

Board of Zoning Adjustment

Staff Report

May 15th, 2023



Case No:	23-NONCONFORM-0005
Project Name:	Nonconforming rights
Location:	3800 Cane Run Road
Owner:	Ricardo E. Acosta, Reinaldo Acosta
Applicant:	Ricardo E. Acosta
Jurisdiction:	Louisville Metro
Council District:	1 – Tammy Hawkins
Case Manager:	Ian Sexton, Associate Planner

REQUEST(S)

- To determine whether a property has nonconforming rights to operate as a Bar/Tavern.

CASE SUMMARY/BACKGROUND

The subject property is located within the M-2 industrial zoning district and the Traditional workplace form district. The site is approximately 0.59920 acres and is occupied by a one-story structure with a basement. The zoning on the site has changed numerous times in previous years. After years of industrial zoning on the property, there was an areawide re-zoning under docket number 9-88-63, changing the zoning from “E-4” Industrial to C-2 commercial. This property’s C-2 zoning continued until 1987 when another areawide rezoning occurred under docket number 9-1-87, changing the zoning from C-2 to Enterprise zoning. The zoning was changed again in 1994 with an area-wide rezoning, under docket number 9-65-94 that changed the zoning from EZ-1 to M-2. The property remained as a Bar/Tavern throughout these zoning changes until it was abandoned in 1990. This is supported by directory findings as well as a land use map from a zoning change of an adjacent property in 1975, this can be found on page 5 of the staff report.

Historic Zoning	
1943	“E-3” Heavy Industrial District
1954	“E-3” Industrial District
1958	“E-4” Industrial District
1965	C-2 Commercial
1969	C-2 Commercial
1987	EZ-1 Enterprise
1995	M-2 Industrial

The property owner applied to establish nonconforming rights for a Tavern/bar/Saloon on February 10th, 2023. Based on the information provided in the application and staff research, the property was used as a tavern/bar/saloon prior to 1963 when commercial uses were removed from industrial zones and continuously until 1990 when the use was abandoned. Staff informed the applicant that they did not have enough conclusive information to grant nonconforming rights at the administrative level. In addition, the areawide rezoning to EZ-1 in 1987 made the use conforming. The use became nonconforming in 1995 when the property was rezoned to M-2. There is a lack of information in the

directories to show that the Bard/Tavern use continued to the present day. Based on Land Development Code (LDC) Section 1.3.1.F, 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 a Bar/Tavern in M-2 zoning 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.

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/FINDINGS

The applicant submitted different pieces of evidence that supports their claim that the property was used as a tavern until 1990 when it appears based on the directories that the use of the property as a bar/tavern ceased. The applicant submitted a historic post card found inside the building that shows the exterior of the same building with the sign "Stumble Inn". The Boston Public Library dates the postcard, ca. 1930-1945. Additionally, the applicant submitted various directory excerpts from the Caron's directory as well as current photographs of renovations to the building as well as public health approval to sell food and ABC license application which indicates that the applicant/property owner has tried to

reinstate the discontinued use. Staff research included searching through the Caron directories, looking through historic zoning maps, looking through historic aerial photos and finding courier journal excerpts. By looking through the Caron directories staff was able to find, that the property had been used as a tavern/bar dating back from approximately 1951 to 1990 when it appears the use ceased.

STAFF RECOMMENDATIONS

Staff does believe that the property had nonconforming rights for a bar/tavern in the past and that the zoning changes over the years have brought the use into and out of conformance. The last rezoned in 1995 made a bar/tavern use nonconforming; however, staff did not find information that the bar/tavern use continued to the present day. The applicant has submitted information that he plans to open a bar/tavern use on the property.

RELATED CASES

Various area-wide rezonings: 9-88-63, 9-1-87, 9-65-94.

TECHNICAL REVIEW

No technical review required.

INTERESTED PARTY COMMENTS

Staff has not received any interested party comments.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the applicant request that the 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.

