

Commission, Board or Committee

Staff Report

January 7, 2019



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| Case No: | 18APPEAL1005 |
| Project Name: | Oak Street Appeal |
| Location: | 508 East Oak Street |
| Appellant: | Luke Nuebauer |
| Jurisdiction: | Louisville Metro |
| Council District: | 4 – Barbara Sexton Smith |
| Case Manager: | Chris French, AICP, Planning Supervisor |

REQUEST(S)

Appeal of a staff determination issued by the Office of Planning and Design Services concerning a request for nonconforming rights for a two-family dwelling (duplex) at 508 E. Oak Street, Louisville, KY.

CASE SUMMARY/BACKGROUND

On November 12, 2018, Luke Neubauer, Manager for 502 Rentals LLC, requested a determination that the existing building at 508 E. Oak Street is a legally nonconforming duplex. After a review of the application and information within Develop Louisville files, Planning and Design Services staff determined that there was insufficient evidence to support a determination that the duplex is legally nonconforming. This decision was provided to the property owner in a letter dated December 5, 2018.

The appellant filed an appeal of the staff determination in a timely manner on December 7, 2018.

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 appeals of staff determinations 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 both units were lawfully established as independent dwelling units and thereby the building is a duplex and not a single-family residence.

The subject property is currently zoned R-6 Multi-Family; however, the lot is not large enough to allow a two-family dwelling. The maximum density in the R-6 Zoning District is 17.42 dwelling units per acre or 2,500.6 square feet per unit. The subject property is .0927 acres or 4,038.01 square feet, which is large enough to allow one unit. Therefore, the subject property does not meet the density restrictions found in LDC section 2.2.11.E.2 to allow two units.

In order for the duplex to be lawfully nonconforming to this provision, it must have been lawfully in existence at the time in which the zoning regulation which does not permit the duplex was enacted.

Further, the nonconforming use must not have been abandoned as the abandonment of a nonconforming use terminates the nonconforming use status.

In both the nonconforming rights and appeal applications, the appellant submitted documentation to support the existence of a duplex. 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

18NONCONFORM1036: This case is subject to this appeal application.

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 2.2.11 | R-6 Residential Multi-Family District – Maximum Density and FAR |

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

Dwelling, Single Family (or One Family) - A dwelling designed for and occupied exclusively by one family. This term includes Conventional, Average-Lot, Clustered and Zero-Lot-Line one family dwellings.

Dwelling, Two Family (or Duplex) - Any group of two dwelling units occupying a single lot or building site, whether composed of one or more than one principal building. This term includes Conventional, Average-Lot, Clustered and Zero-Lot-Line two family dwellings.

Dwelling Unit - Either a single room or two or more connected rooms used exclusively as a single unit and intended for occupancy for no less than thirty (30) consecutive days or more by one family, and providing complete, independent living facilities (which at a minimum includes permanent provisions for living, sleeping, eating, cooking and sanitation which are accessed independently). Notwithstanding the provisions of this definition, where permitted, short term rentals may be occupied by more than one family and for less than 30 consecutive days. This term does not include hotel or motel rooms, extended stay lodging facilities, nursing home rooms, or assisted living residence units.

Family - One or more persons occupying premises and living as one housekeeping unit, and distinguished from a group occupying a boarding and lodging house, fraternity or sorority house, a club, hotel, or motel.

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 in 1931 by the City of Louisville. Pursuant to LDC Sec. 2.2.7, the R-5 single-family zoning classification does not permit a duplex.

According to Jefferson County PVA record, the building currently listed with a property class of "520 RES 2 FAMILY DWELL DUPLEX", but the property type is listed as "1:SINGLE FAMILY". Property details indicate that the two-story building was built in 1910. Trulia.com provides information and photos for unit 1. Zillow.com provides information for unit 2. According to Trulia.com, Unit 1 is listed as having 1,949 square feet of finished space with two bedrooms and two bathrooms; however, the applicant states that this unit has three bedrooms. According to Zillow.com, Unit 2 is listed as having 1,200 square feet of finished space with 3 bedrooms and 1 bathroom.

The applicant as part of case 18NONCONFORM1036 provided directories for 2000 and 2012, which showed the property as having listings for more than one unit. Staff reviewed the zoning for the property and noted an areawide zoning change in 1985 from R-8A to R-6; the R-8A zoning would have allowed a duplex on the site based on the maximum density of that zoning district. Staff reviewed directories for 1971, 1980, and 1990, which provided information for only one unit. Therefore, staff did not grant the nonconforming rights request. In order for staff to grant nonconforming rights there needs to be sufficient evidence in favor of the application.

