

Board of Zoning Adjustment Staff Report

November 17, 2014



Case No:	14Appeal1008
Project Name:	Nonconforming Rights
Location:	231 North 19 th Street
Owner:	Work Development, LLC
Applicant:	Mitchell E. Kersting
Representative:	Mitchell E. Kersting
Size:	0.054 acres
Existing Zoning District:	R-6
Existing Form District:	Traditional Neighborhood
Jurisdiction:	Louisville Metro
Council District:	5 – Cheri Bryant-Hamilton
Case Manager:	Steve Hendrix, Planning Supervisor

REQUEST

An Appeal of a Refusal issued by the Department of Codes & Regulations concerning the change from one nonconforming use (grocery store) to another nonconforming use, (office). Only the Board has the authority to allow a change from one nonconforming use to another nonconforming use.

CASE SUMMARY/BACKGROUND/SITE CONTEXT

On October 21, 2014, a Notice of Refusal was verbally issued concerning the change from a retail store to an architect's office.

On October 22, 2014, an Appeal application was submitted concerning the change to an office for a small architecture firm.

Since the Board's decision in 2011, a market has been listed in 2012 and 2103. The address was not listed in the 2014 directory.

The zoning remains R-6, Residential Multi-Family District.

As mentioned in the 2011 staff report, the Portland Neighborhood Plan recommends changing the R-6 to CR, Commercial Residential at corner commercial opportunities such as this one.

A grocery store is a permitted use within a CN, Neighborhood Commercial District.
A professional office is a permitted use within a CN, Neighborhood Commercial District.

An office would be no more offensive or odious to the neighboring properties than the grocery store, since the office will create less pedestrian traffic, will likely have a reduction in the noise from clients and since the appellant is intending to renovate the interior and exterior of the building.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Vacant Retail Store/Apartments	R-6	Traditional Neighborhood
Proposed	Architectural Firm/Apartments	R-6	TN
Surrounding Properties			
North	Single Family Residences	R-6	TN
South	Single Family Residences	R-6	TN
East	Apartments	R-6	TN
West	Boone Park	R-1	TN

PREVIOUS CASES ON SITE

B-16482-11

On October 17, 2011, the Board acknowledged nonconforming rights existed for a grocery store on the first floor at this location.

INTERESTED PARTY COMMENT--None

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

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;
2. There is a reasonable prospect that the nonconforming use will be reinstated in the foreseeable future.

Abandonment has not occurred.

ZONING HISTORY

The zoning remains R-6, Multi-Family Residential.

LAND USE HISTORY

Since the Board's decision in 2011, a market was listed at this location in 2012 and 2103. The address was not listed in the 2014 directory.

STAFF CONCLUSIONS

A grocery store and a professional office are within the same zoning classification of CN, Neighborhood Commercial District. The office will be no more odious or offensive to surrounding properties, since the pedestrian traffic and noise will be reduced and since the interior and exterior of the building will be renovated.

The 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. If the change from one nonconforming use (grocery store) to another nonconforming use (architect's office) is in the same or more restrictive zoning classification?
2. Is the proposed office no more odious or offensive to surrounding properties that the grocery store?
3. If the Notice of Refusal issued by Planning & Design Services was proper?

NOTIFICATION

Date	Purpose of Notice	Recipients
10.30.14	Notices ready to be mailed	Appellant, Adjacent Neighbors
10.31.14	Sign Posted	Neighbors
11.07.14	Legal Ad in paper	Circulation Area

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Appellant's Justification
4. Pictures
5. October 17, 2011, BOZA Minutes



