

## Amy Johnson

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**From:** Howard Hall <friendsofhistoricsalem@gmail.com>  
**Sent:** Monday, October 08, 2018 1:43 PM  
**To:** CityRecorder; citycouncil; Cara Kaser; Tom Andersen; Brad Nanke; smccold@cityofsalem.net; Matthew Ausec; Chris Hoy; Sally Cook; Jim Lewis; chuckbennett@cityofsalem.net; Dan Atchison  
**Subject:** TESTIMONY: REVIEW/RESPONSE TO THE REBUTTAL BY MR. KIRCHICK (August 8, 2018), Applicant, in the Case Record CU-ADJ18-07 -

CITY COUNCIL MEETING, October 8, 2018  
Subject: Agenda Item 4.a "Call Up" PUBLIC HEARING

The Honorable Chuck Bennett, Mayor  
& Members of Council  
City of Salem  
ATTN: City Recorder

In the record that you have received, there are a number of assertions from the applicabt Mr. Kirchick that are not accurate.

1.. Mr. Kirchick argues (Attachment 4, page 1) during the adoption of the Salem STR ordinance, *"Nowhere did..others argue for a blanket exception of the ordinance for historic districts as they do now."*

**RESPONSE:** Mr. Kirchick's statement is not true.

**SCAN and myself, are NOT arguing "for a blanket exception of the (STR) ordinance for historic districts" as he Kirchick claims.**

**Ms. Shirack. myself, SCAN have NEVER sought a blanket exception of the ordinance for historic districts.**

This case is site specific.

The conclusion is this commercial use is not reasonably compatible within this residential area.

Testimony from SCAN, Ms. Shirack, and myself is not on any other historic district in Salem.

**Under our City's code, SRC Chapter 230, Historic Preservation, there are three types of historic districts: commercial, residential, and public historic districts. Not all historic districts under the code in Salem are designated as residential.**

I would not support "a blanket exception" of the STR ordinance for historic districts. STRs within the Salem Downtown Historic District would conform, most likely, to the the setting. STRs could occur as part of mixed use in public historic districts.

I can not comment on the Court-Chemeketa residential National Historic District, because I have not reviewed the National Register nomination, researched the current uses or the record from adoption of City Ordinance in 1987.

Each historic district has a specific character and life. These reviews are on a case by case basis, District by District analysis, the *tout ensemble*, the setting, traffic, parking, goals.

At issue in this case, Case No.18-07, is the compatibility of the commercial use of single family residence, a *de facto hotel*, non-owner occupied commercial operation, in the heart of Gaiety Hill, a designated residential National Historic District, on a congested street, near the very busy intersection of Mission St., an arterial, and High St SE, a collector, with constricted or no parking already.

The written comments into record by citizens overwhelmingly find the proposed commercial use (1) to be incompatible and to have a significant negative impact, pronounced impact on livability, the fabric of Gaiety Hill as a residential area, and

(2) that the **sought commercialization erodes the residential character and purpose set forth in 1986 nomination documentation in 1986 for listing in the National Register of Historic Places (NR)**, approved by the State Advisory Committee on Historic Preservation (SACHP)(May 1986), the U.S. National Park Service, the Keeper of the National Register, the Secretary of Interior (October 10,1986), delineated in boundaries formally adopted by Ordinance 126-86 by our City Council (2nd Reading: December 8, 1986) YES - Madam Mayor Sue Harris Miller, Salem City Councilors Cummins, Carney, Hawes, Jackson, Shirley, Throp. NO - None. ABSENT: Berg and Minden.

**No commercial uses were within the original "carefully drawn" designated boundaries, and the commercial use was specifically "excluded" (NR) by those that prepared the nomination to state and Federal agencies. Gaiety Hill is described in the NR documentation as the "front line of defense against commercial encroachment..upon a distinctive intact residential neighborhood surrounding Bush's Pasture Park..."**

Our efforts before Council is to uphold the core integrity of the GH/BPP NHD as authentic, **a true intact historically residential community, and residential life**. Commercialization of a single family residence, a contributing historic resource in the heart of Gaiety Hill undermines, fundamentally the original goal of the National Register nomination.

As a practice, SCAN, Ms. Shirack, myself, do not comment on actions in the residential Court-Chemeketa National Historic District. We defer to other neighborhood organizations to comment and to provide input on the day-to-day life and context to City Council on residential historic districts in their areas.

**The conclusion of incompatibility is site specific to the Gaiety Hill/Bush's Pasture Park, and to commercial use of 725 High Street SE.**

3. Mr. Kirchick states: *"Mr. Christenson, Ms. Shirack, the Chair of SCAN's Land Use and Transportation Committee, and others oppose our permit application when really their arguments are an attack on the ordinance itself."*

**RESPONSE:** This is FALSE. For myself, this is absolutely not true. The analysis is site specific to this location.

The foundation of our concern is sustaining the integrity and residential life of Salem's premiere residential National Historical District, Gaiety Hill/Bush's Pasture Park -- as a true residential space, authentically true historical residential area, not a commercial space. One can distinguish between true residential and faux residential.

The goal is to uphold and to sustain a distinctively authentic intact historical living residential neighborhood, honored as such to Oregon and the nation, and for the life of those that live in Gaiety Hill.

