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503-588-6173*

DECISION OF THE HEARINGS OFFICER

CONDITIONAL USE / CLASS 2 ADJUSTMENT CASE NO.: CU-ADJ18-07

APPLICATION NO. : 18-106982-ZO & 18-109847-ZO

NOTICE OF DECISION DATE: AUGUST 29, 2018

SUMMARY: A request 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 single-family dwelling located at 725 High Street SE 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 a portion of the required off-street parking serving the proposed use to be located in the public street right-of-way of High Street on the existing driveway leading to the home rather than on the subject property. The required parking will be located on the driveway, but because the majority of the driveway is located within the right-of-way of High Street, it would not be located on the property.

The subject property is approximately 0.1 acres in size, zoned RS (Single Family Residential) within the Gaiety Hill/Bush's Pasture Park Historic District, and located at 725 High Street SE (Marion County Assessor Map and Tax Lot Number: 073W27CA00200).

OWNER: Pensco Trust Company, LLC (Gregg Monette)

APPLICANT: Stuart Kirchick and Pensco Trust Company, LLC

LOCATION: 725 High Street SE / 97301

CRITERIA: Conditional Use: SRC Chapter 240.005(d)
Class 2 Adjustment: SRC Chapter 250.005(d)(2)

FINDINGS: The findings are in the attached Order dated August 29, 2018.

DECISION: The Hearings Officer **APPROVED** the Conditional Use Permit Case No. CU-ADJ18-07 to allow the existing single-family dwelling located at 725 High Street SE to be used as a short-term rental, subject to the following conditions of approval:

Condition 1: The maximum number of occupants in the short-term rental shall not exceed 6 persons. For purposes of this condition of approval, children under 5 years of age do not count towards the maximum number of occupants.

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
FAX: 503-588-6005

CITY OF Salem
AT YOUR SERVICE

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: Off-street parking in the existing driveway shall be limited to a maximum of 2 vehicles at any given time. If necessary for the property manager to perform work or respond to an emergency at the property while the property is occupied, the property manager may park a third vehicle in the existing driveway for the duration of the work being performed.

Condition 5: 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.

The Hearings Officer **APPROVED** the Class 2 Adjustment Case No. CU-ADJ18-07 to allow the parking spaces within the existing driveway at 725 High Street SE to count toward the off-street parking requirement for use of this property as a short-term rental.

The rights granted by the attached Order for Conditional Use / Class 2 Adjustment Case No. CU-ADJ18-07 must be exercised, or an extension granted, by **September 14, 2020** or this approval shall be null and void. A copy of the Order is attached.

Application Deemed Complete: June 22, 2018
Public Hearing Date: July 25, 2018
Notice of Decision Mailing Date: August 29, 2018
Decision Effective Date: September 14, 2018
State Mandate Date: October 20, 2018

Case Manager: Bryce Bishop, bbishop@cityofsalem.net; 503.540.2399

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, no later than **5:00 p.m., Thursday, September 13, 2018.**

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 Chapters 240 and 250. The appeal must be filed in duplicate with the City of Salem Planning Division. 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 at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

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

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**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

A REQUEST FOR A CONDITIONAL USE	}	CU-ADJ18-07
PERMIT AND CLASS 2 ADJUSTMENT TO		
ALLOW AN EXISTING SINGLE-FAMILY		
DWELLING LOCATED AT 725 HIGH STREET		
SE TO BE USED AS A SHORT-TERM RENTAL	}	FINDINGS OF FACT, CONCLUSIONS, AND DECISION

DATE AND PLACE OF HEARING:

July 25, 2018, Salem City Council Chambers, Room 240, Civic Center, 555
Liberty Street SE, Salem, Oregon.

APPEARANCES:

<u>Staff:</u>	Bryce Bishop, Planner II
<u>Neighborhood Association:</u>	Jeff Schumacher, Chair of SCAN N.A.
<u>Proponents:</u>	Susan Martin, Susan Martin Property Management, representing the Applicant
<u>Opponents:</u>	Ed Arabas, Jack Foust, Willy Kohne, Jon Christenson, Jim Randall, Sharon Edwards, Roger Deminna, Patricia Deminna, Jacque Heavey, Andrea Foust, and William Vagt

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

The City of Salem held a duly authorized and noticed public hearing on July 25, 2018, regarding the request to allow an existing single-family dwelling to be used as a short-term rental. Prior to the public hearing, Jon Christenson and Jeff Schumacher requested that the record stay open for 7 days so additional written testimony could be submitted. At the public hearing, the Hearings Officer granted the request and held the record open until 5:00 pm, August 1, 2018 for new written evidence, 5:00 pm, August 8, 2018 for rebuttal to any new evidence, and 5:00 PM, August 15, 2018 for final written argument by the applicant only.

