

Board of Zoning Adjustment

Staff Report

June 1, 2020



Case No:	20-APPEAL-0001
Project Name:	Dixie Highway Appeal
Location:	7318 Dixie Highway
Appellant:	Clear Vision Counseling, LLC
Representative:	Clifford Ashburner
Jurisdiction:	Louisville Metro
Council District:	12 – Rick Blackwell
Case Manager:	Jon E. Crumbie, Planning & Design Coordinator

REQUEST(S)

- Appeal of an administrative decision regarding nonconforming rights

CASE SUMMARY/BACKGROUND

The Appellant submitted a nonconforming rights determination request on January 10, 2020. Staff conducted a review of the applicant's information and determined that there was insufficient information that the nonconforming use (professional office) has been established in the M-2 Industrial Zoning District. Therefore, staff concluded that the property does not have nonconforming rights for a professional office and submitted a letter to the Appellant stating that decision on February 13, 2020.

The Appellant filed an Appeal of the administrative decision on March 2, 2020, which is within the 30-day appeal period. On March 30, 2020 due to the COVID-19 pandemic the Governor of the State of Kentucky signed SB 150 which tolled all KRS hearings. The Appellant submitted information with the Appeal application to support his basis of appeal. This documentation is part of the record and is available for the Board to review on the Louisville Metro Government Agenda & Meeting Portal (<http://louisville.legistar.com>).

STAFF ANALYSIS/FINDINGS

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

Section 1.2.2 Definitions
Section 1.3.1 Use Section
2.5.2 M-2 Industrial District

As currently defined in LDC Sec. 1.2.2, the following definitions are relevant to the appeal:

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.

According to Jefferson County PVA records, the property use type is listed as general retail. The PVA lists the building as built in 1948.

The Appellant provided documentation related to his ownership and use of the property for commercial activities. The property is in the county and must be dated back to 1963 since the zoning regulations prior to 1963 permitted commercial uses. Staff did not receive or find any documentation supporting the lawful existence of a professional office on the subject property at any time. Staff did find documentation supporting the establishment of nonconforming rights for a grocery store prior to the zoning provisions prohibiting such use being established; however, the use is no longer a grocery store and has changed several times to other uses (car dealership, retail store, dry cleaner) not in the same classification as required. Without further information to corroborate the Appellant information staff cannot determine that the professional office existed on the property since 1963.

Staff Conclusions

Staff did not have sufficient information and documentation in the review of the nonconforming rights case to conclude that a professional office use existed on the property in 1963. The Appellant has not submitted additional information to change staff's previous conclusion. Therefore, staff believes that the original decision was correct, and the property does not have established nonconforming rights for a professional office use. However, in staff's letter regarding the nonconforming rights case, staff noted that there was sufficient evidence that a grocery store existed on the property in 1963, another type of nonconforming use. Regrettably, there was additional evidence that the grocery store use changed to other uses multiple times over the years, with some of those uses being in a higher classification. Therefore, staff assumed that the grocery store use was abandoned in accordance with the LDC. Based on the appeal form, it appears that the appellant accepts the decision that the original nonconforming use in 1963 was a grocery store and wants to rebut the presumption of abandonment. In order to do that the appellant must show evidence that:

1. The property owner has undertaken to reinstate the discontinued nonconforming use (grocery store) 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 (grocery store) will be reinstated in the foreseeable future.

If the appellant proves that the nonconforming use (grocery store) has not been abandoned and the Board agrees to reinstate that nonconforming use, a request for a change in nonconformance use to a professional office or any other use of a lesser intensity as allowed by the LDC and could be reviewed by the Board at a new hearing.

Standard of Review

Pursuant to LDC 11.7.3 and KRS 100.257, the Board of Adjustment 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.

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. Did the commercial use (professional office) exist on the property in 1963?

2. If yes to question 1, did this use of the property continue to the present day?

If the Board answers yes to both questions, then the Board would concur with the applicant, and the approval of such motion would overturn staff's decision.

