



**MEETING OF JUNE 6, 2023**

**TO:** Mayor Jordan and City Council

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

**FROM:** Donna Wonsower, Planner

**DATE:**

**SUBJECT:** **Appeal: CUP-2023-0043: Conditional Use Permit (435 N. OLIVER AVE/ KING INVESTMENTS OF FAYETTEVILLE LLC, 482): Submitted by KING INVESTMENTS OF FAYETTEVILLE LLC for property located at 435 N. OLIVER AVE in WARD 4. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 0.31 acres. The request is to use the residence as a short-term rental.**

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**RECOMMENDATION:**

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

**BACKGROUND:**

The subject property is in central Fayetteville approximately 500 feet northwest of Razorback Stadium. The property is zoned RSF-4, Residential Single-Family, Four (4) Units Per Acre and no overlay districts apply to this property. It is currently constructed with a 2,450 square foot single-family structure originally built in 1908 according to the Washington County Assessor. Portions of the parcel's edges have slopes above 15%. On April 20, 2021, City Council adopted an ordinance to regulate short-term rentals operating within Fayetteville's city 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 ten. Three (3) off-street parking spaces are available in the driveway. On-street parking is not available on N. Oliver Ave. Within a quarter mile of the property, city business license records indicate one active Type 2 short-term rental business license; however, the following active code cases for short-term rentals operating without a business license within ¼ mile of the subject address have been opened since late

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Mailing address:

113 W. Mountain Street  
Fayetteville, AR 72701

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April 2023.

- CVZD-2023-0320 (426 N OLIVER AVE): A case was opened in early May for unlicensed short-term rental operation of both the primary home (type 2 STR) and the associated ADU (type 1 STR). The business license clerk is in communication with the property's designated agent and has emailed application instructions. No current STR or CUP application on file.
- CVZD-2023-0322, CVZD-2023-0317, CVZD-2023-0316 (410 N OLIVER AVE): Multiple cases were opened in late April to early May for rooms being operated as short-term rentals. A single notice of violation was sent for all associated violations on the property and is currently being tracked. No current STR or CUP application on file.

Additionally, complaints received ahead of the public hearing (see discussion) regarding gravel on the subject property were forwarded to Engineering to investigate. Staff found a code violation of UDC 169.03 - Review And/Or Permits Required and a code case is being started in EnerGov.

**DISCUSSION:**

At the April 24, 2023 Planning Commission meeting, a vote of 8-1-0 forwarded the request to City Council with a recommendation of approval. Commissioner Winston made the motion and Commissioner Madden seconded. Staff noted the receipt of three public comments and unverified reports of gravel being unloaded in the rear of the property received the day of the meeting. The applicant stated that their intent was to convert the entire backyard to turf in order to reduce maintenance requirements, and that the gravel was due to this. Commissioner Winston affirmed that he did not see a need to table the request in order to investigate reports of the gravel given its intended use and stated that the proposed location adjacent to the Razorback Stadium is appropriate for a short-term rental. Commissioner Garlock, who was opposed, acknowledged that N. Oliver has no sidewalks and is a “No Parking” street, and stated that incompatibility and potential parking issues are his reasoning for a denial vote. No members of the public spoke during the meeting.

**BUDGET/STAFF IMPACT:**

NA

**ATTACHMENTS:** Appeal Letter with Council Member Sponsors , Exhibit A, UDC 169.03 Code Violation , Planning Commission Staff Report

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# City of Fayetteville, Arkansas

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

## Legislation Text

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**File #: 2023-748**

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**Appeal: CUP-2023-0043: Conditional Use Permit (435 N. OLIVER AVE/ KING INVESTMENTS OF FAYETTEVILLE LLC, 482): Submitted by KING INVESTMENTS OF FAYETTEVILLE LLC for property located at 435 N. OLIVER AVE in WARD 4. The property is zoned RSF-4, RESIDENTIAL SINGLE-FAMILY, FOUR UNITS PER ACRE and contains approximately 0.31 acres. The request is to use the residence as a short-term rental.**

A RESOLUTION TO GRANT THE APPEAL OF COUNCIL MEMBERS SARAH MOORE, SCOTT BERNA, AND TERESA TURK AND DENY CONDITIONAL USE PERMIT CUP 2023-043 FOR A SHORT-TERM RENTAL AT 435 NORTH OLIVER AVENUE IN WARD 4

**WHEREAS**, on April 24, 2023, the Planning Commission approved Conditional Use Permit CUP 2023-043 for a short-term rental at 435 North Oliver Avenue in Ward 4; and

**WHEREAS**, Council Members Sarah Moore, Scott Berna, and Teresa Turk 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 denies conditional use permit CUP-2023-043 for a proposed short-term rental at 435 North Oliver Avenue.

