

# LOBB & HURST, PLLC

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December 18, 2020

## VIA HAND DELIVERY

Louisville Metro Planning & Design Services  
444 S. 5<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Louisville, Kentucky 40202

RE: 2601 West Chestnut Street, Louisville, KY 40211  
Application #20-NONCONFORM-0031

Dear Sir or Madam:

Enclosed for filing please find a BOZA Appeal Application in regard to the above-captioned non-confirming use case, as well check #1202 in the amount of \$100.00 for the filing fee.

If there is anything further that you require, please do not hesitate to contact me at your earliest convenience.

Sincerely,

LOBB & HURST, PLLC



Thomas J.B. Hurst, Member

Enclosures

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20-APPEAL-0009

Statement in support of approval of 20-NONCONFORM-0031

On November 17, 2020, Nicolas Pregliasco, on behalf of his clients Fed With Faith, Inc. and Jean Manganero, filed a Non-Conforming Use application (20-NONCONFOM-0031) for property at 2601 W. Chestnut Street in Louisville seeking a NCU determination for 6 existing apartments in a building located at the back of the subject property. Based on the size of the subject property (approximately 0.09 acres), the applicable R-6 zoning would allow a maximum of 1.56 dwelling units. The same property was already the subject of two pending NCU applications, 20-NONCONFORM-0013 and 20-NONCONFORM-0014, seeking a NCU determination for office/retail use and 13 apartments. On November 18, 2020, the Office of Planning & Design Services approved 20-NONCONFORM-0031 and denied the other two pending applications.

As ground for the appeal of the approval of 20-NONCONFOM-0031, the Appellant states that the Applicant failed to provide any evidence that the non-conforming use of the property for multiple apartments predated the adoption of the applicable zoning regulation in 1971, or that the subsequent non-conforming use of the property for multiple apartments has been continuous and uninterrupted. Moreover, nothing in the November 18 approval letter sets forth any additional facts that provide a basis of the determination of a pre-existing non-conforming use for 6 apartments.

Attached herewith is a letter dated August 14, 2020, submitted on behalf of the Appellant in opposition to 20-NONCONFORM-0013 and 20-NONCONFORM-0014. This letter sets out the Appellant's personal knowledge regarding the use of the subject property based on her being a life-long resident of the Russell neighborhood, having grown-up in (and is now the owner of) the house at 2605 W. Chestnut Street directly adjacent to the subject property.

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VIA U.S. MAIL AND ELECTRONIC MAIL

August 14, 2020

Ms. Heather Pollock  
Case Manager  
Louisville Metro Planning & Design Services  
444 S. 5<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Louisville, Kentucky 40202  
[Heather.pollock@louisvilleky.gov](mailto:Heather.pollock@louisvilleky.gov)

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RE: 2601 West Chestnut Street, Louisville, KY 40211  
Application #20-NONCONFORM-0013  
Application #20-NONCONFORM-0014

Dear Ms. Pollock:

This letter is in follow-up to our telephone conversation of Tuesday, August 11, 2020, regarding the two (2) pending non-conforming use applications (the "Applications") referenced above in regard to 2601 W. Chestnut Street (the "Subject Property"). As I mentioned to you during our discussion, my client Katheryn Higgins is the owner of 2605 W. Chestnut Street, which is directly adjacent to the Subject Property. Her parents, Frederick and Elnora Higgins, purchased the 2605 W. Chestnut Street property in 1946 after her father was discharged from the army, where he had trained as Tuskegee airman at Fort Knox. For many years her father operated the Rose and Higgins Funeral Home, located three blocks from the family home, while her mother was a teacher for over 30 years in the old City School system and later the Jefferson County Public School system. It is where my client and her brother, Martin, both grew up and attended daily Mass at St. Charles Borromeo Catholic church, and have remained for their lifetimes. Martin was a manager at a local restaurant on West Broadway less than half of mile from the family home for over 20 years, and my client commuted from that home daily while attending the University of Louisville, earning degrees in both in chemical engineering and finance. It is where she lives today. It is her family home. It is also her second home.