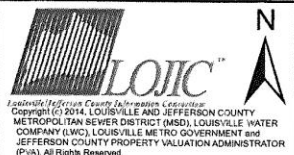
R-R RURAL RES.	R-5 RES. S.FAM.	R-8A RES. M-FAM.	C-R COMM./RES.	M-1 IND.	DRO DEV. REVIEW OV.
R-E RES. EST.	RRD RES. REDEV	OR-1 OFF./RES.	C-1 COMM.	M-2 IND.	W-1 WATERFRONT
R-1 RES. S.FAM.	R-5A RES. M-FAM.	OR-2 OFF./RES.	C-2 COMM.	M-3 IND.	W-2 WATERFRONT
R-2 RES. S.FAM.	R-5B TWO-FAM.	OR-3 OFF./RES.	C-3 CBD	CRO CRO. REVIEW OV	W-3 WATERFRONT
R-3 RES. S.FAM.	R-6 RES. M-FAM.	OTF OFF./TOUR	C-M COMM. MAN.	PRO PLAN. RESEARCH	WRO WATER. REVIEW OV.
R-4 RES. S.FAM.	R-7 RES. M-FAM.	C-N NEIGH. COMM.	EZ-1 ENTERPRISE	PEC PLAN. EMP. CEN.	



Zoning District Map
 Louisville/Jefferson Metro Government
 Planning and Design
 Services

14APPL1008
APPEAL

Scale: 1:617 Date: 10/24/2014





R-R RURAL RES.	R-5 RES. S.FAM.	R-8A RES. M-FAM.	C-R COMM./RES.	M-1 IND.	DRO DEV. REVIEW OV.
R-E RES. EST.	RRD RES. REDEV	OR-1 OFF./RES.	C-1 COMM.	M-2 IND.	W-1 WATERFRONT
R-1 RES. S.FAM.	R-5A RES. M-FAM.	OR-2 OFF./RES.	C-2 COMM.	M-3 IND.	W-2 WATERFRONT
R-2 RES. S.FAM.	R-5B TWO-FAM.	OR-3 OFF./RES.	C-3 CBD	CRO CRO. REVIEW OV	W-3 WATERFRONT
R-3 RES. S.FAM.	R-6 RES. M-FAM.	OTF OFF./TOUR	C-M COMM. MAN.	PRO PLAN. RESEARCH	WRO WATER. REVIEW OV.
R-4 RES. S.FAM.	R-7 RES. M-FAM.	C-N NEIGH. COMM.	EZ-1 ENTERPRISE	PEC PLAN. EMP. CEN.	



Zoning District Map
 Louisville/Jefferson Metro Government
 Planning and Design
 Services

**14APPL1008
 APPEAL**

Scale: 1:402 Date: 10/24/2014



Letter of Intent

231 N. 19th Street

10.22.14

To whom it may concern,

The property at 231 N. 19th street in the Portland neighborhood west of Downtown has historically contained two individual dwelling units and a first-floor convenience store. We aim to replace the convenience store with a small architecture firm.

The convenience store (Park Market) has occupied the space for years and has shown a level of neglect that has negatively impacted the integrity of the structure and the aesthetic of the neighborhood. The exterior of the building has been consistently littered with trash, graffiti, and signage promoting the consistent sale of snacks, beer, and assorted tobacco products. The interior has gone through several levels of poorly constructed patchwork and been left with an undesirable appeal. Police reports indicate that two armed robberies occurred within months of one another in late 2013 that may have contributed to the closure of the establishment.

We intend to renovate both the interior and the exterior to outfit the quality space needed for a minimally invasive, yet positively impactful, architecture firm. We currently have two employees and hope to hire one additional soon. We have our own on-site parking available. Our dedication to LEED certification is testament to our commitment for taking great care of the space that houses our company and promotes a quality way of life in the community.

