



# BOZA Appeal Application

Louisville Metro Planning & Design Services

Case No.: 19-APPEAL-0001 Intake Staff: RC

Date: 9-6-19 Fee: \$ 100

Applications are due on Mondays at 2:00 p.m. in order to be processed that week. Once complete, please bring the application and supporting documentation to: Planning and Design Services, located at 444 South 5<sup>th</sup> Street, Suite 300. For more information, call (502) 574-6230 or visit <http://www.louisvilleky.gov/PlanningDesign>.

### Project Information:

Primary Project Address: 9705 National Turnpike, Fairdale, KY 40118

Additional Address(es): \_\_\_\_\_

Primary Parcel ID: 1051-0045-0000 and 1051-0394-0000

Additional Parcel ID(s): \_\_\_\_\_

Proposed Use: Non-Conforming M-2 Existing Use: Non-Conforming M-2

Existing Zoning District: R-4 Existing Form District: \_\_\_\_\_

Deed Book(s) / Page Numbers<sup>2</sup>: D.B. 4783 Page 153

The subject property contains 7.56 /4.5 acres. Number of Adjoining Property Owners: 10

Has the property been the subject of a previous development proposal (e.g., rezoning, variance, appeal, conditional use permit, minor plat, etc.)? *This information can be found in the Land Development Report (Related Cases)*<sup>1</sup>  Yes  No

If yes, please list the docket/case numbers:

Docket/Case #: \_\_\_\_\_ Docket/Case #: \_\_\_\_\_

Docket/Case #: \_\_\_\_\_ Docket/Case #: \_\_\_\_\_

**Contact Information:**

**Appellant:**  Check if primary contact

**Applicant:**  Check if primary contact

Name: Mac G. Sawyer

Name: Mac G. Sawyer

Company: Sawyer House & Building Movers

Company: Sawyer House & Building Movers

Address: 9705 National Turnpike

Address: 9705 National Turnpike

City: Fairdale State: KY Zip: 40118

City: Fairdale State: KY Zip: 40118

Primary Phone: 502-614-0621

Primary Phone: 502-614-0621

Alternate Phone: \_\_\_\_\_

Alternate Phone: \_\_\_\_\_

Email: macgsawyers@gmail.com

Email: macgsawyers@gmail.com

**Appellant Signature (required):** 

**Attorney:**  Check if primary contact

**Plan prepared by:**  Check if primary contact

Name: James C. Nicholson

Name: \_\_\_\_\_

Company: Nicholson Law Office

Company: \_\_\_\_\_

Address: 121 South Seventh Street, Suite 200

Address: \_\_\_\_\_

City: Louisville State: KY Zip: 40202

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Primary Phone: 502-583-3212

Primary Phone: \_\_\_\_\_

Alternate Phone: 502-533-3323

Alternate Phone: \_\_\_\_\_

Email: judgejcn@aol.com

Email: \_\_\_\_\_

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**Certification Statement:** A certification statement **must be submitted** with any application in which the owner(s) of the subject property is (are) a limited liability company, corporation, partnership, association, trustee, etc., or if someone other than the owner(s) of record sign(s) the application.

I, James C. Nicholson, in my capacity as Attorney, hereby representative/authorized agent/other

certify that Mac G. Sawyer is (are) the owner(s) of the property which name of LLC / corporation / partnership / association / etc.

is the subject of this application and that I am authorized to sign this application on behalf of the owner(s).

Signature:  Date: 9-6-19

I understand that knowingly providing false information on this application may result in any action taken hereon being declared null and void. I further understand that pursuant to KRS 523.010, et seq. knowingly making a material false statement, or otherwise providing false information with the intent to mislead a public servant in the performance of his/her duty is punishable as a Class B misdemeanor.

