

Board of Zoning Adjustment
Staff Report
December 7, 2020



Case No:	20-APPEAL-0006
Project Name:	Southcrest Drive Appeal
Location:	4634 Southcrest Drive
Appellant:	Aja Sherman
Representative:	Aja Sherman
Jurisdiction:	Louisville Metro
Council District:	21 – Nicole George
Case Manager:	Jon E. Crumbie, Planning & Design Coordinator

This request was continued to November 2 and then to December 7 to allow the Appellant time to gather additional information concerning nonconforming rights.

REQUEST(S)

- Appeal of an administrative decision regarding nonconforming rights

CASE SUMMARY/BACKGROUND

Pursuant to KRS 100.257 and 100.261 the Board of Zoning Adjustment shall hear appeals of an official action, order, requirement, interpretation, grant, refusal or decision of an administrative official, zoning enforcement officer or code enforcement officer. Appeals must be taken within 30 days of the official action. Action in this case is deemed to be March 10, 2020, when the Code Enforcement Officer issued the Zoning Violation Notice. The appellant submitted the completed appeal on August 24, 2020.

A Code Enforcement Officer, Steven Bodner, issued the Zoning Violation Notice (ENF -ZON-20-000249) on March 10, 2020, based on a complaint that the structure is being used as a duplex in an R-5 zoning.

The Appellant filed an Appeal of the administrative decision on August 24, 2020. A portion of the appeal letter asserts that the Appellant did not receive the Notice of Violation until August. The Appellant submitted information with the appeal application to support their basis of appeal concluding that there is a two family structure on the property. This documentation is part of the record and is available for the Board to review on the Louisville Metro Government Agenda & Meeting Portal (<http://louisville.legistar.com>).

On October 19, 2020 the Board of Zoning Adjustment determined that the Appellant had submitted information that lent itself more to a nonconforming rights decision. At that time the Board allowed the Appellant time to gather additional information concerning nonconforming rights. Appellant amended the Appeal to reflect that it was related to the nonconforming rights decision instead of the Notice of Violation. The Appellant submitted a nonconforming rights determination request on October 22, 2020. Staff reviewed the Polk Directories and they show two listing in 1971. All other Polk Directories shows one listing through 2014. Staff conducted a review of the applicant's information and determined that there was not sufficient information that a nonconforming use (duplex) had been established in the R-5 Single Family Zoning district. Therefore, staff concluded that the property does not have nonconforming

rights for a duplex and submitted a letter to the Appellant stating that decision on November 17, 2020. The

Directory Findings:

1926	Vacant
1934	Marvin FH
1942	James PW
1961	Franke Henry J Jr
1965	Franke Henry J Jr
1971	2 Listings: James E Sanders & Billy Blankenship
1978	James E Sanders
1985	James E Sanders
1993	James and Carol Sanders
2004	James and Carol Sanders
2014	Carol Sanders

STAFF ANALYSIS/FINDINGS

The following sections of the LDC are applicable to this case:

Section 1.2.2 Definitions

Section 2.2.7 Zoning District

As currently defined in LDC Sec. 1.2.2, the following definition is relevant to the appeal:

Dwelling Unit - Either a single room or two or more connected rooms used exclusively as a single unit and intended for occupancy for no less than thirty (30) consecutive days or more by one family, and providing complete, independent living facilities (which at a minimum includes permanent provisions for living, sleeping, eating, cooking and sanitation which are accessed independently). Notwithstanding the provisions of this definition, where permitted, short term rentals may be occupied by more than one family and for less than 30 consecutive days. This term does not include hotel or motel rooms, extended stay lodging facilities, nursing home rooms, or assisted living residence units.

2.2.7 R-5 Residential Single Family District

The following provisions shall apply in the R-5 Residential Single-Family District unless otherwise provided in these regulations:

A. Permitted Uses: All uses permitted in the R-1 Residential Single Family District, as well as the following use(s): Dwellings, semi-detached, on lots recorded before June 17, 1954, where each dwelling unit is constructed on its own lot and meets all other requirements of this zoning district

Uses allowed in the R-1 Residential Single Family District:

- Accessory buildings or uses
- Agricultural uses
- Community residences
- Country clubs
- ***Dwellings, Single-family***
- Family care home (mini-home)
- Home occupations

- Publicly owned and/or operated colleges, schools and institutions of learning (except training schools)
- Publicly owned and/or operated libraries, museums, historical buildings and grounds, arboretums, aquariums, and art galleries
- Publicly owned and/or operated parks, playgrounds, and community centers
- Residential care facilities
- Temporary buildings, the uses of which are incidental to construction operations being conducted on the same or adjoining lot or tract, and which shall be removed upon completion or abandonment of such construction, or upon the expiration of a period of two years from the time of erection of such temporary buildings, whichever is sooner
- Off-street parking permitted within a conservation subdivision (see Chapter 7, Part 11 for details)

According to Jefferson County PVA records, the property type is listed as residential two-family dwelling duplex. The PVA lists the structure as built in 1920.

