

Commission, Board or Committee
Staff Report
February 4, 2019



Case No:	18APPEAL1006
Project Name:	Mud Lane Appeal
Location:	3401 Mud Lane
Owner(s):	Rickey and Janice Conley
Appellants:	Gary Doyle, Donna Doyle, and Matthew Doyle
Representative:	Nick Pregliasco, Bardenwerper Talbott & Roberts, PLLC
Jurisdiction:	Louisville Metro
Council District:	13 – Mark Fox
Case Manager:	Chris French, AICP, Planning and Design Supervisor

REQUEST(S)

- Appeal of an administrative decision on the determination of agricultural use and the application of the agricultural use exemption as listed in KRS 100.203(4)

CASE SUMMARY/BACKGROUND

According to 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. Such appeal shall be taken within thirty (30) days.”

This appeal is in regard to an agricultural use determination made by the Planning Director on November 20, 2018. This determination was made to determine whether changes to the property located at 4301 Mud Lane were sufficient to constitute an agricultural use and if so, was the use of the large accessory structure related to that use and as such would be exempt from the size restriction of accessory structures as found in Land Development Code section 5.4.2.C.1. The Planning Director’s interpretation dealt with whether the use on the property was agricultural and did this use include the large accessory structure. The Planning Director did not interpret KRS 100.203(4), which provides for an exemption/exception from zoning for agricultural uses on property that is at least five acres in size.

In an email, Matthew Doyle initially questioned the size of the 4301 Mud Lane property based on a survey provided to Planning and Design Services for a previous waiver case associated with the size of the accessory structure. This survey showed the property slightly under five acres which was different than information found in PVA records. This survey was brought to the attention of the property owners by the Planning Director. The property owners chose to have a new survey conducted. This survey was provided to the Planning Director who reaffirmed a previous determination submitted to the property owners on September 14, 2018. With the submittal of the new survey the Planning Director submitted the letter dated November 20, 2018 to the property owners and to the Doyles as an adjacent property owner. In that letter, the Planning Director affirmed that her final decision was based on the date of the second letter.

This appeal was filed by the adjacent property owners, the Doyles, and was filed in a timely manner.

STAFF FINDINGS

The basis of appeal by the Appellants is summarized below from support documentation submitted with the appeal application:

1. That the agricultural determination caused a procedural issue in the review of the appeal case submitted by the subject property owners.
2. That the decision to issue an interpretation is troublesome considering the past compliance history of the subject property's owners.
3. That there is an issue in the interpretation of the use of the property as agricultural and the application of the KRS 100.203(4) zoning exception.
4. That there is a lack of defined process in determining whether a property qualifies for an agricultural exception.

In regard to the basis of appeal issue number one, the appellants for 18APPEAL1001 appealed a notice of violation (NOV) issued on March 14, 2018. The Appellant's basis of appeal expressed that the situation had changed and that most violations had been corrected and that the last violation, the size of the accessory structure was resolved because it was being used for agricultural purposes. The appellant had not asked for an agricultural determination on activities on the property after the NOV was issued. Staff recommended that they ask for that administrative decision on the current use of the property. It was determined through two site inspections and information provided by the property owner's attorney, including a new boundary survey that the property as currently used would be considered an agricultural use. If the property was at least five acres and the accessory structure in question was used for agricultural purposes, then the structure could utilize the agricultural exception/exemption provided for in KRS 100.203(4). The Planning Director determined that the property owners met those criteria and granted them a positive agricultural use determination. Once that determination was granted the Appellant's attorney withdrew the appeal case and the owners accepted all violations noted in the NOV from March 14, 2018. Staff does not find a procedural error since the NOV was related to activity on the property that occurred on March 14, 2018 and not afterwards when the changes to the property took place. In addition, the Appellants withdrew their appeal and accepted all violations noted in the NOV from March 14, 2018. The NOV was never rescinded as argued by Mr. Doyle in his letter that accompanied the application for 18APPEAL1006.