**Please submit the completed application along with the following items:**

**Project application and description**

- Land Development Report<sup>1</sup>
- A copy of the current recorded deed<sup>2</sup> (*must show "End of Document" stamp on last page*)
- Legal description on separate 8.5" x 11" sheet of paper (if not included in deed)
- Drawing of property, survey, tax map, or LOJIC map
- A written description of the grounds for the appeal
- A copy of the action or decision being appealed (e.g. Refusal Form, Cease and Desist Order, Interpretation Letter, etc.)
- If necessary, notarized affidavits, photographs, and supporting documents – examples may include information from Caron's or the Polk Directory, utility bills, tax records, etc.

**Mailing labels to notify Adjoining Property Owners (APOs)<sup>3</sup>**

- One set of mailing label sheets for: 1<sup>st</sup> tier APOs and those listed on the application
- One copy of the APO mailing label sheets

**Fee** (Cash, charge or check made payable to Planning & Design Services)

- \$ 100 Application Fee  
(Applicant must also pay for the legal advertisement)

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**Resources:**

1. Land Development Reports can be obtained online by entering the site address at: <https://www.lojic.org/lojic-online>
2. Deeds and plats can be found at the Jefferson County Clerk's Office, located at the 2<sup>nd</sup> floor of Metro Hall (527 West Jefferson Street, telephone: 502-574-6220). Many deeds, plats and other records are available online at: <https://search.jeffersondeeds.com>
3. Adjoining property ownership information can be found at the Property Valuation Administrator (PVA) office at 531 Court Place, Suite 504 or via their website: <https://jeffersonpva.ky.gov/property-search/>



OFFICE OF PLANNING & DESIGN SERVICES  
DEVELOP LOUISVILLE  
LOUISVILLE, KENTUCKY

GREG FISCHER  
MAYOR

YU "EMILY" LIU, AICP  
DIRECTOR

August 09, 2019

Mac Sawyer  
9705 National Turnpike  
Louisville, KY 40118

Re: 19NONCONFORM1016  
9705 National Turnpike  
Louisville, Kentucky 40118

This letter will serve notice that nonconforming use rights for a blacksmith and contractor's shop with a storage yard have not been established for the property known as 9705 National Turnpike. The subject property lies within the R-4 Single-Family Residential Zoning District. This decision is based upon information provided in the application and Develop Louisville files.

Staff's conclusion can be appealed to the Louisville Metro Board of Zoning Adjustment pursuant to Kentucky Revised Statutes, Section 100.257 within 30 days.

Sincerely,

Chris French  
Planning & Design Supervisor

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LOUISVILLE FORWARD

[www.louisvilleky.gov](http://www.louisvilleky.gov)

METRO DEVELOPMENT CENTER 444 S. FIFTH STREET, STE 300, LOUISVILLE, KENTUCKY 40202 502.574.6230 FAX 502.574.8129

19-APPEAL-0001

**RE: BOZA APPEAL APPLICATION (Supplemental – Page 3)**  
**19 NONCONFORM 1016**  
**Mac G. Sawyer**  
**9705 National Turnpike**  
**Louisville, KY 402118**

**STATEMENT OF APPEAL**

Comes now the Applicant, Mac G. Sawyer, (“Sawyer”), by counsel, and files this Notice of Appeal from the determination of the Office of Planning & Design Services on August 9, 2019 (*letter attached*) that Sawyer failed to establish non conforming rights for a contractor’s shop and storage yard for 9705 National Turnpike. In support thereof, and in compliance with the BOZA Appeal Application and “Project Application and Description” (Page 3), Sawyer incorporates by reference in its entirety, the following documents and/or exhibits, which are hereby made a part of this appeal:

1. The Nonconforming Rights Application and binder filed on May 13, 2019 in the Office of Planning and Design Services, by counsel, consisting of more than 500 documents, affidavits, pictures, and other supporting documents showing the commercial and industrial use of 9705 National Turnpike dating back to the 1930’s, and republished in this appeal.
2. Deeds previously filed with the Nonconforming Rights Application and now supplemented with the following deeds (*See Tab - Deeds*) concerning the same property of this application/appeal:
  - (a) Deed - Mac G. Sawyer, Grantor, to Laura L. Bailey, Grantee. (Deed Book 8195 Page 984) Dated April 17, 2003; and,

(b) Deed - Laura L. Bailey, Grantor, to Mac G. Sawyer, Grantee. (Deed Book 09677 Page 0247) Dated January 31, 2011.

