

Board of Zoning Adjustments

Staff Report

February 4, 2019



Case No:	17APPEAL1004
Project Name:	Birchwood Appeal
Location:	201 S. Birchwood Avenue
Appellant:	Chris David
Jurisdiction:	Louisville Metro
Council District:	9 – Bill Hollander
Case Manager:	Chris French, AICP, Planning and Design Supervisor

REQUEST(S)

- Appeal of an administrative decision on 7/14/2017 to revoke a short term rental registration

CASE SUMMARY/BACKGROUND

According to KRS 100.257, “The board of adjustment shall have the power to hear and decide cases where it is alleged by an applicant that there is error in any order, requirement, decision, grant, or refusal made by an administrative official in the enforcement of the zoning regulation. Such appeal shall be taken within thirty (30) days.”

This appeal by the property owner and short term rental host, Chris David, is in regard to the revocation of a short term rental registration because the dwelling unit in question was not the primary residence of the host as required by the Land Development Code. The registration was revoked by Notice of Violation on July 14, 2017. The appeal was timely filed and additional time beyond the 60 days for the appeal to be heard was granted by the Appellant. The following is a timeline of events that have taken place regarding short term rentals at the subject property:

Timeline of Related Events (Events directly relevant to this appeal in bold):

- 1/13/2017: Initial short term rental complaint filed
- 1/13/2017: Initial enforcement case regarding unlawful short term rental opened (#17PM1551)
- 1/13/2017: Enforcement courtesy notice regarding STR sent (#17PM1551)
- 2/2/2017: Short Term Rental Registration approved (#17STR1039)**
- 2/3/2017: Enforcement case regarding STR closed (#17PM1551)
- 2/27/2017: Current enforcement case regarding STR opened (#17PM3864)**
- 4/28/2017: Short Term Rental Registration revoked (#17STR1039) due to violations
- 5/26/2017: Administrative Appeal Filed Regarding 4/28/2017 decision to revoke (#17APPEAL1001)**
- 7/14/2017: Short Term Rental Registration (#17STR1039) reinstated after determination that one of the violations cited in 4/28/2017 revocation decision was inapplicable
- 7/14/2017: Short Term Rental Registration (#17STR1039) revoked due to residency**
- 7/14/2017: Notice of Violation/First Citation issued stating requirement for primary residency or conditional use permit**

- 9/8/2017: Amended basis of appeal filed by Appellant regarding the 7/14/2017 decision to revoke (note: #17APPEAL1000 was on file and open on 7/14/17 and the appeal was converted to #17APPEAL1004)**
- 1/24/2018: Second Citation sent
- 5/14/2018: Third Citation sent
- 7/31/2018: Property owner submitted Conditional Use Permit Pre-Application (#18CUP1103)
- 8/17/2018: Fourth Citation sent
- 9/10/2018: Property owner submitted Conditional Use Permit Formal Application (#18CUP1103)
- 10/15/2018: BOZA denied Conditional Use Permit Application (#18CUP1103)
- 1/9/2019: Appellant directed staff to docket administrative appeal (#17APPEAL1004)**

The Appellant asserts that the administrative official, in this case, the Planning Director erred in the decision to revoke the short term rental registration. The Appellant asserts that he resided within the specific dwelling unit at the time of the revocation and therefore, the Planning Director erred in revoking the license.

STAFF ANALYSIS/FINDINGS

The decision of the Planning Director to revoke the short term rental was based on multiple pieces of evidence, including 13 affidavits submitted by residents of the area on April 5, 2017, a copy of a mortgage that the Appellant took in December 2016, that listed his address as 1303 S. Shelby Street, and a copy of an AirBnB listing submitted to Planning and Design Services on July 5, 2017, which stated that the Appellant did not live on the property (see attached to agenda item).

The following is the basis of appeal submitted by the Appellant on September 8, 2017. The basis of appeal is as follows:

1. The Appellant asserts that his personal mail, including utility bills are received at the 201 S. Birchwood address.
2. The Appellant asserts that his tax documentation comes to the Birchwood address.
3. He asserts that his drivers license lists the Birchwood address.
4. The Appellant asserts that 75% or more of his time is spent at the Birchwood address.
5. The Appellant asserts that if a warrant for his arrest was issued then the police would search the Birchwood address first.
6. The Appellant asserts that his voter registration lists the Birchwood address.

