

# Board of Zoning Adjustment

## Staff Report

March 18, 2024



<b>Case No:</b>	24-CUP-0030
<b>Project Name:</b>	Proposed Accessory Dwelling Unit
<b>Location:</b>	7120 River Road
<b>Owner(s):</b>	KIC Property Holdings, LLC.
<b>Applicant:</b>	Bardenwerper, Talbott and Roberts, PLLC.
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	16 – Scott Reed
<b>Case Manager:</b>	Molly Clark, Planner II

### **REQUEST(S)**

Conditional Use Permit to allow an Accessory Dwelling Unit (ADU) that does not meet the special standards of the LDC. (LDC 4.2.3)

### **CASE SUMMARY**

The subject site is zoned R-4 Single Family Residential in the Village Form District. The applicant is requesting a conditional use permit for a dwelling unit within an existing single-story accessory structure. The primary home is a one-story, 1,947 square foot single-family home. The applicant is proposing to convert a portion of the existing accessory structure on the site to a 2 bedroom 720 square foot dwelling unit. There are no plans to short term rental the ADU. The property is owned by a corporation (LLC) and a corporation itself cannot reside within a dwelling; only an individual(s) may reside within a dwelling. Because the property owner does not reside on the subject property, the ADU does not comply with the LDC, section 4.3.27 and a conditional use permit is required.

### **STAFF FINDING**

The requested conditional use permit is not adequately justified based on the staff's analysis contained in the standard of review. Item "J" requires the owner of the property to reside within either the principal or the accessory dwelling unit. The owner will not reside on the property. The request is not wholly consistent with the intent of the regulations as stated in the Planning Commission staff report "to provide an important option for wealth building." Because the owner does not live on the property, any wealth created leaves the property as it is not associated with an occupant of the subject site.

### **RELATED CASES**

- ENF-ZON-23-0009000: Heavy trucks being parked in residential zoning
- ENF-BLD-23-03120: Construction on accessory structure without permits. Stop Work Order was issued.
- 23-NONCONFORM-0019: Nonconforming Rights for an accessory dwelling unit denied.

### **TECHNICAL REVIEW**

- Upon approval of the requested CUP, the owner/developer should contact Metro Emergency Services to have address assigned for the proposed accessory apartment.

## **INTERESTED PARTY COMMENTS**

All comments received have been placed in the record and made available to the Board in advance of the public hearing.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT**

1. Is the proposal consistent with applicable policies of the Comprehensive Plan?

STAFF: The proposal meets all applicable policies of the Comprehensive Plan.

2. Is the proposal compatible with surrounding land uses and the general character of the area including factors such as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting and appearance?

STAFF: The proposed use is compatible with surrounding development and land uses. The proposed ADU will be 1 story and will not be taller than any of the other surrounding residential uses. The existing accessory structure is residential in nature and is compatible with surrounding residential developments.

3. Are necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, emergency services, education and recreation adequate to serve the proposed use?

STAFF: The subject property is served by existing public utilities and facilities. Transportation Planning and MSD have reviewed and approved the proposal.

Accessory dwelling units that do not meet the provisions of Section 4.3.27 may be allowed in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, and U-N districts upon the granting of a conditional use permit and compliance with the listed requirements.

A. One ADU, either attached or detached is permitted per single family dwelling per lot.

B. Maximum ADU Size: 800 square feet or 30 percent of the gross floor area of the principal structure, whichever is greater.

C. Location Requirements:

1. For an attached ADU, the yard or setback requirements of the principal structure shall be met. The attached ADU shall be located either to the side or behind the principal structure.

2. For a detached ADU, the yard or setback requirements of an accessory structure shall be met. The detached ADU shall be located either to the side or behind the principal structure.

D. ADU Access:

1. For an attached ADU, an exterior staircase used to access a second story or higher ADU shall not be located on the front façade of the structure. N/A

2. For a detached ADU, the exterior pedestrian entrance to the ADU shall be located facing the principal structure or side yard.

E. Maximum Height:

1. For an attached ADU, the maximum height shall not exceed the height of the principal structure.
2. For a detached ADU, the maximum height shall not exceed the maximum height permitted for an accessory structure in accordance with Chapter 5 of the LDC. The maximum height shall not exceed the height of the principal structure.

F. ADUs approved under this provision shall not be used as a short term rental.

G. Any property that has been subject to a zoning, property maintenance, or building code violation(s) in the 12 months prior to application shall be reviewed and approved by the directors of Planning & Design Services and Codes & Regulations, or their designees. Any violations shall be resolved prior to approval.

H. Off-street parking shall meet the requirements of Chapter 9 of the LDC.

I. ADUs that include new construction that results in habitable floor area (for example, additions to principal structures or new accessory structures) shall not be allowed on any areas of lots that contain environmental constraints (LDC Section 4.6.2.A)

J. The owner of the property shall reside within either the principal or the accessory dwelling unit.

K. To avoid any confusion, since there is no language to the contrary, this section does not override any deed restriction or homeowners' association declarations restricting accessory dwelling units.

STAFF: The applicant is proposing to convert a portion of the existing accessory structure on the site to a 2 bedroom 720 square foot dwelling unit. There is no short term rental being proposed. The property will not be occupied by the owner and will need relief from item "J." The property is owned by a corporation (LLC) and a corporation itself cannot reside within a dwelling; only an individual(s) may reside within a dwelling. While the owner does not reside on the property, additional units are being provisioned in the appropriate area within the site, which leads to an increase in housing units, but does not necessarily result in affordable housing units. The owner not living on the site restricts the ADU from being leveraged wholly consistent with the intent of the regulations as stated in the Planning Commission staff report "to provide an important option for wealth building." Because the owner does not live on the property, any wealth created leaves the property as it is not associated with an occupant of the subject site.