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP)

The subject property 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	RS (Single Family Residential) within the Gaiety Hill/Bush’s Pasture Park Historic District
East	Across High Street SE - RS (Single Family Residential) within the Gaiety Hill/Bush’s Pasture Park Historic District
West	RS (Single Family Residential) within the Gaiety Hill/Bush’s Pasture Park Historic District

3. Existing Conditions

The subject property at 725 High Street SE is approximately 0.1 acres (4,743 square feet) and is located within the Gaiety Hill/Bush’s Pasture Park Historic District. The property is improved with a two-story, 1,884 square-foot, three-bedroom home that 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 High Street.

A. Circulation & Access: The subject property abuts High Street SE along its eastern boundary. High Street is designated as a collector street under the City’s Transportation System Plan (TSP). The current right-of-way width of High Street in this area is approximately 99 feet, which exceeds the minimum required 60-foot right-of-way width for a collector street. As a result of the wider right-of-way in this area, the majority of the driveway serving the subject property is located within the public street right-of-way of High Street. This is the case with the driveways of many homes on High Street. Primary vehicular access to the subject property is provided via the existing driveway onto High Street.

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 of 24 inches or greater), trees and native vegetation in riparian corridors, and trees on lots and parcels greater than 20,000 square feet. 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 or construction 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 not contain any areas of mapped landslide hazard susceptibility points. Pursuant to the City's landslide hazard ordinance (SRC Chapter 810), a geologic assessment is therefore not required in conjunction with the proposal.

4. Neighborhood Association Comments

The subject property is located within the boundaries of the South Central Association of Neighbors (SCAN) neighborhood association. The neighborhood association was notified of the proposal and the SCAN Land Use & Transportation Committee provided comments which were included as Attachment E to the staff report.

Comments provided by the SCAN Land Use & Transportation Committee indicate, in summary, that the applicant has not met conditional use approval criterion No. 3, which requires the proposed use be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property. The committee explains that this criterion is not met because the proposed non-owner, occupied short-term rental represents a commercial use in a single-family zone where renters will come and go in quick succession without any involvement in the residential community. It is explained that this type of use detracts from the residential nature of the neighborhood and the livability for surrounding residents.

The Committee also indicates that the proposal does not meet conditional use approval criterion No. 2, which requires a finding that the reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions. The Committee reiterated that the SCAN Board remains opposed to the short-term rental of housing that is not also occupied by the owner or long-term renter of the house.

Comments were received from Jeff Schumacher, President of SCAN, at the public hearing. During the period the record was held open following the public hearing, SCAN submitted additional testimony in opposition to the application.

5. Public Comments

All property owners within 250 feet of the subject property were mailed notice of the proposal. Notice of public hearing was also posted on the subject property. Comments from 20 area property owners were submitted and included as Attachment G to the staff report. The comments received express concerns and opposition to the proposal which can be summarized as falling into the following main categories:

A. Impact on Residential Character of Neighborhood and Residential Historic District. The majority of the comments submitted express concerns about conversion of this existing single family historic home within the Gaiety Hill/Bush's Pasture Park Historic District into a commercial short-term rental, non-owner occupancy of the short-term rental, and the negative effects this use 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.

B. Parking Impacts. Comments received express concern about the potential parking impacts of the proposed use. Comments received explain

that parking is a particular problem in the area and permit parking is only available on the street.

C. Vehicle and Pedestrian Safety on High Street. Comments received express concern regarding the heavy volume of traffic on High Street and the potential safety problems that will be created as a result of out-of-town guests who are unfamiliar with the traffic in this area backing-out onto High Street and creating a safety risk to themselves and others. Comments provided explain that there have been numerous accidents through this section of street.

Written comments were received on the day of the hearing from 5 additional members of the public, consistent with the previously received written comments. Oral testimony was received during the public hearing from 11 members of the public. The concerns expressed during oral testimony were consistent with previously received written comments. During the period the record was held open following the public hearing, 19 members of the public submitted additional testimony in opposition to the application. The applicant also filed a response to the additional testimony.

6. City Department Comments

A. The Building and Safety Division reviewed the proposal and provided comments indicating that, per the Oregon Building Codes, the maximum allowable number of occupants within the dwelling is sixteen and must be posted or install fire sprinklers.

Imposition of Condition 1, limiting the maximum number of guests within the short-term rental to 6, will ensure that the maximum occupant load allowed for the dwelling will not exceed that allowed by the building code.

B. The Fire Department reviewed the proposal and provided comments indicating that the existing structure meets Fire Department access and water supply requirements.

C. The Public Works Department reviewed the proposal and provided comments indicating they have no concerns with the proposal.

7. Public Agency & Private Service Provider Comments

Notice of the proposal was provided to public agencies and to public & private service providers.

Portland General Electric (PGE) reviewed the proposal and indicated that they have no comments.

8. Conditional Use Permit Approval Criteria

Salem Revised Code (SRC) 240.005(d) sets forth the following criteria that must be met before approval can be granted to an application for a Conditional Use Permit. The following subsections are organized with approval criteria shown in ***bold italic***, followed by findings evaluating the proposal's conformance with the criteria. Lack of compliance with the following criteria is grounds for denial of the Conditional Use Permit application, or for the issuance of certain conditions to ensure the criteria are met.

