

TO: Hearings Officer

FROM: Lisa Anderson-Ogilvie, AICP
Deputy Community Development Director and
Planning Administrator

DATE: December 28, 2022

SUBJECT: **Conditional Use / Class 2 Adjustment Case No. CU-ADJ22-04 – 795 Church
St SE; Open Rebuttal**

On December 14, 2022, the Hearings Officer held a public hearing for CU-ADJ22-04. The hearing was closed, and the record was left open until December 21, 2022, at 5:00 p.m. for anyone to provide additional written testimony. The additional testimony was sent to interested parties on December 21, 2022 and they were able to submit rebuttal to testimony given in the open record period until December 28, 2022, at 5:00 p.m. The applicant has until January 4, 2023, at 5:00 p.m. to submit final written rebuttal. No other testimony will be accepted.

The comments received for this case during the rebuttal period for interested parties are attached to this memo.

Attachments:

- A. Testimony from William Vagt - December 26, 2022
- B. Testimony from Carlene and Wally Benson - December 28, 2022
- C. Testimony from Evan West - December 28, 2022
- D. Testimony from the Applicant - December 28, 2022

cc: CU-ADJ22-04 File

Bryce Bishop

From: william vagt <william_vagt@q.com>
Sent: Monday, December 26, 2022 2:05 PM
To: Bryce Bishop
Subject: Opposition to Conditional Use / Class 2 Adjustment Case No. CU-ADJ22-04 – 795 Church St SE

Opposition to Conditional Use / Class 2 Adjustment Case No. CU-ADJ22-04 – 795 Church St SE

The City states in their answer to Section 1, on their December 21, 2022, Conditional Use / Class 2 Adjustment Case No. CU-ADJ22-04 – 795 Church St SE; Open Record:

“Because there are no changes proposed or required to the home, the property (other than the recommended parking space screening), or the abutting streetscape to accommodate the proposed use, the early residential architectural style and streetscape of the district will be maintained.”

This implies that the “parking space screening” is a change to the “streetscape”. This is important for the City’s Section 2’s statement that the parking space screening complies with Section 230. It does not.

SRC Section 230 is designed to preserve the architectural integrity of the district. Specifically Section 230 says corner lots have two “primary façades”. Common knowledge is that a front yard is in front of a “primary façade”. Since the intent of SRC Section 230 is to protect the streetscape and specifically states that a structure can have two primary facades for the purposes of protecting the streetscape then common knowledge should be used and the structure has two front yards for the purposes of Section 230 review and not some overly legal interpretation of other SRC Sections. This preserves the intent of Section 230. Therefore, for the purposes of Section 230 review, this structure has two front yards! And the City’s required “parking space screening” violates Section 230 requirements.

William Vagt

690 Liberty Street SE

Salem, OR

Bryce Bishop

From: Carlene Benson <bensonwc@mac.com>
Sent: Wednesday, December 28, 2022 11:17 AM
To: Bryce Bishop
Subject: Case no. CU-ADJ22-04

Dear Mr. Brewer,

I'm Carlene Benson, and I live at 545 Leslie St. SE. around the corner from the subject property. I found going through the most recent staff report so very disheartening. So much of it seems to be common boilerplate routinely applied to all STR applications to support the applicants. Each code is narrowly applied to support the applicant. In this last report so much that was pointed out by concerned neighbors, an expert in historic preservation, and a city planner, was simply ignored or cherry picked to address issues in support of the applicant.

These codes are subjective and can just as easily be applied to support the historic district and neighborhood, one of only 2 residential historic districts in Salem, which the City is not averse to advertising as a tourist attraction but is not willing to work to maintain the integrity of it. Why not?

SRC 240.005 as a requirement for the conditional use was not even addressed in this latest report despite the many rebuttals listing it specifically, such as regarding the commercialization of a single residence in the National Historic District having a negative impact on the District as well as commercialization being intentionally excluded from the district. Why not?

