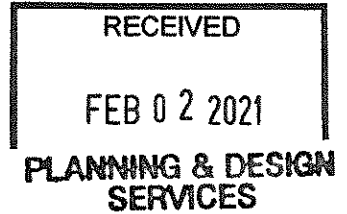


**GROUND'S FOR APPEAL FROM DENIAL OF
NON-CONFORMING RIGHTS APPLICATION**

**1735 Bonnycastle Ave.
20-NONCONFORM-0028**



The applicant appeals from the denial of the non-conforming rights application for the property located at 1735 Bonnycastle Ave. (the "property"). A copy of the January 4, 2021 denial letter and findings from Planning and Design Services are attached hereto as Exhibit 1.

The property, which consists of two separate buildings each of which contains two dwelling units, has been used as a four-plex since well-before 1971 when the current zoning regulations applicable to the Deer Park neighborhood, including the subject property, were adopted. The applicant proposes to continue this property's historic non-conforming use as four-plex apartments. The property is zoned R-5 and there are many other multi-family residences, including numerous four-plexes, within the Deer Park neighborhood. Among others, there are four four-plexes located a 1700-1718 Deerwood Avenue, less than two blocks from the subject property. There is also a much larger multi-family complex within one block of the subject property at the corner of Shady Lane and Norris Place in an R-7 zone. The Planning and Design Services staff findings confirm that "[a]lthough the property has been consistently zoned as single-family, the structures were built prior to zoning regulations going into effect. . . . [T]he Deer Park neighborhood was developed prior to zoning laws and therefore there are several nonconforming uses and lot patterns in the area."

The proposed use of the property as a four-plex apartment building is identical to the property's known past use, which has always been as a four-plex. The property was purchased by the applicant in 2017 from C. T. and M. C. Hardin, who had owned the property since 1992, and who purchased the property from Elmer and Virginia Fravel, who had owned the property since 1969. Copies of these deeds are attached as Exhibit 2. To the applicant's knowledge, the property has been a four-plex since the current structures were moved to the property, which was well before 1969. The applicant has continued using the property as a four-plex since he purchased the property in 2017. A copy of the applicant's affidavit attesting to these facts is attached as Exhibit 3. The Planning and Design Services findings state that directory listings for the property were "inconsistent, *but there is a pattern of either 3 or 4 units being on the property*. However, all 4 units were not found in the directories until 1976." (emphasis added). The findings, however, note that there were addressing discrepancies with this property, and sometimes the property was listed as 1530 Norris Place, 1530R Norris Place, or just 1735 Bonnycastle Ave. For example, the chart provided in the findings notes that 1735 Bonnycastle was listed as "Vacant" in 1971 and "Not listed" in 1972, and that 1530 1/2 Norris Place was not listed in either of those years, yet 2 units are shown for 1530 Norris Place in those years. In 1973, however, 1735 Bonnycastle had a listing and 1530 Norris Place and 1530 1/2 Norris Place are listed as "Vacant." These addressing discrepancies likely explain why the existence of three or four units at the property cannot be traced back to 1971. Indeed, the Planning and Design Services findings state that "*The evidence provided by the applicant implies that the property has had four units since 1969.*" (emphasis added).

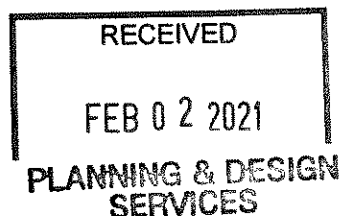
The applicant's understanding that the property has been used as a four-plex since at least 1969 is consistent with a report of the Louisville-Jefferson County Planning Commission titled "After April 3, 1974...A Post Tornado Planning Report" that discusses the zoning and land use of properties within Deer Park as of 1974. A copy of the report is attached as Exhibit 4. Page 12 of the report states that, within the Deer Park neighborhood, "multiple family dwellings are limited to *several four-plexes* throughout the area, a 22-unit complex on the corner of Norris Place and Shady Lane, and two apartments, one containing 18 units, the other 8, on Eastern Parkway." (Emphasis added). At pages 24-25, the report explains that these four-plexes were developed before the adoption of the 1971 zoning regulations: "In Deer Park west of Bardstown Road the land is primarily classified as R-5 . . . The Deer Park area . . . developed prior to the adoption of the Zoning District Regulations which accounts for the discrepancy with the current [R-5] zoning limitations on development . . . [A]partment structures were built on some property prior to the adoption of the zoning district regulations which would be prohibited by today's zoning districts." Thus, the report acknowledges that the existence of four-plexes within Deer Park predates the adoption of the 1971 zoning regulations under which the multi-family use was nonconforming. The Planning and Design Services findings confirm that *"the Post Planning Tornado Report strengthens the argument that a four-plex would not have been out of character for the Deer Park neighborhood."* (emphasis added).

That the property has historically been used as a four-plex is also confirmed by the presence of multiple power meters and entrances on the property. Attached as Exhibit 5 are a series of images of the property taken in December 2020. Images 1 and 3 show the two power meters on the duplex at the front of the property that faces onto Bonnycastle (1735 Bonnycastle). Image 2 is a photo of that duplex from Bonnycastle showing the two entrances. Image 4 shows the two power meters for the rear duplex that faces Norris Pl (1530 and 1530½ Norris Place). Images 5 and 6 shows the two entrances to the rear duplex. The four power meters and four entrances further support the historical non-conforming use of this property as a four-plex. The Planning and Design Services Report states that "Pictures of the property show that the four units are divided between two structures on the site. Each structure has two separate entrances and two separate meters."

For the reasons set forth below, the applicant's application and attached materials satisfy every requirement for approval of non-conforming rights.

1. The use lawfully existed on the property prior to adoption, or amendment, of the zoning regulation that makes the use nonconforming:

The multi-family use of the property was nonconforming when the currently-applicable zoning regulations were adopted in 1971. Here, the nonconforming multi-family use of the property dates back to at least 1969, as set forth above and evidenced by the documentation attached hereto. Furthermore, the Planning and Design Services findings state that *"The evidence provided by the applicant implies that the property has had four units since 1969, and the Post Planning Tornado Report strengthens the argument that a four-plex would not have been out of character for the Deer Park neighborhood."* Thus, the proposed continuation of the nonconforming residential use of the property lawfully existed on the property prior to the adoption of the zoning regulation that makes the residential use nonconforming.



