

**Board of Zoning Adjustment**  
**Staff Report**  
September 23, 2024



<b>Case No:</b>	24-CUP-0192
<b>Project Name:</b>	Short Term Rental
<b>Location:</b>	1722 R Fernwood Avenue
<b>Owner(s):</b>	Jonathan Delph & Kellie Burton
<b>Applicant:</b>	Kellie Burton
<b>Jurisdiction:</b>	Louisville Metro
<b>Council District:</b>	8 – Ben Reno-Weber
<b>Case Manager:</b>	Jude Mattingly, Planner II

**REQUEST(S)**

- **Conditional Use Permit** to allow short term rental of a dwelling unit that is not the primary residence of the owner (LDC 4.2.63.)

**CASE SUMMARY**

The applicant requests approval for short term rental of a dwelling unit that is not the primary residence of the owner in the R-5, single-family residential zoning district and Traditional Neighborhood form district. Located in between where Fernwood Ave. intersects with Deerwood Ave. and Deer Park Ave. the purposed short term rental will be located in a one (1) bedroom Accessory Apartment associated with a prior approval on site. A condition of approval associated with the prior approval will limit the allowed occupancy to two (2) adults. The applicant states that there are three (3) off-street parking spaces available in addition to on-street parking.

The proposed short term rental will not be subject to the 600' separation requirement on condition that the property owner will maintain their primary residence within the principal structure on the property.

The site in question previously had been granted a conditional use permit, 19CUP1060, to allow the short term rental of a dwelling unit that is not the primary residence of the host. Standard L from 19CUP1060 required that an active registration be maintained, and if the registration ever lapsed for longer than 6 months, the conditional use permit would become null and void. The applicant failed to maintain an active registration for the dwelling unit and is seeking a new approval.

**STAFF FINDING**

The proposal is adequately justified for approval, including exemption from the separation requirements, based on staff's analysis contained in the standard of review. The owner will maintain their primary residence in the principal structure on the property.

## **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 applicable policies of the Comprehensive Plan.

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: The proposal is 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 as no changes to the exterior of the property are being proposed which reduce compatibility with the area.

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: 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 are available. The subject property is served by existing public utilities and facilities.

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

Short Term Rental Term Rental of a dwelling unit that is not the primary residence of the owner or the Short Term Rental of a condominium unit that is the primary residence of the owner 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 for 30 consecutive days or more is not considered a short term rental.
- B. The dwelling unit shall be limited to a single short term rental contract at a time.
- 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 registered property is in excess of two acres in which case the occupancy limit shall be two times the number of bedrooms plus six individuals. If the aforementioned occupancy allows for more than 12 individuals, that shall be a maximum of 12 persons over the age of 16. The Board may further restrict the number of individuals. Relief to this provision may be provided by the Board on a case-by-case basis if the applicant can demonstrate that a greater occupancy will be in compliance with life safety and occupancy standards and the short term rental is of a sufficient distance to not adversely impact a neighboring property.
- 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 (i) on which another approved short term rental that required a conditional use permit is situated or (ii) located in an OR, OR-1, or OR-2 district and a TN form district which has an active registration and has maintained an active registration prior to the effective date of this

provision and it has not been conclusively proven to the Board that the holder of the registration is the owner of the property, and the property is the owner's primary residence. Relief to this provision may be provided by the Board on a case-by-case basis for the following reasons; however relief may be denied upon consideration of the other factors and the burden is on the applicant to demonstrate that the subject short term rental would not contribute to an overconcentration of short term rentals in the immediate area and/or adversely affect the affordable housing stock in the immediate area.

(1) Reasons for Potential Relief:

- (a) The Property is adjacent to nonresidential zoning districts that allow short term rentals by right
- (b) There is a significant environmental feature or primary collector or higher classification road that separates the proposed short term rental from other short term rentals within the buffer area
- (c) A short term rental property within the buffer area is located on the perimeter of the buffer area, with part of the property being located outside of the buffer area
- (d) A neighborhood plan encourages and supports short term rentals in the subject area

In applications where the entire area encapsulated by the 600 foot buffer is residentially zoned (including TNZD areas mapped Neighborhood General), under no circumstance shall the Board provide relief to this provision in cases in which two or more short term rentals with conditional use permits are already in existence within 600 feet.

(2) The following exceptions to this separation requirement apply:

- (a) The separation requirement shall not apply to a property on which the conditional use permit is conditioned that the owner acts as host and maintains their primary residency within another dwelling unit in the same building or on the same parcel of land.
- (b) The separation requirement shall not apply between two or more short term rentals on a single property being reviewed under the same conditional use permit application. However, if the property is subdivided after the conditional use permit is granted, a new conditional use permit shall be required in order for any new lot(s) to have a short term rental, with the separation requirements applying to that subsequent application.
- (c) The separation requirement shall not apply to a property in the TNZD district on which the conditional use permit is conditioned that the host shall maintain their primary residency within the dwelling unit.

- 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 in a multi-family building, the condominium unit must be the primary residence of the owner. 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.

- F. Food and alcoholic beverages shall not be served by the host to any guest.
- G. Outdoor signage which identifies the short term rental is prohibited in residential zoning districts.
- 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.
- I. The short term rental and host shall meet all additional requirements set forth in the Louisville Metro Code of Ordinances.
- 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 registration pursuant to section 4.3.23. When the Planning Director revokes an approved registration, staff shall schedule a public hearing for the Board to consider revoking the associated conditional use permit. The Board may also revoke the conditional use permit for other reasons pursuant to section 11.5A.6.
- 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. In order to commence short term rentals, a new conditional use permit must be granted if required by this Land Development Code.
- 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 thirty (30) days, or in the event of a change of ownership and/or host, a new registration is not issued within thirty (30) days 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, and such conditional permit must satisfy the applicable requirements for a conditional use permit in effect at the time the new application for a conditional use permit is filed.

STAFF: The applicant has demonstrated or will be required to provide compliance with each of the lettered standards of the conditional use permit. The proposed short-term rental will not be subject to the 600' separation requirement as the owner will maintain their primary residence within the principal structure on the subject property.

## REQUIRED ACTIONS

- **APPROVE** or **DENY** the **CONDITIONAL USE PERMIT** to allow a short term rental of a dwelling unit that is not the primary residence of the owner (LDC 4.2.63)

## NOTIFICATION

Date	Purpose of Notice	Recipients
9/4/24	Hearing before BOZA	Registered Neighborhood Groups in Council District 8
9/5/24	Hearing before BOZA	1 <sup>st</sup> and 2 <sup>nd</sup> tier adjoining property owners and current residents
9/6/24	Hearing before BOZA	Sign Posting

## ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Conditions of Approval

### 1. Zoning Map





## 2. Aerial Photograph



## 3. Conditions of Approval

1. The conditional use permit for this short term rental approval shall allow up to one (1) bedroom with a maximum of two (2) guests at any one time. Bedrooms must meet all occupancy requirements set forth in Louisville Metro Code of Ordinances.
2. 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
3. The owner shall act as host and maintain their primary residency within the primary structure on site.