

Board of Zoning Adjustments

Staff Report

November 18, 2019



Case No:	19-APPEAL-0001
Project Name:	National Turnpike Appeal
Location:	9705 National Turnpike
Appellant:	Mac G. Sawyer
Representative:	James C. Nicholson
Jurisdiction:	Louisville Metro
Council District:	13 – Mark Fox
Case Manager:	Chris French, AICP, Planning and Design Supervisor

REQUEST(S)

- Appeal of an administrative decision regarding nonconforming rights

CASE SUMMARY/BACKGROUND

The Appellant submitted a nonconforming rights determination request on May 13, 2019. Staff conducted a review of the applicant's information and determined that there was insufficient information that the nonconforming use (blacksmith, contractor's shop, and storage yard) existed on the property in 1943. Therefore, staff concluded that the property did not have nonconforming rights and submitted a letter to the Appellant stating that decision on August 9, 2019.

The Appellant filed an appeal of the administrative decision on September 6, 2019, which is within the 30-day appeal period. The Appellant waived the 60-day review period to allow this case to be heard later. The Appellant submitted information with the appeal application to support his basis of appeal. This documentation is part of the record and is 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

Section 1.3.1 Use

Section 2.5.2 M-2 Industrial District

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 1:Single Family and the property class is listed as 510 RES 1 Family Dwelling. The PVA lists the building as built in 1928.

The Appellant provided extensive documentation related to his ownership and use of the property for non-residential activities related to uses that fit the M-2 zoning category under a blacksmith, contractor's shop, and storage yard. However, affidavits from some neighboring property owners, nearby business owners, and relatives of previous owners is the only information that was provided for the time period prior to the 1960s. Staff looked at the files within the Office of Planning and Design Services and could not find any information regarding the use of the property as a blacksmith, contractor's shop, or storage yard. Staff looked at an aerial photograph from the 1946 (Attachment 3) which does not show the storage of equipment, vehicles, or materials on the property as discussed in the affidavits. Without information to corroborate the affidavits staff cannot determine that the use existed on the property since 1943.

In the Appellants basis of appeal, he lists information identified as zoning enforcement notes from previous zoning enforcement officers, which the Appellant is using to state that he had nonconforming rights; however, staff could not find documentation that the property was formally granted nonconforming rights. The former zoning enforcement officers listed may not have had the authority to grant nonconforming rights.

In addition, the Appellant asserts that he can satisfy that the use existed since the 1960s, but a requirement to go back to 1943 is a very high bar and that the affidavits submitted by individuals for the period preceding the 1960s should be sufficient to grant nonconforming rights.

Staff Conclusions

Staff did not have sufficient information in the review of the nonconforming rights case that the nonresidential use existed on the property in 1943. 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 a blacksmith, contractor's shop, and storage yard.

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 the nonresidential use (blacksmith, contractor's shop, and storage yard) exist on the property in 1943?
2. If yes to question 1, did this use of the property continue to the present day?

If the Board answers yes to both questions, the Board will need to determine the area of the property utilized for these activities in its motion, and the approval of such motion would overturn staff's decision.

If the Board answers no to any of the two questions listed above, then an approval of such a motion would affirm staff's decision.

RELATED CASES

19NONCONFORM1016 – The administrative decision in this case is the subject of the appeal.

INTERESTED PARTY COMMENTS

No comments submitted.

