

Board of Zoning Adjustment

Staff Report

October 18, 2021



Case No:	21-APPEAL-0006
Project Name:	Staebler Avenue Appeal
Location:	108 Staebler Avenue
Owner/Appellant:	Harmony Property Management, LLC
Representative:	Christopher Morris
Jurisdiction:	City of Saint Matthews
Council District:	9 – Bill Hollander
Case Manager:	Chris French, AICP, Planning & Design Supervisor

REQUEST(S)

- Appeal of an administrative decision regarding a July 28, 2021 Notice of Violation

CASE SUMMARY/BACKGROUND

The City of St. Matthews has local zoning authority and has designated City staff to administer enforcement of its Land Development Code. Jack Ruf, in his capacity as code enforcement officer for the City, issued the Notice of Violation that is subject to this appeal. Mr. Ruf's credentials are attached to this agenda item. Mr. Ruf issued the Notice of Violation and Order to Stop Use on July 28, 2021, in response to an unlawful use occurring on property located at 108 Staebler Avenue. The Notice identified the illegal use as a short term rental of a single family residence. The Appellant's representative filed an appeal of this decision on August 31, 2021, which was determined to be a timely submittal based on when the written notice was obtained by the property owner.

Louisville Metro Government staff were not involved in the subject decision. Since this appeal is for a decision and corresponding action taken by an Administrative Official for the City of St. Matthews, representatives of the City have provided their justification for the decision. Planning and Design Services (PDS) staff, which serves as primary staff to the BOZA and assists the City with the administration of its zoning activities, is facilitating the appeal process and proceeding for the parties. As this report has been prepared by PDS staff that was not party to the decision, it provides factual and procedural information for the BOZA to consider. The BOZA should refer to the documents and testimony provided by the City for additional information regarding the reasoning and justification for the subject decision. Conversely, the BOZA should refer to the documents and testimony provided by the Appellant for information regarding why the property owner believes the decision was in error.

The documentation submitted by the Appellant's representative and by the City of St. Matthews is part of the record and is available for the Board to review on the Louisville Metro Government Agenda & Meeting Portal (<http://louisville.legistar.com>) attached to this agenda item.

STAFF ANALYSIS/FINDINGS

The Appellant submitted a basis of appeal as required for appeals. The Appellant's representative was notified both through the appeal application form, correspondence, and in a meeting with PDS staff that the Appellant is responsible for the placing the legal ad as required by KRS 100. In addition, PDS staff sent written notice to the Appellant and the Administrative Official in accordance with KRS 100 as well as adjoining property owners which is the policy of PDS.

The Appellant's basis of appeal can be summarized as follows (Note: this is a staff summary of the basis of appeal, please refer to the complete basis of appeal attached to this agenda item):

1. The Appellant's representative argues that the City of St. Matthews cannot regulate short term rentals because a definition of short term rental does not exist in the City of St. Matthews's Land Development Code.
2. The Appellant's representative argues that the subject site meets the definition of a single family dwelling as listed in the City of St. Matthews's Land Development Code and is being used for uses as listed within that code for the applicable zoning district.
3. The Appellant's representative states that he has had communications with the City of St. Matthews attorney, John Singler, and that the interpretation of the City is that a short term rental is a multi-family residential zoning use such as a boarding and lodging house or an apartment hotel. The Appellant's representative believes this interpretation to be erroneous because the city does not define short term rental within its zoning code.
4. The Appellant's representative states that the City of St. Matthew's action is unconstitutional because the City chose to selectively prosecute the subject property instead of the numerous other properties that the Appellant's representative alleges exist in other single family zoned properties within the City.

In response to the basis of appeal by the Appellant, the City of St. Matthews attorney, John Singler provided a defense of the actions taken by the City. In this response, Mr. Singler argues the following (This is a summary of the response, please refer to complete response attached to this agenda item):

1. That Article (3)(C)(1) and (2) state,
 - (1) Land Use and Agricultural Purposes:
No land may be used except for a purpose permitted in the district in which is located
 - (2) Building Uses and Location:
 - a. No building shall be erected, converted, enlarged, reconstructed, moved, or structurally altered, nor shall any building be used or designed to be used for any purpose except a use permitted in the district in which the building is located.

Mr. Singler argues that this section of code provides that if a use isn't expressly permitted then that use is prohibited. Therefore, short term rentals are not permitted as a use in the City of St. Matthews zoning code. Mr. Singler also points out that this position was also the position of Louisville Metro prior to the adoption of short term rental regulations by Louisville Metro in 2016.

2. Mr. Singler states that the City has determined that the closest use in its code to a short term rental is a Boarding and Lodging House or a hotel. Therefore, the use would only be allowed in zoning districts that permit those uses such as R-7, office-residential, and commercial zones.
3. Mr. Singler also refutes the argument of the Appellant's representative that short term rental is the same use as single family residential. He points to the KY Supreme Court Case, Hensely v. Gadd, in which the court ruled:

"In analyzing the restrictions and the facts of this case, we agree with the trial court and with Hensley that one-night, two-night, weekend, weekly inhabitants cannot be considered "residents" within the commonly understood meaning of that word, or the use by such persons as constituting "residential." Gadds use of the property meets the very statutory definition of hotel: a "building or structure kept, used, maintained, advertised, or held out to the public as a place where sleeping accommodations are furnished to the public." KRS 219.011(3)...."

