

# Board of Zoning Adjustment Staff Report

September 12, 2016



<b>Case No:</b>	16Appeal1008
<b>Project Name:</b>	Nonconformance
<b>Location:</b>	2747 South Seventh Street Road
<b>Owner:</b>	Gary & Mary Ruark
<b>Representative:</b>	William B. Bardenwerper
<b>Size:</b>	0.29 acres
<b>Existing Zoning District:</b>	R-7 & R-5
<b>Existing Form District:</b>	Traditional Neighborhood
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	6 –David James
<b>Case Manager:</b>	Steve Hendrix, Planning Supervisor

## REQUEST

Appeal of a Notice of Refusal from Planning & Design concerning the change from one nonconforming use (heating & air conditioning shop) to another nonconforming use (beauty salon) in an R-7 zoning district.

## CASE SUMMARY/BACKGROUND/SITE CONTEXT

The subject site is located in an R-7, Residential Multi-Family and R-5, Residential Single Family zoning districts, both within a Traditional Neighborhood Form District. The two story structure appears to have apartments on the second floor with the ground floor having space for retail/office space, garages, and shop area. The first floor space in the front appeared to be vacant. The location and the size of the beauty shop is not known.

1971, will be the base year for the establishment of nonconforming rights, since the property was in the former City of Louisville.

## ZONING HISTORY

1971-----Present-----R-7, Residential Multi-Family and R-5, Residential Single Family

## LAND USE HISTORY

Information gathered from the City Directories shows that from 1971, either Birkhead Company Incorporated Heating and Air Conditioning or Advantage Heating & Air Conditioning has been listed at this location until 2015, along with apartments.

**LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE**

	Land Use	Zoning	Form District
<b>Subject Property</b>			
Existing	Vacant Heating & Air Conditioning Contractor's Shop, Apartments	R-7, R-5	Traditional Neighborhood
Proposed	Same with Beauty Shop	R-7, R-5	TN
<b>Surrounding Properties</b>			
North	Cemetery	R-1	TN
South	Apartments	R-7	TN
East	Cemetery	R-1	TN
West	Day Care, Mobile Home Park	EZ-1, R-6	Traditional Workplace

**PREVIOUS CASES ON SITE**

**B-119-02**

On June 17, 2002, the City of Louisville Board of Zoning Adjustment **DENIED** the Appeal to allow the change from one nonconforming use, (heating & air conditioning shop) to another nonconforming use, (bar) with a malt beverage license, since nonconforming rights did not exist on the subject property, 1931 was the base year used.

**INTERESTED PARTY COMMENT**

None Received

**STAFF ANALYSIS:** The following sections of the Land Development Code appear to be applicable to this case. The full text of these sections may be found within the Land Development Code for all of Jefferson County.

- Chapter 1.2.2. Definitions
- Chapter 1.3.1 Nonconformance
- Chapter 2.2.11 R-7, Residential Multi Family District

In addition, KRS 100.253 is the State statue that deals with non-conforming uses.

The Land Development Code and state law indicate that a nonconforming use is any established lawful activity conducted on a parcel at the time of enactment any zoning regulation which would not permit such activity on that parcel. A nonconforming use may be continued as then established until it is abandoned. However, such a use shall not be enlarged or extended beyond the scope and area that existed at the time the nonconformity began. **The Board of Zoning Adjustment has the authority to allow a change from one nonconforming use to a second nonconforming use if the new use is in the same or more restrictive classification than the prior use and is no more odious or offensive to surrounding properties than was the first non-conforming use.**

The abandonment of a nonconforming use terminates the nonconforming use status. The burden of proof in a hearing before the 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 had 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.

Abandonment does not appear to have taken place, since a heating and air conditioning shop has been at this location since at least 1971.

### STAFF CONCLUSIONS

A beauty shop is listed as a permitted use within an OR-1, Office Residential zoning district, while a heating and air conditioning shop (contractor's shop) is listed as a permitted use within a C-2, Commercial zoning district. The beauty shop would be in a more restrictive classification than the heating and air conditioning shop.

