

**19-NONCONFORM-0012**  
**Change in Nonconformance for**  
**3911 S. 3<sup>rd</sup> Street**



**Board of Zoning Adjustment Public Hearing**

**Zach Schwager, Planner I**

**October 07, 2019**

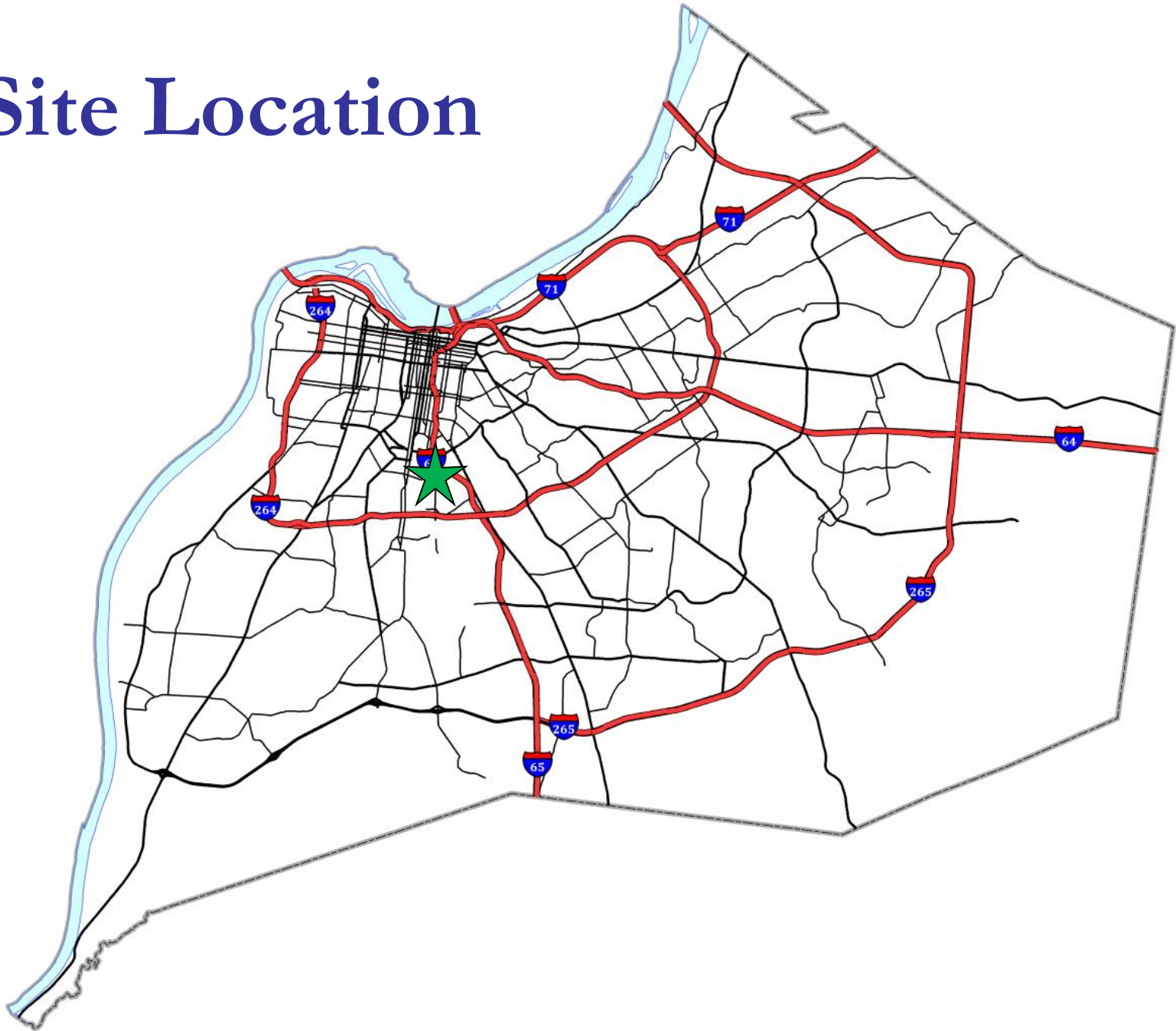
# Request

Change in Nonconformance from Dentist Office (Doctor's Office) to a Barbers/Cosmetologists/Hairdressers/Manicurists and tanning salon.