Regarding basis of appeal issue number two, staff cannot speak to intent of the property owners. The agricultural interpretation was based on a request by the owners related to changes made to the property to correct violations noted in an NOV presented to the property owners on March 14, 2018. The Planning Director notes in her letter dated September 14, 2018, that any changes in the use of the structure that are not related to agricultural activity would negate the agricultural determination and could lead to additional enforcement action.

In review of basis of appeal issue number three, staff must point out that agricultural use is allowed under the current zoning of the property. The LDC utilizes the same agricultural use definition as found in KRS 100.111(2). That definition states,

Agricultural Use (KRS 100.111):

A. A tract of at least five (5) continuous acres for the production of agricultural or horticultural crops, including but not limited to livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timber, orchard fruits, vegetables, flowers, or ornamental plants, including provision for dwellings for persons and their families who are engaged in the agricultural use on the tract, but not including residential building development for sale or lease to the public;

B. Regardless of the size of the tract of land used, small wineries licensed under KRS 243.155, and farm wineries licensed under the provisions of KRS 243.156;

C. A tract of at least five (5) contiguous acres used for the following activities involving horse:

1. Riding lessons;
2. Rides;
3. Training;
4. Projects for educational purposes;
5. Boarding and related care; or
6. Shows, competitions, sporting events, and similar activities that are associated with youth and amateur programs, none of which are regulated by KRS Chapter 230, involving more than seventy (70) participants shall be subject to local applicable zoning regulations; or

D. A tract of land used for the following activities involving horses:

1. Riding lessons;
2. Rides;
3. Training;
4. Projects for educational purposes;
5. Boarding and related care; or
6. Shows, competitions, sporting events, and similar activities that are associated with youth and amateur programs, none of which are regulated by KRS Chapter 230, involving seventy (70) or less participants. Shows, competitions, sporting events, and similar activities that are associated with youth and amateur programs, none of which are regulated by KRS 230, involving more than seventy (70) participants shall be subject to local applicable zoning regulations. This paragraph shall only apply to acreage that was being used for these activities before July 13, 2004.

Planning and Design Services staff inspected the property twice and found several agricultural activities occurring on the site. For example, staff observed a garden area and a small group of fruit bearing trees, which in and of itself would not constitute an agricultural use. In addition, staff observed around a dozen or so chickens house in a fenced area with at least two chicken coups. Staff also observed a fenced area attached to the large accessory structure with two cows in the fenced area and with the ability to access the second half of the large accessory structure. The remainder of the accessory structure was also observed to include hay, farm implements including two tractors. The vehicle lift in the accessory structure was there but at the time of the inspection was being used for maintenance on one of the tractors. In addition to the cows, two horses were also on the property in another fenced area near the rear of the property. These activities and the use of the accessory structure were found to be enough evidence by the Planning Director to make the agricultural use determination for the site.

In review of the last basis of appeal issue, staff does not agree that there is no defined process for such a determination. It is the same process used by Planning for any other use interpretation requested by anyone else in the community. Sometimes these interpretations can be less formal based on analysis, but all form interpretations require a letter from the Planning Director, which is the process followed in this case. If the Appellant is questioning the process for application of KRS 100.203(4), then that is not a provision that Planning and Design Services can interpret. The question to the Planning Director in this case was whether the site was used agriculturally and if so, did that use include the large accessory structure. The Planning Director determined that the answer was yes for both questions and based on the final determination on the size of the property the agricultural exemption/exception was applied as provided for in KRS 100.203(4).

STANDARD OF REVIEW FOR REZONING AND FORM DISTRICT CHANGES

The Board shall determine whether an error was made by the Planning Director in the agricultural determination completed for property located at 4301 Mud Lane.