To: Fayetteville City Clerk and City Council members

From: Lisa Orton

Date: May 2, 2023

We the undersigned citizens of Fayetteville, AR are requesting an appeal of the Planning Commission's decision to approve Conditional Use Permit (CUP-2023-0043) located at 435 N. Oliver Ave. We are appealing this decision based on the City of Fayetteville's Unified Development Code (UDC) Section 163.18 (H) for items 1-3:

"Short-term rentals in residential zoning districts may be subject to denial or additional conditions based upon the Planning Commission's findings on the following factors:

- (1) Adequate parking infrastructure;
- (2) Adequate adjoining or nearby streets for on-street parking;
- (3) Frequency or concentration of nearby licensed Type 2 short-term rentals; and
- (4) Prior zoning or code violations."

1. Adequate Parking Infrastructure: There is insufficient parking for this location. The structure located at 435 N. Oliver Ave. contains 3 bedrooms and therefore is entitled to up to 8 residents per night. There is parking for only 2 vehicles and on street parking is not allowed. Oliver Ave is a very narrow street without sidewalks on either side. Parking is prohibited on both sides of the street. In the past, there have been numerous complaints about illegal street parking.
2. Adequate adjoining or nearby streets for on-street parking: Many of the adjoining streets (Halsell, Maple and Gray) are narrow and do not allow parking on the street and most do not have sidewalks.
3. Frequency or concentration of nearby licensed Type 2-short term rentals: According to the City of Fayetteville's Development and Economic Services website, there is 1 licensed Short Term Rental Type 2 located two houses away at 473 N Oliver. However, there are at least three complaints submitted that contend that two unlicensed short-term rentals are operating at 426 N Oliver St, right across the street from 435 N. Oliver Ave. They are listed under the Airbnb platform as the "The Stadium House" and "The Stadium Cottage". In addition, there are over 4 rooms listed under the Airbnb platform located at 410 N. Oliver Ave.

Those unlicensed short-term rentals are under investigation by the Planning Department. If these alleged unlicensed short-term rentals are operating, a minimum of 7 short-term type operations are occurring on Oliver Ave, within .08-mile radius of 435 N. Oliver Ave.

In addition, we believe short-term rentals are not compatible with our University Heights neighborhood and its historic nature of owner-occupied residences. This area was outside the city limits for many years, and the infrastructure of our streets and the layout of the properties reflect this residual rural

character, particularly the narrow streets that prohibit on-street parking and the design of the homes for family residents. Our neighborhood has historically provided accessible, permanent homes for university staff, professionals, and their families, many of whom have traditionally walked to school or work. The need for such permanent housing options is currently more important than ever with our rapidly growing population.

As this request is being considered, University Heights is being evaluated for nomination as a Historic District. We believe that the historical significance of University Heights lies in its character as a formerly rural area, as shown in the present day scattered old farmhouses, including the Oliver house itself, that still stand on our narrow streets. Some present residents are descendants of people who lived here before the streets were paved, when the post office regarded this as a Rural Route. During the post-war expansion of the University as a result of the GI Bill, Hotz addition was developed to accommodate the growing faculty/staff of the University, with their young families and modest incomes. Some young people, attracted to the new Department of Architecture, designed houses in this neighborhood before achieving regional and national prominence. Leverett School educated their children. All these residents could walk to work or to school. Some residents had careers in education at the University and others taught at Leverett, and they included deans and food service workers.

Many of these historic qualities are still present in University Heights, even as the farmsteads have developed into neighborhoods with houses in many styles and in many price ranges. In summary, short-term rentals are incompatible with the historic character of the neighborhood.

In view of the many issues listed in this letter, please do not approve the Conditional Use Permit (CUP-2023-0043) located at 435 N. Oliver Ave.

Sincerely,

Barbara Fraleigh, Margaret Holcomb, Lisa Orton, Ethel Simpson, Jane Scroggs

## Wonsower, Donna

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**From:** Shelton, Jackson  
**Sent:** Monday, May 8, 2023 12:28 PM  
**To:** Wonsower, Donna  
**Subject:** FW: Need two more City Council members to support our appeal

Good afternoon,

I received your email request regarding Council Members Berna's support of the CUP-2023-0043 Appeal.

The forward messaged associated with this email has Council Member Berna's willingness to support the appeal being heard.