(1) The proposed use is allowed as a conditional use in the zone.

The Hearings Officer notes that 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. The subject property is located within the Gaiety Hill/Bush's Pasture Park Historic District, but this designation does not subject the property to additional restraints on use of the property. Hearings Officer finds that short-term rental is specifically identified as an allowed conditional use within the RS zone; therefore, this criterion is met.

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

Comments and testimony received by the public and from SCAN identify the following likely adverse impacts:

- Commercial use of a single-family home in the historic district will detract from the nature and character of the neighborhood, and have a negative impact on the historic district as a whole;
- Decrease in stability, quality and desirability of the neighborhood;
- Negative impact on property values;
- Reduction in available housing stock and increase in rent for the area;
- Reduction in the number of neighbors involved in the neighborhood;
- Decrease in safety because short-term renters are unfamiliar with the area;
- Increase in traffic congestion from additional, unfamiliar cars;
- Exacerbation of existing parking problems;
- Increase in difficulty resolving issues between neighbors because owners are out of state with a property manager, not living there;
- Short-term rentals in other locations have been detrimental, not beneficial, to those neighborhoods.

The Hearings Officer notes that SRC 806.015(1), Table 806-1, requires one parking space per guest room. The property located at 725 High Street SE has three bedrooms. As stated in the Staff Report, there is room within the driveway to accommodate three standard size parking spaces using the parking stall dimensions required under SRC 806. The Hearings Officer notes that limiting parking to two spots in the driveway plus one in the garage (for a total of three parking spots for the property) will allow the property to meet this minimum off-street parking requirement, while minimizing the adverse impact on parking in the immediate area because this use will have an appearance similar to that of parking provided for single family dwellings in the neighborhood. Because the code allows parking of three vehicles in the driveway, in the event the property manager needs to perform work or respond to an emergency at the property while the property is occupied, the property manager may park a third vehicle in the existing driveway for the duration of the work being performed. The Hearings Officer finds that this will alleviate the applicant's concern about parking for the property manager, if needed, when the property is occupied.

The Hearings Officer notes that on-street parking permits are available only to individuals who reside in a dwelling. Since no one will be residing in the dwelling, a residential parking permit will not be available for this property. By limiting the number of parking spaces for the property to three, the Hearings Officer notes that the impact on traffic will be consistent with what is typical for other single-family homes in the neighborhood. The Hearings Officer finds that approval of the short-term rental in this location will not pose a unique or greater risk to vehicle and pedestrian safety than what is associated with other existing single-family dwellings in the neighborhood.

The Hearings Officer notes the safety concerns expressed by SCAN and the public. The Hearings Officer finds that imposition of Conditions 1-4 will minimize these concerns. With these limitations in place, the impact on safety will be consistent with what is typical for other single-family homes in the neighborhood. No matter who occupies the property, cars will be entering onto and exiting from High Street and drivers will need to use extreme caution when doing so. The Hearings 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.

The Hearings Officer notes the concerns regarding the negative impacts a short-term rental could have on a residentially zoned historic district. These concerns are discussed under criteria (3), below. The Hearings Officer notes that concerns raised regarding quality and desirability of the neighborhood, impact on available housing stock, property

values and rent, and reduction in the number of involved neighbors are all relevant. However, it is unclear how one short-term rental will adversely impact the neighborhood in these ways. Any future applications requesting conditional use permits for other properties in the neighborhood will be subject to review by the City's staff and to a hearing before a hearings officer, and any transfer of this property will necessitate filing of a new application and subsequent public hearing because of Condition 5. Similarly, it is unclear how resolution of issues between neighbors will be any more difficult than long-term rentals supervised by a property manager. The applicant is required to have a local property manager to be a point of contact for neighbors, respond to any issues that arise, and ensure proper maintenance of the property.

The Hearings Officer notes that both the public and the applicant submitted testimony on the impact short-term rentals can have on surrounding areas. The Hearings Officer finds that the information provided on the impact short-term rentals have on communities in general is divided. The broader question of whether permitting short-term rentals is a good or bad policy is beyond the scope of this application or the authority of a hearings officer.

The Hearings Officer finds that imposition of the five conditions recommended by the City's staff, as amended below, on the short-term rental at 725 High Street will minimize the reasonably likely adverse impacts of the use on the immediate neighborhood:

Condition 1: The maximum number of occupants in the short-term rental shall not exceed 6 persons. For purposes of this condition of approval, children under 5 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: Off-street parking in the existing driveway shall be limited to a maximum of 2 vehicles at any given time. If necessary for the property manager to perform work or respond to an emergency at the property while the property is occupied,

the property manager may park a third vehicle in the existing driveway for the duration of the work being performed.

Condition 5: 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.

Through imposition of these conditions, this criterion is met.

