

# Board of Zoning Adjustment

## Staff Report

June 29, 2020



<b>Case No:</b>	20-CUP-0021
<b>Project Name:</b>	Cain Short Term Rental
<b>Location:</b>	1908 Bonnycastle Avenue
<b>Owner(s):</b>	Bryan Cain
<b>Applicant:</b>	Bryan Cain
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	8 – Brandon Coan
<b>Case Manager:</b>	Jon Crumbie, Planning & Design Coordinator

**This case was continued from the March 16, 2020 Board of Zoning Adjustment meeting due to the concern over COVID-19 virus.**

**This case was continued from the April 6, 2020 Board of Zoning Adjustment meeting due to the concern over COVID-19 virus.**

### **REQUEST(S)**

Conditional Use Permit to allow short term rental of dwelling units that are not the primary residences of the host in an R-5 zoning district and Traditional Neighborhood Form District.

### **CASE SUMMARY/BACKGROUND**

The applicant requests approval to conduct short term rentals at the subject property. The subject property is developed with a one structure that is a duplex (19-NONCONFORM-1009). The applicant states that unit 1 is currently designated for long term rental and is currently under lease. The host lives in unit 2. The applicant would like to use both units for short term rental. The applicant states that unit 1 has two bedrooms that will allow a maximum number of six guests and unit 2 has two bedrooms that will allow a maximum number of six guests. The site has credit for on-street parking and there appears to be ample parking spaces along the street. The applicant states that there are up to five spaces at the rear.

### **STAFF FINDING / RECOMMENDATION**

Based upon the information in the staff report and the testimony and evidence provided at the public hearing, the Board of Zoning Adjustment must determine if the proposal meets the standards established in the LDC for a Conditional Use Permit.

## **RELATED CASES**

### **19-NONCONFORM-1009**

Staff determined that nonconforming use rights for a dwelling, two family (duplex) have been established. This decision is based upon information provided in the application and Develop Louisville files.

## **TECHNICAL REVIEW**

There are no outstanding technical review items.

## **INTERESTED PARTY COMMENTS**

A neighborhood meeting was held on June 27, 2019 and at least one person attended not including the applicant. A second neighborhood meeting was held on November 27, 2019 and at least five people attended not including the applicant.

## **STANDARD OF REVIEW AND STAFF ANALYSIS FOR CONDITIONAL USE PERMIT**

### 1. Is the proposal consistent with applicable policies of the Comprehensive Plan?

STAFF: The proposal does not conflict with Comprehensive Plan policies.

### 2. Is the proposal compatible with surrounding land uses and the general character of the area including factors such as height, bulk, scale, intensity, traffic, noise, odor, drainage, dust, lighting and appearance?

STAFF: When appropriately managed, the proposed use is compatible with surrounding development and land uses.

### 3. Are necessary on-site and off-site public facilities such as transportation, sanitation, water, sewer, drainage, emergency services, education and recreation adequate to serve the proposed use?

STAFF: The subject property is served by existing public utilities and facilities. The proposal will not create substantial additional requirements for the site.

### 4. Does the proposal comply with the specific standards required to obtain the requested conditional use permit?

**4.2.63** Short Term Rental Term Rental of a dwelling unit that is not 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 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:

