

Board of Zoning Adjustment

Staff Report

July 10, 2023



Case No:	23-NONCONFORM-0008
Project Name:	Midland Avenue Nonconforming Rights
Location:	2052 Midland Avenue
Parcel:	075F00370000
Owner:	3105 Hunsinger, LLC.
Applicant:	Timothy Bowman
Jurisdiction:	Louisville Metro
Council District:	8 – Ben Reno-Weber
Case Manager:	Jeremy Chesler, Planner I

REQUEST(S)

- To determine whether a property has nonconforming rights for a 4-plex

CASE SUMMARY/BACKGROUND

The subject property is zoned R-5B two-family residential and is located in the Traditional Neighborhood form district. The property is located in the Cherokee Triangle Historic Preservation District. The site is approximately 0.1109 acres and contains a principal structure that contains 4 residential dwelling units. According to information provided by PVA, the structure was built in 1915. According to the LDC, the applicant must prove the use was being exercised consistently since 1975 (year of areawide rezone from R8 to R-6 zone). The applicant provided directory listings dating back from 1960’s to the current day. The applicant also provided two notarized affidavits from previous property owners as well as historic newspaper listings. The applicant nor research conducted by Planning and Design staff could provide sufficient evidence the use existed in 1975. To recognize nonconforming rights, there must be conclusive evidence showing the use’s establishment and continuous existence since 1975.

Zoning regulations within the City of Louisville in 1975, would have permitted a 0.1109 acre property in the R-8 zoning district to have 6 dwelling units. Please reference the collection of historic zoning maps for details. These maps have been attached to the agenda item.

Historic Zoning	
1931	Two-Four Family
1937	Two-Four Family
1944	Two-Four Family
1954	A One Family
1965-1971	R-8 Apartment
1975	R-6 Apartment
1989-Present	R-5B Residential Two-Family

The applicant has applied for nonconforming rights for a 4-plex. At the time of this staff report, staff does not possess conclusive evidence to grant nonconforming rights for the use as requested. Based on Land Development Code (LDC) Section 1.3.1.F and pursuant to BOZA Bylaws and Policies, staff requested that the case go to BOZA to make a final determination on whether the property has nonconforming rights.

BOZA must determine whether the property has nonconforming rights for a 4-plex in the R-5B zone based on the following criteria:

LDC Section 1.3.1.A-F states;

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.

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.

C. There shall be no increase in the floor area or the land area devoted to a nonconforming use or other enlargement or extension of a nonconforming use beyond the scope and area of its operation at the time the regulation that made the use nonconforming was adopted.

D. Subject to the limitations and restrictions imposed by items A through C of Chapter 1 Part 3, the Board of Zoning Adjustment may permit a change in the nonconforming use to another nonconforming use only if the new nonconforming use is in the same or more restrictive classification and upon finding that the new nonconforming use will be no more odious or offensive to surrounding properties than the first nonconforming use. When the Board of Zoning Adjustment permits a change from one nonconforming use to another nonconforming use pursuant to this paragraph, it may impose such conditions upon such new nonconforming use as it finds are necessary to preserve the character of the neighborhood, to minimize nuisances to surrounding properties, and to protect the value of surrounding properties.

E. Notwithstanding any provision in Chapter 1, Part 3 to the contrary, a residential structure located in an industrial district may be expanded if (1) the expansion does not increase the number of dwelling units on the subject property and (2) the expansion would be permitted if the existing structure were located in an R-5 Residential district.

F. ABANDONMENT. 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.

STAFF ANALYSIS

Staff used historic zoning maps and city directories to research the subject site. Research revealed the subject property was subject to two area-wide rezonings in 1975 and 1989. In 1975, a Cherokee Triangle Neighborhood areawide rezoning, under docket # 9-132-74, changed the property from R-8 Apartment District to R-6 Apartment District. In 1989 another areawide rezoning in the Cherokee Triangle Neighborhood, under docket #9-19-89, changed the zoning of the property from R-6 Residential Multi-Family to R-5B two-family residential. The applicant nor research conducted by Planning and Design staff could provide sufficient evidence the use existed in 1975. To recognize nonconforming rights, there must be conclusive evidence showing the use's establishment and continuous existence since 1975.

Jefferson County zoning regulations in 1975, would have permitted 6 units on the subject property. The regulations at that time would have allowed one dwelling unit per 750 square feet of lot area in the R-8 zone, therefore the existing 4-plex would have been permitted on the subject site, when the original zoning regulations were adopted. Staff also researched historic Caron and Polk Directories. Caron City Directories from 1969-1977 show only one listing for the subject property. From 1977-1990 Caron City Directories consistently showed between 2-4 units listed for the subject property. From 1991-2005 City Directories consistently listed 5 units at the property. While Directory listings from 2006-2020 are relatively inconsistent, listing between 1 to 5 units.

STAFF FINDINGS

Staff finds there is inconclusive evidence to determine that the property has nonconforming rights for a 4-plex. Therefore, staff requested that the case go to BOZA to make a final determination on whether the property has nonconforming rights.