The issue of the inconsistency in applying conditions to this permit request versus the other STR a block away as pointed out by Kendra Mingo was not addressed. Why not?

Sufficient evidence was given by several neighbors about the problems encountered with the STR on High Street. That owner and property manager pledged "to be engaged as residents in this neighborhood." We don't have those problems with real residents who live here, in these homes. The issues raised by neighbors about enforcement of the conditions was not addressed. Why not?

This has been an exhausting process and the neighbors are on our own trying to deal with complex city codes. We've done the best we can. Please listen to OUR experts, Jon Christianson and Evan West, who have provided sufficient evidence to deny this application.

Thank you for your consideration.

Carlene and Wally Benson
545 Leslie St. SE

City of Salem
555 Liberty Street SE
Salem, Oregon 97301
Attn: Jim Brewer, Hearing Officer Case No. CU-ADJ22-04

Re: City Staff Response to Case No. CU-ADJ22-04 for 795 Church St SE.

To Whom It May Concern:

City of Salem employees responded to testimony submitted in the open record period on 12/21/2022. Presented below is response and rebuttal to the arguments submitted in the staff memo. The argument presented by city staff is paraphrased in bold. Each item corresponds numerically to the Open Record Memo.

1. The City of Salem is not obligated to maintain the integrity of National Historic Districts.

The city staff memo suggests that once properties have been listed on the National Register of Historic Places, integrity is no longer an item of concern to the State of Oregon or the City of Salem. This response by city staff betrays either fundamental misunderstanding of historic preservation practice as supported by state and local regulation, or an embarrassingly transparent attempt to perform semantic gymnastics in effort to shirk their responsibility to their constituents. The staff memo is correct only that the National Park Service does not have any regulatory authority over the resources listed on the National Register. Tremendous deference is given to the states, and to local government. However, in Oregon and the City of Salem, historic preservation guidelines and ordinances are not only modeled after the standard of excellence created by the National Historic Preservation Act, but they are also patently more robust.

OAR 660-023-0030 encourages local governments to inventory historic resources in a manner compatible with the database of the Oregon State Historic Preservation Office (SHPO). The SHPO applies the criteria of the National Register of Historic Places, including the evaluation of seven aspects of integrity. The City of Salem replaces the word integrity, with the word character, in describing how historic resources should be preserved. The Salem Comprehensive Plan directs “Where no conflicting uses have been identified, such resources shall be managed to preserve their original character. When conflicting uses are identified, resources shall be protected by acquisition or by plans which limit the intensity of development and promote conservation of these resources” (Salem Area Comprehensive Plan).

The character (or integrity) of the building at 795 Church Street SE, and the Gaiety Hill/Bush’s Pasture Park National Historic District, are inextricably interconnected. The staff memo selectively highlights the importance of “streetscape” as noted in the historic district nomination but fails to note the later mentioned critical importance of the historic district representing “a sense of connected and unified place” (NHD Nomination, 1986). It is this sense of unity that the citizens of Gaiety Hill are warning is under assault by the

intrusion of commercial business in the residential historic district. This intrusion constitutes a significant negative impact on the livability of the neighborhood that cannot be minimized by the proposed conditions.

3. SRC 231.001 does not apply because the change of use is allowed for conditionally.

The response memo submitted by city staff on 12/21/22 asserts that because the change of use proposed is allowed for as a conditional use under SRC 240, the city code addressing the adaptive reuse of historic resources (SRC 231) does not apply. The staff memo suggests that the wording “for use not otherwise allowed in the zone” precludes the change of use from consideration under 231, because the use is allowed for *if conditions minimizing impact can be met* [emphasis mine].

