



**MEETING OF APRIL 18, 2023**

**TO:** Mayor Jordan and City Council

**THRU:** Susan Norton, Chief of Staff  
Jonathan Curth, Development Services Director  
Jessica Masters, Development Review Manager

**FROM:** Gretchen Harrison, Planner

**DATE:**

**SUBJECT:** **Appeal: CUP-2023-0009: Conditional Use Permit (332 N. FLETCHER AVE./ETG SHELF 3 LLC, 485): Submitted by JUSTIN GUNN for property located at 332 N. FLETCHER AVE. in WARD 1. The property is zoned RSF-8, RESIDENTIAL SINGLE-FAMILY – 8 UNITS PER ACRE and contains approximately 0.09 acres. The request is to use the residence as a short-term rental.**

---

**RECOMMENDATION:**

City staff recommends approval and the Planning Commission recommends denial of a request for a conditional use permit for a short-term rental as described and shown below.

**BACKGROUND:**

The subject property is located near Mount Sequoyah, just northeast of the intersection of Dickson Street and Fletcher Avenue. The property is zoned RSF-8, Residential Single-Family, 8 Units per Acre, contains 0.09 acres, and is currently developed with a two-bedroom townhome. On April 20, 2021, City Council adopted an ordinance to regulate short-term rentals operating within its limits. On December 20, 2022, City Council amended the ordinance to enact new requirements for short-term rentals. This report reflects those new changes for consideration.

*Request:* The applicant requests conditional use permit approval to use the property as a Type 2 short-term rental, which are those not occupied by a permanent resident. Type 2 short-term rentals are subject to density limitations, including a 2% city-wide cap, and restrictions on the number of units that may be used as a short-term rental in multi-family dwelling complexes.

*Findings:* Staff finds that granting the requested conditional use is unlikely to negatively impact the public interest. Minimal disruptions are expected for neighbors due to applicable business licensing requirements, including a required building safety inspection, and applicable density caps limiting the maximum number of guests to eight. Two off-street parking spaces are available in an existing detached carport. On-street parking is also available along the east side of Fletcher Avenue. Within a quarter mile of the property, city business license records indicate there are three active Type 2 short-term rental business licenses. There are no active or prior zoning code violations at the subject address.

**DISCUSSION:**

---

Mailing address:

113 W. Mountain Street  
Fayetteville, AR 72701

[www.fayetteville-ar.gov](http://www.fayetteville-ar.gov)

At the February 27, 2023, Planning Commission meeting, a motion to deny this item passed with a vote of 7-1-0. Commissioner Winston made the motion with a second from Commissioner Garlock. Commissioner Sparkman voted against the denial. Commissioners expressed concerns about approving a Type 2 short-term rental in a new development that was originally marketed as affordable housing, suggesting that it may adversely impact the character of this development and the surrounding neighborhood. Six members of the public spoke at the meeting in opposition to this request. Those who spoke expressed concerns about the underlying development, noting continued problems with increased water run off, storage of residential trash carts, and parking. They also raised questions about this development being originally touted as attainable workforce housing and felt that approval of a Type 2 short-term rental would adversely impact the residential character of the area.

**BUDGET/STAFF IMPACT:**

N/A

**ATTACHMENTS:** Appeal Letter with Council Member Sponsors, Exhibit A, Planning Commission Staff Report



# City of Fayetteville, Arkansas

113 West Mountain Street  
Fayetteville, AR 72701  
(479) 575-8323

## Legislation Text

---

**File #: 2023-549**

---

**Appeal: CUP-2023-0009: Conditional Use Permit (332 N. FLETCHER AVE./ETG SHELF 3 LLC, 485): Submitted by JUSTIN GUNN for property located at 332 N. FLETCHER AVE. in WARD 1. The property is zoned RSF-8, RESIDENTIAL SINGLE-FAMILY – 8 UNITS PER ACRE and contains approximately 0.09 acres. The request is to use the residence as a short-term rental.**

A RESOLUTION TO GRANT THE APPEAL OF COUNCIL MEMBERS SCOTT BERNA, HOLLY HERTZBERG, AND D'ANDRE JONES AND APPROVE CONDITIONAL USE PERMIT CUP 2023-009 FOR A SHORT-TERM RENTAL AT 332 NORTH FLETCHER STREET

**WHEREAS**, on February 27, 2023, the Planning Commission denied the application for Conditional Use Permit CUP 2023-009, to allow a Short-Term Rental at 332 North Fletcher Street; and

**WHEREAS**, Council Members Holly Hertzberg, D'Andre Jones, and Scott Berna have properly appealed the decision of the Planning Commission pursuant to §155.05(A)(3) of the Unified Development Code.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby grants the appeal of Council Members D'Andre Jones, Holly Hertzberg and Scott Berna, finds that the proposed short term rental is compatible with adjacent properties and other property in the zoning district, and approves Conditional Use Permit CUP 2023-009 for a Short-Term Rental at 332 North Fletcher Street.