2. The use existed continuously on the property since the time it became nonconforming, without an interruption of more than twelve (12) consecutive months:

As set forth above and in the supporting materials submitted herewith, the subject property has been used for multi-family residential uses since at least 1969, which is prior to adoption in 1971 of the currently-applicable zoning regulations under which the multi-family use of the property is nonconforming. To the applicant's knowledge, that use has existed continuously since 1969 without an interruption of more than twelve months. The Planning and Design Services findings confirmed that either three or four units existed on the property back to 1976, and addressing discrepancies likely account for the inability to trace the three or four unit use back to 1971.

3. The use has not been expanded, or relocated, on the property since the adoption of the zoning regulation that makes it nonconforming:

The multi-family residential use of the property has not expanded, or relocated, on the property since the adoption in 1971 of the currently-applicable zoning regulations under which the multi-family use is nonconforming. As stated above, the entire property has been used as a four-plex apartment since at least 1969.

Because the applicant's application satisfies all requirements for approval of non-conforming rights for use of the property as a four-plex, this Board should reverse the denial of the applicant's application and grant non-conforming rights.

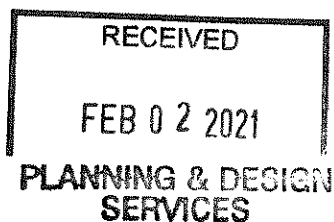


EXHIBIT 1



OFFICE OF PLANNING & DESIGN SERVICES
DEVELOP LOUISVILLE
LOUISVILLE, KENTUCKY

GREG FISCHER
MAYOR

YU "EMILY" LIU, AICP
DIRECTOR

January 4th, 2021

211 Excelsior LLC
2350 Village Drive
Louisville, KY 40205

Clifford Ashburner
101 S. 5th Street
Louisville, KY 40202

Re: 20-NONCONFORM-0028
1735 Bonnycastle Ave
Louisville, KY 40205

This letter will serve notice that nonconforming use rights for four dwelling units have not been established for the property located at 1735 Bonnycastle Avenue. The subject property lies within the R-5 Single-Family Residential Zoning District. This decision is based upon information provided in the application and Develop Louisville files.

Staff did not receive or find documentation supporting the consecutive use of four dwelling units dating back to 1971.

Staff's conclusion can be appealed to the Louisville Metro Board of Zoning Adjustment pursuant to Kentucky Revised Statutes, Section 100.257 within 30 days.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris French".

Chris French
Planning & Design Supervisor



LOUISVILLE FORWARD
www.louisvilleky.gov

METRO DEVELOPMENT CENTER 444 S. FIFTH STREET, STE 300, LOUISVILLE, KENTUCKY 40202 502.574.6230 FAX 502.574.8129

21-APPEAL-0002

Nonconforming Rights Application – Four Units in R-5
1735 Bonnycastle Avenue
20-NONCONFORM-0028

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SERVICE

The Applicant is requesting nonconforming rights for four dwelling units on one property in R-5 zoning.

Property Information:

Zoning: R-5
Form District: Traditional Neighborhood
Neighborhood: Deer Park
Acreage: 0.0864
Year Built: Both Structures Built in 1905
PVA Property Classification: Res 1 Family for both Structures



The site is surrounded by pockets of commercial and multifamily zoning.

- Landuse**
- SINGLE FAMILY
 - MULTI-FAMILY
 - COMMERCIAL
 - INDUSTRY
 - PUBLIC AND SEMI-PUBLIC
 - PARKS AND OPEN SPACE
 - RIGHT-OF-WAY
 - VACANT
 - FARMLAND

Historic Zoning	
1931	"A" One Family
1940	"A" One Family
1954	"A" One Family
1958	"A" One Family
1965	R-5 Single Family
1995	R-5 Single Family

Directory Findings:

Year	1735 Bonnycastle	1530 Norris Pl	1530 1/2 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	Under Construction	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	?

Summary of Directory

Findings:

Imagery from Google Street View showed that the structures on the property have the addresses listed in the table. The existence of 4 units did not show in the directories until 1976. The number of units on the property varied between 3 and 4 units until 2008, where the directories were not able to verify the number of units. Additionally, in 1994, the directories showed 1735 Bonnycastle as 'under construction.' This may mean that the structure has been modified since 1971.

21-APPEAL-0002

Evidence Provided by Applicant:

Copies of Deeds

- These do not imply the use of the property outside of 'residential.'

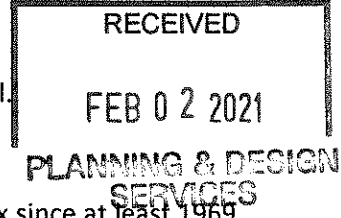
Signed Affidavit

- The affidavit claims that the property has been used as a fourplex since at least 1969.

Post Tornado Planning Report 1974

- Indicates that the Deer Park neighborhood has nonconforming densities.

In Deer Park west of Bardstown Road most of the land is classified as R-5 which permits a maximum density of 7.2 single family dwelling units per acre on land already subdivided. Existing densities in this area exceed the permitted maximum in over half the blocks in Deer Park. This can be explained by the fact that Deer Park was developed before the Zoning District Regulations were adopted.
- The area between Edenside Drive, Bardstown Road, Shady Lane and Baxter Avenue is predominantly developed with single family residential dwellings. Multiple family dwellings are limited to several four-plexes throughout the area, a 22-unit complex on the corner of Norris Place and Shady Lane, and two apartments, one containing 18 units, the other 8, on Eastern Parkway. The predominant single family development within this area has been built at a relatively high density for single family structures.
- The report does not specifically state that the subject property was a fourplex but suggests that such a use would not be out of character for the area.



Findings Summary:

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 3 or 4 units being on the property. However, all 4 units were not found in the directories until 1976. There were some addressing discrepancies with this property, and sometimes the property was listed until 1530 Norris Pl, 1530R Norris Pl, or just 1735 Bonnycastle Ave.

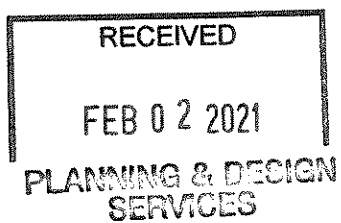
The surrounding land uses are dense single-family lots and scattered multifamily buildings. The evidence provided by the applicant implies that the property has had four units since 1969, and the Post Planning Tornado Report strengthens the argument that a four-plex would not have been out of character for the Deer Park neighborhood.

Pictures of the property show that the four units are divided between two structures on the site. Each structure has two separate entrances and two separate meters.

Pictures:



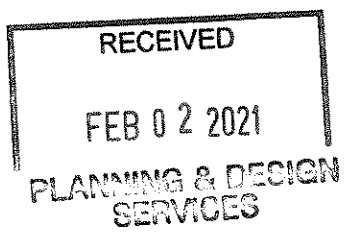
The front facade of Structure 1 (1735 Bonnycastle) has two separate entrances.



