

17APPEAL1003

2211 Longest Ave.



Louisville Metro Board of Zoning Adjustment Public Hearing

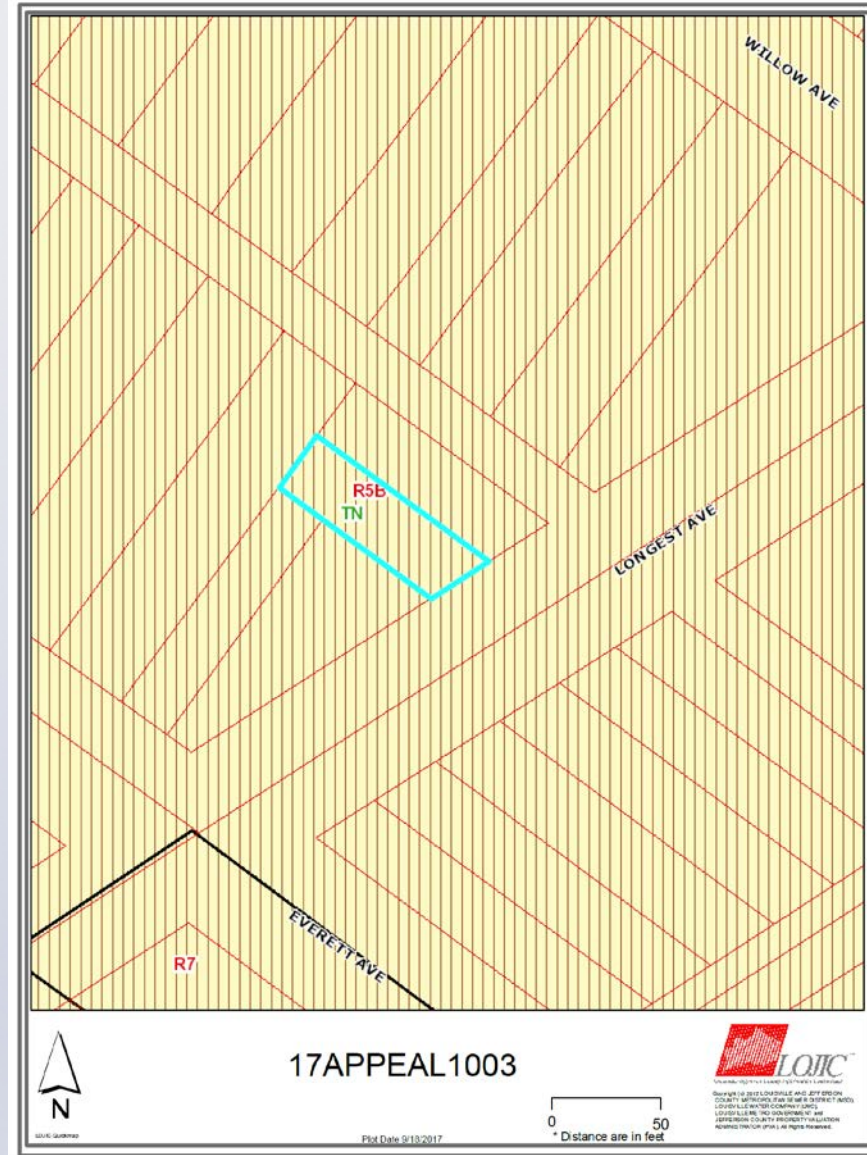
Brian Mabry, AICP, Planning & Design Supervisor
October 2, 2017

Request

- Appeal of a Zoning Notice of Violation issued by Planning and Design Services finding that the short term rental is in violation of Section 4.2.63 of the Land Development Code.

