

Board of Zoning Adjustment

Staff Report

July 2, 2018



Case No:	18APPEAL1003
Project Name:	Henry Avenue Appeal
Location:	3599 Henry Avenue
Owner:	Launch Intl. LLC
Appellant:	James Wright
Representative:	Dustin Robinson
Existing Zoning District:	R-4
Existing Form District:	Traditional Neighborhood
Jurisdiction:	Louisville Metro
Council District:	15 – Butler
Case Manager:	Chris French, AICP

REQUEST(S)

Appeal of a staff determination issued by the Office of Planning & Design Services concerning a request for nonconforming rights for a two-family dwelling (duplex) at 3599 Henry Avenue, Louisville, KY.

CASE SUMMARY/BACKGROUND

On March 30, 2018, James Wright of Launch Intl. LLC, the manager for the property owner, requested a determination that the existing building at 3599 Henry Avenue is a legally nonconforming duplex. After a review of the application and information within Develop Louisville files, Planning & Design Services staff determined that there was insufficient evidence to support a determination that the duplex is legally nonconforming. This decision was provided to the property owner in a letter dated April 25, 2018.

The appellant filed an appeal of the staff determination in a timely manner on May 23, 2018.

As set for in Louisville Metro Land Development Code (LDC) Sec. 11.7.3, pursuant to Kentucky Revised Statutes (KRS) 100.257 and 100.261, the Board shall hear appeals of determination in the following areas: 1) written interpretations of the provisions of the LDC and 2) an official action, order, requirement, interpretation, grant, refusal, or decision of an administrative official, zoning enforcement officer or code enforcement officer.

The appellant is asserting that both units were lawfully established as independent dwelling units and thereby the building is a duplex and not a single-family residence.

The subject property is currently zoned R-5 Single Family. Pursuant to LDC Sec. 2.2.7, this zoning classification does not permit a duplex. In order for the duplex to be lawfully nonconforming to this provision, it must have been lawfully in existence at the time in which the zoning regulation which does not permit the duplex was enacted. Further, the nonconforming use must not have been abandoned as the abandonment of a nonconforming use terminates the nonconforming use status.

In both the nonconforming rights and appeal applications, the appellant submitted documentation to support the existence of a duplex. 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>).

PREVIOUS CASES ON SITE

18NONCONFORM1012: This case is subject to this appeal case. On March 30, 2018, James Wright on behalf of Launch Intl. LLC, requested a determination that the existing building at 3599 Henry Avenue is a legally nonconforming duplex. Planning & Design Services staff determined that there was insufficient evidence to support a determination that the duplex is legally nonconforming. This decision was provided on April 25, 2018.

INTERESTED PARTY COMMENTS

No interested party comments have been received as of the publication date of this report.

STAFF ANALYSIS

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

Section 1.2.2	Definitions
Section 1.3.1	Use
Section 2.2.7	R-5 Residential Single-Family District

As currently defined in LDC Sec. 1.2.2, the following definitions are relevant to the appeal:

Dwelling, Single Family (or One Family) - A dwelling designed for and occupied exclusively by one family. This term includes Conventional, Average-Lot, Clustered and Zero-Lot-Line one family dwellings.

Dwelling, Two Family (or Duplex) - Any group of two dwelling units occupying a single lot or building site, whether composed of one or more than one principal building. This term includes Conventional, Average-Lot, Clustered and Zero-Lot-Line two family dwellings.

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.

Family - One or more persons occupying premises and living as one housekeeping unit, and distinguished from a group occupying a boarding and lodging house, fraternity or sorority house, a club, hotel, or motel.

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.

Based on a review of archived zoning maps, the zoning of the property has been single-family residential since adoption of zoning in 1931 by the City of Louisville. Pursuant to LDC Sec. 2.2.7, the R-5 single-family zoning classification does not permit a duplex.

