

Board of Zoning Adjustment Staff Report

July 11, 2016



Case No:	15Appeal1002
Project Name:	Nonconformance
Location:	1234 Boyle Street
Owner:	Ray Ackerman
Applicant:	Ray Ackerman
Existing Zoning District:	R-6
Existing Form District:	Traditional Neighborhood
Jurisdiction:	Louisville Metro
Council District:	10 – Pat Mulvihill
Case Manager:	Steve Hendrix, Planning Supervisor

REQUEST

Appeal of a Notice of Violation issued by the Department of Codes and Regulations, the establishment of a nonconforming use (office in the house) and the change to another nonconforming use, (office with display) in an R-6 zoning district.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

A Notice of Violation was issued by the Department of Codes and Regulations in regards to the number of vehicles parked and the vehicles being licensed, operable and in the name of the homeowner.

A site inspection on June 22, 2016, found no violations.

Documentation submitted by the appellant requests that the property continue to be commercial for the expansion of the millwork shop as storage and parking.

After some discussion, the appellant is requesting that the Board determine nonconforming rights for an office in the residential structure in an R-6 Zoning District and to allow a change in that nonconformance to one that allows an office with display. "Display" in this case would mean products from the millwork shop such as brackets, crown molding, and balusters. The appellant has stated that such office visits would be by appointment only and not a retail situation. Parking will remain on the street

The subject site is located at 1234 Boyle Street between Goss Avenue and Samuel Street in the Schnitzelburg neighborhood.

The appellant owns the millwork shop at the corner of Boyle Street and Goss Avenue, just southwest of the subject property. The appellant also owns the adjacent property to the west which faces Samuel Street and the property across Boyle Street to the east.

ZONING HISTORY

1971-----Present-----R-6, Residential Multi Family District

LAND USE HISTORY

Information gathered from the City Directory indicates that an office has been at this location since at least 1971. A long time occupant was Arab Termite and Pest Control and most recently Commonwealth Home Inspections.

1971, is the base year in determining nonconforming rights for property in the former City of Louisville.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Vacant Structure/Garage	R-6	Traditional Neighborhood
Proposed	Office with display Garage for storage	R-6	TN
Surrounding Properties			
North	Single Family Residence	R-6	TN
South	Single Family Residence	R-6	TN
East	Single Family Residence	R-6	TN
West	Single Family Residence	R-6	TN

PREVIOUS CASES ON SITE

None

INTERESTED PARTY COMMENT

Received email from neighbor at 1232 Boyle Street concerned about the condition of the property.

APPLICABLE PLANS AND POLICIES

Land Development Code
KRS

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-6, Residential Multi Family District

In addition, KRS 100.253 is the State statute 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 has not taken place.

STAFF CONCLUSIONS

Various site inspections have taken place and the violations did not exist. Research from the City Directory reveals that an office has been at the location since at least 1971. The display of the finished millwork products is minimal. Both land uses are permitted in an OR, Office/Residential District. It does not appear that the "office/display" would be any more odious or offensive to surrounding properties than the home inspection office. The Notice of Violation was proper at the time it was issued, but the violation has been resolved.

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 an office?
2. If so, is the change from one nonconforming use (office), to another nonconforming use (office with finished millwork display) in the same or more restrictive classification ?
3. Is the change from one nonconforming use (office),to another nonconforming use (office/display) no more odious or offensive to surrounding properties than the first nonconforming use?
4. If the Notice of Violation issued by the Department of Codes & Regulations was proper?

NOTIFICATION

Date	Purpose of Notice	Recipients
June 29, 2016	Notices mailed	Appellant, Adjacent Neighbors
June 27, 2016	Sign Posted	Neighbors
July 1, 2016	Legal Ad in paper	Circulation Area

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph





1234 BOYLE ST

1234 Boyle St.



LOJIC Quick map

Plot Date 4/24/2015

0 50
* Distance are in feet



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