

Board of Zoning Adjustment

Staff Report

May 15, 2023



Case No:	23-APPEAL-0002
Project Name:	Burlingame Court Appeal
Location:	8605 Burlingame Court
Owner:	Daniel Most
Appellant:	Daniel Most
Representative:	Bardenwerper, Talbot & Roberts, PLLC
Jurisdiction:	Louisville Metro
Council District:	23 – Jeff Hudson
Case Manager:	Chris French, AICP, Planning Supervisor

REQUEST(S)

- Appeal of an administrative decision regarding a zoning enforcement action.

CASE SUMMARY/BACKGROUND

A notice of violation was issued on February 10, 2023, regarding an unlawful use of a property within the R-4 zoning district. The notice of violation is attached to this report (see exhibit 1). The dwelling unit on the property is being used as a Boarding House without the required approvals. During the inspection process, the zoning enforcement officer has determined that individuals rent beds or entire bedrooms and that each individual has a separate lease/contract. Under this arrangement, the persons occupying the dwelling unit are not living as a single housekeeping unit.

The appellant's representative filed an appeal of the zoning enforcement action on March 6, 2023 on the basis that the use of the property is not a boarding house. The basis of appeal is attached to this staff report (see exhibit 2). The appeal application was filed within 30 days of the administrative action being appealed; therefore, this is a timely appeal.

STAFF ANALYSIS/FINDINGS

The following sections of the LDC are applicable to this case:

Section 2.2.6 R-4 Residential Single Family District

Staff Analysis: The R-5 residential single-family district is limited to single family residential units. LDC section 4.2.11 allows for Boarding and Lodging Houses in residential with an approved conditional use permit. LDC section 4.3.24 allows Residential Lodging House with four or fewer boarders in a residential zoning district as a permitted use with special standards.

Section 1.2.2 Definitions

Boarder - A resident of a **Boarding Home** or **Boarding House** who does not require supervision or assistance related to medication, activities of daily living, or supervised plan of care.

Boarding Home – As defined in KRS Section 216B.300, any home, facility, institution, lodging, or other establishment, however named, which accommodates three (3) or more adults not related by blood or

marriage to the owner, operator, or manager, and which offers or holds itself out to offer room and board on a 24-hour basis for hire or compensation. It shall not include any facility which is otherwise licensed and regulated by the cabinet or any hotel as defined in KRS Section 219.011(3). Boarding Homes are further regulated by the Commonwealth of Kentucky pursuant to KRS Chapter 216B. A Boarding Home as regulated by the Commonwealth of Kentucky may or may not be a **Boarding House** as regulated in this Land Development Code.

Boarding House – A dwelling unit in which a room(s) is rented to a Boarder(s) who is not a member of the Family for compensation. A Boarding House is not a Family Care Home, Homeless Shelter, Rehabilitation Home, Residential Care Facility, Transitional Housing, or any other use more specifically defined in this Land Development Code. There are two classifications of Boarding Houses:

A. **Residential Lodging House** – A single-family dwelling where one or more occupants are primarily permanent in nature, and rent is paid for guestrooms. A **Residential Lodging House** is a **Boarding House** that is owner-occupied and has five (5) or fewer guestrooms.

B. **Commercial Boarding House** – A building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family dwelling. A **Commercial Boarding House** is a **Boarding House** that is either a) not owner-occupied or b) owner-occupied and contains more than five (5) guestrooms.

Dwelling Unit - Either a single room or two (2) or more connected rooms used exclusively as a single unit and intended for occupancy for no less than 30 consecutive days or more by one (1) **Family**, and providing complete, independent living facilities (which at a minimum includes permanent provisions for living, sleeping, eating, cooking, and sanitation which are accessed independently). Notwithstanding the provisions of this definition, where permitted, short term rentals may be occupied by more than one family and for less than 30 consecutive days. This term does not include **Hotel** or **Motel** rooms, **Extended Stay Lodging** facilities, **Nursing Home** rooms, or **Assisted Living Residence** units, or any other use more specifically defined in this Land Development Code.

Family - One (1) or more persons occupying premises and living as one (1) housekeeping unit.

