

**Board of Zoning Adjustment  
Staff Report  
November 2, 2015**



<b>Case No:</b>	15Appeal1007
<b>Project Name:</b>	Nonconformance Claim
<b>Location:</b>	5013 Poplar Level Road
<b>Owner:</b>	Samuel M. Seifert
<b>Applicant:</b>	Liquor Palace 3, Inc. Sukhjit Bains
<b>Representative:</b>	Kenneth S. Handmaker
<b>Size:</b>	0.33 acres
<b>Existing Zoning District:</b>	C-1
<b>Existing Form District:</b>	Suburban Marketplace Corridor
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	2 --- Barbara Shanklin
<b>Case Manager:</b>	Steve Hendrix, Planning Supervisor

On October 5, 2015, the Board heard testimony and continued the case to allow staff to find more information regarding the intent of the Board in 1996 and to give the Board time to review all the information that was submitted at the hearing. A recording was not found. A citation report was submitted by the appellant on October 20, 2015.

**REQUEST**

An Appeal of a Notice of Violation issued by the Department of Codes and Regulations concerning nonconforming rights for outside alcohol consumption in a C-1 zoning district.

**CASE SUMMARY/BACKGROUND/SITE CONTEXT**

On June 8, 2015, a Notice of Violation was issued by the Department of Codes and Regulations. An Appeal application was submitted on July 8, 2015.

A site inspection was conducted on September 23, 2015, that revealed the new 1,645 square foot outside drinking area formed by an 8 foot, 2 inch high wooden privacy fencing. The area contains several picnic tables with umbrellas, tent awning seating, a smoker, a portable toilet, and a wooden patio section near the back door.

The consumption of alcohol inside the package store is allowed per B-254-96.

The appellant is contending that the approval in 1996 included outside consumption.

The Ann Gregg, (former owner) affidavit that was submitted at the hearing on October 5, 2015, notes that customers regularly purchased beer and drank it in the store and outside in the front and rear parking lots.

**The description of the 1996 action has been written in various forms:**

The November 18, 1996 case was listed as **B-254-96**, An Appeal of a Notice of Violation issued by the Division of Zoning Enforcement based upon alleged nonconforming rights **to allow drinking in a liquor store**.

The Board APPROVED the appeal in 1996. Within the Boards justification the minutes state, “that based upon the file of this case, the staff report and evidence and testimony submitted at the hearing it is determined that non-conforming use rights exist on the site for the appellant **to allow on-premise drinking of alcoholic beverages.**”.

The 1996 staff report refers to the subject of request as an appeal of a Notice of Violation issued by the Division of Zoning Enforcement based upon alleged non-conforming rights **to allow drinking at a liquor store**, while the at the end of the report refers to **on-premise drinking of alcoholic beverages.**

**The legal advertisement for the 1996 case is the same as the agenda listing, to allow drinking in a liquor store.**

The current Alcohol Beverage Control license states “**Non-conforming rights exist on the site to allow on-premise consumption of malt beverages only. (No outdoor consumption of beer)**”

The site is located on the northeast corner of Poplar Level Road and Aletha Drive within an existing C-1 zoning district and a Suburban Marketplace Corridor. The retail center also contains an art/clothing store, the Krush restaurant and billiards, the Old Skool Social Club and a vacant space, all northeast of the package store. A barber shop is north of the subject site within the center. Across Aletha Drive to the south is a convenience store, east of the retail center are single family residences, and across Poplar Level Road to the west is automobile care/sales.

The appellant claims that the 1996 BOZA determination meant alcohol consumption inside and outside the package store.

Definitions of premise have been included in the staff report from the American Heritage College Dictionary and the American Planning Association dictionary.

The Board will need to clarify the decision made in 1996 and determine if nonconforming rights exist for outside drinking.

**LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	Land Use	Zoning	Form District
<b>Subject Property</b>			
Existing	Package Liquor Store with alcohol consumed on the premises inside and outside.	C-1	Suburban Marketplace Corridor
Proposed	Same	C-1	SMC
<b>Surrounding Properties</b>			
North	Restaurant/billiards within retail center	C-1	SMC
South	Convenience Store	C-1	SMC
East	Clothing store within retail center	C-1	SMC
West	Barber shop	C-1	SMC

## INTERESTED PARTY COMMENT

None Received

### APPLICABLE PLANS AND POLICIES

Land Development Code  
KRS

**STAFF ANALYSIS:** The following sections of the Land Development Code appear to be applicable to this case. The full text of these sections may be found within the Land Development Code for all of Jefferson County.

