

18APPEAL1002
Appeal of a Notice of Violation
16922 Shelbyville Road



Board of Zoning Adjustment Public Hearing

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July 16, 2018

Request

Appeal of a Notice of Violation (NOV) issued by a Zoning Enforcement officer concerning the use of a contractor's shop at 16922 Shelbyville Road, Louisville, KY.

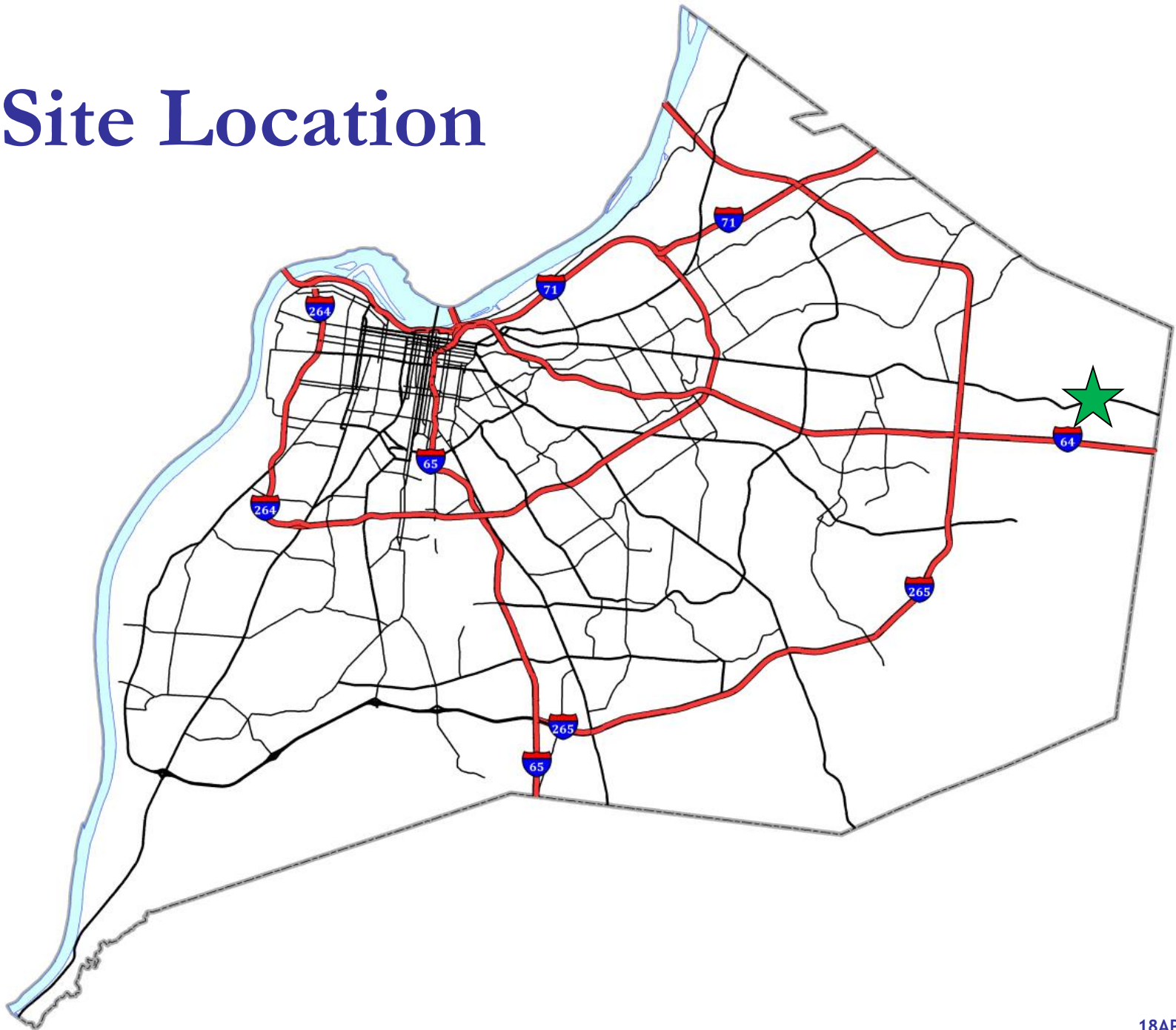
Case Summary/Background

- According to Jefferson County Property Valuation Administrator (PVA), the property was developed in 1900.
- The principal structure appears to have been originally designed as something other than a single-family residence.
- The property is zoned R-4 Single Family. This zoning classification does not permit a contractor's shop/yard.
- In order for a contractor's shop/yard to be lawfully nonconforming, it must have been lawfully in existence at the time in which the zoning regulation which does not permit the contractor's shop/yard 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 appealed the NOV that the contractor's shop/yard is not a permitted use on the property.
- The appellant filed an appeal of the NOV 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