Section 4.2.11 Boarding Houses in a Residential or Traditional Neighborhood Zoning District

Boarding Houses may be allowed in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, U-N, R-5A, R-5B, R-6, R-7, R-8A, TNZD (Neighborhood Center), and TNZD (Neighborhood Transition-Center) districts upon the granting of a Conditional Use Permit and compliance with the [requirements]....

Staff Analysis:

The property was initially issued a notice of violation on February 15, 2022 after a zoning enforcement officer determined that the dwelling unit was being used for unlawful short term rentals (ENF-ZON-20-000151). While this notice was not appealed, the case was closed on March 22, 2022 after an attorney for the property owner assured zoning enforcement staff that the dwelling unit would only be occupied by compliant long term rentals.

After additional complaints were filed, a new case was opened on February 7, 2023 (ENF-ZON-23-00135). Upon further investigation, it was determined that the use was not operating as a compliant long term rental. Evidence showed that the occupants were not living as a single housekeeping unit, a requirement for a single family long term rental per the definitions of *dwelling unit* and *family*. Further, it was determined that the unlawful use was not a short term rental as it was discovered that occupants rent either beds or bedrooms, not the entire unit, for tenancies of greater than 30 days. The use is best categorized under the definition of *boarding house* since rooms are rented to different parties under separate contracts. However, the relatively unique setup of this operation is in ways reminiscent of

elements of other defined uses such as short term rentals and hotels, and undefined uses such as co-housing and hostels. Further, in its current organization, it does not meet all of the standards and requirements for a boarding house.

The occupants are only related to one another by the shared landlord and a need for housing on an interim basis. Occupants enter into individualized contracts and maintain their primary residences elsewhere. The fact that occupants share common spaces and amenities is inconsequential as that is permitted in, and somewhat customary of, boarding houses and others similar uses such as hotels. Further, while the appeal states that occupants have “specific” beds, based on their website, occupants do not appear to have their own dedicated beds or bedrooms, which is customary of conventional rentals. The appeal does not elaborate on the meaning of “specific” and it appears that they share these beds/spaces. Bedrooms, some or all of which have bunk beds, are devoid of personal effects and do not appear to have individualized bedding. As of the day of this report, the website <https://louisvillecrashpads.com/>, solicits new occupants for a max of 10 persons per the house (with a “waiting list for the Burlingame property”). It is unknown if the house could accommodate all 10 at a given time and meet building/property maintenance occupancy requirements. If not, it would be highly irregular for a tenant to not be permitted to stay within their residence on a given night.

Occupants stay at the property upon need and interaction between occupants may or may not occur. Interaction or relationship between occupants does not appear to be required. Based on information from their website previously around the time of the notice, see attached, occupants enter into contracts for up to 31 days. With the potential for contracts being entered into and concluding at such short intervals (only 1 more day than a short term rental), a high turnover of occupants is likely. This further enforces that occupants may not even know one another, let alone live as a single family/housekeeping establishment.

In the appeal, the appellant states that this is not a short term rental because there are multiple contracts and the term of the contract is for 30 days or more. The use in question does not clearly fall within the definition of any use in the LDC. LDC section 1.1.6 states, “No building, structure, or land located within the planning unit shall hereafter be used or occupied, and no building, structure, or part thereof shall hereafter be erected, constructed, reconstructed, located, moved or structurally altered except in conformity with the regulations herein specified for the zoning and form district in which it is located, and in conformity with all other applicable provisions of this Code.” The LDC is a permissive code, meaning that the use must be expressly listed in the code as permitted. Therefore, the closest use allowed by the LDC that would best fit the use in question would be a boarding house. A conditional use permit could be requested for a boarding house in the R-4 zoning district.

The appeal states that the occupants rent a specific bed. This is the common idea for a boarding house. However, it should be noted that the use in question would not be a compliant boarding house pursuant to the LDC as there is a standard restricting a boarding house to one boarder per room. This standard can be waived through the CUP process, so an application for a boarding house could be approved to allow more than one boarder per room. The fact that the use does not meet a standard for a CUP does not disqualify it from being that use so long as it is consistent with the definition.