According to Jefferson County PVA record, the building currently has a "R – Residential 2 Family Dwelling" property class assignment and is described as a "Duplex". Property details indicate that the two story building was built in 1940, and consists of 1,792 square feet of finished area and has two full bathrooms. The number of kitchens and bedrooms was not provided.

Staff reviewed city directories from 1967, 1970-1972, 1977, 1982, 1987, 1991, 1997, 2002, 2007, 2012, and 2017; the directories only showed a single occupant and one address.

Staff did not inspect the interior of the building. Based on information provided by the Appellant, the structure has one unit on the first floor and a second unit on the second floor. Both units are identical in configuration, containing two bedrooms, one bathroom, a living room, and a kitchen. There is an entrance to the first floor unit from the front of the structure. There are rear entries to both units. The pictures provided by the Appellant show two furnaces, two meters, two electrical panels, and two water heaters. It is clear that the structure today contains two dwelling units as defined in LDC Sec. 1.2.2.

In the basis of appeal, the Appellant asserts that the structure is currently being used as a duplex. The 2017 city directory does not show two units or two occupants. The Appellant has an affidavit from the previous property owner, Wendell Flener, stating that he owned the property for 42 years (November 1973 to October 2015) and confirmed the property was a duplex for the entire time that he owned the structure. City directories do not corroborate this assertion. In addition to the affidavit from Mr. Flener, the Appellant provided a copy of a second mortgage property value analysis report from Freddie Mac; this document lists the structure as a single family dwelling but then further describes the property as a duplex. The Appellant also provided lease documents for the period of January 2017 to January 2019.

This property is within the boundaries of the City of Louisville that existed prior to consolidation to Louisville Metro in March of 2003. Within these boundaries, a nonconforming rights claim must be dated back to June 18, 1972 or the date in which the zoning regulations which would not permit such activity was enacted (whichever date is later). In this case, the R-5 zoning was in place on June 18, 1971 and duplexes have not been permitted within that zoning category since that date. Therefore, in order to recognize the duplex as lawfully nonconforming, evidence must support the nonconforming use as in existence on June 18, 1971. Further, evidence must support that the use was never abandoned and has continued to exist from June 18, 1971 to present.

STAFF CONCLUSIONS

It does not appear that the building was originally designed as a duplex, there is evidence that the structure was divided into two units based on the evidence presented by the Appellant and used currently as a duplex based on the two recent leases; unfortunately, the city directories, as reviewed by staff never identified the property as having two units or more than one occupant before or after 1971. A nonconforming rights claim does not need to date back to the year in which the building was

constructed (1940 per the PVA), but 1971. If the Board finds the referenced supporting evidence as accurate and reliable, in addition to any additional evidence provided at the hearing, nonconforming rights concerning the duplex may be recognized.

However, the Board must also find that the nonconforming rights were not abandoned and that the building has been continuously used as a duplex. As stated earlier, staff could find no evidence that the property was used as a duplex in 1971 or that the use was maintained thereafter, other than the information provided by affidavit from the previous property owner.

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 an 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. If the duplex was lawfully in existence on June 18, 1971.
2. And if so, has it been continuously used as duplex from June 18, 1971 to present.