In the basis of appeal, the Appellant asserts that they bought the property from the Louisville Metro Housing Authority in good faith that the work they had done to the property which included a 400 square foot addition to the back of the house adding two bedrooms and a bathroom and finishing off the attic space into two more bedrooms on the third floor had been done according to housing code. The Appellant asserts that the structure was converted to a duplex by the Louisville Metro Housing Authority. The Appellant is appealing the nonconforming rights determination because the conversion to a duplex was administered by a government agency. The Appellant also provided enough information to show that the current structure is divided into two dwelling units.

This subject property is within the boundaries of the City of Louisville that existed prior to consolidation to Louisville Metro in March of 2003. Within these boundaries, a nonconforming rights claim must be dated back to June 18, 1971 or the date in which the zoning regulations which would not permit such activity was enacted (whichever date is later), in this case 1985. The R-6 zoning was in place in 1985, which permitted multi-family dwellings that meet the maximum density requirements of the zone. In this case, the lot size of the subject property would only permit a single-family residence. Therefore, in order to recognize the duplex as lawfully nonconforming, evidence must support the nonconforming use as in existence in 1985. Further, evidence must support that the use was never abandoned and has continued to exist from 1985 to present.

STAFF CONCLUSIONS

It does not appear that the structure was originally built as a duplex, but it is clear that the structure is currently configured as a duplex. A nonconforming rights claim does not need to date back to the year in which the building was constructed (1910 per the PVA), but 1985, based on the change in zoning of the property. 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 duplex may be recognized. Based on the information that staff could find in the City Directories the structure was not a duplex in 1985.

In addition, the Board must also find that the nonconforming rights were not abandoned and that the building has been continuously used as a duplex. As stated earlier, staff could find no evidence that the property was used as a duplex from 1985 to 1990. The Appellant did provide information that the property was used as a duplex from 2000 to the present. The Board has greater latitude than staff to take additional evidence into consideration, including testimony at the hearing in order to make its determination on an appeal.

The Appellant asserts that the Louisville Metro Housing Authority was responsible for the conversion and therefore nonconforming rights should be granted. Staff does not agree with this assertion. The Louisville Metro Housing Authority is a quasi-governmental agency and is subject to both the zoning code and building code.

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.

STANDARD OF REVIEW

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 duplex was lawfully in existence in 1985.
2. And if so, has it been continuously used as duplex from 1985 to present.

NOTIFICATION

| Date | Purpose of Notice | Recipients |
|------------|---------------------|--|
| 12/20/2018 | Hearing before BOZA | Appellant, Adjacent Neighbors, Administrative Official |
| 12/19/2018 | | GovDelivery Notice |
| 12/21/2018 | | Sign Posted |
| 12/28/2018 | | Legal Ad in Courier-Journal – Circulation Area |

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Inspection Photographs
4. Unit 1 – Trulia.com
5. Unit 2 – Zillow.com

1. Zoning Map



2. Aerial Photograph



1 inch = 46 feet

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508 E. Oak Street



3. Site Photos



Subject property




Across the street




Rear of the subject property


4. Trulia.com




See 21 photos




Map View
See the local terrain and how close this home is to parks and main streets.




Street View
Take a virtual walk around the neighborhood.



Crime
Lowest crime relative to the rest of Jefferson county.



Schools
56 Elementary Schools
43 Middle Schools
37 High Schools





Commute
66% of residents commute by car

Home Details

Overview

 Multi-Family
 2 Beds
 2 Baths
 Built in 1910

 1,949 sqft
 22 days on Trulia

508 E Oak St # 2 Louisville, KY 40203

3 beds · 1 bath · 1,200 sqft

● **SOLD: \$52,230**

Sold on 09/15/17

EST. MORTGAGE

\$204/mo



[Get pre-qualified](#)

*Note: This property is not currently for sale or for rent.
The description below may be from a previous listing.*

Newly and Beautifully remodeled luxury 2nd and 3rd floor apartment. Granite countertops and original refinished hardwood floors. This unit includes the best bathroom around, come see for yourself!

Facts and Features



Type
Apartment



Year Built
No Data



Heating
No Data



Cooling
No Data



Parking
Off street



HOA
No Data

INTERIOR FEATURES

Bedrooms

Beds: 3

Appliances

Appliances included: Dryer, Washer

Flooring

Floor size: 1,200 sqft

Flooring: Hardwood