

# Board of Zoning Adjustment Staff Report

September 11, 2023



<b>Case No:</b>	23-NONCONFORM-0021
<b>Project Name:</b>	Nonconforming Rights
<b>Location:</b>	1836 Eastern Parkway
<b>Owner(s):</b>	Ruth Lovell and David Lovell
<b>Applicant:</b>	Ruth Lovell
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	8 – Ben Reno-Weber
<b>Case Manager:</b>	Joel P. Dock, AICP, Planning Supervisor

## REQUEST(S)

- Nonconforming Rights

## CASE SUMMARY

The applicant has requested nonconforming rights for a tri-plex for the property located at 1836 Eastern Parkway. The lot is zoned R-5 Single-Family Residential and located at the corner of Fernwood Ave and Eastern Parkway, directly before the intersection of Eastern Parkway and Bardstown Rd.

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, see technical review for more details. For lots located within the original boundaries of the City of Louisville the use needs to be continuous from 1971 to present with no gaps of more than 1 year. The subject property is located within the original boundaries of the City of Louisville; therefore, evidence that substantiates the existence of the nonconforming use should be provided back to 1971. Evidence to establish nonconforming rights was not sufficient. Pursuant to Board of Zoning Adjustment Bylaws and Policies, the request for nonconforming rights has been brought before the Board to make a final determination.

## STAFF FINDING

Staff finds there is inconclusive evidence to determine that the property has nonconforming rights for a tri-plex administratively. Because staff determined that evidence was inconclusive, the burden shall be on the applicant to provide documentation supporting the establishment of the nonconforming use and its continuous existence.

## TECHNICAL REVIEW

**Nonconformity/Nonconforming Defined.** An activity or a building, structure, or 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.

**Board Policy (5.18.02).** For a nonconforming rights application where the Planning Director and/or designee determines there is insufficient evidence to recognize a lawful nonconforming use, the staff of the Office of Planning and Design Services shall docket the case to the next available Board of Zoning

Adjustment public hearing. The Board must review the application pursuant to KRS 100 and LDC section 1.3.1 to determine whether the property has nonconforming rights. The burden shall be on the applicant to provide documentation supporting the establishment of the nonconforming use and its continuous existence.

## **STAFF ANALYSIS**

The applicant submitted signed affidavits attesting to the structure's use as multi-family; however, the affidavits only go back to the 1980s. As true for all nonconforming rights requests, affidavits by themselves will not suffice as the only evidence of existence for a nonconforming use; in other words, other evidence should be submitted along with notarized affidavits. Affidavits must contain specific information as to the affiant's knowledge of the use, and the basis for that knowledge.

The applicant submitted Caron and Criss-Cross directory listings from the 1970s to early 2000s. One of the directory listings submitted by the applicant contain three separate listings under 1836 Eastern Parkway, possibly in 1973. The applicant submitted city directory listings from 1979 that suggest four separate listings under 1836 Eastern Parkway. Another listing submitted by the applicant suggest two listings in 1971. The remaining directories from the 1970s to 2000s show a mix of 1-2 listings. Directory listings do not state conclusively the structure did not have three units in 1971. Residential directory listings heavily rely on if the individual or family were willing to report their occupancy at the time. The applicant also submitted interior photos showing the three separate units. The photos submitted have been attached to this staff report as an agenda item.

Staff researched historic zoning maps and found the property has consistently been zoned for single-family residential use. According to historic Courier Journal newspaper entries from 1923 and 1927, the home is suggested to have been constructed as a single-family residence. PVA records indicate the home was constructed in 1910. In 1973, the structure was advertised as being "presently duplexed." Staff also researched Caron and Polk city directories from 1970 to 2023. Findings yielded listings consisting of one to two separate listings under the address 1836 Eastern Parkway. The address never appeared to consist of three separate listings in the directories in staff's possession, which are the Caron and Polk directories. Staff also referred to Sanborn Maps from the 1960s label the structure "D" for Dwelling. There is no clear indication the Sanborn Maps recognize the structure as anything more than a single-family dwelling unit.

Staff located a Board of Zoning Adjustment appeal of an order of the City of Louisville Department of Building and Housing Inspection under Docket # B-6-75. The appeal of the order from 1975 cited property owner Gene Lovell, of operating 3 units in the house located at 1836 Eastern Parkway. During this time, nonconforming rights had to be proven back to 1931 for the City of Louisville, not 1971. The property owner submitted affidavits attesting to the property's use as a multi-family dwelling structure.

