

Board of Zoning Adjustment

Staff Report

April 5, 2021



Case No:	21-APPEAL-0002
Project Name:	Bonnycastle Avenue Appeal
Location:	1735 Bonnycastle Avenue
Appellant:	211 Excelsior, LLC
Representative:	Daniel O’Gara
Jurisdiction:	Louisville Metro
Council District:	8 – Cassie Chambers Armstrong
Case Manager:	Jon E. Crumbie, Planning & Design Coordinator

REQUEST(S)

- Appeal of an administrative decision regarding nonconforming rights for four dwelling units on one property in an R-5 zoning district.

CASE SUMMARY/BACKGROUND

The Appellant submitted a nonconforming rights determination request on November 9, 2020. Staff conducted a review of the applicant’s information and determined that there was not sufficient information that a nonconforming use (four dwelling units on one property) has been established in the R-5 Single Family Zoning District. A letter providing this decision was sent to the property owner on January 4, 2021.

The Appellant filed an appeal of the administrative decision on February 2, 2021, which is within the 30-day appeal period. The Appellant submitted a copy of deeds, signed Affidavit, and post tornado planning report for 1974 to support their basis of appeal concluding that there are four dwelling units on the one property. These documents are part of the record and available for the Board to review on the Louisville Metro Government Agenda & Meeting Portal (<http://louisville.legistar.com>).

STAFF ANALYSIS/FINDINGS

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

Section 1.2.2 Definitions

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

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.

According to Jefferson County PVA records, the property type is listed as Residential 1-Family for both structures. The PVA lists the structure as built in 1905.

Although the property has been consistently zoned as single-family, the structures were built prior to zoning regulations going into effect. As described in the Tornado Planning Report, the Deer Park neighborhood was developed prior to zoning laws and therefore there are several nonconforming uses and lot patterns in the area.

The directory findings were inconsistent, but there is a pattern of either three or four units being on the property. However, all four units were not found in the directories until 1976. There were some addressing discrepancies with this property, and sometimes the property was listed under 1530 Norris Pl, 1530R Norris Pl, or just 1735 Bonnycastle Ave.

Directory Findings:

Year	1735 Bonnycastle	1530 Norris Pl	1530 ½ Norris Pl	# of Units
1971	Vacant	Brown B.A.	Not Listed	2
1972	Not Listed	Brown B.A.	Not Listed	2
1973	Breitzman Wm C	Not Listed	Not Listed	1
1974	Elston Mary L	Vacant	Vacant	3
1976	Allison John T Passmore John C	Kokot Gloria A	Lynch Joan	4
1977	Allison John T Passmore John C	Kokot Gloria A	Lynch Joan	4
1978	Prince Pamela J Passmore John C	Kokot Gloria A	Vacant	4
1979	Prince Pamela J	No Return	Talley J M	3
1984	Lampton C	White Dennis	Talley Sandra Mrs.	3
1988	Kruer J Ward Thomas	White Dennis	Talley Sandra Mrs.	4
1991	Kruer J Travel Elmer	Smith Mike	Talley Sandra Mrs.	4
1994	<i>Under Construction</i>	Not Verified	Not Verified	?
1999	Frisco Kristen Sachi Josh	Progner Kelli R	Talley Sandra Mrs.	4
2003	Mathis Michael No Current Listing #2	Sturm Aaron W	Not Listed	3
2008	No Current Listing	Sturm Aaron W	Not Listed	?
2015	No Current Listing	No Current Listing	Not Listed	?

Staff Conclusions

Staff did not have sufficient information in the review of the nonconforming rights case that four dwelling units existed on the lot continuously since 1971. The Appellant has not submitted additional information to change staff's previous conclusion. Therefore, staff believes that the original decision was correct, and the property does not have established nonconforming rights for four dwelling units on one lot in an R-5 zoning district.

Standard of Review

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 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.

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. Did a residential multi-family use with four residential units exist on the lot in 1971?
2. If yes to question 1, did this use of the property continue to the present day?
3. If the Board of Zoning Adjustment does not agree that four residential units exist on the lot; does a lesser number of units have nonconforming rights?

If the Board answers yes to the first two questions listed above, then an approval of such a motion would overturn staff's decision.

If the Board answers no to the first two questions, then the Board would concur with the staff, and the approval of such motion would affirm staff's decision. Furthermore, if the Board feels that there is evidence for nonconforming rights for two or three units a motion should be made for a lesser number of units.