Respectfully,

Mitchell Kersting

Owner



RECEIVED

OCT 22 2014

PLANNING &
DESIGN SERVICES

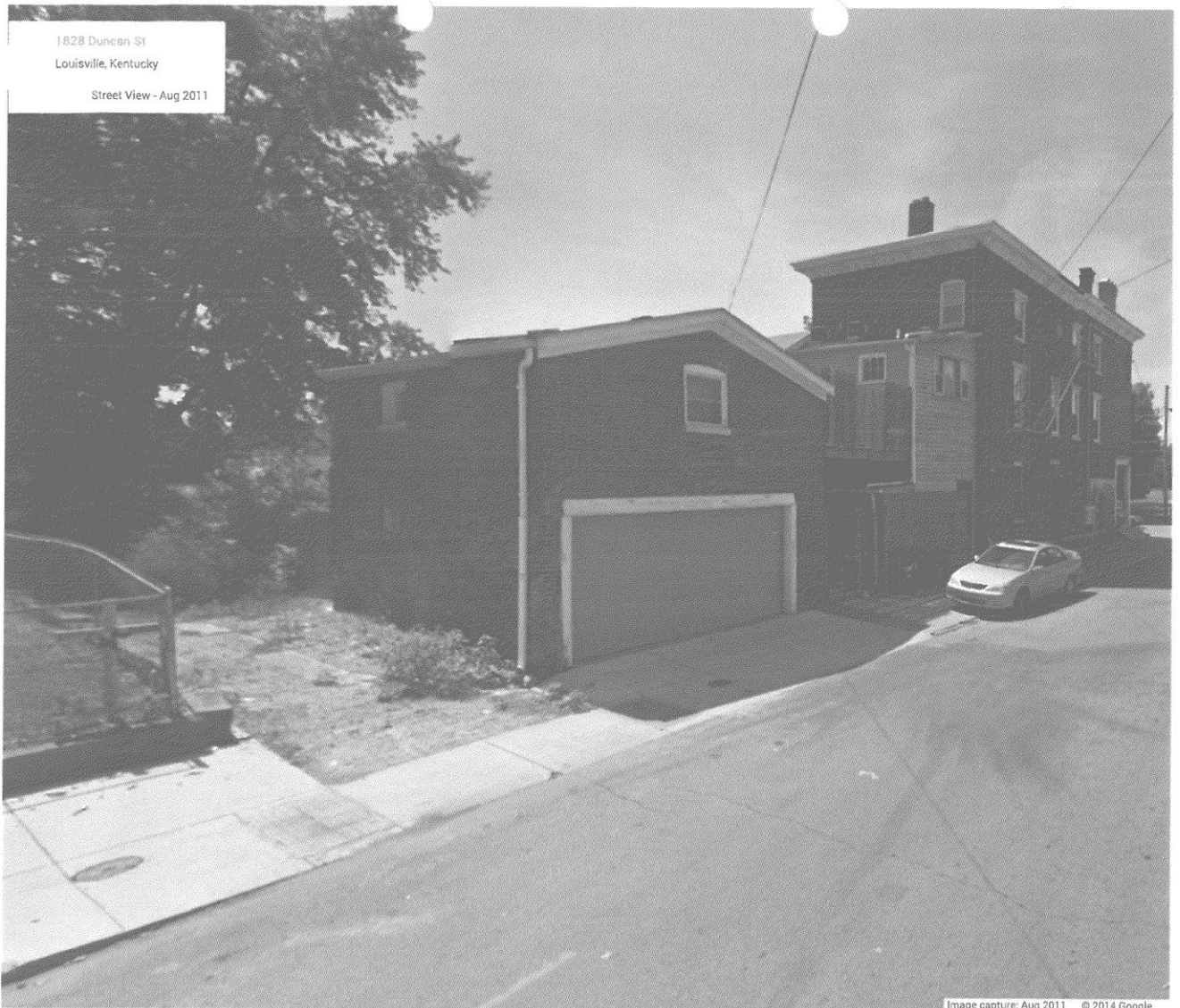
14APPEAL1008



229 N 19th St
Louisville, Kentucky
Street View - Aug 2011

Image capture: Aug 2011 © 2014 Google

Front of building from N. 19th St.



rear view of site from Duncan St.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

OCTOBER 17, 2011

NEW BUSINESS:

CASE NO. B-16482-11

Appellant: Park Market
John R. Ligon
231 N. 19th Street
Louisville, Kentucky 40203

Owner: MSB, Inc.
William Kingsbury
10511 Ballardsville Road
Louisville, Kentucky 40241

Attorney: Nick Pregliasco
Bardenwerper, Talbott & Roberts
8311 Shelbyville Road
Louisville, Kentucky 40222

Subject: An Appeal of a Notice of Violation issued by the Department of Codes and Regulations concerning non-conforming rights for a grocery store.

Premises affected: On property known as 231 North 19th Street and being in Louisville Metro.

