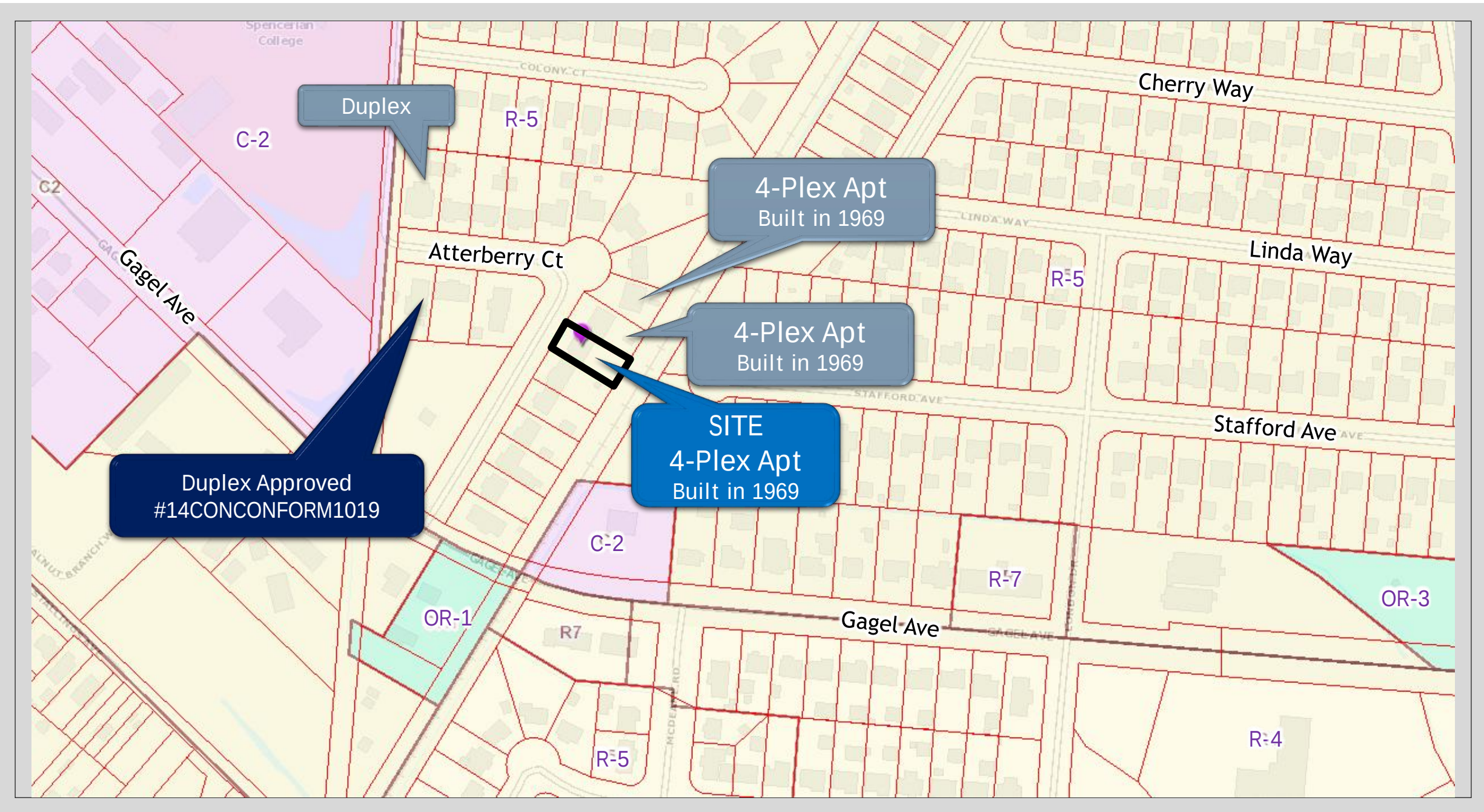




Docket No. 22-Appeal-0014

Appeal of administrative decision regarding Non-
Conforming Rights on property located at
4607 Atterberry Court



C-2

Duplex

R-5

4-Plex Apt
Built in 1969

4-Plex Apt
Built in 1969

SITE
4-Plex Apt
Built in 1969

Duplex Approved
#14CONCONFORM1019

Atterberry Ct

Cherry Way

Linda Way

R-5

Stafford Ave

C-2

R-7

OR-3

Gagel Ave

R-4

R-5





1712 Atterberry Ct.
Duplex

4603 Atterberry Ct.
4-Plex Apt
Built in 1969

4605 Atterberry Ct.
4-Plex Apt
Built in 1969

1712 Atterberry Ct.
Duplex Approved
#14CONCONFORM1019

SITE
4603 Atterberry Ct.
4-Plex Apt
Built in 1969



4603 Atterberry Ct.
4-Plex Apt
Built in 1969

4605 Atterberry Ct.
4-Plex Apt
Built in 1969

SITE
4607 Atterberry Ct.
4-Plex Apt
Built in 1969

View of site and adjoining pre-Plan Certain apartment buildings (4603, 4605, & 4607 Atterberry Ct.).

1713 Atterberry Court

Original entrance doors
for the duplex



NCU Approved:
1712 Atterberry Ct.
#14NONCONFORMING1019



Original entrance doors
for the duplex

NCU Approved:
1712 Atterberry Ct.
#14NONCONFORMING1019



OFFICE OF PLANNING & DESIGN SERVICES
DEVELOP LOUISVILLE
LOUISVILLE, KENTUCKY

GREG FISCHER
MAYOR

YU "EMILY" LIU, AICP
DIRECTOR

December 2, 2014

Mr. & Mrs. Kenneth Richardson
7912 Kendrick Crossing Lane
Louisville, Kentucky 40291

Re: # 14Nonconforming1019
1712 Atterberry Court
Louisville, Kentucky 40216

Dear Mr. & Mrs. Richardson,

This letter will serve notice that nonconforming use rights for two (2) units has been established for the property known as 1712 Atterberry Court per your submitted information and staff's research.

The property owner is advised that changes to the use of property could result in a loss of any nonconforming rights that might exist.

Copies of this letter will be sent to adjacent property owners.

Staff's conclusion can be appealed by any interested party to the Louisville Metro Board of Zoning Adjustment pursuant to Kentucky Revised Statutes, Section 100.257 within 30 days of receipt of letter.

The statement must be recorded in the chain of title in the Office of the Clerk of Jefferson County, Kentucky, to put others on notice of the establishment of nonconforming use.

Sincerely,

A handwritten signature in cursive script, reading "Steve Hendrix", is written over the typed name.

Steve Hendrix
Planning Supervisor, Codes & Regulations

Cc:
April Robbins, Zoning Supervisor, Codes & Regulations
Dave Marchal, Assistant Director, Codes & Regulations

LOUISVILLE FORWARD

www.louisvilleky.gov

METRO DEVELOPMENT CENTER 444 S. FIFTH STREET, STE 300, LOUISVILLE, KENTUCKY 40202 502.574.6230 FAX 502.574.8129

NCU Approved:
1712 Atterberry Ct.
#14NONCONFORMING1019



OFFICE OF PLANNING & DESIGN SERVICES
DEVELOP LOUISVILLE
LOUISVILLE, KENTUCKY

GREG FISCHER
MAYOR

YU "EMILY" LIU, AICP
DIRECTOR

December 2, 2014

Mr. & Mrs. Kenneth Richardson
7912 Kendrick Crossing Lane
Louisville, Kentucky 40291

Re: # 14Nonconforming1019

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Copies of this letter will be sent to adjacent property owners.

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Sincerely,

A handwritten signature in cursive script, reading "Steve Hendrix", is written over the printed name.

Steve Hendrix
Planning Supervisor, Codes & Regulations

Cc:
April Robbins, Zoning Supervisor, Codes & Regulations
Dave Marchal, Assistant Director, Codes & Regulations

LOUISVILLE FORWARD

www.louisvilleky.gov

METRO DEVELOPMENT CENTER 444 S. FIFTH STREET, STE 300, LOUISVILLE, KENTUCKY 40202 502.574.6230 FAX 502.574.8129

7-17-69

Docket No. 9-135-69
 Subject: Zoning Plan for the City of
 Shively

The public hearing on this plan was held on July 9, 1969, at which time action on this proposal was postponed.

Following some discussion, a motion was made and seconded, and the following resolution was unanimously adopted:

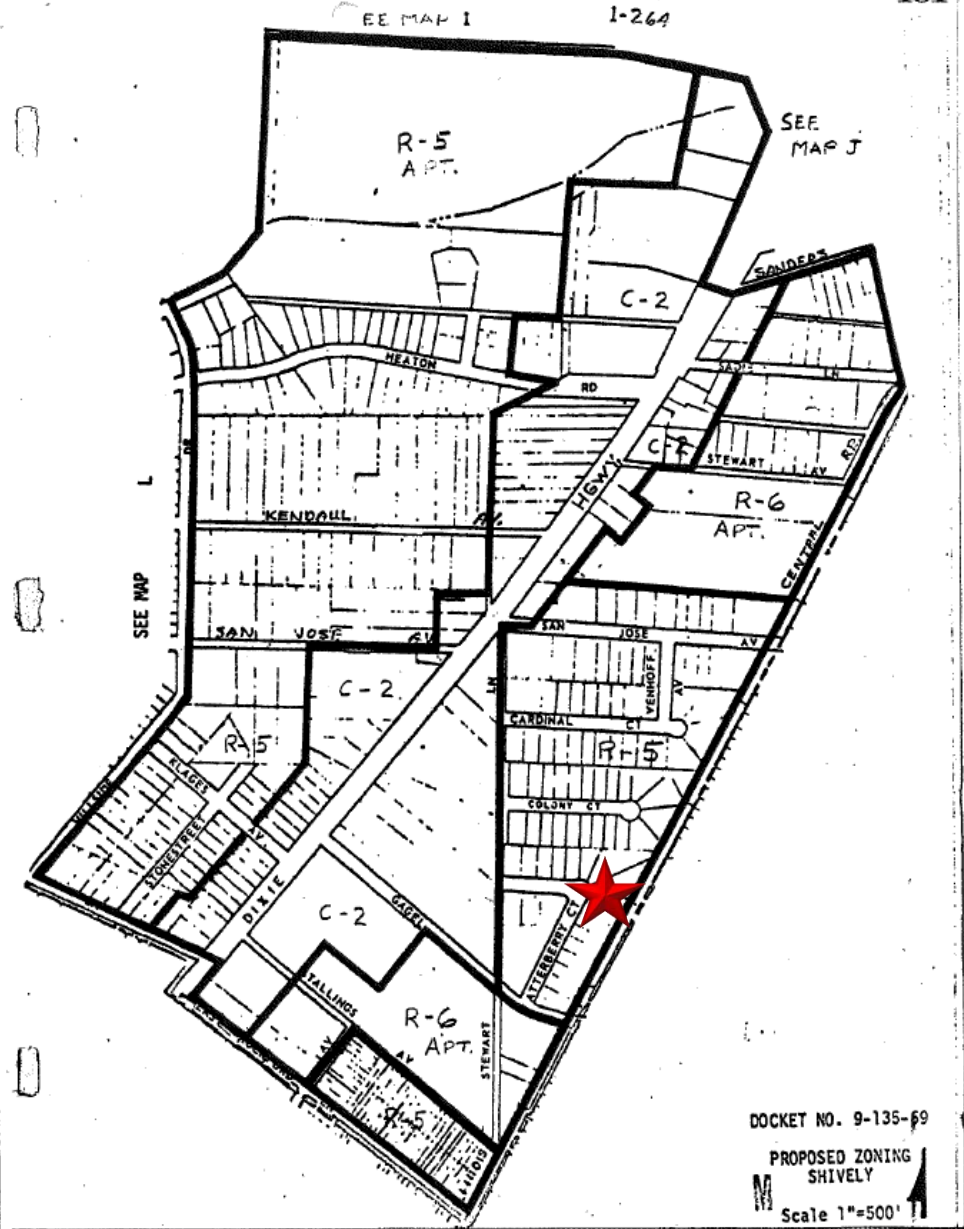
WHEREAS, the Louisville and Jefferson County Planning Commission has held a public hearing pursuant to KRS Chapters 100 and 424 concerning the text and map of a zoning regulation for the City of Shively, Kentucky; and

WHEREAS, the Louisville and Jefferson County Planning Commission finds that this proposal will promote the public health, safety, morals, and general welfare; will facilitate orderly and harmonious development of the visual character of said city; will regulate the density of population and intensity of land use in order to provide adequate light and air; will prevent the overcrowding of land, blight, danger, and congestion of people and commodities; will lead to having uniformity in the zoning regulations for all of the planning unit; and will otherwise be to the best interests of the citizens of the City of Shively and this planning unit; and

WHEREAS, the City of Shively has previously adopted the statement of objectives which is a part of the comprehensive plan; and

WHEREAS, the Louisville and Jefferson County Planning Commission is conducting studies which are required for a new comprehensive plan to update the existing comprehensive plan;

NOW, THEREFORE, BE IT RESOLVED, That the Louisville and Jefferson County Planning Commission does hereby recommend to the City Council of the City of Shively, Kentucky, that the text called Zoning District Regulations for the City of Louisville and Jefferson County outside cities of the fourth class, dated October 21, 1968, and the following zoning district map in Sections A through M, which said text and map complement and refer to one another, and which said text and map are a part of this resolution as if fully copied herein, be adopted by an ordinance of said City to be in effect therein.



4603, 4605, and 4607 Atterberry used as
a justification for the NCU Approved for
1712 Atterberry Court in
#14NONCONFORMING1019



4603 4605 4607 Atterberry Court

These are all multi-unit apartment
buildings.

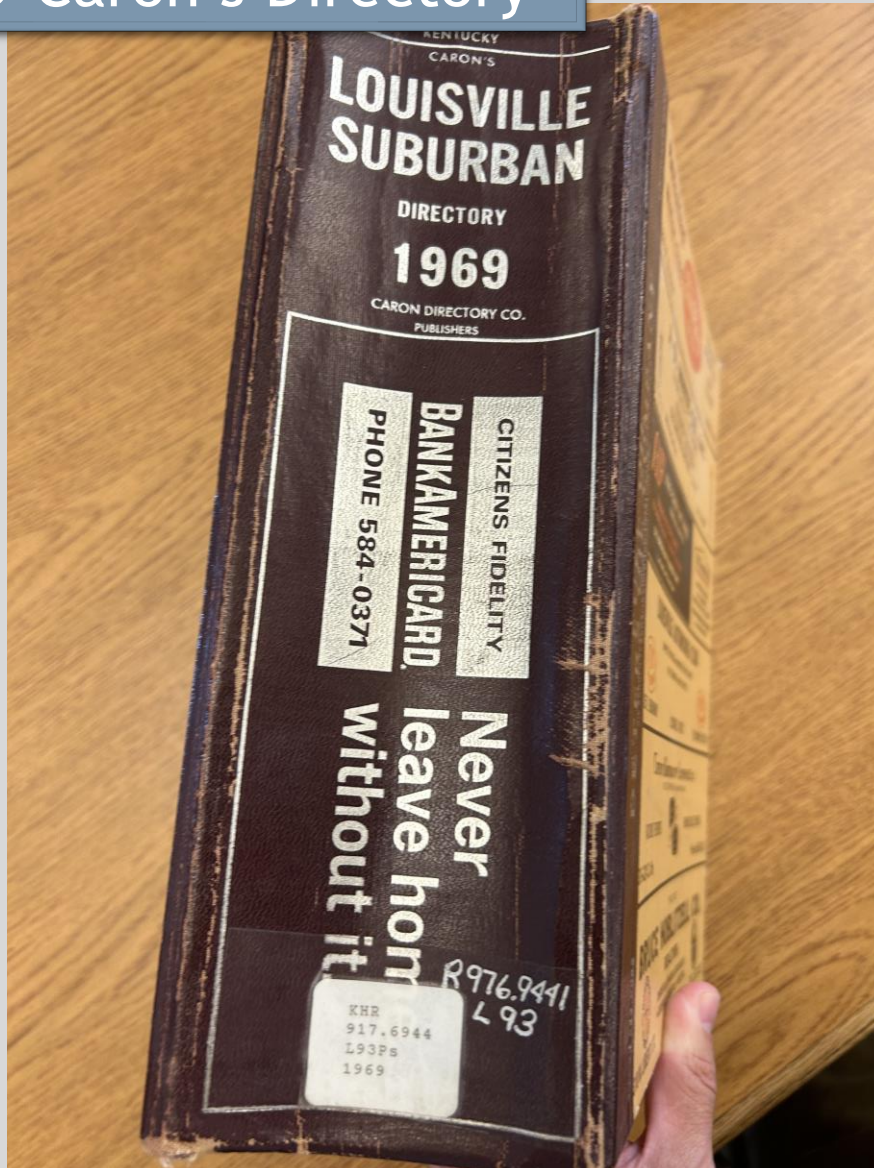
RECEIVED
PLANNING
DESIGN SERVICES

Image captured Oct 2013 © 2013 Google

<https://www.google.com/maps/place/1712+Atterberry+Ct,+Louisville,+KY+40216/@38.254, -85.754, 15z> 11/16/2014

