

**Board of Zoning Adjustment
Staff Report
September 12, 2016**



Case No:	16Appeal1009
Project Name:	Nonconformance Claim
Location:	14009 Dixie Highway
Owner:	Kenneth L. Hagan
Applicant:	SteelHorse Package Liquor & Saloon
Representative:	Kenneth L. Hagan
Size:	0.35 acres
Existing Zoning District:	C-1
Existing Form District:	Suburban Marketplace Corridor
Jurisdiction:	Louisville Metro
Council District:	14 – Cindi Fowler
Case Manager:	Steve Hendrix, Planning Supervisor

REQUEST

An Appeal of a Uniform Citation issued by the Louisville Metro Alcoholic Beverage Control concerning nonconforming rights for the consumption of beer inside and outside of a package store.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The subject site is located in far southwestern Jefferson County on Dixie Highway, less than five (5) miles from the Hardin County line. The consumption takes place inside the store, near the back entrance and at the rear of the property where picnic tables and a canopy are located. The owner stated they usually close around 11:00 PM and have an older crowd. The “beer garden” area is approximately 160 feet from the Dixie Highway right of way. Although, there is an apartment house to the southwest of the outdoor area, existing trees and vegetation provide a buffer and staff has not received any calls of concern. The other adjacent land uses include a sheet metal shop to the north and a railroad line and vacant fields to the east.

In 2004, a letter was sent to the subject address with South Dixie Liquors as the owners, from the Department of Inspections, Permits & Licenses, Alcoholic Beverage Control Division allowing the beer consumption to continue, but only for South Dixie Liquors, (owners at the time).

The present owner bought the property in May 2005, at the County Commissioner’s Sale and understood the beer consumption to be “grandfathered”, so the consumption continued. The owner has stated that other inspections have taken place over the last ten, (10) years and no citations were issued. On May 2016, the store was cited for customers drinking alcoholic beverages inside and outside of the store.

SteelHorse Package Liquor & Saloon is currently in the process of being heard by the ABC Board concerning the citation. The ABC Board acknowledges that one way to resolve the situation would be for the store to obtain nonconforming rights.

On **August 26, 2016**, a site inspection was made by staff. Consumption of beer was observed inside of the package store and outside at the rear of the property under a canopy.

July 22, 2016, Notice of Rescheduled Hearing, Department of Codes & Regulations Division of Inspections, Permits and Licenses to show cause why your license should not be suspended or revoked because of violation.

On **July 19, 2016**, an Appeal application was submitted.

On **May 20, 2016**, a Uniform Citation was issued by the Department of Codes and Regulations in regards to customers drinking alcoholic beverages inside and outside of the package store.

November 24, 2003, a letter was sent from the Department of Inspections, Permits & Licenses, Alcoholic Beverage Control Division to South Dixie Liquors concerning the consumption of alcohol on the premises of package liquor stores located in C-1, Commercial Zoning District. The letter stated “those establishments in Jefferson County that are located outside of the former City of Louisville may be allowed to continue to have consumption of beer and/or malt liquor beverages on their premises if they are able to demonstrate to the ABC Administrator that they have been allowing consumption of purchases on their premises since 1978.”

January 5, 2004

A letter was sent to Kentucky Rose, Inc. dba South Dixie Liquors from the Department of Inspections, Permits and Licenses allowing the consumption of malt liquor beverages on the premises at the current level. The letter also states that the right is being granted is not establishing non-conforming rights and therefore cannot be transferred to subsequent purchaser of the business or property.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Package Store with Consumption of beer, inside & outside	C-1	Suburban Marketplace Corridor
Proposed	Same	C-1	SMC
Surrounding Properties			
North	Sheet Metal Shop	C-2	SMC
South	Apartment House	C-1	SMC
East	Vacant Field	EZ-1	Neighborhood
West	Single Family Residences	R-4	N

NO PREVIOUS CASES ON SITE

INTERESTED PARTY COMMENT

None Received

STAFF ANALYSIS: The following sections of the Land Development Code appear to be applicable to this case. The full text of these sections may be found within the Land Development Code for all of Jefferson County.

- Chapter 1.2.2. Definitions
- Chapter 1.3.1 Nonconformance
- Chapter 2.2.11 C-1, Commercial District

In addition, KRS 100.253 is the State statute that deals with non-conforming uses.

The Land Development Code and state law indicate that a nonconforming use is any established lawful activity conducted on a parcel at the time of enactment any zoning regulation which would not permit such activity on that parcel. A nonconforming use may be continued as then established until it is abandoned. However, such a use shall not be enlarged or extended beyond the scope and area that existed at the time the nonconformity began. The Board of Zoning Adjustment has the authority to allow a change from one nonconforming use to a second nonconforming use if the new use is in the same or more restrictive classification than the prior use and is no more odious or offensive to surrounding properties than was the first non-conforming use.