It should be noted that Mac G. Sawyer originally received this property by deed dated April 12, 1975 from Harold G. Taylor and Mary H. Taylor (Deed Book 4783 Page 153). His ownership was continuous until April 17, 2003, when, for various business reasons, he put the deed in Laura L. Bailey's name. Ms. Bailey was his girlfriend and mother of his child. At all times Sawyer continued to reside on the property and operate his house moving business, commercial carpet cleaning business, and other enterprises from 9705 National Turnpike. In May of 2005 Bailey attempted to deed the property back to Sawyer. This deed was not recorded until January 2011. From 1975 until present Sawyer has had uninterrupted use and control of the subject property.

3. The Inspection and Zoning Case Notes consisting of 11 pages. (*See Tab – Zoning Notes*). These notes were not given to counsel in an Open Records request but were pieced together from another source. These Notes are very important. They show unequivocally from August 2006 to present Code Enforcement was familiar with the subject property 9507 National Turnpike, its use as a contractor's shop, blacksmith shop, and storage yard, prior to 1943, and Sawyer.

(a) Page 2 – Log – Zoning Notes. See entries from April Robbins, Metro Supervisor of Code Enforcement. A review of Ms. Robbins entries indicates in September 2007 she was advised the property was nonconforming by Mr. Sawyer. She allowed Sawyer and Bailey to provide her with information and proof of its nonconforming use. (*See Tab – 2007 Letter*). Robbins met with Sawyer. Additional entries on or about January 2008 indicates Ms. Robbins made



the determination the property's use was nonconforming and directed the zoning officer to make any violation non hazardous, i.e. violations of property maintenance code, and cite for debris.

On July 22, 2008, the Notes indicate the "*last violation corrected. case closed.*"(Emphasis added).

(b) Page 3 – Log – Zoning Notes. See January 7, 2011, entry from April Robbins, Supervisor. In the Comment section she wrote:

"1/17/08, Laura Bailey, owner provided documents from City she had non-conf. rts. For carpet cleaning & house moving here. Our concern is that she has a junk/salvage yard operations going on. Please take pics, go deep into the property to see all of vios."

- On March 9, 2011, B. Mason, Zoning Officer in the Comment section states, "It's not a 'junkyard', just a yard that's full of junk, rubbish & debris."
- On March 16, 2011, B. Mason in the Comment section states, "I spoke with owner, Mr. Sawyer, who called for contact information for Supervisor [April Robbins]. He said the property was 'grandfathered' in a while back & wished to discuss with her..."
- On September 21, 2011, D. Schmitt, Zoning Officer states, "spoke with Mr. Sawyer. He said he spoke with arobbins [April Robbins] and was told he was grandfathered in work has been done. He currently has 2 workers on site cleaning."

(c) Page 4 – Log – Zoning Notes. See January 15, 2013, entry from April Robbins, Supervisor. In the Comment section Ms. Robbins states, and this is a direct quote;

“BASED UPON AN AREA WIDE REZONING, THIS PROP. WAS ONCE ZONED COMMERCIAL. THEY ARE ALLOWED TO CONTINUE THEIR HOUSE MOVING AND CARPET CLEANING BUSINESS FROM THE NOW RES. LOCATION. CLOSE CASE WHEN NO MORE VIOLATIONS EXIST. SEE ME FOR MORE INFO.”

- On February 27, 2013 R. Miller, Zoning Officer, per April Robbins directive closed the zoning case.