- A. The maximum stay for a guest shall be 29 consecutive days. A dwelling unit rented to the same occupant 30 consecutive days or more is not considered a short term rental. ***The applicant has been informed of this requirement.***
- B. The dwelling unit shall be limited to a single short term rental contract at a time. ***The applicant has been informed of this requirement.***
- C. At no time shall more persons reside in the short term rental than two times the number of bedrooms plus two individuals, except where the licensed property is in excess of two acres in which case the occupancy limit shall be two times the number of bedrooms plus six individuals. ***The subject property is smaller than two acres. The applicant states that unit 1 has two bedrooms that will allow a maximum number of six quests and unit 2 has two bedrooms that will allow a maximum number of six quests.***
- D. The property on which the short term rental(s) is situated shall not be located closer than 600 feet (measured in a straight line from nearest property line to the nearest property line) to any property on which another approved short term rental that required a conditional use permit is situated. The provision shall not apply to a property in the TNZD district which required a conditional use permit even though it is the primary residence of the host. ***As of the date of this report, within 600' of the subject property, there are six properties with an approved conditional use permit allowing short term rentals that is not the primary residence of the host. The applicant is requesting relief to the provision in accordance with LDC Section 4.2.2.B. If the Board does not grant relief, the application does not meet all of the listed requirements and the conditional use permit cannot be approved.***
- E. The building in which the dwelling unit is located shall be a single-family residence, duplex, or condominium. If the short term rental is a condominium unit, the condominium unit must be the primary residence of the host. All conditional use permit applications for the short term rental of a condominium unit shall include evidence showing the applicable condominium association has taken action to approve the short term rental of the subject condominium. The evidence shall be provided in the form of minutes from an officially called meeting of the applicable condominium association board where in all condominium would be discussed and a majority of the board members voted in favor of permitting/allowing the short term rental of the subject condominium. In addition to notification required by Chapter 11 Part 5A, an applicant for a short term rental within a condominium shall provide notice of the Conditional Use Permit public hearing to all condominium owners within the association. Proof of notification shall be by way of affidavit. This provision shall not be waived or adjusted. ***The applicant has been informed of this requirement.***
- F. Food and alcoholic beverages shall not be served by the host to any guest. ***The applicant has been informed of this requirement.***
- G. Outdoor signage which identifies the short term rental is prohibited in residential zoning districts. ***The applicant has been informed of this requirement.***
- H. There shall be a sufficient amount of parking available for guests, as determined by the Board of Zoning Adjustment. The amount and location of parking shall be based on the land uses and density of the immediate vicinity. ***The site has credit for on-street parking and there appears to be ample parking spaces along the street. The applicant states that there are up to five spaces at the rear.***

- I. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances. ***The applicant has been informed of this requirement.***
- J. If the property is subject to two (2) or more substantiated civil and/or criminal complaints within a twelve (12) month period, the Planning Director may revoke the approval. When the Planning Director revokes an approval under this section, the owner and host shall be notified of the revocation and shall have thirty (30) days in which to request an appeal before the Board of Zoning Adjustment. If no appeal is requested, the revocation shall become final on the thirty-first (31) day after the initial action by the Director. Civil complaints include, but are not limited to, reported violations of building, safety, property maintenance, nuisance, health and sanitation, fire, electrical, plumbing, and mechanical codes. Criminal complaints include, but are not limited to, reported drug activity, theft and criminal mischief. ***The applicant has been informed of this requirement.***
- K. Prior to commencement of any short term rental on the subject property, the host shall register the short term rental pursuant to the Louisville Metro Code of Ordinances. If the short term rental is not registered within thirty (30) days of the issuance of the conditional use permit, the permit shall become null and void. ***The applicant has been informed of this requirement***
- L. An active registration for the short term rental, as required by the Louisville Metro Code of Ordinances, shall be maintained. No short term rentals may take place unless the registration is active and in the name of the current host and property owner. If the registration is not renewed and lapses for six months, or in the event of a change of ownership and/or host, a new registration is not issued within six months from the date of the change, the conditional use permit shall become null and void. In order to recommence short term rentals, a new conditional use permit must be granted if required by this Land Development Code. ***The applicant has been informed of this requirement.***

#### **NOTIFICATION**

Date	Purpose of Notice	Recipients
6/10/2020	Hearing before BOZA	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners Registered Neighborhood Groups in Council District 8
6/15/2020	Hearing before BOZA	Sign Posting