Mr. Singler states that even though this case involved a deed restriction enforcement, the Court was clear that short term rental is a business and not a single-family residential use.

4. Mr. Singler refutes that Mr. Ruf erred when he talked to the Appellant about pursuing a boarding and lodging house approval to allow them to do the use they desired. Mr. Singler points out Mr. Ruf's long career in planning and his willingness to work with applicants to help them achieve their goals. Mr. Ruf's suggestion was just that, identifying a path forward that the Appellant could pursue to achieve the end goal.
5. Mr. Singler discusses the site inspection of the property and the evidence that Mr. Ruf collected to determine the use was a short term rental. He ends by stating that Mr. Ruf acted correctly based on the evidence he collected and in accordance with the City of St. Matthews's Land Development Code.

Staff Conclusions

The Board must determine whether the Administrative Official acted correctly in issuing the Notice of Violation and Stop Use Order.

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 Appellant that there is error in any order, requirement, decision, grant, or refusal made by an administrative official in the enforcement of the zoning regulation.

Based upon the file of this case, this staff report, and the evidence and testimony submitted at the public hearing, the Board must determine:

Whether the Administrative Official for the City of St. Matthews:

Erred in issuing the Notice of Violation and Stop Use Order and therefore the Board **approves** the appeal and overturns the administrative official's decision.

Or

Affirm the action taken and therefore the Board **denies** the appeal and affirms the administrative official's decision.

RELATED CASES

None

INTERESTED PARTY COMMENTS

No comments submitted.

