

**18APPEAL1004**

**Appeal of a Staff Determination  
3818 Southern Parkway**



**Board of Zoning Adjustment Public Hearing**

**Chris French, AICP, Planning & Design Supervisor**

**November 19, 2018**

# Request

Appeal of a staff determination issued by the Office of Planning & Design Services concerning a request for nonconforming use rights for a two-family dwelling (duplex) at 3818 Southern Parkway.

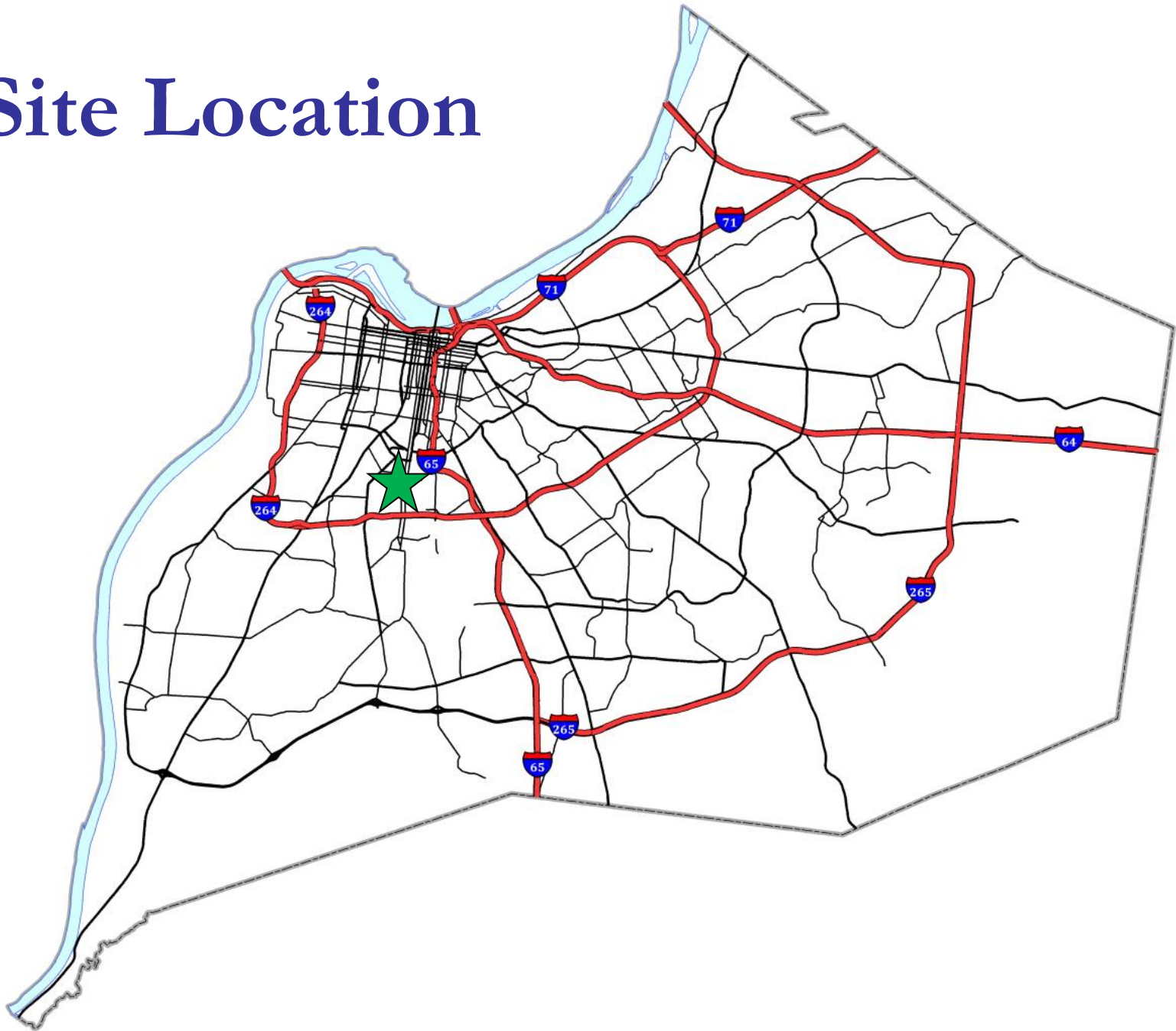
# Case Summary/Background

- The property is developed with a single building in 1900.
- The building appears to have been originally designed as a single-family residence. However, there are currently two units within it.
- The property is zoned R-5 Single Family. This zoning classification does not permit a duplex.
- In order for a duplex to be lawfully nonconforming, 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 terminates the nonconforming use status.

# Case Summary/Background

- The property owner/appellant requested a determination that the building is a legally nonconforming duplex.
- Staff determined that there was not adequate evidence to support a determination that a duplex is legally nonconforming because there was a significant gap in the evidence to support the continued use of the structure as a duplex.
- The appellant filed an appeal of the staff determination in a timely manner.
- As set forth 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 an appeal of a decision of an administrative official.