Chapter 1.2.2.	Definitions
Chapter 1.3.1	Nonconformance
Chapter 2.4.3	C-1, Commercial District

In addition, KRS 100.253 is the State statute that deals with non-conforming uses.

The Land Development Code and state law indicate that a nonconforming use is any established lawful activity conducted on a parcel at the time of enactment any zoning regulation which would not permit such activity on that parcel. A nonconforming use may be continued as then established until it is abandoned. However, such a use shall not be enlarged or extended beyond the scope and area that existed at the time the nonconformity began. The Board of Zoning Adjustment has the authority to allow a change from one nonconforming use to a second nonconforming use if the new use is in the same or more restrictive classification than the prior use and is no more odious or offensive to surrounding properties than was the first non-conforming use.

### ZONING HISTORY

Since 1963, C-1, Commercial District.

### LAND USE HISTORY

1967-----2006 -----Ace Liquors  
2007 to the present-----Liquor Palace III

### STAFF CONCLUSIONS

The decision made by the 1996 Board has been described in various forms and although the “premise” definition includes the land and structures, staff believes the intent was to allow only **inside consumption**. If the 1996 Board had intended for outside alcohol consumption, some type of conditions would have probably been given.

Testimony from several patrons said that they would stop and occasionally drink outside. However, the fenced area with picnic tables, umbrellas, a portable toilet, and a smoker was only constructed this year and is accessed from the inside of the store. Testimonies did not state that the “outside area” was such a place. Even though “premises” includes inside and outside of the store, in all of the various descriptions that were used, not once was “outside” mentioned. The affidavit noted, “in the store and on the outside in the front and rear parking lots’, but not a designated location such as the existing fenced in portion

If the Board feels that outside alcohol consumption has nonconforming rights, it will need to have a defined area, so in the future, the exact boundaries are known.

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

1. If nonconforming rights exist for the outside consumption of alcohol?
2. If so, the Board will need to determine the exact area.
3. If the Notice of Violation issued by the Department of Codes and Regulations was proper?

### NOTIFICATION

Date	Purpose of Notice	Recipients
9.18.15	Notices ready to be mailed	Appellant, Adjacent Neighbors
9.23.15	Sign Posted	Neighbors
9.25.15	Legal Ad in paper	Circulation Area
10.16.15	Sign Posted	Neighbors

### ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Violation Notice
4. Appellant's Justification
5. 1996 Minutes
6. 1996 Staff Report
7. ABC License
8. Definitions
9. Pictures
10. October 5, 2015 Minutes
11. Citation Report from Mr. Handmaker

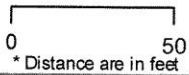




LOJIC Quickmap

# 5013 Poplar Level Road

Plot Date 7/15/2015



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**Louisville-Jefferson County Metro Government**  
**Department of Codes & Regulations**  
**Property Maintenance Division**

444 S. 5th Street, Suite 200 - Louisville, KY 40202

Phone: (502)773-2140 Email: John.Ernst@louisvilleky.gov Web Site: louisvilleky.gov/fpl/

Case No.: 15PM5570-2600596

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**119 CHANGING IMAGE SIGNS/GEN. REQ.**

Chapter 8.2.1.D-F/Article M Changing Image/Moving Signs: You have a changing image/moving sign that is in violation of the standards set forth in the Land Development Code for Louisville and Jefferson County. Changing image signs (includes electronic changeable copy signs and time and temperature signs) shall conform to the following standards: 1. All changing image signs under five (5) square feet in area with no more than one (1) line of text shall not exceed a rate of change of once per four (4) seconds. 2. All changing image signs over five (5) square feet in area and/or with more than one (1) line of text shall not exceed a rate of change in excess of once per 20 seconds. 3. Changing image signs with a rate of change in excess of the restrictions set forth in numbers 1 & 2 above or signs with video displays, shall require approval from the Planning Commission or designee. The Planning Commission review shall include at a minimum the following issues: a. Characteristics of the adjacent street (traffic speed, number of lanes, functional class, etc.). b. Proximity to another changing image sign or sign with a video display. c. Dimensions of the proposed signs. d. Number of lines of text. e. Proximity to residential development. f. Legibility of text. Freestanding or attached signs that include changing image signs shall not be closer than 300 feet to a residentially zoned district unless the residentially zoned property is used for a non-residential purpose (e.g. church or school) or the changing image sign is not visible to the residentially zoned property. All changing image signs (including signs with a video display method) shall come equipped with automatic dimming technology which automatically adjusts the sign's brightness based on ambient light conditions. The purpose of this auto dimming technology is to decrease the light level output from a day time level to a night time level, which is typically 0.3 footcandles above ambient light levels. Changing image signs with a video display method shall require a Conditional Use Permit approved by the Board of Zoning Adjustments and shall be prohibited within the Neighborhood, Traditional Neighborhood and Village Form Districts. Permanent on-premises signs, which revolve, rotate or move shall be permitted on non-residentially used property only and no such sign shall move faster than one cycle every ten (10) seconds. Signs, which revolve, rotate or move shall not be permitted within the Neighborhood, Traditional Neighborhood, Traditional Marketplace Corridor and Village Form Districts.

