

**Board of Zoning Adjustment**  
**Staff Report**  
May 20, 2019



<b>Case No:</b>	18CUP1173
<b>Project Name:</b>	Wallace Short Term Rental
<b>Location:</b>	775 Goullon Court
<b>Owner(s):</b>	James Wallace
<b>Applicant:</b>	James Wallace
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	4 – Barbara Sexton Smith
<b>Case Manager:</b>	Jon Crumbie, Planning & Design Coordinator

**REQUEST(S)**

Conditional Use Permit to allow short term rental of a dwelling unit that is not the primary residence of the owner/host in an R-6 zoning district and Traditional Neighborhood Form District.

**CASE SUMMARY/BACKGROUND**

The applicant requests approval to conduct short term rentals at the subject property. The subject property is developed with a one structure that is a single family residence. The applicant states that the residence has three bedrooms that will allow a maximum number of eight guests. The site has credit for two on-street parking spaces.

**STAFF FINDING / RECOMMENDATION**

Based upon the information in the staff report and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards established in the LDC for a Conditional Use Permit.

## RELATED CASES

None

## TECHNICAL REVIEW

There are no outstanding technical review items.

## INTERESTED PARTY COMMENTS

A neighborhood meeting was held on February 18, 2019 and no one attended.

## STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT

### 1. Is the proposal consistent with applicable policies of the Comprehensive Plan?

STAFF: The proposal does not conflict with Comprehensive Plan policies.

### 2. Is the proposal compatible with surrounding land uses and the general character of the area including factors such as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting and appearance?

STAFF: When appropriately managed, the proposed use is compatible with surrounding development and land uses.

### 3. Are necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, emergency services, education and recreation adequate to serve the proposed use?

STAFF: The subject property is served by existing public utilities and facilities. The proposal will not create substantial additional requirements for the site.

### 4. Does the proposal comply with the specific standards required to obtain the requested conditional use permit?

**4.2.63** Short Term Rental Term Rental of a dwelling unit that is not the primary residence of the host or the Short Term Rental of a condominium unit that is the primary residence of the host in a R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7 or R-8A district and Short Term Rental of any dwelling unit in a TNZD district may be allowed upon the granting of a Conditional Use Permit. In addition to any conditions of approval, a short term rental and its host shall meet the following requirements:

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental. ***The applicant has been informed of this requirement.***
- B. The dwelling unit shall be limited to a single short term rental contract at a time. ***The applicant has been informed of this requirement.***
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus two individuals, except where the licensed property is in excess of two acres in

which case the occupancy limit shall be two times the number of bedrooms plus six individuals.

**The subject property is smaller than two acres. The applicant states that the residence has three bedrooms that will allow a maximum number of eight guests.**