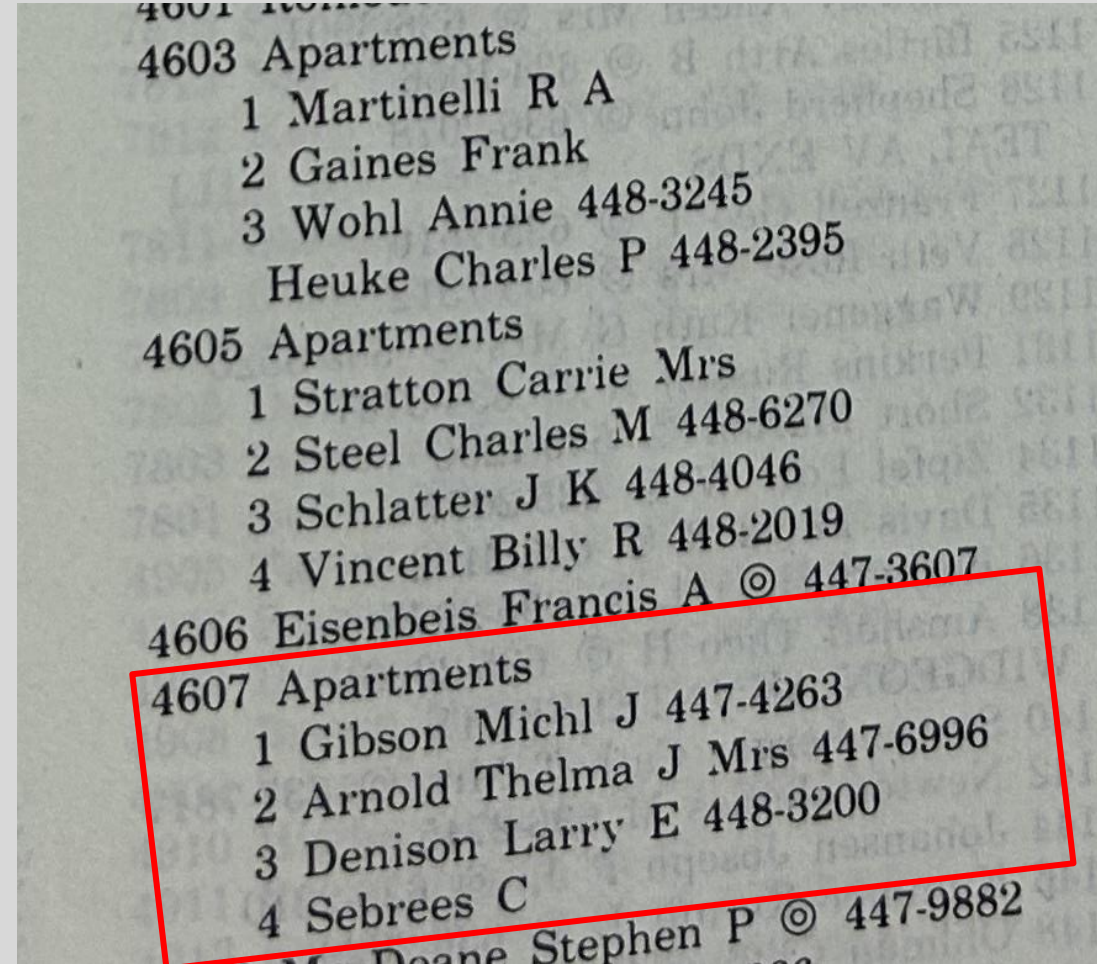
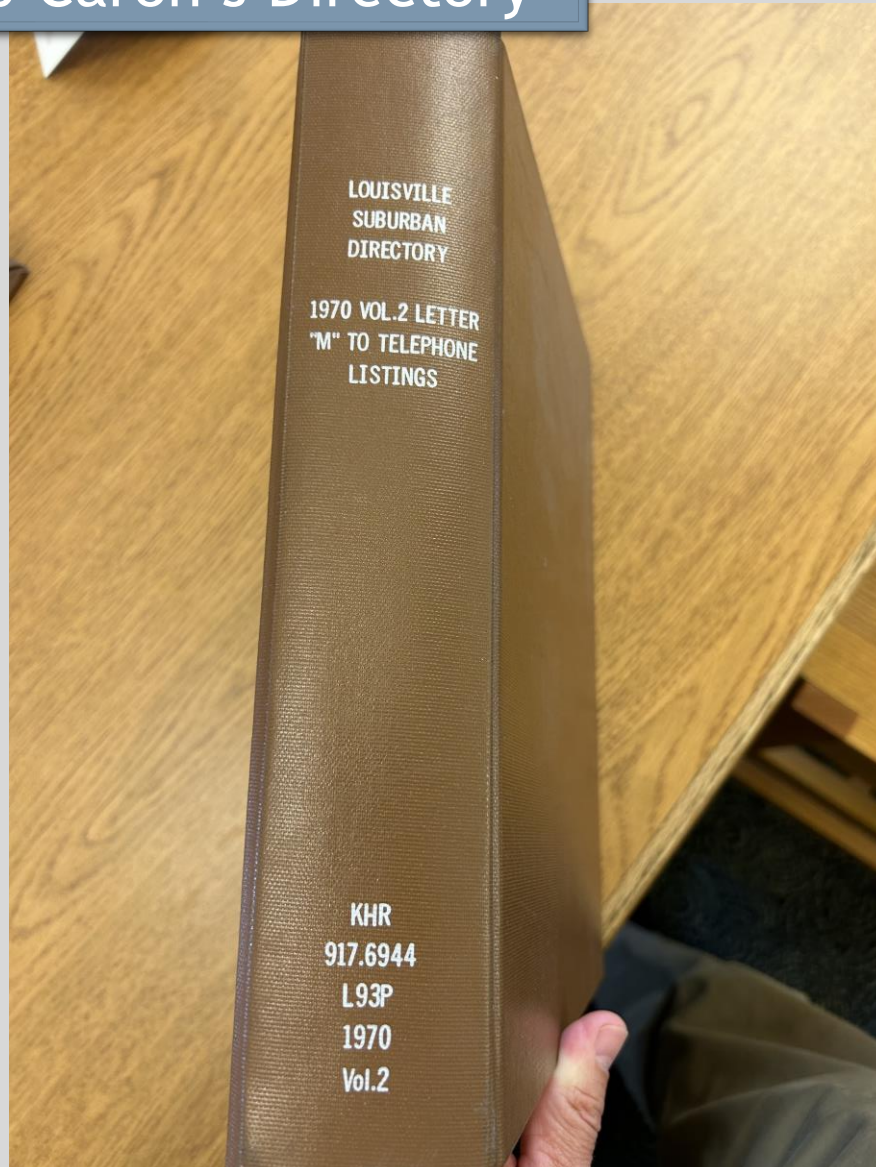
1712 Atterberry Ct 12/10/19

1969 Caron's Directory



4603 Under Constn	
4605 Under Constn	
4606 Eisenbeis Francis A © 447-3607	
4607 Apartments	2
1 State Anthony W	2
2 Arnold Thelma J Mrs 447-6996	2
3 Mc Donnell Kenneth A	2
4 Button J R Jr	2
4609 Mc Deane Stephen P © 447-9882	2
4613 Cain R	2
4615 Bruce Wallace W © 447-3751	2
4617 No Return	2
149	
ATUR ST (PLEASURE RIDGE PARK)	
FROM DEAD END SOUTH TO	

1970 Caron's Directory

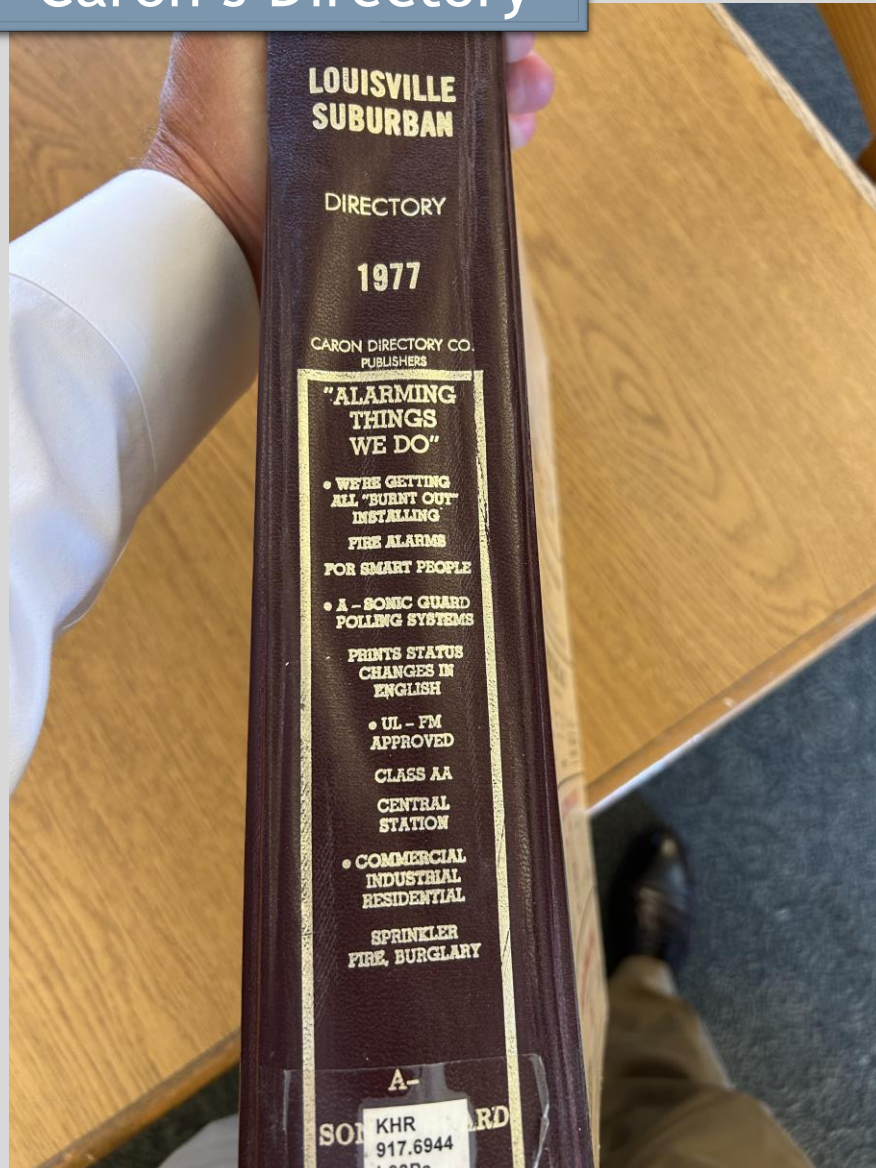


1972 Caron's Directory



Phone 77	4603 Apartments
	1 Martinelli R A 447-8315
	2 Roehrig Joseph V 447-4209
	3★De Witt B A 448-7654
	4★Dowell C
	4605 Apartments
	1★Ward Darrell E 447-2026
	2 Vacant
	3★Nicholas Lorene Mrs
	4★Higdon P
	4606 Eisenbeis Francis A © 447-3607
	4607 Apartments
	1 Bodemann Gary L 447-3882
	2 Arnold Thelma J Mrs 447-6996
	3★Ashley Patricia D 447-9448
	4★Graham Randy S 448-5558
	4609 Mc Deane Stephen P © 447-9882
	4611 Vacant
	4613 Cain Raymond © 447-4266
	4615 Bruce Wallace W © 447-3751
	4617 Hopper Marion D 447-9708
ATUR ST (PLEASURE RIDGE PARK)	
FROM DEAR END	
14	