**Comments:** OPEN SIGN MUST STAY SOLID AT ALL TIMES. SIGN MAY NOT FLASH OR SCROLL.

**Location:** FRONT

**Responsible:** BOTH

Subject violation needs to be in compliance on or before July 06, 2015 to avoid additional fines and court action.

**96 NON-PERMITTED USE-COMMERCIAL**

Chapter 2.4.1-6/Article 6.1-10) Non-Permitted Use: You are allowing a non-permitted use to exist on the above referenced commercial property. This is in violation of The Land Development Code for Louisville and Jefferson County (Chapter 2.4.1-6). OR You are allowing a non-permitted use to exist on the above referenced commercial property. This is in violation of The Development Code for Louisville and Jefferson County (Article 6.1-10).

**Comments:** YOU HAVE ESTABLISHED A BEER GARDEN ON C-1 ZONED PROPERTY WITHOUT FIRST OBTAINING A CONDITIONAL USE PERMIT FROM LOUISVILLE METRO PLANNING AND DESIGN DEPARTMENT.

**Location:** REAR

**Responsible:** BOTH

Subject violation needs to be in compliance on or before July 06, 2015 to avoid additional fines and court action.

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**Louisville-Jefferson County Metro Government**  
**Department of Codes & Regulations**

**Property Maintenance Division**  
 444 S. 5th Street, Suite 200 - Louisville, KY 40202

Phone: (502)773-2140 Email: John.Ernst@louisvilleky.gov Web Site: louisvilleky.gov/ipl/

Case No.: 15PM5570-2600596

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**Z265 CONDITIONAL USE PERMIT**

Chapter 11.5A.1 D Conditional Use Permit: A Conditional Use Permit shall be approved only on the basis of conditions established by the Board to ensure that the proposed conditional use will not adversely affect the use of surrounding properties, and the development plan approved by the Board. The permit shall be valid only for the location and area shown on the approved development plan. All construction and operations must be conducted in accordance with the approved plan and conditions attached to the Conditional Use Permit. The Planning Director is authorized to approve minor development plan modifications consistent with the intent of the approved Conditional Use Permit.

**Comments:** YOU HAVE ESTABLISHED A USE WITHOUT THE APPROVAL OF A CONDITIONAL USE PERMIT FOR THIS LOCATION FOR THE PURPOSE OF ALCOHOL CONSUMPTION.

**Location:** REAR

**Responsible** BOTH

Subject violation needs to be in compliance on or before July 06, 2015 to avoid additional fines and court action.

JOHN ERNST

Inspector  
 (502)773-2140  
 John.Ernst@louisvilleky.gov

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ISAOPERR1007



**BOARD OF ZONING ADJUSTMENT  
CASE NO. \_\_\_\_\_**

**IN RE: LIQUOR PALACE 3, INC., Appellant  
5013 Poplar Level Road  
Louisville, Kentucky 40219**

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DESIGN SERVICES

**GROUND FOR THE APPEAL FROM  
CEASE AND DESIST ORDER**

By Cease and Desist Order/Notice dated June 8, 2015, copy attached, the Department of Codes & Regulations, Property Maintenance Division, issued at the insistence and bequest of a field agent/investigator for the Department of Codes & Regulations, Division of Alcoholic Beverage Control (ABC), 'Liquor Palace 3, Inc., Appellant herein, was ordered by July 6, 2015, prior to expiration of the applicable appeal period, to stop using its licensed premises in alleged violation the Land Development Code, Chapter 2.4.1-6/Article 6.1-10 and Chapter 11.5A.1 D. Specifically, Appellant is alleged to be operating a "beer garden," whatever that is, on its premises without having a conditional use permit therefor. Putting it another way, it is claimed that Appellant is using its premises for the purpose of alcohol consumption "without the approval of a conditional use permit." The Department, by and through its above named Divisions, is wrong for the reasons hereinafter set forth.

