

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
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*Si necesita ayuda para comprender esta información, por favor llame
503-588-6173*

DECISION OF THE HEARINGS OFFICER

CONDITIONAL USE / CLASS 2 ADJUSTMENT CASE NO.: CU-ADJ22-04

APPLICATION NO.: 22-117577-PLN

NOTICE OF DECISION DATE: January 26, 2023

SUMMARY: Conditional Use Permit and Class 2 Adjustment to allow an existing single-family dwelling to be used as a short-term rental.

REQUEST: A consolidated application for a Conditional Use Permit and Class 2 Adjustment to allow an existing four-bedroom single-family dwelling to be used as a short-term rental.

The application includes the following:

- 1) A Conditional Use Permit to allow the use of the existing single-family dwelling as a short-term rental; and
- 2) A Class 2 Adjustment to allow the two proposed off-street parking spaces located in the existing driveway to encroach approximately seven feet into the required 12-foot special setback abutting Mission Street SE (SRC 800.040).

The subject property is approximately 6,098 square feet in size, zoned RS (Single Family Residential) within the Gaiety Hill/Bushs Pasture Park Historic District, and located at 795 Church Street SE (Marion County Assessor Map and Tax Lot Number: 073W27DB00600).

APPLICANT: Brandon Fahlman and Quinn Burke

LOCATION: 795 Church St SE, Salem OR 97301

CRITERIA: Salem Revised Code (SRC) Chapters 240.005(d) – Conditional Use; 250.005(d)(2) – Class 2 Adjustment

FINDINGS: The findings are in the attached Decision dated January 25, 2023.

DECISION: The **Hearings Officer, Planning Administrator APPROVED** Conditional Use / Class 2 Adjustment Case No. CU-ADJ22-04 subject to the following conditions of approval:

Condition 1: The number of guest rooms within the short-term rental shall be limited to three. The maximum number of occupants in the short-term rental shall not exceed six persons. For purposes of this condition of approval, children under 12 years of age do not count towards the maximum number of occupants.

Condition 2: The short-term rental shall be rented to only one group of guests at a time. Bookings of the rental by more than one group of guests at any given time is prohibited

- Condition 3:** Use of the short-term rental shall be limited to the provision of lodging. Activities other than lodging, such as events, parties, gatherings, luncheons, banquets, weddings, meetings, fundraising, or commercial or advertising activities are prohibited.
- Condition 4:** Fences or walls greater than four feet in height shall not be installed in or on the yard fronting Mission Street.
- Condition 5:** The bicycle parking spaces provided for the short-term rental use shall be developed in conformance with the applicable bicycle parking development standards included under SRC 806.060.
- Condition 6:** The existing paved area located to the east of the existing driveway between the dwelling and Mission Street SE shall be removed.
- Condition 7:** The Conditional Use Permit shall be valid only for the current applicant/owner. The Conditional Use Permit shall not run with the land and is not transferable to any other applicant or owner.
- Condition 8:** At the time of any future widening of Mission Street SE, if additional right-of-way is required to be dedicated along the Mission Street frontage of the property such that a minimum driveway depth of 20 feet cannot be maintained on the subject property:
- a) The operator will provide sufficient off-site off-street parking spaces for guests to comply with the then-existing off-street parking requirements in the Code; as needed the operator may rent or lease additional offsite, off-street spaces but may not increase the number of guest rooms to more than three; or
 - b) The number of guest rooms within the short-term rental shall be reduced from three to the number that aligns with the number of rooms supported by the remaining off-street parking space in the garage, consistent with the then-existing off-street parking requirements in the Code; and the maximum number of guests allowed shall be correspondingly reduced to two for each allowed guest room, with children under 12 years of age not counting towards the maximum number of occupants; or
 - c) The short-term rental shall be converted back to use as a single-family dwelling.

The rights granted by the attached decision must be exercised, or an extension granted, by February 14, 2025, or this approval shall be null and void.

Application Deemed Complete:	<u>November 22, 2022</u>
Public Hearing Date:	<u>December 14, 2022</u>
Notice of Decision Mailing Date:	<u>January 26, 2023</u>
Decision Effective Date:	<u>February 14, 2023</u>
State Mandate Date:	<u>March 22, 2023</u>

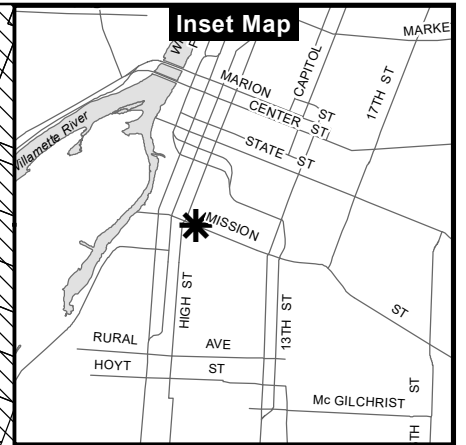
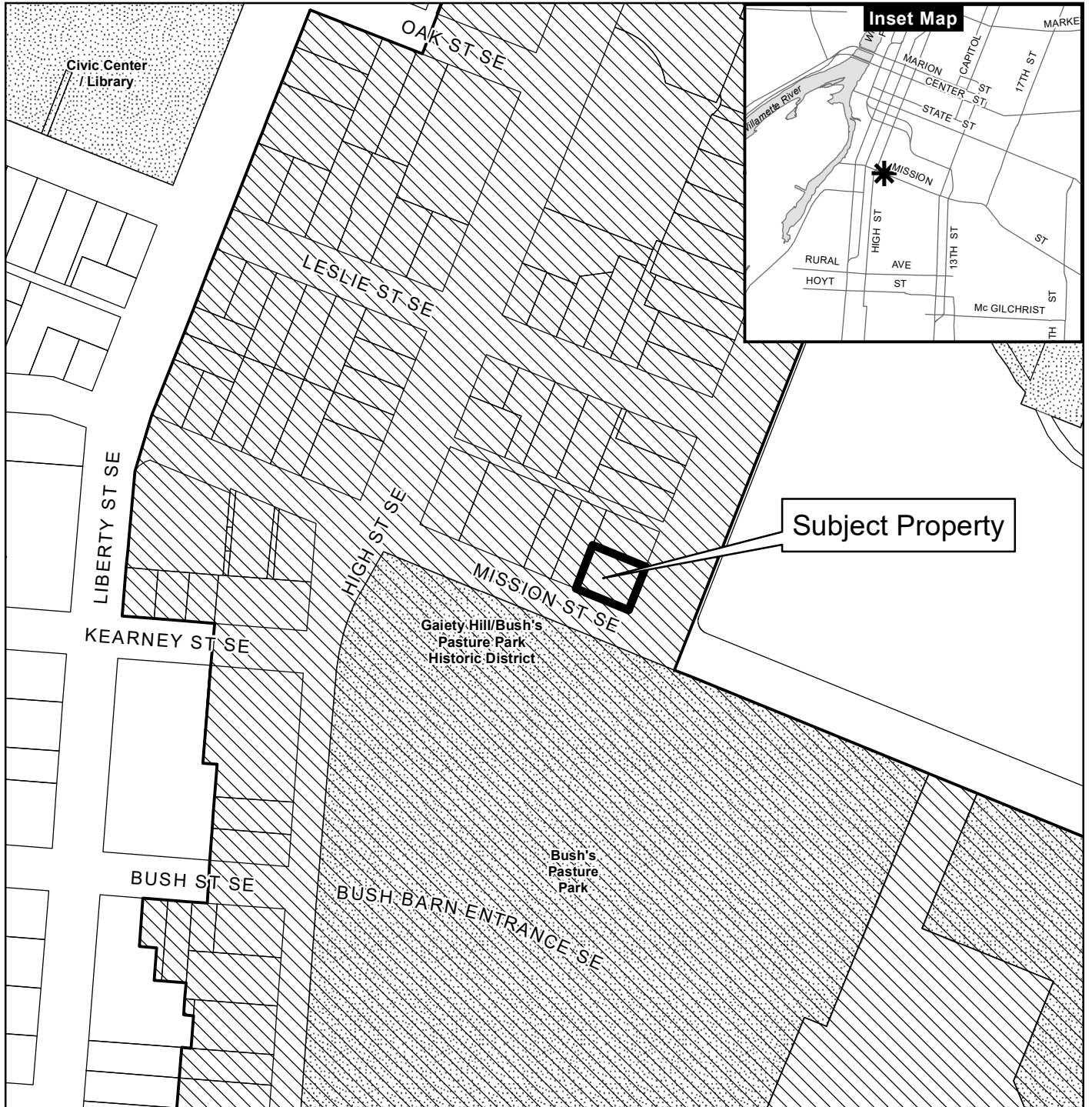
Case Manager: Bryce Bishop, bbishop@cityofsalem.net, 503-540-2399

