

# Board of Zoning Adjustment

## Staff Report

May 15<sup>th</sup>, 2023



<b>Case No:</b>	23-NONCONFORM-0006
<b>Project Name:</b>	Nonconforming Rights
<b>Location:</b>	N 32 <sup>nd</sup> St (West abutting property)
<b>Parcel:</b>	010F01630000
<b>Owner:</b>	West End Transport Partners
<b>Applicant:</b>	Charles Podgursky
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	5 – Donna Purvis
<b>Case Manager:</b>	Mark Pinto, Associate Planner

### REQUEST(S)

- To determine whether a property has nonconforming rights to operate as a parking lot for automobiles and heavy trucks to serve the adjacent industrial use.

### CASE SUMMARY/BACKGROUND

The subject property is split zoned between R-5 and EZ-1 and located within the Traditional workplace form district, refer to the zoning map for more details. The site is approximately 0.69880 acres and is occupied by a parking lot for automobiles and heavy trucks to maneuver and dock. The parking area serves the industrial use abutting the property, currently addressed 101 N 32<sup>nd</sup> St. The parking area, which is currently not addressed, has historically been zoned R5 with the exception of the southern most portion zoned EZ-1. Historic zoning maps from 1930 indicate the property zoned “light-industrial” at the most southward portion and “One-Family” the majority, northward section of the property.

Historic Zoning	
1931	Light Industrial/One-Family
1965-1979	M-2 Industrial/R-5 Residential
1995-2001	EZ-1/R-5 Residential
2023	EZ-1/R-5 Residential.

The applicant has applied for nonconforming rights automobile, heavy truck parking and maneuvering area to serve the adjacent industrial use. Based on the information and evidence provided in the application and staff research, the property has been used for a parking area for automobiles and heavy trucks since as early as 1973, possibly earlier according to aerial photographs. Staff informed the applicant that for nonconforming rights to be granted at the administrative level, there must be conclusive evidence the use existed on the site consistently, since the year 1971. The aerial photographs retrieved from Develop Louisville files and those submitted by the applicant were inconclusive when determining if the use existed on the site in 1971. Furthermore, the Caron Directory entries submitted by the applicant confirm the property previously addressed 3131-3325 W Market St, currently addressed 101 N 32<sup>nd</sup> St, had been listed as commercial/industrial businesses. This property

is not the one in which the applicant is requesting nonconforming rights, since it has historically been zoned for industrial use. Certified Sanborn maps submitted by the applicant show the primary industrial site; however, the property the applicant is requesting nonconforming rights for the parking area does not provide sufficient evidence the specific use existed on the subject property since 1971. At the time of this staff report, staff does not possess conclusive evidence to grant nonconforming rights for the automobile/heavy truck parking and maneuvering area to serve the abutting industrial use. 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 an automobile/heavy truck parking area in the R-5 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**

The applicant submitted copies of the Caron and Polk City Directories dating back to 1951 to 2007 for the property current addressed 101 N 32<sup>nd</sup> St, previously addressed 3131-3325. The applicant also submitted Sanborn maps from 1905, 1928, 1950, 1989, 1991, 1993, 1995, and 1999 which show commercial and industrial activity on the site addressed 101 N 32<sup>nd</sup> St. The Sanborn maps do not provide conclusive evidence the portion of the property used as a parking lot zoned R-5 existed in 1971 or previously. In addition, the applicant submitted aerial photographs of the site, beginning in 1940.

Aerial photographs from 1940-1965 show the subject site occupied by residential structures. 1971 aerial photographs show I-264 constructed, the residential structures that did occupy N 32<sup>nd</sup> St from Market St. approximately halfway to the intersection of N 32<sup>nd</sup> St and Rowan St were demolished. N 32<sup>nd</sup> St was rerouted. The applicant submitted Planning Commission minutes from March 26, 1970, Docket # 1-8-70, which included the approval to close the remaining portion of the original 32<sup>nd</sup> St from Market St South to the alley between Market and Jefferson Streets.

