

21-NONCONFORM-0007

1335 E Washington Street



**Louisville Metro Board of Zoning Adjustment
Public Hearing**

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May 3rd, 2021

Request

- To determine whether nonconforming rights for three dwelling units was abandoned.

Case Summary / Background

- The site is in the R-6 Zoning District and the Traditional Neighborhood Form District. Current density restrictions only permit one dwelling unit.
- Evidence submitted with the nonconforming rights application established the consecutive use of three units until 1982.
- The current owner bought the triplex in 2011. There is a lack of evidence between 1982 and 2011.

Case Summary / Background

- Due to the inability to confirm consecutive use of the three units and pursuant to Land Development Code section 1.3.1.F, staff is requesting that the case go in front of the Board of Zoning Adjustment to make a determination on whether the nonconforming use was abandoned during this timeframe.
- If the Board does determine that the nonconforming use was abandoned, the board will then need to determine if the use has been reinstated.

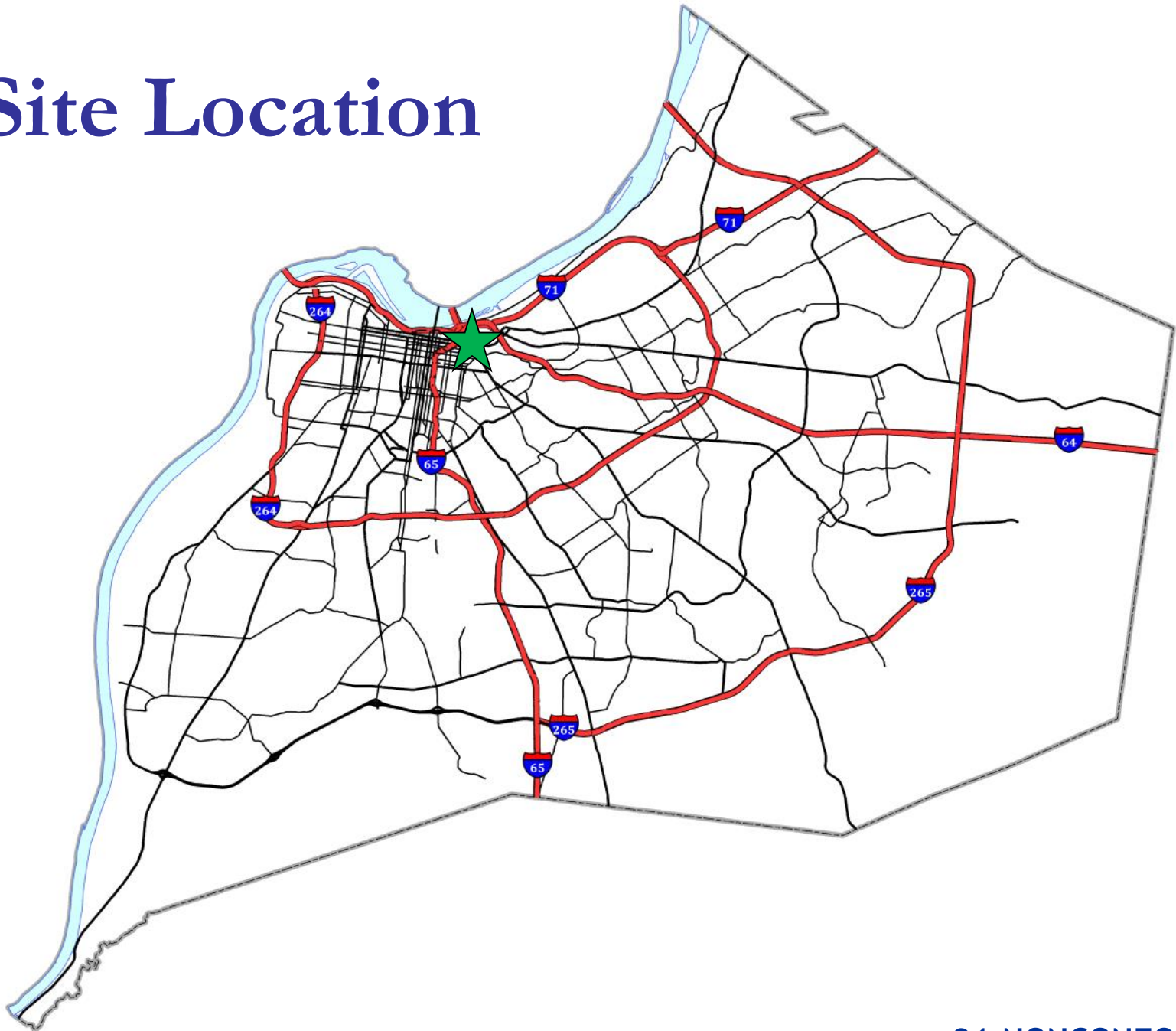
Case Summary / Background

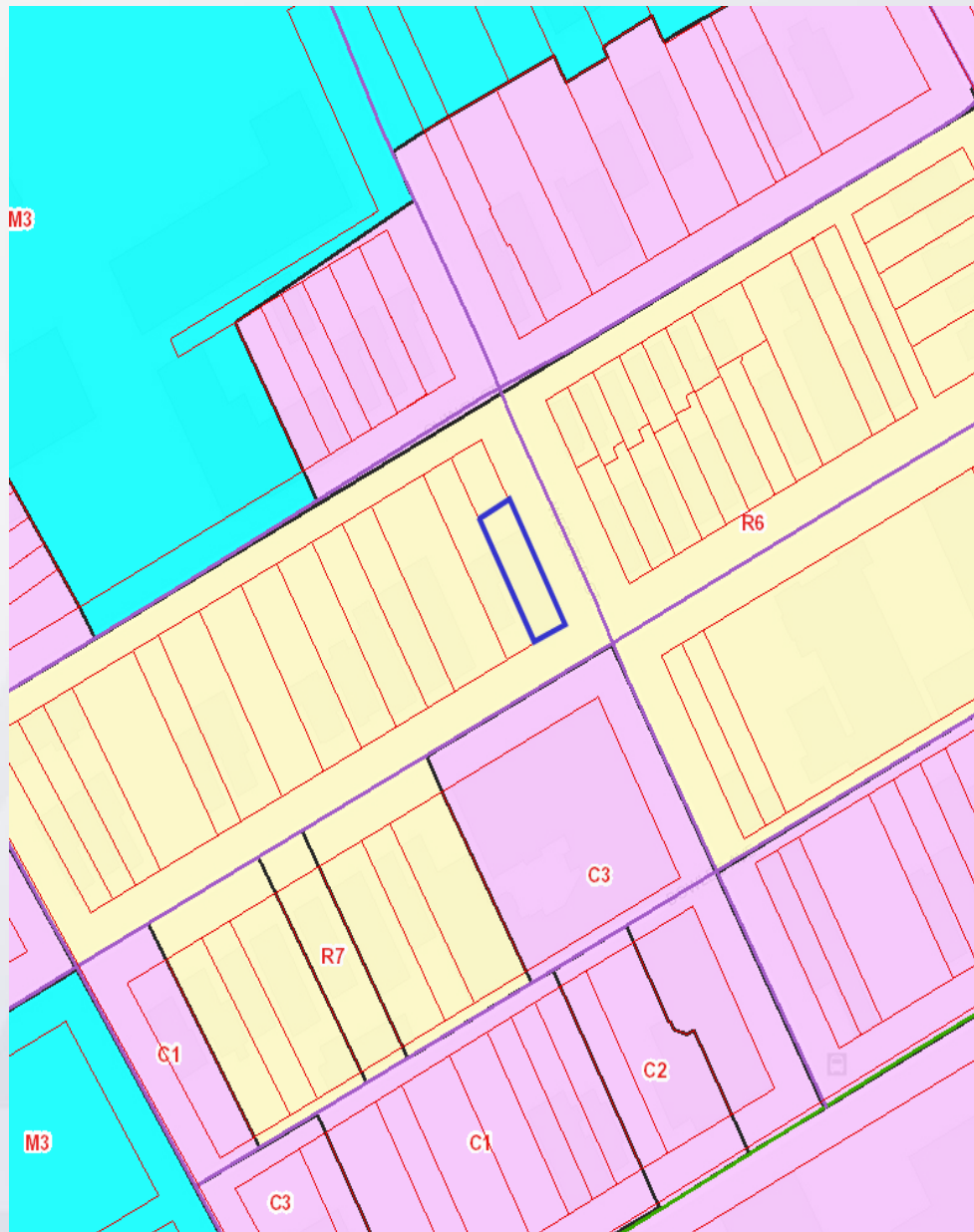
- BOZA must determine whether the nonconforming use for three units was abandoned between 1982 and 2011. If yes, the board must determine if the use has been reinstated based on the following criteria:

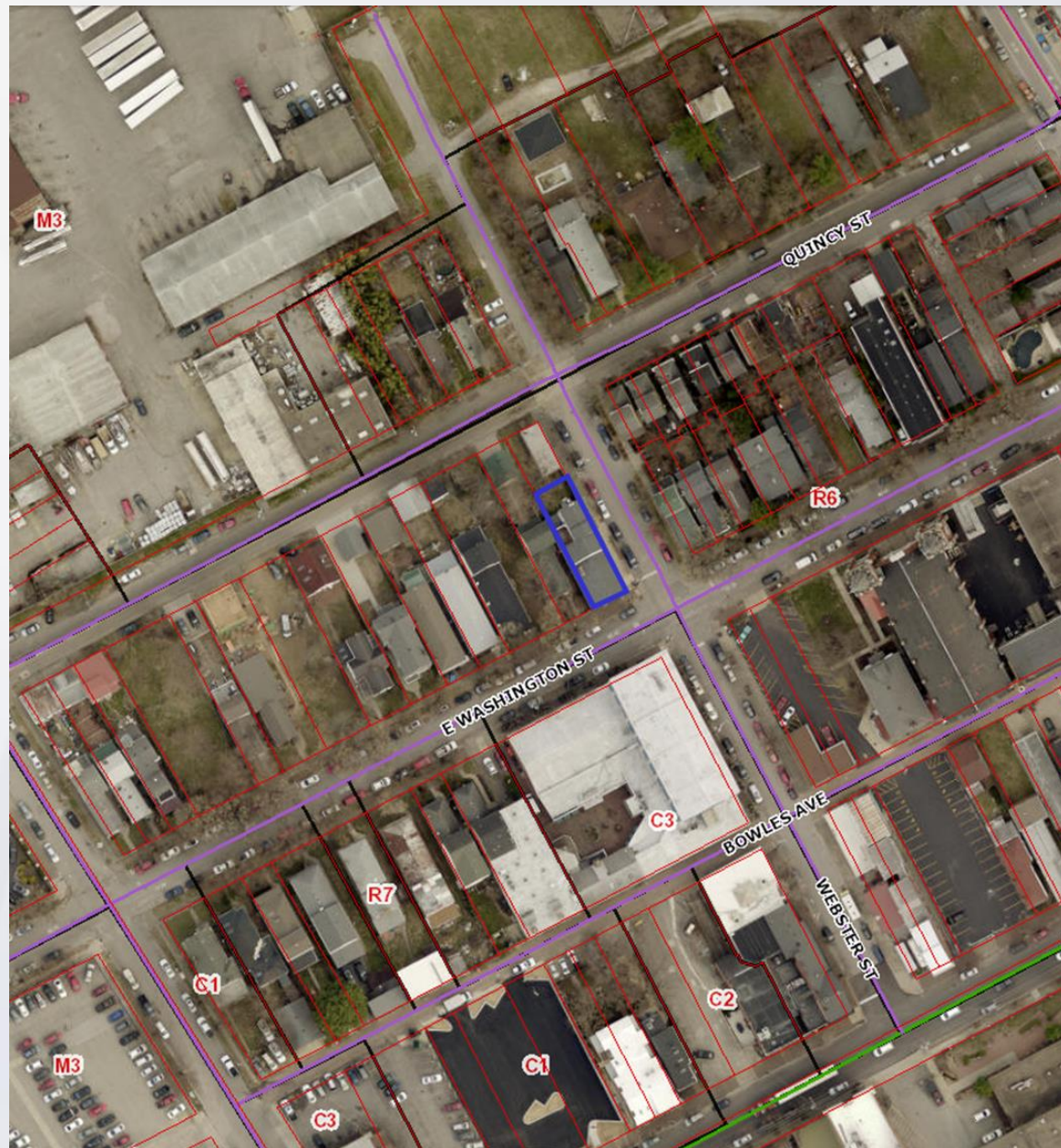
Standards of Review (1.3.1 A-F)

- 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.

Site Location







Conclusion

- Staff finds that the three units were legal nonconforming through 1982.
- BOZA must determine whether the nonconforming use was abandoned based on LDC Section 1.3.1.F.
- If yes, the board must determine if the use has been reinstated.

Required Action

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

1. APPROVE or DENY the applicant request that the nonconforming rights for three units has not been abandoned.