# Site Location



# Zoning/Form Districts

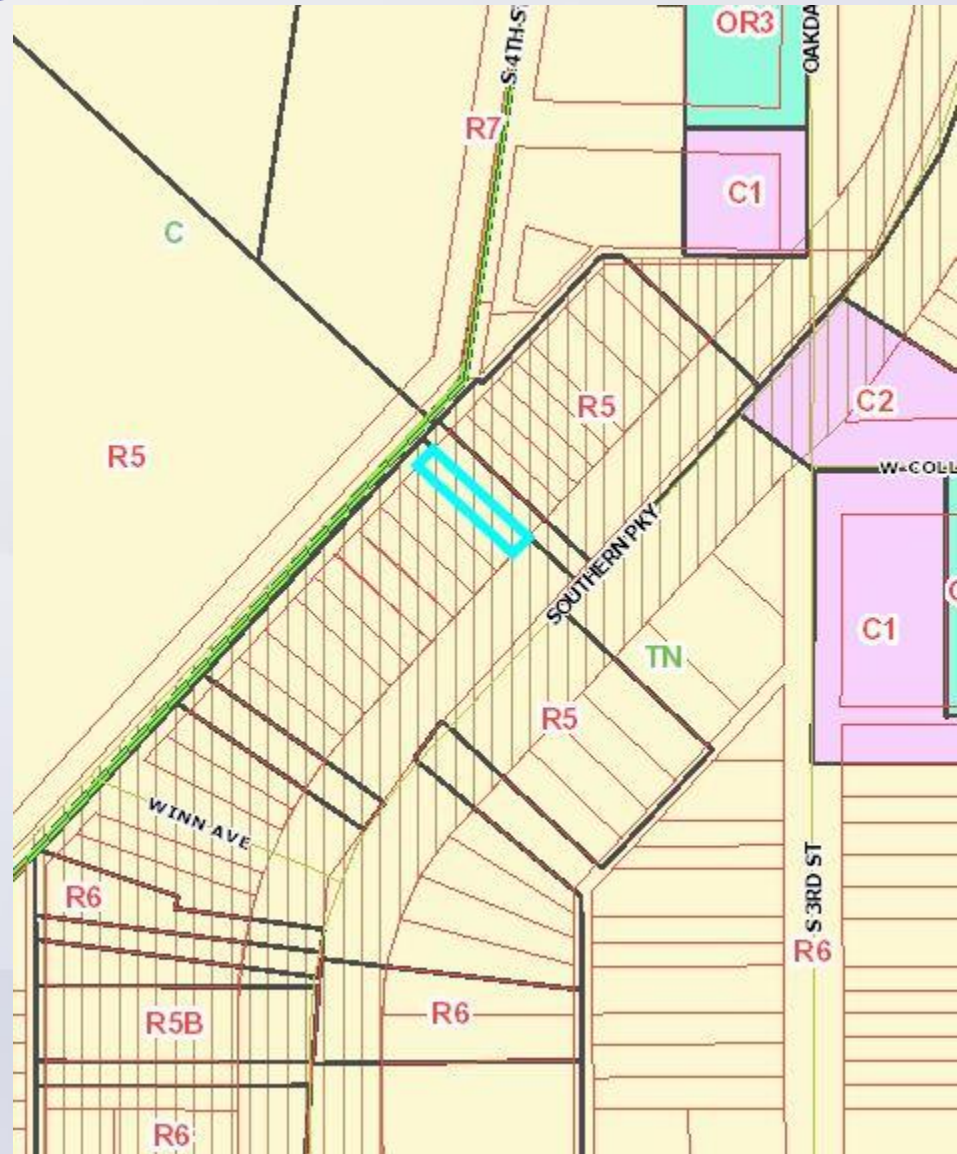
Subject Property: R5/TN

North: R5/TN

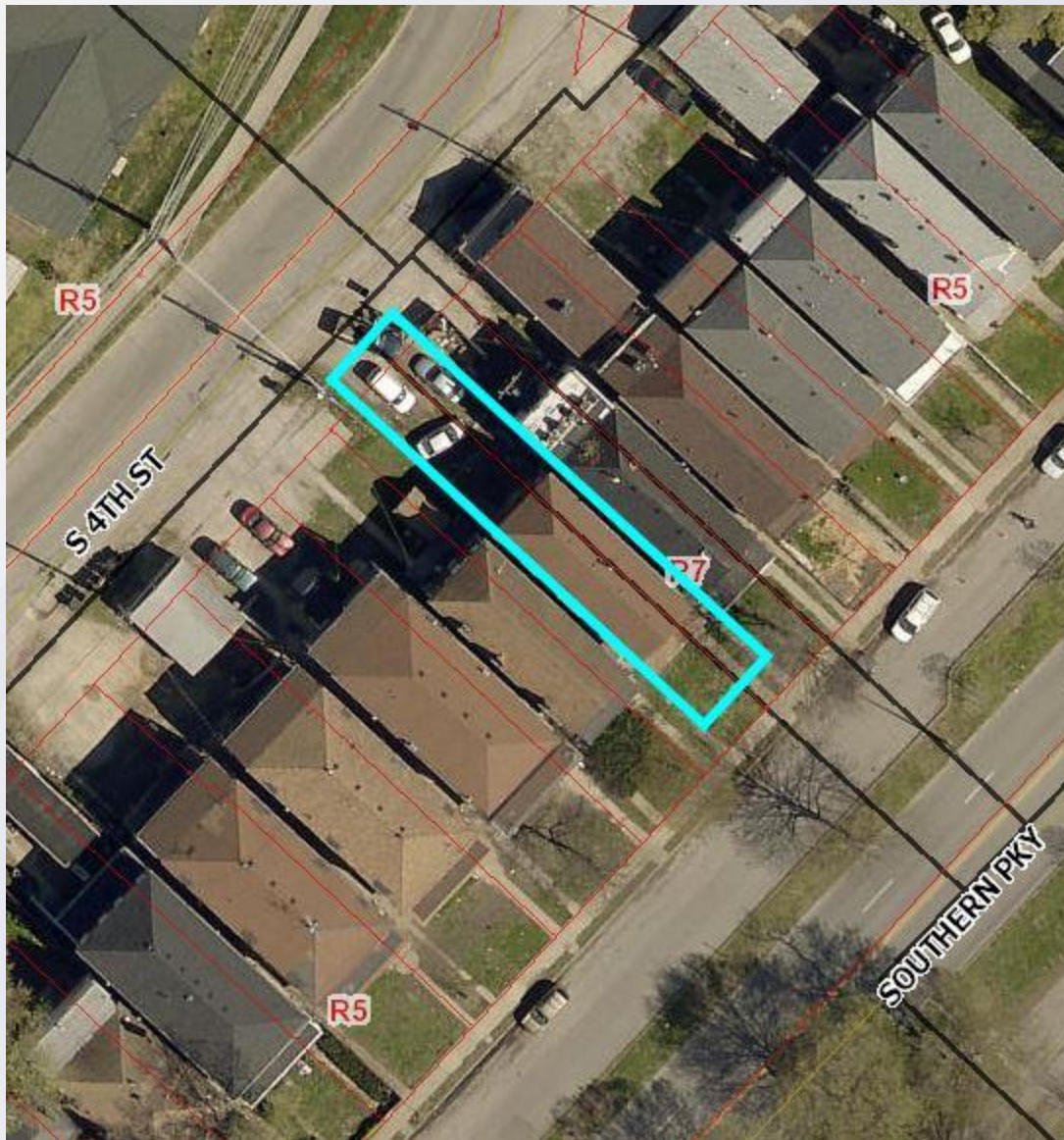
South: R5/TN

East: R5/TN

West: R5/TN



# Aerial Photo





3820

3818

11/02/2018 09:55

Front of Structure

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Rear of Structure

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Gas Meters

11/02/2018 09:55

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# Standards of Review

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.

The abandonment of a nonconforming use terminates the nonconforming use status. The burden of proof in a hearing before the appropriate Board on whether a nonconforming use has been abandoned shall be on the party asserting that the nonconforming use has been abandoned. However, a showing that the subject property has not been regularly used for the purposes for which the nonconforming use status is claimed for a period of one year shall create a presumption of such abandonment, and thereupon the burden of proof shall shift to the party asserting that the nonconforming use has not been abandoned. The Board may accept any substantial evidence sufficient to show that the nonconforming use has been discontinued for a period of one year or more. To rebut the presumption, the property owner must show by clear and convincing evidence that:

1. The property owner has undertaken to reinstate the discontinued nonconforming use on the property by such acts as would be undertaken by a reasonable person with the intent to reinstate said nonconforming use; and