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at planning@cityofsalem.net, no later than 5:00 p.m. Friday, February 10, 2023. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 240, 250. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

Vicinity Map 795 Church Street SE



Legend

- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools
- Parks

0 100 200 400 Feet



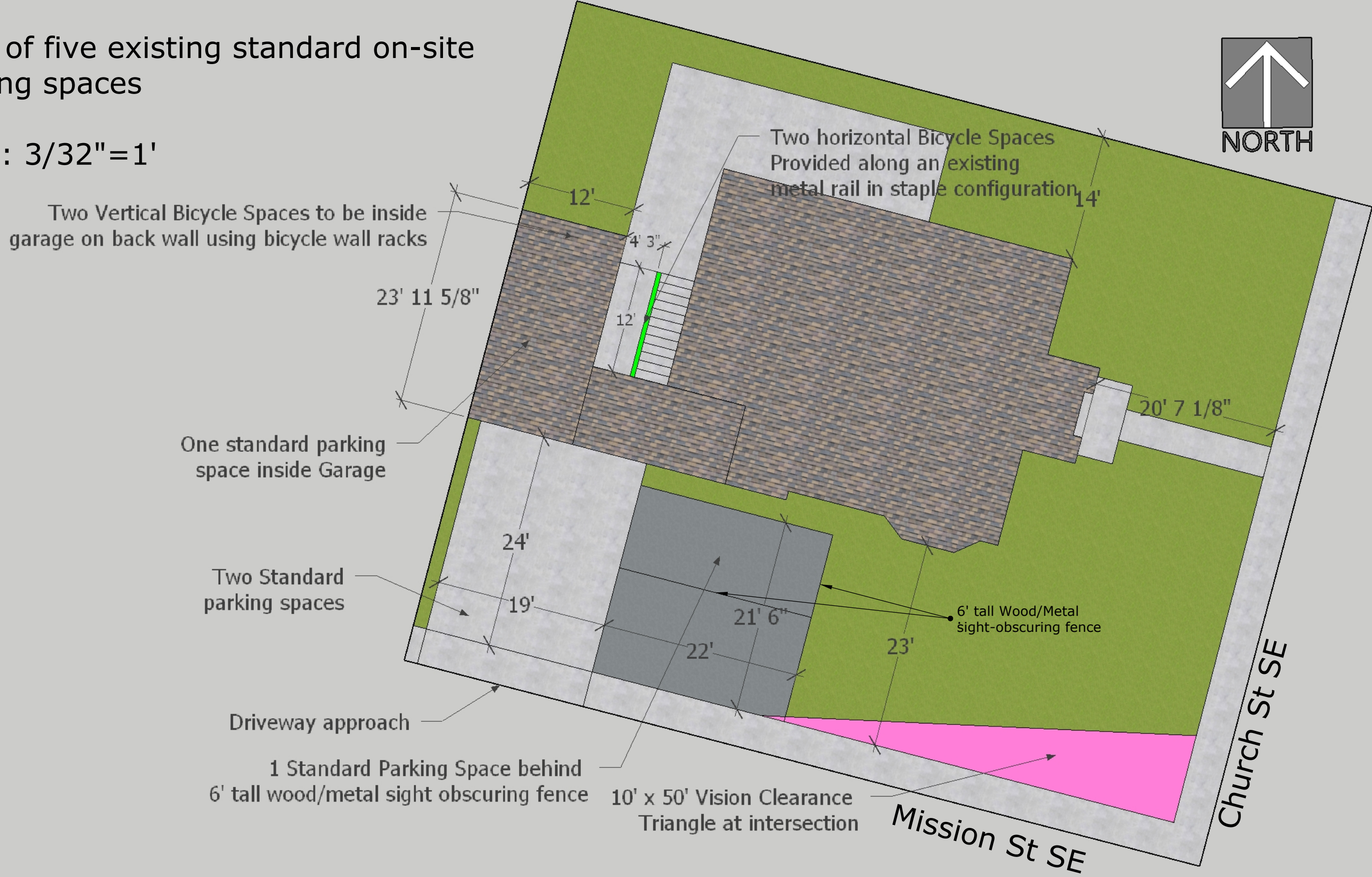
CITY OF Salem
AT YOUR SERVICE
Community Development Dept.

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Conditional Use Permit - Date: 8/17/2022, Revised on 10/28/2022
Applicants: Brandon Fahlman & Quinn Burke
Location: 795 Church St SE, Salem, OR 97301
Site Area: 6264 square feet - no protected trees or vegetation - Landscaped area: approximately 2931 square feet

Total of five existing standard on-site parking spaces

Scale: 3/32"=1'



**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

REQUEST FOR CONDITIONAL USE PERMIT
AND CLASS 2 ADJUSTMENT TO ALLOW AN
EXISTING SINGLE-FAMILY DWELLING TO
BE USED AS A SHORT-TERM RENTAL FOR
PROPERTY LOCATED AT 795 CHURCH ST
SE, SALEM OR 97301

CASE NO. CU-ADJ22-04

FINDINGS OF FACT, CONCLUSIONS, AND
DECISION

DATE AND PLACE OF HEARING:

The Hearings Officer held a properly noticed public hearing remotely on December 14, 2022.

APPEARANCES:

Staff: Bryce Bishop, Planner III

Neighborhood Association: Evan West, in person, with additional written testimony provided December 20, 2022

Proponents: Brandon Fahlman, Owner & Applicant

Opponents: Carlene Benson, in person, additional written testimony provided December 19, 2022;
Mary Anne Spradlin, in person, additional written testimony provided December 21, 2022;
William Vagt, in person, additional written testimony provided December 16, 2022;
Jacque Heavy, in person, additional written testimony provided December 20, 2022;
Patricia Deminna, in person, additional written testimony provided December 19, 2022;
Wally Benson, in person, additional written testimony provided December 18, 2022;

Mary Fitzpatrick, in person, additional written testimony provided December 21, 2022;
Irene Longaker, written testimony provided December 20, 2022;
Cheryl Randall, written testimony provided December 20, 2022;
Matthew Stevenson, written testimony provided December 20, 2022;
Bret Wilcox, written testimony provided December 20, 2022;
Jon Christenson, written testimony provided December 21, 2022;
Andrea Foust, written testimony provided December 21, 2022;
Leonard Kelly, written testimony provided December 21, 2022;
Kristi Kurtz, written testimony provided December 21, 2022;
Kindra Mingo, written testimony provided December 21, 2022;
Carol Mitchell, written testimony provided December 21, 2022;
Sylvia Strand, written testimony provided December 21, 2022;
John Van Dreal, written testimony provided December 21, 2022;
Brittany Vollmar, written testimony provided December 21, 2022;
Stephen Wood, written testimony provided December 21, 2022.

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

In this decision, many of the facts that follow, related to the background of this application, the nature of the application, the subject property's Salem Area Comprehensive Plan designation, and zoning, as well as the site analysis and public and private agency review are uncontroverted. The Hearings Officer takes them from the Staff report without substantive change. The Hearings Officer generally follows the format of the staff report in writing this decision.

On August 25, 2022, Brandon Fahlman, on behalf of the applicant and property owners, Brandon Fahlman, Quinn Burke, Whitney Fahlman, and Katelyn Burke, filed an application for a Conditional Use Permit to allow the existing four-bedroom single family dwelling located at 795 Church Street SE to be used as a short-term rental.

Subsequent to staff's initial review of the application for completeness and identification of additional information that was needed in order to continue processing

the application, an additional application for a Class 2 Adjustment was filed in order to allow the two proposed off-street parking spaces located in the existing driveway to encroach approximately seven feet into the required 12-foot special setback abutting Mission Street SE.

Because both a Conditional Use Permit and Class 2 Adjustment are required in connection with the proposal, the applicant, pursuant to SRC 300.120(c), chose to consolidate the applications and process them together as one. When multiple applications are consolidated, the review process for the consolidated application is required to follow the highest numbered procedure type required for the land use applications involved, and the Review Authority for the application shall be the highest applicable Review Authority under the highest numbered procedure type.

Based on these requirements, the Hearings Officer is required to review the proposed consolidated application, and that review is through a Type III procedure.

After additional requested information was provided by the applicant, the staff deemed the application complete for processing on November 22, 2022 and notice of the public hearing on the proposal was subsequently sent, consistent with SRC requirements, on November 23, 2022. Notice was also posted on the subject property by the applicant's representative, consistent with SRC requirements, on December 1, 2022.

