

Board of Zoning Adjustment

Staff Report

May 3rd, 2021



Case No:	21-NONCONFORM-0007
Project Name:	Abandonment of Nonconforming Use
Location:	1335 E Washington Street
Owner(s):	Rosenstein Family Holdings LLC
Applicant:	Debbie Rosenstein
Jurisdiction:	Louisville Metro
Council District:	4 – Jecorey Arthur
Case Manager:	Rachel Mandell, AICP, Planner I

REQUEST(S)

- To determine whether nonconforming rights for three dwelling units was abandoned.

CASE SUMMARY/BACKGROUND

The subject property is located within the R-6 zoning district and the Traditional Neighborhood form district. The structure contains three dwelling units. Multifamily uses are permitted in the R-6 zoning district, however the density restrictions would only permit one dwelling unit on this property.

The applicant submitted a nonconforming rights application for the three units. Evidence provided by the applicant and research conducted by staff confirmed that at least three units existed on site until 1982. However, the evidence provided from this date through 2011 left significant gaps. The current owner has been managing the three units since 2011.

Due to the inability to confirm consecutive use of the three units and pursuant to Land Development Code section 1.3.1.F, staff is requesting that the case go in front of the Board of Zoning Adjustment to make a determination on whether the nonconforming use was abandoned during this timeframe.

If the Board does determine that the nonconforming use was abandoned, the board will then need to determine if the use has been reinstated.

The Abandonment of a Nonconforming Use is determined by the following:

Land Development Code 1.3.1.F:

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

Staff finds that the three units were legal nonconforming through 1982. BOZA must determine whether the use was abandoned and therefore nonconforming rights no longer exist.

TECHNICAL REVIEW

No technical review required.

INTERESTED PARTY COMMENTS

No comments received.

REQUIRED ACTIONS:

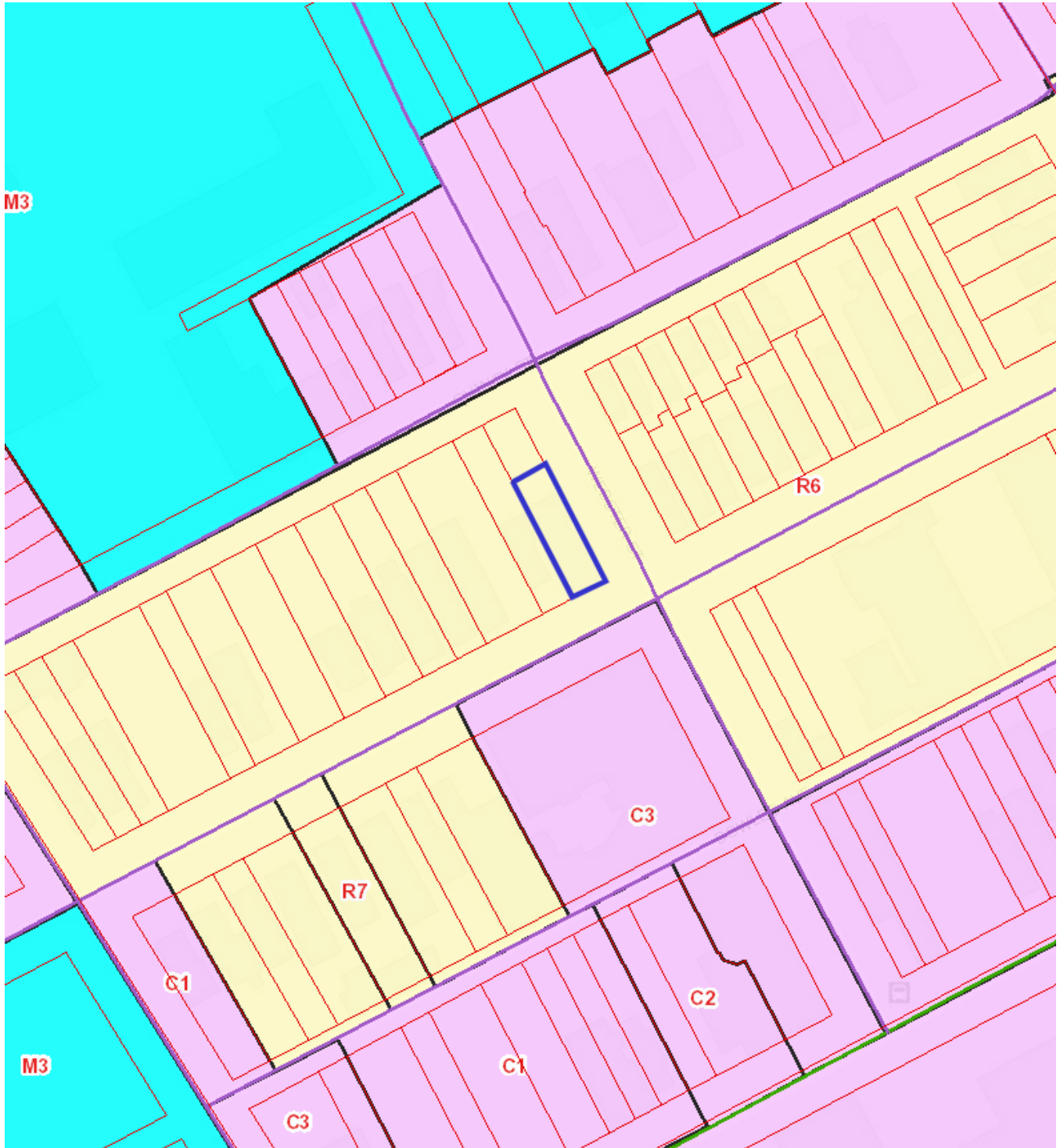
- **APPROVE** or **DENY** the applicant requesting nonconforming rights for three dwelling units based on the determination that the nonconforming use was not abandoned.

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

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map



2. Aerial Photograph

