



Non-Conforming Rights Application for  
6603 River Road, Prospect KY 40059

# Threshold Question

- The Staff Report seeks to have the Louisville Metro Board of Zoning Adjustment determine if **Abandonment of Nonconforming Rights** for 6603 River Road has occurred.
- Applicant intends to Review the Following Relevant Factors
  - Kentucky Statutory Law
  - Regulatory Law
  - Case Law
  - Facts Surrounding Use
  - Intention of the Owner
  - Other Factors for the Board's consideration

# Statutory Law

- KRS 100.111 – Nonconforming rights - structure lawfully existed before adoption of zoning regulations
- KRS 110.253(2) – Board can permit a change from one nonconforming use to another if the new nonconforming use is in the same or more restrictive classification.
  - Club or Lodge would require OR-2
  - Office only requires OR-3
- KRS 110.253(2) - Determining Factor for granting a change from one nonconforming use to another: It is allowable if it will not “change the character of the neighborhood or detract from the enjoyment of value of property in such neighborhood”.

# Regulatory Law – Land Development Code

- LDC 1.2.1 Definition of Abandonment – no intent to continue use or resume use within a reasonable time
- LDC 1.3.1 Nonconforming use structure shall not be expanded or relocated

# Case Law

- In *Dempsey v. Newport Board of Adjustments*, Ky. App., 941 S.W.2d 483, 485 (1997), the Kentucky Court of Appeals noted that while a nonconforming use may be deemed “undesirable” by some citizens “[i]t nevertheless **constitutes a legitimate, vested property right and clearly enjoys broad constitutional protection . . . Vested property rights are not easily lost or voided.**”
- In *Holloway Ready Mix Company v. Monfort*, Ky., 474 S.W.2d 80, 83 (1971) the Court concluded that **a ten-year period of non-use of a quarry was sufficient** to show an intention to abandon, particularly, when coupled with testimony from one of the owners that he had told neighbors his company had **no intention of** operating
- Controlling Factors that the Board Should Consider: **Facts and Intention of the Owner**

# Facts

- We traced the ownership of property back to 1906 – Always Nonconforming (see Slide 8,9,10,11,12)
- Before Mr. Smith acquired and remodeled, PVA records indicate “General Office” (see Slide 13)
- Mr. Mercurio contacted the current General Office of the Masons, downtown Louisville, 502-893-0192, Roberta on one occasion and Jamie on another occasion provided general information and contact information for current Secretary of Lodge 456, Wesley Mertz 502-758-2457, we learned that 6603 River Road **had offices, likely used by officers**, also had a meeting hall.

## **6603 River Road**

### **Property Transaction Record and Details Going Back to Before 1944**

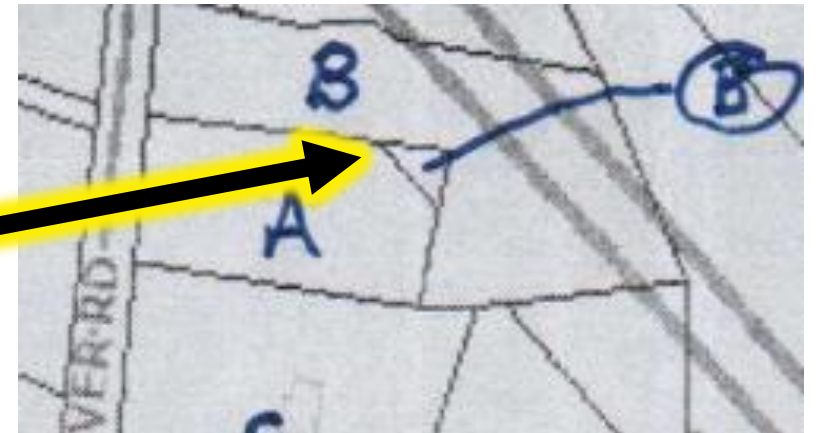
- Deed, Dated August 10, 1906, Deed Book 650, Page 81
  - Grantor: Board of Education for Jefferson County for School District #50 of Jefferson County Kentucky
  - Grantee: Board of Trustees of Harrods Creek Lodge, No. 456, Free and Accepted Masons
  - Conveyed: land and the building
- 
- Deed, Dated December 14, 2005, Deed Book 8755, Page 175
  - Grantor: Board of Trustees of Harrods Creek Lodge, No. 456, Free and Accepted Masons
  - Grantee: Board of Trustees of Crescent Hill Lodge, No. 820, Free and Accepted Masons
  - Conveyed: land and the building
  - Sale Price: \$1.00, but Assessed Value is set forth in the deed to be \$50,200