1977 Caron's Directory



4603 Apartments
1 Warner Virginia M Mrs 448-2476
2 Roehrig Joseph V 447-4209
3 Geary James 448-3566
4 Jockell

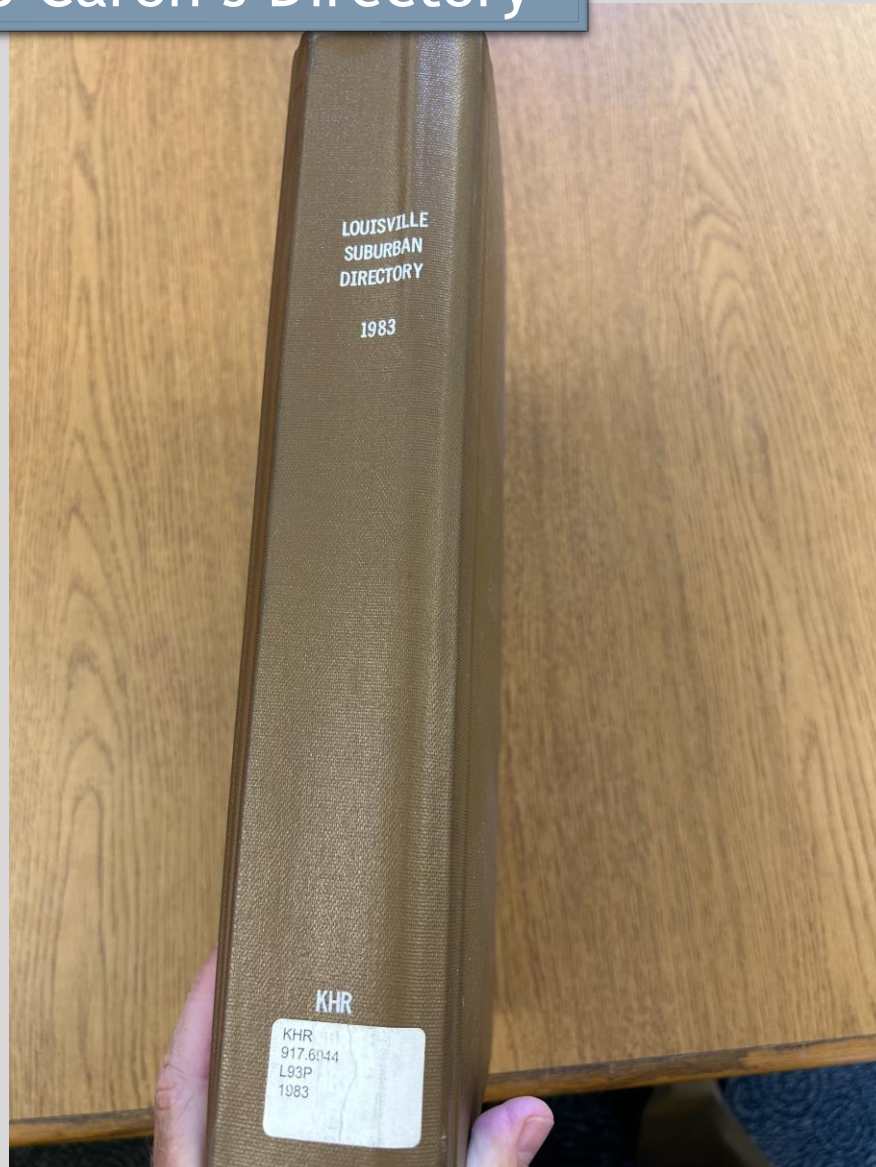
4605 Apartments
1★Burge K
2 No Return
3★Mottley D
4★Whitlow Danny

4606 Eisenbeis Francis A © 447-3607

4607 Apartments
1 Flanagan K Gary
2 Woodrum Martha
3★Clark Wayne A
4★Knabel Joseph W

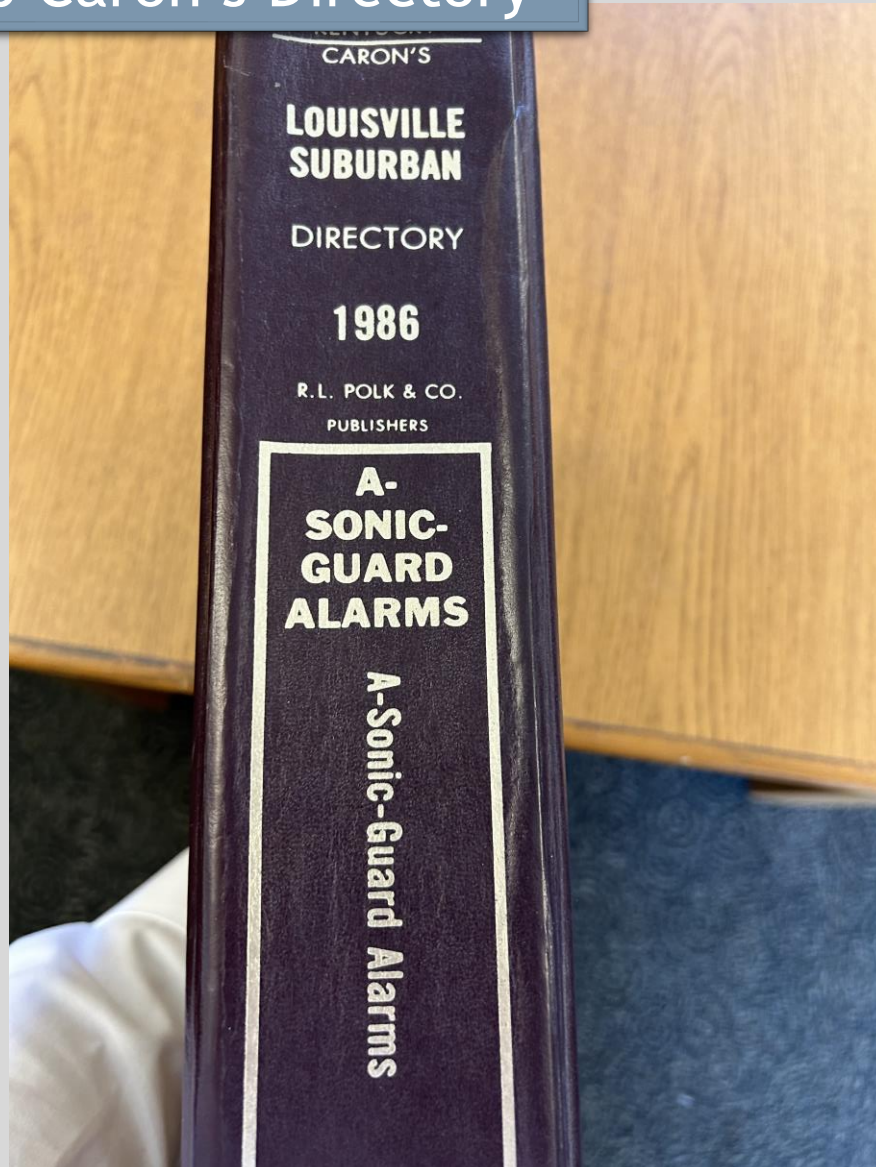
4609 Mc Deane Stephen P © 447-9882
4611 Irmscher Robt ©
4613 Cain Raymond ©
4615 Bruce Wallace W © 447-0755

1983 Caron's Directory



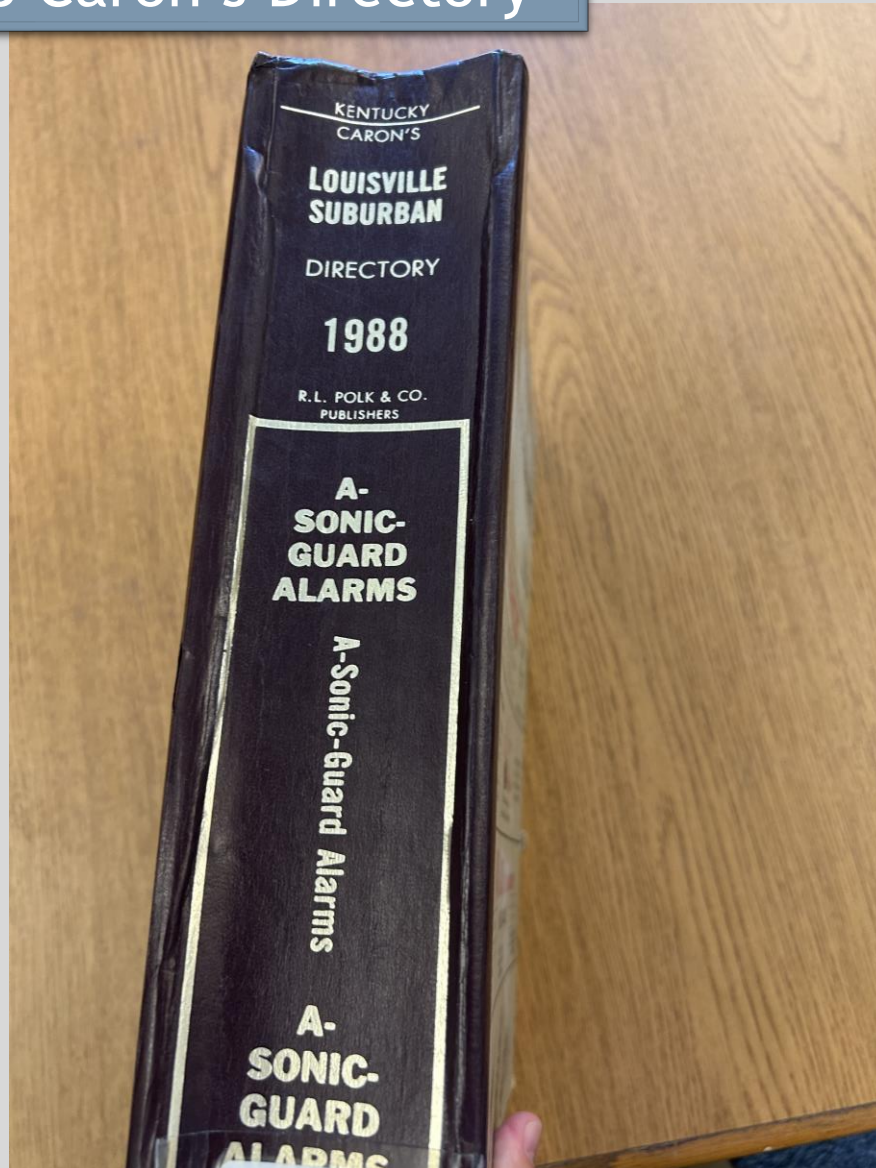
2 Roehrig Joseph V 447-4209
3 Weston Janice K 447-9338
4 Dowell Margt
Ken-Mar Apartments
1 Burge Ken J 449-1221
2 Ken-Mar Apts Ofc 449-1221
3★Hogan Barbara
4★Snawder Phil
4606 Eisenbeis Edna A © 447-3607
ant 4607 Apartments
1★Paul Bernice 447-4729
2★Nadorff John 449-1193
3 No Return
4★Emerson Cindy L 447-0280
4609 Mc Deane Stephen P © 447-9882
4611 Mc Cawley David © 448-7382
4613 Cain Raymond ©
4615 Bruce Wallace W © 447-3751
4617 Gore Bonnie L Mrs

1986 Caron's Directory



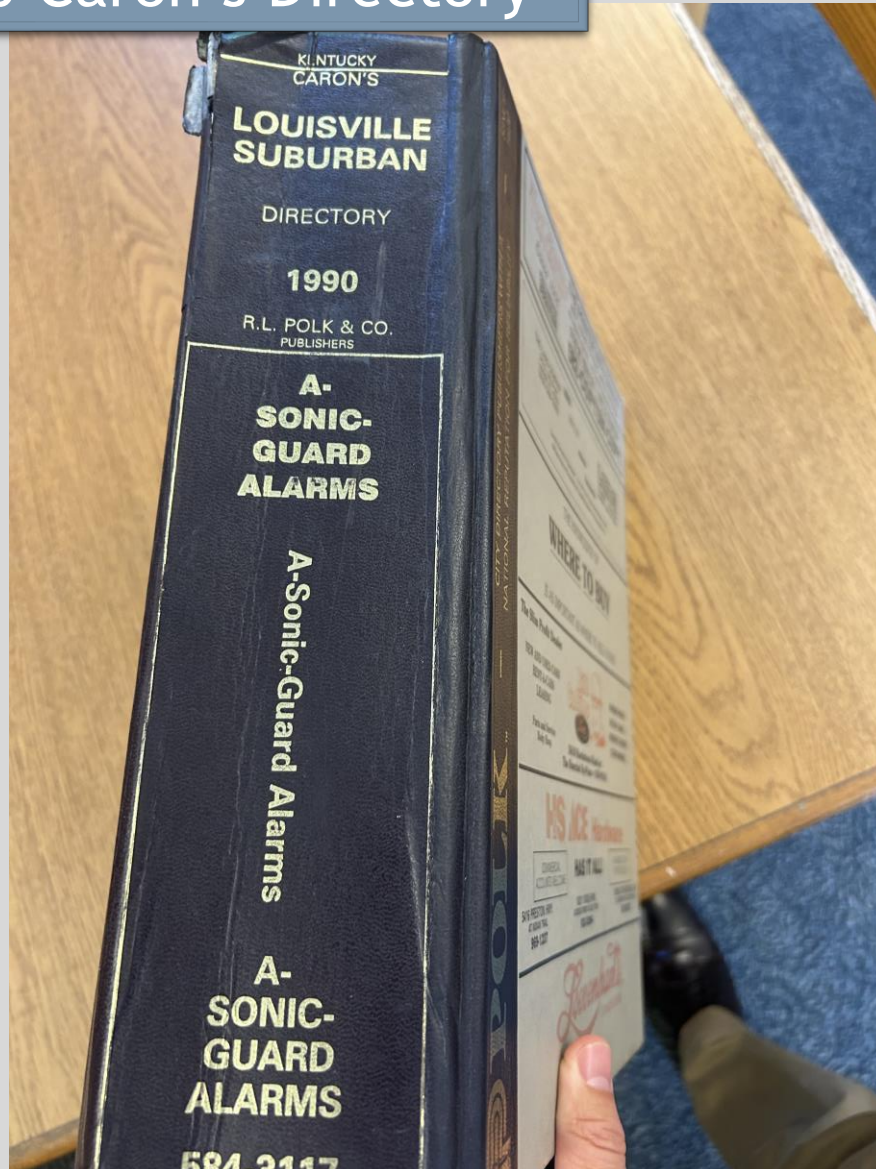
4603 Apartments
1 Turner June B 447-3801
2★Helm Michl D 448-3329
3 Weston Janice K 447-9338
4 Dowell Margt
Ken-Mar Apartments
1 Burge Ken J 449-1221
2 Ken-Mar Apartments ofc 449-1221
3 Perry Nell K 449-1790
4 Quisenberry Hardin R 448-4114
4606 Eisenbeis Edna A 447-3607
4607 Apartments
1★Doty Wayne E
2 Nadorff John 449-1193
3 Paul Bernice 447-4792
4★Hamilton Janice L 448-5896
4609 Mc Deane Stephen P © 447-9882
4611 Ogaldez Edwin L © 447-8054
4613 Cain Raymond ©
4615 Bruce Wallace W © 447-3751
4617 Gore Bonnie L Mrs ©

1988 Caron's Directory



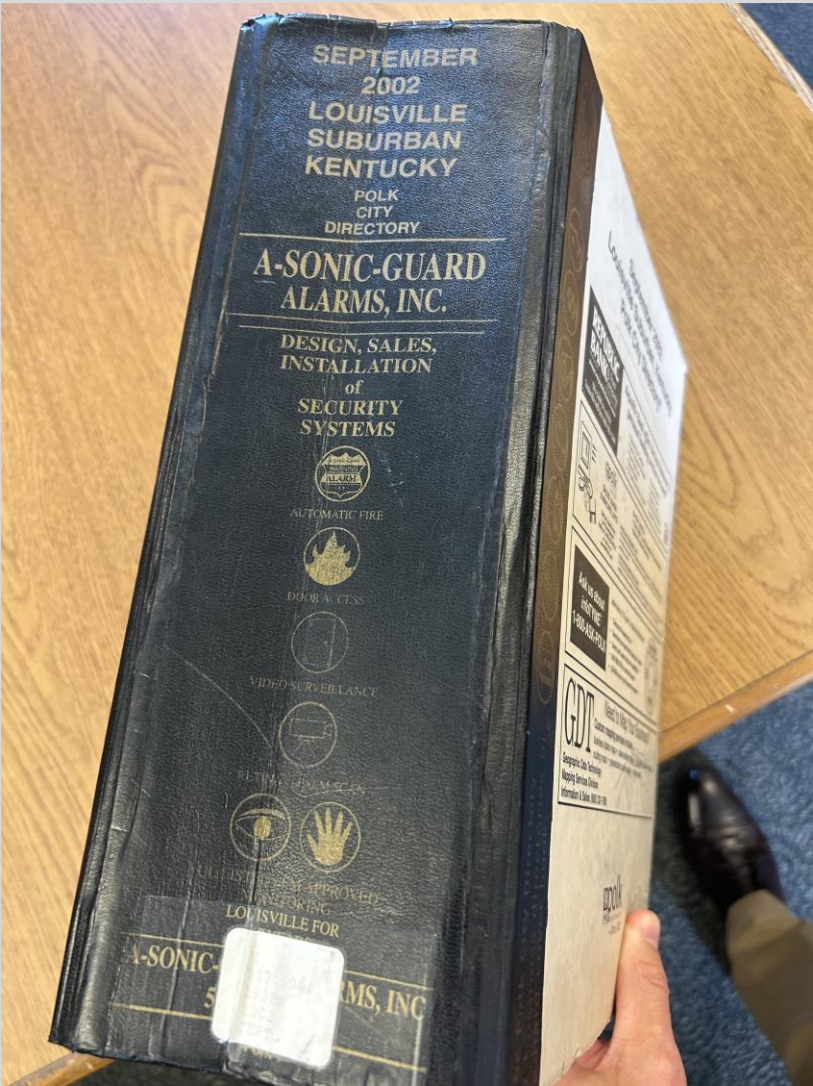
4603 Apartments
1 Turner June B 447-3801
2 Wilkerson
3★Weston Janis K 447-9338
4 Dowell Margt
Ken-Mar Apartments
1 Burge Ken J 449-1221
2 Ken-Mar Apartments ofc 449-1221
3 Perry Nell K 449-1790
4 Quisenberry Hardin R 448-4114
4606 No Return
4607 Apartments
1 Vacant
2 Nadorff John
3 Paul Bernice 447-4729
4 Hamilton Janice L 448-5896
4609 Mc Deane Stephen P © 447-9882
4611 Ogaldez Edwin L © 447-8054
4613 Vacant

1990 Caron's Directory



	2 Nadorff John	17
	3 Paul Bernice 447-4729	
	4 Hamilton Janice L 448-5896	
schs	4609 Mc Deane Stephen P © 447-9882	22
	4611 Ogaldez Edwin L © 447-8054	22
	4613★Wilson Haskell D © 448-5615	22
ncil	4615 Bruce Wallace W © 447-3751	
	4617 Dawes Gary W	
	ATTU LA -FROM 6602	278