#### **ATTACHMENTS**

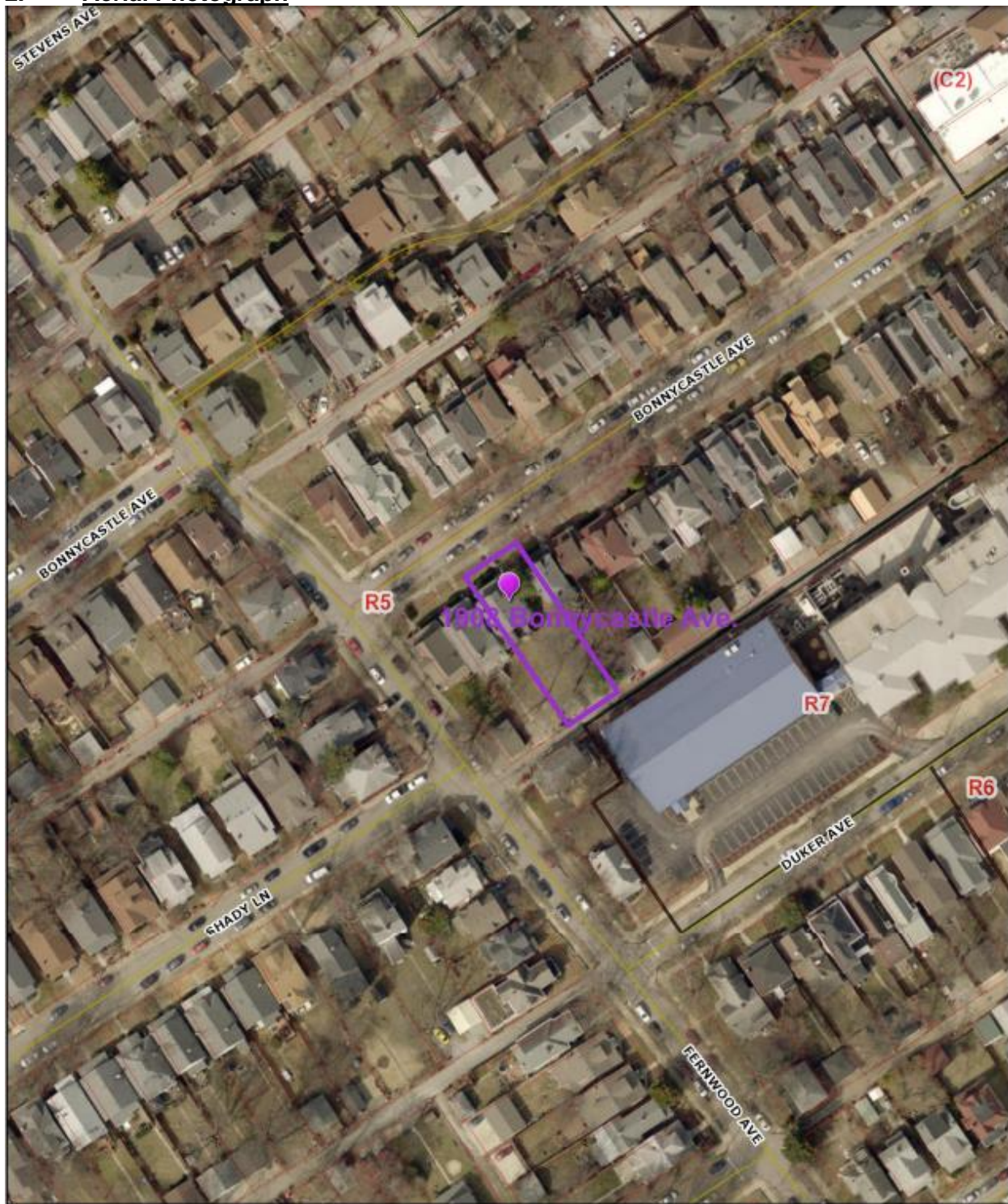
1. Zoning Map
2. Aerial Photograph
3. 600' Map
4. Justification
5. Condition of Approval