1. The issue of drinking on the subject premises was addressed before this body in Docket No. B-254-96, in which Ann Gregg, d/b/a Ace's Liquors, at 5013 Poplar Level Road, Louisville, Kentucky 40219 appealed from a Notice of Violation and Order to Stop Use issued by the Division of Zoning Enforcement based upon an illegal and improper use of the premises, i.e., allowing drinking on-premises. After hearing, the appeal was approved and the Notice and Order were overruled/reversed. The sum and substance of the determination is that non-conforming use rights exist on the licensed premises to allow on-premises drinking of alcoholic beverages, including, without limitation, malt beverages. See attached November 18, 1996 action. This Order clearly establishes that no Conditional Use Permit is required and it will be established, if necessary, that the current owner acquired the package liquor store from Ms. Gregg and that the premises have been used as a package liquor store and has allowed the continuing consumption of beer/malt beverages on the premises without interruption and without abandonment.

2. The Divisions which have sought to interject themselves in the business affairs of the Appellant fall under the same Department. They share information and are both located on the same floor, the Second, at 444 South Fifth Street in Louisville, Kentucky. Certain field agents/investigators of ABC attempt from time to time to enforce the provisions of the Land Development Code. In the instant case, Mr. Roby, one such inspector, has spent countless hours harassing Appellant and issuing citation after citation in bad faith, including claims of improper use of the subject premises. Those premises include the land and building in and upon which Appellant's licensed businesses are being operated. Those businesses include a retail package liquor store, a nonquota retail malt

ISAPPELLANT

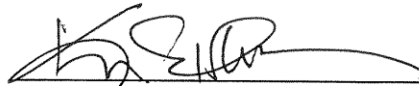
beverage package license and an NQ 4 malt beverage drink license which permits the sale of malt beverages for consumption on the premises. Rather than citing Appellant for allowing consumption of beer on the premises, ABC should read its own ABC License Detail, indicating that non-conforming right exist on the site to allow on-premises consumption of malt beverages. See attached ABC License Detail on Appellant.

3. Failure to recognize and apply Appellant's non-conforming use rights constitute a denial of its Kentucky and Federal entitlement to due process and to equal protection of the laws.

4. The harassment which has led to the deluge of Notices of Violation and other fraudulent citations constitute arbitrary action under KY. CONST. § 2.

5. If, as represented to the general public at large, that the purpose of zoning laws, state and local alcoholic beverage laws and regulations and local ordinances governing a smoking ban is for the public health and safety, then Appellant and all others similarly situated are entitled to have them applied and interpreted in a uniform manner. They are not.

6. The grounds set forth above are not intended to be all-inclusive and Appellant reserves the right to supplement the foregoing as facts supporting additional grounds are discovered.



Kenneth S. Handmaker  
MIDDLETON REUTLINGER  
401 South Fourth Street - Suite 2600  
Louisville, Kentucky 40202  
(502) 584-1135  
E-mail: [khandmaker@middletonlaw.com](mailto:khandmaker@middletonlaw.com)

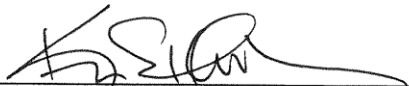
Attorney for Liquor Palace 3, Inc.

#### CERTIFICATE OF SERVICE

It hereby is certified that a copy hereof was served by hand delivery upon Mr. John Ernst, Inspector, Department of Codes & Regulations, 444 S. Fifth St., Suite 200, Louisville, Kentucky 40202 on this July 8, 2015.

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Attorney for Appellant

-2-

15APPEAL1007



**JEFFERSON COUNTY, KENTUCKY**  
**DEPARTMENT OF PLANNING AND ENVIRONMENTAL MANAGEMENT**  
**DIVISION OF PLANNING AND DEVELOPMENT SERVICES**

DAVID L. ARMSTRONG  
 County Judge/Executive

ADRIAN P. FREUND, AICP  
 Department Director

R. WAYNE BENNETT, AICP  
 Division Director

CHARLES A. DAVIS  
 Assistant Director

LETTER OF TRANSMITTAL

DATE: DECEMBER 3, 1996

Mary Hentz  
 County Building Department  
 301 Fiscal Court Building  
 Louisville, Kentucky 40202

To Whom It May Concern:

The Jefferson County Board of Zoning Adjustment, meeting in executive session took the following action.

DOCKET NO B-254-96

DATE ACTION  
 WAS TAKEN: NOVEMBER 18, 1996

Variance <input type="checkbox"/>	Conditional Use Permit <input type="checkbox"/>	Appeal <input checked="" type="checkbox"/>	Modification <input type="checkbox"/>		
ACTION TAKEN	Approved <input checked="" type="checkbox"/>	Approved On Condition <input type="checkbox"/>	Approved In Part <input type="checkbox"/>	Denied <input type="checkbox"/>	Denied In Part <input type="checkbox"/>

PLANS ENCLOSED: YES  NO

MINUTES: ENCLOSED:  WILL FOLLOW UPON APPROVAL:

A copy of this transmittal letter has been sent to the applicant. If you need any further information, please do not hesitate to contact me.

