

Board of Zoning Adjustment Staff Report

April 18, 2023



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| Case No: | LIC-STA-23-00498 |
| Request: | Short Term Rental Residency Hearing |
| Project Name: | Host William Thomas Nutt |
| Location: | 1505 E Breckinridge St |
| Owner: | 1505 East Breckenridge Street Land Trust |
| Applicant: | n/a |
| Jurisdiction: | Louisville Metro |
| Council District: | 8 – Ben Reno-Weber |
| Case Manager: | Joseph Haberman, Planning & Design Manager |

REQUEST

The Director of Planning & Design Services requested a residency hearing concerning a short term rental registration application for a dwelling unit at 1505 E Breckinridge. There are two dwelling units on the subject property. The application applies to the rear dwelling unit, which has an informal address of 1505 R E Breckinridge not recognized in LOJIC. The Director has the ability to request such a hearing pursuant to Louisville Metro Land Development Code Section 4.3.23.

CASE SUMMARY/BACKGROUND

A short term rental registration application was submitted to the Office of Planning & Design Services (PDS) on 2/27/23. The application identifies William Thomas Nutt as the host. As part of the application, Mr. Nutt provided documents supporting his residency at the address, including a copy of his driver's license and voter information documentation.

Following a review of the application, staff determined that a residency hearing is necessary due to conflicting and/or inadequate documentation. Based upon the information in the application, in this staff report, and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the subject dwelling unit is the primary residence of Mr. Nutt. Otherwise, a Conditional Use Permit (CUP) is required.

The subject application and hearing does not apply to the front dwelling unit, which is currently registered under a different host.

STAFF ANALYSIS/FINDINGS

The following sections of the LDC are applicable to this case:

4.3.23 Short Term Rentals, J.: In a case in which a) the primary residency of the host is in question due to conflicting documentation or b) inadequate documentation concerning the primary residency of the host is provided by the host, the Planning Director may request that the Board of Zoning Adjustment review the registration and make a determination related to the residency of the host.

1.2.2 Primary Residence (or Principal Residence): A primary residence is the main home of an individual. An individual has only one primary residence at a time. If an individual owns and lives in just one dwelling unit, then that property is his or her primary residence. If an individual owns or lives in more than one dwelling unit, then he or she must apply a

“facts and circumstances” test to determine which property is his or her primary residence. While the most important factor is where he or she spends the most time, other factors are relevant as well. The more of these factors that are true of a home, the more likely that it is a primary residence: Factors include, but are not limited to, the address listed on an individual’s U.S. Postal Service address, Voter Registration Card, federal and state tax returns, driver’s license, state identification card, and/or vehicle registration.

While Mr. Nutt provided documents in support of his residency at the address, including a copy of his Kentucky driver’s license and voter information documentation (from the Jefferson County Clerk’s records), circumstances suggest that he may not have established primary residency at the address at the time of application.

Mr. Nutt appears to have applied for the registration shortly after moving to the address. The application was submitted on 2/27/23 and his driver’s license was issued on 2/8/23. No documentation was provided indicating that he moved in prior to February 2023 and other information found by staff supports a finding he lived elsewhere prior to February 2023. While staff has no evidence indicating that Mr. Nutt already has or will spend time at the property, his residency must rise to the definition of primary residency. In addition to providing the required documentation as evidence, it must serve as his “main home” where he spends “most” of his time. As Mr. Nutt has recently moved to the address, a determination that he will spend most of his time at the address moving forward is based in assumption.

In addition, the host is a renter at the property and not the owner. While not common, some renters have the permission of the owner to sublet their rental as short term rentals. However, in this case, the owner appears to play a significant role in the management of the short term rentals at the address. Mr. Nutt must serve as the primary host and the responsible party for the application. He must be involved in responding to issues associated with the short term rental. Representatives of the owner, not Mr. Nutt, initially responded to concerns with the application in part due to inadequate contact information.

Further, while not grounds to deny, the timing of the application is notable. The application was submitted shortly after enforcement action was taken related to unlawful short term rentals in the rear dwelling unit. The property is zoned Urban Neighborhood (UN). In the UN district, short term rentals that are not occupied by the host require a CUP. Approval of the subject registration would be the most expedient option of resolving the enforcement case and allowing the continued rental of the rear dwelling unit.

Timeline of Related Events:

- 07/02/18: A Pre-Application for a CUP was filed (18CUP1086). A formal application, the second step in the process, was never submitted. If a CUP was approved, short term rentals would have been permitted regardless of host residency.
- 06/08/18: Initial complaint was received related to alleged unlawful short term rentals (resulting in Zoning Enforcement Case 18PM14370).
- 12/31/18: Zoning Enforcement Case 18PM14370 closed.
- 12/12/19: Short Term Rental Registration issued to Crystal Lewis for front dwelling unit (LIC-STA-19-00462 and LIC-STL-19-00363).
- 02/18/20: After closure of previous case, a new complaint was received related to alleged unlawful short term rentals (resulting in Zoning Enforcement Case ENF-ZON-20-000296)