- Deed, Dated August 1, 2006, Deed Book 8884, Page 167
- Grantor: Board of Trustees of Crescent Hill Lodge, No. 820, Free and Accepted Masons
- Conveyed: land and the building
- Grantee: Charles E. Smith and Rita G. Smith
- Sale Price: \$125,000

- Deed, Dated May 4, 2011, Deed Book 9731, Page 14
- Grantor: Charles E. Smith and Rita G. Smith
- Grantee: Commonwealth of Kentucky
- Conveyed: .0442 acre triangle of land needed for East End Bridge
- Sale Price: \$42,700

- Deed, Dated October 9, 2019, Deed Book 11539, Page 76
- Grantor: Charles E. Smith and Rita G. Smith
- Grantee: Mark Mercurio and Lora Mercurio
- Conveyed: balance of the land and the building
- Sale Price: \$300,000







Harrod's Creek School, Jefferson Co. Ky. Jan. 12, 1909

at Harrod's Creek School, Jefferson Co. Ky. Jan. 12, 1909



*Harrod's Creek School, Jefferson Co. Ky. Jan. 12, 1909*

*At Harrod's Creek School, Jefferson Co. Ky. Jan. 12, 1909*



At Harrods Creek School, Jefferson Co., Ky., Jan. 12, 1909



## Jefferson County PVA Property Valuation Administrator

6603 River Rd



## Property Details

TYPE GENOFF : General Office  
YEAR BUILT 1947  
EXTERIOR WALL  
ROOFING STRUCTURE 4  
BASEMENT FOUNDATION  
CONDITION above normal for age  
BUILDING TYPE General Office:001  
STORIES 2  
FULL BATHROOMS  
HALF BATHROOMS

MAILING ADDRESS Po Box 953  
Prospect, K  
0953  
OWNER SMITH CH,  
RITA G  
PARCEL ID 000600670  
LAND VALUE \$163,350  
IMPROVEMENTS VALUE \$129,170  
ASSESSED VALUE \$292,520  
APPROXIMATE ACREAGE 0.91  
PROPERTY CLASS 445 Com C  
DEED BOOK/PAGE 8884 0167  
DISTRICT NUMBER 500012  
OLD DISTRICT 21  
FIRE DISTRICT Harrods Cr  
SCHOOL DISTRICT Jefferson C  
NEIGHBORHOOD 90 / COMM  
SATELLITE CITY Jefferson I  
SHERIFF'S TAX INFO [View Tax I](#)



# Intentions of Mr. Smith Who Acquired the Building From the Masons and Remodeled It

- Sworn Affidavit of Mr. Charles Smith: (see Slide 15)
  - Had no intention to abandon any property rights, to the contrary, made efforts to preserve Nonconforming Rights
  - Did not believe that he was changing the use – Masons used it for office, he planned to use for office
  - He took out building permit, did not expand the footprint or location of the building, followed the permit and received all approvals
  - He visited with Planning and Zoning to learn that he must not expand the footprint or change the location of the building to preserve Nonconforming Rights
  - He worked with River Fields on the facade design and incorporated requested features into the design
- River Fields Email – demonstrates open correspondence between Mr. Smith and River Fields as the time of the remodeling (see Slide 16)

AFFIDAVIT OF CHARLES E. SMITH

FORMER OWNER OF SUBJECT PROPERTY AT 6603 RIVER ROAD

COMES NOW Declarant, **Charles E. Smith**, and states under oath as follows:

1) Declarant is over the age of 18 years, is of sound mind and has direct knowledge about the property at 6603 River Road, Louisville, Kentucky ("Subject Property").