Ken Baker  
 Planner II

LOUISVILLE AND JEFFERSON COUNTY PLANNING COMMISSION

531 COURT PLACE • SUITE 900  
 LOUISVILLE, KENTUCKY 40202-3396

Phone 502-574-6230

FAX 502-574-8129

PRINT ON RECYCLED PAPER

JEFFERSON COUNTY BOARD OF ZONING ADJUSTMENT

NOVEMBER 18, 1996

**DOCKET NO. B-254-96**

**Appellant:** Ann Gregg, d.b.a. Ace's Liquors

**Subject:** An appeal of a Notice of Violation issued by the Division of Zoning Enforcement based upon alleged non-conforming rights to allow drinking in a liquor store.

**Premises affected:** On property known as 5013 Poplar Level Road and being in unincorporated Jefferson County.

**Appearances - Administrative Official**

LeRoy Jewell, Zoning Enforcement Officer, Jefferson County Code Enforcement Division, 531 Court Place, Suite 900, Louisville, Kentucky 40202

**Appearances For Appellant:**

Bill Bardenwerper, 8311 Shelbyville Road, Louisville, Kentucky 40222, who submitted an affidavit from Sam Seifert

**Appearances-Interested:**

No one.

**Appearances Against Appellant:**

No one.

On September 24, 1996, the Jefferson County Division of Zoning Enforcement issued a Notice of Violation and Order to Stop Use because it would not comply with the Zoning District Regulations.

On October 24, 1996, Ann Gregg, d.b.a. Ace's Liquors filed an appeal from a Notice of Violation issued by the Division of Zoning Enforcement based upon alleged non-confirming rights to allow drinking at a liquor store.

On November 18, 1996, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected and the existing and proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

A video and map of the site and surrounding area were shown.

JEFFERSON COUNTY BOARD OF ZONING ADJUSTMENT

NOVEMBER 18, 1996

**DOCKET NO. B-254-96 (CONTINUED)**

Shari Cooper, Court Reporter, recorded the testimony given in the public hearing.

After the public hearing and a further discussion of the case by the members of the Board in open executive session, on a motion by Member Tonini, seconded by Member Bell, the following resolution was adopted:

**WHEREAS**, the Board finds that the subject site is zoned C-1 Commercial; that the existing use is a use which is permitted in this zone, that the business has operated as a liquor store for 30 years; that the Carons Directories list the use from 1967 through the present as Ace Liquors, the current occupant; that the C-1 zoning classification in effect in 1963 listed package liquor stores as a permitted use and did not prescribe whether alcoholic beverages could be consumed on premise; that an amendment to the regulations in 1979 created the current listing that prohibits on-premise consumption of alcoholic beverages; that based upon the file of this case, the staff report and evidence and testimony submitted at the hearing it is determined that non-conforming use rights exist on the site for the appellant to allow on-premise drinking of alcoholic beverages;

**WHEREAS**, the Board finds that the Notice of Violation and Order to Stop Use issued by the Jefferson County Division of Zoning Enforcement was proper,

**NOW, THEREFORE, BE IT RESOLVED**, that the Notice of Violation and Order to Stop Use is hereby **OVERRULED** and the appeal is **APPROVED**.

The vote was as follows:

YES: Members Tonini, Bell, Korfhage, Kline, and Drago  
NO: Members Troutman and Henderson  
NOT VOTING: No one.

**JEFFERSON COUNTY BOARD**

**DOCKET NUMBER B-254-96**    **Public Hearing Date:** NOVEMBER 18, 1996

**Applicants:**                    ANN GREGG, dba ACE LIQUORS

**Subject of Request:**        An appeal of a Notice of Violation issued by the Division of Zoning Enforcement based upon alleged non-conforming rights to allow drinking at a liquor store.

**Premises Affected:**        On property known as 5013 Poplar Level Road and being in unincorporated Jefferson County.

**Existing Use and Zoning:**        Liquor Store; C-1

**Surrounding Land Uses and Zoning:**

North - Commercial; C-1

South - Commercial; C-1

East - Commercial; C-1

West - Commercial; C-2

(See attached land use map for specific location and uses).

