

**BOARD OF ZONING ADJUSTMENT MINUTES**  
**October 2, 2017**

**PUBLIC HEARING**

**CASE NUMBER 17APPEAL1003**

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
Project Name:	2211 Longest Ave. Appeal
Location:	2211 Longest Ave.
Owner:	Jocelyn Gonzalez
Applicant:	Christopher Payne
Representative:	Christopher Payne
Jurisdiction:	Louisville Metro
Council District:	8 – Brandon Coan
Case Manager:	Brian Mabry, Planning Supervisor

The staff report prepared for this case was incorporated into the record. The Board members received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (The staff report is part of the case file maintained at Planning and Design Services offices, 444 South 5<sup>th</sup> Street.)

**An audio/visual recording of the Board of Zoning Adjustment hearing related to this case is available on the Planning & Design Services website, or you may contact the Customer Service staff to view the recording or to obtain a copy.**

**Agency Testimony:**

**03:27:22** Joe Haberman presented the case on behalf of the Case Manager, Brian Mabry, and showed a Powerpoint presentation. Mr. Haberman stated the main decision the Board of Zoning Adjustment needs to make is whether or not the evidence the appellant presents is enough to overturn staff's decision that this is not the appellant's primary residence. Mr. Haberman stated the appellant is running some other short term rentals as well, so he has several addresses connected to him. Mr. Haberman stated we don't know how many short term rentals he's associated with, but at least two others he's come in for a Conditional Use Permit and made those applications. Mr. Haberman stated at least in those two instances the appellant made the statement that he does not live at those two. Mr. Haberman stated there are some properties that he is connected to in Jeffersonville as well, so there's a high degree of uncertainty as to where he claims primary residence. Mr. Haberman asked Mr. Mabry if he had anything to add, and Mr. Mabry stated he did not. Mr. Haberman responded to questions

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from the Board Members (see staff report and recording for detailed presentation).

**03:44:07** Member Fishman asked for clarification as to whether the appellant has applied for a CUP for the address on Longest or the one on Hannah (see recording for detailed presentation).

**03:44:17** Mr. Haberman stated he does not know the address of the other one, but it is his understanding that he has applied after receiving a Notice of Violation for a Conditional Use Permit for at least one other property associated with him being the host of, and he admitted in that application that it was not his primary residence (see recording for detailed presentation).

**03:44:50** Brian Mabry stated he could provide a comment on that. Mr. Mabry stated that Item #1 on Page 3 of the Staff Report states that there has been a pre-application Conditional Use Permit submitted for short term rental at 4310 Hannah Avenue (see recording for detailed presentation).

**03:45:55** Joe Haberman and Brian Mabry responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in opposition of the appeal:**

Ronald Gregg, 1289 Everett Avenue, Louisville, KY 40204

Christopher Owen, 2206 Longest Avenue, Louisville, KY 40204

Maureen Bearden, 1291 Everett Avenue, Louisville, KY 40204

**Summary of testimony of those in opposition:**

**03:57:25** Ronald Gregg spoke in opposition of the appeal. Mr. Gregg stated this property backs onto his property. Mr. Gregg stated this property has had lots of renters in it, but there is no indication that this individual lives at the house. Mr. Gregg stated he shows up occasionally, disappears, parks his car there all day, but he's never seen him bring in groceries or do anything that you would think of as permanent residency. Mr. Gregg stated the property has been rented heavily, nine and ten individuals at a time. Mr. Gregg responded to questions from the Board Members (see recording for detailed presentation).

**04:02:52** Christopher Owen spoke in opposition of the appeal. Mr. Owen stated he has very rarely seen this gentleman walking in or out of the house. Mr.

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Owen stated there have been multiple rentals. Mr. Owen stated to be fair he has been renovating his house, so he has not been there all the time, but usually every day to pick up mail, etc., and he has seen multiple renters, groups as large as fourteen. Mr. Owen responded to questions from the Board Members (see recording for detailed presentation).

**04:05:02** Maureen Bearden spoke in opposition of the appeal. Ms. Bearden stated just to add a comment, the fourteen people and two other groups of people were there after the Notice of Violation was issued on July 26. Ms. Bearden stated there are also reviews on the Airbnb site from August and September. Ms. Bearden responded to questions from the Board Members (see recording for detailed presentation).

**The following spoke in favor of the appeal:**

Chris Payne, 2211 Longest Avenue, Louisville, KY 40204

**Summary of testimony of those in favor of the appeal:**

**04:08:32** Chris Payne spoke in favor of the appeal. Mr. Payne responded to questions from the Board Members. Mr. Payne stated he does have five properties, three that he rents in Louisville. Mr. Payne stated he owns two in Southern Indiana (see recording for detailed presentation).

