

Board of Zoning Adjustment

Staff Report

July 24th, 2023



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|--------------------------|-------------------------------|
| Case No: | 23-NONCONFORM-0014 |
| Project Name: | Nonconforming Rights |
| Location: | 1216 Belmar Dr |
| Parcel: | 085A01430000 |
| Owner: | Nicole Nguyen |
| Applicant: | Nicole Nguyen |
| Jurisdiction: | Louisville Metro |
| Council District: | 21 – Betsy Ruhe |
| Case Manager: | Mark Pinto, Associate Planner |

REQUEST(S)

- To determine whether a property has nonconforming rights for a manicurist (nail salon).

CASE SUMMARY/BACKGROUND

The subject property is zoned R-5 Single-Family Residential, located within the Suburban Neighborhood form district, and approximately 0.16540 acres. The applicant has applied for nonconforming rights for a nail salon which is classified in the Land Development Code as a manicurist, an allowable use in the OR-1 zoning district along with barbers, cosmetologists, and hairdressers. The applicant submitted a signed statement from the previous owner, Roberta Vittitow. According to photos of the property, the business’s previous name was “Bobbi Shop.” The previous owner stated the property was operating as a salon under the name “Be-Lovely” when the property was purchased in 2001 from David Key. The previous owner also indicates David Key purchased the property from Pearl Payton, which operated a small business within the space. The applicant submitted documentation from Jefferson County PVA which lists the property class as 420 COM Retail. According to PVA, the 874 sq. ft. structure was allegedly constructed in 1983. This date has been proven to be false and will be further elaborated upon in the staff analysis section of this staff report. Information submitted by the applicant has been provided as an agenda item.

| Historic Zoning | |
|------------------------|-------------------------------|
| 1965 | R-5 Single-Family Residential |
| 1980-1984 | R-5 Single-Family Residential |
| 1995-2001 | R-5 Single-Family Residential |
| Present | R-5 Single-Family Residential |

The applicant has applied for nonconforming rights for a manicurist (nail salon). Based on Land Development Code (LDC) Section 1.3.1.F and pursuant to BOZA Bylaws and Policies, staff requested that the case go to BOZA to make a final determination on whether the property has nonconforming rights.

BOZA must determine whether the property has nonconforming rights for a nail salon use in the R-5 zone based on the following criteria:

LDC Section 1.3.1.A-F states;

A. 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.

B. 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.

C. 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.

D. 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.

E. Notwithstanding any provision in Chapter 1, Part 3 to the contrary, a residential structure located in an industrial district may be expanded if (1) the expansion does not increase the number of dwelling units on the subject property and (2) the expansion would be permitted if the existing structure were located in an R-5 Residential district.

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 ANALYSIS

Staff researched Caron and Polk Directories dating back to 1962. In 1962 through 1980, the property was listed under the name "Payton Pearl M" as a "confr." The directories also indicate the property owner for 1216 Belmar Ave, Payton Peal M, also owned the property immediately to the right of 1216 Belmar Ave, which is 1214 Belmar Ave. Upon further investigation "confr" is an abbreviation for a confectionary in the Caron Directories. Historic zoning regulations from the 1960s list a confectionary as an allowable use within the C-1 zoning district. In 1981 and 1982, the subject property was listed as vacant. In 1983, the Caron Directories list the property as "under constr." This would suggest the structure was being renovated, not new construction given previous directory listings and staff research from historic Sanborn Maps. A Sanborn Map with an index dated 1961 show the structure with the identical building footprint and configuration as present day. The Sanborn Map also has an "S" over the building drawing, which is code for a store or other commercial type use.

Sanborn Maps along with historic aerials retrieved by staff corroborate listings from Caron Directories and confirms the building was not constructed in the 1980s as stated on PVA records. Historic aerials and the Sanborn maps have been attached as an agenda item. In 1984 to 1993 directories list the property under the name Be-Lovely Beauty Salon and in 2001 as Shear Miracles Salon. From 2005-2021, the property is listed in the City Directories as Bobbi Shop Beauty Salon.

Directory listings aid in corroborating information submitted by the applicant and statements from one of the previous property owners attesting to the property's use history. Staff analyzed historic newspaper entries and found further evidence the subject site was used for nonresidential purposes. Throughout the late 1950s and 1960s, 1216 Belmar Dr is listed under the fourth ward as a polling place for primary elections. A copy of the Courier Journal entries from 1962 have been attached as an agenda item. Staff also suggests there has been no evidence of an expansion of any nonconforming use on the property.

STAFF FINDINGS

Staff finds there is sufficient evidence to state the subject property had nonconforming rights for a confectionary, since the use predated 1971; however, a change in nonconforming rights was never requested and filed to change the nonconforming rights use from a confectionary. The standard of review for changes in nonconforming rights is based on a determination whether a new nonconforming use is any more odious or offensive to surrounding properties than the first nonconforming use. Staff finds the requested nonconforming use of a manicurist (nail salon) would be no more odious or offensive than the previous nonconforming use, a confectionary. The new nonconforming would potentially generate less traffic and noise than a confectionary store. Per LDC regulations, if the structure is over 50 years old there is no parking requirements for the building.

The other standard of review for changes in nonconforming rights requests is determining if the new nonconforming use is in the same or more restrictive zoning classification as the first nonconforming use. Manicurists (nail salons) are permitted in the OR-1 zoning district while confectionaries are permitted in the C-1 zoning district. Therefore, staff finds the proposed nonconforming use is in a more restrictive zoning classification. Ultimately staff finds there is sufficient evidence and information for the Board to grant nonconforming rights for a manicurist (nail salon) pursuant to Section 1.3.1.F of the LDC.