**Related cases:**        None

\*\*\*\*\*

On September 24, 1996, the Jefferson County Division of Zoning Enforcement issued a Notice of Violation and Order to Stop Use for on-premise drinking of alcoholic beverages in a C-1 Commercial zone. The appellant filed an appeal of this decision to the Board of Zoning Adjustment on October 24, 1996. The appellant is appealing this decision on the basis of non-conforming rights.

The appellant states: "This property has non-conforming use rights."

**STAFF ANALYSIS:** The following sections of the Louisville and Jefferson County Zoning District Regulations appear to be applicable to this case. The full text of these sections may be found within the Louisville and Jefferson County Zoning District Regulations

Article 3, Zoning District Rules, C., 1. and 2., a.

Section 6.3, C-1 Commercial District, C., 6.

JEFFERSON COUNTY BOARD OF ZONING ADJUSTMENT STAFF REPORT

NOVEMBER 18, 1996

DOCKET NO. B-254-96 (CONTINUED)

Section 8.3, Non-Conformance.

In addition, KRS 100.253 is the State statute which deals with non-conforming uses.

The Zoning District Regulations indicate that a non-conforming use is any established activity existing at the time of enactment of any zoning regulation which would not permit such activity. A non-conforming use may be continued until it is abandoned, but there shall be no change of the non-conforming activity which would create non-conformance with regulations beyond that existing at the time the non-conformity began. There shall be no increase in the floor area or the land area devoted to a non-conforming use nor other enlargement or extension beyond the scope and area that existed at the time the non-conformity began.

The staff has researched the zoning on the site and finds that it was first zoned 'A' - One Family from 1943 until 1953. From April of 1953 until February of 1958, the site was zoned D-1. On March 8, 1963, the Zoning District Regulations were revised; the D-1 district became the C-1 Commercial district. The site has remained C-1 since that time. The current C-1 zoning classification allows "Package liquor stores, where alcoholic beverages are not consumed on the premises." However, the C-1 zoning classification in effect in 1963 listed as a permitted use: "Package liquor stores." It did not prescribe whether alcoholic beverages could be consumed on premise. An amendment to the regulations in 1979 created the current listing that prohibits on-premise consumption of alcoholic beverages.

The staff has researched the available *Caron's Directories* in the offices of the Planning Commission. The first listing for 5013 Poplar Level Road was in 1964. The occupant in that and the following year is listed as Little Pigs of America restaurant. In 1966, the site is listed as vacant. From 1967 through the present, the site is listed as Ace Liquors, the current occupant.

Although the current zoning regulations do not allow on-premise consumption of alcoholic beverages in a C-1 district, it appears that when Ace Liquors was established, in 1967, the zoning regulations at the time did not prohibit it. To establish non-conforming rights, the appellant must present information which proves that alcoholic beverages have been consumed on the premises since before the time the C-1 regulations were changed in 1979.

**JEFFERSON COUNTY BOARD OF ZONING ADJUDICANT STAFF REPORT**

**NOVEMBER 18, 1996**

**DOCKET NO. B-254-96 (CONTINUED)**

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

1. If any rights exist on the site for the appellant to allow on-premise drinking of alcoholic beverages.
2. If the Notice of Violation issued by the Jefferson County Division of Zoning Enforcement was proper.



EB JEP

5013 Poplar  
LEVEL

### Permit Detail



Louisville-Jefferson County Metro Government  
**Department of Codes and Regulations**

Licenses & Permits /ABC  
 444 S. 5th Street  
 Louisville, KY 40202  
 502.574.6230  
[www.louisvilleky.gov/ipj/LNP/](http://www.louisvilleky.gov/ipj/LNP/)

### ABC License Detail

License Number	6895	Issued Date	11/18/2004	Expiration Date	02/28/2016
Contractor:	LIQUOR PALACE 3, INC 14619 INSPIRATION COURT LOUISVILLE, KY 40245-	Owner:	LIQUOR PALACE 3, INC 14619 INSPIRATION COURT LOUISVILLE, KY 40245-		
Application Name	LIQUOR PALACE 3	Category Type	Liquor Store	Zoning	C1
Own/Lease	LEASE	Lease Expires	06/30/2018		
Comments:	NON-CONFORMING RIGHTS EXIST ON THE SITE TO ALLOW ON-PREMISE CONSUMPTION OF MALT BEVERAGE ONLY. (NO OUTDOOR CONSUMPTION OF BEER.) SECURITY DETAIL REQUIRED BY AGREED ORDER ON THURSDAYS, FRIDAYS AND SATURDAYS FROM 4 P.M. UNTIL 8 P.M.				