If the Board answers no to any of the two questions listed above, then an approval of such a motion would affirm staff's decision.

RELATED CASES

20-NONCONFORM-0001 – The administrative decision in this case is the subject of the appeal.

INTERESTED PARTY COMMENTS

No comments submitted.

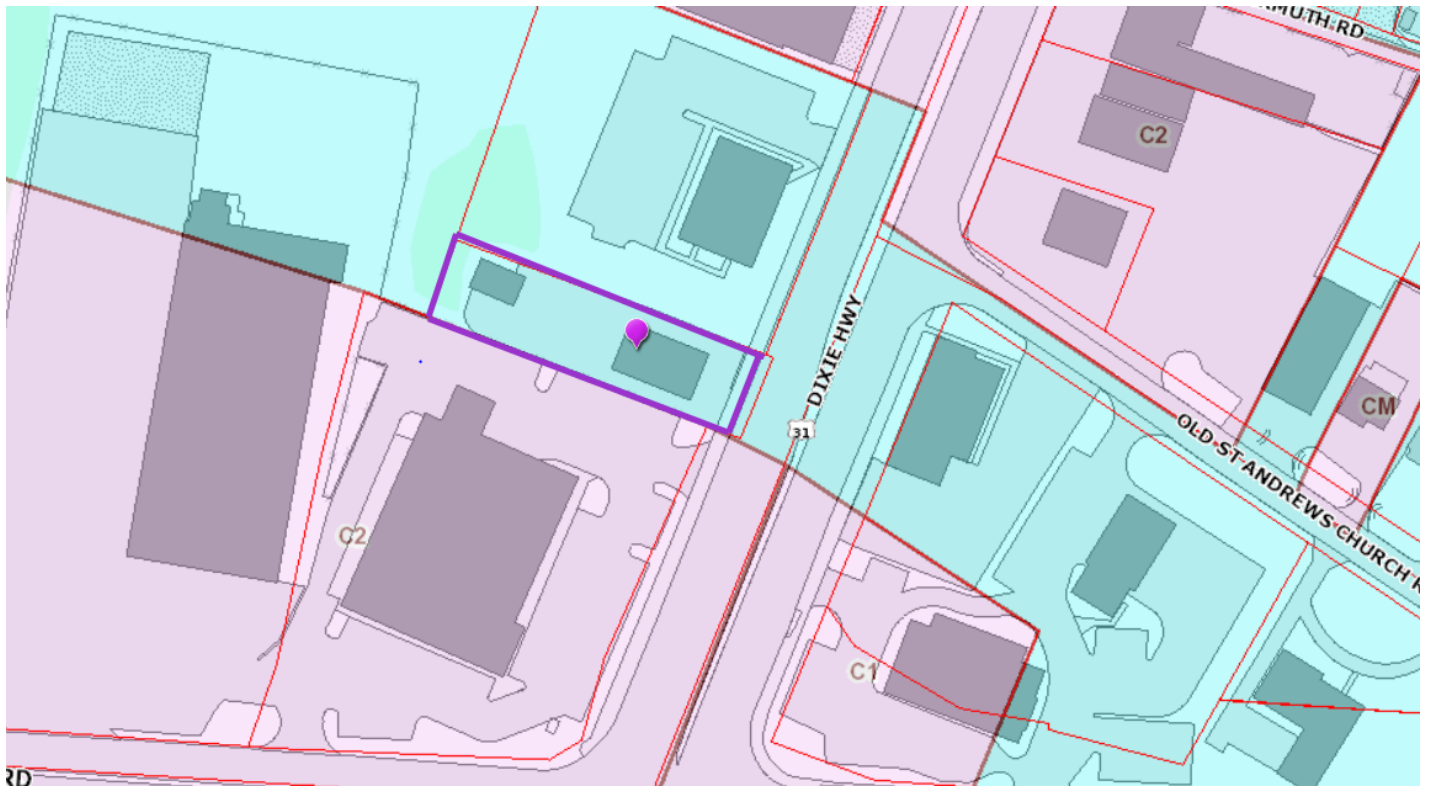
NOTIFICATION

Date	Purpose of Notice	Recipients
5/15/2020	Notification of appeal of an administrative decision	Adjoining property owners, Appellant, and PDS staff GovDelivery District
5/22/2020	Legal ad for notification of appeal of an administrative decision	Courier Journal - published in paper by Appellant or Representative