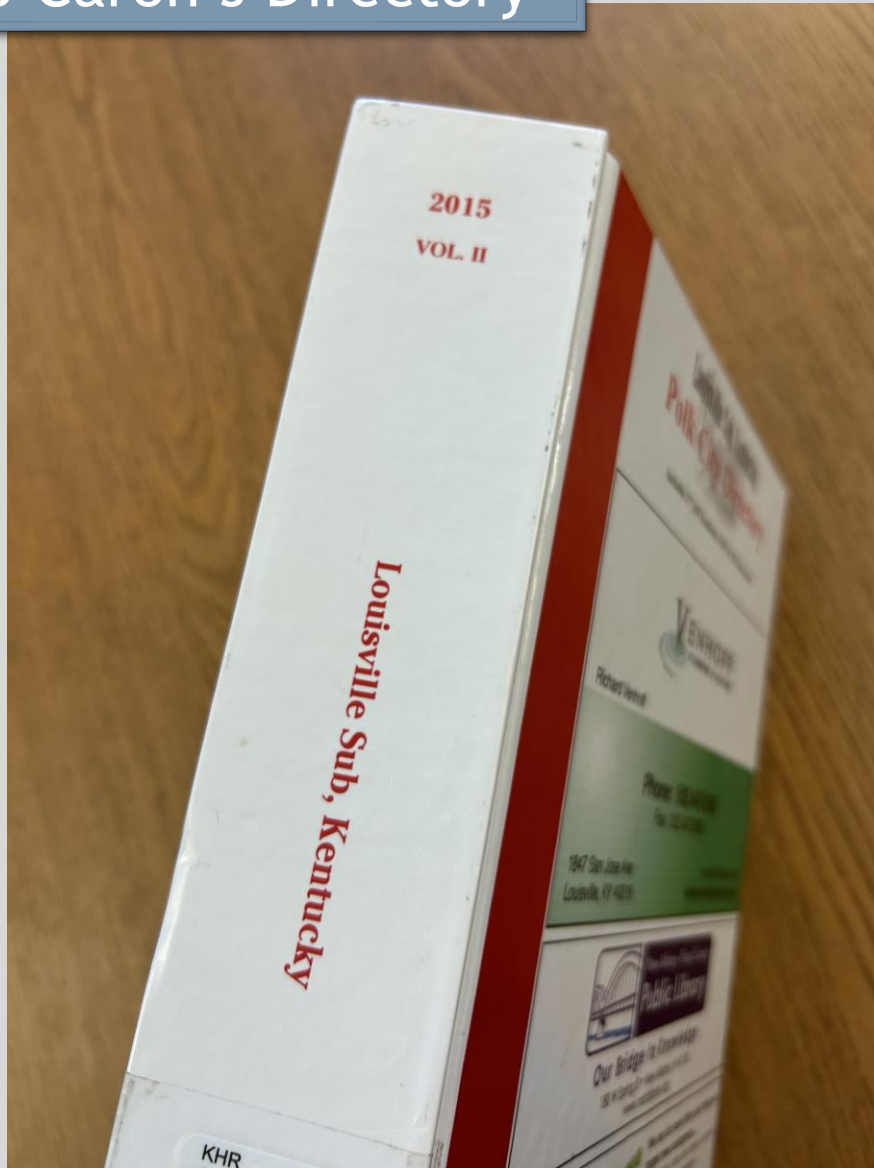
2002 Caron's Directory



.....502-440-2000 3115
4601 Roof Billy M [20] ▲502-447-7507 3116
4603 Neely Delton B [6]502-448-5261
1 Not Verified
2 Buck Martha M [3] ..502-449-3845
3 - 4 Not Verified (2 Apts)
4605 Johnson Mable F [4] ..502-447-0667
2 Dailey Rhonda L [4]
3 Perry Kizzie N502-449-1790
3 Perry Nell K [19]502-449-1790
4 Shannon Camesha L [3]
.....502-449-0424
4 Shannon Kelly W ..502-449-0424
4606 Not Verified
4607 Brockman Chrissy [2] 502-449-3839
1 Not Verified

ATTEBERRY CT Cont'd
2 Gray Crystal R [3]
3 - Not Verified (3 Apts)
4611 Bronnert Jackie G
Bronnert Mich

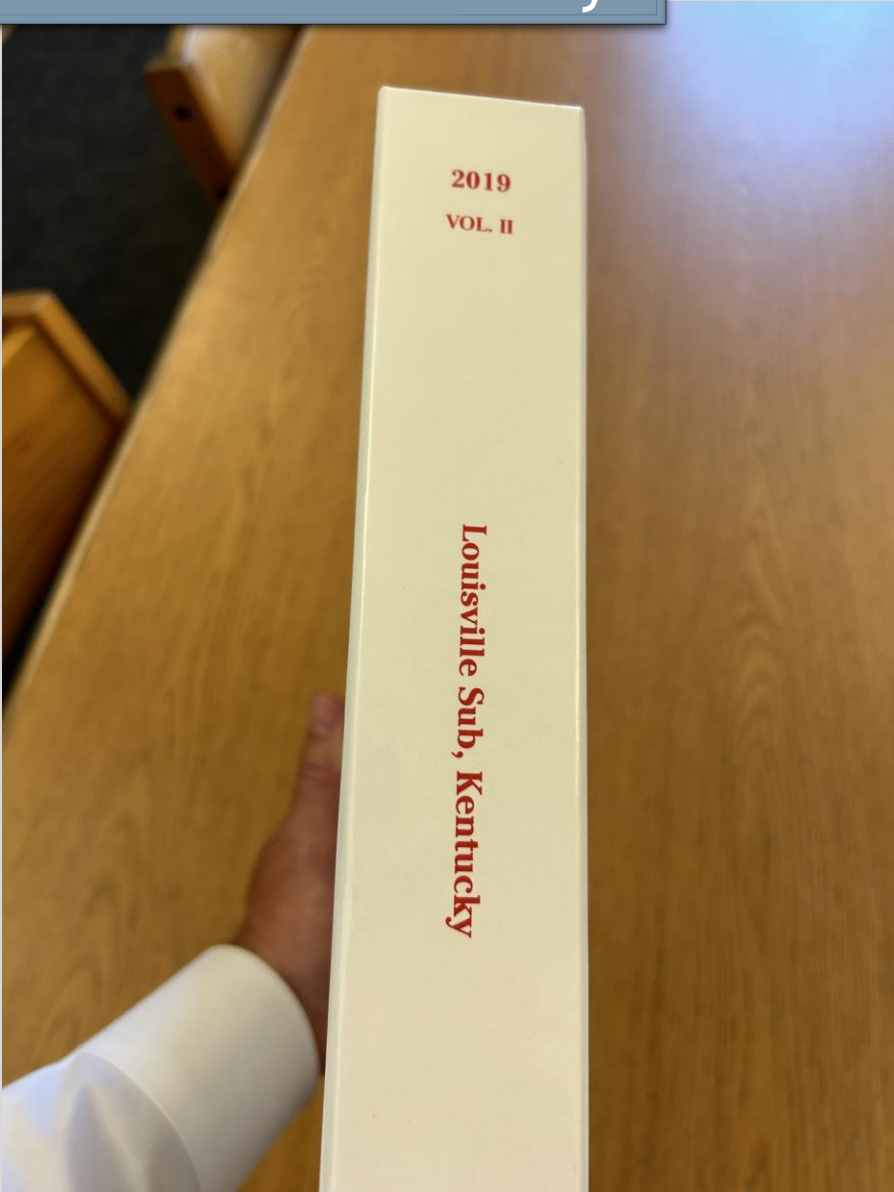
2015 Caron's Directory



4603 **N** Fuson Eddie
1 **N** James Ebony R ✓
2 Grundemann Edward & Amy M **17**
4605 2 Spurling Denasha **6**
3 **N** Nell Perry ✓
4 **N** Camesha Shannon ✓
4606 Fentress Anna L **29** ▲ (1958)
Fentress Oleda
4607 Russell Thomas **3**
1 Thompson Jill M @ **16**
2 King Patricia ✓ **10**502-449-7534
4609 Hatley Kimberly A ✓ @ **13** ▲ (1958)
4611 Bronnert Michael L & Jacklynn G ✓ **20** ▲
(1958)502-447-8054
4613 Pring Katie E & Jay ✓ @ **11** ▲ (1958)
4615 Slayton Sean E @ **2** ▲ (1958)
4617 Waastaff Amisha ✓ **15**

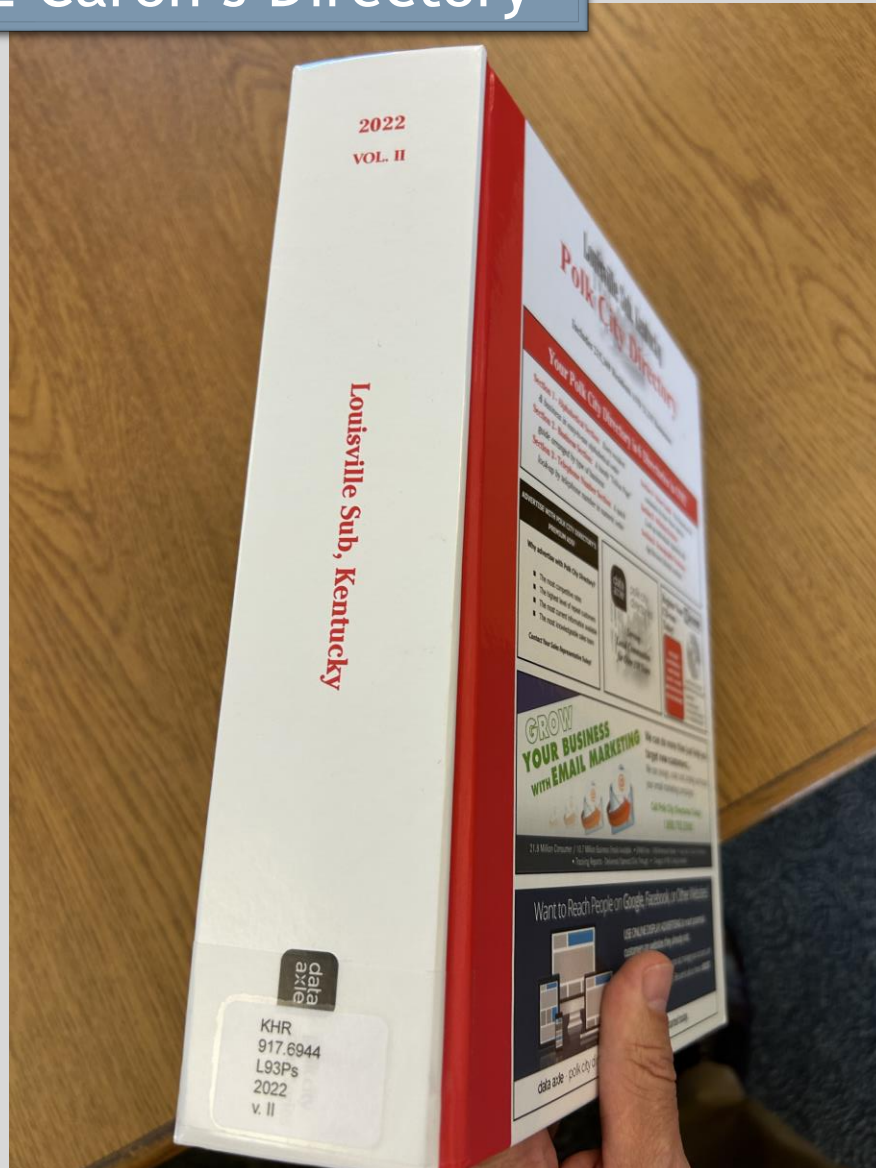
3111 M
(
3112 Br
3113 Ke
3114 Fo
(
3115 Br
Bra
3116 No
AUBURN
CANDOR
+ LINHE