### Endorsement List

Endorsement Type	Status	Issue Date	Initial By	Initial Date	Comments
Malt Beverage	Active		CHORN	11/18/2004	[ENRSTAT=ACTIVE]
Quota Retail Package	Active		CHORN	11/18/2004	[ENRSTAT=ACTIVE]
Liquor Package 12-2AM	Active		KDAVIS	02/04/2009	[ENRSTAT=INACTIVE]
Malt Beverage 12-2AM	Active		KDAVIS	02/04/2009	[ENRSTAT=INACTIVE]
Malt Beverage 12-4AM	Active		KDAVIS	02/06/2009	[ENRSTAT=ACTIVE]
Liquor Package 12-4AM	Active		KDAVIS	02/06/2009	[ENRSTAT=ACTIVE]
NQ Retail Malt Beverage Package	Active			11/18/2004	
NQ Retail Malt Beverage Package (12 am till 2 am)	Active			02/04/2009	
Quota Retail Package	Active			11/18/2004	
Quota Retail Package (12 AM - 2 AM)	Active			02/04/2009	
NQ4 Retail Malt Beverage Drink	Active				
NQ Retail Malt Beverage Combo (Package and Drink)	Active			02/04/2015	

PERFORMING, AS OF A MOVIE OR PLAY. ▾ *v.* -miere*a*, -mier*ing*, -mier*es* or -mièred, -miè*ring*, -miè*res* —*tr.* To present the premiere of. —*intr.* 1. To have the premiere. 2. To make a first appearance in a public performance. ♦ *adj.* First or paramount; premier. [Fr. *première* < fem. of *premier*, first. See PREMIER.]

**USAGE NOTE** In entertainment contexts the verb *premiere* has by now become the standard way of saying “to introduce to the public,” though some Panelists do not like this usage. The example *The Philharmonic will premiere works by two young Americans* was acceptable to 77 percent of the Panelists in 1999, up from 14 percent in 1969 and 51 percent in 1987. But only 25 percent of the Panelists in 1999 (up from 10 percent in 1987) accepted extension of the verb to nonentertainment contexts, as in *Last fall the school premiered several new degree programs.*

**pre•mière dan•seuse** (prī-mîr' dän-sœz', -myâr') *n.*, *pl.* **pre•mières dan•seuses** (prī-myâr' dän-sœz') A woman who is the principal dancer in a ballet company. [Fr. : *première*, fem. of *premier*, first + *danseuse*, fem. of *danseur*, dancer.]

**pre•mil•le•nar•i•an** (prē-mîl'ə-nâr'ē-ən) *adj.* Of or relating to premillennialism. ♦ *n.* A person who believes in premillennialism. —**pre•mil•le•nar'•i•an•ism** *n.*

**pre•mil•len•ni•al** (prē'mî-lën'ē-əl) *adj.* Of or happening in the time before the millennium. —**pre'mil•len'ni•al•ly** *adv.*

**pre•mil•len•ni•al•ism** (prē'mî-lën'ē-ə-lîz'əm) *n.* The belief that the Second Coming of Jesus will immediately precede the millennium. —**pre'mil•len'ni•al•ist** *n.*

**premise** (prēm'is) *n.* also **premiss** (prēm'is) 1. A proposition upon which an argument is based or from which a conclusion is drawn. 2. *Logic a.* One of the propositions in a deductive argument. *b.* Either the major or the minor proposition of a syllogism, from which the conclusion is drawn. 3. **premises** *Law* The preliminary or explanatory statements or facts of a document, as in a deed. 4. **premises a. Land and the buildings on it. *b.* A building or part of a building. ♦ *v.* -ised, -is*ing*, -is*es* —*tr.* 1. To state in advance as an introduction or explanation. 2. To state or assume as a proposition in an argument. —*intr.* To make a premise. [ME *premissa* < OFr. < Med.Lat. *praemissa* (*propositiō*), (the proposition) put before, *premise* < Lat., fem. p. part. of *praemittere*, to set in front : *prae-*, *pre-* + *mittere*, to send.]**

**pre•mi•um** (prē'mē-əm) *n.* 1. A prize or award. 2. Something offered free or at a reduced price as an inducement to buy something else. 3. A sum of money or bonus paid in addition to a regular price, salary, or other amount. 4. The amount paid, often in addition to the interest, to obtain a loan. 5. The amount paid or payable, often in installments, for an insurance policy. 6. The

14. The maximum number of hours of operation of a stationary power plant is restricted. Quality management discipline typically does not exceed the typical useful life of a stationary power plant is up to 20 years. (Truckee, Calif.)