**04:11:45** Mr. Haberman stated in follow up he has confirmed through Zoning Enforcement and they've received a copy of the lease which had a clause which is very standard that states no sub-letting without the landlord approval, and short term rentals are a form of sub-letting. Mr. Haberman stated they then followed up with the property owner and she sent an email basically stating that she was okay with it. Mr. Haberman stated they do have a copy of the lease, not with the appeal file, but with the enforcement file (see recording for detailed presentation).

**04:12:46** Mr. Payne responded to questions from the Board Members. Mr. Payne stated he stays at this residence at least four nights a week, except for when the property is not rented; then he stays there seven nights per week. Mr. Payne showed some photos of the property, as well as photos of himself in the property which were date/time stamped (see recording for detailed presentation).

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**04:21:51** Chair Allendorf stated we're needing more evidence other than a bunch of selfies saying you're there. Chair Allendorf stated most of these selfies came after he was given a citation, and there's really nothing before then (see recording for detailed presentation).

**04:25:14** Mr. Payne responded to questions from the Board Members. Mr. Payne showed the Board Members correspondence on his phone from the property owner regarding the Cease and Desist Order (see recording for detailed presentation).

**04:33:05** Joe Haberman stated they were going to get a copy of the lease from the enforcement file so the Board could see it (see recording for detailed presentation).

**04:33:29** Chair Allendorf stated it seems Mr. Payne is acting more as a property manager than actually physically living there (see recording for detailed presentation).

**04:33:39** Member Young stated he does believe he has the right to live there, but his issue is does he live there. Member Young asked the appellant if there have been any short term rentals since receiving the Zoning Notice of Violation (see recording for detailed presentation).

**04:34:18** Mr. Payne stated there's been quite a few letters, but he has done a couple of Airbnb rentals, but he's not exactly sure of the dates. Mr. Payne continued to look for photos of the closet (see recording for detailed presentation).

**04:35:49** Chair Allendorf asked Mr. Haberman if there was a copy of the lease agreement in the files (see recording for detailed presentation).

**04:36:00** Mr. Haberman stated a staff member is going to get a copy of the lease so the Board could see it and it would probably take him about ten or fifteen minutes (see recording for detailed presentation).

**04:37:00** Meeting was recessed.

**04:37:24** Meeting was reconvened.

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**04:37:30** Chair Allendorf stated staff was able to get the paperwork requested regarding the lease information (see recording for detailed presentation).

**04:37:50** Mr. Payne stated he wanted to show his LG&E bill for the record. Mr. Payne reviewed his lease agreement for the property at 2211 Longest Avenue. Mr. Payne responded to questions from the Board Members (see recording for detailed presentation).

**REBUTTAL:**

**04:48:58** Brian Mabry spoke in rebuttal (see recording for detailed presentation).

**04:49:42** Joe Haberman responded to questions from the Board Members (see recording for detailed presentation).

**04:53:47** **Board Members' deliberation**

**04:57:57** Public Hearing was reopened to allow additional testimony from Mr. Payne. Mr. Payne stated he wanted to mention that two of the neighbors live on a different street, so he's never seen them carry in groceries either (see recording for detailed presentation).

**04:58:35** **Board Members' deliberation**

**05:06:00** On a motion by Vice Chair Jarboe, seconded by Member Fishman, the following resolution was adopted:

**WHEREAS**, the Louisville Metro Board of Zoning Adjustment finds that the short term rental is in violation of Section 4.2.63 of the Land Development Code; now, therefore be it

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**RESOLVED**, the Louisville Metro Board of Zoning Adjustment in Case Number 17APPEAL1003 does hereby **DENY** the 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, based upon the Staff Report and the Staff Findings, the preponderance of evidence heard today regarding the discrepancies between the appellant's statements of primary residence and testimony of neighbors to the property who have testified that they are at home during the day and have not seen the appellant residing on the property for a period of six months since the lease signing of February of 2017; further, the submission of proof of residency and the application for recycling carts has listed a different address on Hannah Avenue and the applicant for recycling carts referred to 2211 Longest Avenue as though it were not the primary residence; in addition, the appellant does own properties in Clark County, Indiana that would be listed as the primary residence, and the appellant's own statement that he considers this his primary residence when he is in town and that was not clearly defined, and the Staff conclusions regarding the LDC Code.

**The vote was as follows:**

**Yes: Members Fishman, Howard, Young, Vice Chair Jarboe, and Chair Allendorf**

**Absent: Member Turner**

**05:11:33** On a motion by Vice Chair Jarboe, seconded by Member Fishman, the following resolution was adopted:

**RESOLVED**, the Louisville Metro Board of Zoning Adjustment 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.

**The vote was as follows:**

**Yes: Members Fishman, Howard, Young, Vice Chair Jarboe, and Chair Allendorf**

**Absent: Member Turner**