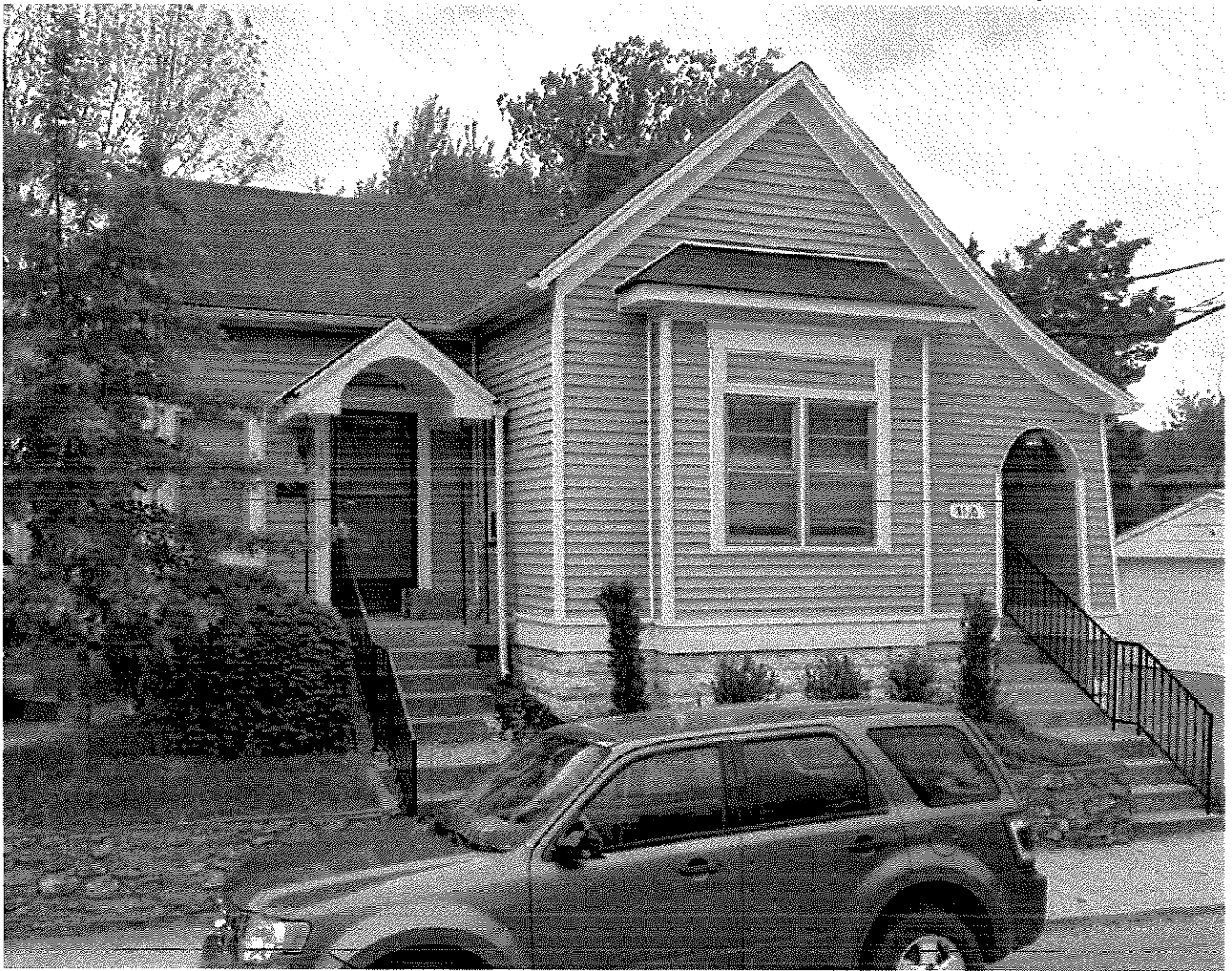
21-APPEAL-0002



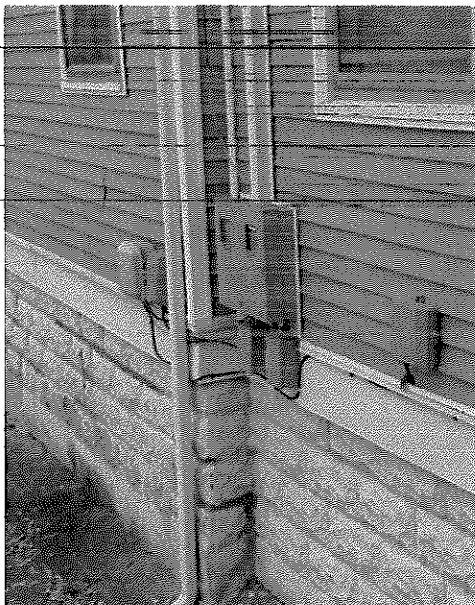
Two meters on Structure 1.



21-APPEAL-0002



Two entrances for Structure 2 (1530 & 1530 ½ Norris Pl) and two meters.



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21-APPEAL-0002



Bobbie Holsclaw
Jefferson County Clerk's Office

As evidenced by the instrument number shown below, this document
has been recorded as a permanent record in the archives of the
Jefferson County Clerk's Office.



INST # 2020256710

BATCH # 265989

JEFFERSON CO, KY FEE \$50.00

STATE OF KY DEED TAX \$260.00

PRESENTED ON: 12-01-2020 09:41:32 AM

LODGED BY: LIMESTONE TITLE & ESCROW LLC

RECORDED: 12-01-2020 09:41:32 AM

BOBBIE HOLSCLOW

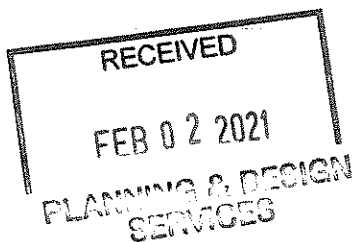
CLERK

BY: EVELYN MAYES

RECORDING CLERK

BK: D 11858

PG: 370-372



527 W Jefferson St ~ Louisville, KY 40202 (502) 574-5700

Website: www.jeffersoncountyclerk.org | Email: countyclerk@jeffersoncountyclerk.org

21-APPEAL-0002

2

QUITCLAIM DEED

THIS QUITCLAIM DEED, made and entered into this 11 day of October, 2020, by and between Highlands Village Investment 2016 Trust u/a dated 3/24/2016, whose address is 2350 Village Drive, Louisville, KY 40205, Grantor; and 211 Excelsior LLC, a Kentucky Limited Liability Company, whose address is 2350 Village Drive, Louisville, KY 40205, Grantee. Per KRS 382.135(c), the property tax bill shall be mailed to the address of the Grantee at: 2350 Village Drive, Louisville, KY 40205.