There could be activity occurring on the site at this time, but it is difficult to determine if the site is being used as automobile and heavy truck parking. The now vacant land was then owned by the state, which was then sold off. Some lots remain under the ownership of the Commonwealth of Kentucky. Aerial photographs from 1973-2016 show automobiles parked on the site, with what appears to be heavy trucks docked in 1983.

The applicant also submitted a notarized affidavit attesting the property has consistently been used for industrial purposes. The applicant also submitted a deed from 1970 that shows the property was sold by the Commonwealth of Kentucky to Mid-Continent Corporation. Staff research included searching Caron and Polk City Directories, researching historic zoning maps, and observing historic and current aerial photographs of the site. Historic aerials of the subject site do show a parking area as early as 1983. The 1973 and 1971 aerials are of lower resolution, but could depict the site being used for parking to serve the adjacent industrial use.

### **STAFF FINDINGS**

Staff finds there is inconclusive evidence to determine that the property has nonconforming rights for the use of a parking area for automobiles and heavy truck parking, maneuvering, and docking. Therefore, staff requested that the case go to BOZA to make a final determination on whether the property has nonconforming rights.

### **RELATED CASES**

22-CAT2-0044: A Category 2B plan on 101 N 32<sup>nd</sup> St, Parcel ID: #010G00050000, to reconstruct a 10,049 sq ft. warehouse building on 4.2 acres in the EZ-1 zoning district.

### **TECHNICAL REVIEW**

No technical review required.

**INTERESTED PARTY COMMENTS**

Staff has not received any 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.

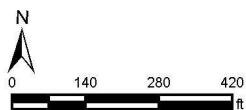
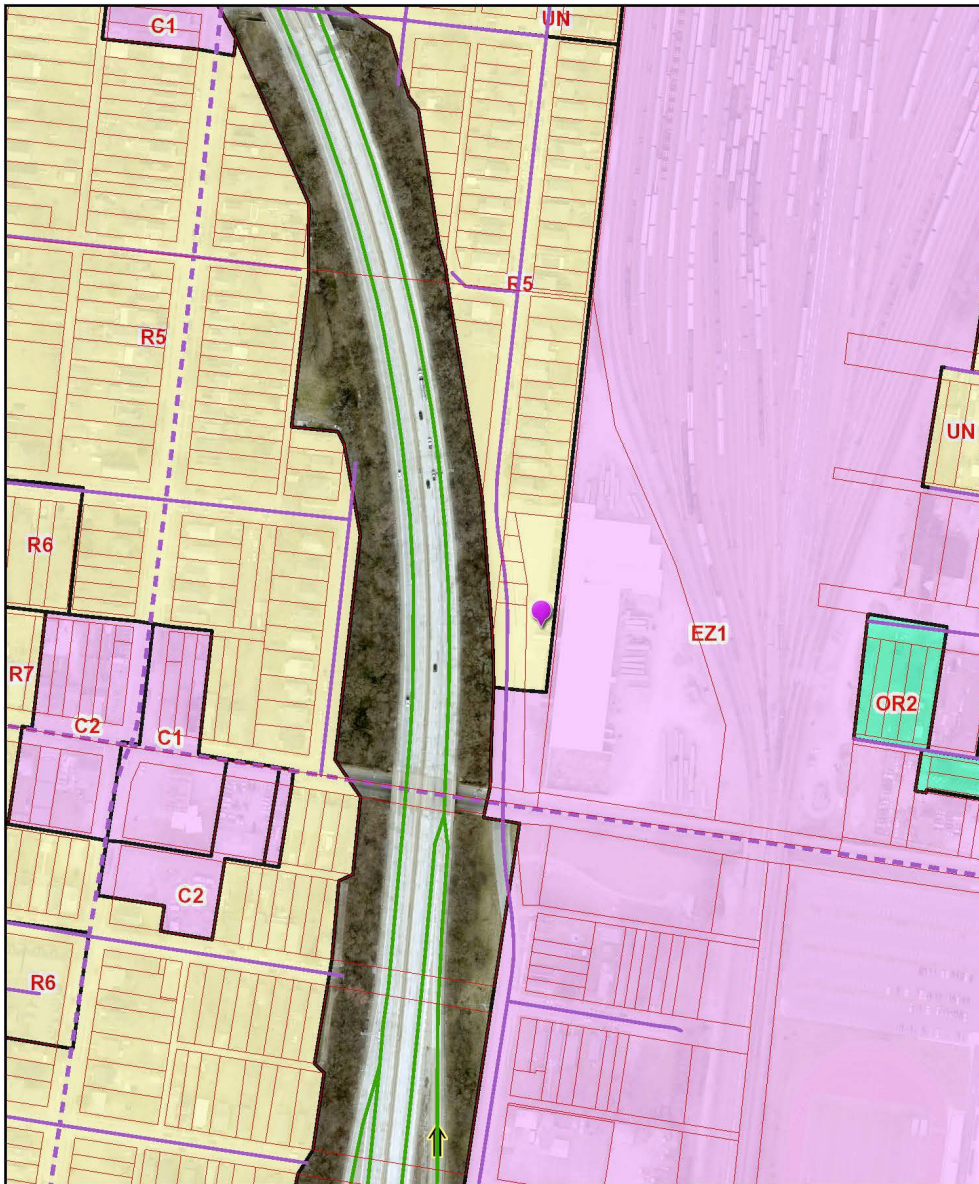
**NOTIFICATION**