The public hearing on the Conditional Use Permit and Class 2 Adjustment was held on December 14, 2022. In response to a request and consistent with state law for quasi-judicial land use hearings, the record was held open until December 21, 2022, for any party to provide additional written testimony or documents. The following one-week period, until December 28, 2022, allowed rebuttal of any new testimony or document. Finally, the applicant reserved the right to a final one-week period, until January 5, 2023 to provide a final written argument. The participants and applicant provided additional testimony, rebuttal and a final written argument as set out under appearances, above. The state-mandated 120-day local decision deadline for the application is March 22, 2023.

PROPOSAL

The application under review by the Hearings Officer is a consolidated Conditional Use and Class 2 Adjustment for property located at 795 Church Street SE.

The Hearings Officer notes that the RS zone requires a Conditional Use Permit to allow the existing four-bedroom single family dwelling to be used as a non-owner-occupied short-term rental and the applicant has requested a Class 2 Adjustment to allow the two proposed off-street parking spaces located in the existing driveway to encroach approximately seven feet into the required 12-foot special setback abutting Mission Street SE.

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FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP)

The subject property at 795 Church Street SE is designated “Single Family Residential” on the Salem Area Comprehensive Plan map and is located within the Urban Growth Boundary and the City’s Urban Service Area.

2. Zoning

The subject property is zoned RS (Single Family Residential) and is located within the Gaiety Hill/Bush’s Pasture Park Historic District. The zoning of surrounding properties is as follows:

Zoning of Surrounding Properties	
North	RS (Single Family Residential) within the Gaiety Hill/Bush’s Pasture Park Historic District
South	Across Mission Street SE, PA (Public Amusement) within the Gaiety Hill/Bush’s Pasture Park Historic District
East	Across Church Street SE - PE (Public and Private Educational Services)
West	RS (Single Family Residential) within the Gaiety Hill/Bush’s Pasture Park Historic District

3. Site Analysis

The subject property at 795 Church Street SE is a single lot of approximately 0.14 acres (*6,098 square feet*) and located within the Gaiety Hill/Bush’s Pasture Park Historic District. The property is improved with a 2,713 square-foot, four-bedroom, two-story house with a 1,320 square-foot basement and is listed as a historic contributing resource within the Historic District. The site also includes an existing single car garage, and a driveway which connects to Mission Street SE.

Existing uses to the north and west of the subject property include single family homes within the Historic District. To the east of the property, across Church Street, is land owned by Salem Health that is developed with a rehabilitation center and playground. To the south of the property, across Mission Street, is Bush’s Pasture Park.

A. Circulation & Access:

The subject property is a corner lot that abuts Church Street SE along its eastern boundary and Mission Street SE along its southern boundary. Vehicular access to the property is provided by an existing driveway onto Mission Street.

Church Street is designated as a collector street under the City's Transportation System Plan (TSP) which requires a minimum right-of-way width of 60 feet. The existing right-of-way width of Church Street is 99 feet and therefore exceeds minimum right-of-way width requirements.

Mission Street is designated as a minor arterial street under the TSP requiring a minimum right-of-way width of 72 feet. The existing right-of-way width of Mission Street along the frontage of the property is 60 feet, which does not satisfy minimum right-of-way width requirements. Pursuant to SRC 800.040, when the required public street right-of-way along the frontage of a property is not met, a special setback applies along the property's street frontage to reserve land for the eventual widening of the street without creating nonconforming structures.

Because the Mission Street right-of-way does not currently meet the minimum required 72-foot width under the TSP, a special setback of 12 feet applies along the property's Mission Street frontage. No structures or paving are allowed within the special setback area, other than those allowed under SRC 800.040(d). Any other setback required by other provisions of the City's development code apply in addition to the special setback and are therefore measured from the special setback line.

As shown on the site plan submitted by the applicant, the proposal is for the short-term rental to include two of its required off-street parking spaces in the existing driveway off Mission Street. Due to the 12-foot special setback applicable along Mission Street, the southern approximately seven feet of these two spaces will encroach into the required special setback area. Pursuant to SRC 800.040(d)(4), only off-street parking, other than minimum required off-street parking, is allowed within a special setback with a removal agreement. Because the two spaces within the existing driveway that encroach into the special setback are required to meet part of the proposed short-term rental's minimum off-street parking requirement, they cannot be within the special setback without an adjustment. The applicant has therefore requested a Class 2 Adjustment in conjunction with the Conditional Use Permit to allow the two off-street parking spaces to encroach into the special setback. Analysis of the Class 2 Adjustment request and findings demonstrating conformance with the Class 2 Adjustment approval criteria are included in Section 8 of this decision.

B. Natural Features:

Trees: The City's tree preservation ordinance (SRC Chapter 808) protects Heritage Trees, Significant Trees (including Oregon White Oaks with diameter-at-breast-height (*dbh*) of 20 inches or greater and any other tree with a *dbh* of 30 inches or greater, with the exception of tree of heaven, empress tree, black cottonwood, and black locust), trees and native vegetation in riparian corridors, and trees on lots and parcels 20,000 square feet or greater. The tree preservation ordinance defines "tree" as, "any living woody plant that grows to 15 feet or more in height, typically with one main stem called a trunk, which is 10 inches or more *dbh*, and possesses an upright arrangement of branches and leaves."

No trees have been identified for removal by the applicant as part of this Conditional Use Permit and Class 2 Adjustment application. Any removal of trees from the property must comply with the requirements of the City's tree preservation ordinance (SRC Chapter 808).

Wetlands: Grading and construction activities within jurisdictional waters of the state are regulated by the Oregon Department of State Lands (DSL) and U.S. Army Corps of Engineers. State and federal wetlands laws are also administered by DSL and the Army Corps of Engineers, and potential impacts to jurisdictional wetlands are addressed through application and enforcement of appropriate mitigation measures.

The Salem-Keizer Local Wetlands Inventory (LWI) does not identify any mapped wetlands or waterways as being present on the subject property. The property also does not contain any hydric or wetlands-type soils and no grading activities are planned. As such, no impacts to wetlands or required mitigation measures are required in conjunction with the proposal.

Landslide Hazards: The topography of the subject property is flat. According to the City's adopted landslide hazard susceptibility maps, the subject property does, however, contain an area of two mapped landslide hazard susceptibility points. Pursuant to the City's landslide hazard ordinance (SRC Chapter 810), because no regulated development activity is proposed on the site, a geologic assessment is not required in conjunction with the proposal.

4. Public and Private Agency Review.

Notice of the proposal was provided to City Departments, public agencies, and to public & private service providers. The following comments were received:

- A. The City of Salem Building and Safety Division reviewed the proposal and indicated no objections.
- B. The City of Salem Public Works Department reviewed the proposal and indicated no objections.

5. Neighborhood Association and Public Comments

The subject property is located within the boundaries of the South Central Association of Neighbors (SCAN) neighborhood association.

Neighborhood Association Contact. SRC 300.310 requires an applicant to contact the neighborhood association(s) whose boundaries include, and are adjacent to, property subject to specific land use application requests. Pursuant to SRC 300.310(b)(1), Conditional Use Permit applications require neighborhood association contact. On August 17, 2022, the applicant contacted the SCAN Neighborhood Association to provide details about the proposal, which satisfies the requirements of SRC 300.310.

Neighborhood Association Comments

Notice of the application was provided to the neighborhood association pursuant to SRC 300.620(b)(2)(B)(vii), which requires notice to be sent to any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property. Comments were received from the SCAN neighborhood association.

The comments received from the neighborhood association indicate, in summary, that the SCAN Board voted unanimously to request that the Hearings Officer deny the conditional use permit for the proposed short-term rental of 795 Church Street SE because the proposal does not meet approval criterion SRC 240.005(d)(3), which requires the Hearings Officer to find that the proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property, and because of approval criterion SRC 240.005(d)(2), which requires the Hearings Officer to find that the reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions of approval.

The neighborhood association indicates that approval criterion SRC 240.005(d)(3) is not met due to the following:

- A. National Historic District. The neighborhood association explains, in summary, that the proposed short-term rental use is a commercialization of a single family residence which conflicts with both 1) the expressed goal in the establishment of the residential Gaiety Hill/Bush's Pasture Park National Historic District, which is to provide the district with a front line of defense against commercial encroachment; and 2) one of the primary intended benefits associated with the original National Register nomination which is to help stabilize the neighborhood and stimulate increased owner occupancy by making it a more distinct and desirable place to live. As such, the neighborhood association this is the reason that when the Historic District was established, commercial uses were specifically and intentionally excluded.

