

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

JUNE 6, 2011

NEW BUSINESS:

CASE NO. B-15735-11

Appellant: Eduardo Sosa
Latin Corner Store
4000 Taylor Blvd.
Louisville, Kentucky 40215

Owner: Freida M. VanNatta
4211 Silver Creek Road
Louisville, Kentucky 40272

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 4000 Taylor Boulevard and
being in Louisville Metro.

COUNCIL DISTRICT 15—Marianne Butler
Staff Case Manager: Steve Hendrix, Planning Supervisor

(CONTINUED FROM MAY 16, 2011)

Appearances Opposing the Appeal:
No one.

Appearances Interested Party:
No one.

Appearances in Support of the Appeal:
Michael Vannatta, 4006 Taylor Blvd., Louisville, Kentucky 40215.

Kathy Candell, 6202 Culloden Drive, Louisville, Kentucky 40258

Freida Vannatta, 4211 Silver Creek Road, Louisville, Kentucky 40272.

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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.

A telephone message from Kathy Candell (daughter of appellant/owner of property) on May 25, 2011, revealed that the temporary employee service used the store for approximately 6-7 months and the campaign office was at this location for approximately one month, otherwise, the use has been a store.

On May 16, 2011, this case was continued by the Board to allow the Appellant to obtain legal counsel.

On March 11, 2011, Mr. Vannatta, whose mother owns the subject property had a conversation with a representative of the Alcohol Beverage Control of the Department of Codes and Regulations concerning a request to allow beer sales as part of the grocery store operation. Mr. Vannatta was informed that a permit could not be issued since beer had not been sold at 4000 Taylor Boulevard since at least 2004, (the use had been abandoned).

On April 5, 2011, an Appeal application was submitted to Planning and Design requesting beer sales as part of the grocery store operation.

On April 29, 2011, it was determined that a written notice should be sent with notification that the violation was for the existence of the grocery store in an OR-1 district and not just a refusal for the beer sales.

On May 2, 2011, a Notice of Violation was issued by the Department of Codes and Regulations concerning non-conforming rights for a grocery store which noted that the existing application could be amended.

On May 16, 2011, the case was continued to June 6, 2011 to allow the Appellant to retain legal counsel.

On June 6, 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.

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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 June 6, 2011 proceedings.

SUMMARY OF STAFF PRESENTATION:

8:39:37 Staff case manager, Steve Hendrix gave a brief presentation of the case to the Board, which included a PowerPoint presentation. He said he received a telephone message from Kathy Candell, the appellant's daughter, that the temporary employee service was only there for 6-7 months; and the campaign office was only there for approximately a month; otherwise, the property has been used as a grocery store. He said the Board must determine if non-conforming rights exist for the grocery store; and if "beer to go" is an expansion beyond the scope and area that existed at the time the non-conformance began.

8:43:47 Member Allendorf asked Mr. Hendrix when the history of the property had gaps, if the appellant told him what the use was. Mr. Hendrix said no, but that the Board could ask the Appellant.

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):

8:48:23 Michael Vannatta, the owner's son, said his mother and sister were supposed to be here to testify.

DISCUSSION:

8:48:50 Chair Jarboe said they could move the case to the end of the docket to allow time for their arrival. Mr. Vannatta agreed.

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SUMMARY OF TESTIMONY OF APPELLANT(S):

9:14:45 Kathy Candell, the owner's daughter, said in 2002 the property was rented to Able Body Temporary Service for 6 months who broke their lease. She said her mother had to take them to court to get her money. She said from 2002 to 2005 Choice Meats leased the property, and that they too broke their lease. She said at that time they were having a hard time leasing it to anyone, but eventually leased it to Jack Conway for his campaign office, but that he was only there a month. She said her Mom has owned the property since the 30's; and that they would like to continue to keep their tenant because they are good people and take care of the property.

