

Board of Zoning Adjustment

Staff Report

July 10th, 2023



Case No:	23-NONCONFORM-0009
Project Name:	Rubel Avenue Nonconforming Rights
Location:	907 Rubel Avenue
Parcel:	021K02120000
Owner:	Kelly McDermott
Applicant:	Kelly McDermott
Jurisdiction:	Louisville Metro
Council District:	8 – Ben Reno-Weber
Case Manager:	Jeremy Chesler, Planner I

REQUEST(S)

- To determine whether the subject property has nonconforming rights for a duplex.

CASE SUMMARY/BACKGROUND

The subject property is zoned UN-Urban Neighborhood residential zoning district and is located in the Traditional Neighborhood form district. The site is approximately 0.03 acres and contains a principal structure which is currently being used as a duplex. The applicant stated that the previous owner claimed the structure was used as a duplex since they purchased it in the 1990’s. According to historic zoning maps the property was zoned “Two-Four Family” in 1944, “A One Family” in 1954, and “R-6 Apartment” from 1965 until an areawide rezoning in 2013 of the Original Highlands Neighborhood, under docket # 9-16074-11, changed the zoning of the property to UN Urban Neighborhood District.

Zoning regulations within the City of Louisville in 1971, the 0.03 acre property would have only been permitted one dwelling unit within the R-6 zone. However, research at the time of the areawide rezoning, identified the subject property at 907 Rubel Avenue, as being a nonconforming duplex. Please reference the collection of historic zoning maps for details. These maps have been attached to the agenda item.

Historic Zoning	
1944	Two-Four Family
1954	A One Family
1965-1971	R-6 Apartment
1995-2001	R-6 Apartment
2013-Present	U-N Urban Neighborhood

The applicant has applied for nonconforming rights for a duplex. At the time of this staff report, staff does not possess conclusive evidence to grant nonconforming rights for the use as requested. Listings from 1971 through 1997, showed that city directories were relatively consistent in listing one occupant at the subject property. In that time, directories displayed one listing in 14 out of 25 years and only showing two listings 1 out of the 25 years, with 10 years in that time period showing either no listing or

being listed as vacant. From 1998 through 2021 city directories show at least two units listed for 16 out of the 24 years, one unit only 3 out of the 24 years, and no listing for 5 out of the 24 years. 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 duplex in the U-N Urban Neighborhood zoning district 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

According to information provided by PVA, the structure was built in 1900. According to the LDC, the applicant must prove the use was being exercised consistently since 1971. The applicant provided PVA records, tax documents, deed information, and neighborhood information. Neither the applicant's research, nor research conducted by Planning and Design staff could provide sufficient evidence of the use existing continuously from 1971 to present. While there is relatively consistent evidence dating back to the late 1990's that the property has been used as a duplex, there is not enough conclusive evidence prior to that period, dating to 1971 for staff to recognize nonconforming rights at the subject property.

Staff's research revealed that the property was part of the R-6 Apartment zoning district from 1971 until 2013. In 2013 the property was part of an areawide rezoning in the Original Highlands Neighborhood, under docket #9-16074-11. As a result of the areawide rezoning, the subject property was changed from R-6 Apartment zoning district to UN Urban Neighborhood District. Zoning regulations in place at the time of the rezoning would have only permitted one dwelling unit within the R-6 zoning district due to the compact size of the lot, current zoning regulations would allow two dwelling units by right in the R-6 zone.

STAFF FINDINGS

Staff finds there is inconclusive evidence to determine that the property has nonconforming rights for a duplex. Although, there is substantial evidence to prove that the property has been used consistently as a duplex for at least 10 years, becoming less consistent from 2011 to the late 1990's and increasingly less consistent from then until 1971. The evidence to prove the use existed consistently dating back to 1971 is not sufficient for staff to recognize the nonconforming rights. Therefore, staff requested that the case go to BOZA to make a final determination on whether the property has nonconforming rights.

RELATED CASES

9-16074-11: Original Highlands areawide rezoning- Rezoned property from R-6 Apartment to U-N Urban Neighborhood

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 as a duplex 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.

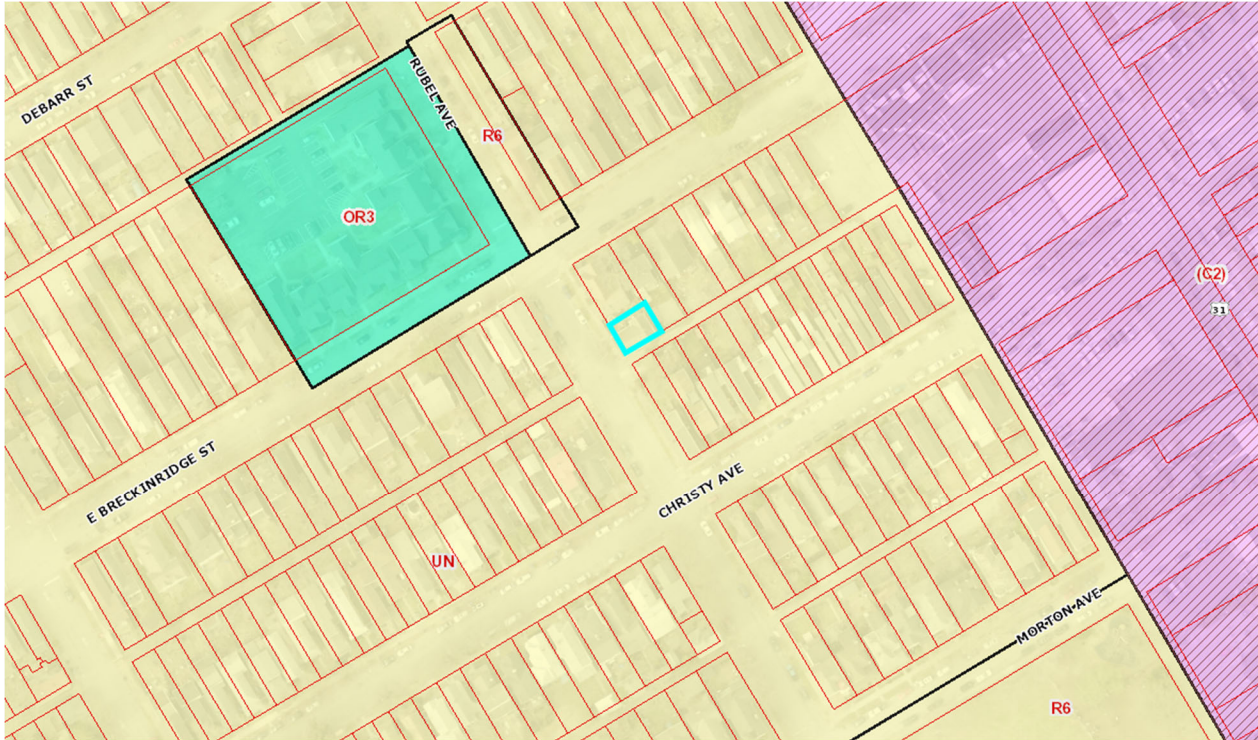
NOTIFICATION

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 Photo
3. Site Photos

1. Zoning Map



2. Aerial Photo



3. Site Photos



Subject Site: 907 Rubel Avenue



Across the street from subject site.



To the left of the subject site



Google Street View: May 2019

To the right of the subject site