The neighborhood association indicates that Gaiety Hill residents oppose the short-term rental because the commercialization of the property as a vacation short-term rental will not help to stabilize the neighborhood and will undermine Gaiety Hill as a distinct and desirable place to live.

In addition, the neighborhood association also expresses broader concerns about the impacts of short-term rentals on housing supply. The neighborhood association indicates that short-term rentals have been found to not broadly be in the public interest of cities due their influence in contributing to increased rental costs and decreased availability of affordable housing and standard long-term rental units in the marketplace.

- B. Livability. The neighborhood association indicates, in summary, that short-term rentals are classified as commercial lodging and therefore cannot be found to be reasonably

compatible with and have minimal impact on the livability or appropriate development of surrounding residential property. The Hearings Officer notes that SRC 110.080 provides rules of construction that must be used in interpreting the Unified Development Code. This provision adopts the general rules of construction adopted by Oregon courts, requires that interpretations do not insert what has been omitted or omit what has been inserted, do give effect to all provisions, where possible, and gives great weight to prior interpretations of the same or related provisions. The Hearings Officer notes that the City Council's decision to allow short-term rentals as conditional uses within the RS Zone must mean that at least some short-term rentals (properly conditioned) could be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding residential property. The question before the Hearings Officer is whether this particular application can satisfy the criteria or be conditioned in such a manner that it meets the criteria. Related to this question is how the Historic District should be viewed in considering the adverse impacts of the use on the immediate neighborhood or in considering livability for purposes of the Conditional Use permit.

The neighborhood association explains that livability must be measured by the functionality of a neighborhood. Short-term renters come and go in quick succession without any involvement in the residential neighborhood. People living, sleeping, and eating in a house for a few days do not make neighbors. A single-family neighborhood of long-term owners and renters develops as a social and security network of neighbors helping neighbors and neighbors watching out for each other's children and property. The neighborhood association explains that neighbors do not speed in their own neighborhood, they volunteer to keep the streets and nearby parks clean, and help the less-able maintain their property. As a result, neighborhoods become safer, friendlier, and more well-kept, which benefits all of the residents.

The neighborhood association indicates that every home converted to a short-term rental takes away a home for a neighbor and potentially active community member; thereby eroding the ability of the neighborhood to serve those functions and causing the livability of the neighborhood to decline. The neighborhood association explains that short-term renters are not neighbors, and an empty house in between short-term renters also is detrimental to a neighborhood. It is indicated that the loss of even one long-term neighbor impact the Gaiety Hill neighborhood because it is a small, geographically defined neighborhood surrounded by commercial, public health, and public use zones. The Hearings Officer agrees that short-term renters have a different relationship with a neighborhood than longer term residents. On the other hand, the Hearing Officer also notes that the owners of the subject property, while using the property for short-term rentals, could establish good neighbor relationships with the neighborhood that are positive and possibly better than the relationship the neighborhood might have with some long-term residents.

The neighborhood association indicates that approval criterion SRC 240.005(d)(2) is not met because although the four conditions proposed by the applicant are helpful,

they are not sufficient to minimize the adverse impacts on the neighborhood because the very nature of short-term rentals commercializes the neighborhood, undermines its stability, and, as a commercial use, is not allowed in the historic district. The Hearings Officer observes that this particular commercial use is allowed if the Conditional Use criteria can be met and if conditions of approval can minimize the reasonably likely adverse impacts of the use. The Hearings Officer notes that crafting conditions of approval that minimize the likely adverse impacts of bad behavior on the part of short-term renters seems challenging to enforce, as short-term stays would likely be ended before enforcement could take place. Consequently, conditions would need to be crafted in a way that enforcement would be an issue for the owner or manager of the property.

As identified in Sections 7 and 8 of the staff decision, the staff concluded that the requested Conditional Use Permit and Class 2 Adjustment satisfy the applicable approval criteria. As explained below, the Hearings Officer finds that as drafted, the conditions of approval proposed to satisfy the criteria for the Conditional Use Permit are not sufficient to minimize the reasonably likely adverse impacts on the neighborhood. The Hearings Officer concludes that amending the conditions is necessary for approval of the Conditional Use Permit.

In regard to the issues raised concerning neighborhood livability and the commercialization of an existing single-family dwelling, staff suggests that while the proposed short-term rental is not a residential use where individuals reside on the property as their primary place of living, it has some functions that are similar to a residential use. The Hearings Officer understands the staff comments are relevant to this decision because they provide legislative history about why the council allows conditional approval of a short-term rental use in the RS zone, notwithstanding the commercial nature of that use. The Hearings Officer does not view these comments as being particularly determinative about the use, which is not an outright permitted use. The conditional use permit review process applicable to the approval of short-term rentals requires the placement of conditions on the use as necessary to mitigate potential impacts on the immediate neighborhood and to ensure the use will be reasonably compatible with and have minimal impact on the livability and appropriate development of surrounding property. The Hearings Officer notes that the question of what level of compatibility is “reasonable” enough, and how minimal the impact on livability needs to be, are important questions for determining whether the application under review satisfies the criteria and can be approved with or without conditions of approval.

The Hearings Officer notes that the staff decision recites that both applicants for the proposal are local area residents who will be self-managing the property and will be available to respond to and address any issues that may arise when the house is being rented. The Hearings Officer understands that the applicants and staff, in good faith, anticipate that local area owners managing the property would be more responsive to neighborhood concerns than absentee owners or property managers with less local

connection. While the Hearings Officer appreciates the thinking behind this discussion, and believes the applicant's statement to be sincere, the Hearings Officer notes that there are no guarantees that the owners and managers will remain in the local area for the duration of their ownership of the property, or that local owners and managers, however well intentioned, will be any more or less responsive than absentee owners or managers located elsewhere. The Hearings Officer notes that the SRC makes a clear distinction between short-term rentals, which require a conditional use permit in the RS zone and Accessory short-term rentals, which are allowed as a Special Use in the RS zone. The distinction is based in part on the presence of owners or long-term renters still residing in the home while the rental occurs. The Hearings Officer notes that imposing a condition of approval requiring local management or the owners to remain as residents of Salem or even of Oregon would not necessarily address concerns about the reasonably likely negative impacts of short-term tenants on the immediate neighborhood because a local manager or owner could be either active or passive and could be either a good neighbor or a bad neighbor. In addition, the Hearings Officer concludes that imposing a condition of approval requiring management of the property to be local and responsive to neighborhood complaints would not address this issue, as such a condition seems so vague as to be unenforceable.

The Hearings Officer notes the recommended conditions of approval for this conditional use permit are generally intended to:

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

The Hearings Officer notes that the recommended conditions of approval are somewhat 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 staff has explained that the conditions are intended to ensure that the number of guests and types of activity occurring on the property will be similar to that of the surrounding residential neighborhood. However, the Hearings Officer is not satisfied that as proposed, the proposed limit on the total number of guests (particularly with the attendant parking requirement) sufficiently addresses the related impacts to the property and the Gaiety Hill/Bush's Pasture Park Historic District and the general livability in the immediate neighborhood.

Regarding the issues raised concerning the impact of the proposed use on the Gaiety Hill/Bush's Pasture Park Historic District, the Hearings Officer agrees with staff that the proposed short-term rental use is not a prohibited use due to its location within the historic district. As indicated in the staff decision and adopted by this decision, the subject property is zoned RS (Single Family Residential) and is located within the Gaiety

Hill/Bush's Pasture Park Historic District. As such, the use and development of the property is subject to the applicable requirements of the RS zone (SRC Chapter 511) and the City's Historic Preservation ordinance (SRC Chapter 230).