1. Zoning Map



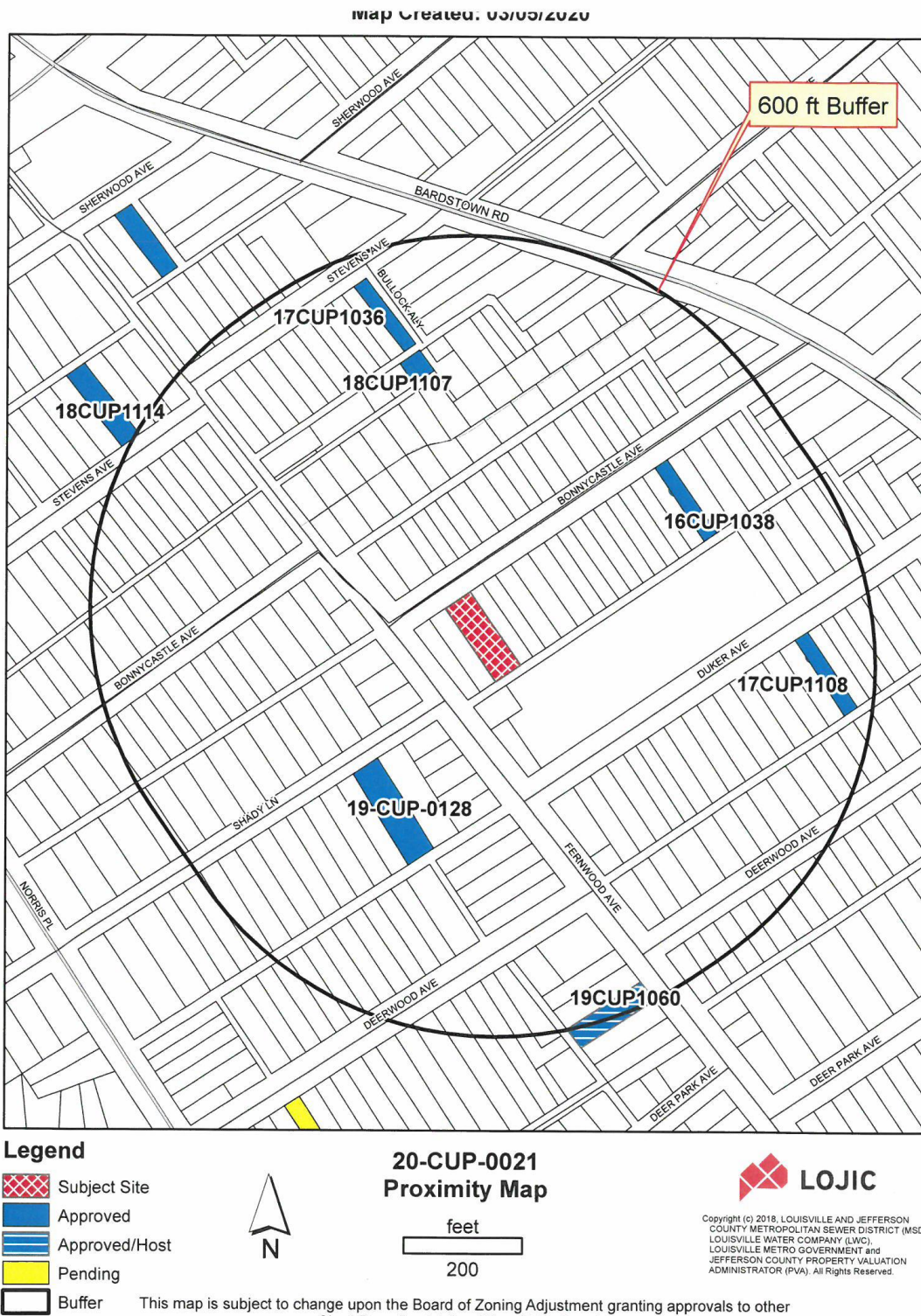


## 2. Aerial Photograph





### 3. 600' Map



#### 4. Justification

BRYAN CAIN 1908 Bonnycastle Ave. #2  
Louisville, KY 40205  
M: 330-413-4320  
bdcain@gmail.com

March 6, 2020

To whom it may concern,

This letter is the justification for requesting an exception to the 600 ft. rule between Short Term Rentals in Louisville.

We understand the reasoning behind the 600' rule and understand that it was a compromise between those who opposed STRs entirely and those that supported their presence. Our primary reasoning for requesting an exception to the rule is we feel that we did our best to register our short term rental in accordance with city ordinances when we began our STR business in 2017, before the 600' rule was in place. Because of a mistake on our part and a mistake at Planning & Design Services as I mentioned in my other letter attached to this application, we didn't know for a year that we had even made a mistake, and by the time we were beginning to work on correcting the mistake, the ordinance had been changed to include the 600 ft. rule. We are arguing that had our mistake been caught when we originally registered, we would have been happy to go through the CUP process at that time. Given that opportunity, we believe we would have been given a permit to operate as an STR before the 600 ft. rule existed.

To further elaborate on my confusion at the beginning of our registration process:

The ordinance regarding STRs begins by defining Primary Residence as follows:

"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."

When I was trying to register our STR in 2017, I thought that verbiage meant that if we lived on the property, we could register our Short Term Rental (Unit #1) as the primary residence of the owner because it is on the same property as our unit. (Unit #2). Anywhere else in real estate, like applying for a mortgage for example, a property is considered owner-occupied, even if the building is multi-family, when an owner lives in one of the units. 1908 Bonnycastle is multi-family, so my mistake was assuming that we would be considered owner-occupied as related to this STR. It wasn't until late in 2018 when we went to re-register that Planning & Design Services informed us that we would need a CUP to operate an STR in Unit #1 because we lived in Unit #2. They informed me that they had overlooked the error the first time we registered.

As you can imagine, this was quite a shock, and very demoralizing. We believed we were legally operating our STR, and we had been paying our transient and sales taxes faithfully to the City of Louisville and to the State of Kentucky the entire time.

I am a youth minister at a local church, and my wife is a stay-at-home mom. We saw this STR as supplemental income because youth ministers are not known for making large sums of money. We have invested around \$10,000 (a lot of money for our family) into renovating and furnishing the rental. It is really beautiful and attracts high-end clients like business people and upper-middle class families. We do not have large groups of college students coming to party, and we particularly discourage such in our house rules. Our rules include rules against parties, unregistered guests, no smoking on the property (even outside), and include strict quiet hours from 11 pm to 8 am.