Please let me know if this is information you require and that it is sufficient.

Thank you,

**Jackson Shelton**  
**Office of the City Clerk Treasurer**

Senior Deputy City Clerk  
City of Fayetteville, Arkansas  
113 West Mountain St  
Fayetteville, AR 72701

[jshelton@fayetteville-ar.gov](mailto:jshelton@fayetteville-ar.gov)

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**From:** Berna, Scott <[scott.berna@fayetteville-ar.gov](mailto:scott.berna@fayetteville-ar.gov)>  
**Sent:** Wednesday, May 3, 2023 10:19 AM  
**To:** Shelton, Jackson <[jshelton@fayetteville-ar.gov](mailto:jshelton@fayetteville-ar.gov)>; Ethel C. Simpson <[esimpson@uark.edu](mailto:esimpson@uark.edu)>; Moore, Sarah <[sarah.moore@fayetteville-ar.gov](mailto:sarah.moore@fayetteville-ar.gov)>; Lisa Orton <[lisa\\_m\\_orton@yahoo.com](mailto:lisa_m_orton@yahoo.com)>; Harvey, Sonia <[sonia.harvey@fayetteville-ar.gov](mailto:sonia.harvey@fayetteville-ar.gov)>; Jones, D'Andre <[dandre.jones@fayetteville-ar.gov](mailto:dandre.jones@fayetteville-ar.gov)>; Wiederkehr, Mike <[mike.wiederkehr@fayetteville-ar.gov](mailto:mike.wiederkehr@fayetteville-ar.gov)>; Bunch, Sarah <[sarah.bunch@fayetteville-ar.gov](mailto:sarah.bunch@fayetteville-ar.gov)>; Turk, Teresa <[teresa.turk@fayetteville-ar.gov](mailto:teresa.turk@fayetteville-ar.gov)>; Hertzberg, Holly <[holly.hertzberg@fayetteville-ar.gov](mailto:holly.hertzberg@fayetteville-ar.gov)>; Mayor <[Mayor@fayetteville-ar.gov](mailto:Mayor@fayetteville-ar.gov)>  
**Cc:** Barbara Fraleigh <[barbara.fraleigh@gmail.com](mailto:barbara.fraleigh@gmail.com)>; Margaret Ann Holcomb <[sunflowerwicks@gmail.com](mailto:sunflowerwicks@gmail.com)>; ejanescroggs@att.net; Williams, Kit <[kwilliams@fayetteville-ar.gov](mailto:kwilliams@fayetteville-ar.gov)>  
**Subject:** Re: Need two more City Council members to support our appeal

I will agree to sign off on this appeal .

Scott

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**From:** Shelton, Jackson <[jshelton@fayetteville-ar.gov](mailto:jshelton@fayetteville-ar.gov)>  
**Sent:** Wednesday, May 3, 2023 10:06 AM  
**To:** Ethel C. Simpson <[esimpson@uark.edu](mailto:esimpson@uark.edu)>; Moore, Sarah <[sarah.moore@fayetteville-ar.gov](mailto:sarah.moore@fayetteville-ar.gov)>; Lisa Orton <[lisa\\_m\\_orton@yahoo.com](mailto:lisa_m_orton@yahoo.com)>; Harvey, Sonia <[sonia.harvey@fayetteville-ar.gov](mailto:sonia.harvey@fayetteville-ar.gov)>; Jones, D'Andre

**To:** Turk, Teresa <[teresa.turk@fayetteville-ar.gov](mailto:teresa.turk@fayetteville-ar.gov)>; Ethel C. Simpson <[esimpson@uark.edu](mailto:esimpson@uark.edu)>; Moore, Sarah <[sarah.moore@fayetteville-ar.gov](mailto:sarah.moore@fayetteville-ar.gov)>; Lisa Orton <[lisa\\_m\\_orton@yahoo.com](mailto:lisa_m_orton@yahoo.com)>; Harvey, Sonia <[sonia.harvey@fayetteville-ar.gov](mailto:sonia.harvey@fayetteville-ar.gov)>; Jones, D'Andre <[dandre.jones@fayetteville-ar.gov](mailto:dandre.jones@fayetteville-ar.gov)>; Wiederkehr, Mike <[mike.wiederkehr@fayetteville-ar.gov](mailto:mike.wiederkehr@fayetteville-ar.gov)>; Berna, Scott <[scott.berna@fayetteville-ar.gov](mailto:scott.berna@fayetteville-ar.gov)>; Bunch, Sarah <[sarah.bunch@fayetteville-ar.gov](mailto:sarah.bunch@fayetteville-ar.gov)>; Hertzberg, Holly <[holly.hertzberg@fayetteville-ar.gov](mailto:holly.hertzberg@fayetteville-ar.gov)>; Mayor <[Mayor@fayetteville-ar.gov](mailto:Mayor@fayetteville-ar.gov)>; Pennington, Blake <[bpennington@fayetteville-ar.gov](mailto:bpennington@fayetteville-ar.gov)>  
**Cc:** Barbara Fraleigh <[barbara.fraleigh@gmail.com](mailto:barbara.fraleigh@gmail.com)>; Margaret Ann Holcomb <[sunflowerwicks@gmail.com](mailto:sunflowerwicks@gmail.com)>; [ejanescroggs@att.net](mailto:ejanescroggs@att.net); Williams, Kit <[kwilliams@fayetteville-ar.gov](mailto:kwilliams@fayetteville-ar.gov)>  
**Subject:** RE: Need two more City Council members to support our appeal