9:23:28 Member Liggin asked Ms. Candell if they advertised the property as a grocery store prior to the Latin Grocery store lease. Ms. Candell said yes. Member Proffitt asked if the meat store was retail. Ms. Candell said yes, that they sold meat and other grocery items. Member Proffitt asked if they ever sold alcohol at this property. Ms. Candell said yes, that Hazelwood Drive-In Liquors was a tenant from 1989 to 2000.

REBUTTAL:

9:27:47 Mr. Hendrix said this clears up the uses of the property between 2002 and 2005. He said the meat store was not listed in the directory he used for research.

BUSINESS SESSION:

9:29:06 Member Allendorf said the testimony from Ms. Candell clears this issue up.

9:29:15 After the public hearing in open business session, on a motion by Member Proffitt, seconded by Member Allendorf and the following resolution was adopted:

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

WHEREAS, the Board finds that the property from 2002 to 2005 was leased by a retail meat store which also sold other grocery items; and in 2005 was leased as

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a campaign office for only one month until the Latin Corner Grocery leased the building so the non-conforming use for a grocery store had not been abandoned;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **ACKNOWLEDGE** that non-conforming rights exist for a grocery store.

The vote was as follows:

YES: Members Liggin, Allendorf, Fishman, Proffitt and Jarboe.

NO: No one.

NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti and Wagaman.

ABSTAINING: No one.

9:30:45 Upon conclusion in open business session, on a motion by Member Proffitt, seconded by Member Allendorf, the following resolution was adopted:

WHEREAS, the Board finds that the sale of "beer to go" is not an expansion or extension beyond the scope and area that existed at the time the non-conformance began; and

WHEREAS, the Board finds that "beer to go" sales would not be improper for the Latin Corner Grocery Store, since the property had been used as a liquor store from 1989 to 2000;

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby **APPROVE** the sale of "beer to go" at the subject property; and

BE IT FURTHER RESOLVED, that the Notice of Violation letter from the Louisville Metro Department of Codes and Regulations was proper; and

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

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The vote was as follows:

YES: Members Liggin, Allendorf, Fishman, Proffitt and Jarboe.

NO: No one.

**NOT PRESENT FOR THIS CASE AND NOT VOTING: Members Grisanti
and Wagaman.**

ABSTAINING: No one.

LOUISVILLE BOARD OF ZONING ADJUSTMENT MINUTES

JULY 24, 1989

DOCKET NO. B-103-89

Appellants: Freida M. and Clarence E. Van Natta

Subject: An appeal of a refusal of a Certificate of Occupancy issued by the City of Louisville Department of Inspections, Permits and Licenses for a commercial use in an OR-1 zone based upon an alleged non-conforming right.

Premises affected: On property known as 4000 Taylor Boulevard and being in the City of Louisville.

Appearances-Interested:

Carol Robinson, Code Enforcement Coordinator, City of Louisville Department of Inspections, Permits and Licenses, 609 West Jefferson Street, 40202.

Appearances For Appellant:

Clarence Edward and Freida Marie Van Netta, 4211 Silver Creek Road, 40272.

Appearances Against Appellant:

No one.

On June 27, 1989, the City of Louisville Department of Inspections, Permits and Licenses issued a refusal for a Certificate of Occupancy because it would not comply with the Zoning District Regulations.

On June 27, 1989, Freida M. and Clarence E. Van Natta filed an appeal from a refusal of a Certificate of Occupancy concerning a commercial use in an OR-1 zone based upon an alleged non-conforming right.

On July 24, 1989, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected was presented to each Board member.

By general consensus and without opposition from anyone present the Board voted unanimously to waive the reading of the staff report. See Addendum for staff report in full.

A map of the site and surrounding area was shown.

Shari Williams Cooper, Court Reporter, recorded the testimony given in the public hearing.

After the public hearing and a further discussion of the case by the members of the Board in open executive session, the following occurred:

LOUISVILLE BOARD OF ZONING ADJUSTMENT MINUTES

JULY 24, 1989

DOCKET NO. B-103-89 (continued)

A motion was entered by Member Crawford for Deferral but died for lack of a second.