The Appellant provided documentation related to their ownership and use of the property for residential activities. The property is in the original city and must be dated back to 1971. The Appellant submitted a signed Affidavit, before/after pictures, and a Caron's Directory listing in 1971 showing the property had two listings.

Staff Conclusions

Staff has information that a duplex was present on the site in 1971 but does not have sufficient information that the nonconforming use (duplex) has been continuous since 1971. The Appellant has not submitted additional information to change staff's previous conclusion. Therefore, staff believes that the original decision was correct, and the property does not have established nonconforming rights for a duplex.

Standard of Review

Pursuant to LDC 11.7.3 and KRS 100.257, the Board of Adjustment shall have the power to hear and decide cases where it is alleged by the applicant that there is error in any order, requirement, decision, grant, or refusal made by an administrative official in the enforcement of the zoning regulation.

Based upon the file of this case, this staff report, and the evidence and testimony submitted at the public hearing, the Board must determine:

1. Did the duplex exist on the property in 1971?
2. If yes to question 1, did this use of the property continue to the present day?

If the Board answers yes to both questions, then the Board would concur with the applicant, and the approval of such motion would overturn staff's decision.

If the Board answers no to any of the two questions listed above, then an approval of such a motion would affirm staff's decision.

RELATED CASES

20-ENF-ZON-20-000249 – The Notice of Violation

20-NONCOMFORM-0025 – The administrative decision in this case is the subject of the appeal.

INTERESTED PARTY COMMENTS

Staff has received several interested party comments.