Submitted  
Respectfully

Jon Christenson

## Amy Johnson

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**From:** Howard Hall <friendsofhistoricsalem@gmail.com>  
**Sent:** Monday, October 08, 2018 2:44 PM  
**To:** CityRecorder; citycouncil; Cara Kaser; Tom Andersen; Brad Nanke; smccold@cityofsalem.net; Matthew Ausec; Chris Hoy; Sally Cook; Jim Lewis; chuckbennett@cityofsalem.net; Dan Atchison  
**Subject:** PUBLIC HEARING TESTIMONY Case No.CU-ADJ18-07 - 725 High St SE - RECONSIDERING LAND USE IMPLICATIONS OF SHORT TERM RENTALS - article Edward J. Sullivan, Oregon's foremost Land Use Attorney, published in LAND USE AND ZONING REPORT (July 2017)  
**Attachments:** Sharing Economy Article 2-13-17.doc

TESTIMONY    Agenda Item 4.a

The Honorable Chuck Bennett, Mayor  
Members of City Council  
City of Salem  
555 Liberty Street SE  
Salem, Oregon 97301

RE: CASE No.CU-ADJ18-07 - 725 High Street SE

Dear Mr. Mayor, Members of Council:

There are two issues that seem to be rising in this case: (1) the test of compatibility of a commercial use in the very heart of a designated residential National Historic District, Gaiety Hill/Bush Pasture Park, and (2) short-term rental impacts.

In review of the voluminous written testimony that you have received, Stuart D. Kirchick, from Capitola, California, submitted an article to you from Cornell Real Estate Review, Volume 13, Article 5 on short term rentals. **I do not engaged in the arguments on STRs, however, I do want to share that (1) there is growing body of professional literature that is calling for some reconsiderations of STRs in municipal law; and (2) the observation the article that Mr. Kirchick submitted that the data is dated 2015 or earlier.**

Major changes have occurred to STRs this year n New York City.

Only a year after adopting STRs regulations, the City of New Orleans on May 24, 2018 enacted a 9 month ban on STRs prohibiting all three categories in its municipal ordinance on STRs in the Historic French Quarter National Historic District. New Orleans is the birthplace of the **tout ensemble** concept, a fundamental foundation of the Historic District in Historic Preservation law (**View Carre Property Owners and Association Inc. v City of New Orleans 167 So. 2nd 376 (1964) 246 La 788**). The case was a driving force in enactment of the federal Historic Preservation Act of 1966. New Orleans City Councilor commented in May 2018, **"We must preserve economic but first and foremost, we must preserve our neighborhoods."** .

The Cornell Review article submitted by Mr. Kirchick does not address or mention historic districts.

**Major studies published by McGill University in 2017 and 2018 are seriously challenging "the public benefit" of STRs (PBS Nightly Business Report July 4, 2018).**

In July 2017, one of the foremost land use attorneys in Oregon, Edward J. Sullivan, published the attached article in the journal, LAND USE AND ZONING REPORT, for your perusal, calling for "reconsidering" the land use impacts from short-term rentals, what may be good for the tourist and owner who derives revenue, **"the impacts of short term rentals for other land owners and the public may be decidedly more mixed...It is not at all apparent those cities that have considered allowing short term rentals have adequately considered their land use impacts."**

Mr. Sullivan also reports *"there is a growing body of troubling anecdotal evidence that the lure of short term rental income is already skewing the city's housing picture with adverse effects"* (Portland, Oregon).

Mr. Sullivan is the foremost land use attorney in the State of Oregon, served as Legal Counsel to Oregon Governor Bob Straub, was an attorney in one of the landmark cases of Oregon land use law, *Fasano v Washington Co.*, (1969). He also teaches at Willamette University and Portland State University.

I want to share this information, not as a counterpoint, but as Findings of Fact that STRs are not always suitable in every location.

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Submitted  
Respectfully

Jon Christenson

**From:** Howard Hall <friendsofhistoricsalem@gmail.com>  
**Sent:** Monday, October 08, 2018 12:28 PM  
**To:** CityRecorder; citycouncil; Cara Kaser; Tom Andersen; Brad Nanke; smccold@cityofsalem.net; Matthew Ausec; Chris Hoy; Sally Cook; Jim Lewis; Dan Atchison  
**Subject:** SUMMARY: Partial list of persons who support or oppose the Conditional Use CU-ADJ18-07 - 725 High Street SE - Gaiety Hill/Bush's Pasture Park National Historic District

## TESTIMONY: Agenda 4.a PUBLIC HEARING - CALL UP - CONDITIONAL USE CU-ADJ18-07 in GAIETY HILL/BUSH'S PASTURE PARK NATIONAL HISTORIC DISTRICT - COUNCIL MEETING OCTOBER 8, 2018

The Honorable Chuck Bennett, Members of City Council

In review of the available materials, below is a partial list of persons who support or oppose the Conditional Use.

**One person is listed as a proponent: Susan Martin, Susan Martin Property Management, representing the applicant.**

Eleven persons were listed by the Hearings Officer Decision summary (August 29, 2018) as opponents.

Examination of materials finds the actual number of persons who submitted comments in opposition to the Conditional Use is near 4-5 times. Persons from Ward 1, 2, 4, 7.

In addition, by a vote of 17-0, the South Central Association of Neighbors (SCAN )Board voted against the proposed Conditional Use: the SCAN Board is comprise of persons from Ward 2 and Ward 7. Individuals on the SCAN Board include **Ron Rubel, Carol Snyder, Victor Dodier, Brian Sund, Carel DeWinkel, Delmy Edwards, Jesse Irizary** and others not listed below.

