

Board of Zoning Adjustments

Staff Report

October 28, 2019



Case No:	19-APPEAL-0002
Project Name:	Beecher Street Appeal
Location:	500 Beecher Street
Appellant:	Charlene B. Satori
Jurisdiction:	Louisville Metro
Council District:	15 – Kevin Triplett
Case Manager:	Chris French, AICP, Planning and Design Supervisor

REQUEST(S)

- Appeal of an administrative decision made on September 27, 2019 to approve a nonconforming rights determination request for a Tavern/Bar/Saloon

CASE SUMMARY/BACKGROUND

The subject property is zoned R-5 and is located within the Traditional Neighborhood Form District, which does not permit bars, taverns, etc. as a permitted use. A nonconforming rights determination application (19-NONCONFORM-0018) for the subject property was filed on September 17, 2019. On September 27, 2019, after reviewing information within the Office of Planning and Design Services and working with the applicant to find additional documentation, staff determined that there was sufficient evidence to establish that the subject property has nonconforming rights for a Tavern/Bar/Saloon. The Appellant submitted an appeal application on October 4, 2019, which is within the 30-day filing window.

As set forth in Louisville Metro Land Development Code (LDC) Sec. 11.7.3, pursuant to Kentucky Revised Statutes (KRS) 100.257 and 100.261, the Board shall hear appeals of staff determinations in the following areas: 1) written interpretations of the provisions of the LDC and 2) an official action, order, requirement, interpretation, grant, refusal, or decision of an administrative official, zoning enforcement officer or code enforcement officer.

The Appellant is asserting in the basis of appeal that the subject property abandoned the nonconforming rights, pursuant to LDC Sec. 1.3.1.F, which states;

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 in reviewing the nonconforming rights application did not consider the nonconforming use of the property as abandoned because even though the last business operating under a nonconforming rights status ceased operation more than one year before the nonconforming rights application was filed, the subject property had been advertised for sale as a property that had nonconforming rights for a tavern/bar/saloon.

The owner of the property provided information in the application for nonconforming rights under 19-NONCONFORM-0018 and additional information was found by the Office of Planning and Design Services based on a review of information within the office. The Appellant submitted information with the appeal application to support their basis of appeal. This documentation is part of the record and is available for the Board to review on the Louisville Metro Government Agenda & Meeting Portal (<http://louisville.legistar.com>).

STAFF ANALYSIS/FINDINGS

The following sections of the LDC are applicable to this case:

Section 1.2.2 Definitions

Section 1.3.1 Use

Section 2.2.7 R-5 Residential Single-Family District

Section 2.4.4 C-2 Commercial District

As currently defined in LDC Sec. 1.2.2, the following definitions are relevant to the appeal:

Nonconformity (or Nonconforming) -An activity or a building, structure or a portion thereof which lawfully existed before the adoption or amendment of the zoning regulation, but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located.

Tavern - A commercial establishment wherein alcoholic beverages are sold for consumption on the premises; a bar, a saloon; provided, however, that a place wherein both food and alcoholic beverages are sold for consumption on premises and within which the total receipts from the sale of food exceed the total receipts from the sale of alcoholic beverages shall be a restaurant.

According to Jefferson County PVA records, the property class for this parcel of land is listed as 420 Com Retail and the details list the use as a Tavern/Bar. The PVA lists the building as built in 1929.

Staff Conclusions

Staff believes that the correct decision was made based on the information submitted by the property owner and other information from the Office of Planning and Design Services. The information submitted by the Appellant would not have changed staff's decision on the nonconforming rights application.

Standard of Review

Pursuant to LDC 11.7.3 and KRS 100.257, the Board of Adjustment shall have the power to hear and decide cases where it is alleged by the applicant that there is error in any order, requirement, decision, grant, or refusal made by an administrative official in the enforcement of the zoning regulation.

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

Were the nonconforming rights for a Tavern/Bar/Saloon abandoned for the property located at 500 Beecher Street?

RELATED CASES

19-NONCONFORM-0018 – The administrative decision in this case is the subject of the appeal.

INTERESTED PARTY COMMENTS

No comments submitted.

