

**Board of Zoning Adjustment
Staff Report**
October 2, 2017



Case No:	17APPEAL1003
Project Name:	2211 Longest Ave. Appeal
Location:	2211 Longest Ave.
Owners:	Jocelyn Gonzalez
Appellant:	Christopher Payne
Jurisdiction:	Louisville Metro
Council District:	8—Brandon Coan
Case Manager:	Brian Mabry, AICP, Planning & Design Supervisor

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.

CASE SUMMARY/BACKGROUND

The subject property is approximately 2,723 square feet in area, and has a single-family residence consisting of approximately 1,856 square feet. The property has frontage on Longest Avenue, between Everett Avenue and Willow Avenue. Zoning for the property is R-5B and it is in the Traditional Neighborhood form district.

Pursuant to KRS 100.257 and 100.261 the Board of Zoning Adjustment shall hear appeals of an official action, order, requirement, interpretation, grant, refusal or decision of an administrative official, zoning enforcement officer or code enforcement officer. Appeals must be taken within 30 days of the official action. Action in this case is deemed to be July 26, 2017, when Zoning Enforcement Supervisor, Michael Wilcher, issued the Zoning Notice of Violation. The appellant submitted the appeal on August 10, 2017. The Zoning Notice of Violation (Attachment 3) is based on a complaint (Attachment 4) that the subject property is not the primary residence of the short term rental host / appellant, Christopher Payne. Therefore, per Section 4.2.63 of the Land Development Code, he is not allowed to operate a short term rental on the property without first obtaining a Conditional Use Permit from the Board of Zoning Adjustment.

Mr. Payne 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. See Attachment 5.

STAFF FINDING

Based upon the file of this case, this 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.

If the BOZA denies the appeal (thereby affirming the Zoning Notice of Violation), then the appellant must obtain a Conditional Use Permit in order to host short term rentals at the property or cease hosting short term rentals

at the property. If the BOZA reverses the notice, (thereby approving the appeal) then the appellant may continue to operate a short term rental there, under the terms of Section 4.3.23 of the LDC.

RELEVANT LAND DEVELOPMENT CODE (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:*

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. 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.*

In the R-5B zoning district, a Conditional Use Permit is required 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. The 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.

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

PREVIOUS CASES ON SITE

17PM6372 In April 2017, Planning and Design Services Zoning Enforcement received a complaint that Mr. Payne was operating a conventional bed and breakfast without a Conditional Use Permit. Zoning Enforcement investigated the complaint and, upon learning that he was instead operating a short term rental, requested Mr. Payne register the property as a short term rental. He registered the short term rental on June 5, 2017. See Attachment 6.

17APPEAL1002 In June 2017, a nearby property owner appealed the administrative 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 Planning and Design Services Staff that the appellant did not have standing to appeal under Kentucky Revised Statutes.

17PM15650 In June 2017, Planning and Design Services 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.

INTERESTED PARTY COMMENTS

See Attachment 7.

NOTIFICATION

Date	Purpose of Notice	Recipients
9/15/17	Hearing before the Board of Zoning Adjustment	Posting of sign on property
9/18/17	Hearing before the Board of Zoning Adjustment	1 st Tier property owners, interested parties and Subscribers of Council District 8 Notification of Development Proposals
9/20/17	Hearing before the Board of Zoning Adjustment	Legal advertisement in the Courier Journal

STAFF ANALYSIS

The appellant claims that the Zoning Notice of Violation is invalid because, as he states in his appeal letter: “I stay there every night I’m in town.” For the reasons listed below, Staff does not believe 2211 Longest Avenue is the appellant’s primary residence.

1. In an effort to prove that the subject property is his primary residence, the appellant provided Zoning Code Enforcement a utility bill (Attachment 8). The appellant also made the bill part of his appeal application. The utility bill may be one indicator of a person’s primary residence; however, it is not proof of primary residence. A person could pay the utility bills and be the contact person for any number of properties. Indeed, one would expect the appellant’s name to be on several utility bills since he hosts a few short term rentals in the Louisville area. He has submitted a pre-application for a Conditional Use Permit for a short term rental at 4310 Hannah Avenue and represented to Staff that he will soon be submitting another Conditional Use Permit pre-application for a short term rental at 2312 Glenmary Ave. As short term rental host, one would expect that the appellant would be the responsible party for utilities for these dedicated short term rentals.
2. When he registered the short term rental on June 5, 2017, the appellant provided his driver’s license as proof of primary residence. The driver’s license shows 2211 Longest Avenue as the appellant’s address; however, the license was issued on the very day that the registration was submitted. Planning and Design Services Staff is not aware of what address was shown on the appellant’s previous driver’s license the day before he registered the short term rental at 2211 Longest Avenue and checked the box indicating that such address is his primary residence. Taken with the other circumstances described in this analysis, this further demonstrates the uncertainty as to what the appellant’s primary residence really is.
3. As part of his application, the appellant provided “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. On March 3, 2017, the appellant put in a request with Louisville Metro’s 311 service for a new garbage cart for 2211 Longest Avenue. See Attachment 9. On the record of the request, the 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.
5. The first email in Attachment 7, Interested Party Comments, is from a nearby property owner, Ms. Maureen Bearden, who makes the claim that Mr. Payne has an additional property in Jeffersonville,

Indiana, that he sometimes lists on the Air BnB platform as a short term rental. Based on that claim, Staff researched the Clark County, Indiana, Assessor's office records and found that a Christopher Payne and a Christopher N. Payne are listed as property owners for 3188 Red Barn Loop and for 3904 Shephards Run, both properties in the same subdivision, Armstrong Farms. As shown in Attachment 10, the property owner addresses for both properties are the properties themselves. In order to verify that the Mr. Payne who owns these properties in Jeffersonville is the appellant, Staff obtained the signed warranty deeds for both properties. See Attachment 11. The signatures on these warranty deeds appear to be from the appellant based on his signature on the appeal letter in Attachment 5.

All of this leads Staff to the question the primary residence of the appellant. Is it 2211 Longest Avenue, Louisville? 4310 Hannah Avenue, Louisville? 3188 Red Barn Loop, Jeffersonville? Or 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 proposes the following findings for BOZA to adopt:

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.

ATTACHMENTS

- 1. Zoning Map**
- 2. Aerial Photo**
- 3. Zoning Notice of Violation**
- 4. Complaint on Subject Property**
- 5. Zoning Notice of Violation Appeal Letter**
- 6. Short Term Rental Registration for 2211 Longest Avenue**
- 7. Interested Party Comments**
- 8. Appellant's Utility Bill**
- 9. 311 Service Request**
- 10. Clark County Assessor's Records for 3188 Red Barn Loop and 390 Shepherds Run, Jeffersonville, IN**
- 11. Signed Warranty Deeds for 3188 Red Barn Loop and 390 Shepherds Run**