NOTIFICATION

Date	Purpose of Notice	Recipients
4/28/2023	Hearing before Board of Zoning Adjustment	1 st tier adjoining property owners
4/26/2023	Hearing before Board of Zoning Adjustment	GovDelivery for Council District 1
5/03/2023	Hearing before Board of Zoning Adjustment	Sign Posting

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Land use map from 9-79-75
4. Findings report is attached to the agenda

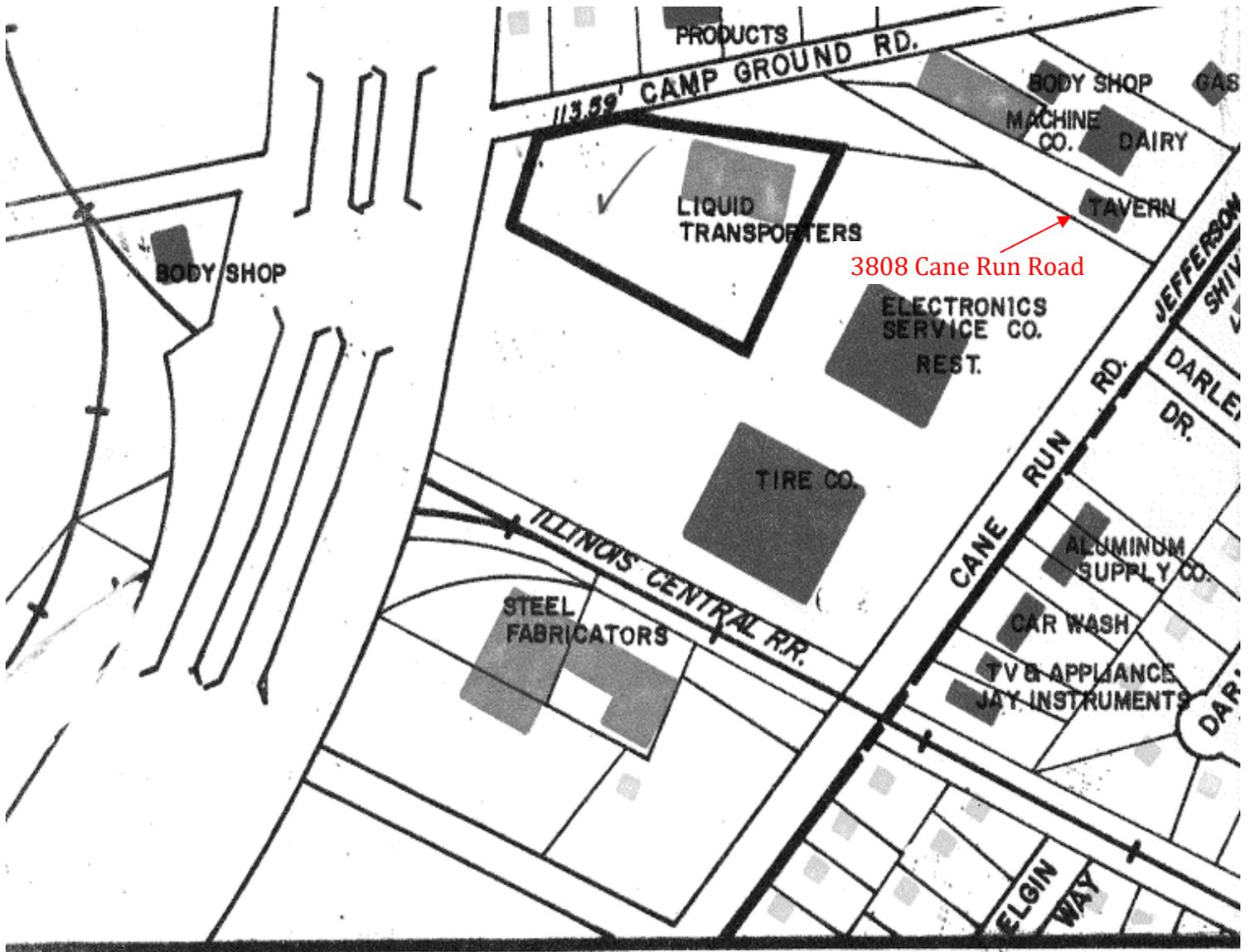
1. Zoning Map



2. Aerial Photograph



3. Land use map from docket #9-79-75



 <p>LAND USE as of Oct. 20, 1975 Nashville and Jefferson county planning commission</p>	<p>Docket No. 9-79-75 C-4 Comm. to M-2 Ind.</p>	 <p>0' 100' 200' SCALE 1" = 200'</p>	<p>Sheet 21</p>
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