2019 Caron's Directory



9-8159	4603	1 No Current Listing	3
	2	Ⓝ Frazier Serenity ✓	
9-4951	2	Grundemann Edward & Amy M [21]	
	3	No Current Listing	3
	4	Taylor India D @w [3]	
@w	4605	1 No Current Listing	3
8-2826	2	Spurling Denasha ✓ @w [10]	
[4] ▲	3	No Current Listing	3
	4	Brown James ✓ [4]	3
	4606	No Current Listing	
	4607	1 Thompson Jill M ✓ w [20]	3
	2	King Patricia ✓ [14]502-449-7534	
3-0585	2	King Rudolph502-449-7534	
	3	No Current Listing	3
	4	Griffin James ✓ @ [2]	
ots)	4609	Hatley Kimberly A ✓ @ [17] ▲ (1958)	■
5)	4611	Bronnert Michael L & Jacklynn G ✓ w [24]	A
		▲ (1958)502-447-8054	C

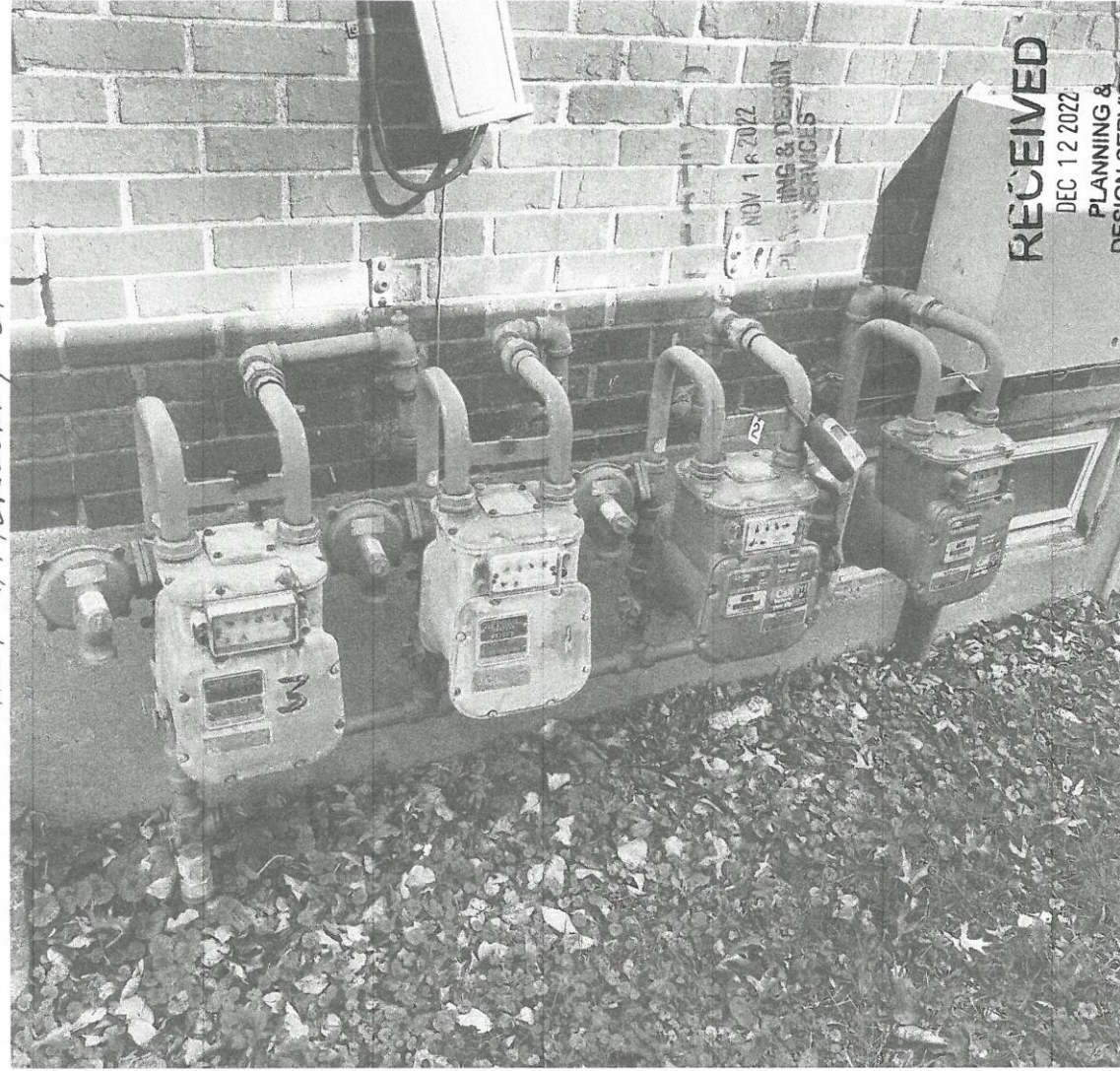
2022 Caron's Directory



ATTERBERRY CT Cont'd		A
4 McDowell Daymond ✓ [5]		
4605 1 Davis Tricia L w [6]		31
2 King Patricia E ✓ [2]		
3 - 4 No Current Listing (2 Apts)		31
4606 Johnson Reginald [5]		31
4607 1 Thompson Jill M [23]		31
2 King Rudolph ✓ [17]	502-449-7534	
3 - 4 No Current Listing (2 Apts)		31
4609 Hatley Kimberly A ✓ @ [20] ▲ (1956)		
① Johnson Amir ✓		31
4611 Bronnert Michael L & Jacklynn G ✓ @w		
[27] ▲ (1956)	502.447.8054	

LG&E meters for each unit

4607 ATTERBERRY CT



22-APPEAL-0014
79 MONTGOMERY AVE

Apt #1 LG&E Bill



a PPL company

BILLING SUMMARY

Previous Balance	51.29
Payment(s) Received	0.00
Balance as of 10/11/22	\$51.29
Current Electric Charges	12.85
Total Current Charges as of 10/11/22	\$12.85
Total Amount Due	\$64.14

This is a final bill.

Mailed 10/12/22 for Account # 3000-4392-4947

AMOUNT DUE
\$64.14

DUE DATE
11/3/22

Online or phone payments made before 7 pm ET will be posted same day

Account Name: PROSPECT CONSTRUCTION LLC

Service Address: 4607 Atterberry Ct Apt 1

LOUISVILLE KY

Online Payments: lge-ku.com

Telephone Payments: (800) 331-7370, press 1-2-3

24 hours a day; \$2.50 fee as of 8/1/22

Customer Service: (800) 331-7370

M-F, 7am-7pm ET

Walk-in Center: 820 W. Broadway

Louisville, KY 40202

M-F, 9am-5pm ET

RECEIVED

NOV 16 2022

PLANNING & DESIGN SERVICES

Please return only this portion with your payment. Make checks payable to LG&E and write your account number on your check.

Amount Due 11/3/22	\$64.14
After Due Date, Pay this Amount:	\$64.14
Winterhelp Donation:	
Total Amount Enclosed:	



PROSPECT CONSTRUCTION LLC
7513 CHESNUT HILL DR

RECEIVED

DEC 12 2022

PLANNING & DESIGN SERVICES

Apt #2 LG&E Bill



a PPL company

BILLING SUMMARY

Previous Balance	47.51
Payment(s) Received	-47.51
Balance as of 10/7/22	\$0.00
Current Electric Charges	17.65
Current Gas Charges	22.73
Total Current Charges as of 10/7/22	\$40.38
Total Amount Due	\$40.38

AMOUNT DUE
\$40.38

DUE DATE
11/3/22

Online or phone payments made before 7 pm ET will be posted same day

Account Name: PROSPECT CONSTRUCTION LLC

Service Address: 4607 Atterberry Ct Apt 2

LOUISVILLE KY

Online Payments: lge-ku.com

Telephone Payments: (800) 331-7370, press 1-2-3

24 hours a day; \$2.50 fee as of 8/1/22

Customer Service: (800) 331-7370

M-F, 7am-7pm ET

Walk-in Center: 820 W. Broadway

Louisville, KY 40202

M-F, 9am-5pm ET

Next read will occur 11/4/22 - 11/8/22 (Meter Read Portion 06)

MONTHLY USAGE

ELECTRIC (kWh) GAS (ccf)



BILLING PERIOD AT-A-GLANCE

	THIS YEAR	LAST YEAR
Average Temperature	67°	0°
Number of Days Billed	28	0
Avg. Electric Charges per Day	\$0.63	\$0.00
Avg. Gas Charges per Day	\$0.81	\$0.00
Avg. Electric Usage per Day (kWh)	1.46	0.00
Avg. Gas Usage per Day (ccf)	0.07	0.00

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
	2021	2021	2021	2022	2022	2022	2022	2022	2022	2022	2022	2022	2022
AVERAGE	0°	0°	0°	0°	0°	0°	50°	62°	72°	79°	80°	76°	67°
	0.00	0.00	0.00	0.00	0.00	0.00	0.48	0.47	0.47	0.59	0.78	0.78	0.63
	0.00	0.00	0.00	0.00	0.00	0.00	0.74	0.72	0.71	0.70	0.71	0.80	0.81

Please return only this portion with your payment. Make checks payable to LG&E and write your account number on your check.