- D. The property on which the short term rental(s) is situated shall not be located closer than 600 feet (measured in a straight line from nearest property line to the nearest property line) to any property on which another approved short term rental that required a conditional use permit is situated. The provision shall not apply to a property in the TNZD district which required a conditional use permit even though it is the primary residence of the host. **As of the date of this report, within 600' of the subject property, there is 1 property with an approved conditional use permit allowing short term rentals that is not the primary residence of the host. The applicant is requesting relief to the provision in accordance with LDC Section 4.2.2.B. If provided, the applicant's justification for this relief is attached to this report. If the Board does not grant relief, the application does not meet all of the listed requirements and the conditional use permit cannot be approved. In addition, the applicant has another CUP case for a short term rental on this meeting agenda (18CUP1174) which is directly behind this property. Approval of this CUP would add a second CUP within 600 feet of the 18CUP1174 site.**
- E. The building in which the dwelling unit is located shall be a single-family residence, duplex, or condominium. If the short term rental is a condominium unit, the condominium unit must be the primary residence of the host. All conditional use permit applications for the short term rental of a condominium unit shall include evidence showing the applicable condominium association has taken action to approve the short term rental of the subject condominium. The evidence shall be provided in the form of minutes from an officially called meeting of the applicable condominium association board where in all condominium would be discussed and a majority of the board members voted in favor of permitting/allowing the short term rental of the subject condominium. In addition to notification required by Chapter 11 Part 5A, an applicant for a short term rental within a condominium shall provide notice of the Conditional Use Permit public hearing to all condominium owners within the association. Proof of notification shall be by way of affidavit. This provision shall not be waived or adjusted. **The applicant has been informed of this requirement.**
- F. Food and alcoholic beverages shall not be served by the host to any guest. **The applicant has been informed of this requirement.**
- G. Outdoor signage which identifies the short term rental is prohibited in residential zoning districts. **The applicant has been informed of this requirement.**
- H. There shall be a sufficient amount of parking available for guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. **The site has credit for two on-street parking spaces**
- I. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances. **The applicant has been informed of this requirement.**
- J. If the property is subject to two (2) or more substantiated civil and/or criminal complaints within a twelve (12) month period, the Planning Director may revoke the approval. When the Planning Director revokes an approval under this section, the owner and host shall be notified of the revocation and shall have thirty (30) days in which to request an appeal before the Board of Zoning Adjustment. If no appeal is requested, the revocation shall become final on the thirty-first (31) day after the initial action by the Director. Civil complaints include, but are not limited to, reported violations of building, safety, property maintenance, nuisance, health and sanitation, fire, electrical,

plumbing, and mechanical codes. Criminal complaints include, but are not limited to, reported drug activity, theft and criminal mischief. ***The applicant has been informed of this requirement.***

- K. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental pursuant to the Louisville Metro Code of Ordinances. If the short term rental is not registered within thirty (30) days of the issuance of the conditional use permit, the permit shall become null and void. ***The applicant has been informed of this requirement.***
  
- L. An active registration for the short term rental, as required by the Louisville Metro Code of Ordinances, shall be maintained. No short term rentals may take place unless the registration is active and in the name of the current host and property owner. If the registration is not renewed and lapses for six months, or in the event of a change of ownership and/or host, a new registration is not issued within six months from the date of the change, the conditional use permit shall become null and void. In order to recommence short term rentals, a new conditional use permit must be granted if required by this Land Development Code. ***The applicant has been informed of this requirement.***