Section 2: Approval of the conditional use permit is subject to the following conditions:

1. A business license must be obtained within one year of conditional use permit approval.
2. The number of occupants is limited to a maximum of two people per bedroom, plus two, for the entire unit when the property is operated as a short-term rental.
3. Special events including, but not limited to, weddings, receptions, anniversaries, private parties, fundraisers and business seminars are prohibited from occurring in the short term rental.
4. No recreational vehicle, trailer, other vehicle or structure not classified as a permanent residential dwelling may be used as a short-term rental.
5. All trash receptacles shall be screened from view of the right-of-way.
6. All outdoor lighting shall meet requirements as outlined in UDC Chapter 176, Outdoor Lighting.
7. Any signage shall meet the requirements as outlined in UDC Chapter 174, Signs.

City Council Members,

Please accept this as our request of appeal for CUP STR II (denied on 2/27).

**Justin & Sheri Gunn – J & S Legacy Builders LLC – CUP 2023-0009**

**332 N. Fletcher, Fayetteville AR 72701**

Our application was presented with an approval recommendation by City Council then denied by the Planning Commission after neighbors shared concerns. Neighbors voiced concerns relating to parking, traffic, density, affordable housing, previous builder complaints, trash pickup, and the fact that our home is a new construction build. All of these statements seem to stem from fear, what ifs, and opinions.

**We ask for this appeal based on the following information:**

1. **Parking** – Each unit has two designated off-street parking spots as required by (building code/planning?) when built. STR parking needs are no different than long term rental or owner-occupied homes. The average 12-month occupancy rate in Fayetteville is 34% which means that 66% of the time there will be NO parked vehicles other than occasional owner occupancy.
2. **Traffic** - STR traffic is no different than long term rental or owner-occupied homes. Given the fact the home is not occupied 100% of the time, this will create less traffic than an average long-term rental or owner-occupied home. We can also assume that when these homes went through the planning department that traffic patterns were studied and approved for the development to be built.
3. **Density** - We are unaware of any density requirements to be permitted for an STR in Fayetteville other than the 2% city wide maximum cap of permits. We understand the CUP requirement is 2% **city wide**, not per neighborhood or per street. It's our understanding that this cap has not been met making our home eligible for approval in this category. During the meeting that our CUP was denied, other similar properties were approved.
4. **Affordable/Available Housing** – We are unaware of any “affordable housing” requirements to be permitted for an STR in Fayetteville. Many STRs have been approved that cost much less than this price point as well.
5. **Builder issues/complaints** – Neighbors expressed dissatisfaction regarding the builder of our home. The stated issues were trees being cut down during construction, water drainage, and dust during construction. We are unable to address these complaints nor are we aware of any requirements regarding previous builders that would have bearing on the CUP approval process for my home.
6. **Trash** –We have a contract with the city waste removal and have both trash and recycle containers for our guests. Additionally, every time a guest checks out our company ensures trash is taken out and cans returned to the back of the home. My neighbors will be able to get in touch with me and my property management company at any time. This will prevent any trash concerns.

**7. Development Neighbors** – We are unaware of any restrictions on STR use in this neighborhood. There is no HOA and no restrictive covenants to prevent STR use. We specifically validated that short term rentals would be allowed with the developer and real estate agent during our purchase.

**8. New vs. Old homes** - Planning members stated their decision was based on “new housing should not be included as an STR”. Yet during this same meeting, new homes were approved. I am unaware of any “new housing” restrictions that would prevent our home from approval in this process.

It seems very clear in reviewing the meeting that each Planning Committee member is applying their own additional requirements such as street level density, age of home, traffic, housing affordability, etc. and simply echoing the opinions of the neighbors. None of which are requirements that I can find, in obtaining a CUP for my home. We urge you to review this meeting to confirm as well (begins at 2:47 mark).

We believe the Commission Chair, Sarah Sparkman, believed that the council was acting out of their authority and unfairly when she went on record stating:

*I take a very narrow view of what our role is as a planning commission. Looking at what the city council has set forth for what we consider in the Short-Term Rentals. The concerns given by everyone here tonight and shared by me are concerns we have anytime that this type of permit comes forward and I don't think it is unique to any piece of property. The city has decided this is something that is going to be permitted in the city. How this is defined under city ordinance, seeing what city council has done on appeal for decisions we've made and just looking for consistency on the way we have done things in the past, I am voting in Favor*

Overall, we're looking for a fair and legal process for submission and adjudication of applications. We are not, as was intoned in the meeting, a wealthy LLC looking to make a lot of money. We are a family with roots in the city that simply would like the option to rent our home when it's not in use which is a constitutional right in the state of Arkansas just as any other property owner would be afforded.

Below is a section from a memo sent from Fayetteville city attorney, Blake Pennington – August 8, 2022. It was titled “Factors to Consider for CUPs and Application for Short Term Rentals. As we reviewed the memo, it confirmed that our property is in-line to be approved; as the city representative recommended. **See below:**

The Planning Commission must take into account the concerns of neighbors and ensure that a use is not unreasonably disruptive and incompatible with the neighborhood. Without a history of violations or disruptions to the neighborhood, it would be difficult for the Planning Commission to determine the proposed use is incompatible with the neighborhood.