On behalf of my client, I would like to express her opposition to the Applications. In doing so, my client notes that the applicant, Fed with Faith, Inc. ("Applicant"), has operated an unauthorized transitional housing facility at the Subject Property since 2017. Only after receiving negative publicity in the local media regarding this unauthorized use did it finally seek the required conditional use permit. As you know the CUP application

20-APPEAL-0009

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DEC 21 2020

AUGUST 14, 2020

PAGE | 2

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to use the Subject Property for transitional housing was denied by BOZA on October 7, 2019. Based on my client's observations of the Subject Property, that unauthorized use continues to this day. On the face of it, it certainly appears that the Applications are simply an attempt to gain official sanction to continue using the Subject Property as transitional housing, notwithstanding the denial of the CUP application.

In regard to the specific factual claims laid out by the Applicant in seeking a non-conforming use certificate for thirteen (13) apartments, I note that the Applicant has failed to provide any objective evidence whatsoever that all (or even some) of the apartments existed prior to 1971. My client, based on her personal knowledge from having grown-up and lived all of her life, next to the Subject Property, does recall Mr. Wirth's shoe repair shop and Pandora's Beauty Box hair salon, (which she and her mother patronized) located on the 26<sup>th</sup> Street side of the building into the late 1960s or early 1970s, but has no recollection of the building having been used for residential apartments before 1971. Any use of the building for multiple apartments did not occur until decades later. I do note that the Applicant mentions that some of the apartments were used as boarding room space, presumably in conjunction with the use of the Subject Property as an employment office (2002-2006) and transitional facility for parolees (2008-2014). Rather than being described as "boarding room space", my client would colloquially describe the use during this period of time as a "flop-house", and also state that this use was in no way a benefit to the neighborhood.

The Applicant also seeks a non-conforming use certificate for the first floor of the building located on the Subject Property for use as office space. As the Applicant concedes in its description of the history of the Subject Property, the prior uses all appear to have been commercial/retail use prior to 1971. In fact, the earliest evidence presented by the Applicant of any use other than as retail/commercial space is 2002 when the Subject Property appears to have been used as employment office. Simply put, Applicant has presented no evidence of use of the Subject Property for office space until long after 1971.

As set forth above, the Applicant has failed to present any substantive evidence to support its claim that it is entitled to non-conforming use certificates for the Subject Property to use as office space and to have an excessive number of apartments. As such, both applications should be denied. Moreover, the Applicant's demonstrated willingness to operate a transitional living facility in violation of the zoning ordinance certainly raises a concern that if the Applications are approved the Applicant would continue to use the Subject Property for what is, for all practical purposes, a transitional living facility.

My client's immediate family's connection to the Russell neighborhood goes back eighty (80) years to the 1940s and her personal family and neighborhood memories of the area stretch back over 60 years to the 1950s. During that time, she has seen the neighborhood transition from a vibrant center of historically significant African-American

20-APPEAL-0009

AUGUST 14, 2020

PAGE | 3

life in Louisville to the economically depressed area that it has become. She, along with all the other property owners in the Russell neighborhood, would love to see the Subject Property put to a productive use that would aid in attracting new home owners and families to help stabilize the surrounding neighborhood. Unfortunately, the Applicant's existing use of the Subject Property over the past 3 years, and presumably the planned use into the future, instead draws a transient population with no stability and no appreciation for, or intention to create lasting ties to, the historic Russell neighborhood. There is no reason to believe that granting the Applicant's requested non-conforming use certificates would do anything to change this established destructive pattern. Again, on behalf of my client, I ask that you deny the Applications.

If you would like to discuss this matter further with either me or my client, please feel free to contact me at your convenience.

Sincerely,



Thomas J.B. Hurst, Member

cc: client

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