Regarding the basis of appeal, staff will respond to each point discussed by the Appellant.

1. Staff reviewed multiple pieces of mail submitted by the applicant. Below is a list of the additional evidence submitted by the Appellant (see attached to agenda item):
 - Temporary visitors pass to Fort Knox, issued date of 9/28/2017, submitted to staff on 12/17/2018. This document is dated after the 7/14/2017 revocation date and was not submitted to Planning & Design Services as part of the 9/8/2017 amended appeal.
 - Infraction Deferral Agreement between State of Indiana and the Appellant, dated 7/24/ 2018, submitted to staff on 12/4/2018. This document is dated after the 7/14/2017 revocation date and was not submitted to Planning & Design Services as part of the 9/8/2017 amended appeal.

- Three certificates of title for three vehicles dated, 8/7/2018, 8/7/2018, and 10/19/2018; all three submitted to staff on 12/17/2018. These documents are dated after the 7/14/2017 revocation date and were not submitted to Planning & Design Services as part of the 9/8/2017 amended appeal.
 - Letters from Code and Regulations from 8/18/2017, 12/04/2017, 11/07/2018 submitted to staff on 12/17/2018. These documents are dated after the 7/14/2017 revocation date and were not submitted to Planning & Design Services as part of the 9/8/2017 amended appeal. Further, these types of Louisville Metro letters are sent to an address of record per the PVA, which may or may not be the primary residence.
 - Vehicle registration dated 10/10/2018 submitted to staff on 12/17/2018. This document is dated after the 7/14/2017 revocation date and was not submitted to Planning & Design Services as part of the 9/8/2017 amended appeal.
 - An affidavit from a mail carrier was submitted; however, the document was not signed or notarized. In addition, the affidavit did not give a timeline and did not address the time period surrounding the registration revocation.
2. Tax bill documents provided by applicant are for 11/1/2017 and 11/1/2018, both well after the revocation of the Short Term Rental registration and were not submitted to Planning & Design Services as part of the 9/8/2017 amended appeal.
 3. The copies of the driver's license (1/24/2017), KY identification card (1/24/2017), and the KY driving instruction card (10/12/2018). The drivers license/ID were used in the initial registration of the Short Term Rental. While a driver's license does show the driver's address of record, it is staff's understanding that it is not specifically required by KRS to show a "primary residence". As such it does not outweigh other evidence presented to the Planning Director in deciding to revoke a registration. The 1/24/2017 driver's license was the only document submitted by the property owner supporting his residency for the registration and as part of the 9/8/2017 amended appeal.
 4. Staff cannot determine whether this assertion is true or not, but the Board can use testimony at the public hearing as information in deciding on the appeal case.
 5. Staff cannot address conjecture on what property would be search if a warrant for arrest was issued for the Appellant.
 6. Staff can verify that the Appellant's current voter registration shows the Birchwood address as of the submittal to staff on 12/17/2018. However, no documentation has been provided that shows that the voter registration identified the Birchwood address at the time the Short Term Rental registration was revoked on July 14, 2017.

Staff Conclusions

It is staff's belief that the Appellant has not provided sufficient evidence from the time period surrounding the July 14, 2017, revocation date to overturn the Planning Director's decision. However, there does appear to be sufficient evidence indicating that 201 S. Birchwood Avenue has been the primary residence of the Appellant as of late 2018.

Standard of Review

The Board must determine whether there is sufficient evidence submitted by the Appellant and presented at the public hearing that an error was made in the decision to revoke the Short Term Rental registration because the property was not the primary residence of the host. In addition, staff would request that the Board also decide whether the current address of the Appellant is 201 S. Birchwood Avenue.

INTERESTED PARTY COMMENTS

No comments submitted.