Our home is one of 10 which are newly constructed homes with a majority vacant currently. There is no known disruptions nor known incompatibility within the neighborhood as evidenced by other CUP/STR approval within close proximity.

Please accept this letter as our formal request to appeal the Planning Committee denial of our CUP. We are simply seeking a fair and legal review of our application based upon your current CUP requirements. In closing, our “ask” is seeking your sponsorship in our appeal.

Respectfully,

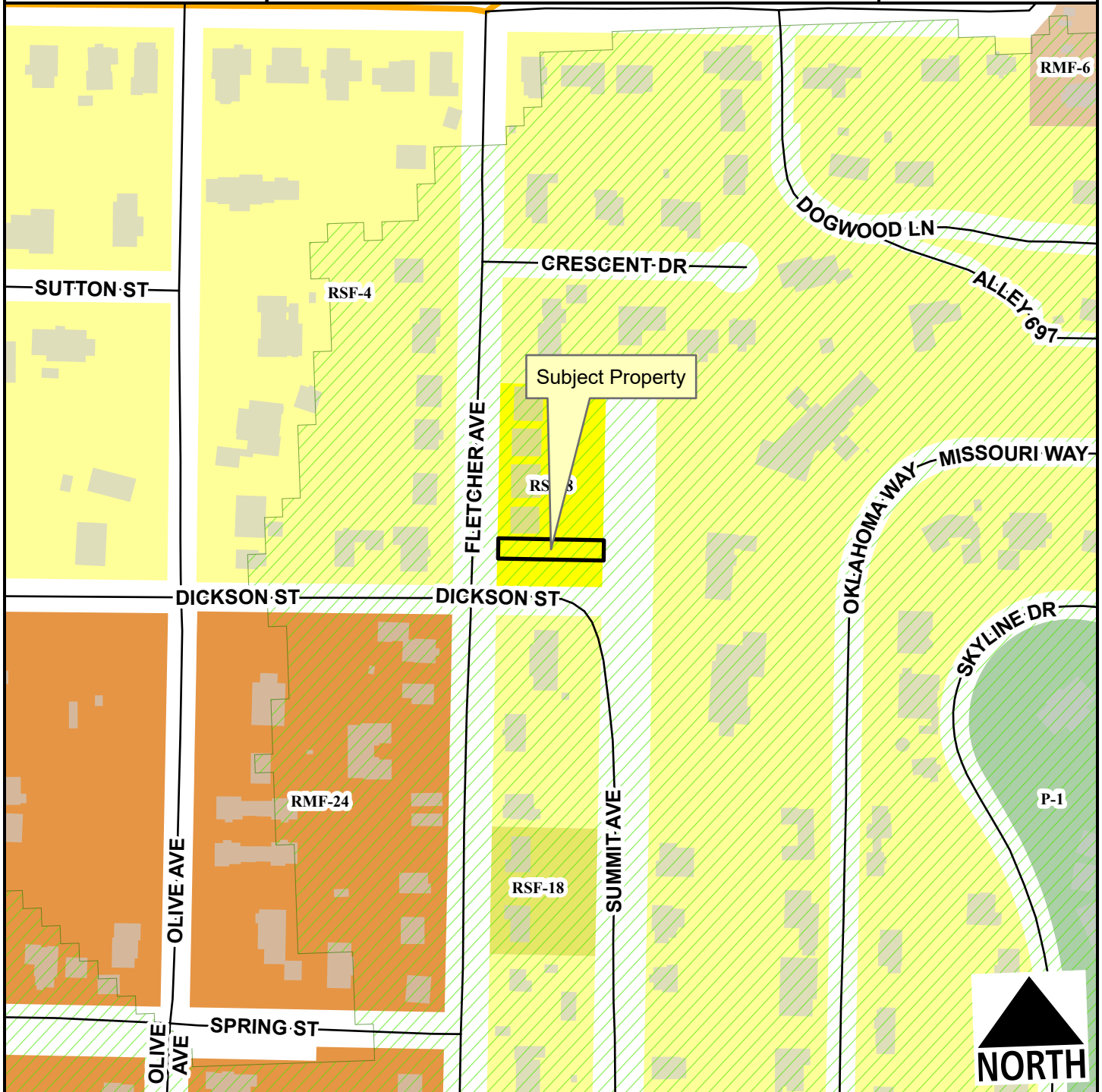
Justin & Sheri Gunn

CUP-2023-0009

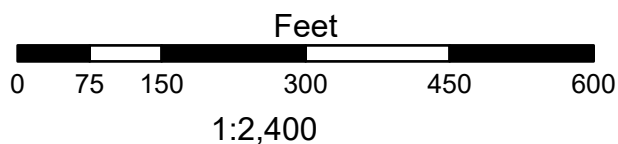
# 332 N. FLETCHER AVE

EXHIBIT 'A'

Close Up View



- Neighborhood Link
- Alley
- Residential Link
- Hillside-Hilltop Overlay District
- Planning Area
- Fayetteville City Limits



- RSF-4
- RSF-8
- RSF-18
- RMF-6
- RMF-24
- P-1