

# Board of Zoning Adjustment

## Staff Report

May 15<sup>th</sup>, 2023



<b>Case No:</b>	23-NONCONFORM-0001
<b>Project Name:</b>	Nonconforming rights
<b>Location:</b>	719 W Kenwood Dr.
<b>Owner:</b>	Tran Le, LLC
<b>Applicant:</b>	Victoria Quibell
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	21 – Betsy Ruhe
<b>Case Manager:</b>	Ian Sexton, Associate Planner

### REQUEST(S)

- To determine whether the subject property has nonconforming rights for a duplex.

### CASE SUMMARY/BACKGROUND

The subject property is located within the R-5 residential zoning district and the Traditional Neighborhood form district. The site is approximately 0.13940 acres and is occupied by a two-story residential structure with a basement

The property owner applied to establish nonconforming rights for a duplex on January 5<sup>th</sup>, 2023. Based on the information provided in the application and staff research, there is some evidence based on Caron's directories that the property had been used as a duplex; however, in 1971 staff could not find any evidence that a duplex was on the property. Based on this lack of evidence staff brought the case to the Board pursuant to BOZA Bylaws and Policies.

BOZA must determine whether the property has nonconforming rights to operate as duplex in R-5 zoning based on the following criteria:

LDC Section 1.3.1.A-F states;

- 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.
- B. A nonconforming use may be continued until it is abandoned notwithstanding the sale of the land parcel on which the nonconforming use exists; but a nonconforming use shall not be enlarged, expanded or changed except as expressly permitted by KRS 100.253 and by Chapter 1 Part 3.
- D. Subject to the limitations and restrictions imposed by items A through C of Chapter 1 Part 3, the Board of Zoning Adjustment may permit a change in the nonconforming use to another nonconforming use only if the new nonconforming use is in the same or more restrictive classification and upon finding that the new nonconforming use will be no more odious or offensive to surrounding properties than the first nonconforming use. When the Board of Zoning Adjustment permits a change from one nonconforming use to another nonconforming use pursuant to this paragraph, it may impose such conditions upon such new nonconforming use as it finds are necessary to preserve the character of the neighborhood, to minimize nuisances to surrounding properties, and to protect the value of surrounding properties.

E. Notwithstanding any provision in Chapter 1, Part 3 to the contrary, a residential structure located in an industrial district may be expanded if (1) the expansion does not increase the number of dwelling units on the subject property and (2) the expansion would be permitted if the existing structure were located in an R-5 Residential district.

F. ABANDONMENT. The abandonment of a nonconforming use terminates the nonconforming use status. The burden of proof in a hearing before the appropriate Board of Zoning Adjustment 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/FINDINGS**

Staff has confirmed that the property currently has two dwelling units. The applicant submitted different pieces of evidence to support their claim that the property has nonconforming rights as a duplex. The applicant submitted property value assessments, PVA information, newspaper ads, directory listings, and a notarized affidavit from 2017. Staff research consisted of searching through the Caron's directories from the year 1971 to the present day as well as historic zoning maps, and historic newspaper excerpts. Staff was able to find that the property at 719 W Kenwood Drive's listings were not consistent enough to conclude that the structure was continuously used as a duplex from 1971 to present day. From 1971 to 1987, the Caron's directory showed one listing. From 1988 to the present, the Caron's directories go from listing the property as a duplex to listing the property as a single family home multiple times. The only consistent pattern of the directories listing the property as a duplex starts in the year 2016 and continues to the present day.

### **STAFF RECOMMENDATIONS**

The applicant states that this structure was built prior to 1971, in this case 1940. PVA supports this date and the Caron's Directory also supports this date. Based on the information available to staff through the nonconforming rights application, the application and information from the PDS office there is insufficient information for staff to identify nonconforming rights for the property as a duplex. The staff findings report is attached to this agenda item.

### **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 for a duplex in accordance with LDC section 1.3.1.

## **RELATED CASES**

None.

## **TECHNICAL REVIEW**

No technical review required.

## **INTERESTED PARTY COMMENTS**

Staff has received comments regarding this request for nonconforming rights determination.

## **REQUIRED ACTIONS:**

- **APPROVE** or **DENY** the applicant request for nonconforming rights for a duplex to be granted.

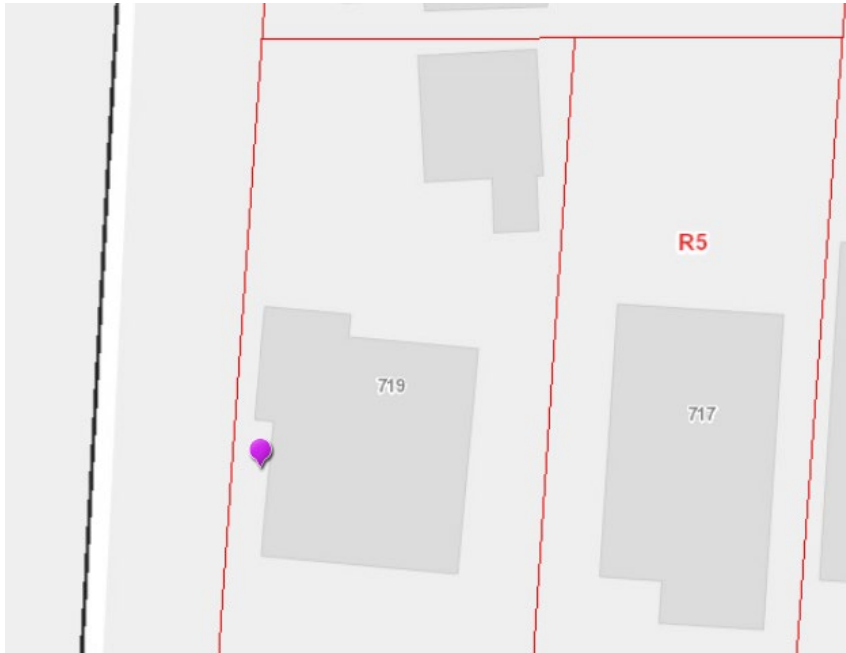
## **NOTIFICATION**

Date	Purpose of Notice	Recipients
4/24/2023	Hearing before Board of Zoning Adjustment	1 <sup>st</sup> tier adjoining property owners
4/26/2023	Hearing before Board of Zoning Adjustment	GovDelivery for Council District 21
5/03/2023	Hearing before Board of Zoning Adjustment	Sign Posting

## **ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Findings Report is attached to the agenda

1. **Zoning Map**



2. **Aerial Photograph**