Mr. Pennington,

The appeal request for CUP-2023-0043: Conditional Use Permit (435 N. OLIVER AVE/ KING INVESTMENTS OF FAYETTEVILLE LLC, 482) has the support of three City Council Members (Turk / Berna / Moore).

Please provide verification that this appeal meets all requirements to be heard by the City Council.

Thank you.

Regards,

**Jackson Shelton**  
**Office of the City Clerk Treasurer**

Senior Deputy Clerk  
City of Fayetteville, Arkansas  
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**From:** Turk, Teresa <[teresa.turk@fayetteville-ar.gov](mailto:teresa.turk@fayetteville-ar.gov)>  
**Sent:** Wednesday, May 3, 2023 10:19 AM  
**To:** Shelton, Jackson <[jshelton@fayetteville-ar.gov](mailto:jshelton@fayetteville-ar.gov)>; Ethel C. Simpson <[esimpson@uark.edu](mailto:esimpson@uark.edu)>; Moore, Sarah <[sarah.moore@fayetteville-ar.gov](mailto:sarah.moore@fayetteville-ar.gov)>; Lisa Orton <[lisa\\_m\\_orton@yahoo.com](mailto:lisa_m_orton@yahoo.com)>; Harvey, Sonia <[sonia.harvey@fayetteville-ar.gov](mailto:sonia.harvey@fayetteville-ar.gov)>; Jones, D'Andre <[dandre.jones@fayetteville-ar.gov](mailto:dandre.jones@fayetteville-ar.gov)>; Wiederkehr, Mike <[mike.wiederkehr@fayetteville-ar.gov](mailto:mike.wiederkehr@fayetteville-ar.gov)>; Berna, Scott <[scott.berna@fayetteville-ar.gov](mailto:scott.berna@fayetteville-ar.gov)>; Bunch, Sarah <[sarah.bunch@fayetteville-ar.gov](mailto:sarah.bunch@fayetteville-ar.gov)>; Hertzberg, Holly <[holly.hertzberg@fayetteville-ar.gov](mailto:holly.hertzberg@fayetteville-ar.gov)>; Mayor <[Mayor@fayetteville-ar.gov](mailto:Mayor@fayetteville-ar.gov)>  
**Cc:** Barbara Fraleigh <[barbara.fraleigh@gmail.com](mailto:barbara.fraleigh@gmail.com)>; Margaret Ann Holcomb <[sunflowerwicks@gmail.com](mailto:sunflowerwicks@gmail.com)>; [ejanescroggs@att.net](mailto:ejanescroggs@att.net); Williams, Kit <[kwilliams@fayetteville-ar.gov](mailto:kwilliams@fayetteville-ar.gov)>  
**Subject:** Re: Need two more City Council members to support our appeal

Hi Jackson,

Thank you so much for your email. I will definitely be supporting the CUP appeal.

