



Staff Report

File #: 18-453

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Date: 10/8/2018

Item #: 4. a.

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Norman Wright, Community Development Director

SUBJECT:

City Council Review of Hearings Officer's decision approving Conditional Use / Class 2 Adjustment Case No. CU-ADJ18-07 allowing an existing single family dwelling to be used as a short-term rental for property located at 725 High Street SE.

Ward(s): Ward 2

Councilor(s): Andersen

Neighborhood(s): SCAN

ISSUE:

Shall the City Council affirm, amend, or reverse the decision of the Hearings Officer for Conditional Use / Class 2 Adjustment Case No. CU-ADJ18-07 approving the use of an existing single family dwelling located at 725 High Street SE as a short-term rental and allowing 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?

RECOMMENDATION:

Affirm the August 29, 2018, Hearings Officer's decision approving the consolidated conditional use and class 2 adjustment application allowing the use of an existing single family dwelling located at 725 High Street SE as a short-term rental and allowing 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.

SUMMARY AND BACKGROUND:

In June of 2017 amendments to the Salem Revised Code (SRC) were adopted to recognize the increasing popularity of home-sharing websites like Airbnb, FlipKey, and others. The amendments established those zones where this type of rental activity would be allowed, as well as specific standards and licensing requirements to minimize impact on neighboring properties.

Within the RS (Single Family Residential) zone, two types of short-term term rental activities are allowed:

Accessory Short-Term Rental:

Accessory short-term rentals are intended to be of smaller-scale with fewer guest rooms and guests where the operator of the rental lives in the home being rented and the activity remains accessory to the main use of the property as a single family dwelling. Because of their lesser impact, accessory short-term rentals are allowed as a special use in the RS zone subject to additional standards under SRC 700.006 and the requirement to obtain a license. A conditional use permit with public hearing is not required.

Short-Term Rental:

Short-term rentals are intended to represent a potentially more intensive form of rental activity when compared to accessory short-term rentals. With short-term rentals there is generally no limit on the maximum number of guestrooms or guests allowed, the property owner does not need to reside in the dwelling unit, and multiple properties can be owned by one owner. Because of their potential increased impact, short-term term rentals within the RS zone require a conditional use permit in addition to obtaining a license. Conditional use permits require a public hearing and provide a process whereby neighbors can provide comments, and conditions of approval can be established to help mitigate any potential impacts on the immediate neighborhood.

On August 29, 2018, the Hearings Officer approved a consolidated application submitted by Stuart Kirchick and the Pensco Trust Company, LLC, seeking approval of a:

- a. Conditional use permit to allow the use of an existing single family dwelling at 725 High Street SE as a short-term rental; and
- b. 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 property subject to the proposed conditional use and class 2 adjustment request is approximately 0.1 acres (4,743 square feet) in size, zoned RS (Single Family Residential) within the Gaiety Hill/Bush's Pasture Park Historic District, and is located at 725 High Street SE (**Attachment 1**).

The conditional use permit in this case is required because the owner will not be living in the home. The class 2 adjustment is necessary in order to allow the existing parking spaces on the driveway leading to the garage of the home, the majority of which is located in the public street right-of-way of High Street, to be counted towards the proposed short-term rental's minimum off-street parking requirement.

The site plan prepared by the applicant showing the location of the existing home on the property and floor plans showing both the ground floor and upper floor layout of the dwelling are included as

Attachment 2. The written statement provided by the applicant addressing the proposal's conformance with the applicable approval criteria for the conditional use permit and class 2 adjustment is included as **Attachment 3.** Rebuttal testimony provided by the applicant during the 7-day rebuttal period granted by the Hearings Officer is included as **Attachment 4.**

The Hearings Officer's August 29, 2018, decision (**Attachment 5**) approved the conditional use permit and class 2 adjustment subject to the following five 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 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.

FACTS AND FINDINGS:

Procedural Findings

1. On March 23, 2018, Susan Martin, on behalf Stuart Kirchick and Pensco Trust Company, LLC, filed an application for a conditional use permit to allow the existing single family dwelling located at 725 High 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 by the applicant's representative on May 4, 2018, in order to allow the existing parking spaces within the driveway leading to the garage of the home to be counted towards the proposed development's minimum required off-street

parking.

2. The application was deemed complete for processing on June 22, 2018. Notice of the public hearing on the proposed development was subsequently provided pursuant to SRC requirements on July 5, 2018. Notice was also posted on the subject property by the applicant's representative pursuant to SRC requirements on July 11, 2018.
3. On July 25, 2018, a public hearing on the proposal was held before the Hearings Officer. Prior to the close of the public hearing a request was made to hold the hearing record open to allow for submittal of additional testimony. The Hearings Officer granted the request and held the record open until August 1, 2018, for the submission of new evidence, August 8, 2018, for rebuttal by the applicant, and August 15, 2018, for final argument by the applicant.
4. On August 29, 2018, after receiving additional evidence and testimony from the public and the applicant, the Hearings Officer issued a decision approving the conditional use permit and class 2 adjustment application (**Attachment 5**).
5. On September 10, 2018, the Hearings Officer's decision appeared on the City Council agenda as an information item and the Council subsequently voted, pursuant to SRC 300.1050, to initiate City Council Review and call the decision up for a public hearing.
6. On September 18, 2018, notice was sent pursuant to SRC requirements for the City Council public hearing. Notice of the hearing was also posted on the subject property pursuant to SRC requirements.
7. The public hearing before the City Council is scheduled for October 8, 2018.
8. The state-mandated 120-day local decision deadline for the application is October 20, 2018.

Substantive Findings

1. 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 provided initial comments on July 6, 2018. The neighborhood association later provided subsequent comments on July 25, 2018, and testified at the public hearing.

The comments provided by the neighborhood association on July 25, 2018, in summary, recommended that the Hearings Officer deny the conditional use permit because the proposal does not meet conditional use approval criterion number (3) requiring the proposed use to be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.

The neighborhood association explains this criterion is not met because the proposed use represents a commercialization of a single family residence within the Gaiety Hill/Bush's Pasture Park National Historic which conflicts with the goals of the district to prevent commercial encroachment, stabilize the neighborhood, and stimulate increased owner occupancy by making it a more distinct and desirable place to live. The neighborhood association indicates the proposed use will impact the livability of surrounding property because short-term renters who come and go in quick succession without any involvement in the residential neighborhood are not the same as long-term owners and renters who develop a social and security network of neighbors helping neighbors, watching out for each other's children and property, keeping streets and nearby parks clean, etc.

Staff Response: As identified in the August 29, 2018, Hearings Officer decision (**Attachment 5**) and the July 25, 2018, Hearings Officer staff report (**Attachment 6**), the proposed conditional use permit and class 2 adjustment satisfy the applicable approval criteria. 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. As a short-term rental, people may choose to stay in the home one night, a few days, or a few weeks, but in all cases people choose to stay there in order to have a place to reside and live on a temporary basis.

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

The conditional use permit review process applicable to the approval of short-term rentals allows for the placement of additional conditions on the use when 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.

Though the owner of the short-term rental is located out of state, it will be managed by a local property manager who will be available to respond to and address any issues that may arise when the home is being rented. In order to respond to concerns raised and to help mitigate the potential impacts of the use, the Hearings Officer placed conditions on the approval:

- 1) Limiting the maximum number of overall guests that may stay in the home at any one time to 6 persons;
- 2) Restricting the number of bookings of the home at any given time to one group of guests;
- 3) Restricting the types of activities the home may be rented for;
- 4) Limiting the number of parking spaces that may be provided in the driveway; and
- 5) Limiting the transferability of the conditional use permit to another applicant or owner.

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

2. 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. Public comments were provided prior to and during the July 25, 2018, Hearings Officer public hearing, as well as subsequent to the public hearing during the 7-day open record period. Public comments provided prior to and during the public hearing are included as **Attachment 7**. Public comments provided during the 7-day open record period are included as **Attachment 8**.

The comments received express concerns and opposition to the proposal which can be summarized as falling into the following main categories:

A. Consistency with Salem Area Comprehensive Plan and City's Historic Preservation Ordinance. Comments provided expressed concern that the proposed use of the home, which is designated as a historic contributing resource within the Gaiety Hill Bush's Pasture Park Historic District, as a short-term rental is inconsistent with the provisions of the Salem Area Comprehensive Plan (SACP) pertaining to the protection of identified historic resources and the City's historic preservation ordinance (SRC Chapter 230).

Staff Response: The Comprehensive Policies Plan of the Salem Area Comprehensive Plan includes the following policy specific to the protection of historic resources:

▪ **Scenic and Historic Areas, Natural Resources and Hazards Policy No. 10 (Historic Sites and Structures)(SACP Section IV.N.10):**

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, 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.

As identified by the above policy, preservation of the historic, cultural, and architectural character of locally designated historic resources, and structures identified in the National Register of Historic Places, is achieved by limiting those uses that conflict with the historic resource. For purposes of the policy, limiting conflicting uses specifically pertains to alterations to the resource or demolition.

In order to fulfill this policy and protect designated historic resources as required by the SACP,

the City has an adopted historic preservation ordinance (SRC Chapter 230) that regulates alteration and demolition of historic resources. The purpose of the City's historic preservation ordinance, as identified under SRC 230.005, 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."

Pursuant SRC 230.020, historic design review is required for physical alterations to historic resources and sites in order to maintain their appearance. Historic design review is not required, however, for the approval of specific uses within historic buildings; and the historic preservation ordinance does not identify permitted and prohibited land uses within historic districts or historic structures. Instead, allowed land uses are governed by the zoning district applicable to the property.

In this case, the subject property is zoned RS (Single Family Residential). Within the RS zone, short-term rentals are allowed as a conditional use pursuant to SRC 511.005, Table 511-1. Because the use is allowed as a conditional use in the zone, a conditional use permit is required in order to establish the use. Any physical changes to the structure requires historic design review under SRC Chapter 230.

Because the subject property is allowed as a conditional use in the zone, and because visible physical alterations to the outside of the structure require historic design review, the proposed use of the property as a short-term rental is consistent with the applicable provisions of the SACP and SRC Chapter 230.

B. Impact on Residential Character of Neighborhood and Residential Historic District.

The majority of the comments submitted express concerns about the conversion of this 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. Specific concerns raised regarding the proposal and its potential impacts to the neighborhood and Historic District include the following:

- The potential for absentee/out-of-state landlords to be non-responsive and the property not being adequately monitored and maintained;
- 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;

- Allowing long-distance landlords to operate short-term rentals will destroy the quality of the neighborhood and encourage more out-of-town buyers to purchase homes in the neighborhood to convert them to short-term rentals.
- 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 are 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).

Staff Response: 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 guests for periods of less than 30 days. As explained by the applicant, guests will go about their days much the same as other families in the neighborhood and eat, sleep, work, stroll through Bush Park, and visit restaurants.

Because this type of use shares similarities with residential uses, both short-term rentals and accessory short-term rentals are allowed within the RS zone. 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. The Hearings Officer's decision includes conditions to limit the maximum number of guests allowed in the rental, the number vehicles that may be parked in the driveway, the type of activities the rental may be used for, the number of bookings that may be made at any one time, and the transferability of the conditional use permit. These conditions help to ensure that the number of guest within the dwelling, the number of cars within the driveway, 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 strictly residential in nature because it's being operated for the commercial purpose of renting rooms on a short-term basis to individuals, the general characteristics of the use are similar to those of a

single family residential use in that there are people living in the structure, albeit on a temporary basis. The proposed use requires no alterations to the dwelling that would preclude it from being used as a single family home in the future, the investments made in the dwelling by the owner will help to ensure the long-term viability of the resource, 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.

In the applicant's written statement provided on July 17, 2018 (**Attachment 3**), it is indicated that not only will there be no detracting from the livability of the neighborhood, the owners of the house and the Property Manager all hope to be engaged as residents in this neighborhood. In addition it is explained that the neighborhood could potentially gain three more people championing the preservation of the historic area and the taxes generated will promote tourism and revenue for the community.

- C. **Parking Impacts.** Concern was expressed about potential parking impacts of the proposed use. Comments received explain that parking is a particular problem in the area and parking on the street is limited to permit parking only.

Staff Response: The minimum off-street parking requirement for short-term rentals established under SRC 806.015(a), Table 806-1, is one per guest room or suite. Because there are three bedrooms within the home, a minimum of three off-street parking spaces are required for the proposed short-term rental. Parking for the rental is proposed to be provided within the existing single-car garage and the driveway leading to it. Based on the parking stall dimension requirements under SRC 806, which require standard sized parking stall to be 9 feet wide by 19 feet in depth, and the depth of the driveway between the front of the garage and the sidewalk (approximately 40 ft.) and the landscaping bed and the sidewalk (approximately 35 ft.), there is space within the driveway to accommodate three standard size parking spaces. The three spaces within the driveway and the one space within the garage results in a total of four spaces being available to serve the proposed use. However, in response to concerns raised regarding the visual impact of several cars parking in the existing driveway, the Hearings Officer established a condition of approval limiting the number of cars that may be parked in the driveway to two. The two parking spaces allowed in the driveway plus the parking space in the existing garage result in three off-street parking spaces being available to serve the proposed use and satisfy minimum off-street parking requirements.

- D. **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.

Staff Response: In order to assess the potential vehicle and pedestrian safety risk resulting from the proposed use and the backing out of vehicles onto High Street, staff consulted with the

City's Assistant Traffic Engineer who provided the following information regarding traffic on High Street:

- **Speed Limit:** The posted speed limit on High Street is 25 MPH. The signs were installed in 2015.
- **Traffic Volume:** Traffic volume data is collected on High Street approximately 200 feet south of Trade Street SE. There has been a downward trend in traffic volumes over the past 15 years of collected data. In 1993 there was 7,260 vehicles per day using High Street SE at the count location, but in the most recent counts (2002, 2005, 2007, and 2008) show the volume is about 3,100 vehicles per day.
- **Crash Statistics:** A review of the 5-year crash data (2012 through 2016) along High Street at Mission Street, Oak Street and Leslie Street show zero (0) reported crashes that could be attributed to vehicles backing out of a driveway.

Based on the above data provided from the City's Assistant Traffic Engineer, traffic volumes on High Street have decreased over the past 15 years and there have been no reported crashes (from 2012 through 2016) resulting from vehicles backing out of driveways onto High Street.

Conditions were placed on the approval of the conditional use permit to limit both the overall number of guests who may stay in the short-term rental and the number of vehicles that may be parked in the driveway. These limits will help to ensure that the number of people staying in the rental and the number of vehicles parked in the driveway will be consistent with what is typical for other single family homes in the neighborhood. Approval of the short-term rental in this location will therefore 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.

3. Approval Criteria.

- A. Conditional Use.** The applicable criteria that must be satisfied in connection with the approval of a conditional use permit are set forth under SRC 240.005(d).

SRC 240.005(d) provides:

An application for conditional use permit shall be granted if all of the following criteria are met:

- (1) The proposed use is allowed as a conditional use in the zone;*
- (2) The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions; and*
- (3) The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.*

As indicated in the August 29, 2018, Hearings Officer decision (**Attachment 5**) and the July

25, 2018, Hearings Officer staff report (**Attachment 6**), the proposal satisfies the conditional use approval criteria of SRC 240.005(d).

The proposed short-term rental is allowed as a conditional use in the RS zone; conditions have been placed on the approval to limit the number of guests allowed and minimize any reasonably likely adverse impacts on the immediate neighborhood; and due to the nature and characteristics of the use, and its limited scale, it will be reasonably compatible with and have minimal impact on the livability and appropriate development of surrounding property.

B. Class 2 Adjustment. The applicable criteria that must be satisfied in connection with the approval of a class 2 adjustment are set forth under SRC 250.005(d)(2).

SRC 250.005(d)(2) provides:

An application for a Class 2 adjustment shall be granted if all of the following 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.**
- (B) If located within a residential zone, the proposed development will not detract from the livability or appearance of the residential area.*
- (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.*

As indicated in the August 29, 2018, Hearings Officer decision (**Attachment 5**) and the July 25, 2018, Hearings Officer staff report (**Attachment 6**), the proposal also satisfies the class 2 adjustment approval criteria of SRC 250.005(d)(2).

The class 2 adjustment to allow the existing driveway in the right-of-way of High Street to meet a portion of the proposal's off-street parking requirements equally meets the underlying purpose of the off-street parking standard by ensuring sufficient parking is still provided off of the street to meet the minimum number of required spaces. The limit on the number of vehicles allowed to park within the driveway ensures the proposed development will not detract from the livability or appearance of the residential area. Because only one adjustment has been requested in conjunction with the proposal, there is no cumulative effect resulting from multiple adjustments that would make the proposal inconsistent with the overall purpose of the zone.

4. Conclusion.

Based on the facts and findings included within this staff report, Hearings Officer's August 29, 2018 decision, and the July 25, 2018, Hearings Officer staff report, the proposed Conditional Use Permit and Class 2 Adjustment satisfy the applicable approval criteria of SRC 240.005(d) and

250.005(d)(2).

Bryce Bishop
Planner II

Attachments:

1. Vicinity Map.
2. Applicant's Site Plan and Floor Plans
3. Applicant's Written Statement (July 17, 2018)
4. Applicant's Rebuttal Testimony (From 7-Day Rebuttal Period)
5. Hearings Officer's Decision for Conditional Use / Adjustment Case No. CU-ADJ18-07 (August 29, 2018)
6. Staff Report to Hearings Officer (July 25, 2018)
7. Public Comments (For July 25, 2018, Public Hearing)
8. Public Comments (From 7-day Open Record Period)