The RS zone, pursuant to SRC 511.005 – Table 511-1, establishes the allowed uses within the zone. The RS zone also establishes the basic development standards applicable to development within the zone, such as lot standards, required building and accessory structure setbacks, lot coverage requirements, and maximum building and accessory structure heights. The City's Historic Preservation ordinance establishes the historic design review process that applies to new construction and exterior alterations/additions to existing designated historic resources. Compared to the underlying zone, the Historic Preservation ordinance does not identify lists of uses that are allowed or prohibited within historic districts. Instead, the historic design review standards regulate physical additions and alternations to properties within the district in a way that ensures consistency and compatibility with the established historic character of the district. The Hearings Officer agrees with staff that the question of which specific uses are allowed in a Residential Historic District is established by the underlying zone. The Hearings Officer notes that SRC Chapter 231, dealing with Historic Adaptive Reuse, includes Table 231-1, which is titled "Uses Within Residential Historic Districts and Individually Listed Resources in Residential Zones." Table 231-1 lists Uses allowed inside Historic Districts and excludes short-term rentals (and most other commercial uses). Taken out of context, Table 231-1 could reasonably be read as prohibiting the proposed short-term rental use within all Residential Historic Districts. The Hearings Officer notes, however, that SRC 231.005(a) expressly establishes the circumstances under which the provisions of SRC Chapter 231 apply. SRC 231.005(a)(1) is clear that the Historic Resource adaptive reuse provisions, including whatever limitations are placed on a proposed adaptive reuse of resources within Residential Historic Districts, apply only if the request is for a historic resource to be converted to a use "not otherwise allowed in the zone. . ." As explained above, the RS zone specifically allows short-term rentals as a conditional use. Consistent with the staff recommendation, the Hearings Officer also finds that nothing in the SRC expressly prohibits short-term rentals within Residential Historic Districts. Accordingly, the Hearings Officer finds that if the underlying zone for a Residential Historic District is RS (Single Family Residential), which in turn allows short-term rentals as a conditional use, the short-term rental use is allowed in the Residential Historic District assuming a conditional use application is approved. The Hearings Officer notes, however, that the Residential Historic District is certainly part of the context for considering the facts, standards, and criteria for the Condition Use. Whether a particular conditional use proposal can be approved depends entirely on whether that proposal can satisfy the conditional use criteria.

As identified in the application materials and the staff report, the existing house is proposed to be used as a short-term rental and no alterations or additions to the house or expansions to the existing paved area on the site are proposed; and no changes to the property have been identified that would accommodate the use but preclude the use of

the house from being used again as a single family residence-- if, at some point in the future, the dwelling is no longer used for short-term rentals. The Hearings Officer finds that although a short-term rental is classified as a commercial lodging use, the property including the house is required to maintain its residential appearance so that it continues to conform to the rest of the historic district.

The Hearings Officer notes that the proposed conditions would require prohibiting the transferability of the conditional use permit to another applicant or owner. If the subject property is later sold by the current owners, any new owner who intends to use the property as a short-term rental would be required to receive approval of a new Conditional Use Permit and go through the Conditional Use Permit approval process.

The Hearings Officer notes the concerns about the impact of the proposed use on the City's residential housing supply. The Hearings Officer agrees with staff that the City has made a number of amendments to the City's development code to remove barriers and provide incentives for the development of needed housing. But the Hearings Officer doesn't necessarily see those amendments as being instructive in this case. The proposal for the subject property would conditionally allow a short-term rental within a single-family dwelling, which the Hearings Officer already has found to be consistent with the City's development code. The Hearings Officer agrees with staff that any impact this conversion would have on the City's overall housing supply might not be discernable. But the Hearings Officer acknowledges that the City's overall efforts to address Housing needs don't directly address the concern that removing this particular house from the City's housing supply by converting it to a commercial use would remove one of the relatively small number of residences within this particular residential historic district. Viewed from the perspective of the size of this particular residential historic district, each conversion of a house from a residential home to a short-term rental is a discernable reduction of the overall supply of residences. The Hearings Officer finds that this is a relevant concern related to the criteria for the proposed Conditional Use.

Public Comments

In addition to providing notice to the neighborhood association, notice was also provided, pursuant to SRC 300.620(b)(2)(B)(ii), (iii), (viii), & (ix), to property owners and tenants within 250 feet of the subject property. As of the date of completion of the staff decision, comments from 28 area property owners were submitted. The comments received express concerns and opposition to the proposal which the staff report summarizes as falling into the following main categories:

- A. Impact on residential character of neighborhood and residential historic district. Comments submitted express concerns about the conversion of this existing single family historic house with the Gaiety Hill/Bush's Pasture Park Historic District into a commercial use to accommodate a non-owner- occupied short-term rental and the negative effects this conversion would have on the character of the surrounding

neighborhood and the Historic District; thereby precluding the proposed use from conforming with the applicable conditional use permit and class 2 adjustment approval criteria. Public comments raise specific concerns regarding the proposal and its potential impacts on the neighborhood and Historic District include the following:

- The potential for absentee/out-of-state or long-distance landlords to be non-responsive, the property not being adequately monitored and maintained, and the associated impact on the quality of the neighborhood;
- The use of the property as a short-term rental will remove one more family home from the neighborhood and replace it with short-term renters who won't be involved, or have a vested interest, in the neighborhood. Unlike homeowners or tenants in a long-term rental, there is no chance to develop a relationship or to work out problems with renters in a short-term rental. It is the people who live in the neighborhood that keep the historic district sound and viable;
- The Gaiety Hill/Bush's Pasture Park Historic District was put in place to preserve the Gaiety Hill neighborhood and protect Bush Park. The neighborhood and park and valuable assets to the City and are vulnerable to development that would be detrimental to the character of the neighborhood and park. Allowing the short-term rental and non-residents will reduce the quality and desirability, and undermine the integrity, of the neighborhood.
- The removal of housing stock from the neighborhood and the potential for rising rents.
- Allowing a contributing historic resource within the Gaiety Hill/Bush's Pasture Park Historic District to be used as a non-owner-occupied short-term rental subverts the policies and guidance set forth in the Salem Area Comprehensive Policies Plan and the purpose of the City's Historic Preservation ordinance (SRC Chapter 230).

Hearings Officer Response: While the proposed short-term rental is not a residential use where individuals reside on the property as their primary place of living, this proposed change of use would not necessarily be evident to passersby, visitors, or other residents of the Historic District. The change in use does not require any alteration to the structure of the house. However, because short-term rentals are not required to be owner-occupied, they must go through the conditional use review process and obtain a conditional use permit. The conditional use permit review process is intended to provide neighboring property owners with an ability to provide comments and identify additional conditions of approval to help the use conform to the character of a particular area and minimize potential impacts. As discussed later in this decision, the Hearings Officer will impose conditions of approval to limit the maximum number of guests allowed in the rental, the type of activities the rental may be used for, and the number of bookings that may be made at any one time. These conditions help to ensure that the number of guests within the dwelling and the types of activities occurring the property will be consistent with that of other single-family dwellings in the neighborhood and therefore ensure the compatibility of the use and the preservation of livability for surrounding properties.

The proposed use also conforms to the applicable policies of the Salem Area Comprehensive Plan concerning the preservation of historic properties and is consistent with the purpose of the City's Historic Preservation ordinance (SRC Chapter 230). Though the proposed use is not residential in nature because it's being operated for the commercial purpose of renting rooms on a short-term basis to individuals, the proposed use requires no alterations to the dwelling that would preclude it from being used as a single family home in the future, and any changes to the exterior will be subject to the requirements of Historic Design Review to ensure the appearance of the structure is maintained as a contributing historic resource within the Gaiety Hill/Bush's Pasture Park Historic District and the property remains consistent with the development pattern of surrounding properties.

- B. Parking Impacts. Comments received prior to the staff report express concerns about the potential parking impacts of the proposed use and that the proposed five off-street parking spaces are too many. The house currently includes three off-street parking spaces, one in the garage and two in the driveway.

Hearings Officer Response: The minimum off-street parking requirement for short-term rentals, established under SRC 806.015(a), Table 806-1, is one space per guest room or suite. Because there are four bedrooms within the house, the proposal includes a minimum of four off-street parking spaces, required for the rental of each of these rooms. As identified on the site plan submitted by the applicant, a total of four off-street parking spaces are proposed in conformance with the minimum off-street parking requirements of SRC Chapter 806. One of the required spaces would remain within the existing garage, two spaces would be located in the existing driveway, and the fourth space is proposed to be located within the side yard of the lot between the house and Mission Street inside of a proposed new screened parking area. The Hearings Officer is not persuaded that the proposal to rent four bedrooms, requiring four parking spaces and a new screened parking area satisfies the criteria for the conditional use. As explained more fully below, the Hearings Officer finds that the proposed short-term rental use must reduce the number of rental rooms and the number of occupants of the short-term rental to satisfy the criteria.

As indicated in the staff report because the right-of-way of Mission Street does not currently meet the minimum required 72-foot width under the TSP, a special setback of 12 feet applies along the property's Mission Street frontage. Within the special setback area no structures or paving are allowed, other than those allowed under SRC 800.040(d).

