

Application #: ZA-456-07-8
Existing Zoning: R-4/C-3
Location: 940 East Broadway Road
Block Location: 900 E. – 4400 S.
Quarter Section: 5-29
Proposal: Formal Interpretation - determine whether legal nonconforming uses can expand into an adjacent parcel.
Ordinance Sections: 307.A.3.
Applicant: Rodney Jarvis/The Henderson Law Firm
Representative: Rodney Jarvis/The Henderson Law Firm
Owner: Steve Hendrix

**ZONING ADJUSTMENT HEARING OFFICER WAS: FRANK DOLASINSKI, AICP
PLANNER WAS: TRICIA GOMES**

Speaking in support was Rod Jarvis, 2415 East Camelback Road, Phoenix, attorney.

Speaking in opposition was Al Slusher, 4230 South 11th Street, Phoenix, Dani Garrity, 4230 South 11th Street, Phoenix, neighbors and Paul Barnes, 5518 East Mariposa Street, Phoenix, representing Neighborhood Coalition of Greater Phoenix.

DECISION: This request for a formal interpretation to determine whether legal nonconforming uses can expand into an adjacent parcel was put under advisement by the Zoning Adjustment Hearing Officer. It was taken out from under advisement on August 22, 2007 and the determination was that the legal non-conforming use on this property cannot expand within the same or adjacent parcels.

FORMAL INTERPRETATION – determine whether legal nonconforming uses can expand into an adjacent parcel. This request was taken under advisement on July 17, 2007. The request was taken out from under advisement on August 22, 2007 with the following Interpretation:

FINDINGS OF FACT: The Applicant is under violation for operating a scrap metal and salvage operation at 940 East Broadway Road. The site involves two parcels. One parcel is zoned C-3 on the southern 293 feet (approximate), adjacent to Broadway Road, and R-4 on the remaining portion of the lot. The second, smaller parcel that fronts on 11th Street is zoned R-4. The zoning for both parcels was established at the time Phoenix annexed the sites in 1960.

Aerial photographs indicated the use of the front portion of the property for scrap metal salvage and welding operations on the southern 100 feet of the C-3 zoning prior to annexation. On January 31, 1980, a formal interpretation was made establishing the salvage and welding business as a legal non-conforming use on the south 100 feet of the C-3 zoned property (ZA-107-80).

The expansion or extension of any commercial or industrial non-conforming use is prohibited according to the provisions of Section 902 of the Phoenix Zoning Ordinance. These provisions have been applied to properties and land uses citywide since well before the annexation of the property at 940 East Broadway Road. Therefore, the scrap metal and salvage operations

on the subject property cannot legally expand beyond the 100 feet depth (from Broadway Road) designated per ZA-107-80 or onto any adjacent parcels.

The scrap metal and salvage operation did not become non-conforming with the adoption of the Rio Salado Interim Overlay (RSIO) by the Phoenix City Council and the subsequent rezoning of the overlay zoning (C-3 RSIO and R-4 RSIO). The land use was legally non-conforming *only to a 100-foot depth* as established under ZA-107-80. No other portion of the site or any adjacent property could legally be used for a scrap metal or salvage yard prior to the adoption of the RSIO district zoning.

Any desire to expand the scrap metal and salvage operation beyond the established 100-foot depth or extend the business onto an adjacent residential parcel prior to the adoption of the RSIO zoning could only have been done by rezoning the property to either A-1 or A-2. No rezoning request was filed to permit such an expansion of the business or extension onto another lot between the January 31, 1980 decision on ZA-107-80 and the December 19, 2001 adoption of the RISO district.

The applicability provisions of the RSIO zoning district addresses existing prohibitive uses (Section 655.B.) with the following: "if (uses) *existing legally prior to the date of the overlay district* [emphasis added] and have become non-conforming uses due to the overlay district, (the applicant) may expand the use on the same or adjacent parcel under the conditions and development standards of this district." The scrap metal and salvage operation did not exist legally beyond the 100-foot depth established in ZA-107-80 and did not become non-conforming because of the RSIO overlay being adopted. If there is any storage of scrap metal or other salvageable products beyond the 100-foot depth, it is being done illegally.

The applicant has pointed out that the RSIO zoning district lists several land uses that are specifically prohibited within its boundaries, including the establishment of "new junk yards, wrecking yards, and salvage yards" (Section 655.C.3). If the applicant wishes to seek rezoning of all or any portion of the property, to an appropriate district for the scrap metal and salvage use, the normal rezoning process must be followed.

As a result of these findings, it is determined that:

- The use of the southernmost 100 feet of the parcel that fronts on Broadway Road as a scrap metal and salvage operation was established as a legally non-conforming use with the approval of ZA-107-80; and
- The depth of the non-conformity cannot be expanded beyond the 100-foot depth on the same lot or extended onto another property, according to the provisions of Section 902 of the Phoenix Zoning Ordinance; and
- The scrap metal and salvage operation (either within the southernmost 100 feet of the parcel that fronts on Broadway Road or on any adjacent parcel) did not become non-conforming with the adoption of the RSIO zoning district. A-1 zoning would have been needed on all other properties, or portions thereof, in order to operate a salvage business prior to the adoption of the RSIO zoning classification.

The only option for expanding a nonresidential nonconforming use, in this case the scrap metal salvage and welding business is to rezone the property.

SUMMARY: Mr. Jarvis stated that the subject site needed to expand into the rear of the property to move the business away from Broadway Road to enhance the property for the Rio Salado Interim Overlay District (RSIO).

Mr. Jarvis explained that a previous interpretation (ZA-107-80) determined that the use was non-conforming and the adoption of the RSIO district created a nonconforming use out of the salvage yard. The expansion of the salvage yard has been operating for a number of years.

Mr. Slusher has lived behind the subject property for the last 44 years. Mr. Slusher spoke in opposition and stated that the subject site began as a furniture store. Cal Harper, property owner several years ago, started selling used appliances, etc.

Mr. Dolasinski inquired about what the subject property had been used for. Mr. Slusher indicated that in the 1960's the owners bought used appliances and now the current owner began keeping shredders on-site. The shredding operation began approximately 3 years ago, shredding everything including cars at the rear of the property.

Ms. Garrity expressed concern with dust. Ms. Garrity noted that he has pictures from 10 years ago that show stoves, refrigerators, etc. on-site. Ms. Garrity stated that the owner works on A/C units at night that emit chemicals and has called the EPA; however nothing has been done yet. The crushers are located next to Ms. Garrity's building which makes the building shake and the spot light along the crusher shines into her property.

Mr. Barnes stated that the property appears to need rezoning; however if the creation of the RSIO created the nonconformity then the property owner should be able to continue the use.

Mr. Jarvis stated that the nonconformity was located in the front of the property and the goal was to move the use north (towards the rear) away from the street.

Mr. Dolasinski took this case under advisement. Mr. Dolasinski took this case out from under advisement on August 22, 2007 and the determination was that the legal non-conforming use on this property cannot expand within the same or adjacent parcels.

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