## PERSONS IN SUPPORT for the Conditional Use of a non-owner occupied short-term rental (STR)

Susan Martin, Susan Martin Property Management (for Stu and Kym Kirchick, applicants)

PERSONS IN OPPOSITION to the Conditional Use - commercial use of a single family residence (R/S) in Gaiety Hill/Bush's Pasture Park residential National Historic District: find the significant negative impact and incompatible to the livability or appropriate development of the surrounding property: not meeting the applicable criteria SRC 240.005 (d)(3), 240.005 (d)(2):

**JW Millegan**, co-author of the Gaiety Hill/Bush's Pasture Park National Historic District Nomination March 1986. Chair of the SCAN Historic Committee 1983-1987

**Hon. Jane Cummins, former Salem City Councilor**, who first introduced the Council Resolution to establish the Gaiety Hill/Bush's Pasture Park National Historic District in 1986, also past member of the Planning Commission, and past senior staff member at the League of Oregon Cities  
**Hon. Jim Randall, former Salem City Councilor** for the downtown area and Gaiety Hill,  
**Jeff Schumacher**, president of SCAN  
**Bruce Hoffman**, Chair of the CANDO Land Use Committee, and past president of CANDO  
**Carol Mitchell**, past president, SCAN  
**Roz Shirack**, Chair, SCAN Land Use & Transportation Committee, a past president of the League of Women Voters, Marion/Polk Counties

**Ashley Carson Cottingham**

**Andrea Foust**

**Madeline Carlson**

**Leonard Kelly**

**Linda Kelly**

**Robin Olsen**

**John Prohovsky**

**John VanDreal**

**Coleen VanDreal**

**Phyllis Foust**

**Jack Foust**

**Kendra Mingo**

**David Craig PhD**

**Jon Christenson**

**Hans Hadley**

**Kelly Hadley**

**Jacque Heavey**

**Mark Dolan MD**

**Brent Koester**

**Teri Koester**

**Kathleen Moynihan**

**Sylvia Strand**

**Patria Deminna**

**Roger Deminna**

**Mary Anne Spradlin**

**Hugh Nelson**

**Erma Hoffman**

**Irene Longaker**

**Carlene Benson**

**Jay Burr**

**Nancy Burr**

**William Vagt**

**Sharon Edwards**

**Cheryl Randall**

**Ed Arabas**

**Bret Wilcox**

**Mr. & Mrs. Willy Kohne**

**Tracy Wilcox**

**Tom Scheuermann**

**Cesie Delve Scheuermann**

**Elizabeth Bettendorf**

**Wally Benson**

Submitted October 8, 2018

Respectfully

Jon Christenson



## Amy Johnson

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**From:** Patricia Deminna <patdex@comcast.net>  
**Sent:** Sunday, October 07, 2018 1:00 PM  
**To:** Bryce Bishop; Amy Johnson; CityRecorder  
**Subject:** CU-ADJ18-07 Council Review 10-8-18

Re: Case number CU-ADJ18-07

We are Patricia and Roger Deminna, and we live at 635 Church St. SE in Ward 2.

We request that the proposed conditional use permit of a short-term rental at 725 High St. SE be denied. We respectfully submit that Criteria #3 of SRC 240.005(d) has not been met.

### **Restrictions on guests do not address compatibility.**

I'll begin with Staff's finding on Criteria 3 (pg. 5) – that restrictions on guests and parties will “ensure” that commercial use is reasonably compatible with appropriate development. I'd suggest that restrictions on guests and their activities do not address compatibility. It's the commercial use itself that's not compatible. I believe there's support for that position in the Salem Comprehensive Plan, which addresses appropriate development in locations with “special conditions.” It's a broad statement of intent, and I hope you'll find it worthwhile to consider.

### **“Special conditions” need to guide decisions of use and development.**

“Special conditions which exist in some locations need to be recognized in order to develop in a satisfactory manner.” Just one is residential: “districts on the National Historic Register and designated under the City's land development ordinances.” Because of our inner-city location, commercial encroachment is an ongoing threat. It threatens the historic district's residential character, and its value to the City's history as a still intact early residential area. In making decisions that affect the Gaiety Hill neighborhood, we should be guided by what preserves and protects, especially when the rental activity is “more intensive” and “less suited” to lower density RS zones.

### **Non-owner occupied short-term rentals are NOT compatible in residential areas.**

“More intensive” and “less suited” – that's the description of short-term rentals. Yet Staff finds (pg. 5) they're allowed because they're “reasonably compatible in residential areas.” No evidence is given to back this claim. On the other hand, the articles I've read only support the owner-occupied (accessory) type, not the type proposed for High Street. That even includes two articles submitted by the applicant. One thing is clear – STRs are not compatible in historic districts. Once they're introduced, the district becomes a profit-making target for investors. Cities with short-term rental history are now grappling with neighborhood upheaval in historic areas, and some are banning all STRs, even those that are owner-occupied. The Gaiety Hill area is a microcosm of nationally known destinations with these problems, and our very small size magnifies the threat to the district's viability as one of the City's still intact early residential areas.

**This commercial use fills no need.**

In closing, this commercial enterprise, a de facto hotel, fills no need. With no one living there, it won't participate in our community or be vested in the community's interests. Clearly, our concerns about the damaging effects of this commercial use are not shared by the out-of-state applicant.

We urge City Council to deny approval of the consolidated application.

Respectfully,

Patricia and Roger Deminna

#### **Notes on historic districts:**

From a 7-25-2017 posting by **David J. Brown**, executive vice president and chief preservation officer of the **National Trust for Historic Preservation**: 2016 City Planning Commission study in **New Orleans** found that most of the city's STVRs were in historic neighborhoods. In December of that year, the City Council amended the zoning code to ban all STVRs, including those that were owner-occupied, in the French Quarter. **Savannah, Georgia** in 2016 had 748 STVRs in its historic districts with 35% of owners living outside the city or county. With the support of the Historic Savannah Foundation (HSF), the city proposed a ban on new non-owner-occupied STVRs while grandfathering in the existing ones. In **Nashville**, too, the biggest impact of STVRs was felt in the city's historic neighborhoods, with 60 % of STVRs located near the downtown district.