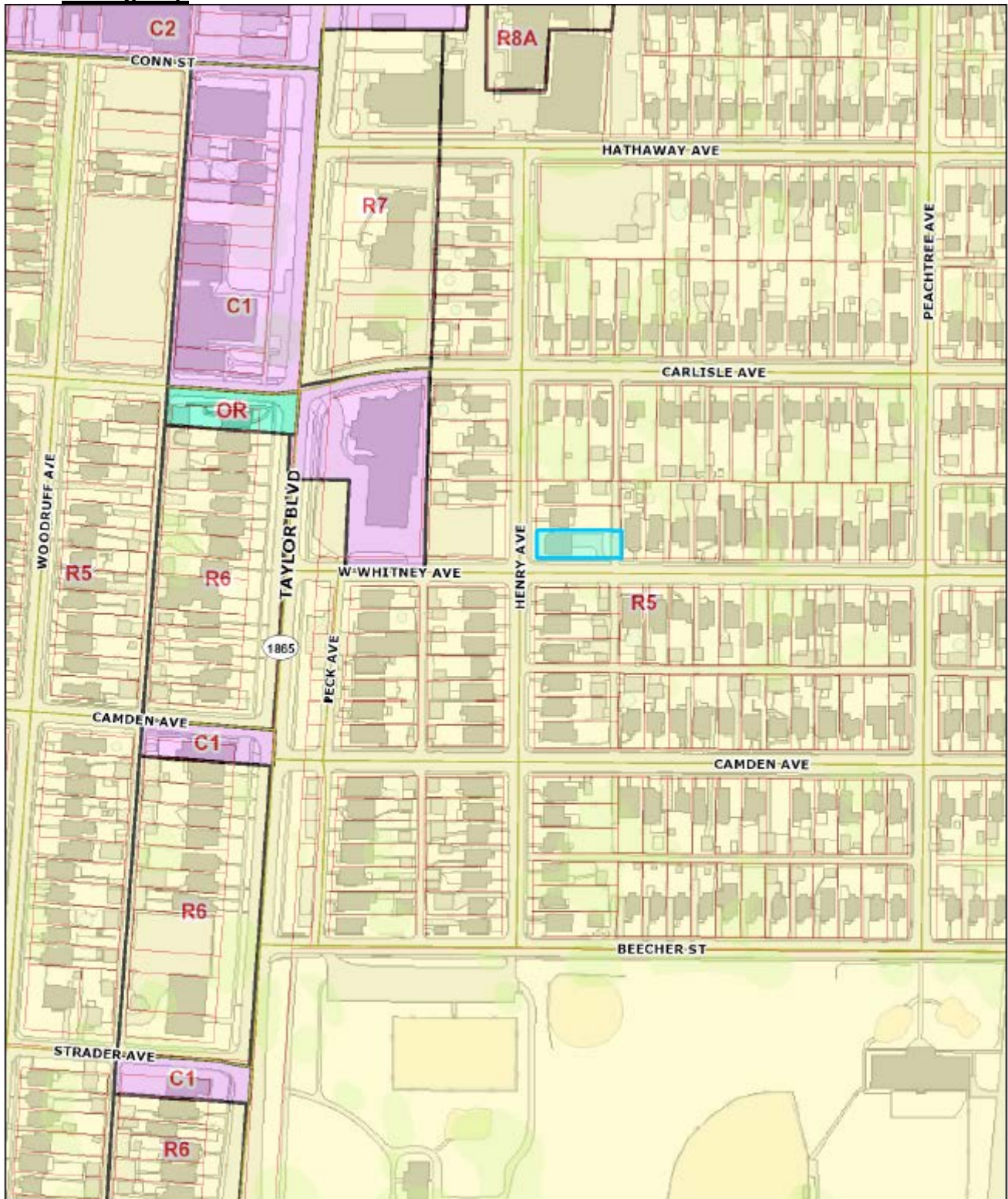
NOTIFICATION


Date	Purpose of Notice	Recipients
6/14/2018	Hearing before BOZA	Appellant, Adjacent Neighbors, Administrative Official
6/15/2018		Sign Posted
6/22/2018		Legal Ad in Courier-Journal – Circulation Area