As shown on the applicant's site plan, two of the required off-street parking spaces are proposed to be located in the existing driveway off Mission Street. Due to the 12-foot special setback applicable along the street, the southern approximately seven feet of these two spaces will encroach into the required special setback area. Pursuant to SRC 800.040(d)(4), only off-street parking, other than minimum required off-street parking, is allowed within a special setback with a removal agreement. Because the two spaces

within the existing driveway that encroach into the special setback are required to meet part of the proposed short-term rental's minimum off-street parking requirement, they cannot be within the special setback without an adjustment. The applicant has requested a Class 2 Adjustment in conjunction with the Conditional Use Permit to allow the two off-street parking spaces in the existing driveway to encroach into the special setback. Analysis of the Class 2 Adjustment request and findings demonstrating conformance with the Class 2 Adjustment approval criteria are included in Section 8 of the staff report.

With the approval of the requested adjustment there will be a total of three off-street parking spaces to serve the proposed use; which will satisfy the applicable minimum off-street parking requirements of the code if the number of rooms for rent is reduced to three.

- C. Impact on housing supply. Comments received express concern regarding the impacts the proposed use will have on the City's housing supply as a result of the existing single family dwelling being converted to a commercial business.

Hearings Officer Response: As previously indicated in this decision, a number of amendments have been made to the City's development code to remove barriers and provide incentives for the development of needed housing. In addition, the original amendments to the code in 2017 to allow short-term and accessory short-term rentals specifically limited short-term rentals to being located within single family dwelling units or condominium units in order to minimize the impacts the use may have on the City's housing supply. The proposed short-term rental will be located within a single-family dwelling consistent with the intent and requirements of the City's development code and any impact this conversion may have on the City's overall housing supply will not be discernable. The Hearings Officer does note that viewed from the perspective of the amount of housing within this particular Residential Historic District, the impact this conversion has on the supply of housing requires consideration.

- D. Precedent of previous Conditional Use Permit approval for 725 High Street. Comments received indicate that the previous approval of the Conditional Use Permit to allow the single-family dwelling at 725 High Street SE to be used as a short-term rental was characterized by staff as a "good experiment to see where it goes" and, as such, the approval represented an arbitrary and capricious experiment that has now set a precedent for future non-owner-occupied rentals.

Hearings Officer Response: The Conditional Use Permit approved in 2018 (Case No. CU-ADJ18-07) allowing the single-family dwelling at 725 High Street SE to be used as a short-term rental was not arbitrary, capricious nor was it an experiment or a binding precedent for future non-owner-occupied rentals. Like all quasi-judicial land use applications, CU-ADJ18-07 was submitted, reviewed, and approved by applying the standards and criteria of the Salem Revised Code to the facts of the case. The application for CU-ADJ18-07 was reviewed and approved by the Hearings Officer who

made that decision through a public hearing process. That Hearings Officer's decision was later called up for review by the City Council, which did not overturn the decision.

This application, as was the case with CU-ADJ18-07, is made under the applicable standards and criteria of the Salem Revised Code at the time of the application and is reviewed by applying the relevant standards and criteria to the specific facts of this case. Because each piece of real property is unique, the facts of each case differ, so even when applying identical standards and criteria in the same manner for each application, can lead to different results for different properties, so "precedence" in the technical sense isn't a factor in the decision. Consistent application of the standards and criteria to the facts should result in similar results for similar properties, but distinct factual considerations are likely to lead to different results. The exception is when a decision includes an express interpretation of language in the code. Even then, while the Hearings Officer must give a prior interpretation considerable weight under the terms of SRC 110.080, the Hearings Officer is still required to independently consider the plain meaning of the text, in context (which includes legislative history provided by the parties). The Hearings Officer may only apply general maxims of statutory construction if an ambiguity in the language remains after viewing the plain meaning of the text in context. Precedence would then apply to the interpretation of the meaning of the ambiguous text of the standards or criterion, but even then, factual distinctions between properties could lead to different results when the standards and criteria are applied. In summary, the Hearings Officer concludes that "precedence" in the technical legal sense is unlikely to be a determining factor in this particular decision.

Homeowners Association

The subject property is not located within a Homeowners Association.

6. ANALYSIS OF CONDITIONAL USE PERMIT APPROVAL CRITERIA

SRC Chapter 240.005(a)(1) provides that no building, structure, or land shall be used or developed for any use which is designated as a conditional use in the UDC unless a conditional use permit has been granted pursuant to this Chapter.

Salem Revised Code (SRC) 240.005(d) sets out the following criteria that an application must meet for a Conditional Use Permit to be granted. The following discussion is organized with approval criteria shown in ***bold italic***, followed by analysis evaluating the proposal's conformance with the criteria, including findings of fact and conclusions of law. If a proposal does not comply with the following criteria the Hearings Officer has grounds to deny the Conditional Use Permit application, or the Hearings Officer may impose conditions to ensure the criteria are met.

SRC 240.005(d)(1): The proposed use is allowed as a conditional use in the zone.

The Hearings Officer notes that the subject property at 795 Church Street SE is zoned RS (Single Family Residential). The Hearings Officer notes that within the RS zone, short-term rentals are expressly allowed as a conditional use pursuant to SRC 511.005(a), Table 511-1. The Hearings Officer notes that the subject property is located within the Gaiety Hill/Bush's Pasture Park Historic District, but the Hearings Officer notes that the Residential Historic District does not impose additional restraints on use of the property except as are already part of the Conditional Use review. The Hearings Officer finds that because the short-term rental use is expressly identified as an allowed conditional use within the RS zone, the application satisfies this criterion.

SRC 240.005(d)(2): The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.

The Hearing Officer notes that the applicant proposes four conditions of approval intended to minimize the reasonably likely adverse impacts of the use on the immediate neighborhood. The proposed conditions include limiting the maximum number of occupants within the short-term rental; restricting the rental of the house to only one group of guests at a time; limiting the rental to the provision of lodging and prohibiting non-lodging activities such as events, parties, gatherings, etc.; and limiting the transferability of the conditional use permit to different applicants or property owners in the future. The Hearings Officer generally agrees that conditions addressing each of these issues are required for the proposal to satisfy this criterion.

The applicant also explains that conformance with the applicable licensing requirements for short-term rentals included under SRC Chapter 30 (Licenses) will help to minimize the reasonably likely adverse impacts of the proposed use to the immediate neighborhood.

The Hearings Officer concurs with some of the proposed findings included in the applicant's written statement and in the staff report that address some (but not all) of the likely adverse impacts of the use on the immediate neighborhood. As previously set out in this decision, both short-term rentals and accessory short-term rentals are allowed in the RS zone. Unlike short-term rentals, however, accessory short-term rentals are allowed outright in the RS zone as a Special Use without the need for a conditional use permit and need only conform to the additional special use standards included under SRC 700.006. While the special use standards under SRC 700.006 were established to help ensure that accessory short-term rentals operate in a manner that is compatible with the residential neighborhoods they are located within, the Hearings Officer notes that the distinctions between the two types of short-term rentals remain, or there would be no reason for the Conditional Development review. The Hearings Officer concludes that compliance with the special use standards under SRC 700.006 does not necessarily address the reasonably likely adverse impacts of the use on the immediate neighborhood.

The Hearings Officer notes testimony raising concerns about the proposed short-term rental commercial use having a negative impact on the Residential Historic District, which the Hearings Officer finds is either the immediate neighborhood or the immediate neighborhood is a portion of the Residential Historic District. The Hearings Officer notes the concerns about the impact of the change in use on the housing supply, concerns about the commercial nature of the short-term rentals impacting the immediate neighborhood due to the possibly unneighborly behavior of short-term renters when the house is occupied, concerns about the impact on the immediate neighborhood of a house being empty when for long periods when it is not rented, and concerns about how the fence designed to screen required parking will impact the immediate neighborhood.

The Hearings Officer is concerned that placing a condition on the use so that the house may not be used by more than one “group of guests” and so that the house may only be used for “lodging purposes” without consideration of the number of people that make up the group of guests does not address the impact that the proposed use will have on the immediate neighborhood. A single group of eight adults (with an unrestricted number of children) may well seem more like an event (perhaps a family reunion), party or gathering than it seems like an equivalent to the neighboring residential uses. The Hearings Officer notes that the consequence of assuming that each existing bedroom in the house will be used as a rental space causes an additional demand for parking, which will not be in keeping with the immediate neighborhood. This, in turn, causes the need for screening.

