

COPY

**NOTICE OF APPEAL BY GLEN KERNS TO  
THE BOARD OF ZONING ADJUSTMENT**

**Subject Property: 114 East Witney Avenue  
Zoning Enforcement Case: ENF-ZON-22-001024**

Comes Glenn Kerns (misnomered as Glen E. Kerns in the Notice of Violation) ["Glenn" or "Mr. Kerns"], by the undersigned Counsel, and hereby appeals to the Board of Zoning Adjustment ("BOZA") from the NOTICE OF VIOLATION ("NOV") dated 8/24/22, a copy of which is attached as Exhibit #1 hereto.

As grounds for this Appeal Glenn states as follows:

1. This Notice of Appeal is filed in the present form as the notation in the NOV that "BOZA appeal forms" are "available at a web address and location of [www.louisvilleky.gov/planningdesign](http://www.louisvilleky.gov/planningdesign)" is incorrect. As of 9/23/22 at 9:00 A.M. the indicated address produces a message "Not Found The requested page could not be found." A copy of a screen print of the aforesaid is attached as Exhibit #2 hereto. Based on Planning & Design Services failing to make "appeal forms" readily available to Mr. Kerns, it would be a deprivation of Mr. Kerns' rights to Due Process of Law under BOTH the Federal and Kentucky Constitutions to deny Glenn's timely appeal of the NOV in the present form as submitted.

2. The property is NOT being put to an "Unlawful Use in Residential Zoning District" by Glenn as stated in the NOV. Mr. Kerns was using the property for an auto repair business, for many years, under prior zoning which allowed such use and he has continuously maintained that use of the property to the present day. That prior and

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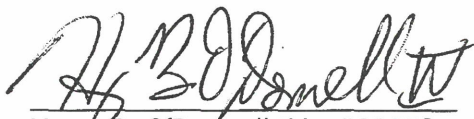
22-APPEAL-0011

continuing use cannot be restricted by the present zoning of the property as to do so is contra to Constitutional limitations imposed by Sections 13, 19 and/or 242 of the Kentucky Constitution, the Takings Clause of Fifth Amendment to the United States Constitution, applicable Kentucky law and precedents. Additionally, upon prior protest by Glenn, after the zoning of the property was changed to residential, the use of the property for an auto repair business was, many years ago, specifically recognized and accepted as a non-conforming use by Planning & Design and/or its predecessor related agencies.

3. For the same reasons and based upon the same legal authorities set forth in the preceding Paragraph 2, Mr. Kerns CANNOT be subject to any citation or penalty for his use of the subject property for "Parking: Noncompliant Parking in Residential Area" as stated in the NOV. The parking of vehicles on the property in the manner set forth in the NOV is necessary and appropriate for use of the property as an auto repair business—as aforesaid a legal, accepted and allowable non-conforming use.

Wherefore, Mr. Kerns prays for appropriate relief from the BOZA.

Respectfully Submitted,



Harry B. O'Donnell IV #83852  
Watterson West Office Building  
1941 Bishop Lane, Suite 706  
Louisville, KY 40218-1937  
(502) 452-6559  
[HODIV@AOL.COM](mailto:HODIV@AOL.COM)  
Counsel for Glenn Kerns

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**CERTIFICATE OF SERVICE**

I hereby certify that the original of this Notice of Appeal, with the Exhibits referenced therein, was served by hand-delivery on September 23, 2022 to:

METRO PLANNING & DESIGN SERVICES  
444 SOUTH 5<sup>TH</sup> STREET  
SUITE 300  
LOUISVILLE, KY 40202

with a copy of the same aforesaid documents being served, on the same date aforesaid by e-mail to:

STEVEN BODNER  
INSPECTOR / ZONING ENFORCEMENT OFFICER  
Steven.Bodner@louisvilleky.gov



Harry B. O'Donnell IV

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Louisville Metro Government  
 Develop Louisville  
 Office of Planning & Design Services  
 444 S. 5<sup>th</sup> Street, Louisville, KY 40202

From CH 9/24/22

08/24/2022  
 5:00 PM

**Owner:**  
 Glen E. Kerns  
 114 East Whitney Avenue  
 Louisville, KY 40214-1823

**Subject Property:** 114 East Whitney Avenue  
**Zoning Enforcement Case:** ENF-ZON-22-001024-1 Visit #1  
**Inspection Date:** 08/24/2022  
**Inspection Time:** 01:15 PM

**ZONING ENFORCEMENT  
 NOTICE OF VIOLATION – LAND DEVELOPMENT CODE**

Following a complaint, your property was inspected on 08/24/2022. As observed during the inspection and/or discovered through subsequent investigation, a violation(s) exists that requires your immediate attention.

You must immediately stop using this property in violation of the Land Development Code. Please contact the Office of Planning & Design Services to determine what steps must be taken to remedy the violation(s). Failure to comply with this Notice may result in a Citation and fine. Any person or entity that violates any provision of the Land Development Code shall be fined not less than \$10 nor more than \$500 for each violation. Each day of violation constitutes a separate offense.

If you disagree with this Notice, you may file an appeal to the Board of Zoning Adjustment (BOZA). Appeals must be filed within thirty (30) days of the date of this Notice. BOZA appeal forms are available at the Office of Planning & Design Services or online at [www.louisvilleky.gov/planningdesign](http://www.louisvilleky.gov/planningdesign).

A zoning enforcement officer will re-inspect the property to determine if you have complied with this Notice. Should you have any questions, please email or call me at the number below.

Steven Bodner  
 Inspector / Zoning Enforcement Officer  
 (502) 773-2067  
 Steven.Bodner@louisvilleky.gov

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Exhibit #1

*If you are not the owner of this property, you have been sent a copy of this Notice as an interested party.*

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**Zoning Enforcement Case: ENF-ZON-22-001024-1 Visit #1**

**ZV\_004**

**Unlawful Use In Residential Zoning District**

- No land may be used except for a purpose permitted in the zoning and form districts in which it is located. The use of the property is not a permitted use in the residential zoning district in which it is located. (Louisville Metro Land Development Code Chapter 2 Part 2)

**ZV\_076**

**Parking: Noncompliant Parking In Residential Area:**

- A requirement related to parking in a residential area is not being met on the property. All standards and requirements set forth in the Land Development Code must be met. (Louisville Metro Land Development Code Section 9.1.15)

**Inspector Comments:**

- There is an auto repair business in operation at this R5 TNFD address. Owner must cease business operation from this address and reduce the number of vehicles parked on the property to three. All vehicles must be operable and licensed to the occupants of this address. Please call Lou Metro Planning and Design Services @ 574-6230 for information on applying for nonconforming rights.
- For further information regarding Residential Land Use and/or Parking rules and regulations please contact the Louisville Metro Office of Planning & Design Services by dialing (502) 574-6230, or by visiting us during business hours at 444 South 5<sup>th</sup> Street, Louisville, KY 40202 Suite 300.

**Responsible:**

- Owner

Subject violation needs to be in compliance to avoid penalties and/or court action.

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# LouisvilleKy.gov

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Exhibit #2