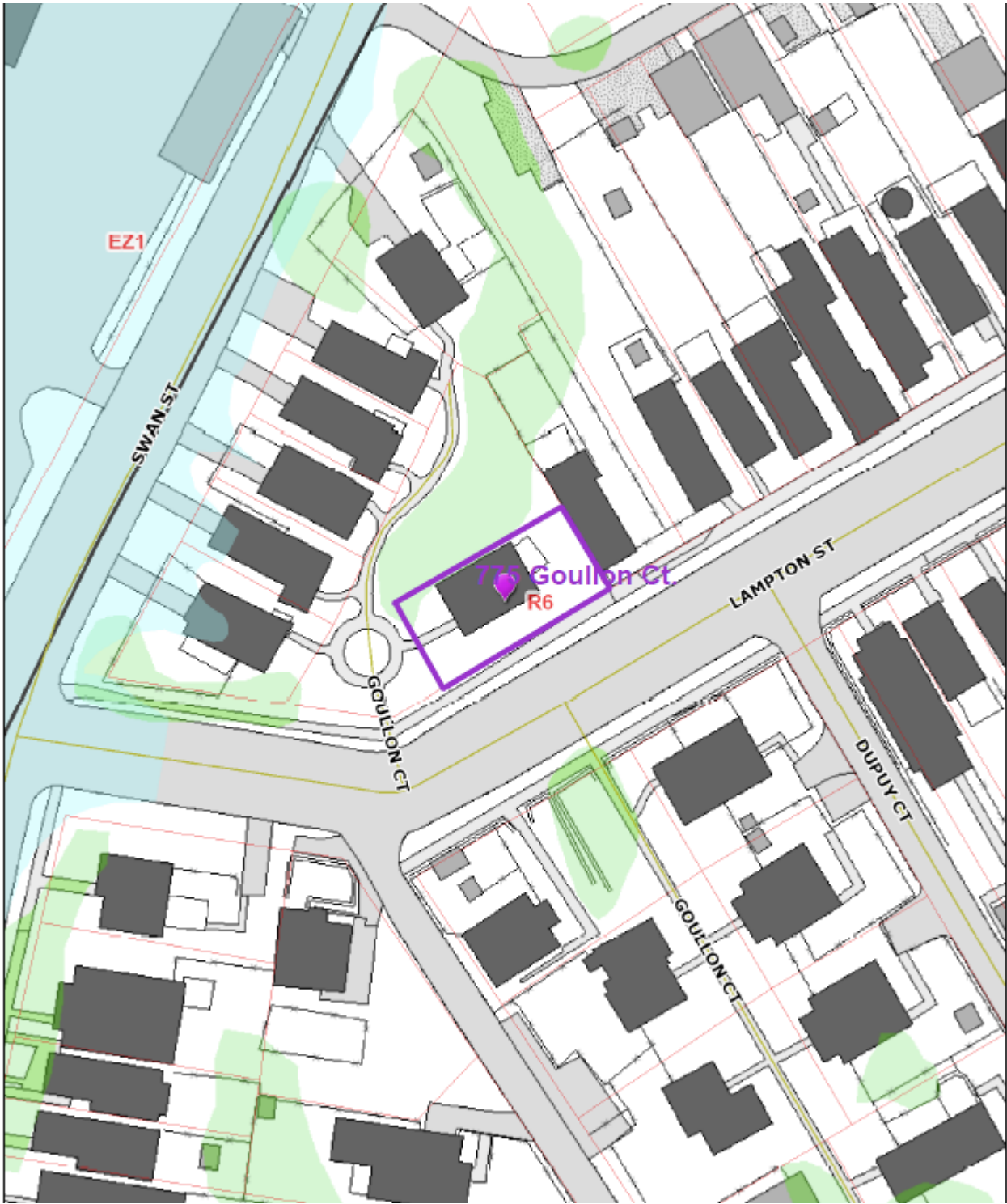
**NOTIFICATION**

Date	Purpose of Notice	Recipients
5/1/2019	Hearing before BOZA	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 4
5/2/2019	Hearing before BOZA	Sign Posting