The abandonment of a nonconforming use terminates the nonconforming use status. The burden of proof in a hearing before the 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 had 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.

Abandonment does not appear to have taken place.

STAFF CONCLUSIONS

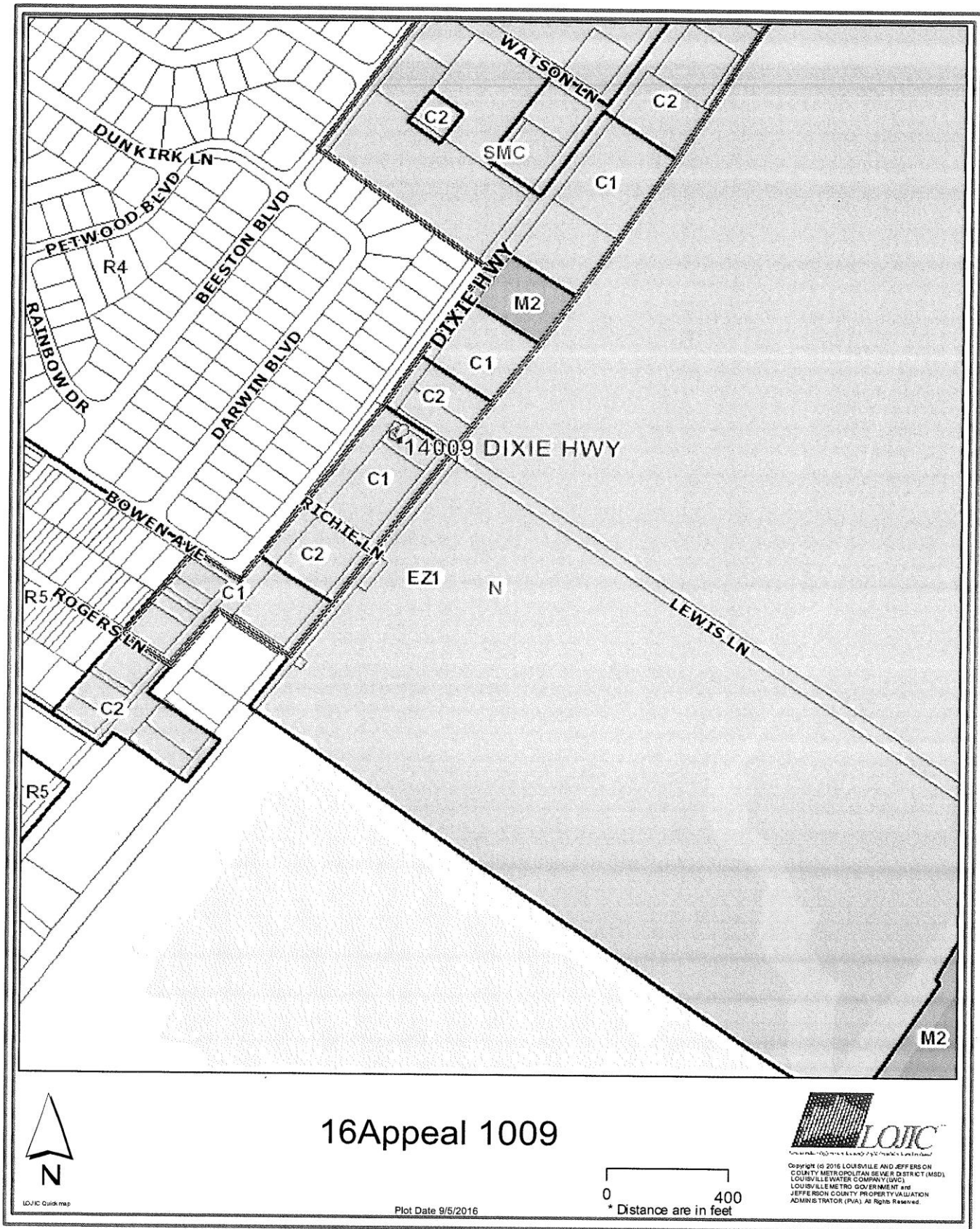
In 2003/2004, the Department of Inspections, Permits and Licenses, Alcoholic Beverage Control Division determined that inside and outside beer consumption would be allowed to continue for the current owner. However, since that time, the consumption has continued under the impression by the owner and apparently previous inspectors that beer consumption had been "grandfathered". The only change has been the ownership of the property.