WITNESSETH:

That, for a valuable consideration in the amount of \$1.00, the receipt of which is hereby acknowledged, the Grantor hereby quitclaims and conveys unto the Grantees, in fee simple, all of their right, title, and interest in and to the following described property located at 1735 Bonnycastle Ave, Louisville, KY 40205, to wit:

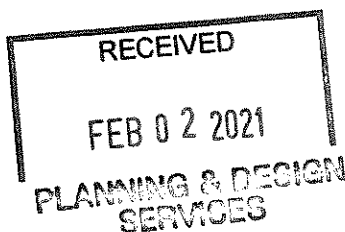
Tax Map/Parcel ID:
10-076C-0177-0000

BEGINNING at the intersection of the Southwest line of Norris Place and Northwest line of Bonnycastle Avenue; thence Northwestwardly with the Southwest line of Norris Place 98.83 feet to a point in the Southeast line of an alley; thence with the Southeast line of said alley in a Southwesterly direction 53.67 feet to a point in the Northwest property line of property conveyed to William E Rodman by deed recorded in Deed Book 2137, Page 473, in the Office of the Clerk of the Jefferson County Court, Kentucky; thence with said Rodman property line in a Southeasterly direction 22.93 feet to a point; thence again with said Rodman property line Northeasterly in a line parallel to the Southeasterly line of the aforementioned alley 18.50 feet to a point; thence again with said Rodman property line in a Southeasterly direction 74.91 feet to a point in the Northwest line of Bonnycastle Avenue; thence in a Northeasterly direction with the Northwest line of Bonnycastle Avenue 30 feet to point of beginning.

Being the same property conveyed to Highlands Village Investment 2016 Trust u/a dated 3/24/2016, by Deed from C.T. Hardin and M.C. Hardin, a married couple, dated 4/28/2017, recorded 5/1/2017, of record in Deed Book 10877, Page 681, in the Office of the Clerk of the County Court for Jefferson County, Kentucky.

The parties hereto state the fair market value of the property is \$260,000. A transfer tax is due in the amount of \$260.00. The Grantee joins this deed for the sole purpose of certifying the fair market value pursuant to KRS 382.135.

IN TESTIMONY WHEREOF, WITNESS the signatures of the Grantors and Grantee, the day and year first above written.



COM200173

21-APPEAL-0002

EXHIBIT 1



Bobbie Holsclaw Jefferson County Clerk's Office

As evidenced by the instrument number shown below, this document
has been recorded as a permanent record in the archives of the
Jefferson County Clerk's Office.



INST # 2017102351

BATCH # 74202

JEFFERSON CO, KY FEE \$17.00

STATE OF KY DEED TAX \$260.00

PRESENTED ON: 05-01-2017 7 03:06:21 PM

LODGED BY: ACKERSON & YANN

RECORDED: 05-01-2017 03:06:21 PM

BOBBIE HOLSCRAW

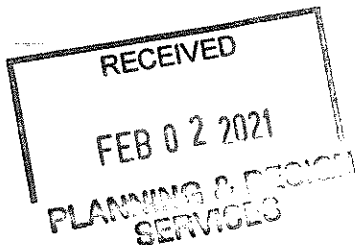
CLERK

BY: SHERRI SCHULTZ

RECORDING CLERK

BK: D-10877

PG: 681-683



527 W Jefferson St ~ Louisville, KY 40202 (502) 574-5700

Website: www.jeffersoncountyclerk.org | Email: countyclerk@jeffersoncountyclerk.org

21-APPEAL-0002

DEED

THIS DEED is between C. T. Hardin and M.C. Hardin (herein "Sellers"), a married couple, whose address is 1622 Forest Hill Drive, Louisville, Kentucky, 40205, and John D. Rothpletz, Trustee of the Highlands Village Investment 2016 Trust u/a dated 3/24/2016 (herein "Buyer"), whose in care of address for payment of 2017 real property taxes is 2350 Village Drive, Louisville, KY 40205.

WITNESSETH

In consideration of \$260,000.00, which the parties hereto certify is the full consideration paid for the property, the receipt of which is hereby acknowledged, the Sellers hereby convey to the Buyer and its successors, and assigns in fee simple, with Covenant of GENERAL WARRANTY, the following described property located at 1735 Bonnycastle Avenue in Jefferson County, Kentucky, to wit:

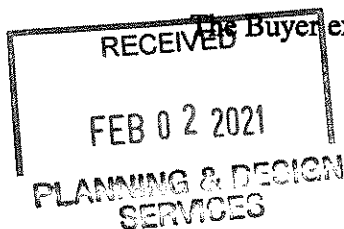
BEGINNING at the intersection of the Southwest line of Norris Place and Northwest line of Bonnycastle Avenue; thence Northwestwardly with the Southwest line of Norris Place 98.83 feet to a point in the Southeast line of an alley; thence with the Southeast line of said alley in a Southwesterly direction 53.67 feet to a point in the Northwest property line of property conveyed to William E. Rodman by deed recorded in Deed Book 2137, Page 473, in the Office of the Clerk of the Jefferson County Court, Kentucky; thence with said Rodman property line in a Southeasterly direction 22.93 feet to a point; thence again with said Rodman property line Northeasterly in a line parallel to the Southeasterly line of the aforementioned alley 18.50 feet to a point; thence again with said Rodman property line in a Southeasterly direction 74.91 feet to a point in the Northwest line of Bonnycastle Avenue; thence in a Northeasterly direction with the Northwest line of Bonnycastle Avenue 30 feet to point of beginning.

Being the same property conveyed to C. T. Hardin and M.C. Hardin by Deed dated November 17, 1992, of record in Deed Book 6247, Page 236, in the office aforesaid.

TO HAVE AND TO HOLD unto John D. Rothpletz and his successors in office as trustee and full power and authority is hereby vested in said trustee to sell, convey, lease, exchange, mortgage, or otherwise dispose of the property herein conveyed or any part thereof upon any terms and at any time he may see fit, and no one shall be required to look to the application of the proceeds therefrom.

Said estate is free from all encumbrances except restrictions and easements of record, zoning regulations and real estate taxes not yet due and payable, which Buyer assumes and agrees to pay.

The Buyer executes this deed for the sole purpose of certifying the consideration pursuant



to KRS Chapter 382; and IN AFFIRMATION of this conveyance, witness the signatures of the Sellers on April 28, 2017.

