

Board of Zoning Adjustment

Staff Report

July 16, 2018



Case No:	18APPEAL1002
Project Name:	Shelbyville Road Appeal
Location:	16922 Shelbyville Road
Owner:	YL Property Partners, LLC
Appellant:	Lucy Kerman
Representative:	Michael F. Lawrence
Existing Zoning District:	R-4
Existing Form District:	Village
Jurisdiction:	Louisville Metro
Council District:	19 – Denton
Case Manager:	Chris French, AICP

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

On April 11, 2018, a Zoning Enforcement Officer issued a NOV to YL Properties LLC, the owner of the property located at 16922 Shelbyville Road, for the operation of a contractor's shop (Miles Fence Company) with outdoor storage in a residential zoning district.

The appellant filed an appeal of the NOV in a timely manner on May 10, 2018. According to KRS 100.263, the Board shall make a decision within sixty (60) days of submittal. The appellant's representative did consent to a public hearing date of July 16, 2018, which exceeds the sixty (60) days allowed by KRS 100.263 to make a decision.

As set forth within the 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 appeals of determination in the following areas: 1) written interpretations of the provisions of the LDC and 2) an official action, order, requirement, interpretation, grant, refusal, or decision of an administrative official, zoning enforcement officer or code enforcement officer.

The appellant is asserting that the property has been used commercially for "decades," the property is classified as commercial by the Jefferson County Property Valuation Administrator (PVA), the property was taxed as a commercial property in 2015, and FlexMLS lists the property as commercial.

The subject property is located within the R-4 Residential Single Family Zoning District. Pursuant to LDC Sec. 2.2.6, this zoning classification does not permit a contractor's shop. In order for the appeal of the citation to be approved, it must be determined that the property has nonconforming rights for a contractor's shop dating back to the adoption of zoning regulations in unincorporated Jefferson County on April 23, 1943. In addition, the nonconforming use must remain in continuous operation, a gap in use of a year or more would lead to a presumption that the nonconforming use had been abandoned; the abandonment of a nonconforming use terminates the nonconforming use status.

In the appeal application, the appellant submitted documentation to support the existence of a contractor's shop. This documentation is part of the record and is available for the Board to review on the Louisville Metro Government Agenda & Meeting Portal (<http://louisville.legistar.com>).

PREVIOUS CASES ON SITE

None

INTERESTED PARTY COMMENTS

No interested party comments have been received as of the publication date of this report.

STAFF ANALYSIS

The following sections of the LDC are applicable to this case:

Section 1.2.2	Definitions
Section 1.3.1	Use
Section 2.2.7	R-4 Residential Single-Family District

As currently defined in LDC Sec. 1.2.2, the following definitions are relevant to the appeal:

Abandonment - The cessation of the use of real property under circumstances which do not manifest an intent to continue said use or to resume said use within a reasonable time. The cessation of a use of real property for less than one year shall be rebuttably presumed to not constitute abandonment and the cessation of a use of real property for a year or more shall be rebuttably presumed to be unreasonable and an abandonment of use.

Nonconformity (or Nonconforming) - An activity or a building, structure or a 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.

Based on a review of archived zoning maps, the zoning of the property has been single-family residential since adoption of zoning by Jefferson County on April 23, 1943. Pursuant to LDC Sec. 2.2.7, the R-4 single-family zoning classification does not permit a contractor's shop. The current Land Development Code permits contractor's shops with outdoor storage in the C-2 Commercial, C-M Commercial Manufacturing, and M-1 Industrial zoning districts with the granting of a conditional use permit, and in the M-2 and M-3 Industrial zoning districts by right.

RESPONSE TO THE APPEAL

YLP Properties, LLC asserts that the property has been used commercially for decades; however, no evidence was submitted with the application to corroborate this claim.

Staff was unable to discover any evidence to support this claim in the Develop Louisville files as staff reviewed city directories from 1967-2017 and the directories never listed 16922 Shelbyville Road.

The appellant also states that the Jefferson County PVA has the property listed as “480 com warehouse,” but PVA does not look at the zoning of a property, only how a property is used at that point in time.

The application also indicates that the 2015 Tax Record Report shows the property as commercial; however, this record looks at use of the property at that point in time and not how a property is zoned.

The appellant also states that the FlexMLS report from August 18, 2015, shows the property as commercial, which again does not look at zoning and only how a property is used at that point in time.

Finally, the appellant indicates in the appeal statement that according to the PVA the principal structure was built in 1900, which is typically a generic year given by the PVA when the construction year is unknown. The basis of appeal also states that the accessory structure in the rear was built in 1985.

STAFF 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. 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. As stated earlier, staff could find no evidence that the property was used as a contractor’s shop in 1943 or that the use was maintained thereafter.

