Board of Zoning Adjustment
Staff Report
March 15, 2021

Case No:	20-NONCONFORM-0022
Project Name:	Abandonment of Nonconforming Use
Location:	6603 River Road
Owner(s):	Mark & Lora Mercurio
Applicant:	Mark Mercurio
Jurisdiction:	Louisville Metro
Council District:	16 – Scott Reed
Case Manager:	Zach Schwager, Planner I

REQUEST(S)

- To determine whether a nonconforming use for a private non-profit club was abandoned.

CASE SUMMARY/BACKGROUND

The subject property is located within the R-4 Residential Single Family zoning district and the Village form district. The site is approximately 0.8735 acres and is occupied by a two-story structure.

The property owner applied to establish nonconforming rights for a club and lodge on September 28, 2020. Based on the information provided in the application and staff research, the property was used as a private non-profit club continuously prior to 1943 and continuously as such until 2006 when the use was changed to a professional office. Staff told the applicant that they believed that this change without approval from the Board of Zoning Adjustment (BOZA) would be an abandonment of the nonconforming use. The applicant, based on Land Development Code (LDC) Section 1.3.1.F, requested that the case go to BOZA to make a final determination on whether the nonconforming use was abandoned.

BOZA must determine whether the nonconforming use for a private non-profit club was abandoned when the use changed to a professional office in 2006, without BOZA approval to do so, 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.

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.

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 FINDING/RECOMMENDATION

Staff finds that the subject property had nonconforming rights for a private non-profit club until 2006 when it was changed to a professional office, but staff believes that the change to a professional office abandoned the nonconforming rights. BOZA must determine whether the nonconforming use was abandoned based on LDC Section 1.3.1.F.

RELATED CASES

21-NONCONFORM-0004 (Change in nonconforming rights) – If BOZA finds that the nonconforming rights for a private non-profit club were abandoned in case 20-NONCONFORM-0022 case 21-NONCONFORM-0004 will be considered withdrawn.

TECHNICAL REVIEW

No technical review required.

INTERESTED PARTY COMMENTS

No comments received.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the applicant request that the nonconforming use for a private non-profit club has not been abandoned.

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 F.
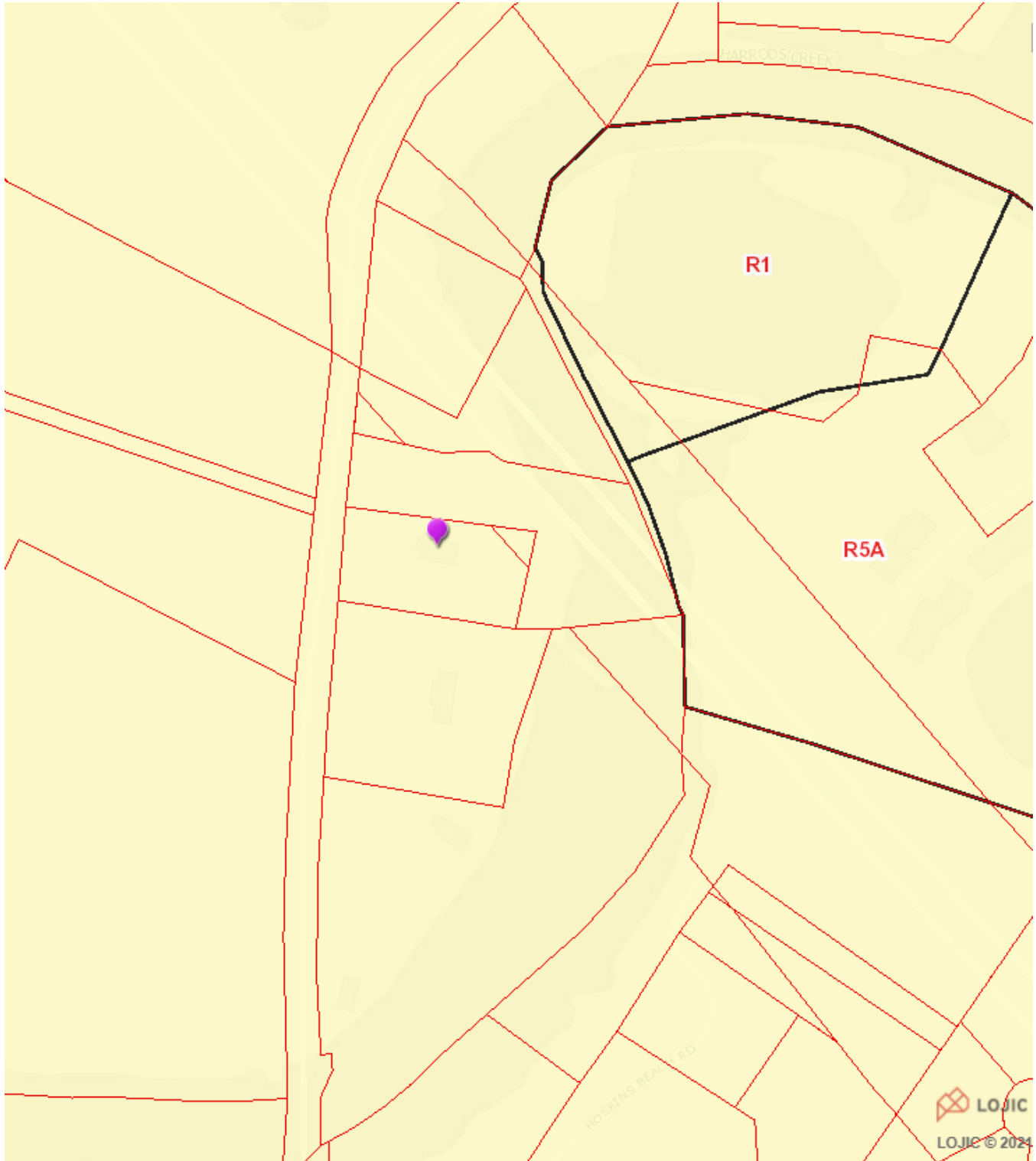
NOTIFICATION

Date	Purpose of Notice	Recipients
2/23/2021	Hearing before Board of Zoning Adjustment	1st and 2nd tier adjoining property owners Registered Neighborhood Groups in Council District 16
2/26/2021	Hearing before Board of Zoning Adjustment	Sign posting

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

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2.   Aerial Photograph