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Inspection Photographs

1. Zoning Map



18APPEAL1003 - 3599 Henry Ave  **LOJIC**

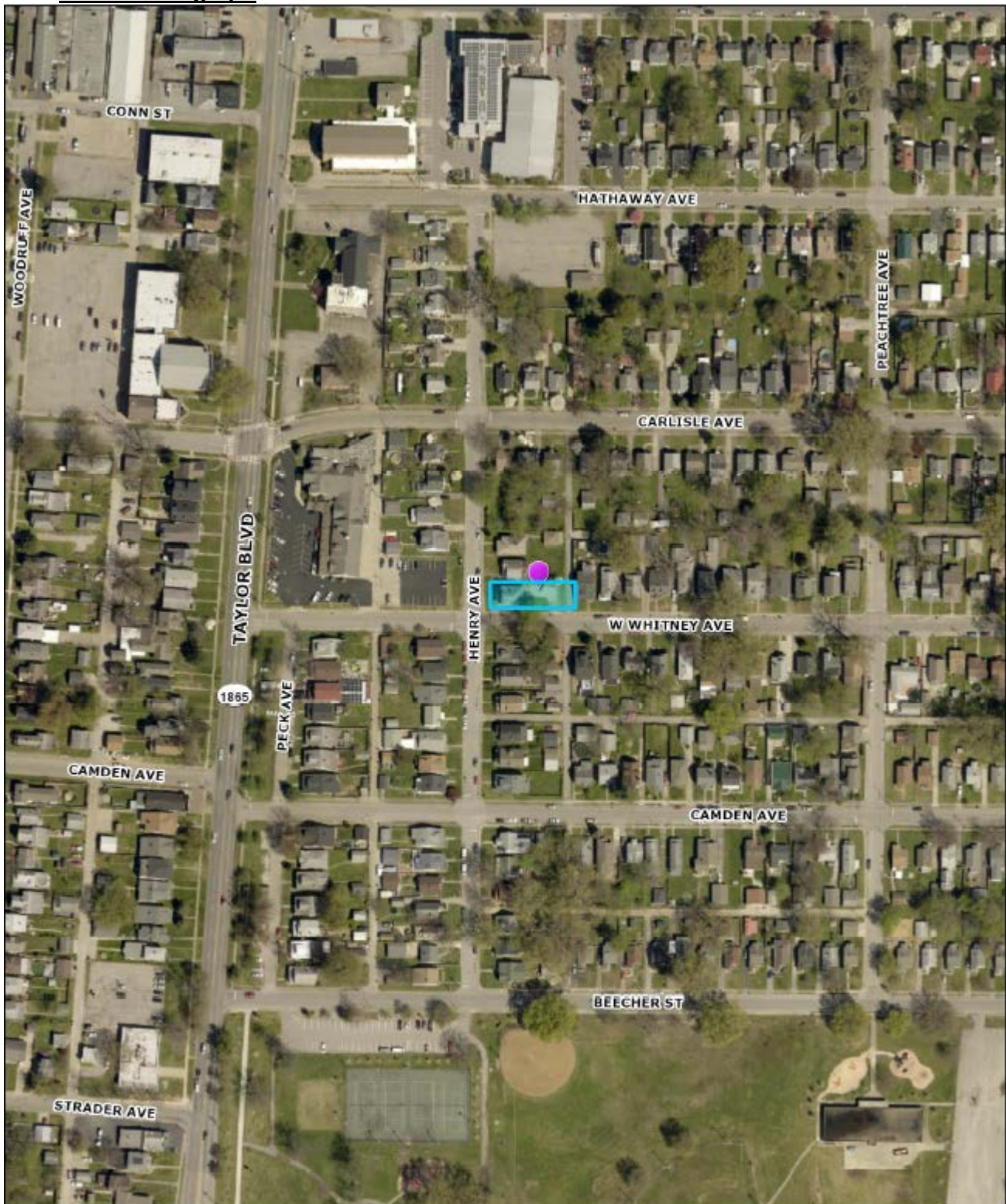
0 120 240 360
ft

Wednesday, June 20, 2018 | 11:16:17 AM

LOJIC © 2018

This map is not a legal document and should only be used for general reference and identification

2. Aerial Photograph



18APPEAL1003 - 3599 Henry Ave  **LOJIC**

0 120 240 360
ft

Wednesday, June 20, 2018 | 10:54:45 AM

LOJIC © 2018

This map is not a legal document and should only be used for general reference and identification

3. Site Inspection Photographs –



1. Front of property



2. Gas meters



3. A/C Units



4. Electrical meters



5. Side entrance



6. Rear stairs and entrances