

Commission, Board or Committee
Staff Report
October 15, 2018



Case No:	18NONCONFORM1028
Project Name:	Franklin Street Nonconforming Use
Location:	935 Franklin Street
Owner/Applicant:	Hilltech Properties, LTD
Representative:	Cliff Ashburner
Jurisdiction:	Louisville Metro
Council District:	4 - Sexton Smith
Case Manager:	Chris French, AICP

REQUEST(S)

- Change in Nonconforming Use

CASE SUMMARY/BACKGROUND

The property is zoned R-6 and occupied by a single structure. Its last known use was a pool supply company, which is not a permitted use in the R-6 zoning district. Based on information provided in the application and records available to Planning and Design Services staff, a nonconforming rights determination letter was submitted to the applicant's representative on June 14, 2018. This letter stated that based on the office records the property located at 935 Franklin Street was determined to have nonconforming rights for a pool supply company in accordance with LDC Section 1.3.1.

On August 6, 2018, the applicant's representative submitted a request to change a nonconforming use (pool supply company) to another nonconforming use (eight dwelling units and general retail). The original application was revised on September 19, 2018, asking that a change in nonconforming rights from a pool supply company to eight dwelling units -excluding approximately 3,800 square feet of the building, which would retain nonconforming rights as a pool supply company for the time being.

LDC Section 1.3.1.A-D 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.

While R-6 zoning allows the proposed multifamily use, it does not allow the use at its proposed density of eight dwelling units. The R-6 requirements and site conditions would restrict the property to a maximum of four dwelling units. The property is located within the R-6 zoning district, which allows residential multi-family at a density of 17.42 dwelling units per acre or approximately 2,500 square feet per unit. The existing property is 0.3789 acres or approximately 16,504 square feet. This lot size would allow up to six dwelling units; however, the proposal includes the retention of approximately 3,800 square feet of nonresidential space. In accordance with LDC Section 2.1.3.C, the nonresidential space must be factored out of the dwelling unit ratio allowed. This section of code uses the maximum allowable density of the structure based on the floor area ratio (FAR); R-6 has a maximum FAR of 0.75. The current structure is nonconforming for this FAR requirement. Based on the lot size (0.37890 or 16,504.88 square feet) and the 0.75 FAR, this would allow a maximum floor area of 12,378.66 square feet. LDC Section 2.1.3.C requires that the 3,800 square feet of nonresidential space be excluded from the 12,378.66 square feet, which is 8,578.66 square feet. LDC Section 2.1.3 requires that the 8,578.66 square feet be divided by the 12,378.66 square feet and then multiplied by 100 to give the percentage applied to the area of the lot, which establishes the maximum area on which residential requirements can be based. This percentage is 69.3 percent. Therefore, using this percentage in the calculation of allowable density yields a maximum density of 4.57 units per acre or four units since the LDC does not permit the allowable density to be rounded up.

The applicant's request for change in nonconforming use to another nonconforming use is to allow eight dwelling units on the site. The applicant argues that the multifamily use and density of eight units would be allowed in the C-2 zoning district, which is the same classification as the pool supply company use. Staff questions this argument because multifamily residential is an allowable use in R-6 and the proposed number of units is double what would be permitted by the LDC for the subject property. Staff is concerned that eight units would be more odious or offensive to surrounding property owners than the current nonconforming use, especially considering that 3,800 square feet is to remain as a nonconforming pool supply company. The applicant has made it clear to staff that a future request would be submitted regarding a change to the nonconforming status of the nonresidential space in the future, which increases uncertainty into the future intensity of use on the property.

STAFF FINDING / RECOMMENDATION

Staff does not believe that the conversion of 14,241 square feet of the 18,041 square feet of the building from a pool supply company to eight residential dwelling units would be the same or less intense than the pool supply portion of the building. Multifamily residential use is permitted in the R-6 Zoning District, but the density ratio based on the retention of 3,800 square feet of nonresidential (potential retail) space that was part of the pool supply company would only allow four units. Eight units is double that density allowance and would be at a greater intensity than the non-retail portions of the pool supply company, which the residential units are proposed to replace. The existing

building already exceeds the maximum floor area for the R-6 Zone, which further limits future development. Staff cannot recommend approval of the request for change in nonconforming use to allow eight residential units.

TECHNICAL REVIEW

None

INTERESTED PARTY COMMENTS

No comments received

STANDARD OF REVIEW FOR CHANGE IN NONCONFORMING USE

As stated in LDC Section 1.3.1.D, the Board must find that the proposed nonconforming use that would replace the existing nonconforming use would be in the same or more restrictive classification than the existing nonconforming use and that the proposed nonconforming use (eight dwelling units) would be no more odious or offensive to surrounding properties than the current nonconforming use (pool supply company).