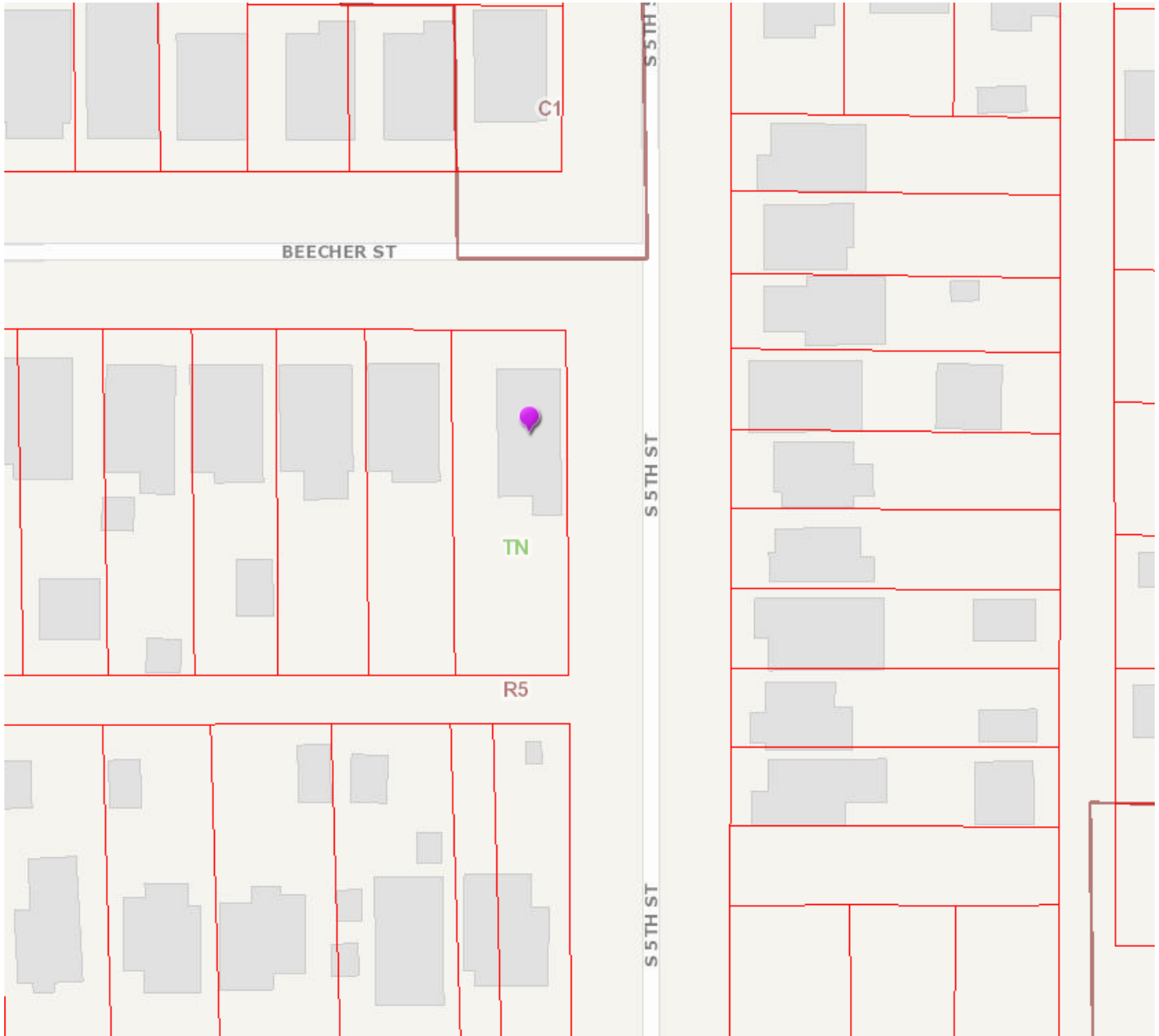
NOTIFICATION

Date	Purpose of Notice	Recipients
October 16, 2019	Notification of appeal of an administrative decision	Adjoining property owners, Appellant, and PDS staff GovDelivery District 15
October 18, 2019	Legal ad for notification of appeal of an administrative decision	Courier Journal - published in paper