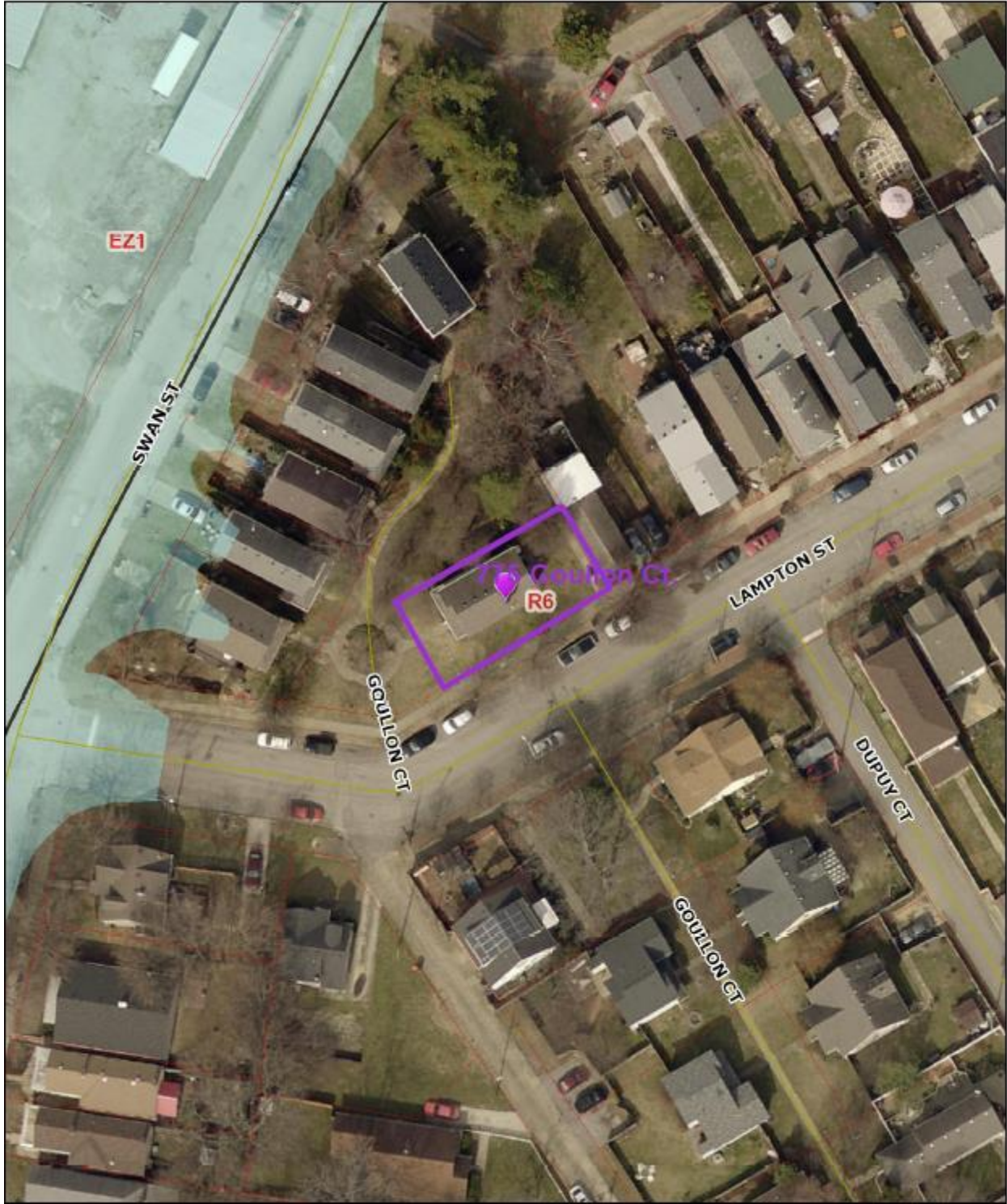
**ATTACHMENTS**

- 1. Zoning Map
- 2. Aerial Photograph
- 3. Conditions of Approval
- 4. Applicant Justification for Relief

- 1. **Zoning Map**



2. Aerial Photograph



**3. Conditions of Approval**

1. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental with Develop Louisville and with the Louisville Metro Revenue Commission. If the short term rental is not registered with Develop Louisville and with the Revenue Commission within 30 days of the approval of the minutes of this case, then the Conditional Use Permit shall be deemed null and void.

2. The short term rental and host shall meet all additional provisions set forth in the Louisville Metro Code of Ordinances.

**4. Applicant Justification for Relief**

Reference: 18 CUP 1173 775 Goullon Court, Louisville, Ky. 40204  
 18 CUP 1174 772 Goullon Court, Louisville, Ky. 40204

On May 8, 2019, I was requested to provide a reasons for why the above properties are entitled to a waiver/variance of the new Short Term Rental ordinance. First, the retroactive application of the new ordinance to an existing case is unconstitutional. Second, the 600 foot radius requirement under the new ordinances is also unconstitutional. Lastly, I have attempted to comply with the request despite my position the prior law dictates my property and CUP.

Below is a timeline of events relevant to my position.

**Time Line:**

11/29/18	Pre-application submitted for 18 CUP 1173 and 18 CUP 1174	Payment of \$300.00 cleared the bank on 11/30/2018
02/18/19	Neighborhood meeting	No Attendees, No Opposition
02/28/19	Formal application submitted for for 18CUP1173 and 18CUP1174.	Payment of \$551.00 by credit card posted on March 1, 2019. At this time there was nothing more I needed to do.
03/19/19	I reached out to Mr Crumbie asking what the next step was in the process to obtain the CUP	
04/30/19	I received an email notifying me that my cards were ready to be picked up and mailed. And to also to be thinking of reasons why relief from the 600 foot rule would be appropriate.	
05/10/19	I had a conference call with Joe Haberman, Chris French and Jon Crumbie.	During the call I was asked to come up with reasons why I should have relief from the 600 foot rule since there is another CUP within 600 feet and I am requesting 2 CUPs within 600 feet of each other. I was told I need to submit them on Monday May 13.