RELATED CASES

9-132-74: Areawide rezoning in the Cherokee Triangle Neighborhood, changed the zoning of the property from R-8 to R-6

9-19-89: Areawide rezoning in the Cherokee Triangle Neighborhood, changed zoning of the property from R-6 to R-5B

TECHNICAL REVIEW

No technical review required.

INTERESTED PARTY COMMENTS

Staff has received no interested party comments.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the applicant’s request that the nonconforming use of a 4-plex be recognized as an established activity which lawfully existed at the time of the enactment of any zoning regulation which would not permit such activity.

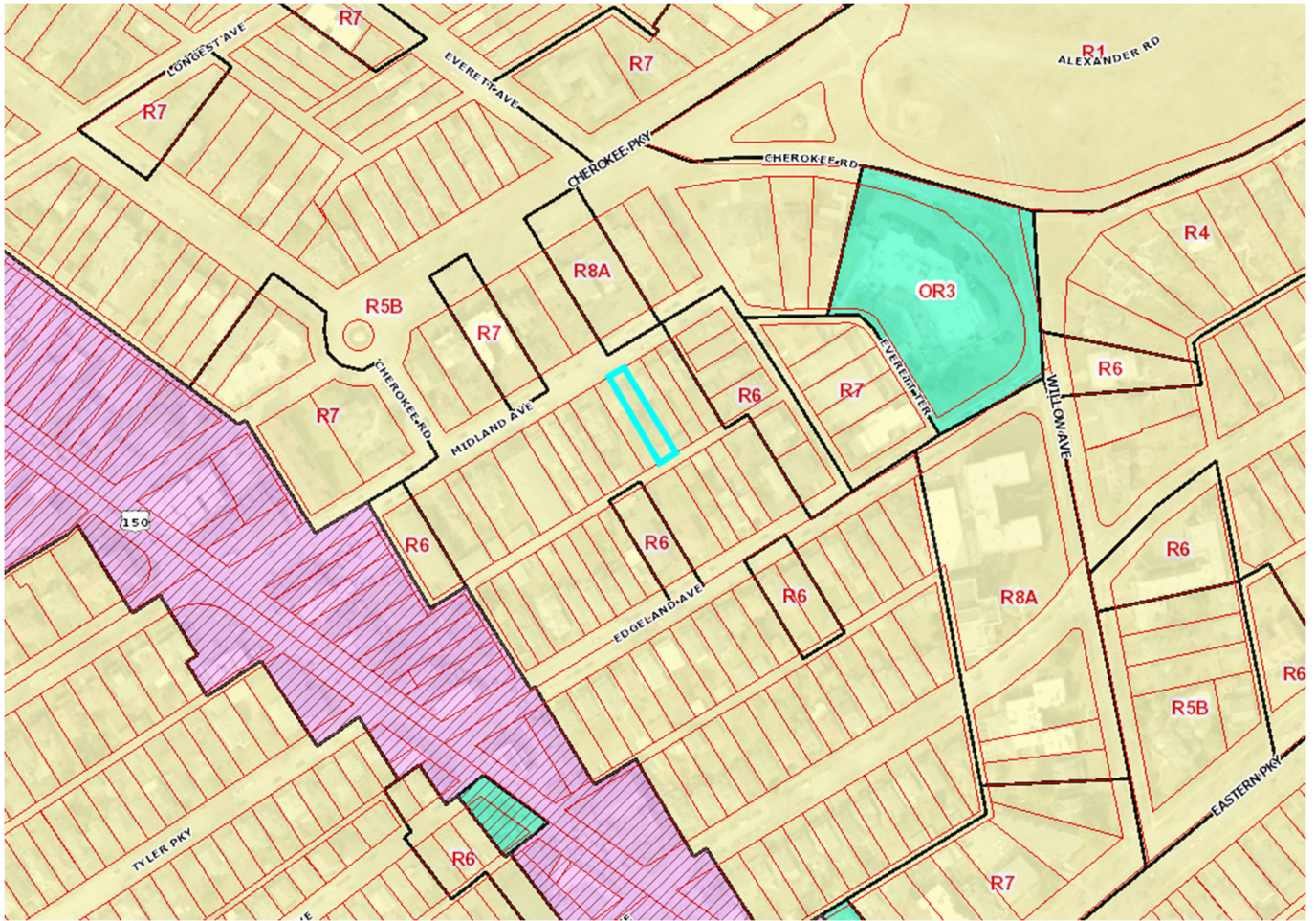
NOTIFICATION

Date	Purpose of Notice	Recipients
6/26/2023	Hearing before Board of Zoning Adjustment	1 st tier adjoining property owners
6/26/2023	Hearing before Board of Zoning Adjustment	GovDelivery for Council District 8
6/28/2023	Hearing before Board of Zoning Adjustment	Sign Posting

ATTACHMENTS

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

1. **Zoning Map**



2. Aerial Photo



3. **Site Photos**



Front of subject site, 2052 Midland Avenue



Across the street from subject site.



To the right of the subject site

Network: Jun 28, 2023 at 10:12:12 AM EDT
Local: Jun 28, 2023 at 10:12:12 AM EDT



To the left of the subject site