This perspective by the staff once again overlooks other wording that gives the hearing officer additional capacity to interpret and apply the city code. Also included in SRC 231, and not addressed by the staff memo, is the direction that adaptative reuse guidelines are essential in situations when “other allowed uses in the zone are not otherwise feasible” (SRC 231.001). If short term rental were to be always and forever conditionally allowed as a use of historic resources, chapter 231 and its provision that short-term rental is specifically not allowed for in residential historic districts, would have little need for existence. Adopted three years after SRC 240, the hearing officer can safely infer that SRC 231 was designed by City Council under the principle *lex specialis derogat legi generali*. The principle that specific law prevails over general law is acknowledged but not contested by the staff memorandum.

4. The proposed change of use does not violate SRC 230.082.

The city staff response appears to misunderstand the concern regarding SRC 230.082. The summary of the concern raised states “the proposed change of use violates SRC 230.082.” The item of concern brought forth in testimony is not that the proposed change of use violates this specific ordinance outright. The objection raised is that allowing for a use which has been demonstrated to be the cause of a broad range of significantly adverse impacts puts the city at odds with the direction of SRC 230.082(a).

The staff response suggests that this section of city code applies exclusively to historic resources owned by the City of Salem. In fact, SRC 230 differentiates resources owned or directly managed by the city by assigning them the term “public historic resource.” Others, including privately owned contributing buildings, are labeled as “historic resources” SRC 230.005(a). The section of code originally mentioned in testimony specifically directs that “A public agency shall avoid inadvertent impacts to a historic resource for which the agency is responsible” SRC 230.082(a).

Regarding Case No. CU-ADJ22-04 the City of Salem Community Development Department is the permitting agency responsible for allowing or disallowing the change in use proposed for a historic resource. Evidential testimony has repeatedly demonstrated that to allow for the change in use would cause wide ranging adverse impact to many

historic resources in the Gaiety Hill neighborhood. Under SRC 230.082 the hearing officer has the authority to serve as a check on the inadvertent impact that the city is poised to cause through conditional use permitting. It is respectfully requested that the hearing officer exercise this authority.

I remain confident that the hearing officer will acknowledge the validity of all the objections brought forward by concerned citizens and the residents of the Gaiety Hill neighborhood. However, even if the arguments addressed in this rebuttal are insufficient, I respectfully remind the hearing officer that pursuant to SRC 240, two questions matter above all others.

1 – will the proposed use be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property? (SRC 240.005(d)(3))

2 – Can the reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions? (SRC 240.005(d)(2))

These questions were notably not addressed by city staff in their most recent submission on 12/21/22. By contrast, concerned citizens have demonstrated that the myriad impacts caused by allowing commercial lodging in the residential historic district are and will be significant. Furthermore, the conditions as proposed do not serve to minimize the significant impacts to livability and appropriate development. I once again respectfully request that the hearing officer acknowledge that these truths are demonstrated and supported by a preponderance of evidence, and I request that the hearing officer exercise their authority to deny the proposed Conditional Use Permit and requested Class 2 Land Use Adjustment.

Sincerely,

Evan West

Evan West, M.A.
466 Rural Avenue South
Salem, OR 97302

Most of the text below is from a letter submitted to Jim Brewer, on December 21, 2022, with regard to Hearing Officer Case No. CU-ADJ22-04.

The Applicant responses are in red.

To Whom It May Concern:

I was approached by the residents of the Gaiety Hill Bush Pasture Park National Historic District to provide expert testimony and guidance in my capacity as a historic preservation professional. As a neighbor, and a concerned citizen of Salem, I am honored to provide these services pro bono publico. Please see below my memorandum in summation of the legal arguments in opposition to the actions proposed in Case No. CU-ADJ22-04.

QUESTION PRESENTED

Shall a Conditional Use Permit and Class 2 Adjustment be granted to allow an existing four-bedroom single-family dwelling to be used as a short-term rental within a residential national historic district?