The appeal states that the use in question is similar to student housing at the University of Louisville. This is irrelevant to this case because the University of Louisville is considered a state agency and is therefore exempt from the zoning regulations. If referring to properties not located on state-owned land, no specific examples were provided indicating that staff classified differently. And given the zoning surrounding many universities/colleges, it is unlikely that these properties share the same zoning.

The appeal argues that the occupants within the building operate as a family and that they live as a single housekeeping unit. No meaningful information provided as to how they live as a family, other than each occupant has full access of the property. As previously stated in this report, the occupants have separate contracts which is not typical of a family or a single housekeeping unit. In addition, the appellant's representative does not provide any information on whether the tenants know each other or any connection the tenants have to be considered a family or whether they share experiences or expenses in order to be considered a single housekeeping unit. Also, the website for this property (see exhibit 3 attached to this report) would allow someone to setup an individual contract to lease a bed immediately upon the execution of the contract and payment; this would also make it difficult for the tenants to know each other or to act as a single housekeeping unit.

The appeal states that the use in question meets the definition of a dwelling unit. The LDC states that a boarding house can only be in a dwelling unit. Staff does not argue that the structure in question is a dwelling unit as defined by the LDC. However, the use is not specifically listed in the code and is closest to a boarding house which would require a CUP in the R-4 zoning district with relief from the one boarder per room requirement.

The new lease provided for in the appeal is irrelevant since the Notice of Violation was issued based on the use of the property at that time. In addition, the multiple leases are only one issue regarding the use in question for this property and would not resolve the issue moving forward. A single shared lease would only be superficial if tenants are able to enter into individual agreements and contracts as a form of subletting under the umbrella lease. A lease to typical "family" has shared consequences and responsibilities.

STAFF CONCLUSIONS

The basis of appeal has not shown where the zoning enforcement officer erred in issuance of the Notice of Violation. It is clear that the current use of the property is not permitted in the R-4 zoning district without a conditional use permit for a Boarding House.

STANDARD OF REVIEW

Pursuant to LDC 11.7.3 and KRS 100.257, the BOZA shall have the power to hear and decide cases where it is alleged by the 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.

The Board must determine if an error was made.

RELATED CASES

ENF-ZON-23-000135-2 – Notice of Violation regarding the use of the property.

INTERESTED PARTY COMMENTS

Staff has not received any interested party comments.

NOTIFICATION

Date	Purpose of Notice	Recipients
5/1/2023	Notification of appeal of an administrative decision	Adjoining property owners
5/1/2023	Notice of appeal hearing	GovDelivery for Council District 6
5/3/2023	Notice of appeal hearing	Sign Posting
5/3/2023	Legal ad for notification of appeal of an administrative decision	Courier Journal - published in paper by Appellant

ATTACHMENTS

1. Notice of Violation
2. Appellant's Basis of Appeal
3. Website for Property
4. Zoning Map
5. Aerial Photograph
6. Site Photos

1. Notice of Violation



Louisville Metro Government
Develop Louisville
Office of Planning & Design Services
444 S. 5th Street, Louisville, KY 40202

Page 1 of 2

02/10/2023
5:00 PM

Owner:

Daniel J Most
17015 Piton Way
Louisville KY 40245-5463

Interested Party:

Current Occupant
8605 Burlingame Court
Louisville KY 40219

Subject Property:

8605 Burlingame Court

Zoning Enforcement Case:

ENF-ZON-23-000135-2 Visit #2

Inspection Date:

02/09/2023

Inspection Time:

1:00 PM

**ZONING ENFORCEMENT
NOTICE OF VIOLATION – LAND DEVELOPMENT CODE**

Following a complaint, your property was inspected on 02/09/2023. As observed during the inspection and/or discovered through subsequent investigation, a violation(s) exists that requires your immediate attention.

You must immediately stop using this property in violation of the Land Development Code. Please contact the Office of Planning & Design Services to determine what steps must be taken to remedy the violation(s). Failure to comply with this Notice may result in a Citation and fine. Any person or entity that violates any provision of the Land Development Code shall be fined not less than \$10 nor more than \$500 for each violation. Each day of violation constitutes a separate offense.

If you disagree with this Notice, you may file an appeal to the Board of Zoning Adjustment (BOZA). Appeals must be filed within thirty (30) days of the date of this Notice. BOZA appeal forms are available at the Office of Planning & Design Services or online at <https://louisvilleky.gov/government/planning-design>.