2) Declarant states that he and his wife Rita acquired the Subject Property from the Board of Trustees of Crescent Hill Lodge, No. 820, Free and Accepted Masons by deed dated August 1, 2006.

3) Declarant states that he obtained historic PVA records that indicate that the Masons had classified the building on the Subject Property as a "General Office".

4) Declarant states that he consulted with Louisville Planning and Zoning, prior to obtaining his Building Permit to remodel the building, and was cautioned to avoid increasing the floor area or the land area beyond the scope and area of operation as existed prior to order to preserve his nonconforming rights.

5) Declarant states that he had no intention of surrendering any property rights when he remodeled the building on the Subject Property, which is why he consulted with Louisville Planning and Zoning prior to embarking upon the remodeling project.

6) Declarant states that when he remodeled the building on the Subject Property, he did not change the location of the building nor did he change the size of the building.

7) Declarant states that he obtained an approved Building Permit from the Louisville Department of Codes and Regulation and he effected the remodeling of the building in accordance with that approved Building Permit.

8) Declarant states that Ms. Meme Runyon, Executive Director of River Fields, Inc., visited the site on a couple of occasions during the time that the remodeling was occurring; she made several suggestions regarding the exterior façade, and her ideas were incorporated into and became part of the remodeling project.

9) Declarant states that the remodeling project was inspected and approved by Louisville Department of Codes and Regulations.

10) Declarant states that after remodeling, he utilized the building on the Subject Property as an office building, on a continuous basis, until he sold the Subject Property to its current owner, Mark and Lora Mercurio.

11) Declarant states that he sold the Subject Property to the current owner, Mark and Lora Mercurio by deed dated October 9, 2019.

12) Declarant states that, to the best of his knowledge and belief, Mark and Lora Mercurio have continuously operated the building on the Subject Property as an office since they acquired it from me.

13) Declarant states that he supports and endorses Mr. Mercurio's Non-Conforming Rights Application on the Subject Property and hopes that it is approved.

Further, the Affiant sayeth not.

Charles E. Smith

3-15-21

Charles E. Smith

COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

15<sup>th</sup> The foregoing instrument was subscribed, sworn to and acknowledged before me this day of March, 2021, by **Charles E. Smith** to be his free act and voluntary deed.

My commission expires: 7/22/2024

[AFFIX SEAL]

Randall Scott Walker  
Notary Public, State at Large



CS  
3-15-21

csmith@semonin.com

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From: "Rosalind Streeter" <rosalindstreeter@riverfields.org>   [Save Address](#) | [Headers](#)  
To: csmith@semonin.com  
CC:  
Date: Wed, 20 Dec 2006 17:24:33 -0500  
Subject: **River Fields and your property**

Dear Charlie:


I am sorry that it has taken me so long to get back to you. We met a few weeks ago when I visited your property, the old lodge with the school inside. We talked briefly about the eastern bridge and its effects on your property. River Fields has been working tirelessly on the bridges project and I have been hoping to reconnect with you to let you know what we are doing on this project.

I am mailing you some info. regarding the bridges project and Harrods Creek. I am also working on a history of the area and would love to get a copy of your photographs of the lodge/school. Please let me know what I can do to make this easier for you. If you have any more questions, please feel free to ask me.

Rosalind

--  
River Fields, Inc.  
643 West Main Street, Suite 200  
Louisville, KY 40202-2921  
t (502) 583-3060  
f (502) 583-3285

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csmith@semonin.com

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f (502) 583-3285

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# Other Things for the Board to Consider

## a. **10-Year Rule** – KRS 100.253(3)

- i. Does not apply in Jefferson County because we have the Board to make fair determinations for its citizens, but in most other places in Kentucky
- ii. If nonconforming property has been in existence for at least 10 years, and has not been subject of any adverse action, it is **deemed to have nonconforming rights**
- iii. In this case, since remodeling in 2006, there has been no adverse action until 2020 – 15 years.

