

Board of Zoning Adjustment
Staff Report
September 9, 2019



Case No:	19CUP1091
Project Name:	Feller Short Term Rental
Location:	1061 Mary Street
Owner(s):	1061 MS Land Trust
Applicant:	1061 MS Land Trust
Jurisdiction:	Louisville Metro
Council District:	4 – Barbara Sexton Smith
Case Manager:	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-5 zoning district and 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 one structure that is a single- family residence. The applicant states that the residence has four bedrooms that will allow a maximum number of ten guests. The site has credit for one on-street parking space and will have two spaces at the rear of the property.

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 May 28, 2019 and no one attended except the owners and applicants.

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 four bedrooms that will allow a maximum number of ten 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.***
- 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 one on-street parking space and two spaces at the rear of the property.***
- 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
8/23/2019	Hearing before BOZA	1 st and 2 nd tier adjoining property owners Registered Neighborhood Groups in Council District 4
8/29/2019	Hearing before BOZA	Sign Posting

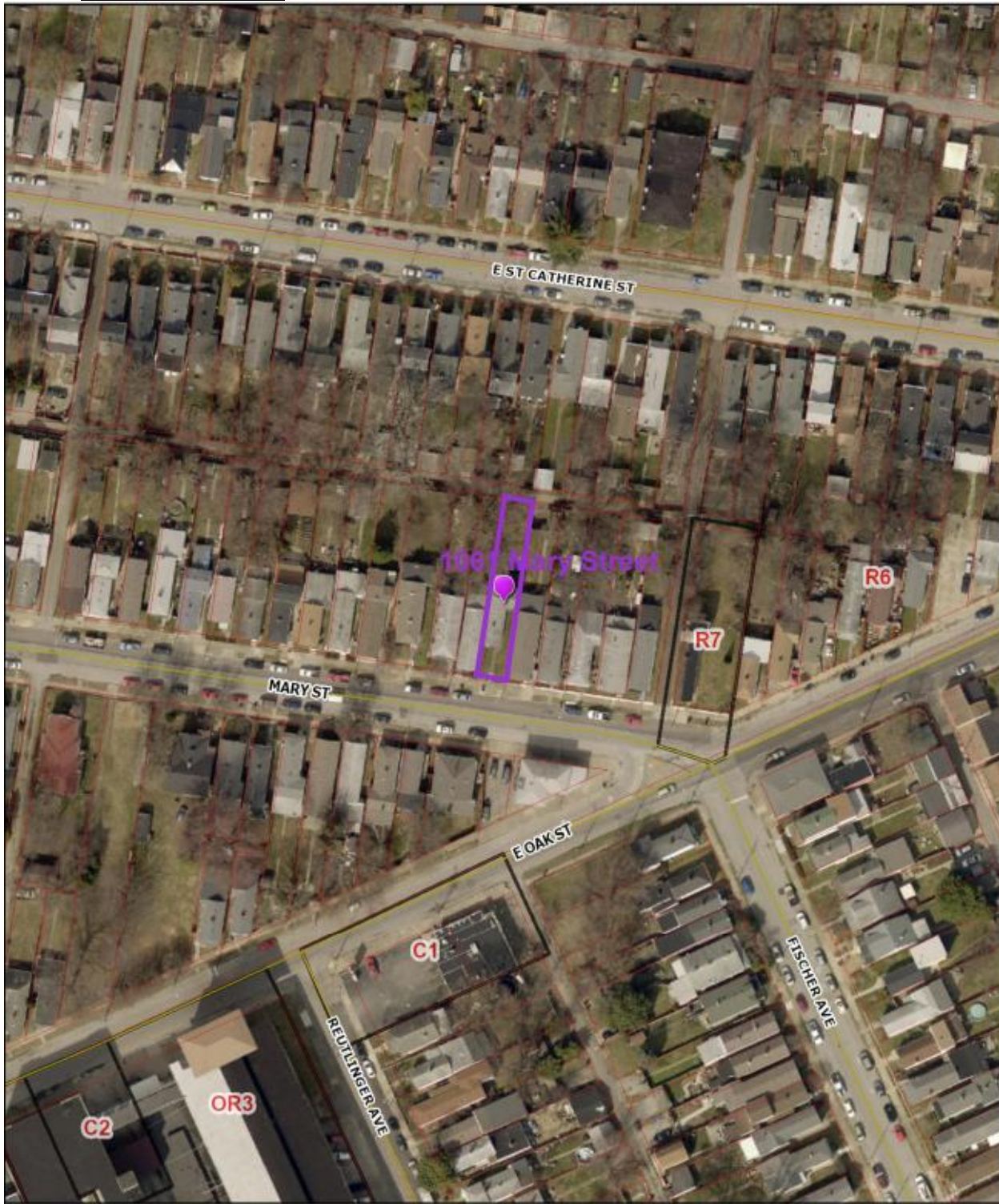
ATTACHMENTS

- 1. Zoning Map
- 2. Aerial Photograph
- 3. 600' Map
- 4. Justification

1. Zoning Map



2. Aerial Photograph





3. 600' Map

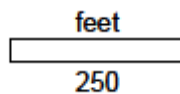
Map Created: 08/23/2019



Legend

-  Buffer
-  Subject Site
-  Approved
-  Pending

**Proximity Map
Case # 19CUP1091**



This map is subject to change upon the Board of Zoning Adjustment granting approvals to other Short Term Rental Conditional Use Permits.



Copyright (c) 2018, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE WATER COMPANY (LWC), LOUISVILLE METRO GOVERNMENT and JEFFERSON COUNTY PROPERTY VALUATION ADMINISTRATOR (PVA). All Rights Reserved.

4. Justification

19CUP1091 There are several reasons we believe our property at 1061 Mary Street should be approved for CUP although one other approved CUP exists within 600 ft radius.

1. **OTHER ESTABLISHED CUP IS NOT IN USE** - Within the 600 feet radius, there is only one property with an established CUP for short-term rental use. However, the owner has no current plan to rent the property on a short-term basis. The property is currently leased long term through August 2020. The owner does not intend to use his CUP and is in support of the present CUP. See Affidavit attached as Exhibit 1.
2. **MAJORITY OF PROPERTIES WITHIN 600 FOOT RADIUS ARE RENTAL PROPERTIES**- According to our analysis and investigation, approximately 50% of the properties within 600 feet are rental properties including several duplex/multifamily properties Tier 1 or on the same block. The surrounding neighborhood is very transient.
3. **NO NEIGHBORHOOD CONCERNS OR COMPLAINTS**- Going above and beyond the rules, we had two (2) neighborhood meetings. No one was in attendance at either meeting. The lack of participation at the meetings is relevant to the lack of objection/issue with the present CUP application. Furthermore, we received a few statements of support from Tier 1 and 2 properties and residents on the same street. (See Written, Video and Audio Statements attached as Exhibit 2)
4. **MIXED USE AND HIGH DENSITY NEIGHBORHOOD** - This is not the traditional family oriented neighborhood. There are several multifamily and commercial properties in proximity to 1061 Mary including a convenience store, a cafe and a large scale apartment complex and several rental single family and duplex. All properties are zoned to allow multifamily, C1 or OR3 uses. (See area overly maps Exhibit 3)
5. **CONFIGURATION AND TRAFFIC PATTERN OF SURROUNDING AREA** - There are distinct boundaries that define and separate this "neighborhood" (an area greater than the 600 ft radius): Mary Street Minor Artery West to East toward I65 (South), Beargrass Creek (North and East) and Train Tracks (West). There are no short term rental CUP's in the "neighborhood". The only CUP in the 600 ft radius falls outside these defined boundaries and is addressed in Paragraph 1 above. (See area overlay maps Exhibit 3)
6. **PRIOR CHARACTER OF THE PROPERTY** - 1061 Mary St. was a long term rental property for several years. The new owner has remodeled the premises and increased the property's value. The requested CUP will not change the prior use of the premises (a rental property) while actually adding to the neighborhood (increased property value and better appearance). The short term rental property will ensure the property remains in prime condition with constant owner oversight and maintenance. (see before and after pictures attached as Exhibit 4)

7. **PROPERTY CONDITION COMPARED TO NEIGHBORHOOD** Many of the other properties within the 600ft and extended neighborhood are in disrepair in comparison to the property at 1061 Mary St. (See Photos attached as Exhibit 4)
8. **SHORT TERM RENTAL INCREASE PROPERTY VALUES IN THIS PARTICULAR NEIGHBORHOOD-** Studies have shown that short-term rental properties increase property values by 17% percent in urban areas, while doubling the density of short-term rentals within a 300 meters in urban areas is associated in property value increase between 6-9%. In either event, property values rise which is a positive for the neighborhood. See Sheppard, Steven and Udell, Andrew, "Do AirBNB Properties Affect Housing Prices?", Williams College Department of Economics, January 1, 2018 (incorporated by reference).
9. The 600 foot radius is an arbitrary distance. Therefore, unconstitutional.
10. At a minimum, a **zoning** ordinance must contain a plan for orderly growth, and property owners must be able to rely on it when making investments in real estate and for the protection of land values.
11. Ordinance **zoning** provision was **unconstitutional** for failure to delineate standards by which city **zoning board** of adjustment could approve exceptions to an ordinance, which contained a severability clause.
12. A "conditional use permit" is an exception within state's **zoning** law which allows an applicant to undertake a beneficial land use not otherwise permitted in a particular **zoning** district. Here, the zoning district allows for a rental. Therefore, use of the "conditional use permit" process is unconstitutional.