Since the original nonconforming use was never recognized staff recommends the Board of Zoning Adjustment recognize nonconforming rights for a confectionary as the first motion for this case based on the staff report and information presented by staff. For the second motion, staff recommends granting a change in nonconformance to a manicurist (nail salon) based on the staff report and the findings that a manicurist (nail salon) is permitted in a less intensive classification than a confectionary and is no more odious or offensive than the original nonconforming use.

RELATED CASES

There are no related cases associated with the property.

TECHNICAL REVIEW

No technical review required.

INTERESTED PARTY COMMENTS

Staff has received no interested party comments.

REQUIRED ACTIONS:

- **APPROVE** or **DENY** the applicant’s request that the nonconforming use be recognized as an established activity which lawfully existed at the time of the enactment of any zoning regulation which would not permit such activity.

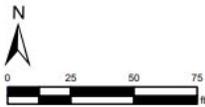
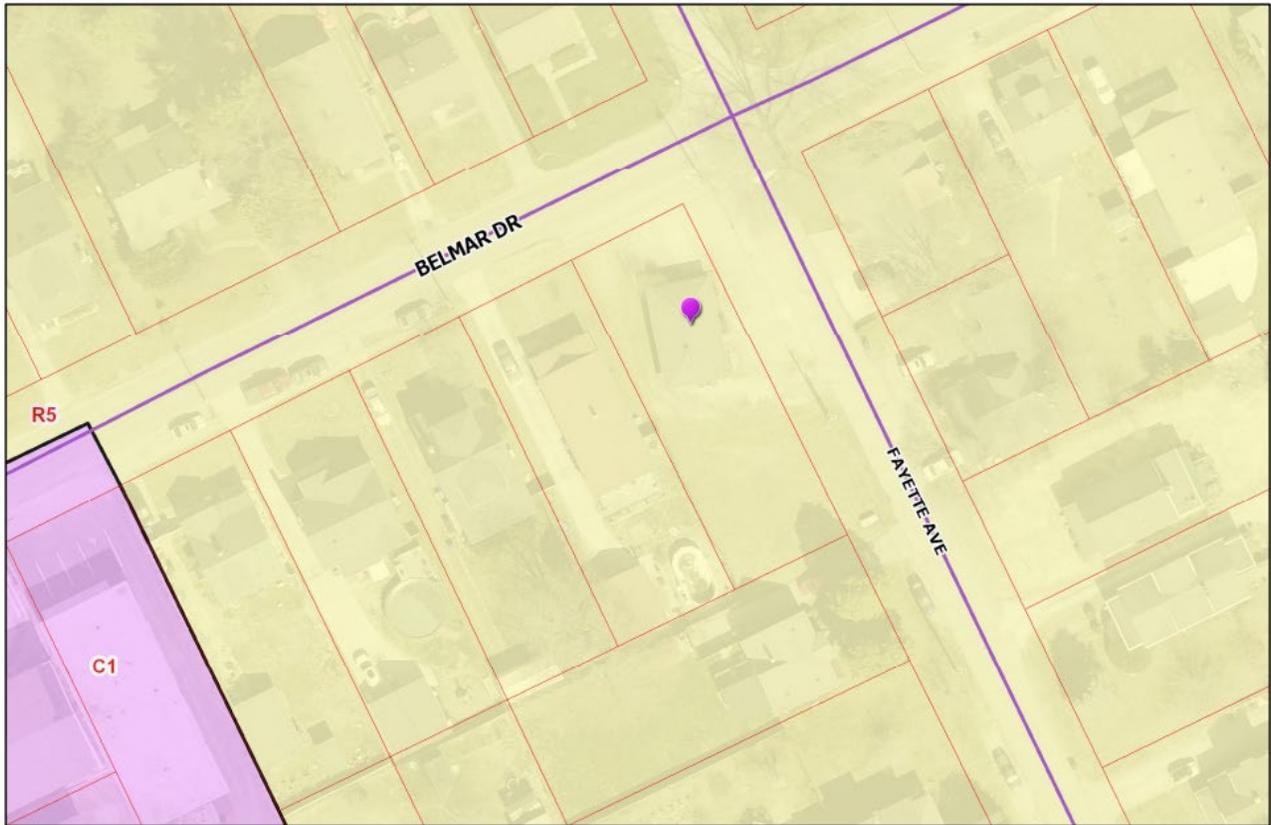
NOTIFICATION

| Date | Purpose of Notice | Recipients |
|-------------|---|--|
| 7/7/2023 | Hearing before Board of Zoning Adjustment | 1 st tier adjoining property owners |
| 7/10/2023 | Hearing before Board of Zoning Adjustment | GovDelivery for Council District 21 |
| 7/12/2023 | Hearing before Board of Zoning Adjustment | Sign Posting |

ATTACHMENTS

1. Zoning Map
2. Aerial Photographs
3. Site Photos

I. Zoning Map



1216 Belmar Dr

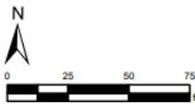
Friday, July 14, 2023 | 1:34:39 PM



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This map is not a legal document and should only be used for general reference and identification.

II. Aerial Photo



1216 Belmar Dr

Friday, July 14, 2023 | 1:35:44 PM



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III. Site Photos



Intersection of Belmar Dr. and Fayette Ave.



Subject Site (1216 Belmar Dr).



To the right of Subject Site (1214 Belmar Dr).



Across the street from subject site.