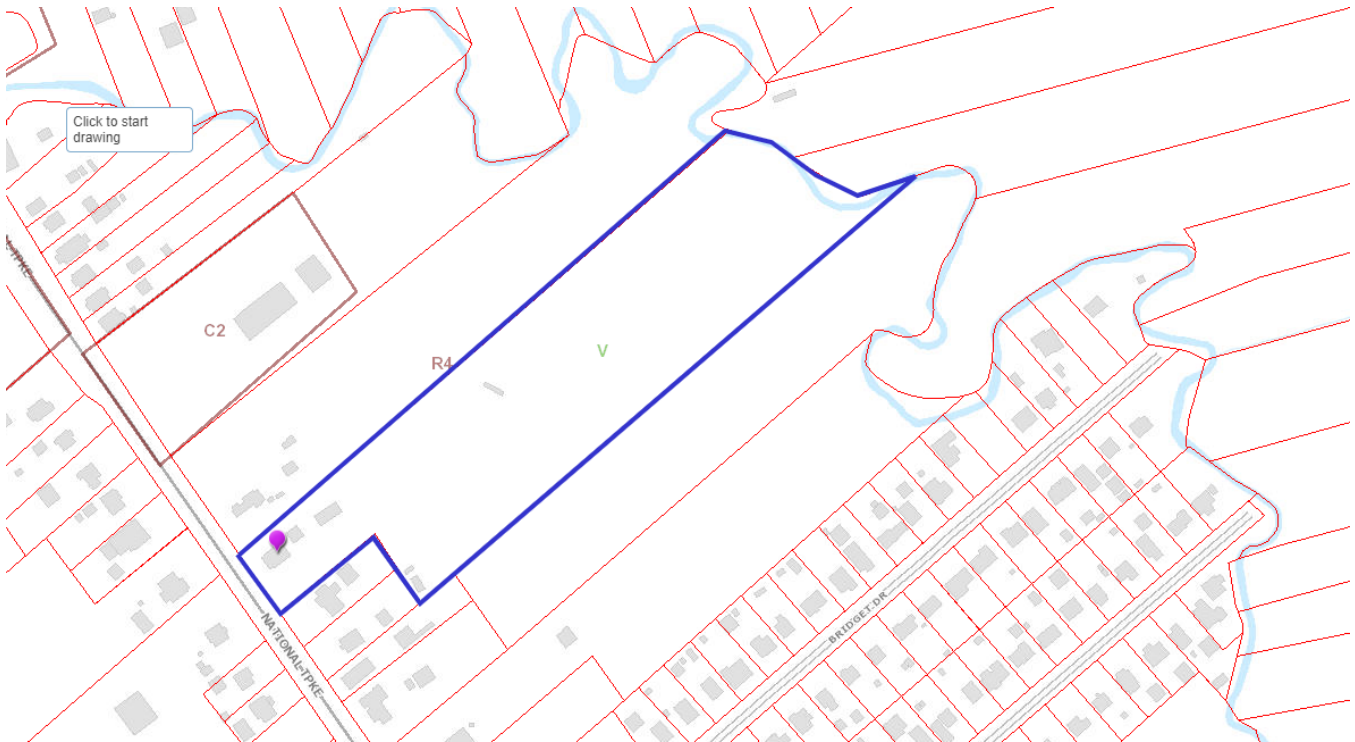
NOTIFICATION

Date	Purpose of Notice	Recipients
11/1/2019	Notification of appeal of an administrative decision	Adjoining property owners, Appellant, and PDS staff GovDelivery District
11/3/2019	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. Historical Aerial Photograph
4. Site Photos

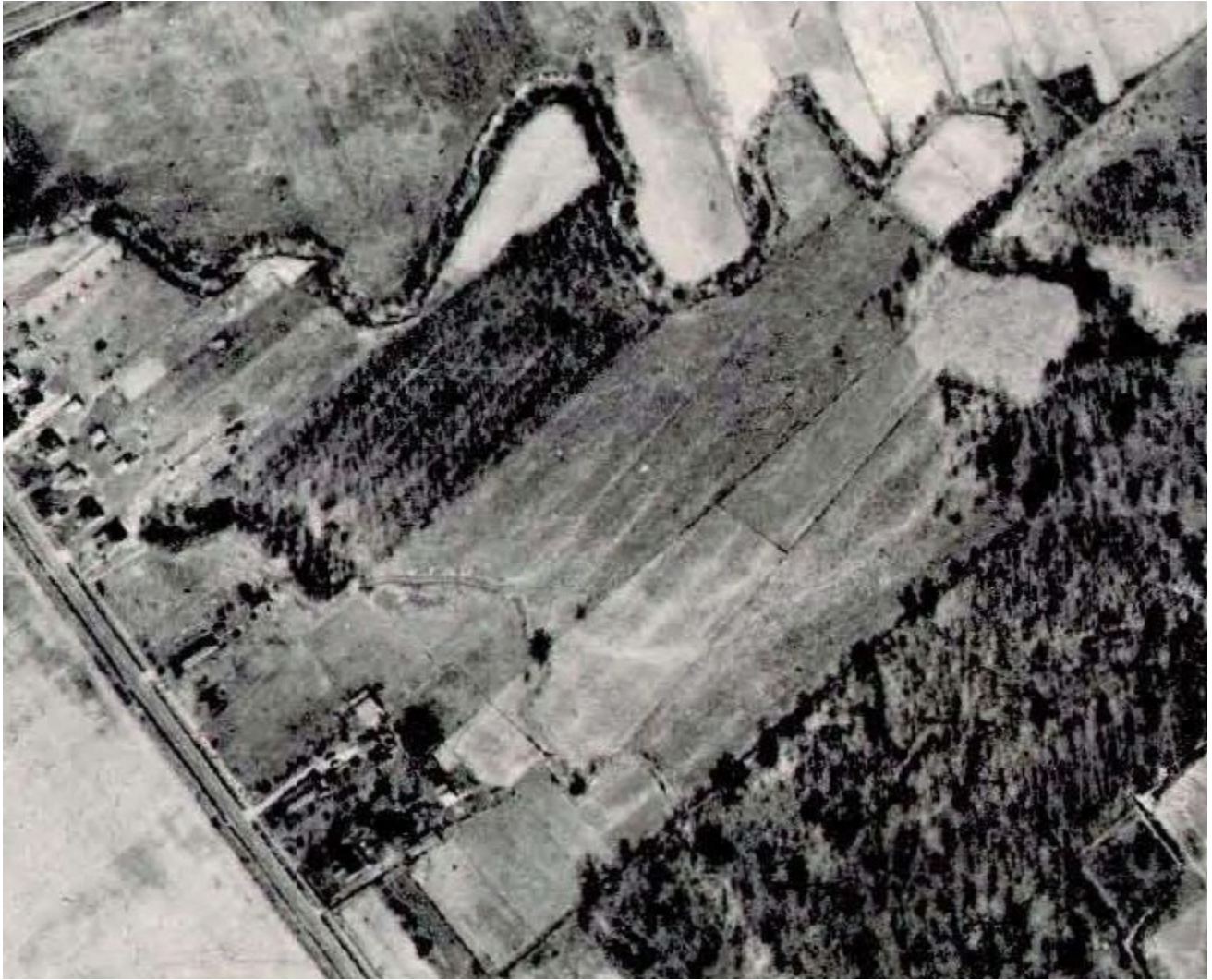
1. Zoning Map



2. Aerial Photograph



3. Historical Aerial Photograph - 1946



4. Property Photos



View from the street



Google Earth 2019



Google Earth 2019