

July 25, 2019

VIA HAND DELIVERY

Hon. Dwight Young, Chair and
Members of the Louisville Metro Board of Zoning Adjustment
Louisville Metro Planning and Design Services
444 South 5th Street, Suite 300
Louisville, KY 40202

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Re: 19CUP1009/Request for Reconsideration

Dear Chairman Young and Members of the Board:

On behalf of our firm's client, applicant Benjamin Levine, I respectfully request that the Board reconsider its final action of July 8, 2019 in the above-referenced matter denying Mr. Levine's application for a conditional use permit authorizing a short-term rental property at 1006 Mulberry Street, Louisville, Kentucky.

As I discussed this morning with Assistant County Attorney Travis Fiechter, although Planning & Design Services staff informed me late yesterday that Section 8.01.03 of the Board's bylaws was amended on February 4, 2019 (and now requires motions for reconsideration to be made by the next regularly scheduled Board meeting), as of this afternoon, the "View BOZA Bylaws" link on the Board of Zoning Adjustment webpage still directed to the former version of the Board's bylaws revised in December 2017 (which provided that motions for reconsideration could be brought within a thirty-day time period of the Board's action). Given these circumstances (which failed to afford reasonable notice of the recent amendments to the Board's bylaws), and our misplaced reliance on the former thirty-day deadline, I also request that the Board make an exception to its reconsideration policy and entertain a motion for reconsideration at its meeting of August 5, 2019.

The grounds for Mr. Levine's request for reconsideration are as follows:

1. Mr. Levine filed his preapplication on January 6, 2019, held a neighborhood meeting on March 19, 2019, and filed his formal application on March 28, 2019. The Louisville Metro Council subsequently enacted Ordinance No. 056, Series 2019 (amending LDC 4.2.63) on April 25, 2019, which was approved by Mayor Fischer on May 8, 2019. Accordingly, Mr. Levine was

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entitled to have the Board consider his application under the ordinance in effect at the time that his application was submitted – and not under the subsequently enacted amendments to LDC 4.2.63. *See, e.g., Darlington v. Bd. of Councilmen*, 140 S.W. 2d 392, 396-97 (Ky. 1940). *Accord Gibson v. City of Oberlin*, 167 N.E. 2d 651 (Ohio 1960) (the right to approval of a land-use proposal is determined by the regulation in existence at the time the application is filed).

2. Mr. Levine purchased the subject property on March 27, 2017 for \$143,730.00, with the intention of realizing a return on investment through its operation as a short-term rental property. In addition, after acquiring the subject property (and before the recent amendments to LDC 4.2.63), Mr. Levine invested approximately \$35,000.00 on improvements intended to enhance its appeal as a short-term rental property. Accordingly, pursuant to Kentucky law, Mr. Levine acquired a vested right to use the subject property for all lawful uses under the formerly enacted version of LDC 4.2.63. *See, e.g., Perkins v. Joint City-County Planning Comm'n*, 480 S.W. 2d 166, 168-69 (Ky. 1972) (citing *Darlington*, 140 S.W. 2d 392).
3. Because Mr. Levine had no control over when his application was docketed to be heard by the Board, its reliance on the subsequently enacted version of LDC 4.2.63 in denying his application on July 8, 2019 appears to have been arbitrary. Indeed, the Board stated that it denied Mr. Levine's application because it had previously approved a conditional use permit for a short-term rental at 1019 Lydia Street in its Case No. 18CUP1211. But the Board approved that conditional use permit on May 6, 2019 (nearly two weeks after the Metro Council had amended LDC 4.2.63) and while Mr. Levine's application was likewise pending its consideration. Accordingly, the Board's denial of Mr. Levine's application appears to have been the arbitrary result of the date on which it was docketed to be heard. *But see Am. Beauty Homes Corp. v. Planning and Zoning Comm'n*, 379 S.W.2d 450, 456-57 (Ky. 1964).
4. The Board appears to have acted arbitrarily in refusing to grant Mr. Levine's written request for relief from LDC 4.2.63(D). *See Am. Beauty Homes*, 379 S.W.2d at 456-57. In particular, the Board erred in applying a self-created "compelling reason" standard to Mr. Levine's request for relief, despite having granted relief in the immediately preceding case (Case No. 18CUP1051) upon finding merely that "the other [two] short term rentals are at the edge of the 600 foot boundary which is far enough away so as not to cause an issue at this location, the short term rental is close to the expressway,

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and the short term rental would be an improvement to the community. . . .”
See July 8 Minutes at 6.

5. Adjoining property owners have expressed support for Mr. Levine’s application and no adjoining property owners have stated any opposition to Mr. Levine’s application.

For the above reasons, we respectfully request that the Board entertain a motion for reconsideration of its final action in Case No. 19CUP1009 at its meeting of August 5, 2019.

Thank you for your consideration.

Sincerely,



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cc: Travis Fiechter, Assistant County Attorney

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