

Board of Zoning Adjustment

Staff Report

June 26th, 2023



Case No:	23-NONCONFORM-0010
Project Name:	Nonconforming Rights
Location:	10510 National Turnpike
Parcel:	105100800000
Owner:	James Gerkins
Applicant:	James Gerkins
Jurisdiction:	Louisville Metro
Council District:	13 – Dan Seum Jr.
Case Manager:	Mark Pinto, Associate Planner

REQUEST(S)

- To determine whether a property has nonconforming rights for heavy truck repair (welding, garage work, repairs of trucks and equipment).

CASE SUMMARY/BACKGROUND

The subject property is zoned R4 single-family residential and is located in the village form district. The site is approximately 0.98820 acres and contains a single-family residence and a truck repair business in the rear accessory structure, repair garage. The applicant stated the repair garage was destroyed due to a fire on April 15th, 2022. According to historic zoning maps the property was zoned One-Family in 1943 and is currently zoned R4 Single-Family Residential. However, Planning Commission Docket #10-2-45 rezoned several properties from A One-Family Residential to D-2 Commercial along the intersection of Mt. Holly Rd and National Turnpike. The abutting property to the immediate south is presently zoned C-2 Commercial. Historic zoning maps from 1945, 1954, 1958, 1965, and related cases maps for 1965-1971, 1980-1984, and 1984-2001 shows the zoning line for D-2 Commercial, later classified as C-2 Commercial, encroaching onto the subject property 10510 National Turnpike.

Jefferson County zoning regulations in 1946 did permit automobile repair garages, provided that no vehicles being repaired or waiting to be repaired be parked or stored on the public way, in required yards, or on the premises outside of the building and that there be no open storage of wrecked or dismantled cars or sued parts on the public way or on the premises. A zoning map from Louisville and Jefferson County Planning Commission printed in 2000 shows the C-2 Commercial zoning line no longer encroaching into the subject property. Please reference the collection of historic zoning maps for details. These maps have been attached to the agenda item.

The applicant submitted 55 signed affidavits of individuals and neighbors attesting to the use's existence dating back to various time periods. Please see the combined list of signed affidavits, attached to this agenda item. The applicant also submitted an employer's report from 4/30/1959 under the firm name James Mack Gerkins & Juanita Gerkins (owners) addressed to Route 1 Box 164, Fairdale Ky. The report shows a list of employees who allegedly worked on the premises and their wages.

A similar employer report was submitted by the applicant dating back to October 17th, 1962. The employer's name is listed as James Mack Gerkins, addressed to 10510 National Turnpike, Fairdale Ky with firm name "James Mack Gerkins Trucking." An insurance document from the Kentucky Inspection

Bureau dated 1970 was submitted addressed to J.M Gerkins at 10510 National Turnpike, Fairdale Ky. Under the “description of property covered” section, it states an approved roof, on the one-story concrete block building occupied as garage-machine shop on contents consisting principally of automotive equipment which while in the above described building.” An invoice numbered 57 dated June 28th, 1961, received from James Mack Gerkins was also submitted. The invoice is date stamped with the words “Byerly Motors INC.”

An insurance document invoice from Nitzken & Burns Insurance Agency dated November 16th, 1977, was also submitted stating the property coverage as Building and Contents. An invoice from Virgins Auto Parts addressed 10512 National Turnpike dated March 8th, 1983, was submitted with items descriptions as “Exast Spts” and “Muffler CL.” Part numbers are also listed. Another insurance document from Nitzen & Burns Insurance Agency dated 12/23/68. The document describes the location of property covered as “On the one-story, concrete block building, approved roof occupied as Garage-Machine Shop, situated R10510 National Turnpike, Fairdale Ky... On contents consisting principally of automotive equipment while in the above described building.” An invoice from Virgins Auto Parts addressed 10512 National Turnpike dated December 2nd, 1982, was an item description of “CL Muffler,” part number is also associated. The applicant also submitted a deed from May 15th, 1997, that references the initial purchase of the property conveyed to “Mack M. Gerkins and Alice Juanita Gerkins by deed dated December 30th, 1943, recorded in Deed Book 2962, Page 11.” A collection of all historic documents has been attached to this agenda item.