RELEVANT CODE SECTIONS

Pursuant to LDC 11.7.3 and 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.

Pursuant to LDC 1.3.1.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.”

Pursuant to LDC 1.3.1.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.”

Pursuant to LDC 1.3.1.F, “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.”

Based upon the file of this case, this staff report, and the evidence and testimony submitted at the public hearing, the Board must determine:

1. 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,
2. 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 on the property located at 16922 Shelbyville Road, and the decision of the Zoning Enforcement officer is overturned.

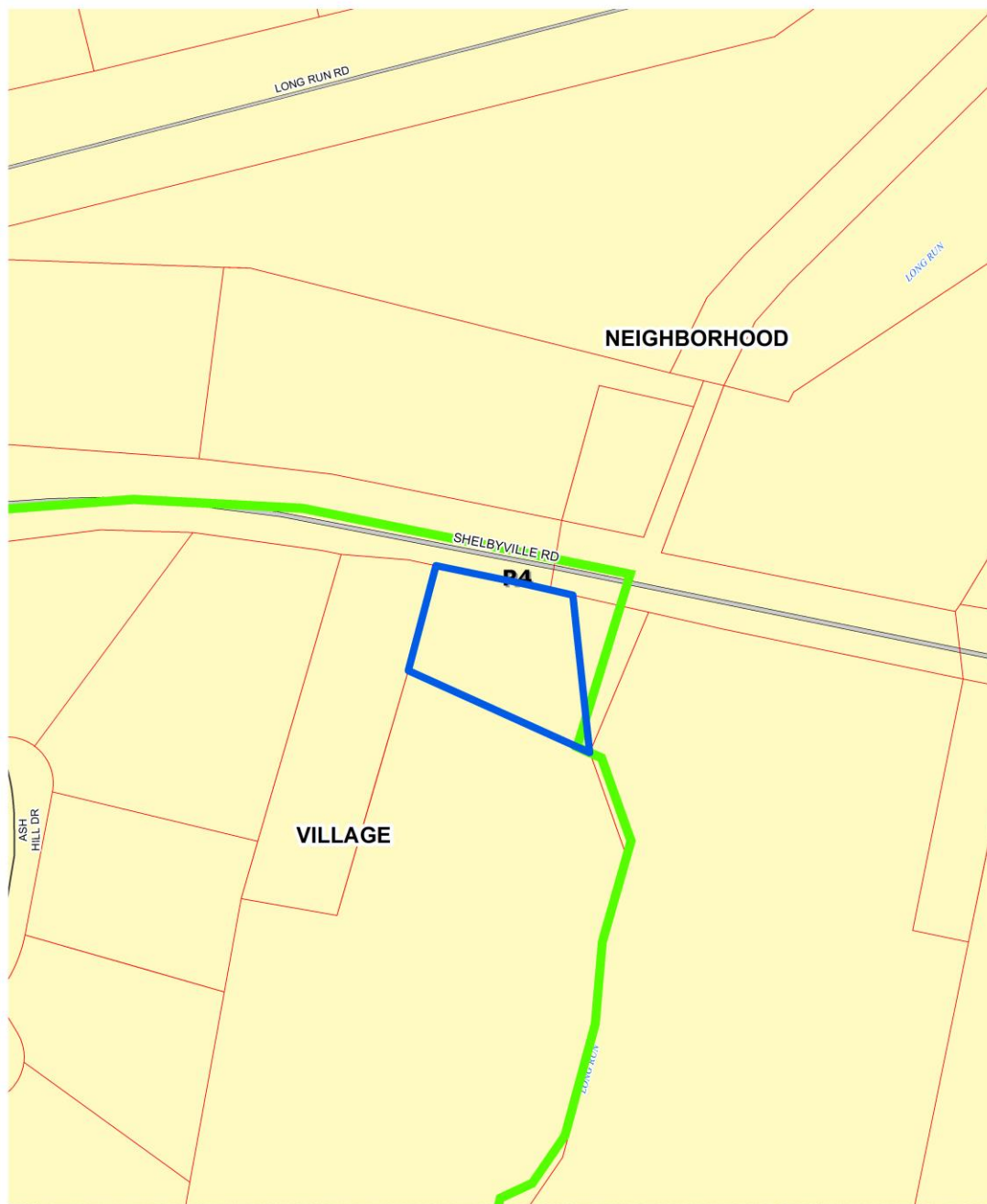
NOTIFICATION

Date	Purpose of Notice	Recipients
6/21/2018	Hearing before BOZA	Appellant, Adjacent Neighbors, Administrative Official
6/29/2018		Sign Posted
7/6/2018		Legal Ad in Courier-Journal – Circulation Area