SHORT ANSWER

No. Under the current Salem Revised Code (SRC) there is no legal avenue for pursuit of the proposed change of use to 795 Church Street SE. Procedurally, the incorrect Type III application was filed. Even if the application type and relevant ordinance were not prohibitive, the applicant has failed to meet the burden of evidential proof required to demonstrate that the change of use would cause only minimal acceptable impact that could be minimized through the imposition of Conditions.

The Applicant followed the guidelines in SRC 511.005. Table 511-1 establishes short-term commercial lodging as a conditionally-permitted use within the RS zone.

SRC 240.005(b) confirms that a Conditional Use Permit is to be processed as a Type III application.

FACTS

The building at 795 Church Street SE is identified by the Oregon State Historic Preservation Office as an eligible/contributing (EC) resource within the Gaiety Hill/Bush's Pasture Park National Historic District. This places the building among the resources that collectively fulfill the legal requirement that a National Historic District must "possess a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development" (National Register of Historic Places Bulletin 15, 1995). The Type III application process for the proposed adaptive reuse of eligible/contributing buildings in a residential historic district is directly addressed by SRC Chapter 231. Chapter 231.

– Historic Adaptive Reuse was adopted 10/26/20 and became effective 11/26/20. The applicant has pursued a Type III application under SRC Chapter 240. – Conditional Use. This chapter requires the applicant to demonstrate that 1 - The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property (SRC 240.005(d)(3) and 2 - The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions (SRC 240.005(d)(2).

Evan West has incorrectly assumed that the Applicant has filed an incorrect application type. Referring to Table 511-1 in SRC 511.005, both the use of “Short-term commercial lodging” is specifically identified and the use of “Historic resource adaptive reuse pursuant to SRC chapter 230” is identified.

The Applicant is seeking a conditional-use permit to use the property as a short-term rental.

The purpose of SRC Chapter 230 is to allow the reuse of individually listed resources and historic-contributing buildings within historic districts in order to promote the preservation of these resources where the original use, or other allowed uses in the zone, are not otherwise feasible and a zone change would be inappropriate.

A short-term rental is an allowed use within the RS zone. SRC Chapter 230 is not applicable when considering the purpose of SRC Chapter 230.

DISCUSSION

The question presented is specifically addressed by SRC 231.005. This section requires that “No historic resource shall be reused for a use not otherwise allowed in the zone without historic resource adaptive reuse approval” SRC 231.005 (a)(1). By virtue of conditional use application, the applicant and the City of Salem have demonstrated that the nature of the intended change of use of the historic resource is not allowed outright by zoning. In deference to the doctrine of Lex specialis, the hearing officer is empowered to direct the applicant that conditional use permitting under SRC Chapter 240 is the incorrect method of application for the proposed adaptive reuse. Moreover, the relevant chapter of code identifies the proposed adaptive reuse as “short-term commercial lodging” which is specifically not permitted within residential historic districts (SRC 231.005 Table 231-1). The adoption of this ordinance on 10/26/20 also precludes any reference by the applicant to precedent established by the existing short-term rental at 725 High Street SE. Although further discussion is rendered moot by the requirements of SRC 231.005, it bears repeating that the applicant has not fulfilled the requirements of their application under SRC 240.

The applicant and the City of Salem Staff Report have submitted theoretical argument in lieu of evidence as required by ORS 197.763 (9)(b). By contrast, those who have provided written and spoken testimony in opposition have provided evidential proof that the proposed change in use will cause significantly adverse impact to the immediate neighborhood. Additionally, the major

impact caused by the proposed change of use cannot be minimized or mitigated through the imposition of conditions.

Among the many adverse effects of a proposed change in use is the damage that such a change would cause to the integrity of the National Historic District. The intrusion of commercial use, under which short-term rental is categorized by SRC 111.001, stands to fracture the continuity by plan of the historic district. The legal importance of this continuity was previously referenced in the presentation of facts. This impact cannot be minimized by conditions, and the applicant has not proposed any conditions to that end. In fact, agents of the City of Salem including the hearing officer, are directed that “a public agency shall avoid inadvertent impacts to a historic resource for which the agency is responsible” (SRC 230.082(a)). By nature of the permit in question appearing before a hearing officer, the Community Development Department has demonstrated its responsibility for the issue at hand.