Historic Zoning	
1943	A One-Family
1965-1979	R-4 Single Family
1980-1984	R-4 Single Family
1985-Present	R-4 Single Family

The applicant has applied for nonconforming rights for heavy truck repair (welding, garage work, repairs of trucks and equipment). At the time of this staff report, staff does not possess conclusive evidence to grant nonconforming rights for the use as requested. Based on Land Development Code (LDC) Section 1.3.1.F and pursuant to BOZA Bylaws and Policies, staff requested that the case go to BOZA to make a final determination on whether the property has nonconforming rights.

BOZA must determine whether the property has nonconforming rights for heavy truck repair (welding, garage work, repairs of trucks and equipment) use in the R-5 zone based on the following criteria:

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.

STAFF ANALYSIS

Staff researched historic aerials of the site along National Turnpike (previously Old National Turnpike Rd). An aerial from 1946 depicts what appears to be a large structure in the rear of the lot. The aerial photograph from 1946 suggests the repair garage was present on the site at this time. Historic aerials from 1946 leading up to present day show the same structure in the rear of the property. PVA (Property Value Administrator) records indicate the single-family residence was constructed in 1954. According to historic aerials, it appears the repair garage existed prior to the construction of the home. Aerial photographs of the property dating back to 1946 have been attached as an agenda item.

Staff located Planning Commission Docket #10-2-45 within historic Planning Commission Docket books. The report of the Zoning Committee is dated September 28th, 1945. The case rezoned several properties from A One-Family Residential to D-2 Commercial along the intersection of Mt. Holly Rd and National Turnpike (previously Old National Turnpike). The minutes from the case have been attached as an agenda item. A present zoning map is attached to this report. The abutting property to the

immediate south is presently zoned C-2 Commercial. Historic zoning maps from 1945, 1954, 1958, 1965, and related cases maps for 1965-1971, 1980-1984, and 1984-2001 shows the zoning line for D-2 Commercial, later classified as C-2 Commercial, encroaching onto the subject property at 10510 National Turnpike. A zoning map from Louisville and Jefferson County Planning Commission printed in 2000 shows the C-2 Commercial zoning line no longer encroaching into the subject property. A 1978 Fairdale Study Interim Report for Land Use and Zoning was also found showing the subject site could have been highlighted in red for commercial land use; however, the exact location of where the area classified as commercial land use is difficult to determine. Please reference the collection of historic zoning maps for details. The way in which the zoning line was angled in previous zoning maps could explain how the auto repair garage was able to be constructed on the site in accordance with Jefferson County zoning regulations. These maps have been attached as an agenda item.

Jefferson County zoning regulations in 1946 did permit automobile repair garages in the D-2 Commercial zone, provided that no vehicles being repaired or waiting to be repaired be parked or stored on the public way, in required yards, or on the premises outside of the building and that there be no open storage of wrecked or dismantled cars or used parts on the public way or on the premises. Regulations from this time did not specifically delineate heavy truck repair and auto repair as Land Development Code regulations do currently. Staff also researched historic Caron and Polk Directories. Caron City Directories from 1946-1947 list Mack Gerkins on Old National Pike Rd. Following the historic documents submitted by the application, Directory listings through the 1990s list Gerkins Auto Truck & Welding Serv at 10510 National Turnpike.

STAFF FINDINGS

Staff finds there is inconclusive evidence to determine that the property has nonconforming rights for the use of heavy truck repair (welding, garage work, repairs of trucks and equipment). Therefore, staff requested that the case go to BOZA to make a final determination on whether the property has nonconforming rights.

RELATED CASES

10-2-45: Rezoned properties along National Turnpike and Mount Holly Rd from A: One-Family to D-2 Commercial zoning.

22-NONCONFORM-0028: Previous nonconforming rights case submitted on October 19th of 2022. The case was denied due to inclusive evidence dating the use's existence since 1943.

23-NONCONFORM-0003: Nonconforming rights application was resubmitted. Applicant had missed their 30-day appeal period. The case was denied due to inclusive evidence dating the use's existence since 1943.