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

Comments and testimony received by the public and from SCAN identify numerous ways in which a short-term rental will not be reasonably compatible with the surrounding area:

- Commercial use of a single-family home as a “hotel” in the historic district is not compatible with residential zoning or surrounding single-family residences;
- Inconsistent with historic and cultural character of the district;
- Conflicts with City’s comprehensive plan regarding preservation of historic buildings;
- Conflicts with purpose of SRC 230, City’s historic preservation chapter;
- Conflicts with reason the historic district was created (to be a defense against commercial encroachment);
- Short-term rentals are not used in the same way long-term rentals or owner-occupied properties are;
- Being reasonably compatible with residential zoning does not mean the use is reasonably compatible with the historic district.

The Hearings Officer notes that a short-term rental is not a residential use. It is a commercial use. However, this specific commercial use is permitted under SRC 511.005(a). The Hearings Officer notes that limiting the number of occupants, the number of cars allowed in the driveway, and the activities allowed at the property (i.e. imposing Conditions 1-5 specified under criteria (2)) will ensure that use of the property is similar to that typically made of single-family residences in the neighborhood. The Hearings Officer notes that limiting rental of the property to one group at a time, to people who are either related or know each other, is also compatible with how single-family residences are typically used. The Hearings Officer notes that imposition of these Conditions will minimize the impact short-term rental of the property will have on the livability and development of the surrounding property.

The Hearings Officer finds that short-term rental of the property is reasonably compatible with the surrounding property, and that the impact on livability or appropriate development of surrounding property will be minimized by imposition of Conditions 1-5.

The Hearings Officer notes that the Salem Comprehensive Policies Plan states, "special conditions which exist in some locations need to be recognized in order to develop in a satisfactory manner." The Hearings Officer notes that local historic resources, including landmarks and districts, are expressly called-out as one such location. The Hearings Officer finds that the special conditions and characteristics of a historic district have been recognized and are directly reflected in the 5 Conditions imposed under criteria (2). The Hearings Officer notes that, according to the comprehensive plan, the City's stated goal and policy for historic sites and structures is preservation. Under the comprehensive plan, "preservation is achieved by limiting those uses that conflict with the historic resource, identified to be building alteration and demolition. The City's land use regulations the process for alteration/demolition review and limitation, as well as the procedure for making additional designations." The Hearings Officer finds that preservation of historic resources under the comprehensive plan is constrained to regulating the physical alteration and demolition of buildings, not the specific uses of those buildings.

The Hearings Officer notes that the property located at 725 High Street SE is a historic contributing resource within the Gaiety Hill/Bush's Pasture Park Historic District and is subject to the provisions of SRC 230. The stated purpose of SRC 230 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." The Hearing Officer finds that nothing in the purpose of SRC 230 places restrictions on the use of a resource located within the district. The Hearings Officer notes that review under SRC 230 is limited to exterior alterations to a resource, as evidenced by the chapter's focus on reviewing applications for siding, windows, doors, porches, decks, fences, etc. There are no review criteria addressing use. The Hearings Officer notes that the resource located at 725 High Street SE 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. The Hearings Officer finds that SRC 230 applies to this property, but it is inapplicable to this application for a conditional use permit.

The Hearings Officer notes that at the time Gaiety Hill/Bush's Pasture Park was designed a historic district, one of the purposes for the designation was to provide "a front line of defense against commercial encroachment...upon a distinctive intact residential neighborhood surrounding Bush's Pasture Park." The Hearings Officer notes that this goal is supported by the fact that the boundaries were drawn to exclude commercial uses from the district. The Hearing Officer finds that this purpose does not render short-term rental of a single-family residence located within the district incompatible with the surrounding property. Though use as a short-term rental is commercial in nature, it does not require any alteration to the property that would preclude it from being used as a single-family home in the future. The residence will maintain its historic appearance, and any changes to the exterior will be subject to the requirements of Historic Design Review.

The Hearing Officer notes that there are no overlay zones that effect the property located at 725 High Street SE. Therefore; the Hearings Officer finds that any additional regulations or considerations that apply to overlay zones are inapplicable to this application.

Comments and testimony received by the public and from SCAN also identify the numerous ways in which a short-term rental will have more than a minimal impact on livability and on the appropriate development of surrounding property:

- Detracts from the residential nature of the neighborhood;
- Decrease in stability, quality of living and desirability of the neighborhood;
- Reduction in available housing stock and increases rent for the area;
- Reduction in the number of neighbors involved in the neighborhood;
- Decrease in safety because short-term renters are unfamiliar with the area;
- Increase in traffic congestion from additional, unfamiliar cars in the neighborhood;
- Exacerbation of existing parking problems;
- Increase in difficulty resolving issues between neighbors;
- Sets precedent for other property owners in the neighborhood.

The Hearings Officer notes that most of these concerns are addressed by the Hearings Officer under criteria (2). As for the concern about setting a

precedent, the Hearings Officer notes that any application for a conditional use permit will be subject to review by the City's staff and to a hearing before a hearings officer. The Hearings Officer finds that approval of the present application will not guaranty approval of any future applications for other properties as each application is considered individually.