COUNCIL DISTRICT 5—Cheri Bryant-Hamilton
Staff Case Manager: Steve Hendrix, Planning Supervisor

Administrative Official:
April Robbins, Code Enforcement Supervisor with the Louisville Metro Department of Codes and Regulations, 444 South 5th Street, Louisville, Kentucky.

Appearances Opposing the Appeal:
No one.

Appearances Interested Party:
No one.

Appearances in Support of the Appeal:
Nick Pregliasco, Attorney, 8311 Shelbyville Road, Louisville, Kentucky 40222.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

OCTOBER 17, 2011

NEW BUSINESS:

CASE NO. B-16482-11

William Kingsbury, 10511 Ballardsville Road, Louisville, Kentucky 40241.

Theresa Crum, 1719 Duncan Street, Louisville, Kentucky 40203.

Larry Campbell, Sr., 227 N. 19th Street, Louisville, Kentucky 40203.

An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available in the office of Planning & Design Services, located at 444 South Fifth Street, Louisville, Kentucky.

On August 10, 2011, the Louisville Metro Department of Codes and Regulations issued a Notice of Violation which stated that the grocery store use was not allowed in an R-6 zoning district.

On September 13, 2011, the appellant filed an appeal of this action.

On October 17, 2011, at a meeting of the Board, a hearing was held on the case. A drawing showing the premises affected and the existing and/or proposed construction was presented to each Board member.

In accordance with the Board Bylaws, the staff report prepared for this case was incorporated into the record. The Board members had received this report in advance of the hearing and it was available to any interested party prior to the public hearing. See Addendum for staff report in full.

The recording of this hearing will be found on the DVD of the October 17, 2011 proceedings.

SUMMARY OF STAFF PRESENTATION:

8:37:57 Staff case manager, Steve Hendrix gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He went over the research obtained by staff from the Polk's Directory, which had several businesses on the first floor, but did also list the property as "Vacant" during different years. The justification statement from the appellant states that the Park Market has had some type of business at this location or has been marketed as such from 1971 to 2011. The appellant also submitted Property Valuation Administration ownership information which shows changes in 1997, 2004 and

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

OCTOBER 17, 2011

NEW BUSINESS:

CASE NO. B-16482-11

2005. In 1998, a building permit was issued by the Louisville-Jefferson County Metro, Department of Inspections, Permits and Licenses for the renovation of an existing apartment building with a storefront on the first floor. The permit has a note which states, "See affidavits in file establishing non-conforming rights." Mr. Hendrix said these records are only kept for 5 years though. He said a letter from Portland Now neighborhood group states that the historical building has been a corner store for decades; and they are in support of the grocery store as long as they do not sell alcohol. The appellant submitted six affidavits from various long term area residents that say the store has had some type of business in it, or advertised as such since at least 1971. Mr. Hendrix also indicated that there are three gas and electric meters on the north side of the building. He said according to the Polk's Directory and information received, appears that the use has not been abandoned.

SUMMARY OF TESTIMONY OF ADMINISTRATIVE OFFICIAL:

8:44:58 April Robbins, Code Enforcement Supervisor, Louisville Metro Codes and Regulations, said someone from Portland Now gave her information that a business had moved in after sitting vacant for quite some time. She said the renovation permit issued in 1998 states that there is a store front on the first floor, but that this does not mean there was an existing store at that time. She said their research indicates that it had not been leased for many years. Member Proffitt asked Ms. Robbins if she had any information that the lower level store had been rented as an apartment. Ms. Robbins said no.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition to the appeal.

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

No one spoke as an interested party.

SUMMARY OF TESTIMONY OF APPELLANT(S):

8:49:26 Nick Pregliasco, the appellant's attorney, said the appellant is claiming non-conforming use rights for the small corner grocery store. He said there have been numerous businesses on the first floor such as a pharmacy and dry cleaners and that it was built for a commercial use since the beginning. He said in 1998, Inspections, Permits and Licenses granted a renovation permit and determined the subject property had valid non-conforming use rights supported by previously submitted affidavits. In August 2004, the Health Department

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

OCTOBER 17, 2011

NEW BUSINESS:

CASE NO. B-16482-11

issued a food service permit to sell hot dogs, wings and other food items. Mr. Pregliasco went over the six affidavits from area residents whom also said the lower level has always been a business and when vacant, was advertised as such. He said his client did apply for a beer license but withdrew the application at the request of the Portland Now. He said they also submitted a 200 signature petition of people in favor of non-conforming rights for the existing grocery store. Mr. Pregliasco discussed a similar court case that ruled non-conforming use rights are not considered abandoned when an owner is trying to rent or lease the property for the established use, which is the same in this situation. Member Fishman questioned where access is to the upper apartments. Mr. Kingsbury, the appellant, said it is in the back and pointed this out on the PowerPoint slide. Member Fishman said that there was nothing on the first floor in 2003 and 2005. He said his client purchased the property in 1996, not 1998 as the Polk's Directory indicates. He said this directory can be inaccurate at times.

9:04:27 William Kingsbury, the owner of the subject property, said he purchased the property from Carol Chescheir or heirs of her estate in 1996, not 1998 as the Polk's Directory indicates. He said he received a permit in 1998 to renovate all three floors. He said from his research, the first floor has always had a business including a counseling service and Derby City Smokers who had a sidewalk café/food cart. Mr. Kingsbury said it was also leased as a consignment store several times by different people. Member Fishman asked how long the building has been there. Mr. Kingsbury said he thinks it's been there since 1896.

9:11:04 Theresa Crum said she was born and raised in this area and that since 1970 the property has had several businesses in it. She's seen the dry cleaners and various consignment stores; and other businesses that didn't last very long. She said there was never an apartment on the first floor, stating that there are big pane glass windows. Mr. Pregliasco said it appears there was a dry cleaning business from 1970-1974 and asked Ms. Crum if after that business closed if there was a "For Rent" sign up. Ms. Crum said yes.

9:15:59 Larry Campbell said he lives two door down from the subject property; and has lived in Portland since the early 80's. He also said that the lower floor has always been used for a business; and that he and a friend were thinking about renting it at one point. He said the grocery store is convenient because there are a lot of elderly people living in the area.

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

OCTOBER 17, 2011

NEW BUSINESS:

CASE NO. B-16482-11

9:19:52 Mr. Pregliasco said they will agree to a condition of approval that no alcohol will be sold per Portland Now's request. Member Allendorf questioned this. Mr. Pregliasco said Portland Now doesn't want alcohol sales because it is close to a park.

BUSINESS SESSION:

9:21:22 Member Grisanti went through the questions posed in the staff report with the Board. John Carroll, the Board's legal counsel, said the Board should state specific findings when they make their motions.

9:24:29 After the public hearing in open business session, a motion was made by Member Proffitt, seconded by Member Grisanti and the following resolution was adopted:

WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentations and the evidence and testimony submitted at the public hearing that this appeal concerns non-conforming use rights for a grocery store; and

WHEREAS, the Board finds that the appellant has shown by clear and convincing evidence through affidavits and testimony that the first floor of the subject property has been used for a commercial/retail use continuously well before June 16, 1971, the date the city reinstated the zoning laws; and if the first floor was not leased during various times over the years, the property was always advertised as such with a "For Rent/Lease" sign in the window; therefore, the commercial/retail use was not abandoned; and

WHEREAS, the Board finds that the first floor had been used as a dry cleaning store, a restaurant, dry cleaning businesses and a professional office over many years and the current use as a grocery store are all permitted uses within a CN, Neighborhood Commercial zoning district, and

WHEREAS, the Board finds that a corner grocery store would be no more odious or offensive to surrounding properties than the first non-conforming use since there would be no outside display of merchandise and since the store will be serving the immediate neighborhood; and because the owner has agreed not to sell beer or other alcoholic beverages from the grocery store;

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO BOARD OF ZONING ADJUSTMENT**

OCTOBER 17, 2011

NEW BUSINESS:

CASE NO. B-16482-11

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **ACKNOWLEDGE** that non-conforming rights exist for the grocery store located at 231 North 19th Street.

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the Board does hereby **APPROVE** the Appeal.

The vote was as follows:

YES: Members Liggin, Grisanti, Wagaman, Jarboe, Proffitt and Fishman.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: No one.

ABSTAINING: Member Allendorf.