23-APPEAL-0001: An appeal of an administrative non-conforming rights decision. Application was withdrawn on April 10th, 2023.

TECHNICAL REVIEW

No technical review required.

INTERESTED PARTY COMMENTS

Staff has received no interested party comments.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the applicant’s request that the nonconforming use be recognized as an established activity which lawfully existed at the time of the enactment of any zoning regulation which would not permit such activity.

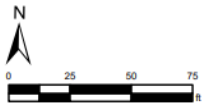
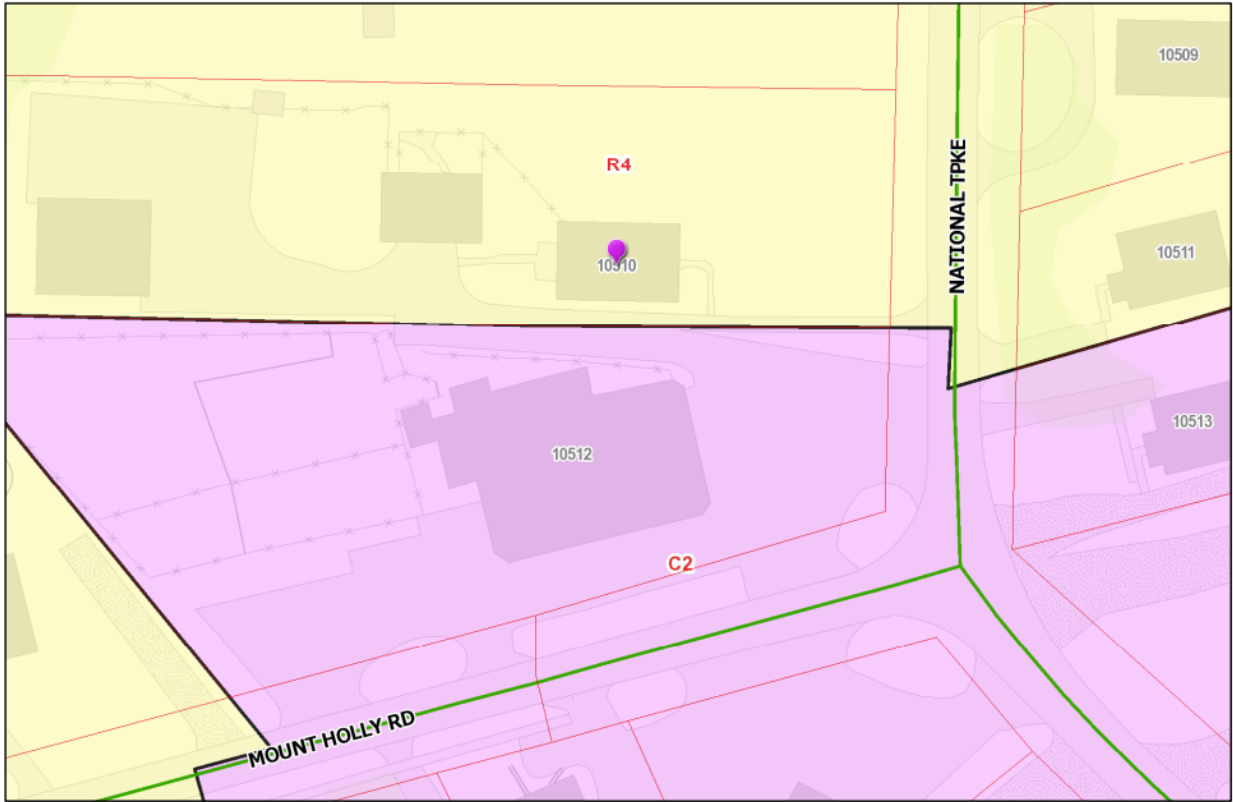
NOTIFICATION

Date	Purpose of Notice	Recipients
6/6/2023	Hearing before Board of Zoning Adjustment	1 st tier adjoining property owners
6/9/2023	Hearing before Board of Zoning Adjustment	GovDelivery for Council District 6
6/12/2023	Hearing before Board of Zoning Adjustment	Sign Posting