The Hearings Officer finds, as conditioned, that a short-term rental at 725 High Street SE is reasonably compatible with the surrounding property, and that use as a short-term rental will have minimal impact on the livability or appropriate development of the surrounding property. This criterion is met.

The Hearings Officer notes, based on the comments and testimony received, that the ordinance allowing issuance of conditional use permits for short-term rental of single-family residences in a historic district is of great concern to the community. A Hearings Officer's decision is made based on the application before them and the code as currently written. A Hearings Officer is not permitted to change a code. That is reserved for City Council.

9. 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 proposal'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 issuance of certain conditions to ensure the criteria are met.

- (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.

The Hearings Officer notes that the short-term rental at 725 High Street SE is required to provide a minimum of three off-street parking spaces under SRC Chapter 806. The Hearings Officer notes that SRC 806.010 generally requires off-street parking to be located on the same development site as the use or activity it serves. The underlying purpose of this standard is to ensure that developments have sufficient parking on-site to serve the use without creating congestion or the need to rely on on-street parking, which generally cannot be reserved for a specific use because such parking is intended to be available to the public.

The Hearings Officer notes that the required minimum right-of-way width for High Street is 60 feet. The right-of-way width adjacent to 725 High Street SE and other properties in the area is 99 feet. The Hearings Officer notes that, due to the excess right-of-way width, the spaces within the short-term rental's driveway are not located on the subject property, but within the public street right-of-way.

The Hearings Officer notes that the subject area is currently being used as a driveway and has been used as a driveway in the past. The application does not seek a new or enhanced use for the driveway, only that the existing driveway be counted toward the short-term rental's off-street parking requirement. The Hearings Officer notes that a wide right-of-way, with driveways located in the right-of-way, is common for properties in the neighborhood. The Hearings Officer finds that the adjustment to allow the parking spaces within the existing driveway to count towards the off-street parking requirements for the short-term rental equally meets the underlying purpose of SRC 806; therefore, this criterion is met.

(B) If located within a residential zone, the development will not detract from the livability or appearance of the residential area.

The Hearings Officer notes that the subject property is located within the RS (Single Family Residential) zone. The driveway currently exists and has been used as an area for parking vehicles. The Hearings Officer notes that the configuration of the driveway is not proposed to be changed in conjunction with the short-term rental use, and it will maintain its appearance as a driveway serving a single-family dwelling. The Hearings Officer finds that allowing the existing driveway to count towards the short-term rental's minimum off-street parking requirement will not detract from the livability or appearance of the residential area; therefore, this criterion is met.

(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.

The Hearings Officer finds that the proposal includes only one adjustment request (allowing parking spaces with the short-term rental's existing driveway to count toward the off-street parking requirement for use as a short-term rental). Because the proposal does not include more than one adjustment, this approval criterion is not applicable.

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DECISION

CONDITIONAL USE PERMIT:

The Hearings Officer APPROVES the Conditional Use Permit to allow the existing single-family dwelling located at 725 High Street SE to be used as a short-term rental, subject to the following conditions of approval:

Condition 1: The maximum number of occupants in the short-term rental shall not exceed 6 persons. For purposes of this condition of approval, children under 5 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: Off-street parking in the existing driveway shall be limited to a maximum of 2 vehicles at any given time. If necessary for the property manager to perform work or respond to an emergency at the property while the property is occupied, the property manager may park a third vehicle in the existing driveway for the duration of the work being performed.

Condition 5: 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.

CLASS 2 ADJUSTMENT:

The Hearings Officer APPROVES the Class 2 Adjustment to allow the parking spaces within the existing driveway at 725 High Street SE to count toward the off-street parking requirement for use of this property as a short-term rental.

