

Board of Zoning Adjustment

Staff Report

February 15th, 2021



Case No:	20-NONCONFORM-0034
Project Name:	Change in Nonconforming Use
Location:	935 Franklin St.
Owner(s):	Hilltech Properties LTD
Applicant:	Clifford Ashburner
Jurisdiction:	Louisville Metro
Council District:	4 – Jecorey Arthur
Case Manager:	Rachel Mandell, Planner I

REQUEST(S)

- Change in nonconforming use from a pool supply company to sixteen dwelling units.

CASE SUMMARY/BACKGROUND

The subject property is located within the R-6 zoning district and the Traditional Neighborhood form district. The site is occupied by a two-story structure that is roughly 16,321 sq. ft. according to data from the PVA. The acreage of the site is approximately 0.3789 acres.

The property owner received a nonconforming rights determination for a pool supply company from Planning and Design Services on June 14th, 2018 in accordance with LDC Section 1.3.1. On August 6th, 2018, the applicant submitted a request to change the nonconforming use from a pool supply company to eight dwelling units and general retail. The request was then revised on September 19th, 2018, asking for a change in nonconforming rights from a pool supply company to eight dwelling units -excluding approximately 3,800 square feet of the building, which would retain nonconforming rights as a pool supply company. This request was approved by the Board of Zoning Adjustment on October 15th, 2018.

Since the approval, the applicant has not changed the use to include the eight dwelling units. The applicant is now coming back in front of the board to request a change of nonconforming rights from a pool supply company to sixteen dwelling units for all square footage of the structure.

LDC Section 1.3.1.A-D 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.

- C. There shall be no increase in the floor area or the land area devoted to a nonconforming use or other enlargement or extension of a nonconforming use beyond the scope and area of its operation at the time the regulation that made the use nonconforming was adopted.
- 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.

The R-6 zoning district permits multiple dwelling units by right. However, the R-6 zoning district has a density restriction of 17.42 dwelling units per acre. Therefore, this site would only be permitted to have six dwelling units to be compliant with current Land Development Code regulations. The request of sixteen dwelling units exceeds the density permitted in the R-6 zoning district by ten units.

The originally approved nonconforming use of a pool supply company falls within the C-2 zoning classification, which is a higher intensity commercial zoning district than what would be required to support sixteen dwelling units on the site. Therefore, it may be argued that the proposed multifamily use is less intense by this classification, and therefore less odious. However, staff questions the validity of this argument because multifamily uses are permitted in the existing R-6 zoning of the property. Staff is concerned that having sixteen dwelling units on the site may be more odious or offensive to surrounding property owners than the original pool supply company.

The Department of Public Works has provided insight on how an increase in residential units in place of the existing retail use would impact trip generation on Franklin Street. Trip generation is a common measurement used to determine the intensity of a use. The multifamily use would generate about eleven peak hour trips for sixteen units. The existing retail use generates less. The other lots on the street in total generate about thirty cars per peak hour. It is expected that the proposed multifamily use would be adding four to five cars during peak hour trips. Although the Department of Public Works does not find this to be a significant increase in trip generation, the overall increase in trip generation during peak hours does not meet the standards of review for a change in nonconforming rights. The proposed use must be no more odious or offensive to surrounding property owners than the first nonconforming use.

The Floor Area Ratio requirement for the R-6 zoning district is 0.75. The existing structure exceeds the permitted floor area by roughly 4,000 sq. ft., meaning that the structure is nonconforming to the Floor Area Ratio requirement. Therefore, further expansion to the structure would not be permitted unless the property is rezoned. Floor Area Ratio is not a value that can be waived or varied from in the Land Development Code which limits future development on the site.

The proposed change in nonconforming use may exceed the parameters considered under this review type and it may be more appropriate to require a change in zoning.

STAFF FINDING/RECOMMENDATION

Staff does not find that the conversion of the existing nonconforming use as a pool supply company to sixteen dwelling units would be the same or less intense, less odious or offensive, or minimize nuisances to surrounding properties.

The board previously determined that adding eight units in addition to the retention of the pool supply company was not an increase in intensity, and with the conversion of the building to be used only residentially, it could be argued that allowing more than eight units is appropriate.

The proposed change of use and the corresponding significant interior alterations required to accommodate such a use may exceed the parameters considered under this review type. It is believed that a change of zoning request may be more appropriate.

TECHNICAL REVIEW

No technical review required.

INTERESTED PARTY COMMENTS

No comments received.

STANDARD OF REVIEW FOR CHANGE IN NONCONFORMING USE

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.