4. Tab – Supplemental Evidence.

- (a) Office of Planning & Design Services letter of August 9, 2019 determining it was unable to establish nonconforming use rights for a blacksmith and contractor’s shop with a storage yard for 9705 National Turnpike.
- (b) Google Earth Photos depicting the use of the subject property over the years when Code Enforcement was on site.

**ARGUMENT**

The Office of Planning & Design Services erred when it was unable to find that non conforming rights for 9507 National Turnpike was not established. Counsel and Sawyer met with staff on June 27, 2019 and they advised they were satisfied the property had been used for non conforming uses, i.e. contractor’s shop, blacksmith shop, and house moving business since the mid 1960’s. The issue for them was establishing the use during the period of time from 1943 to the mid 1960’s. An extremely high bar which Sawyers evidence clearly met.

Staff was very accommodating in allowing Sawyer an opportunity to supplement the record, but as he said then, and reiterates now for the record, he, along with Laura Bailey, gave



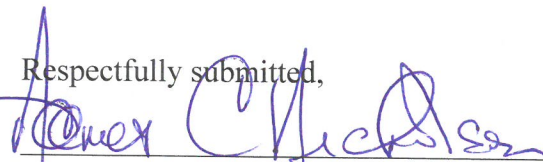
what additional information they had to Ms. April Robbins, Supervisor, Metro Zoning Enforcement, in 2007-8. Ms. Robbins extensively reviewed this evidence. Sawyer relied on the government employee, Ms. Robbins, determination that the property was non conforming. This is what his affidavits and evidence unequivocally proved. Unfortunately Metro no longer has these records. The government should not be allowed to make one determination that a property is non conforming and later change its mind when nothing has changed.

Sawyer should not be held to an unreasonable standard. The decision of the Office of Planning & Design Services is arbitrary, capricious, and contrary to the more than 500 documents, affidavits, pictures, and other supporting documents which clearly establishes the commercial and industrial use of 9705 National Turnpike dating back to the 1930's. A use which has been continuous and uninterrupted to present.

### CONCLUSION

For the reasons set forth above, the Board of Zoning Adjustment should enter a finding setting aside the Office of Planning & Design Services determination of August 9, 2019 and issue an order finding that the use of 9705 National Turnpike for a contractor's shop, blacksmith shop, house moving business and storage yard has been ongoing and continuous prior to the adoption of the Zoning Regulations in 1943, and such use while non conforming under today's zoning is lawful.

Respectfully submitted,



JAMES C. NICHOLSON

NICHOLSON LAW OFFICE

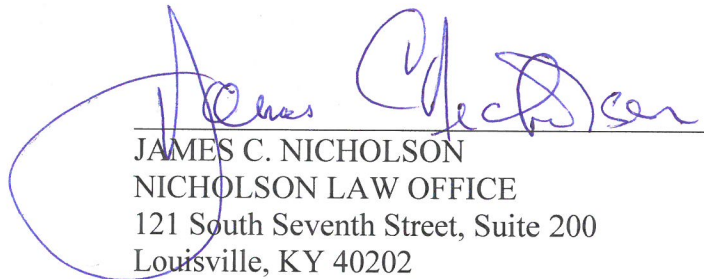
Email: judgejcn@aol.com

Counsel for Applicant/Appellant,

Mac G. Sawyer

**CERTIFICATE OF SERVICE**

It is hereby certified that a true and accurate copy of the foregoing was filed this 6th day of September, 2019 in the Office of Planning & Design Services, 444 South 5<sup>th</sup> Street, Suite 300, Louisville, KY 40202.



A handwritten signature in blue ink, appearing to read "James C. Nicholson", is written over a horizontal line. The signature is stylized and cursive.

JAMES C. NICHOLSON  
NICHOLSON LAW OFFICE  
121 South Seventh Street, Suite 200  
Louisville, KY 40202  
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Counsel for Applicant/Appellant,  
Mac G. Sawyer



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DEVELOP LOUISVILLE  
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