# Case Summary/Background

- The previous property owner received a nonconforming rights determination for dental office from the Department of Inspection, Permits, & Licenses on Planning on June 05, 2003.
- The property located within the R6 zoning district and the Traditional Neighborhood form district.
- The applicant is requesting to change the use from a Dentist Office (Doctor's Office) to Barbers/Cosmetologists/Hairdressers/Manicurists and tanning salon.

# Site Location



# Zoning/Form Districts

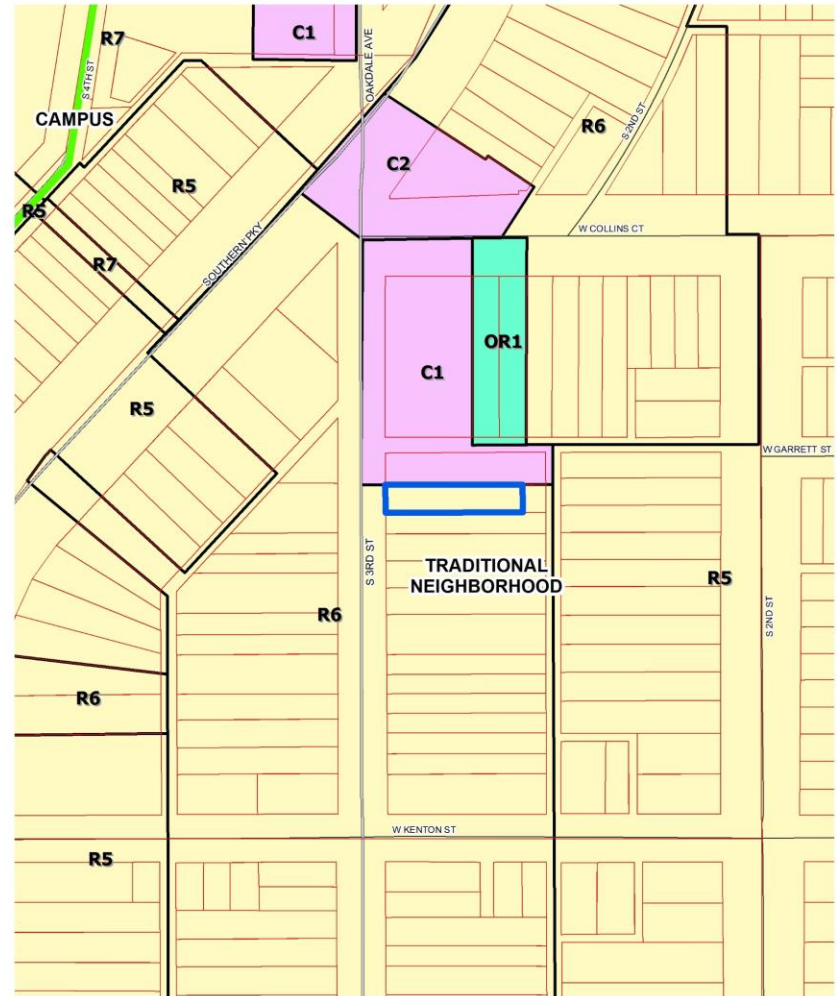
Subject Property: R-6/TN

North: C-1/TN

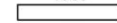
South: R-6/TN

East: R-5/TN

West: R-6/TN



3911 S. 3rd St.  
feet



130  
Map Created: 1/9/2019



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# Front of Property





# Front of Property





# Rear Parking Area





# Property to the North





# Property to the South





# Property Across the Street



# Standards of Review (1.3.1 A-D)

- 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.
- 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.
- 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.
- 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.

# Conclusions

- Staff disagrees with the applicant's assertion that the proposed change in nonconformance is in the same classification as the current use. The proposed uses are in a more intense zoning classification than the current nonconforming use.
- In addition, the change in nonconformance, is more odious and offensive than the current use. A Doctor's or Dental Office will have set appointments and limited hours on the weekends. The proposed uses generate more traffic due to walk-in appointments and expanded weekend hours. Tanning Salons store dihydroxyacetone (DHA) spray containers and other large equipment used to apply sunless tans to their clients which elevate this use to a higher classification.
- Therefore, staff does not recommend that the Board approve the change in nonconforming to allow a Barbers/Cosmetologists/Hairdressers/Manicurists and tanning salon.



# Required Actions

Based upon the file of this case, this staff report, and the evidence and testimony submitted at the public hearing, the Board must determine:

1. Is the change in nonconformance in the same or more restrictive classification than the current nonconforming use ?
2. Will the change in nonconformance be no more odious or offensive to surrounding properties than the current nonconforming use ?

If the answer is yes to both of these questions, the Board may approve the change in nonconforming use.