Because we don't have a lot of disposable income, and because it can be expensive to transition from STR to Long Term Rental due to lost income, we have continued to operate as a STR rental while we have been going through the process to establish Non-Confirming Rights for our Duplex (which were granted), and to go through the application process for this CUP. We believe we have been operating in good faith, and we have continued to pay our taxes this whole time. At no point have we tried to hide what we are doing or avoid paying our fair share of the taxes that help maintain our beautiful city.

We are sympathetic to the arguments of our neighbors in the Deer Park Neighborhood who oppose STRs. They see STRs as a disruption to the fabric of the neighborhood, as potentially a source of noise, parking issues, and the possibility of a great distance between where the owner lives and the location of the STR, which if there were a problem, might mean that it isn't immediately addressed. They recognize, as do we, that CUPs are attached to the property, not the owner. So even though we might be great at running a non-disruptive STR, if we were to sell our property, there is nothing preventing the next owner from being





terrible. Though we plan to hold this property for the rest of our lives, we do recognize that as a valid point, we can't make promises on behalf of future owners, even if we pass the property on to our one-day grown-up children.

The reason we are sympathetic to these concerns, is that we also live in the Deer Park Neighborhood. We live upstairs from the STR that we have been running for the past three years. We also want a wonderful neighborhood where we know our neighbors, where there aren't noise issues or parking issues, and where issues with renters are dealt with quickly and appropriately with as little disruption to neighbors as possible. We want a beautiful street that is clean, and we want thriving businesses and restaurant that are a delight to walk past and walk into.

Where we differ from our neighbors who are opposed to STRs is that we believe that we can have the clean and beautiful neighborhood described above and an STR at 1908 Bonnycastle. We have already been operating, and we have never had a complaint from our neighbors. In fact, the only neighbor that lives on our street that has participated in this CUP process thus far is strongly in FAVOR of our STR. She came to our neighborhood meeting and said that she sees our STR as a vast improvement over the long term renters that have lived at 1908 Bonnycastle under previous owners. It was actually with young long term renters that she had issues with trash and noise, etc. And unlike an STR, with a long-term rental, if a partier moves in you are going to be having parties for at least a year. We also have a very large amount of parking behind our house, and the only time there is no street in front of our house is on Friday and Saturday nights when the bars and restaurants on Bardstown are operating at full capacity.

As I mentioned in my other letter, it is our dream to one day earn enough money to move to the suburbs and continue to operate 1908 Bonnycastle as an STR. We have no immediate plans to do so and we couldn't currently afford to even if we wanted to, but it is a hope. Even still, we would still see ourselves as invested stakeholders in the Deer Park Neighborhood. We love our neighbors on Bonnycastle. We want them to live in an amazing neighborhood whether we live on the street or not. We want the businesses and restaurants on our section of Bardstown Rd. to thrive and grow. We love the owners and employees of our favorite restaurants there. If we thought that this CUP would be detrimental to our neighborhood or to the lives of our neighbors or local business owners, we would not apply for it.

Sometimes on my morning runs down Bardstown Rd. I wear gloves and bring a trash bag with me and pick up trash on Bardstown as I run. I usually collect a full Kroger bag of scraps, bottles, cups and cigarette butts by the time I'm done with a short mile run. And again, I know the CUP will stay with the property beyond me, but it is the intention of my wife and I to hold this property for a very long time. If the day ever did come to sell, we would put the same amount of intention and care into the sale as we try to put into everything else we do in the neighborhood. It would be our goal to find another owner who wants the neighborhood to thrive just as much as we do.

I would like to apologize to all stakeholders for my mistake in the STR registration process in 2017 which started all of this. I ask for mercy regarding that mistake from the Board of Zoning Adjustment and from our neighbors.

In conclusion, we regret our mistake, and while we don't blame anyone at Planning and Design Services (they have been amazing in helping us through this process, and we are grateful for the amazing kindness and professionalism with which they work), we believe if our mistake was caught at Planning and Design Services back in 2017, we would have been permitted before the 600 ft. rule. That is our primary justification for asking for an exception.

Thank you for reading.

Sincerely,

Bryan Cain

## **5. Condition of Approval**

The conditional use permit for this short term rental approval shall allow up to two bedrooms for each unit. A modification of the conditional use permit shall be required to allow additional bedrooms.