

Board of Zoning Adjustment Staff Report

May 15, 2023



Case No:	LIC-STA-23-00614
Request:	Short Term Rental Residency Hearing
Project Name:	Host Wayne Gallavin
Location:	2509 Top Hill Rd
Owner:	2509 TH Land Trust
Applicant:	n/a
Jurisdiction:	Louisville Metro
Council District:	9 – Andrew Owen
Case Manager:	Joseph Haberman, Planning & Design Manager

REQUEST

The Director of Planning & Design Services requested a residency hearing concerning a short term rental registration for a dwelling unit at 2509 Top Hill Road. 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 4/11/23, identifying Wayne Gallavin as the host. As part of the application, Mr. Gallavin provided documents supporting residency at the address, including a copy of his driver's license and voter registration information. After submitting the initial application and subsequent to the docketing of the residency hearing, on 5/8/23, Mr. Gallavin provided additional documentation including but not limited to a vehicle registration.

Following an initial 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. Gallavin. Otherwise, a Conditional Use Permit (CUP) is required.

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. Gallavin provided two documents in support of his residency at 2509 Top Hill in the initial application, including a copy of his Kentucky driver's license (temporary receipt, issued 4/7/23) and voter registration information (not dated), conflicting and inadequate documentation suggested that he maintained primary residency at another property, 1274 Everett Avenue, at the time of application.

Conflicting documentation:

- At the time of application (4/11/23), there was an active short term rental registration for 1274 Everett Ave in which Mr. Gallavin was identified as host. This registration was initially applied for in 2018 and most recently renewed on 10/6/22 (valid until 10/5/23). As part of the applications for 1274 Everett, Mr. Gallavin submitted documentation, including a Kentucky driver's license and voter registration information supporting his residency. While a new registration application for 1274 Everett under a different host was submitted simultaneously with the subject registration application for 2509 Top Hill, a formal request had not been submitted to void this registration as of 4/19/23. Per the definition of primary residence, an "individual has only one primary residence at a time."
- At the time of application (4/11/23), another person/host, Christopher Ty Walston, had a registration requiring primary residency at 2509 Top Hill. The Board determined that Mr. Walston no longer met the requirements for primary residency at a residency hearing on 4/24/23. Mr. Gallavin's application was submitted shortly before this hearing and before Mr. Walston's registration expired on 4/14/23.

Inadequate documentation:

- The driver's license was issued on 4/7/23, shortly before the time of application (4/11/23). A physical driver's license was not submitted for review, only a copy of temporary receipt.
- The voter registration information was not dated and did not state the agency that produced it. It was only a copy, with no means for verification.

After the residency hearing was scheduled, Mr. Gallavin has addressed several issues:

- On 5/1/23, Mr. Gallavin asked staff to immediately revoke his active short term rental registration at 1274 Everett.
- On 5/8/23, Mr. Gallavin supplemented his application with a copy of a vehicle registration and Kentucky Real Estate Commission license information showing 2509 Top Hill as his address.
- On 5/9/23, Mr. Gallavin submitted photos of the interior of the dwelling signifying that he moved into the residence (note: while providing some clarification, photos from a host are generally not an accepted form of documentation to demonstrate primary residency).

- On 5/9/23, Mr. Gallavin submitted an affidavit (note: while providing some clarification, an affidavit from a host is generally not an accepted form of documentation to demonstrate primary residency).
- On 5/9/23, Mr. Gallavin provided his voter information in another document format, showing his address as 2509 Top Hill and issued by the Kentucky State Board of Elections.

In response to a statement in the affidavit, Mr. Gallavin indicates that Leslie Frye took over as host; however, there are not any documents in the file confirming this action. Ms. Frye was added as an emergency contact and Mr. Gallavin remained host of record. No documents supporting Ms. Frye’s primary residence are in the case file, which would have been required to accept her as host of record.

While the Airbnb listing for the short term rental remains live, it does not appear to have been modified since Mr. Walston ceased to be an approved host (with the exception of 2 new guest reviews). It is unclear if reservations are currently being accepted. There is not an active registration at this time and short term rentals are currently prohibited. In review of the Airbnb listing and its comments prior to initiating the residency hearing, Mr. James Wallace remains the functional host. The name of the listing is “Entire home hosted by James”. There are references to the owner/Mr. Gallavin (Wayne) in the 48 comments currently on Airbnb, but the majority refer to Mr. Wallace. That said, the latest comments are from April 2023 and it is possible those guests stayed prior to Mr. Gallavin moving to the property.

Airbnb listing:

https://www.airbnb.com/rooms/37885808?adults=1&children=0&enable_m3_private_room=true&infants=0&location=Louisville%2C%20Kentucky%2C%20United%20States&pets=0&check_in=2024-01-01&check_out=2024-01-06&federated_search_id=f9f475c9-1fb9-468b-aa28-0ae899a3b8b2&source_impression_id=p3_1683662189_DtB6PBSsj2Q%2BbbOp

In addition to providing the required documentation as evidence of residency, the dwelling unit must serve as Mr. Gallavin’s “main home” where he spends “most” of his time. Mr. Gallavin may attest to this matter at the hearing as he recently moved to the dwelling.