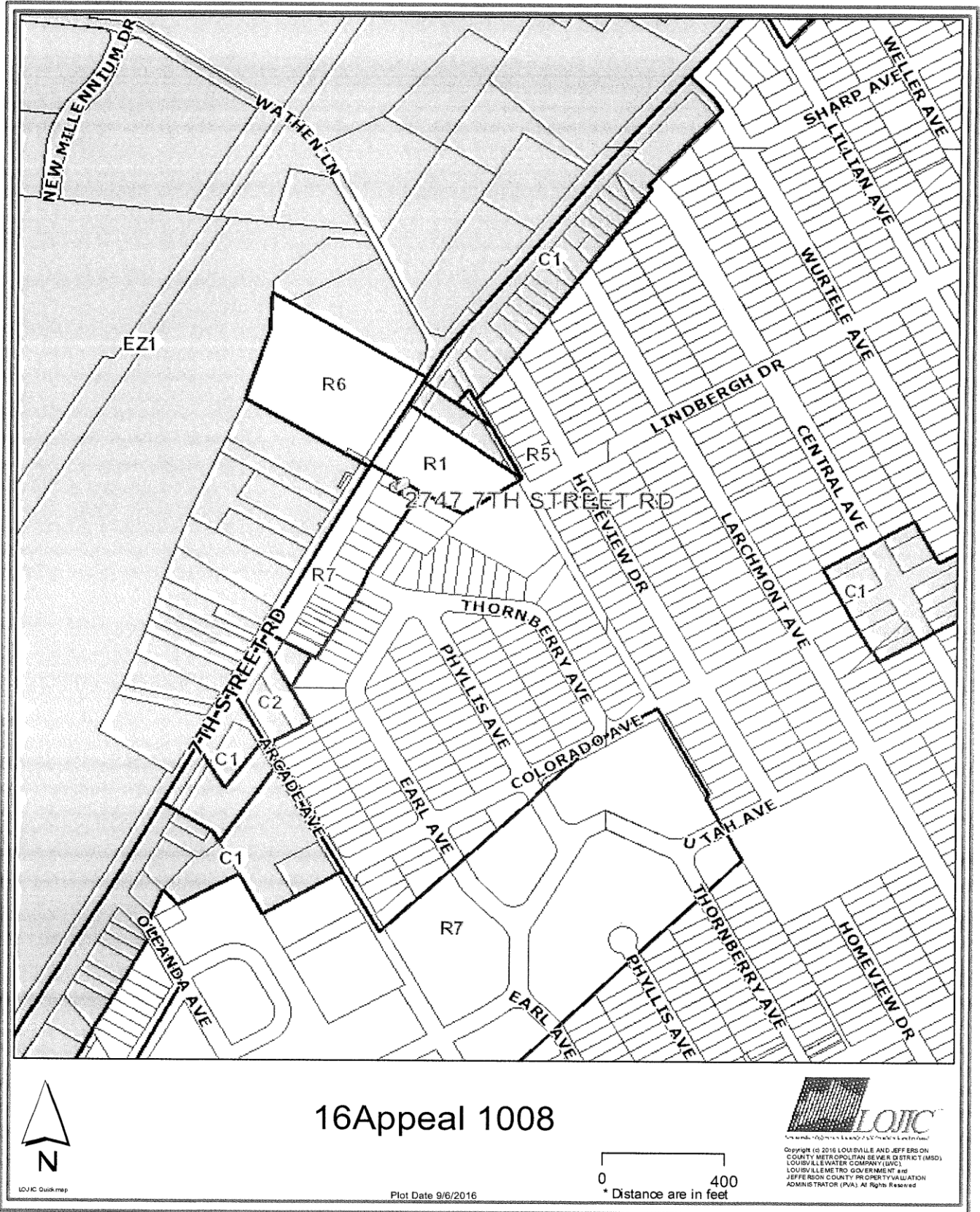
The beauty shop would be less odious or offensive to surrounding properties than the contractor's shop, since the intensity, noise and of the use is substantially less.

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. Do nonconforming rights exist for the heating & air conditioning business?
2. If so, is the change from one nonconforming use (heating & air conditioning business), to another nonconforming use (beauty salon) in the same or more restrictive classification?
3. Is the change from one nonconforming use (heating & air conditioning shop), to another nonconforming use (beauty salon) no more odious or offensive to surrounding properties than the first nonconforming use?
4. The Board will need to determine the location and size of the beauty shop.
5. If the Refusal issued by Planning & Design Services was proper?

### NOTIFICATION

Date	Purpose of Notice	Recipients
August 25, 2016	Notices ready to be mailed	Appellant, Adjacent Neighbors
August 26, 2016	Sign Posted	Neighbors
August 26, 2016	Legal Ad in paper	Circulation Area





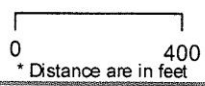
274.7 7TH STREET RD



LOJIC Quickmap

16Appeal 1008

Plot Date 9/6/2016



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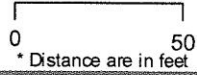
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