As you can see from the timeline above, I complied with all requirements prior to the new law coming into effect. The retroactive application is more egregious when you look at the timelines of other CUPs filed at or near the same time which have had their BOZA Hearings prior to enactment of the new law.

Example 1: My Formal Application filed before: 1036 Garvin Place. Formal Application March 4, 2019. BOZA Date: MAY 6, 2019

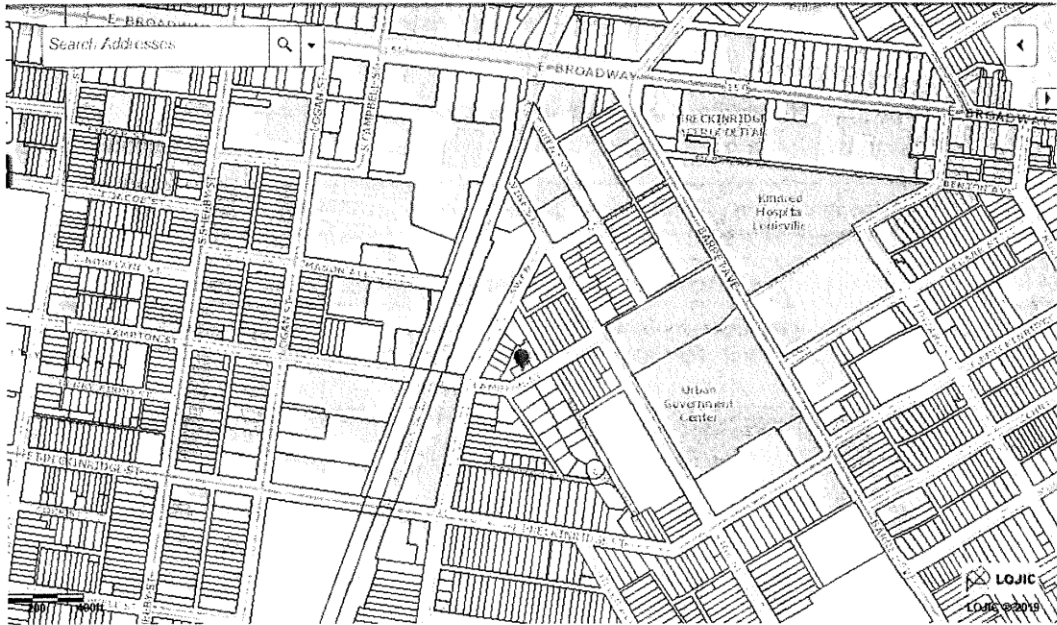
Example 2: 912 Vine St. Formal Application February 26, 2019. BOZA Date: MAY 6, 2019

Example 3: 939 E Washington St. Formal Application February 26, 2019. BOZA Date: MAY 6, 2019

As for the reasons apart from the retroactive application of the law, see below:



1. My CUP will not be changing the character of this transitional neighborhood. As depicted in the following diagram which shows a quarter mile span, it is surrounded by commercial, industrial and residential zones.



- Jefferson Zoning-General**
- Commercial/Industrial
- Industrial Only
- Business/Office
- Residential
- Special

2. The surrounding area is replete with rental properties. Whether the properties are long term or short term, the character of the neighborhood does not change. It is still rental property.
3. The Short Term Rental within 600 feet is on a different roadway. It is on Breckenridge Street. There is a minimum of 15 lots between the properties. We do not share any 1<sup>st</sup> or 2<sup>nd</sup> tier neighbors.
4. There were no complaints about a Short Term Rental proposal by any of the neighbors.