From **Edward J. Sullivan** (B.A., St. John's University (N.Y.), 1966; J.D., Willamette University, 1969; M.A. (History), Portland State University, 1973; Urban Studies Certificate, Portland State University, 1974; M.A. (Political Thought), University of Durham; Diploma in Law, University College, Oxford, 1984; LL.M., University College, London, 1978) article: **Portland** has become a leading city for short-term rentals in the country, and had its first encounters with short-term rental websites in early 2014. The rules require a conditional use hearing for three or more bedrooms. The rules also set limits on occupancies, **require an owner to be onsite at least 270 days during a calendar year.**

## Amy Johnson

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**From:** Dan Atchison  
**Sent:** Friday, October 05, 2018 6:07 PM  
**To:** CityRecorder  
**Subject:** Fwd: Contact Mayor Chuck Bennett

For the record

Begin forwarded message:

**From:** Chuck Bennett <[CBennett@cityofsalem.net](mailto:CBennett@cityofsalem.net)>  
**Date:** October 5, 2018 at 4:47:24 PM PDT  
**To:** Dan Atchison <[DAtchison@cityofsalem.net](mailto:DAtchison@cityofsalem.net)>  
**Subject:** Fwd: Contact Mayor Chuck Bennett

Sent from my iPad

Begin forwarded message:

**From:** <[pacajoyce@sbcglobal.net](mailto:pacajoyce@sbcglobal.net)>  
**Date:** October 5, 2018 at 4:21:50 PM PDT  
**To:** <[cbennett@cityofsalem.net](mailto:cbennett@cityofsalem.net)>  
**Subject:** Contact Mayor Chuck Bennett

Your Name	Joyce Judy
Your Email	<a href="mailto:pacajoyce@sbcglobal.net">pacajoyce@sbcglobal.net</a>
Your Phone	9256987293
Street	375 Fairview Ave. SE #207
City	Salem
State	OR
Zip	97302
Message	Monday's vote on 795 High Street is a critical vote for the Gaiety Hill Historic Residential neighborhood and SCAN as well. Councillor Andersen is in Bhutan and said he would call in arrangements been made so he can speak to this issue and be able to vote?

This email was generated by the dynamic web forms contact us form on 10/5/2018.

From: [Kendra Mingo](#)  
To: ["bbishop@cityofsalem.net"](mailto:bbishop@cityofsalem.net); ["lesliestreet345@googlegroups.com"](mailto:lesliestreet345@googlegroups.com)  
Cc: [David Craig](#); ["ed scan"](#)  
Subject: Public Comment: Response and Objections to Recommendations and Finding of Lisa Anderson-Ogilvie, Deputy Community Development Director and Planning Administrator regarding CASE NO: CU-ADJ18-07  
Date: Saturday, July 21, 2018 4:26:00 PM

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FOR THE MEETING OF: July 25, 2018

CASE NO: CU-ADJ18-07

ADDRESS: 725 High Street SE

ZIPCODE: 97301

HEARD BY: Salem Hearings Officer

CASE MANAGER: Bryce Bishop

Dear Ms. Anderson-Ogilvie and Mr. Bishop:

Our names are Kendra Mingo and David Craig, and we live at 445 Leslie Street SE.

**RESPONSE for Public Record regarding CU-ADJ18-07:** We respectfully object to the recommendations and findings regarding CU-ADJ18-07. We renew our request that the City of Salem Planning Division **deny** the consolidated application for a Conditional Use Permit and Class 2 Adjustment as a short-term, non-owner occupied rental for up to six, non-related tenants because:

- 1) The opinion that the proposed commercial use "*is similar to a residential use*" is insufficient to justify the rezoning from residential to commercial use.
- 2) While the staff report cites uses that "have generally been found to be reasonably compatible" in a RS zone, it **does not address** the exceptions or regulations of a Historic District overlay zone, nor does it address what is "compatible with and appropriate within the context" of a Historic District overlay zone. We contend that the applicants and the City must meet higher regulatory standards in order to rezone single-family residential dwellings to commercial use in a Historic District overlay zone.
- 3) The applicants **have not provided evidence** (i.e., case studies, legal findings, precedence, testimony from residents of the historic district, etc.) that commercial use in a Single-Family Residential zone **that is ALSO** a City of Salem Historic District overlay zone fulfills and/or complies with applicable policies and regulations.<sup>1,2,3,4</sup>
- 4) The subject property is zoned RS (Single Family Residential) **within a Historic District overlay zone**. The SRC states that an overlay zone "*establishes additional regulations beyond the base zone to address specific community objectives. In some cases, an overlay zone may provide exceptions to or supersede the regulations of the base zone.*" The findings of this report regarding applicable Salem Revised Code approval criteria for the conditional use permit **do not address or even mention** the regulations addressing Historic District overlay zones, **nor do they reference** the incorporating documents that created and govern the Gaiety Hill/Bush's Pasture Park Historic District by the National Register of Historic Places in 1986.
- 5) Summary: The staff recommendation and findings do **not provide compelling, factual evidence** that rezoning an existing single-family dwelling in a Historic District overlay zone listed on the National Register of Historic Places for **commercial use** is consistent with the policies and

guidance in the Salem Area Comprehensive Policies Plan and the City's Historic Preservation ordinance (SRC Chapter 230).

References to and comments on staff findings report:

Page 3: *"Based on these requirements, the proposed consolidated application is required to be reviewed by the Hearings Officer and processed as a Type III procedure."*

**Procedural Objection:** The application pertains to regulations of the Salem Revised Code that govern **both** a Single Family Residential Zone **and ALSO** a Historic District overlay zone. Since this application pertains to two zone types with differing SRC standards, regulations, and policies, then we request that the Historic Landmarks Commission also review and render a decision on this application to conform to the judicial oversight required in a Type III procedure involving a property in a Historic District Overlay (SRC Section 300.100 – Procedural types). While the findings of this report discuss general zone regulations, they do not specifically address "additional regulations beyond the base zone to address specific community objectives" for Historic District overlay zones.