A zoning enforcement officer will re-inspect the property to determine if you have complied with this Notice. Should you have any questions, please email or call me at the number below.

Alicia Pedreira
Inspector / Zoning Enforcement Officer
(502) 424-2342
Alicia.Pedreira@louisvilleky.gov

If you are not the owner of this property, you have been sent a copy of this Notice as an interested party.

Zoning Enforcement Case: ENF-ZON-23-000135-2 Visit #2

ZV_017 Conditional Use Permit Required (Boarding And Lodging House)

- Boarding and lodging houses may be allowed in the R-R, R-E, R-1, R-2, R-3, R-4, R-5, R-6, R-7, and R-8A zoning districts only upon the granting of a Conditional Use Permit (CUP) and compliance with the listed requirements. Certain land uses due to their extent, nature of operation, limited application, or relationship to natural resources are considered as exceptional cases. The uses may be permitted in certain districts by Conditional Use Permit (CUP) following a public hearing before the Board of Zoning Adjustment provided such uses will not have an adverse effect on neighboring property, are not in conflict with the goals and plan elements of the Comprehensive Plan, the proposed uses are essential to or will promote the public health, safety, and the general welfare in one or more zones, and are in compliance with the listed standards and requirements. (Louisville Metro Land Development Code Chapter 4 Part 2)

Inspector Comments:

- Inspected, owner Daniel Most allowed an internal inspection. He provided the individual leases for his current tenants and past payment receipts. Photos of leases are under the document tab.
- Although all 5 people currently are renting for over 30 days, they all have individual leases. Tenants do not rent the entire house; they rent a bed in a shared room and share the common areas with other tenants. They do not have their own private room, and some rooms do not have a private bathroom, so those tenants share a common area bathroom. This arrangement does not meet the definition of a house keeping unit. A Conditional Use Permit (CUP) is required.
- For further information regarding Conditional Use Permit (CUP) for Boarding and Lodging Houses please contact the Louisville Metro Office of Planning & Design Services by dialing (502) 574-6230, or by visiting us during business hours at 444 South 5th Street, Louisville, KY 40202 Suite 300.

Responsible:

- Owner

Subject violation needs to be in compliance to avoid penalties and/or court action.

2. Appellant's Basis of Appeal

BARDENWERPER, TALBOTT & ROBERTS, PLLC ATTORNEYS AT LAW

BUILDING INDUSTRY ASSOCIATION OF GREATER LOUISVILLE BLDG • 1000 N. HURSTBOURNE PARKWAY • SECOND FLOOR • LOUISVILLE, KENTUCKY 40223
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Nicholas R. Pregliasco
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March 6, 2023

Case Manager
Louisville Metro Planning & Design Services
444 S. 5th Street, 3rd Floor
Louisville, KY 40202

Re: Appeal of Notice of Violation on property located at 8605 Burlingame Court

Dear Case Manager:

We are herewith filing an Appeal for the above referenced Notice of Violation.

This is an appeal of the February 10, 2023, Zoning Enforcement Notice of Violation in case # ENF-ZON-23-000135-2 ("NOV") for the property at 8605 Burlingame Court (the "Property") owned by Daniel Most ("Owner"). The NOV asserts that the Owner's lease and use of the Property constitutes a "Boarding and Lodging House" necessitating a Conditional Use Permit.

As correctly stated in the NOV, all tenants are currently renting for over 30 days and thus are not short-term rentals. The NOV incorrectly states, however, that the tenants do not rent the entire house and thus do not meet the definition of a housekeeping unit as defined in the Land Development Code.

Tenants rent a specific bed and do have access to the rest of the house. This arrangement is the same as student housing developments at the University of Louisville. The Property has three bathrooms and any tenant can use any bathroom they desire.

With the above arrangement, the tenants are living as a "family" as defined in the Louisville Metro Land Development Code, being *"One (1) or more persons occupying premises and living as one (1) housekeeping unit."*

This is contrasted with a Boarding House, which is *"A dwelling unit in which a room(s) is rented to a Boarder(s) who is not a member of the Family for compensation."* If the tenants only rented the room, not the entire house and ability to use all areas, such as the kitchen, garage, and any bathroom, then this definition would be applicable. However, it is not.