Timeline of Related Events:

- 11/01/16: Initial complaint was received related to alleged unlawful short term rentals (resulting in Zoning Enforcement Case 16PM29509).
- 07/10/18: A Pre-Application for a CUP concerning short term rentals was filed (18CUP1092), the first step in the process.
- 08/23/18 Neighborhood Meeting for a CUP concerning short term rentals was held (18CUP1092).
- 08/24/18: A Formal Application for a CUP concerning short term rentals was filed (18CUP1092), the second step in the process.
- 01/08/19: After closure of previous case, a new complaint was received related to alleged unlawful short term rentals (resulting in Zoning Enforcement Case 19PM1383-ZM).
- 07/19/21: After closure of previous case, a new complaint was received related to alleged unlawful short term rentals (resulting in Zoning Enforcement Case ENF-ZON-21-000701).

- 04/02/21: Short Term Rental Registration issued to Ty Walston (LIC-STA-21-00021 and LIC-STL-21-00134). Wayne Gallavin and James Wallace listed as emergency contacts.
- 04/15/22: Short Term Rental Registration issued to Ty Walston (LIC-STA-22-00377 and LIC-STL-22-00311). Wayne Gallavin listed as emergency contact.
- 01/19/23: After closure of previous case, a new complaint was received related to the host not residing at the property as required (resulting in Zoning Enforcement Case ENF-ZON-23-000081)
- 04/11/23: Short Term Rental Application applied for by Wayne Gallavin (LIC-STA-23-00614)
- 04/14/23: Short Term Rental Registration issued to Ty Walston expired (LIC-STA-22-00377 and LIC-STL-22-00311).
- 04/24/23: Residency Hearing for Ty Walston, Board determined that it was not his primary residence at the time of the hearing
- 04/27/23: Notice of Violation for advertising the property on Airbnb without an active registration.

Notes: Subsequent to the zoning enforcement case being opened on 11/1/16, additional service complaints regarding the short term rental were submitted to Louisville Metro Government. Service complaints received since 11/1/16 were consolidated under active cases.

An additional Short Term Rental Registration was issued to Mr. Walston in 2021, 2020, and 2019 (information is not provided in Accela). An additional Short Term Rental Registration was applied for by Krystal Gallavin in 2018 under (information is not provided in Accela). An additional Short Term Rental Registration was applied for by Ron Burns in 2017 (information is not provided in Accela).

STAFF CONCLUSIONS

While complaints led to an open enforcement investigation, the decision to initiate the hearing is based on the content of the initial application. The complaints on file do not assist with this determination. A complainant has not provided any observations or documentation related to Mr. Gallavin’s current residency. Some neighbors have alleged the previous host did not reside in the dwelling. However, his residency is not subject to this hearing.

While staff does not have any evidence that Mr. Gallavin resided elsewhere at the time of this report; he recently lived elsewhere. He lived at 1274 Everett as recently as April 2023. Given the initial provision of only two supporting documents (with at least one recently issued and the other not dated) and the circumstances noted in this report, a residency hearing is warranted. The Board may accept explanations and evidence via testimony under oath.

Although not grounds to deny his registration, the situation surrounding the application is notable. The application was submitted shortly after a residency hearing was scheduled concerning the previous host. The property is residentially zoned (R5). In the R5 district, short term rentals that are not occupied by the host require a CUP.

Mr. Gallavin moved to the address relatively recently and immediately applied to be a short term rental host. While staff has no information related to how much time Mr. Gallavin has spent or will

spend 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. Due to the recent move, a determination that he will spend most of his time at the address moving forward is based in assumption.

Until the application for Mr. Gallavin, another person/host, Christopher Ty Walston, claimed primary residency at 2509 Top Hill. The Board determined that Mr. Walston no longer met the requirements for primary residency at a residency hearing on 4/19/23. Mr. Gallavin’s application was submitted shortly before this hearing, on or around 4/11/23. It should be noted and considered that in conversations with staff prior to the hearing, Mr. Gallavin agreed that Mr. Walston had moved and did not contest the action to revoke Mr. Walston’s registration. Mr. Walston also did not submit a renewal application for rentals under his name past 4/14/23, which would have required Mr. Gallavin’s approval as representative of the owner.

After the residency hearing was scheduled, Mr. Gallavin has since addressed several issues. He asked staff to revoke his active short term rental registration at 1274 Everett and provided additional documentation.

Staff will request clarification from the host on the following issues at the hearing: the reasoning for the conflicting documentation; the frequency in which the dwelling will be rented short term and if there are any blackout times; the amount of notice Mr. Gallavin accepts in advance for an upcoming guest stay; where Mr. Gallavin will stay when the dwelling is rented short term; and the roles of Mr. Wallace or other hosts in the management of the short term rental.

STANDARD OF REVIEW

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

If the Board determines the host’s residency meets Section 1.2.2, the registration can be approved with Mr. Gallavin as host. The registration is only valid for one year and can be renewed again. 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’s residency does not meet Section 1.2.2, the registration application with Mr. Gallavin as host will 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-23-00614: Short Term Rental Registration (Wayne Gallavin – Host) – Pending
- ENF-ZON-23-000081: Zoning Enforcement Case concerning the host’s residency – Open
- 18CUP1092: CUP Case concerning short term rentals – Withdrawn/Not Approved
- LIC-LTR-23-02301: Long Term Rental Registration

INTERESTED PARTY COMMENTS

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
4/25/23	Notified Host and Owner of Residency Hearing	Host/Owner - by email
5/3/23	BOZA Sign Posting	Subject Property

ATTACHMENTS

- Attachment #1: Application/Memo
- Attachment #2: Driver's License
- Attachment #3: Voter Registration Info
- Attachment #4: Vehicle Registration
- Attachment #5: Kentucky Real Estate Commission License
- Attachment #6: Interior Photos
- Attachment #7: Affidavit