

TO: Hearings Officer

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

DATE: January 4, 2023

SUBJECT: **Conditional Use / Class 2 Adjustment Case No. CU-ADJ22-04 – 795 Church
St SE; Final 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 had until January 4, 2023, at 5:00 p.m. to submit final written rebuttal. The record is now closed and no more testimony or rebuttal will be accepted.

The final written rebuttal from the applicant is attached.

Attachments: A. Applicant's final rebuttal – January 3, 2022

cc: CU-ADJ22-04 file

Most of the text below is from a letter submitted to Jim Brewer, on December 28, 2022, with regard to Hearing Officer Case No. CU-ADJ22-04.

The Applicant responses are in red.

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.

It appears that Mr. West is proposing that the above-described neighborhood "sense of unity" can only be achieved when the home is occupied by a long-term tenant and that the City of Salem should have already adopted code provisions to restrict Historic Neighborhoods from being used as short-term rentals.

This is not the time nor place to discuss which code provisions have not made it into the Salem Revised Code book. We can only use the existing code provisions when reviewing this conditional use request.

The City of Salem, with a focused effort on citizen involvement, made updates to many of the codebooks. The City Council adopted the updated plan and associated changes to the Comprehensive Plan Map, zoning map, and zoning code on July 25, 2022. These changes, which resulted from the Our Salem project, became effective on August 24, 2022.

The Our Salem project would have been the appropriate venue for making changes to the existing code.

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 adaptive 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.

Mr. 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.

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