Teresa

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**From:** Shelton, Jackson <[jshelton@fayetteville-ar.gov](mailto:jshelton@fayetteville-ar.gov)>  
**Sent:** Wednesday, May 3, 2023 10:06 AM

Ethel Simpson  
409 N Oliver Avenue  
Fayetteville AR72701

---

**From:** Moore, Sarah <[sarah.moore@fayetteville-ar.gov](mailto:sarah.moore@fayetteville-ar.gov)>

**Sent:** Wednesday, May 3, 2023 8:59 AM

**To:** Lisa Orton <[lisa\\_m\\_orton@yahoo.com](mailto:lisa_m_orton@yahoo.com)>; CityClerk <[cityclerk@fayetteville-ar.gov](mailto:cityclerk@fayetteville-ar.gov)>; Harvey, Sonia <[sonia.harvey@fayetteville-ar.gov](mailto:sonia.harvey@fayetteville-ar.gov)>; Jones, D'Andre <[dandre.jones@fayetteville-ar.gov](mailto:dandre.jones@fayetteville-ar.gov)>; Wiederkehr, Mike <[mike.wiederkehr@fayetteville-ar.gov](mailto:mike.wiederkehr@fayetteville-ar.gov)>; Berna, Scott <[scott.berna@fayetteville-ar.gov](mailto:scott.berna@fayetteville-ar.gov)>; Bunch, Sarah <[sarah.bunch@fayetteville-ar.gov](mailto:sarah.bunch@fayetteville-ar.gov)>; Turk, Teresa <[teresa.turk@fayetteville-ar.gov](mailto:teresa.turk@fayetteville-ar.gov)>; Hertzberg, Holly <[holly.hertzberg@fayetteville-ar.gov](mailto:holly.hertzberg@fayetteville-ar.gov)>; Mayor <[Mayor@fayetteville-ar.gov](mailto:Mayor@fayetteville-ar.gov)>

**Cc:** Barbara Fraleigh <[barbara.fraleigh@gmail.com](mailto:barbara.fraleigh@gmail.com)>; Margaret Ann Holcomb <[sunflowerwiks@gmail.com](mailto:sunflowerwiks@gmail.com)>; Lisa Orton <[lisa\\_m\\_orton@yahoo.com](mailto:lisa_m_orton@yahoo.com)>; Ethel C. Simpson <[esimpson@uark.edu](mailto:esimpson@uark.edu)>; [ejanescroggs@att.net](mailto:ejanescroggs@att.net); Williams, Kit <[kwilliams@fayetteville-ar.gov](mailto:kwilliams@fayetteville-ar.gov)>

**Subject:** Re: Need two more City Council members to support our appeal

You don't often get email from [sarah.moore@fayetteville-ar.gov](mailto:sarah.moore@fayetteville-ar.gov). [Learn why this is important](#)

I will support this appeal request.

Thank you

--

Sarah Moore

Fayetteville City Council, Ward 2

[sarah.moore@fayetteville-ar.gov](mailto:sarah.moore@fayetteville-ar.gov)

479.263.6629

---

**From:** Lisa Orton <[lisa\\_m\\_orton@yahoo.com](mailto:lisa_m_orton@yahoo.com)>

**Date:** Tuesday, May 2, 2023 at 5:10 PM

**To:** CityClerk <[cityclerk@fayetteville-ar.gov](mailto:cityclerk@fayetteville-ar.gov)>, Harvey, Sonia <[sonia.harvey@fayetteville-ar.gov](mailto:sonia.harvey@fayetteville-ar.gov)>, Jones, D'Andre <[dandre.jones@fayetteville-ar.gov](mailto:dandre.jones@fayetteville-ar.gov)>, Moore, Sarah <[sarah.moore@fayetteville-ar.gov](mailto:sarah.moore@fayetteville-ar.gov)>, Wiederkehr, Mike <[mike.wiederkehr@fayetteville-ar.gov](mailto:mike.wiederkehr@fayetteville-ar.gov)>, Berna, Scott <[scott.berna@fayetteville-ar.gov](mailto:scott.berna@fayetteville-ar.gov)>, Bunch, Sarah <[sarah.bunch@fayetteville-ar.gov](mailto:sarah.bunch@fayetteville-ar.gov)>, Turk, Teresa <[teresa.turk@fayetteville-ar.gov](mailto:teresa.turk@fayetteville-ar.gov)>, Hertzberg, Holly <[holly.hertzberg@fayetteville-ar.gov](mailto:holly.hertzberg@fayetteville-ar.gov)>, Mayor <[Mayor@fayetteville-ar.gov](mailto:Mayor@fayetteville-ar.gov)>

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**Subject:** Need two more City Council members to support our appeal

**CAUTION:** This email originated from outside of the City of Fayetteville. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear City Clerk and City Council members,

Please see the attached letter requesting an appeal of the Planning Commission's decision to approve CUP-2023-0043 located at 435 N. Oliver Ave. We already have the support of council member Teresa Turk. We need at least two more. Would you please consider supporting our request to appeal and let us know by Thursday, May 4, 2023? We need to get the final letter to the City by Friday.

Thank you so much for your consideration.