The Hearings Officer notes that the proposed six-foot tall sight-obscuring fence required to screen an additional parking area will change the appearance of the property and the visual appearance of the Residential Historic District for passersby and from Bush Pasture Park. These visual connections to the Historic Resource are important livability considerations in a Residential Historic District, and significantly reducing the view of the property from the sidewalks and street, from the property to the Park, or from the Park to the historic house would have an adverse impact on the immediate neighborhood. The Hearings Officer notes that written comments objected to the amount of proposed parking, and testimony at the public hearing included information about the number of parking spaces required for a single-family residential use, which is the norm in the Residential Historic District. The Hearings Officer notes that because of the special setback requirement on the Mission Street frontage of the property, the proposed conditions of approval anticipated a situation where the number of available parking spaces would be reduced, and the number of guests and guest rooms would be reduced as well. The Hearings Officer agrees that a six-foot tall sight-obscuring fence to screen the parking on the Mission Street frontage of the property would have a reasonably likely adverse impact on the immediate neighborhood. As the screening requirement stems from a need to provide off street parking, which in turn stems from the number of guest rooms available for rent, the Hearings Officer will impose the proposed condition limiting the number of occupants but will also reduce the number of guest rooms available for short-term rental, and reduce the attendant parking requirement, eliminating the additional parking area and, in turn, eliminating the screening requirement.

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The Hearings Officer will impose the following conditions:

- Condition 1:** The number of guest rooms within the short-term rental shall be limited to three. The maximum number of occupants in the short-term rental shall not exceed six persons. For purposes of this condition of approval, children under 12 years of age do not count towards the maximum number of occupants.
- Condition 2:** The short-term rental shall be rented to only one group of guests at a time. Bookings of the rental by more than one group of guests at any given time is prohibited
- Condition 3:** Use of the short-term rental shall be limited to the provision of lodging. Activities other than lodging, such as events, parties, gatherings, luncheons, banquets, weddings, meetings, fundraising, or commercial or advertising activities are prohibited.

In order to ensure that no sight-obscuring fence or barrier is placed along the Mission Street Frontage, which would have a likely adverse impact on the immediate neighborhood, the Hearings Officer imposes the following condition of approval:

- Condition 4:** Fences or walls greater than four feet in height shall not be installed in or on the yard fronting Mission Street.

Development standards are included within the Salem Revised Code in order to ensure that the use and development of land within the City occurs in a manner that implements the City's Comprehensive Plan, provides for the orderly growth and development of the City, and minimizes any reasonably likely adverse impacts of uses on other properties as required under this approval criterion. In order to ensure that adequate bicycle parking is provided to serve proposed uses, in addition to off-street vehicle parking, SRC 806.055 establishes minimum bicycle parking requirements. Pursuant to SRC 806.055 - Table 806-9, the minimum off-street bicycle parking for short-term rentals is the greater of four spaces or one space per 50 rooms. Because the proposed short-term rental as conditioned only includes three guestrooms, the minimum required bicycle parking for the use remains at four spaces. The site plan provided by the applicant indicates that two of the required bicycle parking spaces will be located inside the garage utilizing wall racks and that the remaining two bike spaces will be accommodated by an existing metal rail in a staple-style configuration. In order to ensure that the bicycle parking spaces provided conform to the applicable standards of SRC Chapter 806, the following condition of approval is imposed:

- Condition 5:** The bicycle parking spaces provided for the short-term rental use shall be developed in conformance with the applicable bicycle parking development standards included under SRC 806.060.

The Hearings Officer notes the dispute between staff and community members that results from the definition for “primary façade” from the Historic Preservation provisions in SRC 230.005 being compared to the development standards from SRC 800.050 for fences, walls, gates and retaining walls. SRC 806.025 establishes location and screening requirements for parking in yards. The Hearings Officer understands the point made in opposition, that the frontage of the property along Mission Street is a primary façade, and the frontage on Church Street is also a primary façade. SRC 230.005 is clear that for purposes of Chapter 230 Historic Preservation, a corner lot has two primary facades. In considering the sight-obscuring fence for the proposed parking area on the Mission Street frontage of the building, Staff properly viewed the front yard to be defined by SRC 112.060, as SRC 230 does not define a front yard at all. While there may be a situation where the distinction between the primary façade defined in Chapter 230 and a front yard as defined in SRC 112 will require more complete discussion in order to come to a decision, the Hearings Officer does not see this discussion as necessary in this case. The parking that would have required the screening will not be permitted. Pursuant to SRC 806.025(a)(1) and (2) off-street parking is allowed within front, side and rear yards abutting streets when the parking is on a driveway leading to a garage or carport. The parking required for the short-term rental use, limited to three guest rooms is three spaces. The site plan provided by the applicant shows an existing paved area located in the side yard of the lot between the existing dwelling and Mission Street. The area has been used for parking and is large enough to accommodate two parking spaces, but it does not currently meet the screening requirements of SRC 806.025(f)(1) and the southern portion of the paved area is located within the 12-foot special setback of Mission Street and cannot be used for parking. The Hearings Officer notes that to minimize the reasonably likely adverse impacts of the use on the immediate neighborhood if additional parking is present, the additional parking area must be removed.

The Hearings Officer imposes the following condition of approval:

Condition 6: The existing paved area located to the east of the existing driveway between the dwelling and Mission Street SE shall be removed.

Under SRC 240.005(e), conditional use permit approvals run with the land unless otherwise provided in the decision granting the conditional use permit. Because the potential for adverse impacts associated with short-term rentals is largely dependent upon the individual owner/operator, their designated property manager, when required, and how they choose to manage the property, requiring a separate conditional use permit for any future owner of the property helps to ensure accountability and public input in the approval process. As such, in order to ensure that the proposed conditional use permit, if approved, is only valid for the current owner/applicant and cannot be transferred to any future owner/applicant, the following condition of approval is imposed:

Condition 7: The Conditional Use Permit shall be valid only for the current applicant/owner. The Conditional Use Permit shall not run with the land and is not transferable to any other applicant or owner.

As identified in the applicant's written statement and discussed in the associated findings in response to this approval criterion, the reasonably likely adverse impacts of the proposed short-term rental on the immediate neighborhood are minimized through the imposed conditions of approval and conformance with the applicable licensing requirements for short-term rentals included under SRC Chapter 30. This criterion is met.

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

Finding: The written statement provided by the applicant indicates that the proposed use is reasonably compatible with surrounding properties and the four conditions of approval ensure that any impacts to the livability or appropriate development of the surrounding area will be minimal.

Because short-term rentals are not required to be owner-occupied they must go through the Conditional Use review process and obtain a Conditional Use Permit. The Conditional Use Permit review process is intended to provide neighboring property owners with an ability to provide comments and identify additional conditions of approval to help the use conform to the character of a particular area and minimize potential impacts. As identified in this decision, conditions of approval have been imposed limiting the maximum number of guests allowed in the rental, limiting the number of guest rooms, reducing the amount of parking spaces, limiting the type of activities the rental may be used for, limiting the number of bookings that may be made at any one time, restricting the transferability of the Conditional Use Permit approval to future applicant/owners, and requiring certain modifications to existing site improvements to ensure compliance with applicable development standards of the Salem Revised Code. These conditions help to ensure that the number of guest within the dwelling and the types of activities occurring the property will be consistent with that of other single family dwellings in the neighborhood and therefore ensure the compatibility of the use and the preservation of livability for surrounding properties.

The proposed use also conforms to the applicable policies of the Salem Area Comprehensive Plan concerning the preservation of historic properties and is consistent with the purpose of the City's Historic Preservation ordinance (SRC Chapter 230). The proposed use requires no alterations to the dwelling that would preclude it from being used as a single-family home in the future, any changes to the exterior will be subject to the requirements of Historic Design Review to ensure the appearance of the structure is maintained as a contributing historic resource within the Gaiety Hill/Bush's Pasture Park Historic District, and as conditioned, the property remains consistent with the development pattern of surrounding properties.

As conditioned, the short-term rental will have a minimal impact on the livability or development of the surrounding property. The Hearings Officer concludes that the application, as conditioned, satisfies this criterion.

7. ANALYSIS OF CLASS 2 ADJUSTMENT APPROVAL CRITERIA

Salem Revised Code (SRC) 250.005(d)(2) sets forth the following criteria that must be met before approval can be granted to an application for a Class 2 Adjustment. The following subsections are organized with approval criteria shown in ***bold italic***, followed by findings evaluating the proposed development's conformance with the criteria. Lack of compliance with the following criteria is grounds for denial of the Class 2 Adjustment application, or for the imposition of conditions to ensure the criteria are met.