# Other Things for the Board to Consider

## **b. Purchaser in Good Faith –**

Prior to purchasing the building in 2019, Mr. Mercurio had been a tenant in the building and operated his office out of 6603 River Road for 9 years. During the entire time, there were no adverse actions. When Mr. Mercurio purchased the property, his lender did not raise any issue about zoning and granted a commercial loan on the property. All of the utility bills that Mr. Mercurio saw before and after his acquisition were at commercial rates. Consequently, it was reasonable for Mr. Mercurio to believe that the property had nonconforming and/or commercial rights. At this point in time, it would be grossly unfair to force Mr. Mercurio to relocate his business and to ask him to find an alternative use for the building, after having conducted his business and made his living in this location for more than 10 years. (see Slide 20, 21,22)

# Other Things for the Board to Consider

## **c. Good Neighbor –**

Mr. Mercurio has only one immediate neighbor. The property is bound on one side by the East End Bridge and on the other side by Creekside Landing Marina. The owner of Creekside Landing has submitted an affidavit in support of Mr. Mercurio being able to continue to own and operated 6603 River Road as an office. (see Slide 23, 24)

## **d. Has Never Been Residential Use –**

This property, as far back as we have been able to trace it (pre-1906) has always been nonconforming.

# LINK

CUSTOMER CARE PORTAL

CONTACT US

Quality Water • Quality  
provided by Louisville Water

Account Management

Billing & Payments

Welcome

Rita Smith

You are currently viewing information for:

Account #: 2563430000 (Commercial)

Address: 6603 RIVER RD, PROSPECT, KY, 40059-9605, 2561227789

Customer: Smith,Rita G

Account Balance

**\$0.00**

Due on 12/15/2015

[View Bill](#)

[Pay by Debit/Credit Card](#)

[Pay by Free E-Check](#)

Account Summary Charges

Storm Water Service (drain) \$60.72

Water Service \$65.20

Payments (\$132.22)

Adjustments and Corrections \$6.30

Account #: 2563430000 (Commercial)

Address: 6603 RIVER RD, PROSPECT, KY, 40059-9605, 2561227789

Customer: Smith,Rita G

No Payment Arrangement/Pay Plan  
our account currently has no active

EXEMPTION	DATE	LAND	IMPROVEMENTS	TOTAL	REAS
none	07/02/2007	\$163,350	\$129,170	\$292,520	A - A
none	12/31/2006	\$163,350	\$82,770	\$246,120	P - P Cons
none	12/14/2005	\$163,350	\$58,380	\$221,730	R - Reas
none	01/01/2000	\$7,800	\$42,400	\$50,200	CR - Com Reas
none	01/01/1994	\$7,800	\$30,700	\$38,500	R - Reas

### Improvement History

OCCUPANCY	SKETCHES	SQUARE FEET	STORIES	YEAR
General Office:001	<a href="#">View Sketch</a>	3,024	2	1947

### Legal Lines

LN	LEGAL DESCRIPTION
1	ADJ BELL .75 ACRE

Property is assessed per KRS 132.20 on January 1st of each year. The current year assessments are updated and posted on the website in mid April. Information deemed reliable but not guaranteed. Data last updated: 01/26/2011



6603 RIVER RD

Mailing Address	8751 ESTERO BLVD APT 704, FORT MYERS BEACH, FL 33931-5158
Owner	SMITH CHARLES E & RITA G
Parcel ID	000600670000
Land Value	\$76,390
Improvements Value	\$184,060
Assessed Value	\$260,450
Approximate Acreage	0.8735
Property Class	145 COM OFFICE
Deed Book/Page	8884 0167
District Number	500020
Old District	21
Fire District	Anchorage Middletown Fire & EMS
School District	Jefferson County
Neighborhood	90 / COM NE JEFFERSON COUNTY
Satellite City	Jefferson County
Sheriff's Tax Info	View Tax Information
County Clerk	Delinquent Taxes <a href="#">↗</a>