Highlands Village Investment 2016 Trust
u/a dated 3/24/2016

BY: John D. Rothpletz C. T. Hardin
John D. Rothpletz, Trustee M.C. Hardin
M.C. Hardin

Commonwealth of Kentucky)
County of Jefferson)

The foregoing Deed and consideration certificate was acknowledged and sworn to before me on April 28, 2017, by C. T. Hardin and M.C. Hardin.

Robert M. Yann
Notary Public, State of Kentucky, at Large
My Commission expires 4/7/2021

Commonwealth of Kentucky)
County of Jefferson)

The foregoing Deed and consideration certificate was acknowledged and sworn to before me on April 28, 2017, by John D. Rothpletz, Trustee of the Highlands Village Investment 2016 Trust u/a dated 3/24/2016.

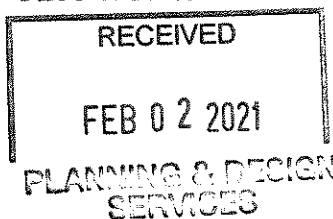
Robert M. Yann
Notary Public, State of Kentucky, at Large
My Commission expires 4/7/2021

This Document Prepared By:

Ackerson & Yann, PLLC
401 West Main Street, Suite 1200
Louisville, Kentucky 40202
(502) 583-7400

By: Robert M. Yann
ROBERT M. YANN

File No. 17-63



THIS DEED made this 17th day of November, 1992 between

ELMER L. FRAVEL and VIRGINIA R. FRAVEL, erroneously referred to as Virginia L. Fravel, husband and wife, Parties of the first part;

and

C. T. HARDIN and M. C. HARDIN, husband and wife, Parties of the second part; 1735 Bonnycastle Avenue, Louisville, KY 40205
c/o 1622 Forest Hill Drive, Louisville, KY 40205

WITNESSETH:—That for a VALUABLE CONSIDERATION paid, the receipt of which is hereby acknowledged, and for the further consideration of the sum of SIXTY TWO THOUSAND and 00/100 DOLLARS (\$62,000.00), for which the parties of the second part have executed their one promissory note as hereinafter set out,

the parties of the first part hereby convey with covenant of GENERAL WARRANTY, unto the parties of the second part, for and during their joint lives with remainder in fee simple to the survivor of them,

the following described real estate situated in Louisville, Jefferson County, Kentucky, to-wit:

BEGINNING at the intersection of the Southwest line of Norris Place and Northwest line of Bonnycastle Avenue; thence Northwestwardly with the Southwest line of Norris Place 98.83 feet to a point in the Southeast line of an alley; thence with the Southeast line of said alley in a Southwesterly direction 53.67 feet to a point in the Northwest property line of property conveyed to William E. Rodman by deed recorded in Deed Book 2137, Page 473, in the Office of the Clerk of the County Court of Jefferson County, Kentucky; thence with said Rodman property line in a Southeasterly direction 22.93 feet to a point; thence again with said Rodman property line Northeasterly in a line parallel to the Southeasterly line of the aforementioned alley 18.50 feet to a point; thence again with said Rodman property line in a Southeasterly direction 74.91 feet to a point in the Northwest line of Bonnycastle Avenue; thence in a Northeasterly direction with the Northwest line of Bonnycastle Avenue 30 feet to point of beginning.

BEING the same property conveyed to first parties by deed dated May 31, 1969, of record in Deed Book 5080, Page 527, in the Office aforesaid.

RECEIVED

FEB 02 2021

PLANNING & DESIGN
SERVICES

The Note hereinabove referred to is payable to the order of ELMER L. FRAVEL and VIRGINIA R. FRAVEL and WILLIAM K. FRAVEL, or the survivor of them, 2435 Ashwood Drive, Louisville, KY 40205, on or before six (6) years after November 17th, 1992, with interest thereon from November 17th, 1992, payable at the rate of 7% per annum, payable monthly as hereinafter set out; said Note being payable in 72 monthly installments, the first 71 of said installments to be for the sum of \$480.69 each and the 72nd and final installment to be due and payable for the entire unpaid balance of the principal and interest then due. The first of said installments to be due and payable on the 1st day of January 1993, and a like installment to be due and payable on the 1st day of each and every month thereafter as hereinabove set out until said Note with interest thereon has been fully paid, said installments when made to apply first to the payment of interest and the balance to principal of said Note and to secure the payment of said Note and interest thereon, a lien is hereby retained on the property hereinabove described and conveyed together with the rents, issues and profits thereof.

Privilege is reserved by second parties to pay all or any part of the Note hereinabove set out prior to maturity without penalty.

The holders of the Note secured by this Vendor's Lien may collect a "late charge" not to exceed 5% of the total monthly payment received more than 10 days in arrears to cover the extra expense involved in handling delinquent payments.

Provided, further however, the Vendor's Lien retained herein, upon sale of subject property may not be assigned, transferred, set over, assumed or the conveyance made subject to same, without the prior written consent of the holders of the Vendor's Lien secured by the Note hereinabove referred to, which consent for assumption or conveyance made subject to same shall not be unreasonably withheld.

In the event of default of payment of the Note secured by the Vendor's Lien and subsequent foreclosure in order to force collection of this Note secured by this Vendor's Lien the makers of said Note and/or their assigns agree to pay court cost and reasonable attorney's fees incurred.

As a further consideration for this conveyance, the obligor(s) covenant(s) and agree(s) until the terms of this deed shall have been fully complied with:

1. To keep the improvements, if any, on the property above described and conveyed, in good condition and repair, natural wear and tear excepted, and insured in some company or companies approved by the holder or holders of said note(s) against loss by fire and tornado in the sum of at least \$74,000.00 each, or to the extent of the value of the improvements, if required by the holder or holders of said note(s) and to cause the policy or policies therefor to be properly assigned or made payable to, and deposited with, the holder or holders of said note(s) as collateral security for the payment of said note(s).

In the event of loss by fire or tornado, the holder or holders of said note(s) may apply the money collected for said insurance to the payment of said note(s) and the accrued interest thereon, or to repairing or rebuilding the improvements.

2. To pay promptly all taxes or other assessments now or hereafter levied against said property, and at the request of the holder or holders, of said note(s) to exhibit receipts therefor.

3. Should the obligor(s) fail to keep up said insurance, or to pay for same, or to pay such taxes or assessments, or any of them, promptly, as same become due and payable, then, the holder or holders of said note(s) may effect and pay for such insurance, or pay such taxes or assessments, and the money thus expended shall be deemed a part of the principal debt hereby secured, and shall be repaid upon demand, together with interest at the rate of seven per cent per annum, payable semi-annually thereon.

