

**Board of Zoning Adjustment  
Staff Report  
October 3, 2016**



<b>Case No:</b>	16Appeal1004
<b>Project Name:</b>	Nonconformance
<b>Location:</b>	6908 Southside Drive
<b>Owner:</b>	Bivin Property, LLC, by Patricia Wuest
<b>Applicant:</b>	J. Buckley Enterprise, Inc. by Shane Keith
<b>Representative:</b>	Nickolas R. Pregliasco
<b>Size:</b>	0.07 acres
<b>Existing Zoning District:</b>	C-1
<b>Existing Form District:</b>	Traditional Neighborhood
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	21 – Dan Johnson
<b>Case Manager:</b>	Steve Hendrix, Planning Supervisor

**REQUEST**

An Appeal to establish nonconforming use rights for the indoor consumption of beer within a C-1 zoning district.

**CASE SUMMARY/BACKGROUND/SITE CONTEXT**

A Planning & Design Services Appeal application was submitted on April 18, 2016 in response to a Warning Notice from the Commonwealth of Kentucky Alcoholic Beverage Control that the store was allowing customers to drink on premises, however, Planning & Design Services was not able to process, since the notice was not from Louisville Metro.

The property owner then submitted a Nonconforming Rights Application on June 20, 2016 requesting the continuance of alcohol consumption at the package store within C-1 zoned property. On July 28, 2016, more documentation other than affidavits was requested by staff, but none was submitted.

The initial Appeal application was supplemented in order for the property owner to obtain nonconforming rights for beer consumption inside the package store within a C-1 zoned property

The base year for this particular parcel will be 1971, since in the former boundaries of the City Louisville. Since at least 1969, the previous owners of the store have stated that indoor alcohol consumption has continuously taken place. Other supporting affidavits were submitted from patrons and neighbors. Staff research shows that a package store was at this location in 1960.

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

	Land Use	Zoning	Form District
<b>Subject Property</b>			
Existing	Package Liquor Store with beer consumed inside.	C-1	Traditional Neighborhood
Proposed	Same	C-1	TN
<b>Surrounding Properties</b>			
North	Parking Lot, Papa John's Restaurant	C-1	TN
South	Lawn Mower Repair Shop	C-1	TN
East	Car Lot, Ruby's Restaurant	C-1, C-2	TN
West	Apartments, garages	R-5	TN

## **INTERESTED PARTY COMMENT**

None Received

**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.

The abandonment of a nonconforming use terminates the nonconforming use status. The burden of proof in a hearing before the 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 had 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.

Abandonment does not appear to have taken place.

### **ZONING HISTORY**

C-1

### **LAND USE HISTORY**

Package store since at least 1960, (Red Bull Drive-in Liquor).

## STAFF CONCLUSIONS

According to the past owners, some patrons, and various neighbors, indoor consumption of beer has continuously taken place at Kenwood Liquors since before 1969. Based upon this information, it would appear that the appellant would have nonconforming rights.

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 indoor consumption of beer?
2. If so, the Board will need to determine the exact area.

## NOTIFICATION

Date	Purpose of Notice	Recipients
9.15.2016	Notices ready to be mailed	Appellant, Adjacent Neighbors
9.16.2016	Sign Posted	Neighbors
9.23.2016	Legal Ad in paper	Circulation Area

## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph