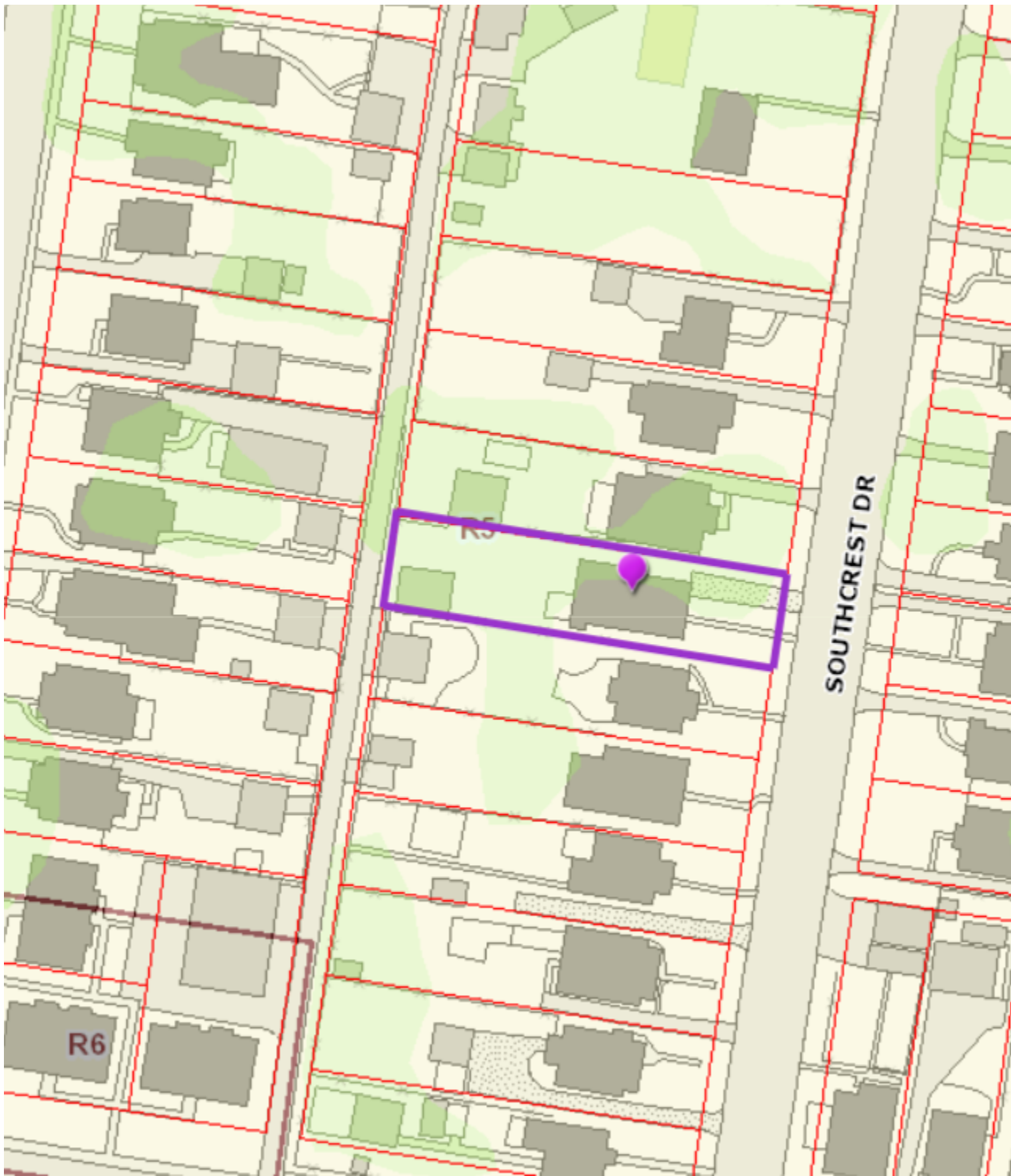
NOTIFICATION

Date	Purpose of Notice	Recipients
10/1/2020	Notification of appeal of an administrative decision	Adjoining property owners, Appellant, and PDS staff GovDelivery District
10/9/2020	Legal ad for notification of appeal of an administrative decision	Courier Journal - published in paper by Appellant or Representative

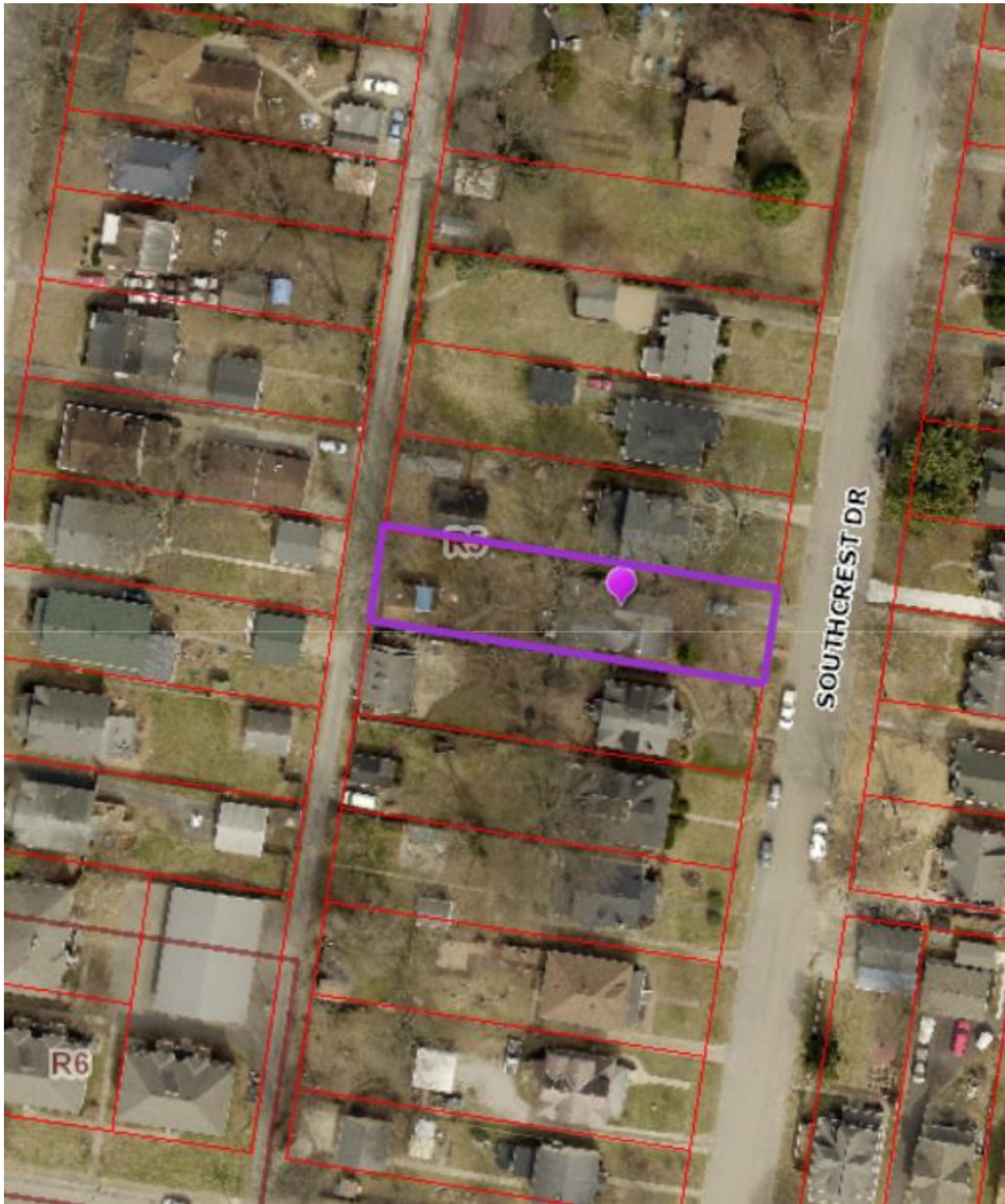
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Photos

1. **Zoning Map**



2. Aerial Photograph



3. Site Photos



