

# Board of Zoning Adjustment

## Staff Report

June 5th, 2023



<b>Case No:</b>	23-NONCONFORM-0004
<b>Project Name:</b>	Auto Repair Nonconforming rights
<b>Location:</b>	2498 Ralph Ave
<b>Owner:</b>	Jericho Cook
<b>Applicant:</b>	Jericho Cook
<b>Jurisdiction:</b>	City of Shivley
<b>Council District:</b>	3 – Kumar Rashad
<b>Case Manager:</b>	Ian Sexton, Associate Planner

**REQUEST(S)**

- To determine whether a property has nonconforming rights to operate as a warehouse and storage yard.

**CASE SUMMARY/BACKGROUND**

The subject property is located within the R-5 zoning district and the Neighborhood form district. The site is approximately 0.88480 acres and is occupied by a 1-story Storage/light warehouse facility. In the period from 1954 to 1958, the property’s zoning was changed from “E-3” Industrial to “A” One Family (currently, the R-5 zoning district). Historic aerials show the property was used as a storage yard beginning in approximately 1971 and PVA information states the warehouse building was not built until 1975, years after the zoning was changed to “A” One Family (See Findings report). Staff cannot confirm PVA’s assertion that the warehouse was built in 1975 as there is a gap in aerial photos from 1971 to 1983. “E-3” Industrial zoning permitted storage yards and warehouses, however the storage yard use and warehouse did not exist until after the property’s zoning changed from “E-3” to “A” One Family. The property’s address is not listed in the Carons directory until 1985 under the name “Roman’s Transportation”.

<b>Historic Zoning</b>	
1943	“E-3” Heavy Industrial District
1945	“E-3” Heavy Industrial District
1954	“E-3” Industrial District
1958	“A” One Family
1965	R-5 Single Family
1969	R-5 Single Family
1995	R-5 Single Family

The property owner applied to establish nonconforming rights for a Storage facility on February 3<sup>rd</sup>, 2023. Staff informed the applicant that they did not have enough conclusive information to grant nonconforming rights at the administrative level. There is a lack of information in the directories to show that the Storage facility existed prior to 1958 when the areawide rezone of the property occurred and continued to the present day. Based on Land Development Code (LDC) Section 1.3.1.F, staff

requested that the case go to BOZA to make a final determination on whether the property has nonconforming rights.

BOZA must determine whether the property has nonconforming rights for warehouse and storage yard in the R-5 zoning district based on the following criteria:

LDC Section 1.3.1.A-F 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.

E. Notwithstanding any provision in Chapter 1, Part 3 to the contrary, a residential structure located in an industrial district may be expanded if (1) the expansion does not increase the number of dwelling units on the subject property and (2) the expansion would be permitted if the existing structure were located in an R-5 Residential district.

F. ABANDONMENT. The abandonment of a nonconforming use terminates the nonconforming use status. The burden of proof in a hearing before the appropriate 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 has 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.

### **STAFF ANALYSIS/FINDINGS**

The applicant submitted two different property value assessments as evidence to support their claim that the property has nonconforming rights for a warehouse and storage yard. One property value assessment was from PVA and the other was from LoopNet.com (not a government property value assessment site). The LoopNet property value assessment states that the property's warehouse is

“Nonconforming zoning grandfathered since 1960”. Staff research consisted of searching through the Caron’s directories from the year 1943 to the present day as well as historic zoning maps, historic aerial photos, and historic newspaper excerpts. Staff found that the Carons directory listings for 2498 Ralph Avenue were not consistent enough to conclude that the property was continuously used as a warehouse and storage yard from 1958 (the year that the zoning of the property changed to residential) to the present. 2498 Ralph Avenue’s address does not appear in the Carons directory until 1985 under the name “Roman’s Transportation”. In addition, historic aerial photos and PVA information shows that the storage yard use began in 1971 and the warehouse was not constructed until a period from 1971 to 1983 (PVA data states 1975 but the first aerial photo showing the warehouse was 1983), several years after the property’s zoning was changed to “A” One Family and R-5 residential.

### **STAFF RECOMMENDATIONS**

Staff does not believe that the property has nonconforming rights for a warehouse and storage yard as historic aerials and PVA information show the property began its use as a storage yard in 1971 (based on aerial photographs) and the warehouse was constructed during a period from 1975-1983, years after the property’s zoning changed from “E-3” Industrial to “A” One Family (currently, the R-5 zone), making both the warehouse and storage yard use nonconforming. Based on the information available to staff through the nonconforming rights application and information from the PDS office there is insufficient information for staff to identify nonconforming rights for the property as a warehouse and storage yard. The staff findings report is attached to this agenda item.

### **STANDARD OF REVIEW**

Pursuant to LDC 11.7.3 and KRS 100.257, the BOZA 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. The Board must determine if an error was made in the determination that the subject property does not have nonconforming rights for a storage facility in accordance with LDC section 1.3.1.

### **RELATED CASES**

No related cases.

### **TECHNICAL REVIEW**

No technical review required.

### **INTERESTED PARTY COMMENTS**

Staff has not received any interested party comments.

### **REQUIRED ACTIONS:**

- **APPROVE** or **DENY** the applicant request that the 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.

### **NOTIFICATION**

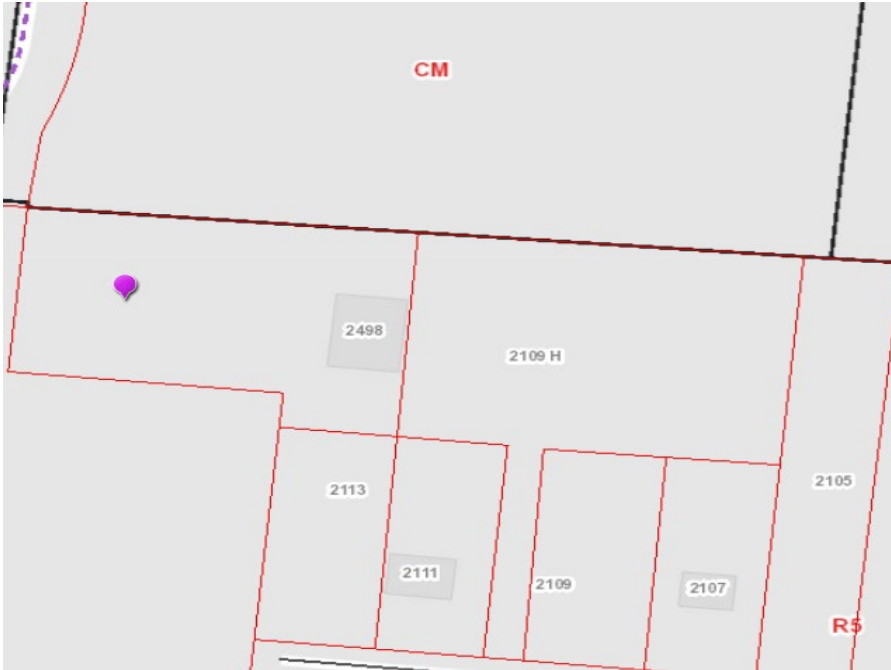
Date	Purpose of Notice	Recipients
5/18/2023	Hearing before Board of Zoning Adjustment	1 <sup>st</sup> tier adjoining property owners

5/19/2023	Hearing before Board of Zoning Adjustment	GovDelivery for Council District 1
5/22/2023	Hearing before Board of Zoning Adjustment	Sign Posting

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