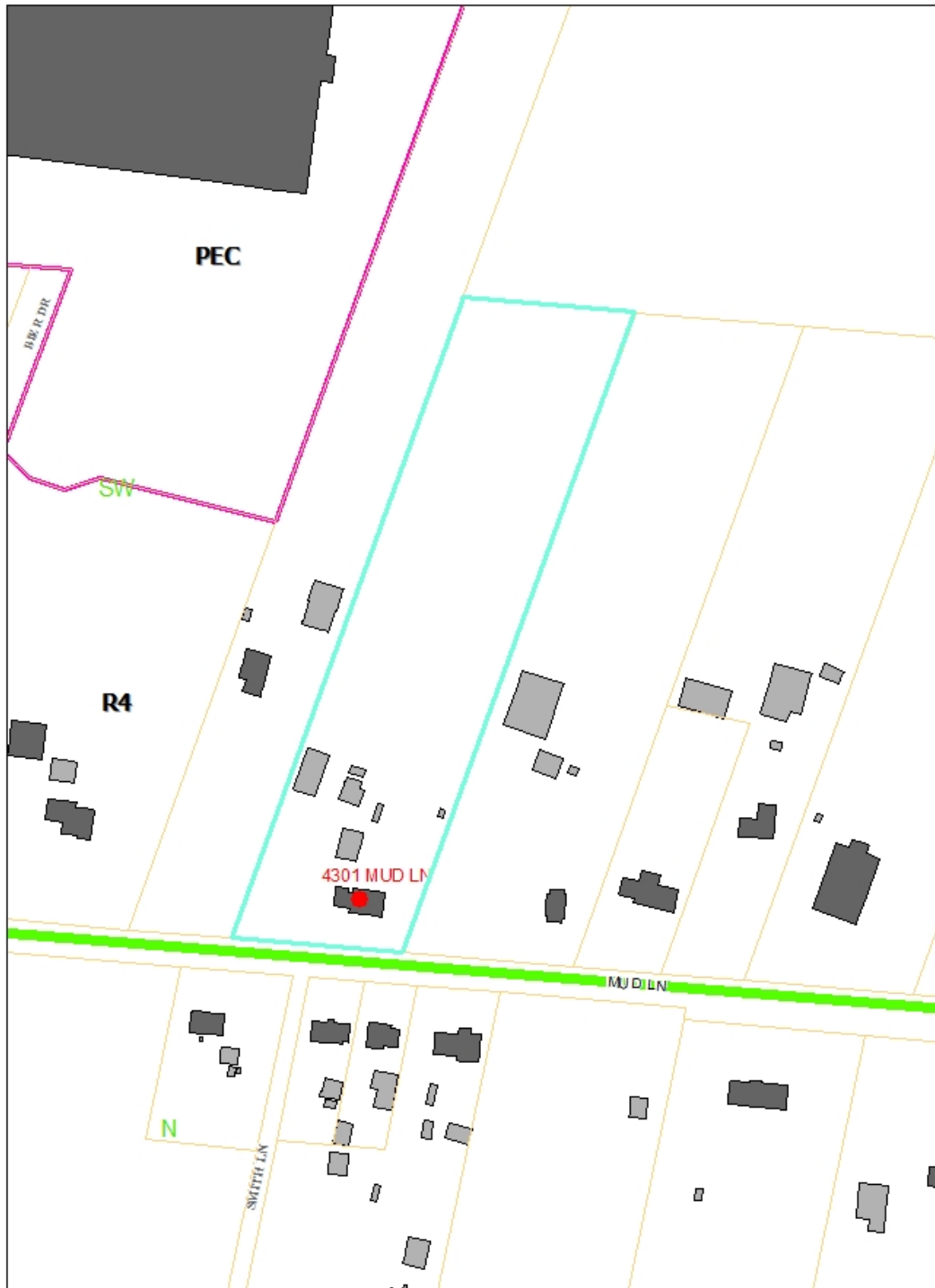
NOTIFICATION

Date	Purpose of Notice	Recipients
01/18/2019	Hearing before Board of Zoning	1 st tier adjoining property owners
01/16/2019	Adjustments	Registered Neighborhood Groups in Council District 13
01/25/2019	Hearing before Board of Zoning	Legal ad in Courier Journal
	Adjustments	

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Photographs – May 4, 2018
4. Site Photographs – June 11, 2018

1. Zoning Map



1 inch = 197 feet

18APPEAL1006
4301 Mud Lane



2. Aerial Photograph



N
1 inch = 318 feet

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4301 Mud Lane



5. Site Photographs – May 4, 2018



6. Photographs – June 11, 2018