Details & Photos



OFFICE BLDG



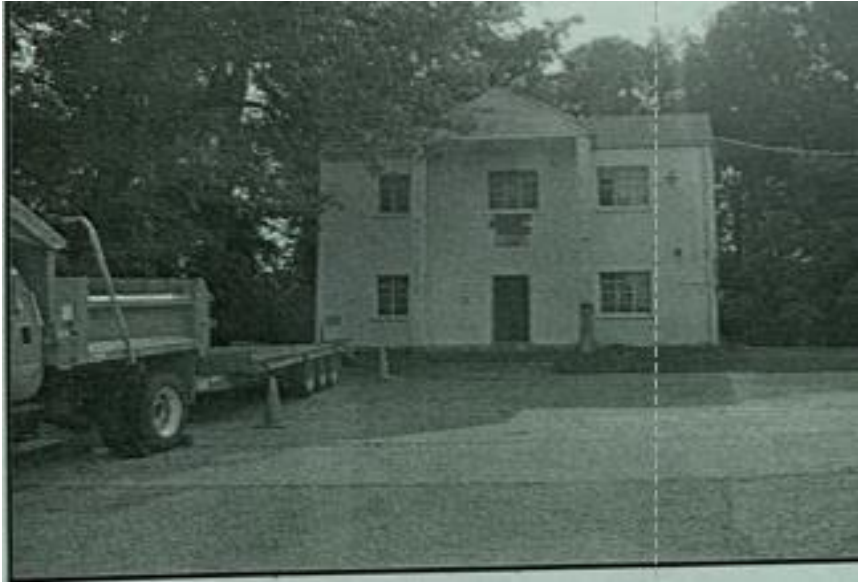
Property Details

Use Description	OFFICE BLDG
Year Built	1947
Basement Area	0 sq. ft.
Basement Finished?	No
Construction Frame	Wood Frame
Stories	2.00
Above Grade Sq Ft.	3,024 sq. ft.

Photos



BEFORE



AFTER



A - 6603 River Road

B - Commonwealth of KY

C - 6615 River Road, Stephen W Rauh Jr

D - KY Transportation Cabinet

F - Harrods Creek Land Management

G - 6600 James Thompson Jr

H - 7001 Michael J. Fleitz

PO Box 58, Harrods Creek KY 40027

Harrods Creek Land Management  
Association, LTD.

4165 Westport Road, Suite 103 40207

James Thompson Jr.

3310 Nutmeg St

San Diego CA 92104

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**NEIGHBORS**

The Louisville/Jefferson County Information Consortium (LOJIC) is a multi-agency partnership to build and maintain a Geographic Information System (GIS) to serve Louisville Metro and Jefferson County.

Our Partners

A - 6603 RIVER ROAD -- TARGET  
B - COMMONWEALTH OF KY  
C - 6615 STEPHEN W RAUH, JR + MARKEE  
D - KY TRANSPORTATION CABINET  
E - 6511 VIRGINIA RUTH RAUH  
F - HARRODS CREEK LAND MANAGEMENT  
G - 6600 JAMES THOMPSON JR  
H - 7001 MICHAEL J. FLEITZ  
P.O. BOX 58, HARRODS CREEK, KY 40027

MSD Building 700 West Liberty Street Louisville, KY 40203 38.2533 N, -85.7628 W

HARRODS CREEK LAND MANAGEMENT ASSOCIATION, LTD.  
4165 WESTPORT ROAD, SUITE 103 40207  
JAMES THOMPSON, JR  
EMERY GRUDER  
3310 NUTMEG ST.  
SAN DIEGO, CA 92104

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6) Delcarant states that he supports and endorses Mr. Mercurio's Non-Conforming Rights Application on the Subject Property and hopes that it is approved.