Page 5-6: *"While the proposed short-term rental is not a residential use where individuals reside on the property as their primary place of living, it is similar to a residential use in that it provides a place where living and sleeping accommodations are provided, albeit on a temporary basis, to persons for periods of less than 30 days."*

**Objection/Rebuttal:** The purpose of the consolidated application is to change the purpose of the dwelling **from a single-family residence to commercial use**. The opinion that the use *"is similar to a residential use"* is insufficient to justify the rezoning from residential to commercial use. One could apply the same claim to the Salem Grand Hotel whose use *"is similar to a residential use in that it provides a place where living and sleeping recommendations are provided"*; however, use that *"is similar to residential use"* is not sufficient to reclassify a hotel (whose purpose is clearly and primarily commercial) to residential use.

Further, one can just as easily assert that the intended use of the property is **commercial**, with the above phrasing defining a hotel. *"a business establishment with direct contact with paying customers where living and sleeping accommodations are provided for travelers and tourists, on a temporary basis, to persons for periods of less than 30 days."*

Page 6: *"Although a short-term rental is not classified as a residential use under UDC, short-term rentals and accessory short-term rentals are, along with a limited list of other non-residential uses, allows in the RS zone because these uses have generally found to be reasonably compatible with and appropriate within the context of residential areas."*

**Objection/Rebuttal:** The staff report repeatedly states the above opinion above as support for the approval of consolidated application (See pages 5-6, 8, 8-9, 14, 15); however, this opinion is not consistent with the definition, purpose, **and regulations** of a single-family residential zone **that is ALSO** a Historic District overlay zone as specified by SRC Section 110.020<sup>4</sup>. While the staff report

cites uses that “have generally been found to be reasonably compatible” in a RS zone, it **does not address** the exceptions or regulations of a Historic District overlay zone, nor does it address what is “compatible with and appropriate within the context” of a Historic District overlay zone. We contend that the applicants and the City must meet higher regulatory standards in order to rezone single-family residential dwellings to commercial use in a Historic District overlay zone.

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Page 7: *“The majority of comments submitted express concerns about the conversion of the existing single family historic home with the Gaiety Hill/Bush’s Pasture Park Historic District into a commercial use accommodating a non-owner occupied short-term rental and the negative effects it will 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.”*

**Objection/Rebuttal:** Our original comments submitted to Mr. Bryce Bishop on July 3, 2018 did not merely “express concerns about the conversion of the existing single family historic home with the Gaiety Hill/Bush’s Pasture Park Historic District into a commercial use.” Instead, we outlined how the application’s purpose and rationale **failed to comply** with the policies and guidance in the Salem Area Comprehensive Policies Plan<sup>1</sup>, the City’s Historic Preservation ordinance (SRC Chapter 230)<sup>2</sup>, other Oregon land use planning guiding documents<sup>3</sup>, or the sections of the Salem Revised Code governing zones and **overlay zones** (SRC Chapter 110, Section 020)<sup>4</sup>.

In order to meet the third criteria for a consolidated application for a Conditional Use Permit and Class to , then the owners of the property at 725 High Street SE need to demonstrate how their application will meet the **four conditions of this criteria for both the RS and the Historic District overlay zones**, namely that the application:

- 1) Be reasonably compatible **with the livability** of surrounding property;
- 2) Have minimal impact **on the livability** of surrounding property;
- 3) Be reasonably compatible **with the appropriate development** of surrounding property;
- 4) Have minimal impact **on the appropriate development** of surrounding property.

To do this, then the owners **need to provide evidence** (i.e., case studies, legal findings, testimony, precedence, etc.) that **commercial use** (i.e., hotel) in a Single-Family Residential Zone **that is ALSO** a City of Salem Historic District Overlay zone and recognized by the National Register of Historic Places:

- Preserves the historic, **cultural** and architectural character of structures identified in the National Register of Historic Places and structures designated as historic buildings pursuant to the City’s land use<sup>1</sup>;
- Limits uses that conflict with the historic resource<sup>1</sup>;
- Preserves significant properties in the Gaiety Hill Historic District<sup>2</sup>;

- Is consistent with the Salem Comprehensive Policies Plan ;
- Preserves assets of particular interest to the community, i.e., the Gaiety Hill Historic District<sup>3</sup>;
- Will have minimal adverse impact on abutting properties and the surrounding area of the historic district, taking into account location, size, design, and **operation characteristics of the proposed use**<sup>3</sup>;
- Is appropriate development and compliant with regulations of a Historic District Overlay zone<sup>4</sup>.

The stated intention that “the owners of the house and the Property Manager all hope to be engaged as residents in this neighborhood” is welcomed. **However**, intention of good will does not replace the burden of evidence (i.e., case studies, legal findings, testimony, etc.) of how the proposed **commercial use** addresses, fulfills, and/or complies with the Salem Area Comprehensive Policies Plan<sup>1</sup>, the City’s Historic Preservation ordinance<sup>2</sup>, other Oregon land use planning guiding documents<sup>3</sup>, or sections of the Salem Revised Code governing zones and overlay zones<sup>4</sup>.

Page 12: “The proposed used is allowed as a conditional use in the zone. Finding: The subject property at 725 High Street SE is zoned RS (Single Family Residential). Within the RS zone, short-term rentals are allowed as a conditional use pursuant to SRC 511.005(a). Table 511-1. Because short-term rental are specifically identified as being allowed as a conditional use with the RS zone, this criterion is met.”