- 01/20/21: A letter was issued by PDS stating that nonconforming rights for two dwelling units have been established (21-NONCONFORM-0006). The current zoning, UN, only permits a single dwelling unit on the property.
- 01/29/21: Notice of Violation issued regarding the advertisement of an unlawful short term rental.
- 03/07/21: Long Term Rental Registration issued to 1505 East Breckenridge Street Land Trust (LIC-LTR-21-00405). Allows the long term rentals of the host of the front unit, Eric Devries, and Mr. Nutt.
- 04/19/21: Notice of Violation issued regarding non-compliance with the terms of an approved registration (for utilizing both units when only one was registered).
- 01/29/21: Short Term Rental Registration issued to Eric Devries for front dwelling unit (LIC-STA-21-00028 and LIC-STL-21-00038).
- 04/19/22: Citation issued regarding non-compliance with the terms of an approved registration (for utilizing both units when only one was registered). Fine paid 05/05/22.
- 12/05/22: Citation issued regarding the advertisement of an unlawful short term rental in the rear dwelling unit. Fine paid 01/13/23.
- 12/05/22: Citation issued regarding the operation of an unlawful short term rental in rear dwelling unit. Fine not paid.
- 05/20/22: Short Term Rental Registration issued to Eric Devries for front dwelling unit (LIC-STA-22-00529 and LIC-STL-22-00435).
- 02/08/23: Kentucky Driver's License issued to Mr. Nutt showing address as "1505R E Breckinridge St"
- 02/27/23: Short Term Rental Registration Application received for rear dwelling unit (LIC-STA-23-00498). Mr. Nutt is listed as the host. Ron Burns is listed as the contact for the owner (1505 East Breckenridge Street Land Trust) and as the emergency contact.

Notes: Subsequent to the zoning enforcement case being opened on 06/08/18, additional service complaints regarding the short term rental were submitted to Louisville Metro Government. Service complaints received since 06/08/18 were consolidated under active cases.

An additional Short Term Rental Registration may have been issued in 2018 under STR928733-BUS and/or STR925120-BUS. Full information is not provided in Accela.

Mr. Nutt's voter registration documentation provide with the application was not dated.

STAFF CONCLUSIONS

While complaints led to an enforcement investigation, the decision to initiate the hearing is based on the content of the application and the circumstances around the property. The proposed host moved to the address relatively recently and immediately applied to be a short term rental host, which would in effect resolve the open enforcement case if approved.

While there is a history of short term rental complaints regarding this property, the complaints on file do not assist with this determination. A complainant has not provided any observations or documentation related to Mr. Nutt's residency. Some neighbors have alleged the other host does not reside in the front dwelling unit. However, his residency is not subject to this hearing.

Staff does not have any evidence that Mr. Nutt resides elsewhere at the time of this report; however, has confirmed that he recently lived elsewhere and could not have spent much time at the address by the time of application. Background search documentation suggests that he lived at an address on Meades Landing Ln. in Goshen, KY as recently as March 15, 2023. Given the provision of only two supporting documents (with at least one recently issued) and the circumstances noted in this report, a residency hearing is warranted. The Board may accept explanations and evidence via testimony under oath.

Staff will request clarification from the host on the following issues at the hearing: his residency status at the Meades Landing Ln. address; the frequency in which the dwelling will be rented short term and if there are any blackout times; the amount of notice the host is provided in advance for an upcoming guest stay; where the host will stay when the dwelling is rented short term; the roles of the host and owner in the management of the short term rental; and payment of the outstanding \$125 fine associated with a past citation.

STANDARD OF REVIEW

The Board must determine if the subject dwelling is the primary residence of Mr. Nutt, as defined in Section 1.2.2.

If the Board determines the host residency meets Section 1.2.2, the registration can be approved. The registration is only valid for one year and can be renewed. The host must maintain primary residence at the address. Failure to do so may result in another residency hearing.

If the Board determines the host residency does not meet Section 1.2.2, the registration can be denied. The host may re-apply for the registration at a later date after satisfying the deficiencies in the application noted by the Board. Alternatively, the owner may apply for a CUP or rezoning to a zoning district that allows short term rentals by right. If approved, the residency of the host would be moot.

RELATED CASES

- LIC-STA-23-00498: Short Term Rental Registration for rear dwelling unit (William Nutt – Host) – Under Review
- LIC-STL-22-00435: Short Term Rental Registration for front dwelling unit (Eric Devries – Host) – Approved
- 18PM14370: Zoning Enforcement Case concerning both units – Closed
- ENF-ZON-20-000296: Zoning Enforcement Case concerning both units – Open
- 21-NONCONFORM-0006: Nonconforming Rights Case concerning both units – Approved
- 18CUP1086: CUP Case concerning both units – Withdrawn/Not Approved

INTERESTED PARTY COMMENTS

Other than enforcement complaints, staff has not received any interested party comments for the file about the residency hearing of the subject host as of the date of this report.

NOTIFICATION

The Land Development Code does not require notification for this type of request. However, staff carried out the following notice.

| Date | Purpose of Notice | Recipients |
|----------|--|----------------------------------|
| 03/28/23 | Notified Host and Owner of Residency Hearing | Host/Owner - by letter and email |
| 04/12/23 | BOZA Sign Posting | Subject Property |