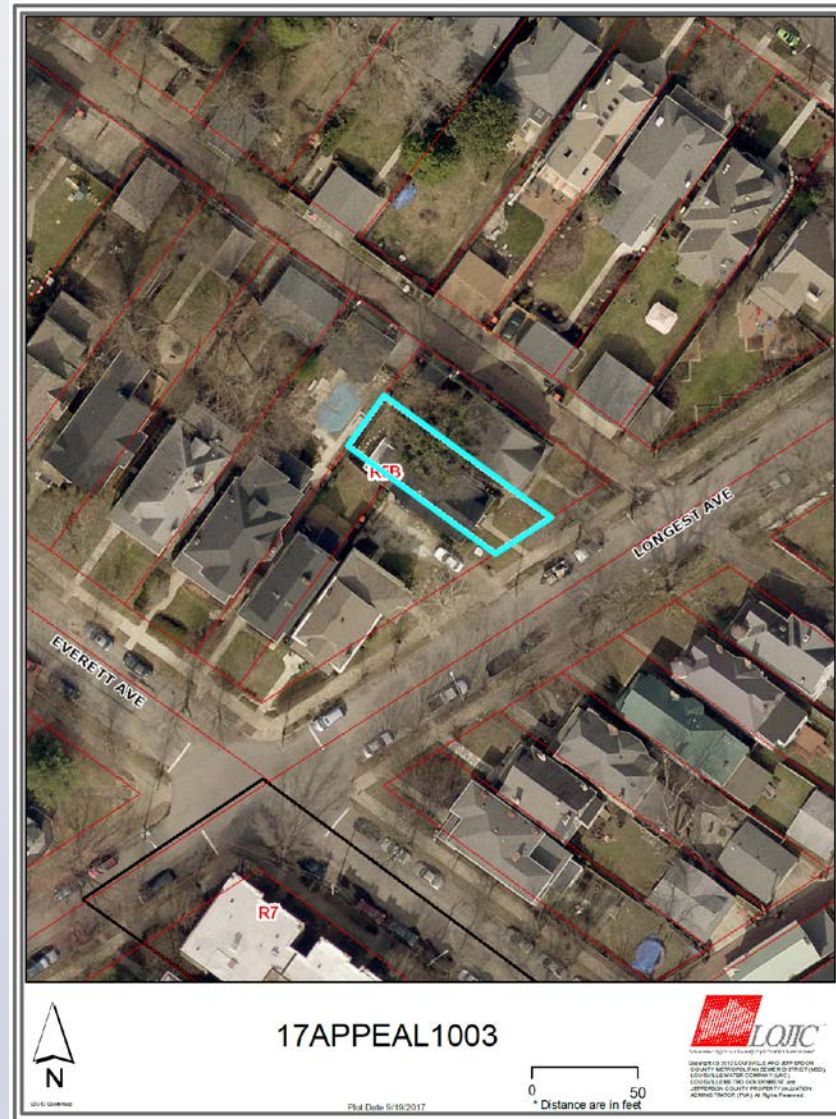
Zoning/Form Districts

- Subject: R-5B
- Northeast: R-5B, TN
- Southwest: R-5B, TN
- Southeast: R-5B, TN
- Northwest: R-5B, TN



Aerial Photo/Land Use

- Subject: Single-family
- Northeast: Single-family
- Southwest: Single-family & multifamily
- Southeast: Single-family & Two-family
- Northwest: Single-family



Background

- Pursuant to KRS, BOZA hears appeals of an administrative action of a Code Enforcement Officer.
- Zoning Code Enforcement issued a Zoning Notice of Violation for the property based on a complaint that the host / appellant does not have the subject property as his primary residence.
- Appellant asserts in his appeal letter that the Zoning Notice of Violation is invalid because he does indeed live at the subject property when he is in town.

LDC Provisions

Section 4.2.63 of the LDC sets forth the standards that a short term rental must meet in order to receive a Conditional Use Permit. It states:

*A short term rental of 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 a 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:*

LDC Provisions

Section 4.3.23 of the LDC sets forth the standards that a short term rental must meet in order to be permitted with standards (and not require a CUP). It states:

*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, a short term rental of a dwelling unit that **is the primary residence of the host** is permitted by the Planning Director with special standards set forth in this section. In a OR, OR-1, OR-2, OR-3, OTF, C-N, C-R, C-1, C-2, C-3, C-M, W-1, W-2, PVD, PTD or PRD district, any short term rental is permitted by the Planning Director with special standards set forth in this section.*

The term “primary residence” is not defined in the LDC nor in any other part of the Louisville Metro Code.

LDC Provisions

- CUP is required in R-5B if the host does not have primary residence at the subject property.
- In that zoning district, a short term rental is permitted subject to standards (no Conditional Use Permit required) if the host has primary residence at the subject property.
- Appellant claims that the subject property is his primary residence and therefore that he does not need a Conditional Use Permit to operate the short term rental.