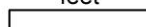
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. 1951 Aerial Photograph
4. Site Inspection Photographs

1. Zoning Map



16922 Shelbyville Road
feet



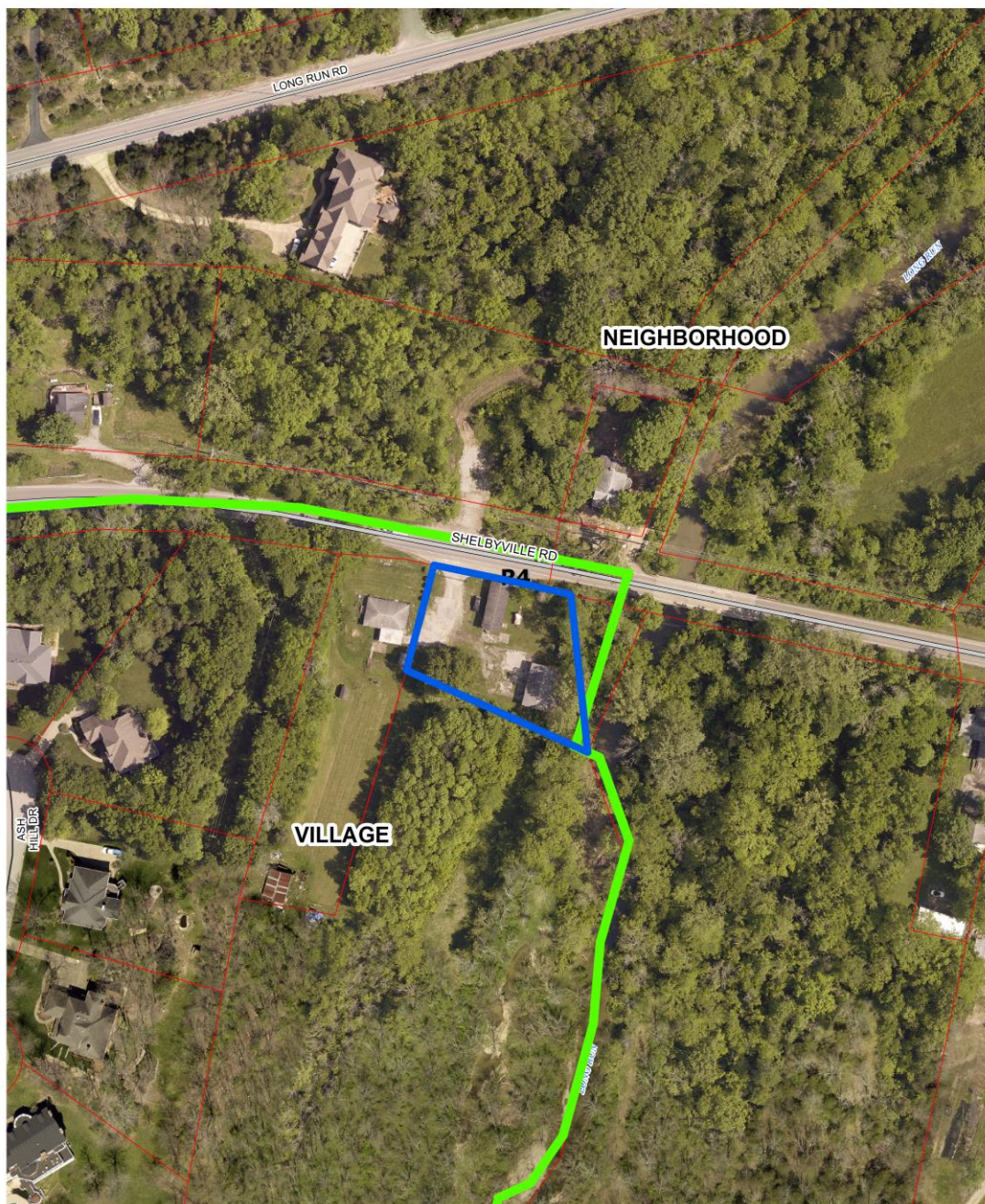
140

Map Created: 7/3/2018



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2. Aerial Photograph



16922 Shelbyville Road
feet



140
Map Created: 7/3/2018



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3. 1951 Aerial Photograph



16922 Shelbyville Road 1951 Aerial

feet



290

Map Created: 7/3/2018



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4. Site Inspection Photographs



1. Front of property



2. Side of property across Shelbyville Road



3. Parking area



4. Facing east on Shelbyville Road



5. Area between parking area and principal structure



6. Rear of property



7. Accessory structure



8. Outdoor storage



9. Front of property facing Shelbyville Road