4. Should the obligor(s) fail to pay such taxes or assessments, as same become due and payable, before any interest or penalties accrue thereon, or fail upon demand of the holder or holders of said note(s) to comply with the stipulations and covenants of this deed, or fail to pay said note(s), or any installment thereon, or interest thereon, within 30 days after same become due, or fail to keep up and pay for such insurance on said property, or to deposit the policy or policies for same with the holder or holders of said note(s), or to keep said premises in good condition and repair, as above set out, then, and in any of said events the holder or holders of said note(s) may declare the whole indebtedness herein secured as at once due and may proceed to collect the same and enforce the lien created herein.

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The parties of the first part further covenant that they are lawfully seized of the estate hereby conveyed, have full right and power to convey the same, and that said estate is free from all encumbrances except any and all subsequent taxes which the parties of the second part hereby assume and agree to pay.

INSTRUMENT PREPARED BY:
HEBEL, HORNUNG & STILGER, P.S.C.
816 MEIDINGER TOWER
LOUISVILLE, KY. 40202 583-3891

BY *Robert H. Hornung*
ATTORNEY AT LAW

PROVIDED, HOWEVER, there is excepted any restrictions, stipulations and easements of record affecting said property.

IN TESTIMONY WHEREOF, witness the signatures of the parties of the first part, this 17th day of November, 1992.

Elmer L. Fravel
ELMER L. FRAVEL

Virginia R. Fravel
VIRGINIA R. FRAVEL

I hereby certify that the
total purchase price is
\$67,000.00.

Elmer L. Fravel

STATE OF KENTUCKY
COUNTY OF JEFFERSON

} SS

The foregoing Deed was acknowledged before me this 17th day of November, 1992 by ELMER L. FRAVEL and VIRGINIA R. FRAVEL, husband and wife, parties hereto, to be their act and deed.

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Robert H. Hornung
Notary Public, STATE AT LARGE

My commission expires June 4, 1993

(Reference Only: Being Lot
Property Evaluation Administrator.)

Block

as shown on the plats of the Jefferson County

CONSIDERATION CERTIFICATE

The parties hereto certify and swear the consideration reflected in this Deed is the full consideration paid for the property. The Grantee(s) join this Deed for the sole purpose of certifying and swearing the fair market value pursuant to the Statute.

Elmer L. Fravel
ELMER L. FRAVEL Grantor
Virginia R. Fravel
VIRGINIA R. FRAVEL Grantor

C. T. Hardin
C. T. HARDIN Grantee
M. C. Hardin
M. C. HARDIN Grantee

STATE OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The foregoing Consideration Certificate was acknowledged and sworn to before me this 17th day of November, 1992, by ELMER L. FRAVEL, and VIRGINIA R. FRAVEL, erroneously referred to as Virginia L. Fravel, husband and wife, Grantors.

[Signature]
NOTARY PUBLIC, STATE AT LARGE

My Commission Expires: 6/4/1993

STATE OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The foregoing Consideration Certificate was acknowledged and sworn to before me this 17th day of November, 1992, by C. T. HARDIN and M. C. HARDIN, husband and wife, Grantees.

[Signature]
NOTARY PUBLIC, STATE AT LARGE

My Commission Expires: 6/4/1993

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145041
Document No: 1992145041
Lodged By: habel
Recorded On: Nov 18, 1992 12:24:48 P.M.
Total Fees: \$12.00
Transfer Tax: \$67.00
County Clerk: Rebecca Jackson
Deputy Clerk: BLORIA

AFFIDAVIT OF JOHN ROTHPLETZ

Comes the Affiant, John Rothpletz and having been first duly sworn, states as follows:

- (1) I am the current owner of 1735 Bonnycastle Avenue, which is currently used as a four-plex of apartments, configured as two separate buildings each of which consists of two units.
- (2) I purchased 1735 Bonnycastle Avenue in 2017 from C. T. and M. C. Hardin, who had owned the property since 1992. The Hardins purchased the property in 1992 from Elmer and Virginia Fravel, who had owned the property since 1969. I have used the property as four-plex of apartments since 2017.
- (3) Based on statements made by the Hardins when I purchased 1735 Bonnycastle Avenue in 2017, my understanding is that the property was used as a four-plex of apartments for the entire time it was owned by the Hardins (1992-2017), and that it has been set up as a four-plex since the current structures were moved to the property which was prior to when the Fravels bought the property in 1969. This suggests the property has been used as a four-plex since prior to 1969.

Further Affiant sayeth naught.

John P. Rothpletz
Signature of Affiant

COMMONWEALTH OF KENTUCKY)

) SS

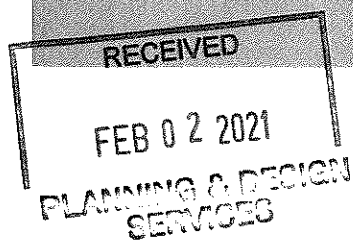
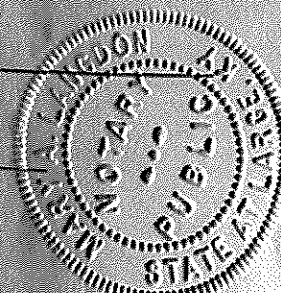
COUNTY OF JEFFERSON)

I, the undersigned Notary Public in and for the Commonwealth and County aforesaid, do hereby certify that on the 2nd day of February, 2021 the foregoing Affidavit was this day presented to me by John Rothpletz who being by me first duly sworn, declared that he signed the foregoing Affidavit as his voluntary act and deed.

My Commission Expires: July 29, 2023

Mary Langdon
NOTARY PUBLIC

Commission No. 626044

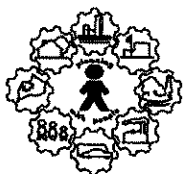


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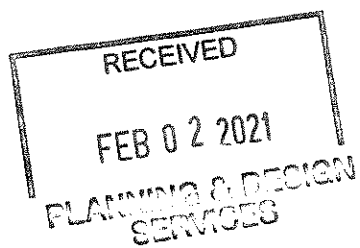
EXHIBIT 4

AFTER APRIL 3, 1974...

A Post-Tornado Planning Report



louisville and jefferson county planning commission



21-APPEAL-0002

It appears that the great majority of damaged structures will be repaired, based on the location of building permits that have been issued to replace damaged structures and on repair and reconstruction work observed in the field.