**REQUIRED ACTIONS**

- **APPROVE** or **DENY** the **CONDITIONAL USE PERMIT** to allow an accessory dwelling unit (ADU) that does not meet the special standards of the LDC. (LDC 4.2.3)

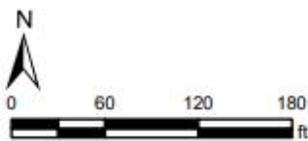
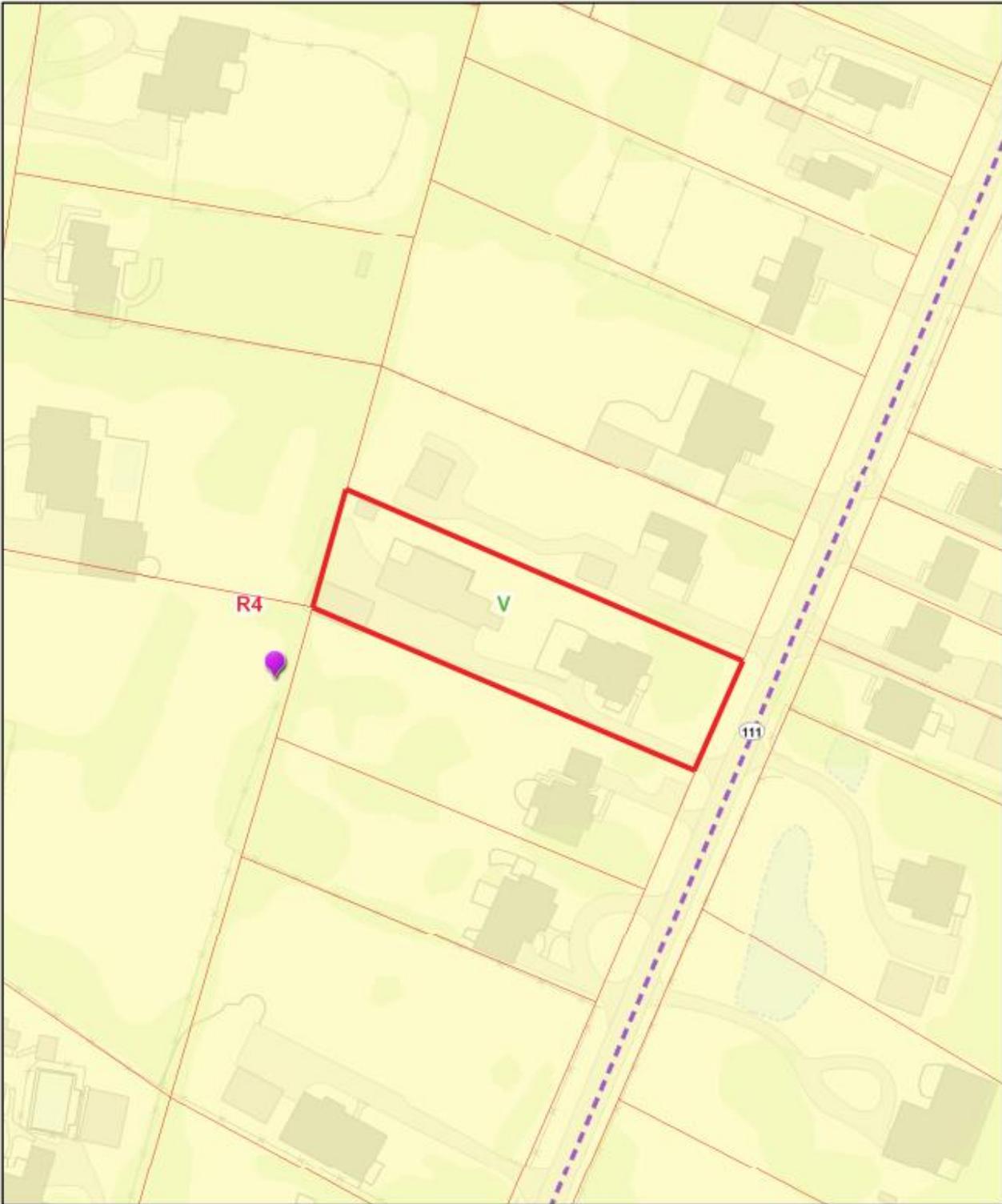
**NOTIFICATION**

Date	Purpose of Notice	Recipients
3/1/24	Hearing before BOZA	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 16
3/1/24	Hearing before BOZA	Sign Posting

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph
3. Conditions of Approval

1. **Zoning Map**



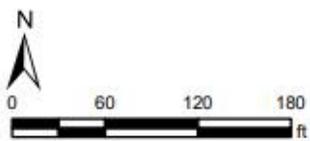
Thursday, March 7, 2024 | 1:43:49 PM



LOJIC © 2024

This map is not a legal document and should only be used for general reference and identification

2. Aerial Photograph



Thursday, March 7, 2024 | 1:42:58 PM



LOJIC © 2024

This map is not a legal document and should only be used for general reference and identification.

**3. Conditions of Approval**

1. The site shall be developed in strict compliance with the approved development plan (including all notes thereon). No further development shall occur on the site without prior review and approval by the Board.
2. The Conditional Use Permit shall be "exercised" as described in KRS 100.237 within two years of the Board's vote on this case. If the Conditional Use Permit is not so exercised, the site shall not be used for an accessory dwelling unit without further review and approval by the Board.