

Board of Zoning Adjustment Staff Report

October 3, 2016



Case No:	16Appeal1007
Project Name:	Nonconforming Rights
Location:	613 Country Club Road
Owner:	Erwin and Teresa Davis
Applicant:	Davis Electronics Inc.
Representative:	Cliff Ashburner
Size:	0.21 acres
Existing Zoning District:	R-5
Existing Form District:	Neighborhood
Jurisdiction:	Louisville Metro
Council District:	9 – Bill Hollander
Case Manager:	Steve Hendrix, Planning Supervisor

REQUEST

An Appeal of a decision issued by Planning & Design Services concerning nonconforming rights.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

On February 25, 2015, the application for Nonconforming Rights was submitted.

On September 2, 2015, the attorney at that time stated that they were trying to obtain non-conforming rights for office use.

On July 13, 2016, a letter was issued from Planning & Design Services stating that nonconforming use rights had been established for an office in an R-5, Residential Single Family Zoning District at this property, (15Nonconforming1001).

Staff realized the 1,098 square foot structure was not built for residential purposes and was aware of the previous uses as noted in the submitted affidavits.

Staff's reasoning was that some of the submitted information was not clear and/or contradictory. On the application, it states the use was reduced to only the storage of equipment and the housing of the radio tower erection repair division since 1987, while the property owner states that the remainder of the property was either leased to other commercial tenants or utilized for storage by Davis Electronics. A contractor's shop, where all operations must be inside the building, is a permitted use within a C-2 district.

It appeared to staff that office use could be considered among all of the past uses.

On August 4 2016, an Appeal application was submitted from the property owners claiming that the property should have nonconforming rights for commercial uses, including a contractor's shop.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Appeared to be a Vacant Building	R-5	Neighborhood
Proposed	Requesting Commercial Use, Including Contractor's Shop	R-5	N
Surrounding Properties			
North	Single Family Residences	R-5	N
South	Single Family Residences	R-5	N
East	Single Family Residences	R-5	N
West	Single Family Residences	R-5	N

PREVIOUS CASES ON SITE

15Nonconforming1001

Nonconforming use rights for an office in an R-5, Residential Single Family Zoning District. Determination from Planning & Design staff in letter dated July 13, 2016.

INTERESTED PARTY COMMENT--None

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 2.2.7 Residential Single Family 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;
2. There is a reasonable prospect that the nonconforming use will be reinstated in the foreseeable future.

Abandonment has not occurred.

ZONING HISTORY

1971—Present-----R-5, Residential Single Family District

LAND USE HISTORY

1971 & 1972-----Address not listed
1973---1981-----DMR Electronics
1982---1986-----Davis Electronics
1987-----Vacant
1989---1990-----Tennmark Inc.
1991---1994-----Vacant
1995---1996-----Address not verified
1998---2016-----Address not listed

STAFF CONCLUSIONS

The structure was not built for residential purposes. Although the land use history varies, it appeared to staff that the one constant was the office use.

The 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 use rights exists for commercial uses, including a contractor's shop.
2. If the determination by staff (15Nonconforming1001) was appropriate.

NOTIFICATION

Date	Purpose of Notice	Recipients
9.15.2016	Notices ready to be mailed	Appellant, Adjacent Neighbors
9.16.2016	Sign Posted	Neighbors
9.23.2016	Legal Ad in paper	Circulation Area

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph