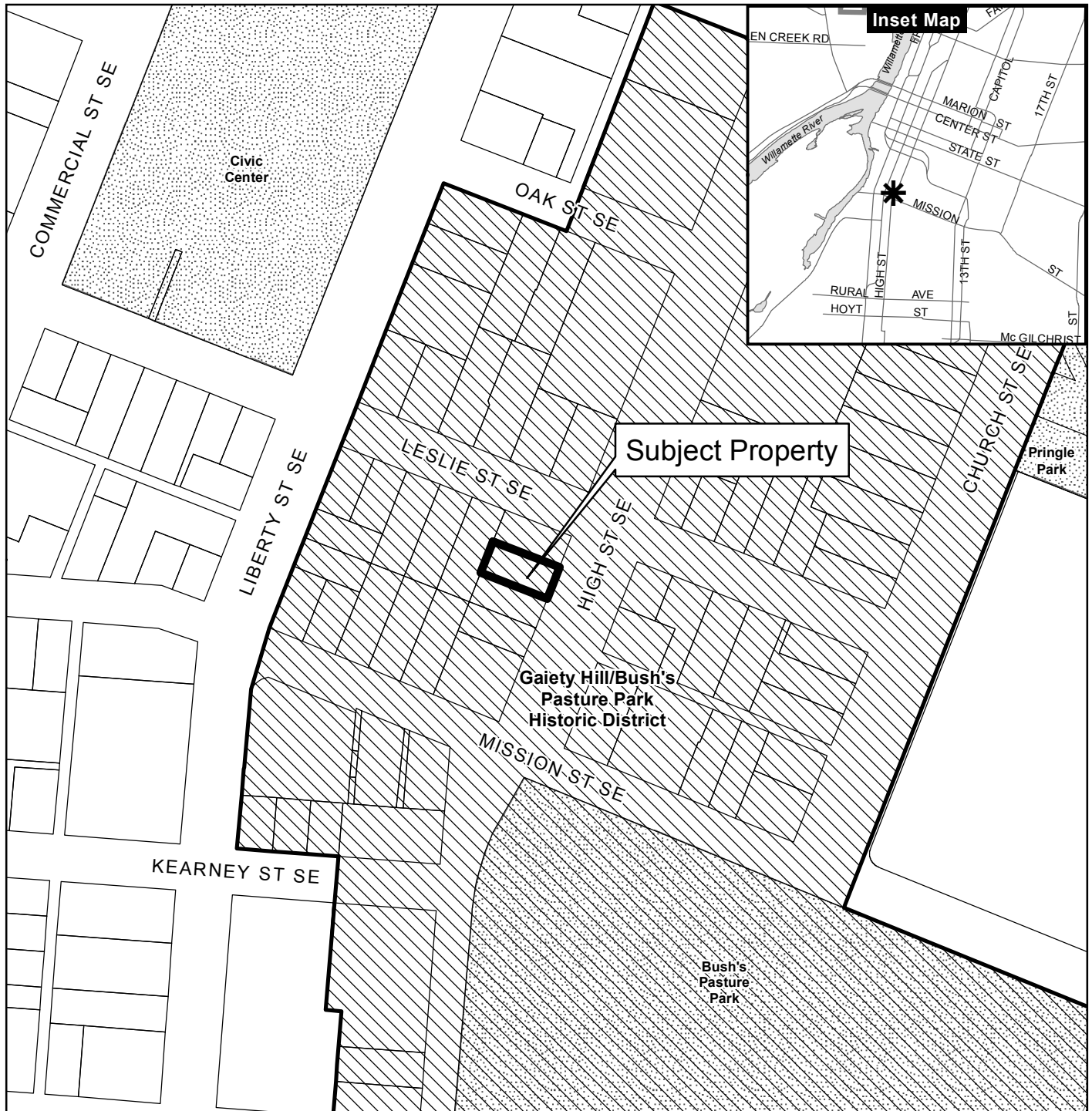
///

DATED: August 29, 2018

A handwritten signature in black ink, appearing to read "Amy Cook". The signature is fluid and cursive, with the first name "Amy" and the last name "Cook" clearly distinguishable.

Amy L. Cook, Hearings Officer

Vicinity Map 725 High Street SE



Legend

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

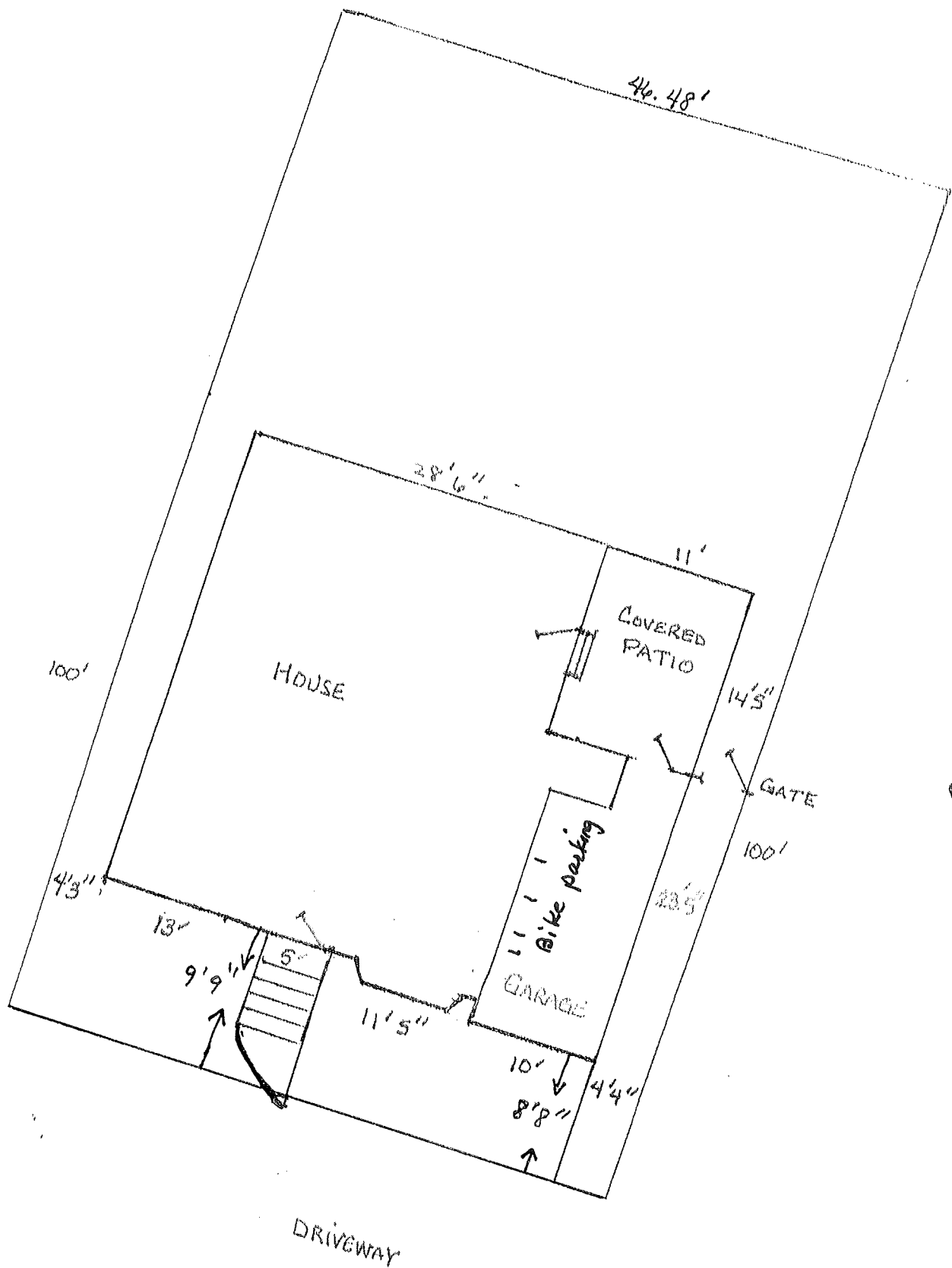
- Parks

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0 100 200 400 Feet

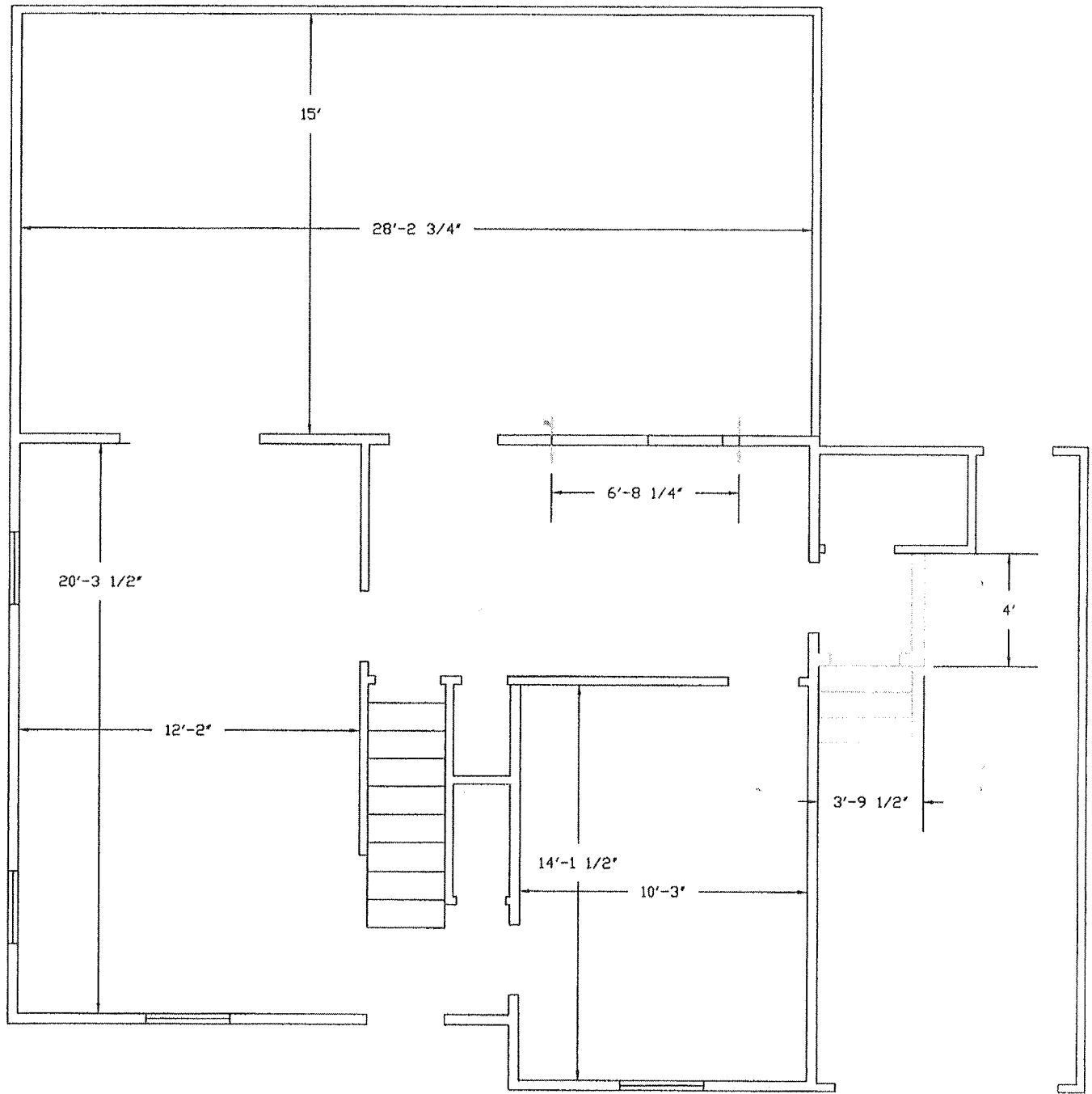




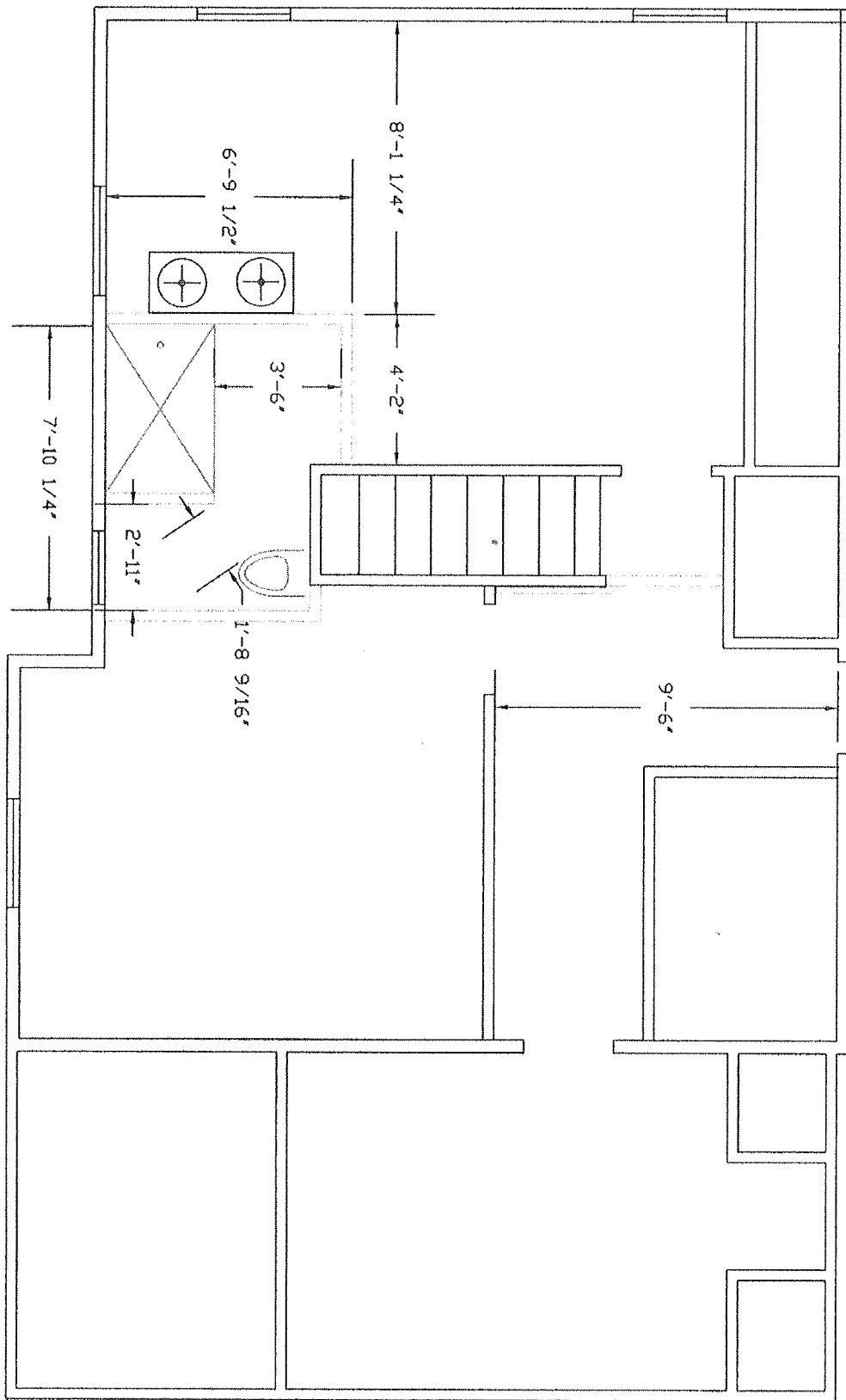
N
S
E
W

725 W. 10th St. SE, Salem, OR 97301
 SITE PLAN SCALE 1:128 (3/32" = 1')

Site Plan



Ground Floor Plan



Second Floor Plan

725 High Street SE Driveway Location in Relation to Property Line



Legend

Taxlots

Urban Growth Boundary

City Limits

Outside Salem City Limits

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