This situation also meets the definition of a single "Dwelling Unit" being a *"single room or two (2) or more connected rooms used exclusively as a single unit and intended for occupancy for no less than 30 consecutive days or more by one (1) Family, and providing complete, independent living facilities (which at a minimum includes permanent provisions for living, sleeping, eating, cooking, and sanitation which are accessed independently)."*

To the extent the confusion was created by the particular way the existing leases were written, the Owner proposes to replace same with the lease attached hereto as an Exhibit confirming the tenants rent the Property and have access to the entire property.


We look forward to answering any questions you may have regarding this appeal.

Many thanks.

Sincerely,

Nicholas R. Pregliasco

3. Property Website – At time of Notice of Violation




Louisville Crashpad II

Rates » \$450 to \$475
Serving - [SDE](#)

[Send a Message](#)

Home [Create Account](#) [Login](#)

See CrashPads near 72 airports!



Daniel Most

★★★★★

[Leave a review](#)
(0 Reviews)

Listing Views - 210

Proudly Serving:

Crew Members - 40,066
Listings - 3,556
Cities - 72
Views/month - 80,000+
Connections - 223,926
[see all here](#)

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JobsBee.com
Free Job Listings
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[Airline Pilot Hiring](#)

**Want to reach
airline crew?**




**Advertise
Here**

Other Listings By Daniel Most



[Louisville Crashpads II](#)
↓
\$350

Photos:



Deposit:	Max Nights:	Distance:
\$50	31	10 - Mile(s)

Bathrooms:(s) (with shower)	Half-baths: (no shower)
3	0

Description

Louisville Crashpads II just opened, we are about 10-11 miles from the airport, 6miles to the UPS sort. We available behind the house, quiet patio. Full and Twin sized beds available. Full Kitchen, lots of storage, high speed internet provided. Washer and Dryer, all linnens provided. 30 minimum day Lease required. If questions.

New Layout includes a max of two persons per room, with single rooms available as they are available.

Dual occupancy rooms rent for \$450-475 a month, and Single occupancy for \$900.

Amenities:

✓ Wifi Internet

✓ Furnished Living Room

✓ Bedding Provided

✓ Washer / Dryer

✓ Full Kitchen

✓ Yard or Patio

Preferences:

- ✓ Female Preferred
- ✓ Pilot Preferred

- ✓ Male Preferred
- ✓ Flight Attendant Preferred

Nearby Places:

- ✓ Restaurants
- ✓ Shopping
- ✓ Movie Theater
- ✓ Transportation
- ✓ Gym
- ✓ Coffee Shops
- ✓ Banks
- ✓ Entertainment
- ✓ Grocery Stores
- ✓ Dry Cleaning

House Rules & Policies

Park behind the gate! No street parking available. Neighbors get upset.
Clean up after yourself.
Be courteous to other crashers and neighbors. Use back door entrance.

Rental Agreements & Policy Download

(If available, click on the link to open and download.)

Happy and safe flying!
Share with your friends!



Share

Tweet

What'cha need to know

- [Why List a CrashPad](#)
- [Refunds](#)
- [Your Information](#)
- [Policies](#)
- [House Rules](#)

Resources

- [Contact / Help](#)
- [Advertise Here](#)
- [FAQ](#)
- [Forgot Password](#)
- [Website Problems](#)