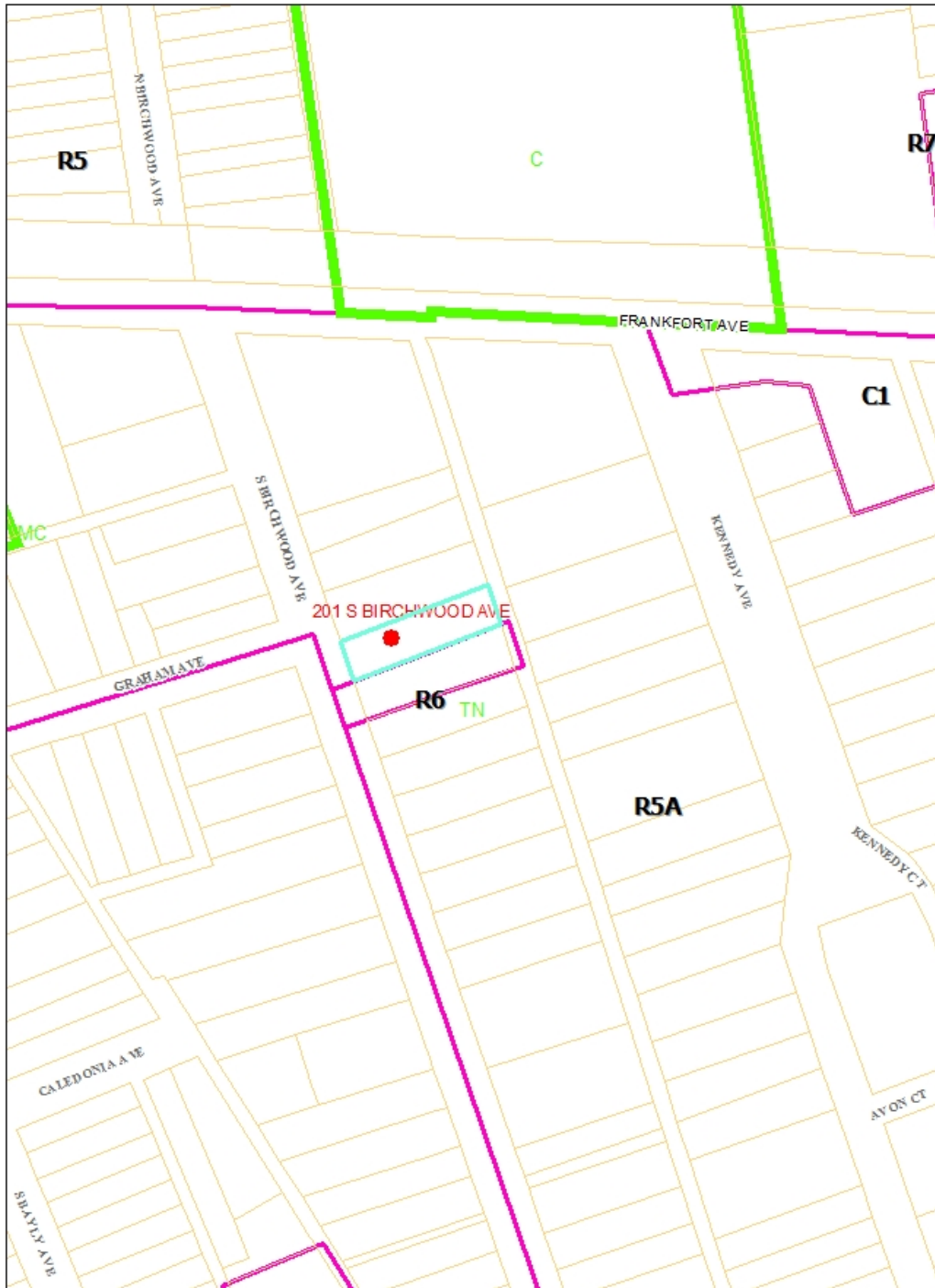
NOTIFICATION

Date	Purpose of Notice	Recipients
01/18/2019	Hearing before Board of Zoning Adjustments	1 st tier adjoining property owners
01/16/2019		Registered Neighborhood Groups in Council District 9
01/25/2019	Hearing before Board of Zoning Adjustments	Legal ad in Courier Journal

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph

1. Zoning Map

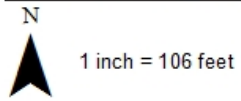


1 inch = 170 feet

17APPEAL1004
201 S. Birchwood Avenue



2. Aerial Photograph



17APPEAL1004
201 S. Birchwood Avenue