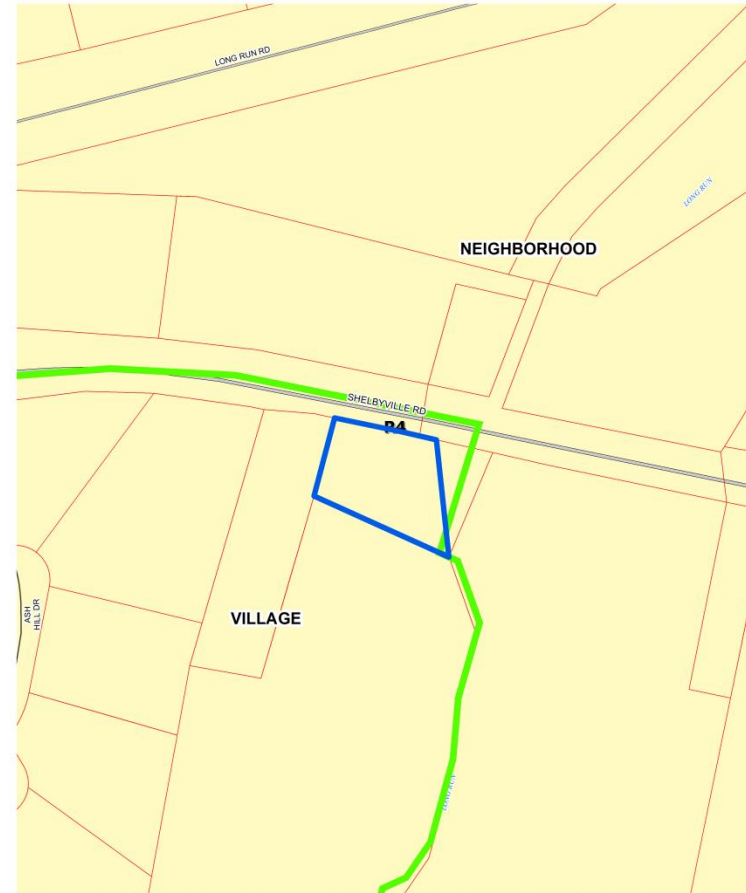
Subject Property: R4/V

North: R4/N

South: R4/V

East: R4/N

West: R4/V



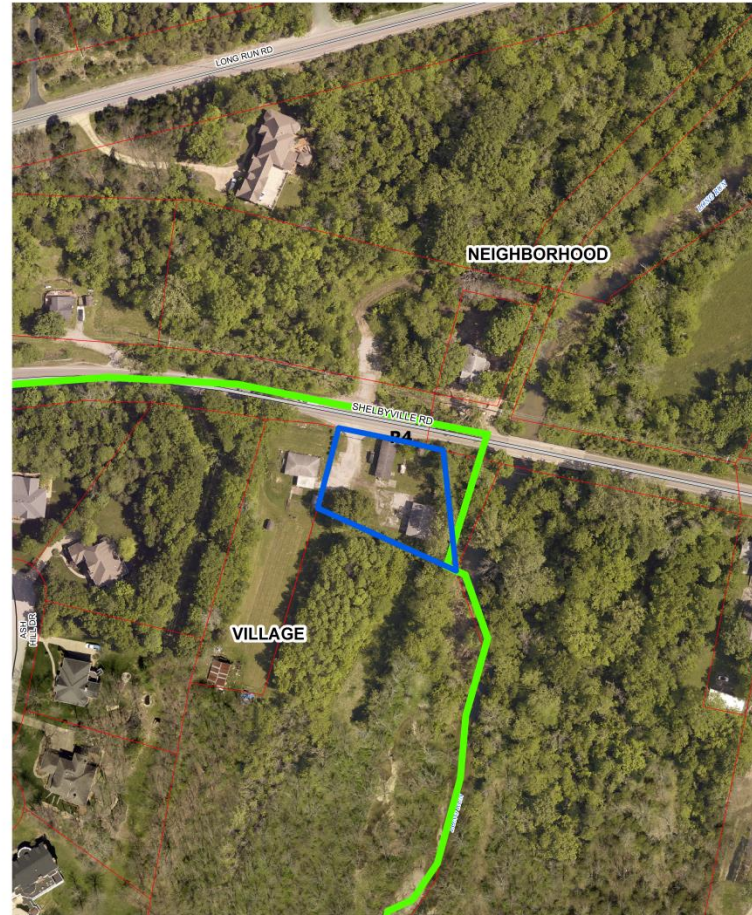
16922 Shelbyville Road
feet

140
Map Created: 7/3/2018

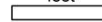


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Aerial Photo/Land Use



16922 Shelbyville Road
feet



Map Created: 7/3/2018



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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 1943-64 and has been R-4 (Single Family) from 1965 to present.
- R-4 zoning does not permit a contractor's shop/yard.
- Per PVA records, the building currently has a "C – Com Warehouse."
- This property is not 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 April 23, 1943 or the date in which the zoning regulation which would not permit such activity was enacted (whichever date is later).
- In this case, the A One-Family District was in place on **April 23, 1943** and the R-4 Single-Family District in **May 1965** and contractor's shop/yard were not permitted within those zoning districts.

Staff Analysis

According to the Appellant:

- The property has been used as a commercial property for “decades.”
- The property class is shown as “480 com warehouse.”
- The principal structure was built in 1900 (per PVA) and the accessory structure was built in 1985.
- 2015 Tax Record Report shows the property as commercial.
- FlexMLS shows the property as commercial.

Staff Analysis

In the appeal application, the appellant submitted documentation to support the existence of a contractor's shop/yard.

- PVA report
- 2015 Tax Record Report
- FlexMLS report from August 18, 2015

Staff checked the city directories for 1967-2017:

- The property located at 16922 Shelbyville Road was never listed.

Conclusions

- It does not appear that the property was used as a contractor's shop on April 23, 1943 as there is no pertinent evidence in regards to the use of the property on that date.
- In this case, a nonconforming rights claim does not need to date back to the year in which the building was constructed (1900 per the PVA), but 1943.
- 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 contractor's shop 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 contractor's shop. Staff could find no evidence that the property was used as a contractor's shop in 1943 or that the use was maintained thereafter.
- There is insufficient evidence that the current use (contractor's shop w/outdoor storage) existed on the property in 1943 or was continuously operated as such to the present day. Therefore, staff believes that the zoning enforcement officer acted correctly.

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:

- If the Zoning Enforcement officer acted correctly in issuing the NOV, and, if so, the Board affirms the decision of the Zoning Enforcement officer and the appeal of the NOV is denied, or,
- If the Board does not affirm the issuance of the NOV, then the Board finds that the property in question has nonconforming rights for a contractor's shop w/outdoor storage on the property located at 16922 Shelbyville Road, and the decision of the Zoning Enforcement officer is overturned.