

Board of Zoning Adjustment

Staff Report

February 6, 2023



Case No:	22-APPEAL-0014
Project Name:	Atterberry Court Appeal
Location:	4607 Atterberry Court
Owner:	Prospect Construction, LLC
Appellant:	Tom Sanders
Jurisdiction:	City of Shively
Council District:	3 – Kumar Rashad
Case Manager:	Chris French, AICP, Planning Supervisor

REQUEST(S)

- Appeal of an administrative decision regarding nonconforming rights for a 4-plex in the R-5 zoning district

CASE SUMMARY/BACKGROUND

The Appellant submitted a nonconforming rights application in 2022, under case number 22-NONCONFORM-0029. Staff reviewed this case and determined that there was insufficient information to recognize nonconforming rights for a 4-plex. This decision was completed and forwarded to the Appellant on December 5, 2022. The appellant submitted an appeal on December 5, 2022, which is within the 30-day appeal period.

In the appellant's nonconforming rights case the property is described as 4-plex structure on 0.18 acres. The appellant states that the structure was built as a 4-plex in 1969. He states that each unit has 2 bedrooms and 1 bath. Each unit is approximately 875 square feet in floor area. The appellant also states that this structure is one of three 4-plex structures that were built along Atterberry Court. The other 4-plex structures were built in 1971.

STAFF ANALYSIS/FINDINGS

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

Section 2.2.7 R-5 Residential Single Family District

Staff Analysis: The R-5 residential single family district is limited to single family residential units and through the permitted use with special standards section 4.3.27 accessory dwelling units are permitted as well. 4-plex buildings are not permitted. 4-plexes would be allowed within multi-family residential districts for properties that meet the maximum density requirement of those zones. In the case of this property, a 0.18-acre property would need to be zoned R-7 to allow 4 units.

Section 1.2.2 Definitions

Dwelling, Multi-family - Any group of three or more dwelling units occupying a single lot, whether composed of one or more than one principal building. However, this term shall not include attached dwellings. This term shall include the following:

- A. Efficiency Apartment - A dwelling unit consisting of not more than one habitable room together with kitchenette and sanitary facilities.
- B. Studio Apartment - A dwelling unit consisting of not more than one habitable room together with kitchenette and sanitary facilities, but having a partial separation within the room for the sleeping area.

Dwelling Unit - Either a single room or two (2) or more connected rooms used exclusively as a single unit and intended for occupancy for no less than 30 consecutive days or more by one (1) **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, or any other use more specifically defined in this Land Development Code.

Nonconformity (or Nonconforming) -An activity or a building, structure or a portion thereof which lawfully existed before the adoption or amendment of the zoning regulation, but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located.

Section 1.3.1 Use

- A. A nonconforming use is an established activity which lawfully existed at the time of the enactment of any zoning regulation which would not permit such activity.

Staff Analysis: This property is located within the zoning jurisdiction of the City of Shively; therefore, nonconforming rights would need to be dated back to when zoning took effect in this area, which is 1943 for all areas outside of the old City of Louisville boundary. The applicant provided information that the use existed in 1969 which is when the building was constructed. Staff does not question the fact that the use continued from 1969 to the present. However, staff could not recognize nonconforming rights for this property since the 4-plex structure was built in 1969. The R-5 or equivalent zoning on the property has existed since 1943.

Applicant Basis of Appeal

The appellant's basis of appeal is based on the fact that the structure was built as a 4-plex in 1969 and that the use has continued to the present day.

STAFF CONCLUSIONS

Based on the information available to staff through the nonconforming rights application, the appeal application and information from the PDS office staff believes that no error was made in the nonconforming rights application. This conclusion is based on the fact that the applicant states that this structure was built after 1943, in this case 1969. PVA supports this date and the Caron's Directory also supports this date.

STANDARD OF REVIEW

Pursuant to LDC 11.7.3 and KRS 100.257, the BOZA 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.

The Board must determine if an error was made in the determination that the subject property does not have nonconforming rights to a contractor's shop in accordance with LDC section 1.3.1.

RELATED CASES

22-NONCONFORM-0029

INTERESTED PARTY COMMENTS

Staff has not received any interested party comments.

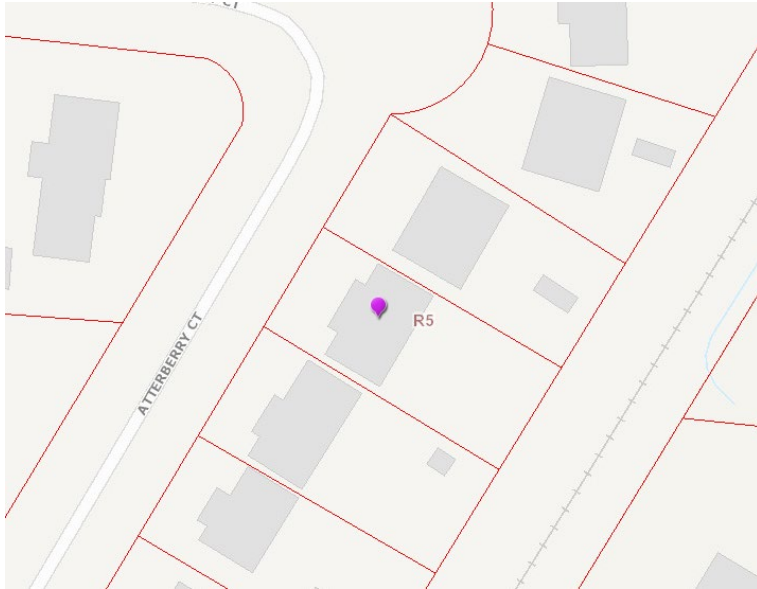
NOTIFICATION

Date	Purpose of Notice	Recipients
1/20/2023	Notification of appeal of an administrative decision	Adjoining property owners
1/23/2023	Notice of appeal hearing	GovDelivery for Council District 6
1/26/2023	Notice of appeal hearing	Sign Posting
1/25/2023	Legal ad for notification of appeal of an administrative decision	Courier Journal - published in paper by Appellant

ATTACHMENTS

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

1. **Zoning Map**



2. **Aerial Photograph**



3. Site Photos

