

# Board of Zoning Adjustment

## Staff Report

March 15, 2021



<b>Case No:</b>	21-NONCONFORM-0004
<b>Project Name:</b>	Change in Nonconforming Use
<b>Location:</b>	6603 River Road
<b>Owner(s):</b>	Mark & Lora Mercurio
<b>Applicant:</b>	Mark Mercurio
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	16 – Scott Reed
<b>Case Manager:</b>	Zach Schwager, Planner I

### **REQUEST(S)**

- Change in nonconforming use from a private non-profit club to a professional office.

### **CASE SUMMARY/BACKGROUND**

The subject property is located within the R-4 Residential Single Family zoning district and the Village form district. The site is approximately 0.8735 acres and is occupied by a two-story structure.

The property owner applied to establish nonconforming rights for a club and lodge on September 28, 2020. Based on the information provided in the application and staff research, the property was used as a lodge continuously prior to 1943 until 2006 when the use was changed to a professional office, which is another nonconforming use in the R-4 zoning district.

This case is directly related to 20-NONCONFORM-0022 regarding abandonment of nonconforming rights. If the Board of Zoning Adjustment (BOZA) determines that the original nonconforming use was abandoned, then this case would be considered withdrawn. If the BOZA determines that the nonconforming rights are not abandoned, then the applicant can go forward with this request to change the nonconformance to a professional office use based on the following criteria:

Land Development Code (LDC) Section 1.3.1.A-D 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.

### **STAFF FINDING/RECOMMENDATION**

A change in nonconformance from a private nonprofit club to a professional office use would be considered no more odious or offensive than the original nonconforming use. The private non-profit club use is allowed in the Office Tourist Facility zoning district and the professional office use is allowed in less intense zones; therefore, the professional office use is located within a lesser zoning classification.

### **TECHNICAL REVIEW**

No technical review required.

### **INTERESTED PARTY COMMENTS**

No comments received.

### **STANDARD OF REVIEW FOR CHANGE IN NONCONFORMING USE**

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.

1. Is the new nonconforming use in the same or more restrictive classification of the first nonconforming use?

Staff Finding: The proposed nonconforming use of professional office is permitted in the same or more restrictive zoning classification than the existing nonconforming use.

2. Is the new nonconforming use no more odious or offensive to surrounding properties than the first nonconforming use?

Staff Finding: The proposed use is not more odious or offensive to surrounding properties than the first nonconforming use.

**REQUIRED ACTIONS:**

- **APPROVE** or **DENY** the **Change in nonconforming use**

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustments must determine if the proposal is in conformance with the Land Development Code Section 1.3.1 paragraph D.

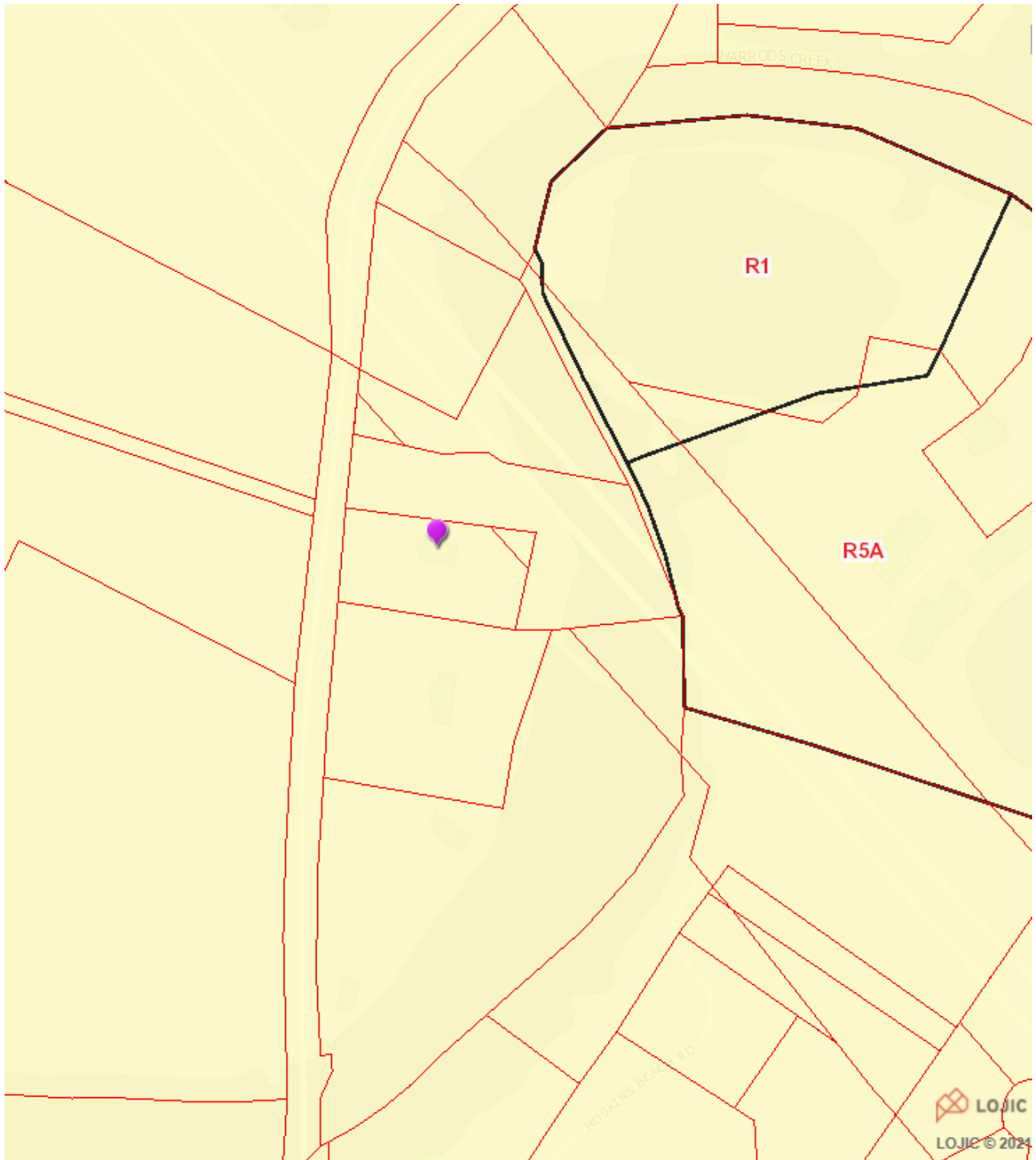
**NOTIFICATION**

Date	Purpose of Notice	Recipients
<b>2/23/2021</b>	Hearing before Board of Zoning Adjustment	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 16
<b>2/26/2021</b>	Hearing before Board of Zoning Adjustment	Sign posting

**ATTACHMENTS**

1. Zoning Map
2. Aerial Photograph

1. **Zoning Map**



2. Aerial Photograph