3. Circulation

The greatest circulation problem in the study area is pavement width -- many streets are simply too narrow to allow safe and easy access for residents, on street parking, and, perhaps most importantly, maneuvering room for emergency equipment. Three streets have inadequate pavement width in the Deer Park - Bonnycastle area --- Fernwood, Stevens and Sherwood. In the Crescent Hill area, Crescent Court, Kennedy Court and the southern end of Birchwood have unsatisfactorily narrow pavement. Most of the streets in the Northeast Crescent Hill area north of Frankfort Avenue have inadequate pavement width with the exception of the first block of Blackburn Avenue.

4. Zoning

Existing zoning patterns in the three neighborhood study areas reflects the predominant use of the land. However, the residential districts generally permit a much higher density than now exists with the exception of Deer Park.

In Deer Park west of Bardstown Road most of the land is classified as R-5 which permits a maximum density of 7.2 single family dwelling units per acre on land already subdivided. Existing densities in this area exceed the permitted maximum in over half the blocks in Deer Park. This can be explained by the fact that Deer Park was developed before the Zoning District Regulations were adopted.

The reverse situation is found on the east side of Bardstown Road where zoning districts permit a much greater density than currently exists. Although block density equals that of Deer Park in some areas, it is still considerably less than the maximum allowed under the R-7 (34 dwelling units per acre) and R-8 (58 dwelling units per acre) districts found in this area.

The zoning pattern of Crescent Hill is similar to that of Bonnycastle. In this case the existing zoning includes a large R-6 Apartment District, which allows up to 17.4 dwelling units per acre, with current densities of 5 to 8 dwelling units per acre.

The Cochrane Hill area is developed at a lower density than is permitted under the existing R-5 zoning.

There is a vacant R-7 Apartment District along the northern edge of the Northeast area.

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succeeding generations the condition of the residential structures and the desirability of the single family neighborhoods did not encourage the rapid redevelopment of property for the much higher permitted densities*. Today, after forty years as the pressures for redevelopment increase, the strategy of substantial "over"-zoning should be reexamined.

The second decision in 1931 that has proven to be questionable was the policy of stripping the major streets Bardstown Road and Frankfort Avenue with commercial districts. Over the past forty years due to commercial pressures the once predominant residential character of these streets has been legally changed to commercial strips.

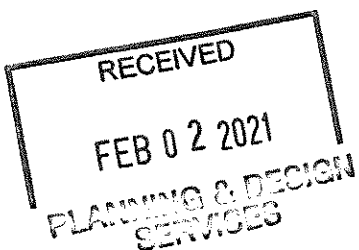
Over the years the zoning district pattern has changed surprisingly little in the study areas. In 1937 an original commercial district at the intersection of Hite and Grinstead Drive was replaced by the B District (duplex) and the A District (single family) along Crescent Court was changed to the B District in 1946. In the Bonnycastle area there was only one apparent change when the C District was expanded along Alta from Cowling Avenue to Barney Street. Over the same forty year period the districts have undergone change. The once overly permissive D District that originally allowed, theoretically, up to 174 units per acre was reduced to a maximum of 58 units per acre in 1945 and the C District was reduced from 72 units per acre to 29 and then increased to 34. The zoning districts were renamed in 1963 with D changed to R-8, C to R-7 and B to R-6. The creation of R-6 also permitted apartments or multi-family structures to be built in areas that were previously limited to single family and duplex structures.

3. Current Zoning Districts - Refer to Zoning District Maps 19, 20 and 21.

The zoning district pattern in the three neighborhood study areas reflects the predominant use of the land. However, the residential districts generally permit a much higher residential density than presently exists with the exception of the Deer Park area.

In Deer Park west of Bardstown Road the land is primarily classified as R-5 which permits a maximum density on land already subdivided of 7.2 single family dwelling units per acre. The density of development of over half of the blocks in Deer Park exceeds the currently permitted density through a combination of single family structure built on narrow lots and a scattered

* One observable trend, however, resulting from the zoning classification of the property has been the gradual increase in the number of dwelling units in previously single family homes through remodeling and an internal structural subdivision. The trend appears to be most prevalent in the Bonnycastle and Crescent Hill areas.



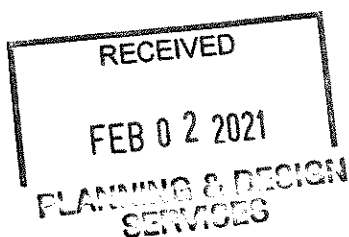
pattern of multiple family structures. The Deer Park area, as the other neighborhoods in the study, developed prior to the adoption of the Zoning District Regulations which accounts for the discrepancy with the current zoning limitations on development. That is, in the subject neighborhoods the land was subdivided into lots with less area than the minimum area permitted on land developed under the R-5 Classification today. Also apartment structures were built on some property prior to the adoption of the zoning regulations which would be prohibited by today's zoning districts.

For the area east of Bardstown Road the reverse of the Deer Park situation is found with the zoning districts permitting a much greater density than exists for the average block density figures. In the R-7 Apartment District along and south of Alta Avenue the block densities equal those of Deer Park but fall far below the maximum permitted R-7 density of approximately 34 dwelling units per acre. In the R-8 Apartment District along and north of Sherwood Avenue the density discrepancy between existing and maximum is even greater. Current block densities for blocks that do not include a single family district range from approximately 8 to 15 dwelling units per acre compared to the potential maximum density of 58 dwelling units per acre under R-8. Within both the R-7 and R-8 Districts are properties that have developed as multiple family structures, some before and some after the adoption of the Zoning District Regulations.

In addition to the residential districts is a strip commercial district, C-2 along Bardstown Road. Within the C-2 District are a variety of general and neighborhood commercial establishments with a limited number of residential structures.

The zoning district pattern in Crescent Hill is characterized by conditions similar to those in Bonnycastle. The large R-6 Apartment District that covers the acre bounded by Grinstead Drive, Stiltz Avenue and Frankfort Avenue contains average block densities of approximately 5 to 8 dwelling unit per acre as opposed to the permitted maximum of 17.4 units per acre permitted under R-6.

In the Cochrane Hill area, along Hillcrest and Pennsylvania Avenues north of Frankfort Avenue in the Northeast Crescent Hill area and along Brownsboro Road at Lightfoot Road the predominant classification is the R-5 Residential District which permits single family structures. The average block densities for the existing development range from approximately 2 dwelling units per acre on Cochrane Hill to 5 dwelling units per acre along Pennsylvania Avenue and in the northeast area. Even though the density potential under R-5 is greater than that existing, an increase is not likely since only one single family structure is permitted on each lot.