1. Is the new nonconforming use in the same or more restrictive classification of the first nonconforming use?

Staff Finding: The proposed nonconforming use of sixteen dwelling units is permitted in the same or more restrictive zoning classification than the existing nonconforming use, however it is argued that the multifamily use would be of higher intensity than the pool supply company.

1. Is the new nonconforming use no more odious or offensive to surrounding properties than the first nonconforming use?

Staff Finding: The proposed use is more odious or offensive to surrounding properties than the first nonconforming use. This was determined by trip generation data, density requirements and an analysis of floor area ratio.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the **Change in nonconforming use**

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Board of Zoning Adjustments must determine if the proposal is in conformance with the Land Development Code Section 1.3.1 paragraph D.

NOTIFICATION

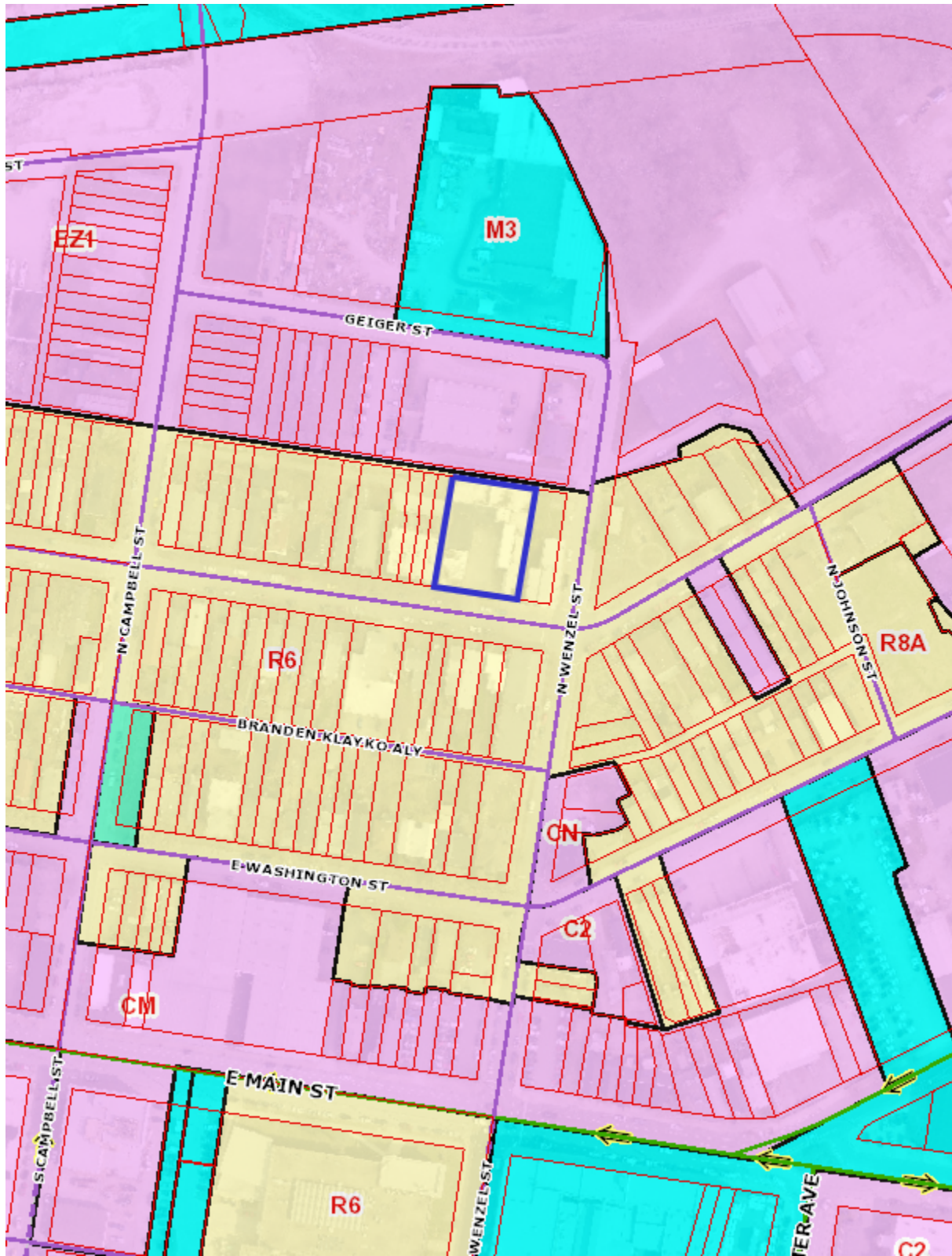
Date	Purpose of Notice	Recipients
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1/27/2021	Hearing before Board of Zoning Adjustment	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 4
2/1/2021	Hearing before Board of Zoning Adjustment	Sign posting

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

