

Board of Zoning Adjustment Staff Report

September 11, 2023



Case No:	23-NONCONFORM-0022
Project Name:	Nonconforming Rights
Location:	714 S 37 th St
Owner(s):	Brightstone LLC
Applicant:	Dena Freeman
Jurisdiction:	Louisville Metro
Council District:	5 – Donna Purvis
Case Manager:	Joel P. Dock, AICP, Planning Supervisor

REQUEST(S)

- **Nonconforming Rights**

CASE SUMMARY

The applicant has requested nonconforming rights for a duplex at 714 S 37th St. The property is zoned R-5, Single-Family Residential and located south of Broadway. The property is adjacent to a public alley, separating the subject site from properties along Broadway zoned R-7 Multi-Family Residential and Commercial. According to the application, the front apartment has one bedroom, one bathroom, and kitchen with separate ingress and egress. The back unit is a two-bedroom townhome with living room, kitchen, bathroom, and separate entrance.

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 must be provided back to 1971. 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. Evidence to establish nonconforming rights was not sufficient. Pursuant to the Board's 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 2 dwelling units. 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 a letter written by USPS stating the property has been addressed as two apartment units since the current USPS record management system was created in 1999, and possibly predates the current management system. The applicant also submitted a letter from LG&E stating the property has consistently had two separate electric and gas meters since as early as 03/16/09. Polk City Directory listings were submitted for the years 1998 and 1999. In 1999, there are multiple listings for the same address, one labeled "2" which indicates individual listed in the directories resided in Unit 2. The applicant also submitted interior and exterior photographs of the units and structure. These photos have been attached as an agenda item.

According to Jefferson County Property Valuation Administrator (PVA), the property was constructed in 1900 and has a property class listed as "520 Res 2 Family Dwell Duplex." While there was not a change in zoning that would have made this use nonconforming, there was a "Chickasaw Neighborhood Needs Assessment" map by the Louisville and Jefferson County Planning Commission which displayed current land use conditions in the area. The map shows the subject property as having two units. The map was intended to identify existing uses that are not permitted in the zoning district in which they are located; it was not intended to establish the legal nonconforming status of identified uses at that time.

Staff researched historic directories and found two listings did not appear under 714 S 37th St until 1999-2000 while directories dating back to 1965 only have one listing. Directory listings do not state conclusively the structure did not have two separate dwelling units in 1971. Residential directory listings heavily rely on if the individual or family were willing to report their occupancy at the time.

Staff also researched historic newspaper entries from the Courier Journal. In 1949 or thereabout, an apartment was made available; however, the historic advertisement indicates a shared bathroom which poses uncertainty on whether or not the units were separated. A historic advertisement listing from 1961 listed 714 S 37th St as a 6-room home with bath, part basement, furnace, 2 kitchens, and arranged for home and income. While the separation of the two units remains unclear, the advertisement would suggest the home was being marketed as having an investment apartment.

In 1978, 1981, and 1985 the apartments were advertised under the tab "Apartments – Unfurnished" as having 3 rooms and one bathroom which suggests the separation of two dwelling units with independent living facilities is present. All historic newspaper entries referenced have been attached as an agenda item. Historic aerials were also analyzed which include the subject property dating back to 1965. The structure's footprint does not appear to have ever changed and there is no indication the rear of the structure which includes the entrance to the second unit was a recent addition.

NOTIFICATION

Date	Purpose of Notice	Recipients
8/23/23	Hearing before BOZA	1 st and 2 nd tier adjoining property owners and residents
8/28/23	Hearing before BOZA	GovDelivery for Council District 5
8/28/23	Sign Posting	Sign Posting

ATTACHMENTS

1. Zoning Map
2. Aerial Map

2. Aerial Map