B. Zoning District Changes

Recognizing that the Comprehensive Plan recommends long-range land use patterns, it is important when planning for an already developed part of the urban area, such as the three study areas, to recognize the existing development and propose zoning controls that control current day-to-day activities. The Comprehensive Plan principles cited earlier during the review of the plan's guidelines appropriately urge the conservation of sound neighborhoods and placing of high density residential development in areas with adequate access to streets and supporting facilities.

In review of the existing zoning district patterns in the three neighborhoods the following characteristics were observed:

- the density of existing residential development
- access provided by the street system
- the potential density that could be developed under the current district
- the rebuilding options available to the property owner that faces complete reconstruction as a result of the tornado damage.

1. Deer Park - Bonnycastle, refer to Proposed Zoning District Map 22.

No changes are recommended at this time for Deer Park. The area reviewed was substantially developed with single family structures and is classified as R-5 Residential which permits only single family structures. The current District should therefore provide some measure of protection and stability to the neighborhood. It should be recognized, however, that much of the area was developed with a lotting pattern and density that does not meet the minimum requirements of the R-5 District. As the structures continue to age and eventual reconstruction is required, a zoning change may well have to be given serious consideration. The opportunity to build new single family structures on lots as narrow as 30 feet will continue to be very limited by the economics of construction and the preference for types of residential structures.

In Bonnycastle, a zoning district change is recommended for consideration. The R-7 and R-8 Districts bounded by Eastern Parkway, the Bardstown Road commercial corridor, Murray Avenue and the R-5 District on the east side is proposed to be reclassified R-5A with the exception of certain internal areas proposed for higher densities. The R-5A District is a new district recommended to be considered as an amendment to the Zoning District Regulations. Its basic controls are proposed to allow single family, row

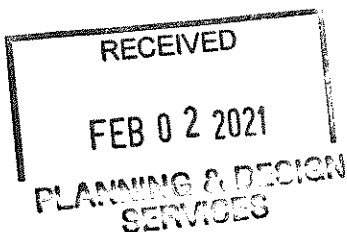


EXHIBIT 5

Image 1



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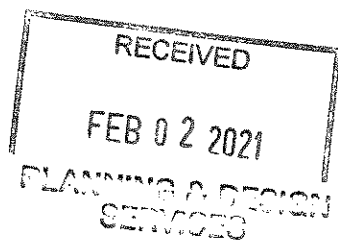


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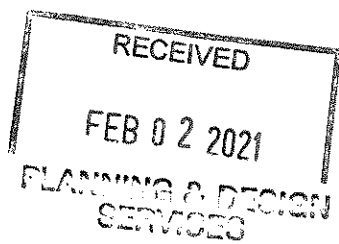


Image 3



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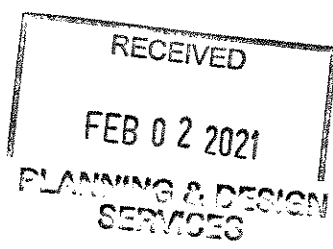


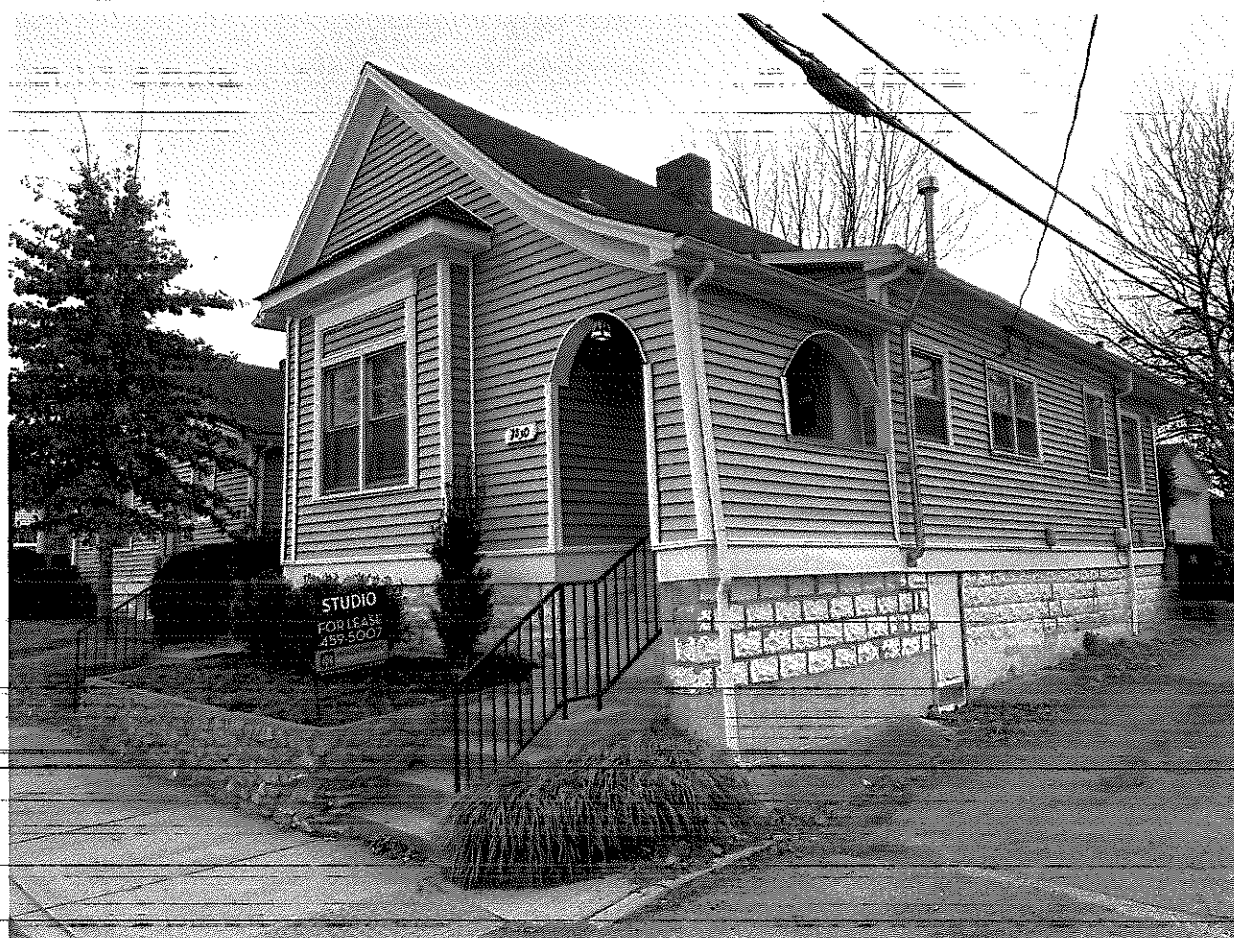
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