**Objection/Rebuttal:** The subject property is zoned RS (Single Family Residential) **within a Historic District Overlay zone**. The Salem Revised Code states that an overlay zone “establishes additional regulations beyond the base zone to address specific community objectives. In some cases, an overlay zone may provide exceptions to or supersede the regulations of the base zone.” The findings addressing applicable Salem Revised Code approval criteria for the conditional use permit **do not address** or even mention the regulations addressing Historic District overlay zones **nor do they reference** the incorporating documents that created and govern the Gaiety Hill/Bush's Pasture Park Historic District by the National Register of Historic Places in 1986.

Thanks very much for considering our further testimony.

Sincerely,  
Kendra Mingo and David Craig  
Member of Gaiety Hill/Bush’s Pasture Park Historic District  
South Central Association of Neighbors (SCAN)  
445 Leslie Street SE  
Salem, OR 97301

**References:**

1. Salem Comprehensive Policies Plan. November 2015. Page 48.  
<https://www.cityofsalem.net/CityDocuments/salem-area-comprehensive-policies-plan.pdf>

*“The historic, cultural and architectural character of structures identified in the National Register of Historic Places and structures designated as historic buildings pursuant to the City’s land use shall be preserved. Preservation is achieved by limiting those uses that conflict with the historic resource.”*

2. Salem Revised Code. Chapter 230. – Historic Preservation.

[https://library.municode.com/or/salem/codes/code\\_of\\_ordinances?nodeId=TITXUNDECO\\_UDC\\_CH230HIPR](https://library.municode.com/or/salem/codes/code_of_ordinances?nodeId=TITXUNDECO_UDC_CH230HIPR)

*The purpose of this chapter is to identify, designate, and preserve significant properties related to the community's prehistory and history; encourage the rehabilitation and ongoing viability of historic buildings and structures; strengthen public support for historic preservation efforts within the community; foster civic pride; encourage cultural heritage tourism; and promote the continued productive use of recognized resources, and to implement the policies contained in the Salem Area Comprehensive Plan for the preservation of historic resources.*

3. Oregon Department of Land Conservation and Development. Pages 10-11

[https://www.oregon.gov/LCD/docs/publications/introductory\\_guide\\_to\\_land\\_use\\_planning\\_in\\_oregon.pdf](https://www.oregon.gov/LCD/docs/publications/introductory_guide_to_land_use_planning_in_oregon.pdf)

*Conditional use criteria also vary from city to city and county to county, but they are normally contained in the same section of the zoning ordinance as the conditional use review procedures. Typically, the criteria will provide that:*

- a. *The proposal be consistent with the comprehensive plan and the objectives of the zoning ordinance and other applicable policies of the city or county;*
- b. *The proposal have a minimal adverse impact on abutting properties and the surrounding area compared to the impact of development that is permitted outright, taking into account location, size, design, and operation characteristics of the proposed use;*
- c. *The proposal preserves assets of particular interest to the community; and*
- d. *The applicant has a bona fide intent and capability to develop, use the land as proposed and has some appropriate purpose for submitting the proposal.*

4. Salem Revised Code. Section 110.020 – Zones and overlay zones, generally.

[https://library.municode.com/or/salem/codes/code\\_of\\_ordinances?nodeId=TITXUNDECO\\_UDC\\_CH110GEZOPR\\_S110.020ZOOVZOGF](https://library.municode.com/or/salem/codes/code_of_ordinances?nodeId=TITXUNDECO_UDC_CH110GEZOPR_S110.020ZOOVZOGF)

*Land in the City is zoned to provide areas suitable for certain types of development. Each zone provides a set of regulations governing the uses, lot size, building setbacks, height, and other development standards. Property may also be subject to an overlay zone. An overlay zone establishes additional regulations beyond the base zone to address specific community objectives. In some cases, an overlay zone may provide exceptions to or supersede the regulations of the base zone.*



## Amy Johnson

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**From:** Bryce Bishop  
**Sent:** Monday, October 08, 2018 11:33 AM  
**To:** Amy Johnson  
**Subject:** FW: ADDITIONAL Public Comments - K.Mingo - CU-ADJ18-07 Conditional Use, 725 High Street

Amy,

Additional public comment for tonight's hearing.

Thanks,  
Bryce

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**From:** Kendra Mingo [mailto:kmingo@willamette.edu]  
**Sent:** Monday, October 08, 2018 11:28 AM  
**To:** Bryce Bishop <BBishop@cityofsalem.net>  
**Cc:** lesliestreet345@googlegroups.com; Jon Christianson <edscannewsletter@gmail.com>  
**Subject:** ADDITIONAL Public Comments - K.Mingo - CU-ADJ18-07 Conditional Use, 725 High Street

FOR THE CITY COUNCIL MEETING OF: October 8, 2018  
CASE NO: CU-ADJ18-07  
AMANDA NO: 18-106982-ZO and 18-109847-ZO  
ADDRESS: 725 High Street SE  
ZIPCODE: 97301  
CASE MANAGER: Bryce Bishop Bryce Bishop, Planner II, [BBishop@cityofsalem.net](mailto:BBishop@cityofsalem.net), 503.540.2399

Dear Mayor Chuck Bennett and Members of the City Council,

My name is Kendra Mingo and I live at 445 Leslie Street SE, Salem, OR with my husband David Craig.

Public Comment: I am entering comments into the public record regarding CU-ADJ18-07

Additional question for Mayor Bennett and City Council: I respectfully ask the City to provide a legal interpretation of an overlay zone and to clarify the regulations that apply to Historic District overlay zone in the City of Salem and how those regulations differ from a regular Single Family Residential neighborhood.

Thank you.