On a motion by Member Deutsch, seconded by Member Janes, the following resolution was unanimously adopted:

WHEREAS, the Board finds that a grocery store existed on the site prior to 1931 and continued until 1979, that commercial non-conforming rights for a grocery store only as allowed in the C-N Neighborhood Commercial District existed previously on the site, that the change in use from a food market, to a TV store are uses which are not permitted in the C-N Neighborhood Commercial District and are not permitted by state law, and

WHEREAS, the Board finds from evidence and testimony submitted at the public hearing that the subject site is presently vacant because access to the site was virtually unattainable due to reconstruction of the Watterson Expressway, therefore, the presumption of abandonment was not voluntary on the part of the appellant, and

WHEREAS, the Board finds that any proposed change in use shall come before the Board through the Appeal process, and

WHEREAS, the Board finds that the refusal of a Certificate of Occupancy issued by the City of Louisville Department of Inspections, Permits and Licenses was proper,

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby OVERRULE the refusal of Certificate of Occupancy issued by the City of Louisville Department of Inspections, Permits and Licenses and does hereby GRANT the Appeal for non-conforming rights for use of the site as a grocery store ONLY.

LOUISVILLE BOARD OF ZONING ADJUSTMENT MINUTES

SEPTEMBER 5, 1989

DOCKET NO. B-142-89

Appellant: Freida M. and Clarence E. VanNatta

Subject: An appeal of a refusal of a Certificate of Occupancy issued by the City of Louisville Department of Inspections, Permits and Licenses concerning a change from one non-conforming use to another (liquor store).

Premises affected: On property known as 4000 Taylor Boulevard and being in the City of Louisville.

Appearances-Interested:

Carol Robinson, Code Enforcement Co-ordinator, Inspections, Permits and Licenses, 609 W. Jefferson Street, Louisville, Kentucky 40202.

Appearances For Appellant:

Freida Marie Van Natta, 4211 Silver Creek Road, Louisville, Kentucky 40272.

David Banks, Attorney for the Board of Aldermen, 3626 First National Tower, Louisville, Kentucky 40202.

Appearances Against Appellant:

No one.

Ms. Robinson spoke in rebuttal.

On August 10, 1989, the City of Louisville Department of Inspections, Permits and Licenses issued a Refusal of Certificate of Occupancy based upon Section 8.3, Non-Conformance of the Development Code.

On August 10, 1989, Freida VanNatta filed an appeal from a Refusal of Certificate of Occupancy issued by the City of Louisville Department of Inspections, Permits and Licenses concerning a change from one non-conforming use to another.

On September 5, 1989, at a meeting of the Board, a hearing was held on this case. A drawing showing the premises affected was presented to each Board member.

By general consensus and without opposition from anyone present, the Board voted unanimously to waive the reading of the staff report. See Addendum for staff report in full.

LOUISVILLE BOARD OF ZONING ADJUSTMENT MINUTES

SEPTEMBER 5, 1989

DOCKET NO. B-142-89 (continued)

A map of the site and surrounding area was shown.

Rose Mary Kithcart, Court Reporter, recorded the testimony given in the public hearing.

After the public hearing and a further discussion of the case by the members of the Board in open executive session, on a motion by Member Riehm, seconded by Member Deutsch, the following resolution was unanimously adopted:

WHEREAS, the Board finds that on July 24, 1989, it determined that the applicant had non-conforming rights under Docket No. B-103-89, for use of the site as a grocery store only, and that any proposed change in that use shall come before the Board through the appeal process, and

WHEREAS, the Board finds that the proposed use as a liquor store is no more odious or offensive to surrounding properties than the first non-conforming use, and

WHEREAS, the Board finds that the proposed non-conforming use as a liquor store is permitted in the zoning district in which the previous non-conforming use was permitted and that the refusal of a Certificate of Occupancy issued by the City of Louisville Department of Inspections, Permits and Licenses was proper,

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby OVERRULE the Refusal of Certificate of Occupancy and does hereby APPROVE the Appeal to change from one non-conforming use to another (liquor store).