Amount Due 11/3/22	\$40.38
After Due Date, Pay this Amount:	\$41.59
Winterhelp Donation:	
Total Amount Enclosed:	

Account # 3500-1019-2739

Service Address: 4607 Atterberry Ct Apt 2



a PPL company

PROSPECT CONSTRUCTION LLC
7513 CHESNUT HILL DR
PROSPECT, KY 40059

RECEIVED

NOV 16 2022

Apt #3 LG&E Bill



a PPL company

BILLING SUMMARY

Previous Balance	266.76
Payment(s) Received	0.00
Balance as of 10/31/22	\$266.76
Current Electric Charges	55.52
Current Gas Charges	41.06
Total Current Charges as of 10/31/22	\$96.58
Total Amount Due	\$363.34

This is a final bill.

AMOUNT DUE
\$363.34

DUE DATE
11/28/22

App, online or phone payments made before 7 pm ET will be posted same day

Account Name: PROSPECT CONSTRUCTION LLC

Service Address: 4607 Atterberry Ct Apt 3
LOUISVILLE KY

Payment Options
(fees may apply)
Mobile app - LG&E KU ODP mobile app
Online - lge-ku.com

Customer Service:
Phone - (800) 331-7370, press 1-2-3
For fastest service, use our mobile app, website or
automated phone system (800) 331-7370
24 hours a day.
Phone reps available M-F, 7am - 7pm ET.

Please return only this portion with your payment. Make checks payable to LG&E and write your account number on your check.

Amount Due 11/28/22	\$363.34
After Due Date, Pay this Amount:	\$363.34
Winterhelp Donation:	
Total Amount Enclosed:	

Account # 3500-1019-2762
Service Address: 4607 Atterberry Ct Apt 3



a PPL company

RECEIVED
12/20/22
BILLING & SERVICE

PROSPECT CONSTRUCTION LLC
7513 CHESNUT HILL DR
PROSPECT, KY 40059

Apt #4 LG&E Bill



a PPL company

BILLING SUMMARY

Previous Balance	64.61
Payment(s) Received	0.00
Balance as of 9/16/22	\$64.61
Current Electric Charges	6.39
Current Gas Charges	4.48
Total Current Charges as of 9/16/22	\$10.87
Total Amount Due	\$75.48

This is a final bill.

See "Important Information" for a message about your usage.

Mailed 9/19/22 for Account # 3500-1019-2747

AMOUNT DUE
\$75.48

DUE DATE
10/12/22

Online or phone payments made before 7 pm ET will be posted same day

Account Name: PROSPECT CONSTRUCTION LLC

Service Address: 4607 Atterberry Ct Apt 4
LOUISVILLE KY
lge-ku.com

Online Payments:

Telephone Payments: (800) 331-7370, press 1-2-3
24 hours a day; \$2.50 fee as of 8/1/22

Customer Service: (800) 331-7370

M-F, 7am-7pm ET

Walk-in Center: 820 W. Broadway

Louisville, KY 40202

M-F, 9am-5pm ET

Please return only this portion with your payment. Make checks payable to LG&E and write your account number on your check.

Amount Due 10/12/22	\$75.48
After Due Date, Pay this Amount:	\$75.48
Winterhelp Donation:	
Total Amount Enclosed:	

Account # 3500-1019-2747
Service Address: 4607 Atterberry Ct Apt 4



RECEIVED
12/20/22
BILLING & SERVICE

PROSPECT CONSTRUCTION LLC
7513 CHESNUT HILL DR
PROSPECT, KY 40059

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

BUILDING INDUSTRY ASSOCIATION OF GREATER LOUISVILLE BLDG • 1000 N. HURSTBOURNE PARKWAY • SECOND FLOOR • LOUISVILLE, KENTUCKY 40223
(502) 426-6688 • WWW.BARDLAW.NET

John C. Talbott
Email: John@BARDLAW.NET
Phone: (502) 426-6688

April 20, 2023

Chris French, AICP, Supervisor
Planning & Design Services
444 South Fifth Street, Suite 300
Louisville, KY 40202

Hon. Sharon Bond, Chair
Board of Zoning Adjustment
c/o Planning and Design Services
444 S. 5th Street
Louisville, KY 40202

RE: 4607 Atterberry Court – Docket No. 22-APPEAL-0014

Dear Chris:

Atterberry is a small street, with only 17 lots, zoned R-5. It is bounded with residential property to the north and east. To the south, it is bound by Gagel Ave., very close to Dixie Highway. The area immediately to the south on Gagel Ave. is zoned R-6, and has many apartment buildings. The area immediately to the west is zoned commercial C-2, has many businesses one would expect to see on or near Dixie Highway.

The 4607 Atterberry property was developed as a 4-plex in 1969 from all available evidence. In fact, 5 of the 17 lots on Atterberry were originally built as multi-family duplexes and 4-plexes. 1712 and 1713 Atterberry were both built as duplexes. 4603, 4605 and 4607 Atterberry were all built originally as the 4-plexes. From a review of the zoning documents for the City of Shively, it is apparent that all five properties were allowed to be built in violation of the zoning regulations in existence at the time. Although we cannot be absolutely certain as to the reason, in looking at the zoning maps (attached hereto as Exhibit A), the lines of demarcation are somewhat confusing, and it appears that they were mistook for the R-6 zoning immediately next to Atterberry on Gagel Ave. Regardless of how it occurred, it is apparent that some how a government official allowed these 5 properties to be built in the 1960's when it was clear they were multi-family residences.

A review of the Carons publication, shows that the property subject to this application and appeal was originally built and identified as a 4-plex "Apartment". Indeed, all five properties were clearly identified as having multiple residents in violation of the zoning regulations. The three 4-plexes are all identified as being "Apartments". Review of the Carons' books shows that this designation continued uninterrupted, and it still continues to this day. (See Carons books attached hereto as Exhibit B).

The three 4-plexes also have parking for multiple units as well as separate meters for utilities. Again, from all available information, this has been the state of these properties since they were built in 1969, so far over 50 years. As can be seen in pictures today, all three 4-plexes have parking for apartments, which can also be seen as far back as the historical imagery goes on lojic.com.

Additionally, in 2014, the property at 1712 Atterberry Ct. also filed a similar con-conforming use application, under 14-NONCONFORMING-1019. Again, this property was built as a duplex in 1962. The evidence in support of its application was for all material and substantial purposes identical to the evidence in support of the current application. It was originally built as a duplex as documented in Carons and had continuously been used as a duplex since that time. This application was approved by the staff at

Chris French, AICP, Supervisor
April 20, 2023
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Office of Planning & Design Services, finding that nonconforming use rights were established for the property.

It seems apparent that the correct decision was arrived at in the case for 1712 Atterberry Ct. Again, from all available evidence, these properties were built with their use as apartments abundantly apparent. The duplexes have two doors easily seen from the street. (See Exhibit C) And the 4-plexes stand out with their size, being much larger than the single-family homes, in the area, parking and multiple meters. (See Exhibit D).

This case should be treated the exact same way as 14-NONCONFORMING-1019. If there is concern that there is not legal authority to make this designation, that concern is misplaced. Kentucky law has long recognized the doctrine of "honest error" and equitable estoppel against the government attempting to enforce laws where it made a mistake in allowing them to be violated. See Berea v. Wren, 818 SW2d 274 (Ky. App. 1991). In this case, the Court held that where a building inspector acted in good faith, even if his or her actions were not sound, "[t]here should be some point at which the owner of the property who acts in such circumstances becomes secure." *Id.* at 277. As in the present application for non-conforming rights, the Court held that it would be inequitable to revoke the building permit, explaining that "[t]he City officials were fully aware of the use which appellee intended to make of this property and made no complaint as to the erroneous zoning until more than a year after the permit was issued and Wren had expended a substantial amount preparing the site."

The equities of this case are even more persuasive that the "honest error" doctrine merits application for approval of the nonconforming rights. See also City of Richmond v. Spangler Apts., LLC, 547 SW3d 556 (Ky. App. 2018) which affirmed the courts continued adherence to the "honest error" doctrine as applied to government actions and inability to enforce regulations.

Additionally, since 14-NONCONFORMING-1019 was granted nonconforming rights in 2014, Planning and Design Services and this Board should be bound by the doctrine of collateral estoppel in accepting this application in the same manner. If BOZA decides differently than what was granted to the property at 1712 Atterberry Ct., its finding would be arbitrary and capricious under existing case law.

We also believe that under the facts existing under the circumstances that the rights are vested. The property should be permitted to be used exactly how it was knowingly built in 1969 and how it has been operated over the last 54 years. In further support of this application, it is also notable that this property, as well as the other two 4-plexes were all known to the Office of Planning and Design Services in 2014 as being used for multi-family apartments, yet made no effort to enforce the zoning standards. (See page 43 of the 14-NONCONFORMING-1019 file).

Consequently, the application for nonconforming use rights should be approved. The doctrine of "honest error" clearly permits this approval, and collateral estoppel prevents any contrary determination. And further, under the circumstances, any enforcement of the zoning regulations on this property would be arbitrary and capricious on the basis of the prior determination at 1712 Atterberry Ct. in 2014.

Important points

- 5 of the 17 lots on Atterberry were originally built as multi-family duplexes and 4-plexes.
- Carons Directory shows built and used as Multi-Family for over 50 years
- Identified as “Apartment” in Carons
- Approval of 1712 Atterberry in 14-NONCONFORMING-1019
- Legal principals of “Honest error” and “Collateral Estoppel” require approval

QUESTIONS?