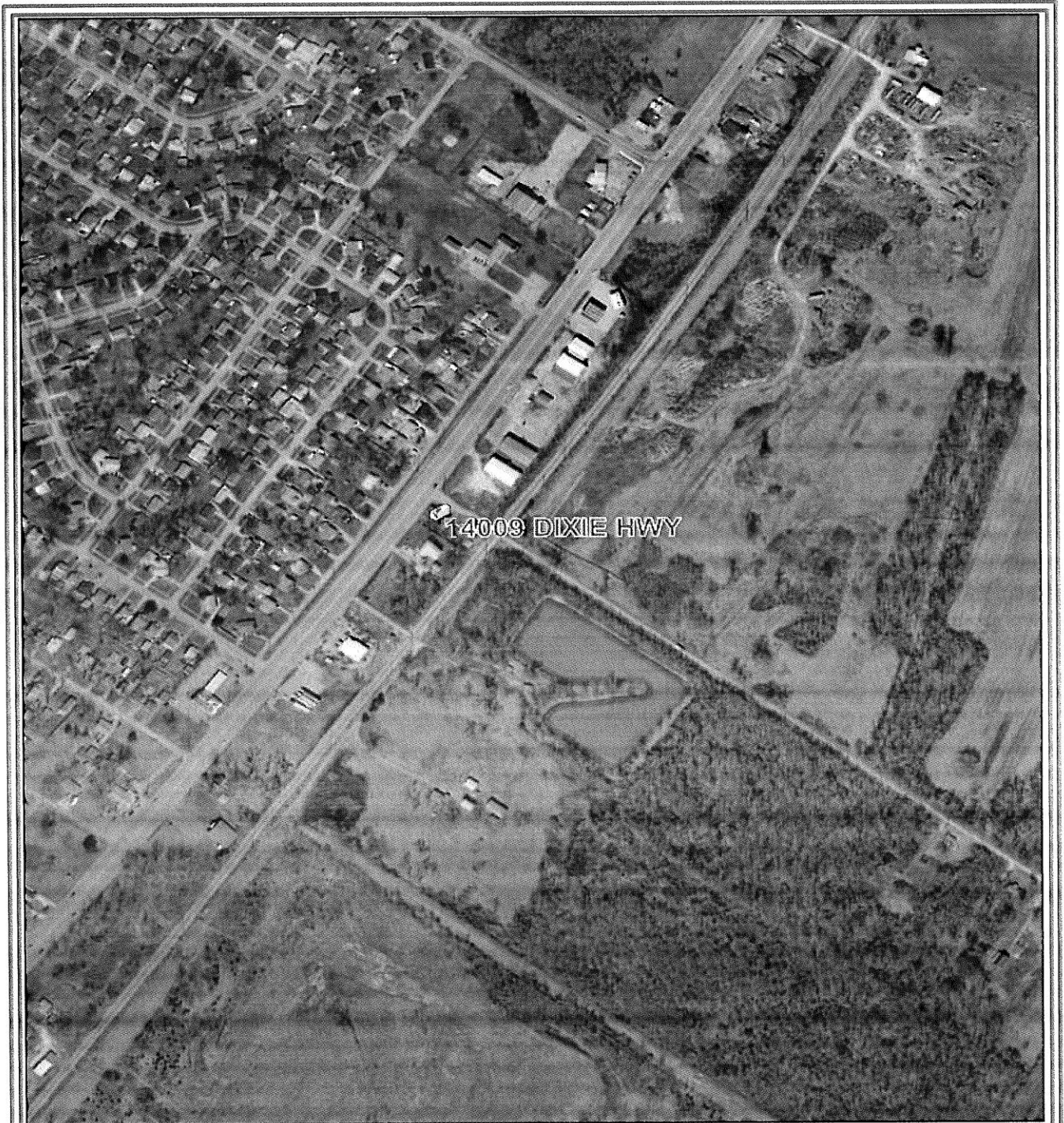
Based upon the file of this case, this staff report, and the evidence and testimony submitted at the public hearing, the Board must determine:

1. If nonconforming rights exist for the inside and outside consumption of beer?
2. If so, the Board will need to determine the areas.
3. If the Notice of Violation issued by the Department of Codes and Regulations was proper?

NOTIFICATION

Date	Purpose of Notice	Recipients
8.26.16	Notices ready to be mailed	Appellant, Adjacent Neighbors
8.26.16	Sign Posted	Neighbors
8.26.16	Legal Ad in paper	Circulation Area





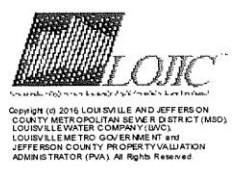
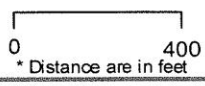
14009 DIXIE HWY



LOJIC Guide map

16Appeal 1009

Plot Date 9/6/2016





14009 DIXIE HWY

16Appeal 1009



LOJIC QuickMap

Plot Date 9/6/2016

0 50
* Distance are in feet



Copyright (c) 2016 LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE WATER COMPANY (LWC), LOUISVILLE METRO GOVERNMENT and JEFFERSON COUNTY PROPERTY VALUATION ADMINISTRATOR (PVA). All Rights Reserved