2. There is a reasonable prospect that the nonconforming use will be reinstated in the foreseeable future.

# Staff Analysis

- The zoning was A (One-Family District) from 1931-66 and has been R-5 (Single Family) from 1966-67 to present.
- R-5 zoning does not permit a duplex.
- Per PVA records, the building currently has a “R – Residential 2 Family Dwelling” property class assignment and is described as “Duplex”.
- This property is within the boundaries of the City of Louisville that existed prior to consolidation to Louisville Metro. A nonconforming rights claim must be dated back to June 18, 1971 or the date in which the zoning regulation 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.

# Staff Analysis

- Duplex use existed prior to 1971
- Evidence exists to show use maintained until 2003
- Between 2003 and 2017 there is not sufficient evidence that the use was maintained
- Staff agrees with the applicant that the current structure is a duplex.
- Staff had insufficient evidence to grant nonconforming rights to a duplex.

# Conclusions

- Structure is currently configured as a duplex
- A duplex use on the site existed prior to and after 1971.
- A gap in the record exists from 2003 to 2017.
- There was insufficient evidence for staff to grant nonconforming rights to the property.
- 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.
- The Board has greater discretion than staff to review and consider additional evidence, including testimony at the public hearing.

# Required Actions

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 a duplex from June 18, 1971 to present