Sincerely,  
Kendra Mingo  
445 Leslie Street SE  
Salem, OR 97031

## Kendra Mingo

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**From:** Kendra Mingo  
**Sent:** Tuesday, July 03, 2018 4:15 PM  
**To:** 'bbishop@cityofsalem.net'; 'lesliestreet345@googlegroups.com'  
**Cc:** David Craig  
**Subject:** Comments for Public Record - Case number CU-ADJ18-07 Conditional use permit for 725 High Street SE

CASE NO: CU-ADJ18-07  
AMANDA NO'S.: 18-106982-ZO & 18-109847-ZO  
ADDRESS: 725 High Street SE  
ZIPCODE: 97301  
HEARD BY: Salem Hearings Officer  
CASE MANAGER: Bryce Bishop

Dear Bryce,

Our names are Kendra Mingo and David Craig, and we live at 445 Leslie Street SE, four houses west of the Gaiety Hill home that has applied for a Conditional Use Permit and Class 2 Adjustment to allow an existing single-family dwelling at 725 High Street SE to be used as a short-term rental.

**REQUEST:** We respectfully request that the City of Salem Planning Division deny the consolidated application for a Conditional Use Permit and Class 2 Adjustment to use the single-family home at 725 High Street SE as a short-term, non-owner occupied rental for up to 6 non-related tenants.

Public Statement: We oppose the conditional use permit for two reasons: (1) the proposed land use is not consistent with the historic and cultural character of the Gaiety Hill Bush Pasture Park Historic District, and; (2) the request does **NOT meet two of the three criteria necessary for approval** as outlined in Section 240.005 of the Salem Revised Code:

- The reasonably likely adverse impacts of the use on the immediate neighborhood **CANNOT** be minimized through the imposition of conditions.
- The proposed use will **NOT** be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.

As you know, the Gaiety Hill Bush Pasture Park Historic District is **one of only four historic districts** listed in the National Register of Historic Places in Salem. The home in question, 725 High Street SE, was built in 1939 and is a *contributing building* to the Gaiety Hill Bush Pasture Park Historic District. As such, 725 High Street SE contributes to our *historic district*, described in Chapter 230 of the Salem Revised Code as:

*"a geographically definable area containing a significant concentration, linkage, or continuity of buildings, structures, sites, or objects united historically or aesthetically by plan or physical development, and listed as a historic district in the National Register of Historic Places."*

The home is also immediately adjacent to numerous other *contributing buildings* (all single-family residences) of the historic district (Table 1.)

**Table 1. Proximity of 725 High St. SE to Contributing Buildings of Gaiety Hill/Bush's Pasture Park Historic District (Source: National Register of Historic Places (NHRP) Historic Districts – Contributing Buildings)**

Name of Contributing Historic Building	Address	Yr Built	Relation to 725 High St.
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French Renaissance Residence - 490 Leslie St SE	490 Leslie St SE	1938	Next door
Bungalow Residence - 712 High St SE	712 High St SE	1920	Across the street
Bungalow Residence - 750 High St SE	750 High St SE	1920	Across the street
David W. and Beryl Eyre House	505 Mission St SE	1926	Across the street
Dr. & Mrs. A. D. Woodhmansee House	695 High St SE	1935	2 houses north
Pearce House	490 Oak St SE	1924	3 houses north
Smith-Fry House	606 High St SE	1859	4 houses north
Colonial Residence – 670 High St SE	670 High St SE	1923	3 houses north
Norman Farmhouse Residence	470 Leslie St SE	1938	1 house west
Cape Cod Residence - 460 Leslie St SE	460 Leslie St SE	1938	2 houses west
English Cottage Residence - 475 Leslie St SE	475 Leslie St SE	1930	3 houses west
Cape Cod Residence - 440 Leslie St SE	440 Leslie St SE	1938	3 houses west
Elizabeth Lord House – Lord and Schryver Conservancy	545 Mission St SE	1932	2 houses east
Bungalow Residence - 555 Mission St SE	555 Mission St SE	1920	3 houses east
Bungalow Residence - 535 Leslie St SE	535 Leslie St SE	1920	3 houses east
English Cottage Residence - 525 Leslie St SE	525 Leslie St SE	1935	2 houses east
Bungalow Residence - 545 Leslie St SE	545 Leslie St SE	1921	4 houses east
John A. Hetzel House – Cape Cod Residence	560 Leslie St SE	1937	4 houses east
Bungalow Residence - 565 Leslie St SE	565 Leslie St SE	1920	5 houses east
Colonial Residence - 595 Leslie St SE	595 Leslie St SE	1920	6 houses east
Norman Farmhouse Residence	470 Leslie St SE	1938	1 house west
Cape Cod Residence - 460 Leslie St SE	460 Leslie St SE	1938	2 houses west
English Cottage Residence - 475 Leslie St SE	475 Leslie St SE	1930	3 houses west
Cape Cod Residence - 440 Leslie St SE	440 Leslie St SE	1938	3 houses west
Walter and Della Smith House	460 Mission St SE	1938	4 houses south
Virgil Pringle House	883 High St SE	1880	5 houses south
Italianate Residence – 975 High St SE	975 High St SE	1880	7 houses south

The Salem Comprehensive Policies Plan (November 2015) states that *“the historic, cultural and architectural character of structures identified in the National Register of Historic Places and structures designated as historic buildings pursuant to the City’s land use shall be preserved. Preservation is achieved by limiting those uses that conflict with the historic resource.”*

If the City of Salem were to approve the conditional use permit and allow a *contributing building* in the historic district to be used as a non-owner occupied, short-term rental unit, then you would subvert both the policies and guidance put forth in the Salem Comprehensive Policies Plan, as well as the purpose of Chapter 230 of the Salem Revised Code, which is to

*“to identify, designate, and preserve significant properties related to the community’s prehistory and history; encourage the rehabilitation and ongoing viability of historic buildings and structures; strengthen public support for historic preservation efforts within the community; foster civic pride; encourage cultural heritage tourism; and promote the continued productive use of recognized resources, and to implement the policies contained in the Salem Area Comprehensive Plan for the preservation of historic resources.”*

Furthermore, converting a single-family residence into non-owner occupied, short-term rental unit for up to six adult, non-related tenants is unlikely to encourage preservation of the resource.