SRC 250.005(d)(2)(A): The purpose underlying the specific development standard proposed for adjustment is:

- (i) Clearly inapplicable to the proposed development; or***
- (ii) Equally or better met by the proposed development.***

Finding: The Hearings Officer notes that because the existing right-of-way width of Mission Street along the frontage of the property does not meet the 72-foot minimum right-of-way width for a minor arterial street required by the City's Transportation System Plan (TSP), a 12-foot special setback applies along the Mission Street frontage of the property. This special setback reserves the area for future right-of-way dedication should Mission Street be widened at some point in the future. Within the required special setback area, no structures or paving are permitted, other than as allowed under SRC 800.040(d).

The Hearings Officer notes that the site plan submitted by the applicant shows that the proposal for the short-term rental includes two of its required off-street parking spaces in the existing driveway off Mission Street. Because of the 12-foot special setback applicable along Mission Street, approximately seven feet from the southern end of these two spaces encroaches into the required special setback area. The Hearings Officer notes that SRC 800.040(d)(4), allows off-street parking, other than minimum required off-street parking, within a special setback providing that the owner enters into a removal agreement. Because the two spaces within the existing driveway that encroach into the special setback are required to meet part of the proposed short-term rental's minimum off-street parking requirement, these two spaces are not allowed within the special setback without an adjustment. The applicant has therefore requested a Class 2 Adjustment in conjunction with the Conditional Use Permit.

The Hearings Officer notes that the underlying purpose of the special setback requirement of SRC 800.040 is to reserve land for future right-of-way designation without that dedication resulting in the creation of nonconforming units of land or nonconforming development. For this proposed use, if Mission Street is widened at some point in the future and 12 feet of additional right-of-way is acquired to accommodate the widening, the number of off-street parking spaces provided to serve the three allowed guest rooms for the short-term rental would be reduced from three spaces to one because the two spaces in the existing driveway would be eliminated. As a result, the use would no longer conform to minimum off-street parking requirements.

The Hearings Officer notes that the City has no current timeline to widen Mission Street along the subject property. The applicant has requested a Class 2 Adjustment to allow the proposed short-term rental use of the property to continue to use the two existing parking spaces within the driveway that currently serve the existing single-family dwelling until such time as Mission Street is widened—when there would no longer be a sufficient driveway depth to accommodate the two parking spaces. To ensure that the proposed development satisfies the underlying purpose and the express requirements of the special setback standard of SRC 800.050, the Hearings Officer will impose the following Condition of Approval to ensure that if Mission Street is widened at some point in the future, the widening of the street will not result in the creation of a nonconforming development:

Condition 8: At the time of any future widening of Mission Street SE, if additional right-of-way is required to be dedicated along the Mission Street frontage of the property such that a minimum driveway depth of 20 feet cannot be maintained on the subject property:

- a) The operator will provide sufficient off-site off-street parking spaces for guests to comply with the then-existing off-street parking requirements in the Code; as needed the operator may rent or lease additional offsite, off-street spaces but may not increase the number of guest rooms to more than three; or
- b) The number of guest rooms within the short-term rental shall be reduced from three to the number that aligns with the number of rooms supported by the remaining off-street parking space in the garage, consistent with the then-existing off-street parking requirements in the Code; and the maximum number of guests allowed shall be correspondingly reduced to two for each allowed guest room, with children under 12 years of age not counting towards the maximum number of occupants; or
- c) The short-term rental shall be converted back to use as a single-family dwelling.

The Hearings Officer finds that this condition of approval ensures that if Mission Street is ever widened in the future: 1) The intensity of the use is commensurately reduced to reflect the number of off-street parking spaces available; and 2) The use of the site maintains conformance with the then-existing off-street parking requirements of SRC Chapter 806 without resulting in the creation of nonconforming development. The Hearings Officer finds that with the loss of two off-street parking spaces within the existing driveway, only one off-street parking spaces would still remain on the site. The Hearings Officer notes that by itself, the remaining off-street parking space is sufficient to meet the current minimum off-street parking requirement for either a short-term rental with one guest room or for a single-family dwelling.

Because the above imposed condition of approval ensures that any widening of Mission Street will not result in the creation of nonconforming development, the underlying purpose of the special setback is equally met by the proposed development. The Hearings Officer concludes that the application as conditioned satisfies this criterion.

SRC 250.005(d)(2)(B): If located within a residential zone, the proposed development will not detract from the livability or appearance of the residential area.

Finding: The Hearings Officer notes that the subject property is located within the RS (Single Family Residential) zone. The Hearings Officer finds that the applicant's requested adjustment to allow the two parking spaces within the existing driveway off Mission Street to encroach into the required 12-foot special setback will not detract from the livability of the residential area—whether defined as the Residential Historic District or the immediate neighborhood. The Hearings Officer finds that the use of the existing driveway within the special setback area will not detract from the appearance of the residential area. If Mission Street is widened at some point in the future and these two spaces can no longer be accommodated, the Hearings Officer has imposed a condition of approval to ensure that the intensity of the use on the site is correspondingly reduced to reflect the reduced number of off-street parking spaces available. Until such time that a future widening of Mission Street occurs, the two existing spaces will continue to be used as they have been when serving the existing single-family dwelling. The Hearings Officer finds that the existing driveway will continue to maintain its appearance and function to provide two off-street parking spaces, as if it were serving a single-family dwelling and therefore will not detract from the livability or appearance of the residential area. The Hearings Officer concludes that the application as conditioned satisfies this criterion.

SRC 250.005(d)(2)(C): If more than one adjustment has been requested, the cumulative effect of all the adjustments result in a project which is still consistent with the overall purpose of the zone.

Finding: The Hearings Officer notes that the proposal includes only one adjustment request, which is to allow the two proposed off-street parking spaces located in the existing driveway to encroach approximately seven feet into the required 12-foot special setback abutting Mission Street SE. Because the proposal does not include more than one adjustment, the Hearings Officer finds this approval criterion is not applicable.

Based on the facts and findings set out above, the Hearings Officer concludes that the proposed Conditional Use Permit and Class 2 Adjustment, as conditioned, satisfy the applicable criteria under SRC 240.005(d) and SRC 250.005(d)(2).

DECISION

Based on the facts and findings contained in the staff report, the written and oral testimony presented during the hearing and open record period, and on the criteria and standards, the Hearings Officer **APPROVES** the requested Conditional Use Permit and Class 2

Adjustment to allow a short-term rental within an existing four-bedroom single family dwelling located at 795 Church Street SE and to allow the two proposed off-street parking spaces located in the existing driveway to encroach approximately seven feet into the required 12-foot special setback that abuts Mission Street SE, subject to the following conditions of approval:

- Condition 1:** The number of guest rooms within the short-term rental shall be limited to three. The maximum number of occupants in the short-term rental shall not exceed six persons. For purposes of this condition of approval, children under 12 years of age do not count towards the maximum number of occupants.
- Condition 2:** The short-term rental shall be rented to only one group of guests at a time. Bookings of the rental by more than one group of guests at any given time is prohibited
- Condition 3:** Use of the short-term rental shall be limited to the provision of lodging. Activities other than lodging, such as events, parties, gatherings, luncheons, banquets, weddings, meetings, fundraising, or commercial or advertising activities are prohibited.
- Condition 4:** Fences or walls greater than four feet in height shall not be installed in or on the yard fronting Mission Street.
- Condition 5:** The bicycle parking spaces provided for the short-term rental use shall be developed in conformance with the applicable bicycle parking development standards included under SRC 806.060.
- Condition 6:** The existing paved area located to the east of the existing driveway between the dwelling and Mission Street SE shall be removed.
- Condition 7:** The Conditional Use Permit shall be valid only for the current applicant/owner. The Conditional Use Permit shall not run with the land and is not transferable to any other applicant or owner.
- Condition 8:** At the time of any future widening of Mission Street SE, if additional right-of-way is required to be dedicated along the Mission Street frontage of the property such that a minimum driveway depth of 20 feet cannot be maintained on the subject property:
- a) The operator will provide sufficient off-site off-street parking spaces for guests to comply with the then-existing off-street parking requirements in the Code; as needed the operator may rent or lease additional offsite, off-street spaces but may not increase the number of guest rooms to more than three; or

- b) The number of guest rooms within the short-term rental shall be reduced from three to the number that aligns with the number of rooms supported by the remaining off-street parking space in the garage, consistent with the then-existing off-street parking requirements in the Code; and the maximum number of guests allowed shall be correspondingly reduced to two for each allowed guest room, with children under 12 years of age not counting towards the maximum number of occupants; or
- c) The short-term rental shall be converted back to use as a single-family dwelling.

DATED: January 25, 2023

A handwritten signature in black ink, appearing to read 'James K. Brewer', with a long horizontal line extending to the right.

James K. Brewer, Hearings Officer