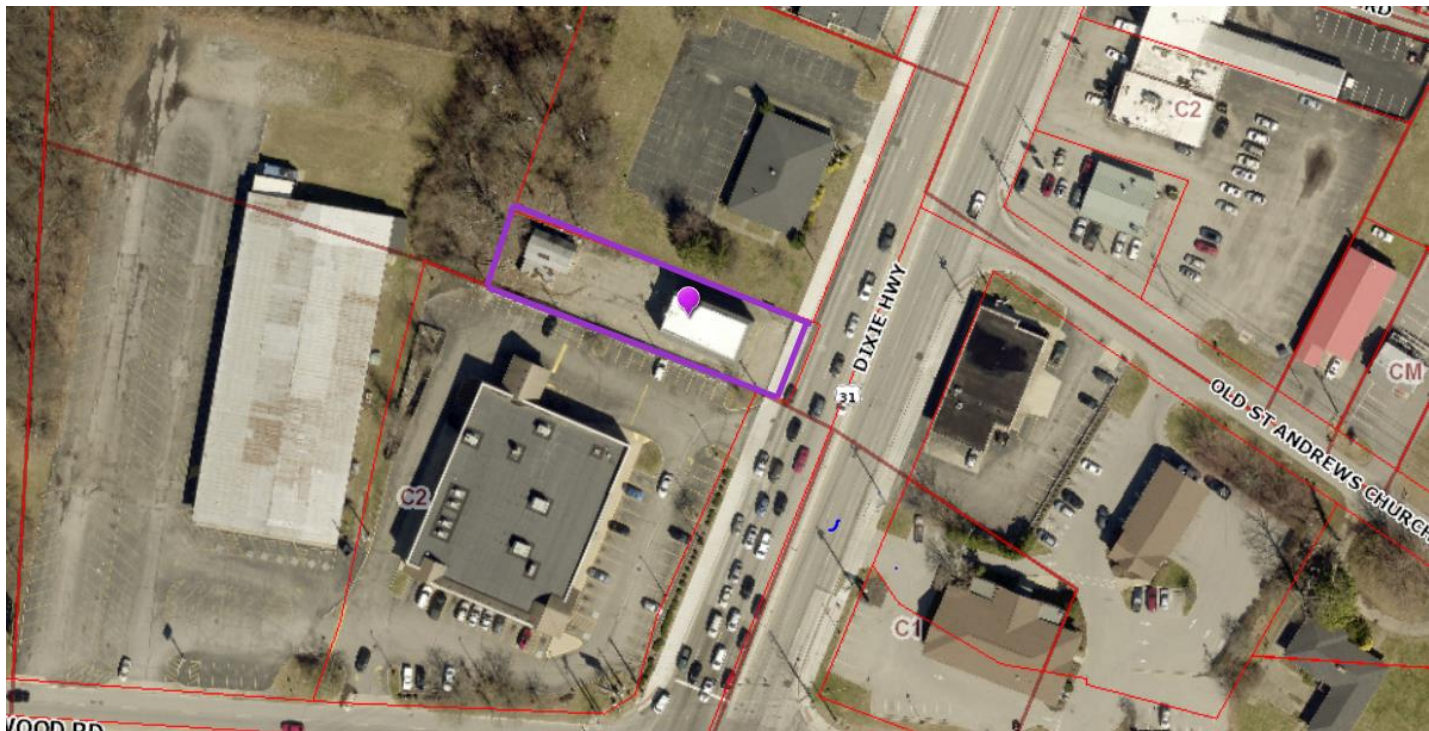
ATTACHMENTS

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

1. **Zoning Map**



2. Aerial Photograph



3. Site Photos