**private** An electrical facility that, regardless of source, is operated by a private owner or lessee, and its function is the provision of a permitted use(s) on the land located. (San Jose, Calif.)

**backup** An electrical facility that is operated as a backup of electrical distribution system or transmission system under circumstances beyond the control of the utility. Electrical generating where an inter-contract has been executed and considered stand-by or reserve power generation facility. (San Jose, Calif.)

**transportable peaker** A portable electrical power generation unit mounted on a trailer or placed

in an association typical of presettlement ecosystems, or areas with rare, threatened, endangered, or special species. (Johnson County, Iowa)

■ **prefabricated housing unit** (See *manufactured housing*)

■ **premises** (See also *lot*) A building lot with the required front, side, and rear yards for a dwelling. (Grand Forks, N.Dak.)

A lot, together with all buildings and structures thereon. (El Paso, Tex.; North Liberty, Iowa; Wood River, Ill.)

Land and the improvements thereon. (Hedwig Village, Tex.)

Any structure, parcel, real estate, or land or portion of land whether improved or unimproved, including adjacent parkways, parking strip, sidewalks, and streets. (Truckee, Calif.)

An area of land occupied by the buildings or other physical uses which are an integral part of the activity conducted upon the land and such open spaces as are arranged and designed to be used in conjunction with that activity. (Loveland, Colo.)

A lot with or without buildings. (Multnomah County, Ore.)

intended to be preserved in their state. (Truckee, Calif.)

Areas intended to remain in a primarily natural or undeveloped state to provide resource protection and opportunities for passive recreation and environmental education for present and future generations. (Rancho Miraga, Calif.)

■ **principal residence** The residence where a person resides seven months or more in a 12-month period. (Danville, Calif.)

■ **print shop** (See also *copy shop*) A facility for the custom reproduction of written or graphic materials on an order basis for individuals or businesses. Typical processes include, but are not limited to, photocopying, blueprinting, similes sending and receiving, and digital offset printing. (Clark County, Nev.)

An establishment in which the primary business consists of duplicating and printing services using photocopy, blueprinting or offset printing equipment, in publishing, binding, and engineering. (Loveland, Colo.)

■ **printing plant** (See also *in definitions*) A commercial printing operation involving a process that is not offset printing, imprinting, repro-

APA











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October 20, 2015

**HAND DELIVERED**

Mr. Steve Hendrix  
Planning and Design Supervisor  
Louisville Metro Government, Develop Louisville  
444 South Fifth Street, Suite 300  
Louisville, Kentucky 40202

**Re: Liquor Palace 3, Inc.  
Case No. 15 Appeal 1007**

Dear Steve:

At Chairman Proffitt's request, I have used best efforts, including information from a colleague's prior open records request directed to Louisville Metro ABC, to identifying citations issued by that agency to the licensee and the disposition thereof for the period starting on November 18, 2004, the date on which it first received City licenses, to October 5, 2015, the hearing date of the above appeal. Enclosed is a spreadsheet representing what I found for the span of nearly eleven years. Based upon my reading of the twelve (12) references to a provision of the Kentucky Revised Statutes and one (1) to Louisville Metro Code of Ordinances, eleven (11) relate, directly or indirectly, to the outside consumption of alcoholic beverages or non-conforming use on the premises. The enclosure is self-explanatory but if additional information is needed, please contact me.

Sincerely,

**MIDDLETON REUTLINGER**

Kenneth S. Handmaker

KSH:lks  
Enclosure

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15 APPEAL 1007



**Liquor Palace 3, Inc.  
Citations Issued by Louisville Metro ABC  
November 18, 2004 – October 5, 2015**

Citation Date	KRS Alleged Statutory Violation(s)	Disposition
February, 2008	243.080(1)	Payment of fine
12/27/2013	243.620 243.240 243.020(1)	Plea of no contest and payment of fine
02/14/2014	243.620 (1) 243.240 243.020 243.088 LMCO 113.21 (Outside consumption)	Charges dismissed in exchange for agreement to provide security (off-duty LMPD officer) from 4-8 p.m. on Thursday, Friday and Saturday
03/21/2015 03/31/2015 04/04/2015	243.080 243.020 (2 <sup>nd</sup> Offense) (Drinking alcoholic beverages outside premises) 243.020 (3 <sup>rd</sup> Offense) (Drinking alcoholic beverages outside premises)	Fine paid for KRS 243.080. Other citations relating to drinking alcoholic beverages outside premises dismissed
06/12/2015	243.020	Citation was for "drinking outside the location in a back patio/beer garden area. This portion of the location does not have conforming rights." Appeal taken and pending. Motion to dismiss citation is pending.

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