

BOARD OF ADJUSTMENT STAFF CASE REPORT

PLN-BOA-24-00001: LIZ ROGERS – requests a conditional use permit for an un-hosted short term rental within the defined Infill and Redevelopment Area in a Single Family Residential (R-1D) zone, on property located at 714 Hambrick Ave. (Council District 3)

Zoning Ordinance

Article 8-8(d)(1) by reference to Article 8-5(d)(15) lists un-hosted short term rentals as a conditional use in the R-1D zone.

Article 1-11 defines a short term rental (STR) as the commercial use of a dwelling unit that is rented in whole or in part, for temporary occupancy by transient guests for a tenancy of less than thirty (30) consecutive days in duration; where no meals are served. This term does not include hotel or motel rooms, extended stay hotels, bed and breakfast facilities, boarding or lodging facilities, or farm employee dwelling units. Transient guests are those who have an established primary residence elsewhere, and this term shall not be construed to include individuals that rent a primary residence on a weekly basis.

Article 1-11 defines un-hosted short term rentals as a short term rental in which a primary resident (as defined in Section 13-76 of the Code of Ordinances) does not occupy the property during the short term rental period.

Article 3-13(g) states that for short term rentals regulated as conditional uses, the Board of Adjustment shall take into consideration:

1. The number of STRs, if any, in proximity of the property being considered for such use.
2. The demonstrated compliance record of the applicant, if they operate other STRs in Lexington.
3. The occupancy rate of other STRs in the general vicinity, including those operated by the applicant.
4. Whether other STRs in the general vicinity have been cited as a nuisance, including those operated by the applicant.

Article 3-13(d) by reference to Article 3-13(c) states that the Board shall establish a maximum occupancy for the short term rental of a maximum of two (2) individuals per bedroom, plus an additional four (4) individuals; or a total of 12 individuals, whichever is less, except that the Board may allow additional occupants when there is sufficient evidence that a greater occupancy will not result in overcrowding or create a nuisance.

Project Description

- The applicant is requesting a conditional use in order to establish an un-hosted short term rental for up to 10 individuals.
- The subject property is located at 714 Hambrick Avenue. Hambrick Avenue is a one-way local street that connects Walton Avenue and North Ashland Avenue. The area around the subject property is zoned Single Family Residential (R-1D), and is comprised mostly of single-family residential uses.
- The subject property is 0.17 acres in size and contains a one-and-one-half story, 2,950 square-foot single family residence that was constructed in 1916. The structure features 4 bedrooms and the applicant is not proposing any expansion of the existing structure to accommodate this use.
- While the occupancy calculation for a 4 bedroom unit would allow for a maximum occupancy of 12 individuals, the applicant intends to utilize the subject property as an un-hosted short term rental for up to 10 individuals. Parking for the use will be accommodated in the existing driveway, which can accommodate up to six vehicles. Because Hambrick Avenue is a one-way street, the applicant plans to provide instructions to guests at the time of booking regarding how to enter and exit Hambrick Avenue. The applicant states that the back yard of the subject property is fully fenced and is screened from adjoining properties to the west, east, and north.
- The applicant states that they will be employing a management company so that any concerns can be issued as quickly as possible. She states that the management company's contact information will be shared with surrounding neighbors, as will her contact information. The applicant plans to utilize a background check service called Safely, as well as noise detectors, cameras, and weekly property checks to monitor the property and guest activity.
- The applicant operates one other short term rental, which was operational prior to the adoption of the new short term rental regulations in July 2023. Short term rentals that were operating in dwelling units prior to July 11, 2023 were given until January 11, 2024 to be "grandfathered in" without requiring a conditional use permit. A Zoning Compliance Permit was issued for that property on October 18, 2023. The applicant became aware during our review of this conditional use application that she also needed to obtain a special fees license from the Division of

Revenue for her other short term rental and that application is currently in process.

- AirDNA is an online platform for short term rental information, and is a provider of data and analytics. The data includes listings from Vrbo and Airbnb, as well as other sites. Based on AirDNA data, there are approximately 21 other short term rentals within 1,000 feet of the subject property. According to our mapped Zoning Compliance Permit data, there are approximately 15 short term rentals within that distance with a zoning compliance permit.
- While it is disconcerting that the applicant did not obtain the necessary license for their other short term rental, once the lack of a license was noted, the applicant immediately sought to remedy the error. The applicant's other short term rental has not been the subject of any complaints to the Division of Building Inspection's Zoning Enforcement staff and staff is not aware of any other compliance issues or complaints. Staff is not aware of any other short term rentals in the vicinity being cited as a nuisance by the Divisions of Building Inspection or Code Enforcement.
- Nationally, communities are concerned that un-hosted, whole-house short term rentals have negative impacts on housing affordability and availability. Locally, these topics have become key points when discussing the future of neighborhoods. Within the Mayor's Commission for Racial Justice & Equality Report published October 2020, the Housing and Gentrification subcommittee recommended that the City should call out gentrification and displacement of residents within neighborhoods that have a large percentage of people of color. This subcommittee referenced and relied upon data from the Task Force on Neighborhoods in Transition Report which was completed in June 2021. This Task Force was created by Councilmembers out of concern about neighborhood change when that change includes properties which turn over at an accelerated rate, or when most new owners are more affluent and differ from the traditional residents in terms of race or ethnicity. The Task Force mapped Priority Areas utilizing the following attributes in order to measure vulnerability to involuntary displacement: median income at less than 30% of area median income (AMI); high minority population (non-white); low mean home sale price; and low owner-occupancy rate. As such, staff considers whether proposed short term rentals are located in or within proximity to these areas to determine whether the use could have an adverse impact on the surrounding neighborhoods, specifically regarding gentrification and displacement. Since short term rentals have not been tracked in the past, staff does not have sufficient data to indicate what the specific impacts might be. At this time, staff will only report this information in order to see if trends develop as we see more short term rental applications. The subject property is located in Census Tract 5, which is not identified as one of Lexington-Fayette County's top 10 Census Block Groups within the intersection of the map attributes listed above.
- Staff is generally supportive of this application. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood. There are twenty-one (21) other short-term rentals in the area around the subject property of which fifteen (15) have received a zoning compliance permit, there are no known nuisances with short term rentals in the general vicinity. This is the applicant's second short term rental and while a license had not been correctly obtained for her other short term rental, once the applicant became aware that it was needed, she acted immediately to obtain it.

The Staff Recommends: **Approval**, for the following reasons:

- a. The proposed use should not have an adverse influence on the subject property or the surrounding neighborhood, as the structure is large enough to accommodate the proposed number of guests.
- b. The proposed use should not have an adverse impact on traffic in the general vicinity as adequate off-street parking is available.
- c. There have been no complaints or citations regarding the applicant's other short term rental. The applicant acted immediately to remedy the lack of a license for the other short term rental identified by the staff during this application process.
- d. All necessary public services and facilities are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The short term rental use shall be established in accordance with the submitted application materials and site plan.
2. Occupancy of the short term rental shall be limited to no more than 10 individuals.
3. All necessary permits and/or approvals shall be obtained from the Divisions of Revenue and Planning prior to commencement of the use, including a Business License, Special Fees License, and a Zoning Compliance Permit.
4. The conditional use permit shall become null and void upon change in ownership, or if the applicant's short term rental special fee license (as regulated by the Division of Revenue and Section 13 of the Code of Ordinances) lapses or is revoked.