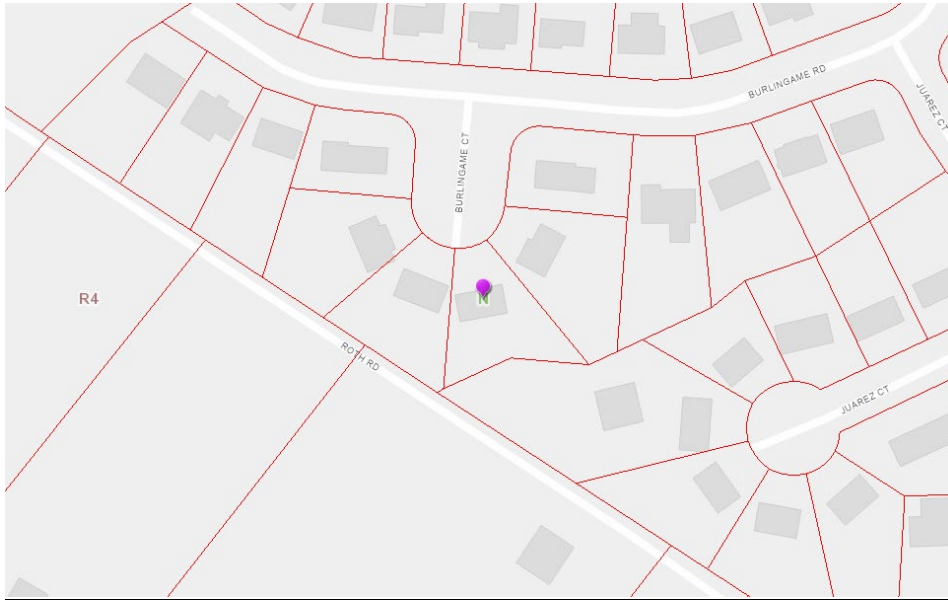
New Features

- [Automatic Rent Payments](#)
- [Tenant Messaging](#)
- [Tenant Management](#)

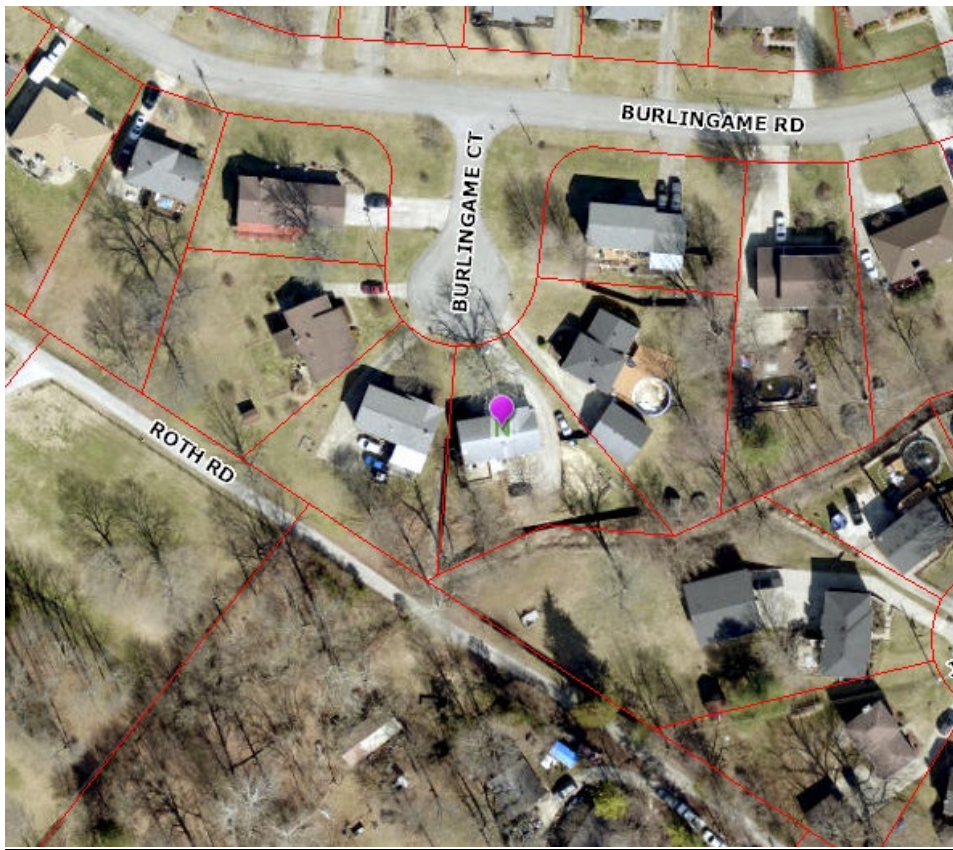
Tweet Follow 7.9K Share

2023 CrashPad411 © Travel Bug Ventures Ltd.

4. **Zoning Map**



5. **Aerial Map**



6. **Subject Property Photo**