ATTACHMENTS

1. Zoning Map
2. Aerial Photographs
3. Site Photos

I. Zoning Map



10510 National Turnpike

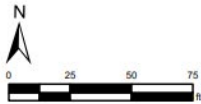
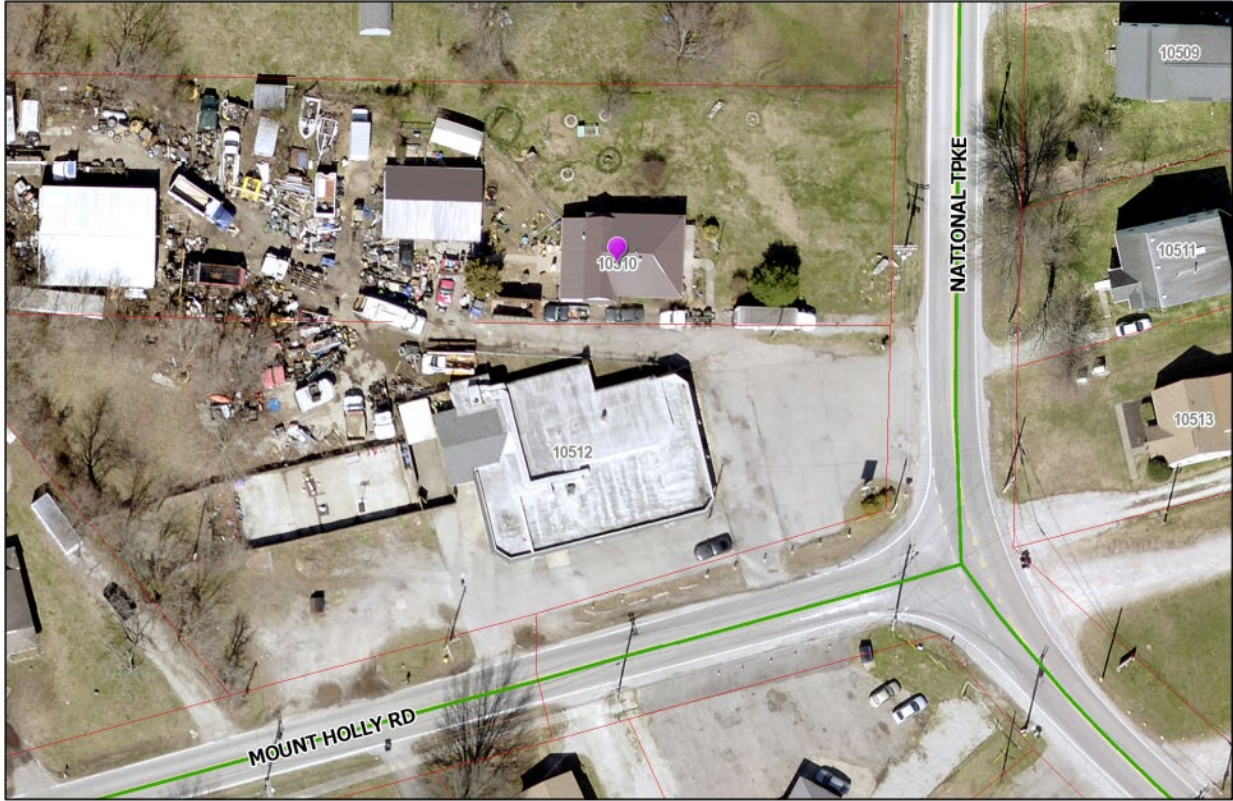
Friday, June 16, 2023 | 12:57:51 PM



LOJIC © 2023

This map is not a legal document and should only be used for general reference and identification.

II. Aerial Photo



10510 National Turnpike

Friday, June 16, 2023 | 12:58:59 PM



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This map is not a legal document and should only be used for general reference and identification.

III. Site Photos



Subject Site, 1442 S 22nd St.



Across the street from subject site.



Down National Turnpike from Site

Network: Jun 12, 2023 at 11:58:32 AM EDT
Local: Jun 12, 2023 at 11:58:32 AM EDT



10512 National Turnpike, at the intersection of Mt. Holly Rd and National Turnpike.