

Salt Lake City Land Use Appeals Hearing Officer  
PLNZAD2022-00275  
Nonconforming Use Change of Use  
1058 East 900 South  
May 19, 2022

This is a request for a determination that the nonconforming retail use at 1058 East 900 South is sufficiently similar to a proposed Alcohol Bar Establishment use at that location that the nonconforming use of the building may continue after the change of use. The determination here is that it is not.

### **Record**

The record includes the Staff Report, a document of 17 pages dated May 5, 2022, and a recording of a hearing held via electronic means on May 12, 2021. Public notice was provided for the hearing as required. Among those appearing at the hearing were the applicant William Hamill and Diana Martinez, Principal Planner, who prepared the staff report. Public comment on the record was provided by Jason Stevenson, Susan Makov, Sherry Matthews Moyes, Carolina Hazman, Jeremy Spekman, Scott Maynard, Sarah Brown, and Peter Clark. Email messages were also received and included in the record. The comments made by the Applicant, the Staff, and the public hearing took approximately one hour of time.

### **The Issue**

A nonconforming use is a use that was legally established at the time that it commenced, but would not be allowed in its location at the current time because the underlying zoning district or other parts of the land use ordinances have changed. In this case, an existing retail use at 1058 East 900 South is a recognized legal non-conforming use. Once a nonconforming use is established, it may continue, typically until it is abandoned by the user. The code also provides, at Section 21A.38.040.H.1, that similar uses to the original nonconforming use may succeed that use while the nonconforming status of the use is preserved. Where there are questions about whether a proposed use is similar to the existing use, the matter is to be resolved by the Appeals Hearing Officer. The staff report includes a detailed analysis of both the existing retail use and the proposed alcohol bar establishment, and a conclusion by the staff that the uses are not sufficiently similar to preserve the nonconforming use.

### **Analysis**

It is determined that the existing retail use and the proposed use are not sufficiently similar to preserve the existing nonconforming use. The staff report provided the opinion consistent with that determination, made by a professional planner with expertise in the land use arena. Where a retail use would have customers, deliveries, and parking requirements, the proposed wine bar, which can only be permitted with all the opportunity to function fully as an alcohol bar establishment, would be regulated in part by the State of Utah as to extended hours of operation that could extend into late evening. The proposed wine bar incorporates outdoor seating. While some of the public comment and the vision of the Applicant appear to be consistent with the overall goals of this evolving neighborhood, those aspirations must be fulfilled through the

evolving land use policy determined by the Planning Commission and the City Council, not the Appeals Hearing Officer. The considerations reviewed in the Staff Report on pages 4-6 is specifically incorporated herein by this reference.

**Conclusion**

Based on the evidence and analysis submitted the existing retail use is not similar to the proposed Alcohol Bar Establishment use.

Dated this 19th day of May, 2022.

/s/ Craig M Call

Craig M Call, Hearing Officer