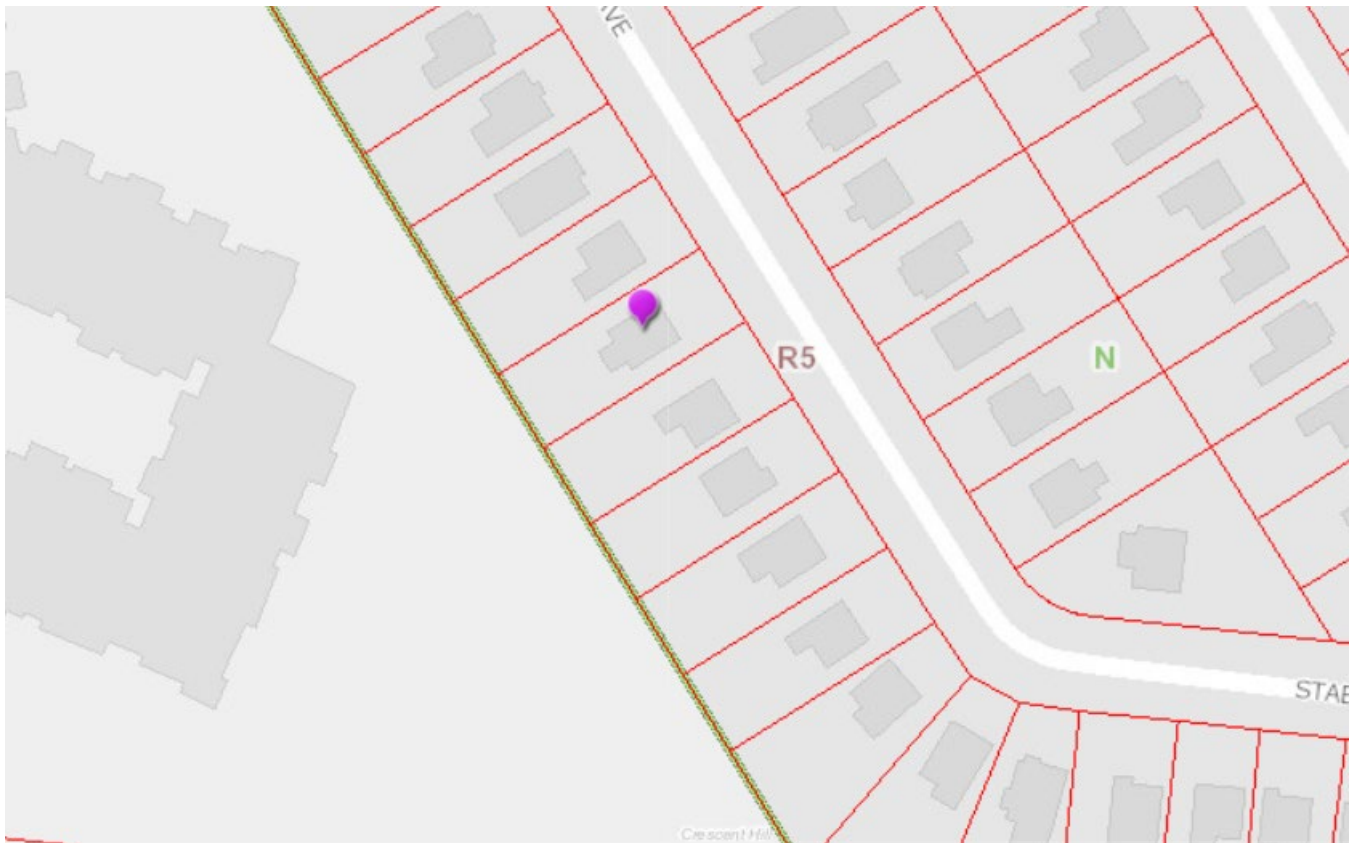
NOTIFICATION

Date	Purpose of Notice	Recipients
10/5/2021	Notification of appeal of an administrative decision	Adjoining property owners, Appellant, and PDS staff GovDelivery District 9
10/2/2021	Legal ad for notification of appeal of an administrative decision	Courier Journal Public Legal Ad

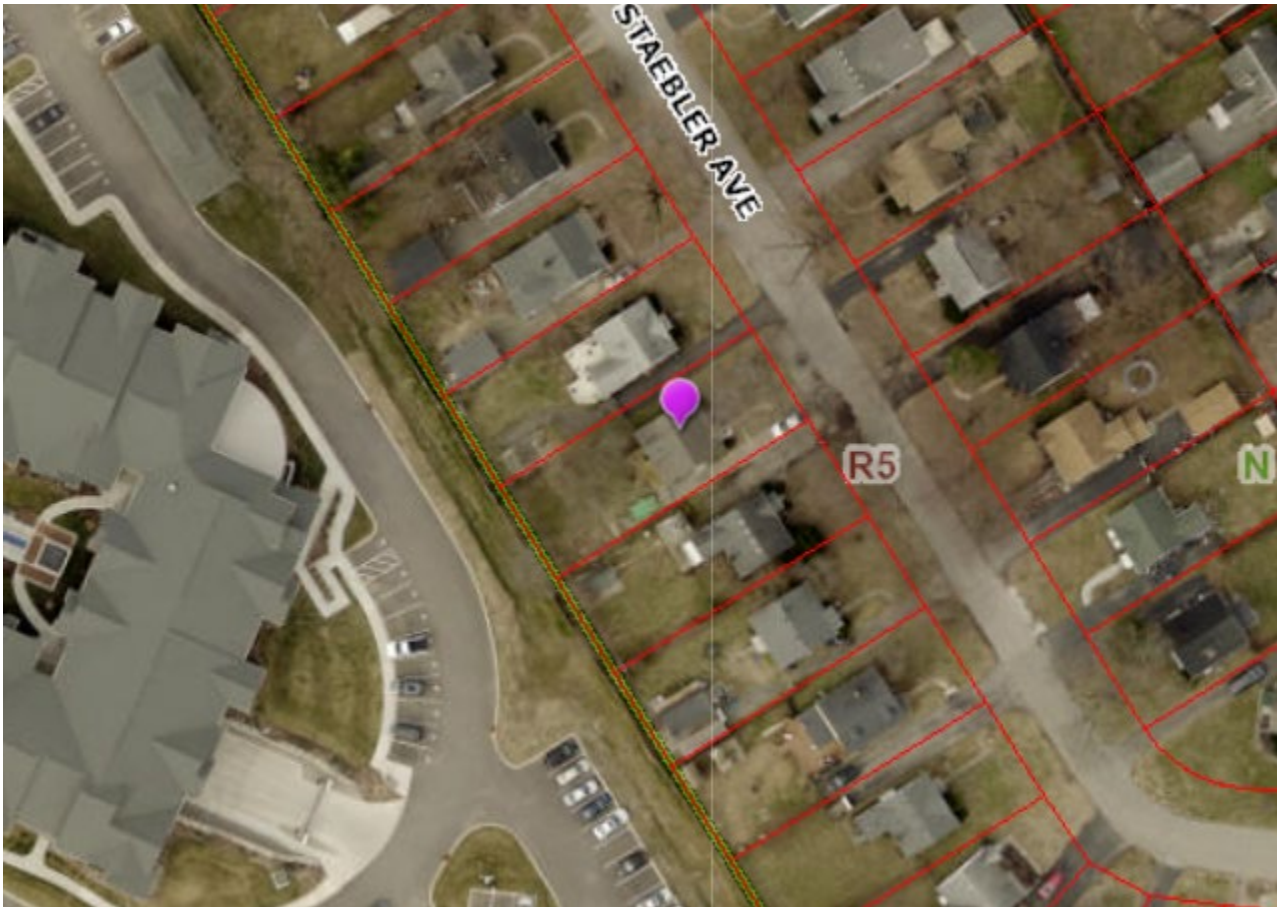
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Photos

1. Zoning Map



2. Aerial Photograph



3. **Site Photos**



Figure 1. Subject site