A significant adverse impact to the entire Salem community is the loss of long-term housing in a city already experiencing a housing crisis. The City of Salem Housing Needs Analysis reports that 23,355 new dwelling units will need to be added over a 20-year period to address the shortage of housing for long-term residents of Salem (Salem Housing Needs Analysis and Economic Opportunity Analysis, 2015). The City Staff Report surmises that tangential city actions, including prohibiting short-term rental in multi-family units, will sufficiently minimize the impact of the loss of residential housing caused by the conditional use permit. This suppositional argument fails to address the evidential proof provided by the Housing Needs Analysis, which identifies the need for the presence of diverse housing types as vital to ending the crisis. To minimize the impact of the loss of residential housing, the applicant would be better suited to propose a commercial adaptive reuse that is allowed for by SRC 231.005 – Room and Board for Group Living (SRC 231.005 Table 231-1).

Residents of Gaiety Hill have consistently submitted evidence that the loss of long-term residence causes major disruption to the community structure, and social and cultural fabric of their neighborhood. Within the greater Gaiety Hill/Bush’s Pasture Park Historic District, the Gaiety Hill neighborhood is presently home to fewer than 50 eligible/contributing single-family residential buildings. The neighborhood is surrounded by commercial business and civic infrastructure. Residents have worked diligently to maintain the livability and functionality of their neighborhood, despite the persistent encroachment of non-residential usage and zoning. The neighbors expect their efforts to be supported by the city, as required by strategic planning priority number four “Building Great Neighborhoods.” This planning priority calls for the City of Salem to “increase the number of complete neighborhoods” that “meet residents daily needs.” (City of Salem Strategic Plan 2021-2026).

The proposed change in use causes disruption to the residents needs by damaging long-term residential stability. This disruption cannot be minimized by either the stated intention of the applicant to be a good neighbor, or by the conditions proposed. The proposal to restrict the type

of activity that the home may be rented for is oxymoronic. The nature of renting the home for purposes other than long-term residence is itself the greatest cause of adverse impact to the livability of the neighborhood.

The short-term rental is to be managed by a local property manager who will be available to respond to and address any issues that may arise when the home is being rented. Staff has also recommended that the Hearings Officer place conditions on the approval of the conditional use permit including:

- 1) Limiting the number of overall guests that may stay in the home at any one time;
- 2) Restricting the number of bookings of the home at any given time to one group of guests;
- 3) Restricting the types of activities the home may be rented for; and
- 4) Limiting the transferability of the conditional use permit another applicant or owner.

The recommended conditions of approval are consistent with the requirements applicable to accessory short-term rentals, which are allowed outright within the RS zone as a Special Use without the requirement to obtain a conditional use permit, and they ensure that the number of guests and types of activity occurring on the property will be similar to that of the surrounding residential neighborhood.

Cultural identity is perhaps best understood as it is described by the City of Salem Historic Preservation Plan. The preservation plan informs the community that “Historic buildings, structures, sites, objects, and districts are the tangible reminders of a community’s past and are the primary components of cultural identity.” The plan admonishes the reader that “historic preservation provides economic, environmental, cultural, and educational benefits to Salem by protecting those places that matter” (Salem Historic Preservation Plan 2020-2030).

To approve the conditional use permit would make the city complicit in piecemeal degradation of the integrity of the social and cultural fabric of the neighborhood, and of the residential national historic district.

CONCLUSION

The hearing officer is imbued with authority, grounds, and subsequent obligation to deny the Conditional Use Permit and the proposed Class 2 Adjustment.

Evan West, M.A.
466 Rural Avenue South
Salem, OR 97302