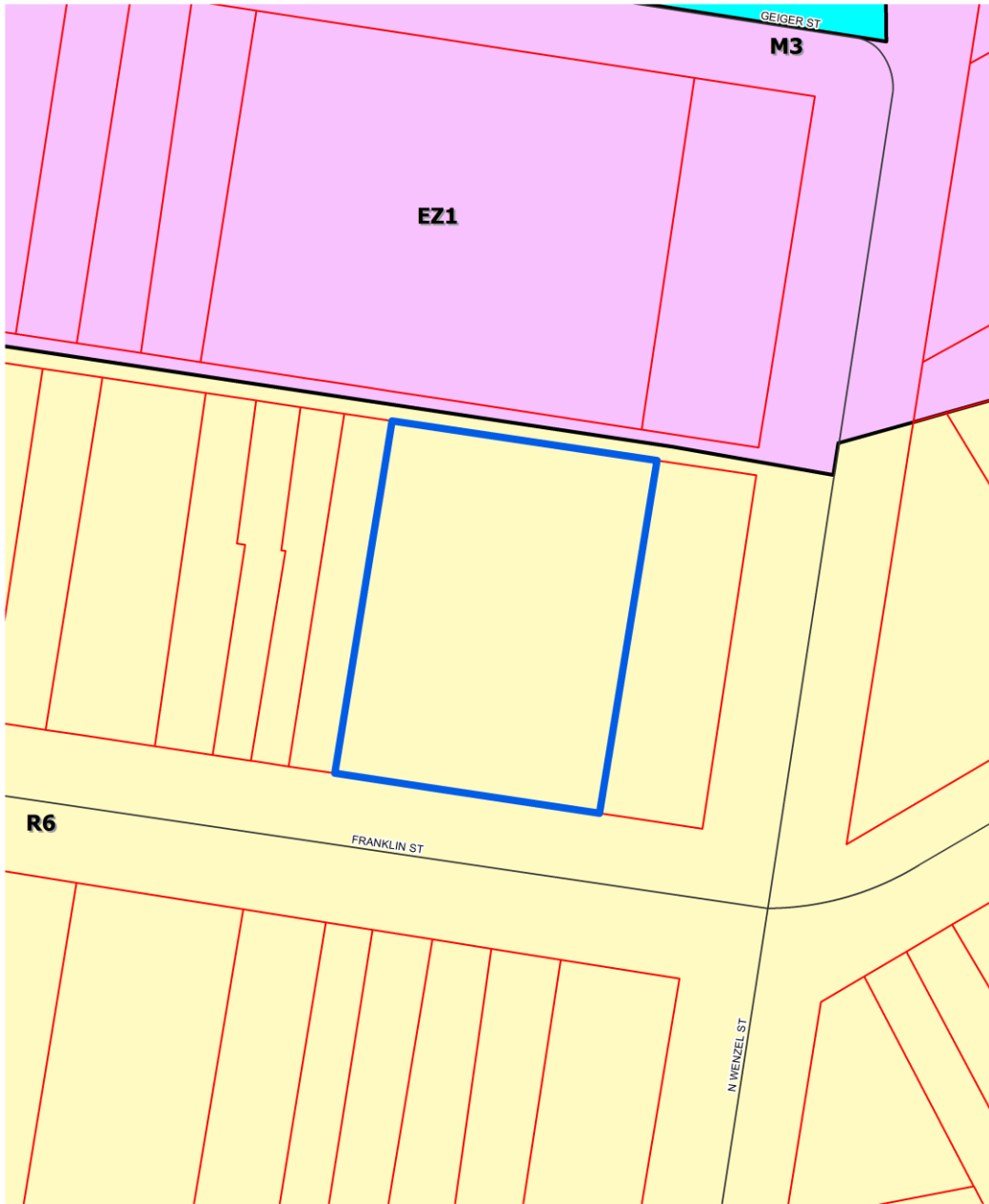
NOTIFICATION

Date	Purpose of Notice	Recipients
9/26/2018	Hearing before BOZA	1 st tier adjoining property owners Registered Neighborhood Groups in Council District 4

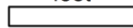
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



935 Franklin Street
feet



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Map Created: 10/10/2018



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2. Aerial Photograph



935 Franklin Street

feet
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Map Created: 10/10/2018



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