Thanks very much for considering our testimony and request.

Sincerely,  
Kendra Mingo and David Craig  
Member of Gaiety Hill/Bush’s Pasture Park Historic District  
South Central Association of Neighbors (SCAN)

445 Leslie Street SE  
Salem, OR 97301

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OCT - 5 2018

COMMUNITY DEVELOPMENT

October 5, 2018

Conditional use/ Class 2 Adjustment Case Number: CU-ADJ18-07

Application No. : 18-106982-ZO & 18-109847-ZO

Notice of decision date: August 29, 2018

Staff Report objections

City Council Review October 8th

Gaiety Hill is a unique historic neighborhood struggling to keep its residential nature. Its location immediately adjacent to downtown means that its traffic is urban in nature and not characteristic of residential neighborhoods. Traffic is currently a massive safety issue that is inconsistent with Gaiety Hill's residential nature. Any increase in congestion is a major impact to the immediate neighborhood and its livability. The commercial nature of this enterprise cannot be mitigated through any imposed conditions. Our neighborhood is constantly being encroached upon by nonresidential uses, such as those requested by Pensco Trust Company.

SRC 240.005(d)(2) conditions for the conditional use have not been met. Specifically adverse impacts to the sounding neighborhood cannot reasonably be minimized through imposition of conditions. At the July 25 hearing along with the short term tenant parking further parking was requested by the property manager for this enterprise. It was clear from the described required cleaning, maintenance, and management activities and the required vehicles for these activities, that this proposed conditional use would not be consistent with Gaiety Hill's residential zoning, nor could any imposed condition make it thus. The hearings findings and Staff Report do not address even the required cleaning after each guest which has the potential to double the trips in and out of the parking across the sidewalk and into the heavily trafficked street. These safety and nuisance issues were not addressed in the findings or the Staff Report. Also, as we all know the frequency of trips for a short term rental is significantly larger than a residence or long term rental. We've all been on vacation and sightseeing, restaurants, and other entertainments significantly increase trip numbers. The finding that "The Hearing Officer finds that approval of the short-term rental in this location will not pose a unique or greater risk to safety than what is associated with other existing single-family dwellings in the neighborhood ." is inaccurate. Rather than being like an "existing single-family dwelling", it is far more like a three unit motel with management, cleaning, repairs, inadequate vehicle access, and inadequate parking located on a major downtown collector street. Would you like to live next to that? The inherent increase in number of trips in and out of the parking and the nature of unfamiliar drivers was not addressed in the findings and these safety risks cannot be mitigated through conditions.

The Staff Report documents 3,100 vehicles per day on this major downtown collector street. This is far more than a residential street. The Staff Report also states that there have been no crashes reported in the last five years attributed to vehicles backing out of a drive way. This is probably because there are very few drives on High that are so small they require backing out. From Trade to Oak the parking garage, account office, attorney office, and chapel all have enough parking so backing is not required. From Oak to Leslie there is only one drive on the east, which is so small it requires backing out. From Leslie to Mission on the east side there is another



small drive requiring backing. But on the west side there are four drives which are so small they require backing out. One of these is the proposed short term rental. From Mission to Kearney there is one drive on the west that is so small it requires backing out. From Kearney to Bush there is a Church with adequate access and one drive on the west that requires backing out. Because of the infrequency of back-out drives and the high concentration (four times the usual) of them on this block makes this short term rental one of the most dangerous drives. Drivers using High are expecting the limited access of a collector street and the renter is expecting a residential traffic flow. This is a very dangerous situation that cannot be mitigated.

Pursuant to the Conditional Use and Adjustment requested under SRC240.005 (d)(3), the proposed use would significantly increase the traffic on the already dangerously congested High Street, a collector street. Not only would there be guests (who would be unfamiliar with traffic flow of this dangerous street) coming and going, but there would be cleaning services and an increase in maintenance and management vehicles required for such an enterprise. There are no conditions that could mitigate this dangerous safety issue. There is no analysis of the increased trip required for maintenance, management, and cleaning. This is not a minimal impact on the livability of surrounding property.

The hearings office was incorrect not to consider the cumulative effect. Multiple parking spaces were asked for in the adjustments. Multiple parking spaces were granted in the adjustments. Therefore cumulative effect should have been addressed.

As requested in the Adjustment an increase in the parking would only exacerbate this already dangerous situation. Allowing two cars to park in a drive, one in the garage, and a third in the drive "to perform work" would cause continuous jockeying of these parked vehicles. Cars would increasingly be backing out across, a heavily used sidewalk, onto the dangerous congested High street. This would significantly detract from the livability and appearance of the residential area SRC250.005(d)(2)(B) and cause a cumulative effect that is not consistent with our residential designation SRC250.005(d)(2)(C).

There was no analysis of the impact this development would have on the Grand which is just blocks away. Especially when all this would be doing is stealing customers from the Grand.

There has been much talk at the hearing about the money the California investor has put into refurbishing the house. This would have been required of anyone wishing to reside in the house or could be recouped through long term rental or sale.

It is unconscionable for the current residential property owners and residents to bear the inconvenience, the reduced security, the reduction in safety, and ultimately the financial burden of this ill-conceived enterprise.

William Vagt  
690 Liberty St SE  
Salem, OR 97301