Date	Purpose of Notice	Recipients
4/27/2023	Hearing before Board of Zoning Adjustment	1 <sup>st</sup> tier adjoining property owners
5/1/2023	Hearing before Board of Zoning Adjustment	GovDelivery for Council District 5
5/03/2023	Hearing before Board of Zoning Adjustment	Sign Posting

**ATTACHMENTS**

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

## I. Zoning Map



**N 32nd St**

Friday, May 5, 2023 | 2:19:59 PM

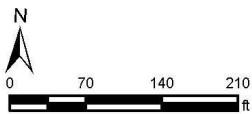


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## II. Aerial Photos



### Subject Site

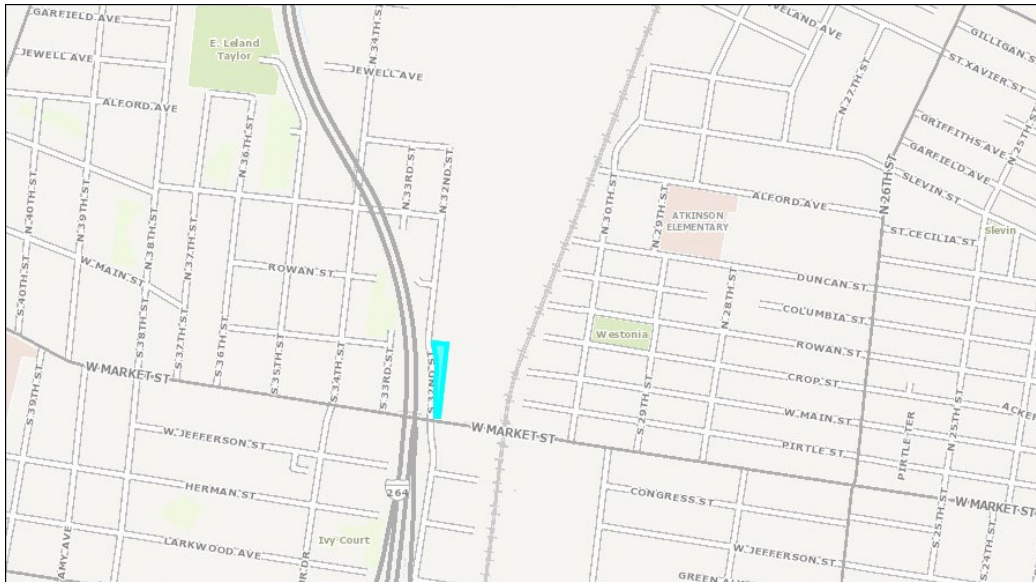
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### III. Site Photos



Subject Site (101 N 32<sup>nd</sup> St is adjacent).





W Market St.





Intersection of W Market St. & N 32<sup>nd</sup> St.





Across the street from subject site.