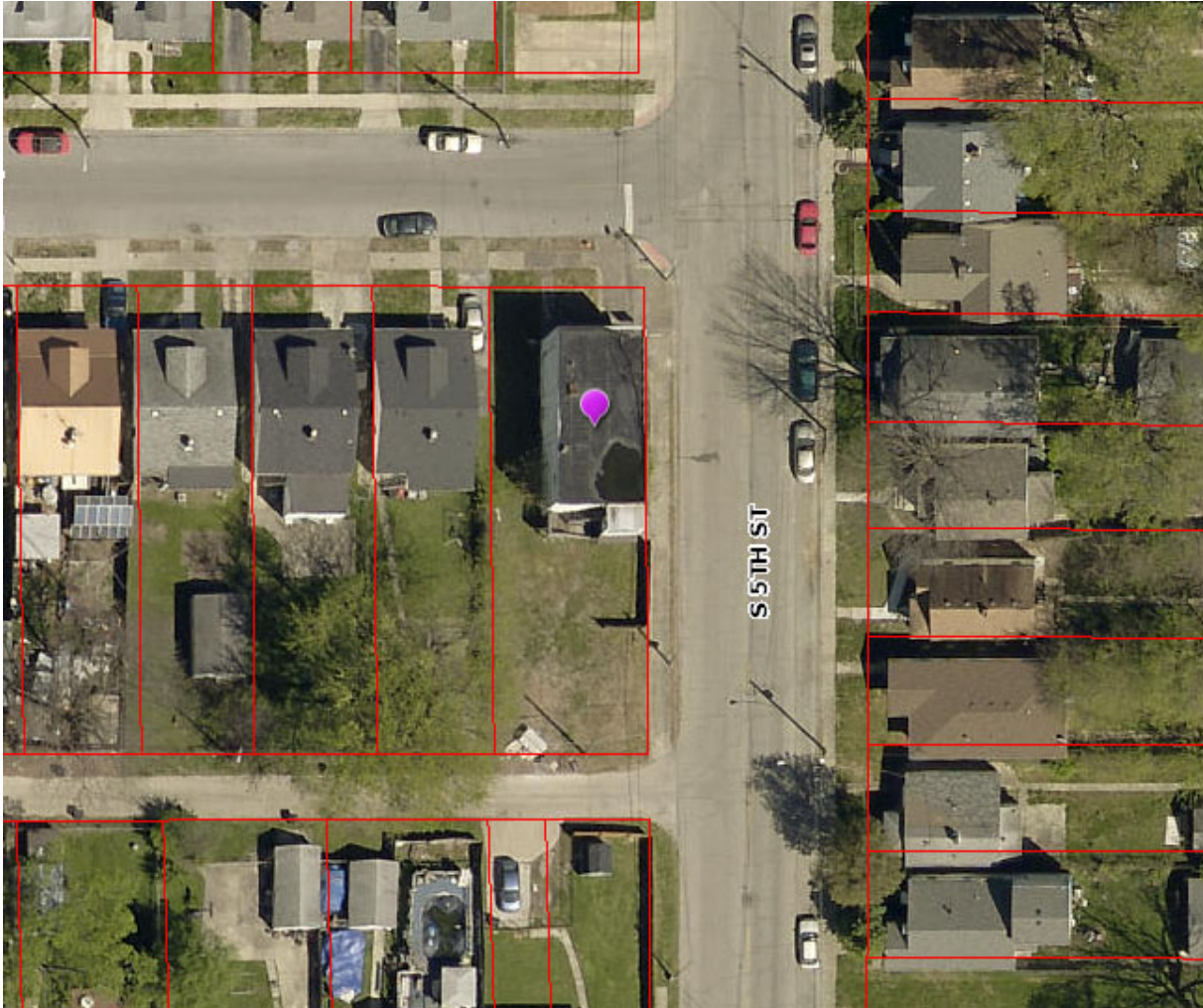
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Property Photos

1. Zoning Map



2. Aerial Photograph



3. Property Photos



Photo from PVA online



Photo from PVA online



Photo from PVA online



Photo from PVA online



Google streetview photo – Dated May 2019



Current photo of property – as of 10/23/19