On May 19, 1975, the Board was advised no new evidence had been submitted by 1 P.M that date, the Board resolved to approve nonconforming rights based upon the affidavit of "Jack Sheehan." On June 2, 1975, the Board did not approve the minutes of the previous meeting on May 19 due to legal questions raised regarding the affidavit at which the Board based their previous decision on. On August 18, 1975, the Board found the legal questions pertaining to the affidavit of Jack Sheehan had not been satisfied and the record at that time did not provide proof of nonconforming rights. The Board ultimately voted to uphold the Cease-and-Desist Order issued by the City of Louisville Department of Building and Housing inspection. The minutes from the case have been attached as an agenda item.

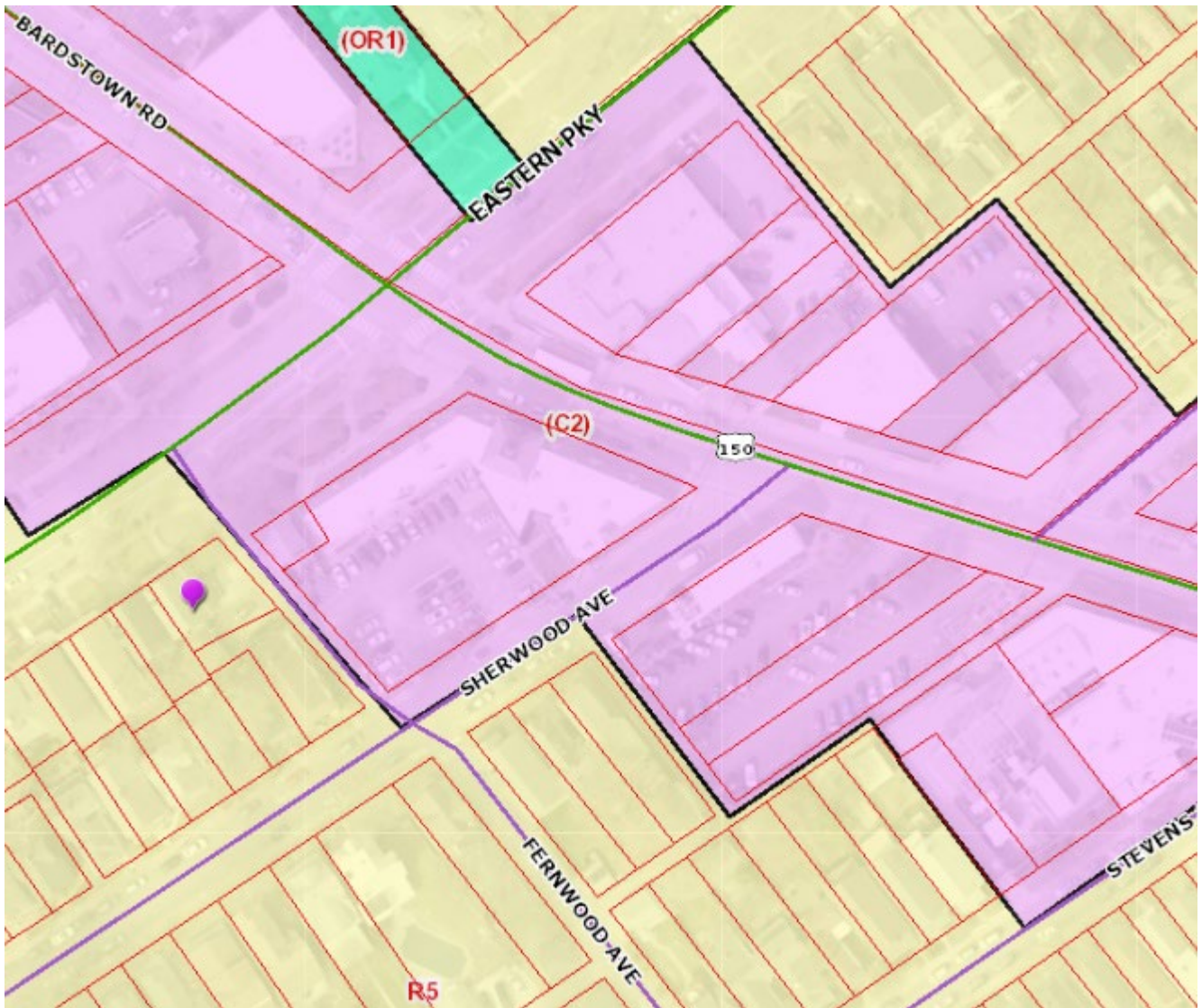
**NOTIFICATION**

Date	Purpose of Notice	Recipients
8/24/23	Hearing before BOZA	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners and residents
8/28/23	Hearing before BOZA	GovDelivery for Council District 8
8/28/23	Sign Posting	Sign Posting

**ATTACHMENTS**

1. Zoning Map
2. Aerial Map

1. Zoning Map



2. Aerial Map

