

# Board of Zoning Adjustment

## Staff Report

February 6, 2023



<b>Case No:</b>	20-APPEAL-0005
<b>Project Name:</b>	Marie Street Appeal
<b>Location:</b>	1433 Marie Street
<b>Owner/Appellant:</b>	Anthony Sermersheim
<b>Representative:</b>	Bardenwerper Talbot & Roberts, PLLC
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	6 – Vacant
<b>Case Manager:</b>	Chris French, AICP, Planning Supervisor

### **REQUEST(S)**

- Appeal of an administrative decision to deny nonconforming rights for contractor's shop and storage yard in the TNZD (Neighborhood General subarea)

### **CASE SUMMARY/BACKGROUND**

The Appellant's representative submitted a nonconforming rights application in 2018, under case number 18NONCONFORM1029. Staff reviewed this case and determined that there was insufficient information to recognize nonconforming rights for a contractor's shop and storage yard. This decision was completed and forwarded to the Appellant's representative on July 20, 2020. The appellant's representative submitted an appeal on August 20, 2020, which is within the 30-day appeal period.

In the appellant's nonconforming rights case the property is described as containing a 1,200 square foot concrete block contractor's building which contains an office and equipment storage for a landscape contractor business. In addition, the 0.5 acre property is fenced with a gravel lot that is used for storage of landscape materials and truck/equipment.

### **STAFF ANALYSIS/FINDINGS**

The following sections of the LDC are applicable to this case:

#### **Section 2.5.2**

Storage yard or contractor's shop, including but not limited to building, electrical, HVAC, landscape, and plumbing contractors; outdoor storage of material and equipment permitted

Staff analysis: The M-2 zone (2.5.2) is the lowest level zone that permits a contractor's shop with an outdoor storage yard use. In addition, the C-2 zones allows this use with a conditional use permit.

#### **Section 1.2.2 Definitions**

**Nonconformity (or Nonconforming)** -An activity or a building, structure or a portion thereof which lawfully existed before the adoption or amendment of the zoning regulation, but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located.

### Section 1.3.1 Use

- 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.

Staff Analysis: This property was located in the TNZD area which encompasses both the Old Louisville and Limerick neighborhoods. The subject property was rezoned in 2002 from R-7 to TNZD. The R-7 zone does not permit the contractor's shop and storage yard use. Since this property is within the Old City of Louisville, any nonconforming use, outside of those created through a rezone or change to the regulations would need to be dated back to 1971. Looking at the Caron's directories, a non-residential use was not listed in 1971. It is staff's understanding that this property was used by the State of Kentucky for a number of years and was eventually sold to a previous private property owner in 1991. Pursuant to KRS 100.361, any instrumentality of state government shall not require approval of the local planning unit for any proposal affecting land use of property. Therefore, the private use of the property began in 1991, and so the nonconforming right has to be dated back to 1991 and the use must continue forward to the present day. Based on information in the nonconforming rights application and other information available to staff it was determined that there was insufficient information to recognize nonconforming rights for the property for a contractor's shop and storage yard use.

### Caron's City Directories

Year	Use Listed
1971	No listing
1991	Vacant
1995	2 listing; Affordable Maid Service/Vacant
2000/2001	1 listing; Integrity Electric
2005	1 listing; L & J Properties Real Estate Management
2010	2 listing; Zaman Business SVC Inc. acting & bkpg genl serv/Zaman, Michelle D
2015	1 listing; Zaman, Michelle D.
2020/2021	1 listing; Zaman, Michelle D.

### Applicant Basis of Appeal

The applicant's appeal application provides one additional piece of information beyond what was submitted with the nonconforming rights case (18NONCONFORM1029). The appellant submitted an affidavit from Mark Herbener, who states that he purchased the property from the State of Kentucky in December 1990. He states in this affidavit the property was used as a contractor's shop since his purchase of the property until he sold it to the Appellant in September 2017.

Staff Analysis: The Caron's directories corroborate for a few years what is stated in the affidavit. Staff does not take affidavits alone in the review of nonconforming rights. There is still insufficient information for staff to recognize nonconforming rights for this property.

### **STAFF CONCLUSIONS**

Based on the information in the nonconforming rights application and in the appeal application staff's original conclusion that there is insufficient information to recognize nonconforming rights to a

contractor's shop and storage yard was correct and no error was made. The Board reviews information provided and can take into account testimony in its review of the appeal.

### **STANDARD OF REVIEW**

Pursuant to LDC 11.7.3 and KRS 100.257, the BOZA shall have the power to hear and decide cases where it is alleged by the applicant that there is error in any order, requirement, decision, grant, or refusal made by an administrative official in the enforcement of the zoning regulation.

The Board must determine if an error was made in the determination that the subject property does not have nonconforming rights to a contractor's shop in accordance with LDC section 1.3.1.

### **RELATED CASES**

18NONCONFORM1029

### **INTERESTED PARTY COMMENTS**

Staff has not received any interested party comments.