Previous Cases On Site

- 17PM6372 In April 2017, PDS Zoning Enforcement received a complaint that Mr. Payne was operating a conventional bed and breakfast without a CUP. Enforcement investigated and, upon learning that he was instead operating a short term rental, requested Mr. Payne register the property. He registered the short term rental on June 5, 2017.
- 17APPEAL1002 In June 2017, a nearby property owner appealed the registration of the property of the short term rental based on her belief that the subject property is not Mr. Payne's primary residence. Legal counsel subsequently advised PDS Staff that the appellant did not have standing to appeal under Kentucky Revised Statutes.
- 17PM15650 In June 2017, PDS Zoning Enforcement received a complaint that Mr. Payne was hosting a short term rental, on property that was not his primary residence, without a Conditional Use Permit. Zoning Enforcement investigated the complaint and issued a Zoning Notice of Violation on July 26, 2017.

Staff Analysis

- For the following reasons, Staff does not believe 2211 Longest Avenue is the appellant's primary residence
 1. Utility bill – Appellant hosts a few short term rentals in the Louisville area, so one would expect that the appellant would be the on utility bills for a number of properties.
 2. Drivers license – Submitted driver's license shows 2211 Longest Avenue as appellant's address; however, the license was issued on the very day that the registration was submitted. Taken with the other circumstances described in this analysis, this further demonstrates the uncertainty as to what the appellant's primary residence really is.

Staff Analysis

3. Selfies – Appellant submitted “selfie” photographs of himself in what appears to be the residence at the subject property. Staff does not believe that this substantiates that the appellant has his primary residence at the subject property.
4. MetroCall 311 Request - On March 3, 2017, appellant put in a request with Louisville Metro’s 311 service for a new garbage cart for 2211 Longest Avenue. Appellant provided his address as 4310 Hannah Avenue. The appellant may very well have changed residences from March to June, 2017, but these inconsistencies lend credence to the complaint from June 2017 that the appellant does not have primary residence at 2211 Longest Avenue.

Staff Analysis

5. Jeffersonville Properties –Nearby property owner claims that appellant has an additional property in Jeffersonville, Indiana, that he sometimes lists on the Air BnB platform as a short term rental. Staff researched Clark County Assessor's office records and found that appellant owns 3188 Red Barn Loop and 3904 Shephards Run in the same subdivision. Clark County records show the owner's address for each property as the properties themselves.

Staff Analysis

- Uncertainty of primary address
 - 2211 Longest Avenue, Louisville?
 - 4310 Hannah Avenue, Louisville?
 - 3188 Red Barn Loop, Jeffersonville?
 - 3904 Shephards Run, Jeffersonville?
- Due to this uncertainty, Staff continues to assert that 2211 Longest Avenue is not the appellant's primary residence and that a Conditional Use Permit is needed in order for him to operate a short term rental there.

Staff Conclusions

- Staff believes that the Zoning Notice of Violation for 2211 Longest Avenue was issued properly and that the BOZA should uphold the notice.

Staff Conclusions

WHEREAS, the Board finds from the file of this case, the staff report, the PowerPoint presentations; the evidence, testimony and discussion at the public hearing that this is an Appeal of a Zoning Notice of Violation issued by Planning and Design Services concerning primary residence of the short term rental host in violation of Section 4.2.63 of the Land Development Code; and

WHEREAS, the Board finds that the Zoning Violation Notice was properly issued on July 26, 2017, as case 17PM15650 because 2211 Longest Avenue is not the primary residence of the appellant.

NOW, THEREFORE, BE IT RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby AFFIRM that the Zoning Notice of Violation was properly issued on July 26, 2017, as case 17PM15650 and that the appellant is in violation of LDC Section 4.2.63.

BE IT FURTHER RESOLVED, that the Louisville Metro Board of Zoning Adjustment does hereby DENY the Appeal.

Required Actions

Based upon the file of this case, the staff report, and the evidence and testimony submitted at the public hearing, BOZA must:

- Determine if the Zoning Notice Violation was issued properly or in error; and
- Affirm or reverse, in part or in whole, the Zoning Notice of Violation that states that the appellant is in violation of Land Development Code Section 4.2.63 which requires that a short term rental that is not the primary residence of the host must have a Conditional Use Permit.