RELATED CASES

20-NONCOMFORM-0028 – The administrative decision in this case is the subject of the appeal.

INTERESTED PARTY COMMENTS

Staff has not received any interested party comments.

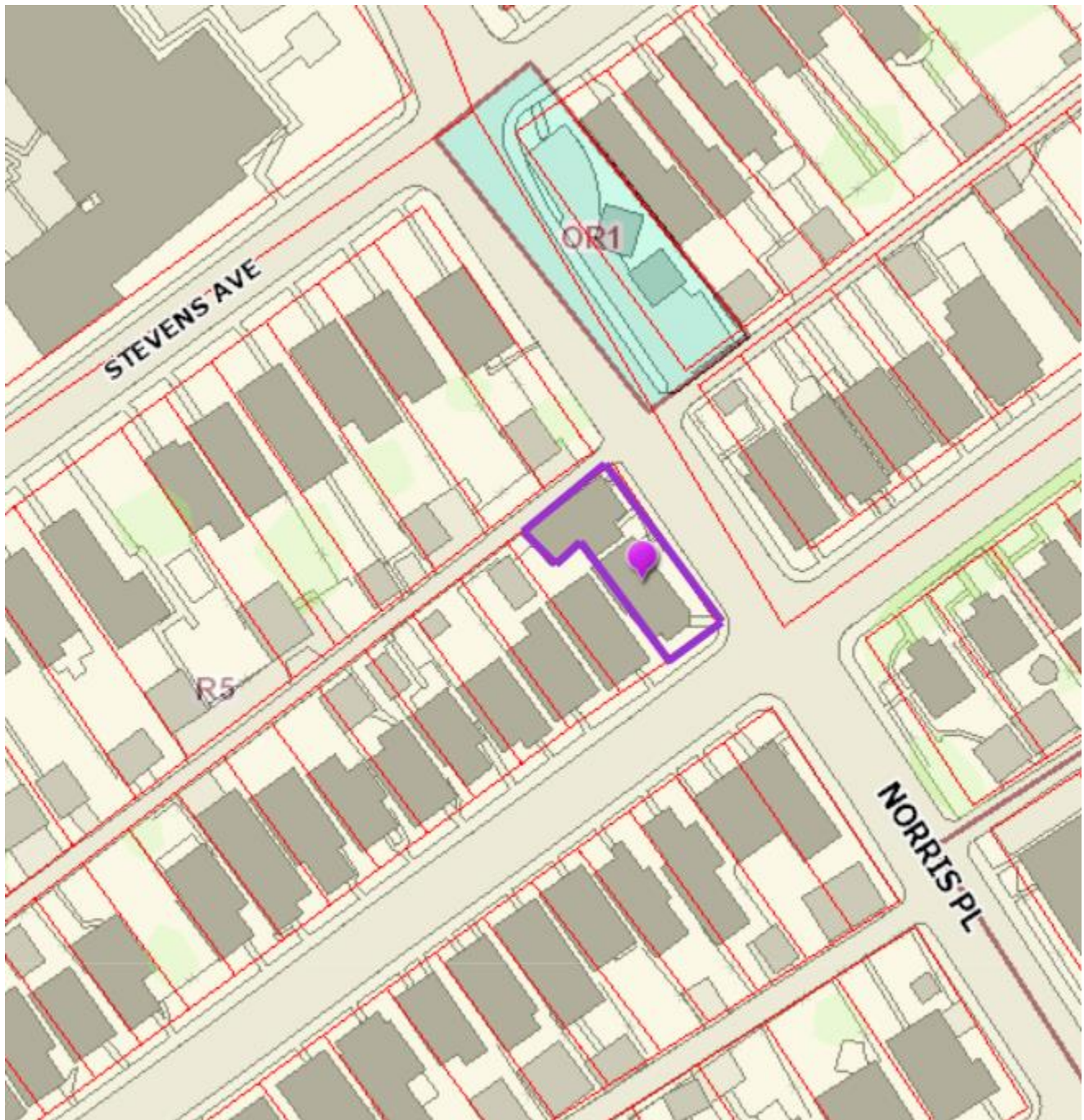
NOTIFICATION

Date	Purpose of Notice	Recipients
3/18/2021	Notification of appeal of an administrative decision	Adjoining property owners, Appellant, and PDS staff GovDelivery District
/2021	Legal ad for notification of appeal of an administrative decision	Courier Journal - published in paper by Appellant or Representative

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Photos

1. **Zoning Map**



2. Aerial Photograph



3. Site Photos