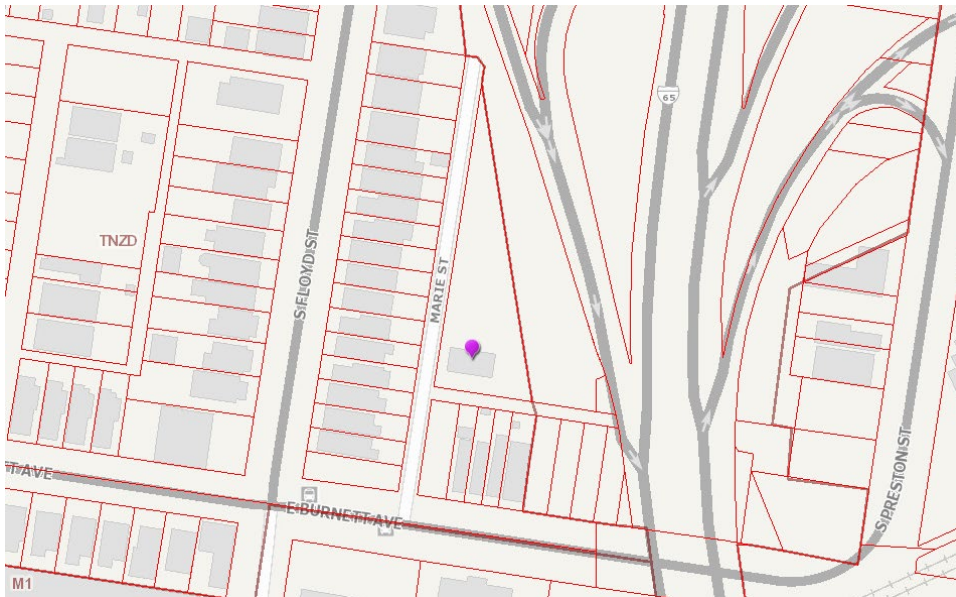
### **NOTIFICATION**

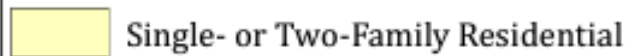
Date	Purpose of Notice	Recipients
1/20/2023	Notification of appeal of an administrative decision	Adjoining property owners
1/23/2023	Notice of appeal hearing	GovDelivery for Council District 6
1/26/2023	Notice of appeal hearing	Sign Posting
1/25/2023	Legal ad for notification of appeal of an administrative decision	Courier Journal - published in paper by Appellant

### **ATTACHMENTS**

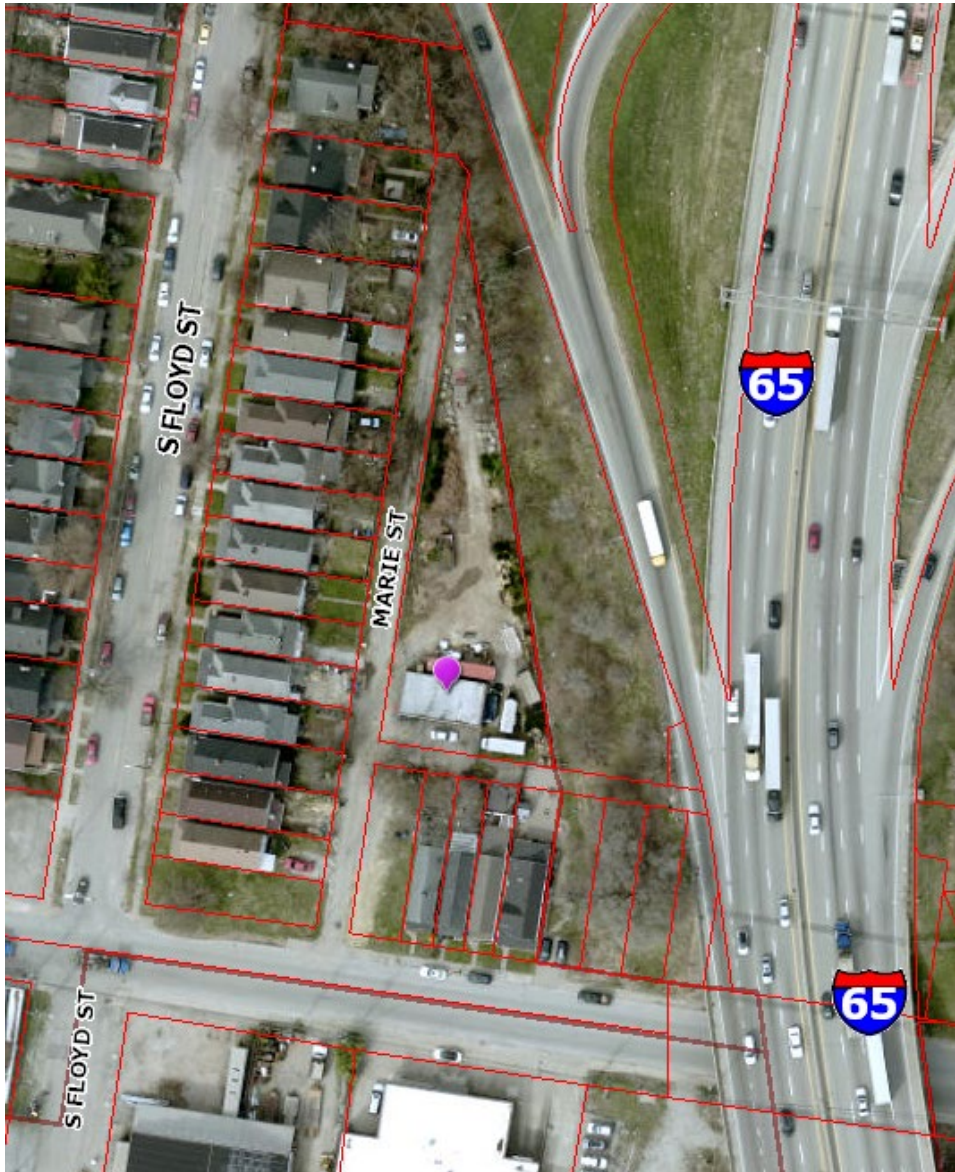
1. Zoning Map
2. Aerial Photograph
3. Site Photos

1. **Zoning Map**





2. Aerial Photograph





3. Site Photos

