

**BEFORE the HEARING EXAMINER for the
CITY of GOLD BAR**

DECISION

FILE NUMBER: LS-001-2024

APPLICANT: Yasmine Hejazi
5201 Storm Lake Road
Snohomish, WA 98290

TYPE OF CASE: Conditional Use Permit for Short-Term Rental of the residence at 504
1st Avenue W

STAFF RECOMMENDATION: Approve subject to condition

EXAMINER DECISION: APPROVE subject to conditions

DATE OF DECISION: March 18, 2024

INTRODUCTION ¹

Yasmine Hejazi (“Hejazi”) seeks a Conditional Use Permit (“CUP”) for Short-Term Rental (“STR”) of the residence at 504 1st Avenue W.

Hejazi filed an application for a CUP on January 22, 2024. (Exhibit 1, PDF 5 - 7 ²) The Gold Bar Public Works Director (“Director”) deemed the application to be complete on January 23, 2024. ³ (Exhibit 5, PDF 23) The City issued a Notice of Application on January 23, 2024. (Exhibit 6, PDF 27 & 28)

The subject property is located at 504 1st Avenue W. Its Assessor’s Parcel Number is 00453600000300 (“Parcel 003”). (Exhibit 1, PDF 5)

The Gold Bar Hearing Examiner (“Examiner”) viewed the subject property via Google Earth imagery: Overhead imagery dated July 23, 2018; Street View imagery not available.

¹ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

² Exhibit citations are provided for the reader’s benefit and indicate: 1) The source of a quote or specific fact; and/or 2) The major document(s) upon which a stated fact is based. Citations to exhibits that are available electronically in PDF use PDF page numbers, not source document page numbers. The exhibits in this case are contained in one consolidated PDF file with PDF page numbers from 1 – 72. While the Examiner considers all relevant documents in the record, typically only major documents are cited. The Examiner’s Decision is based upon all documents in the record.

³ The Director has the lead City staff responsibility for processing land use applications. [Gold Bar Municipal Code (GBMC) 19.05.020]

The Examiner held a hybrid open record hearing on March 13, 2024: In-person participation was available at the City Hall; remote participation was available through the “Zoom” platform. The Director gave notice of the hearing as required by the Gold Bar Municipal Code (“GBMC”). (Exhibits 7 – 10, PDF 31 - 44)

The following exhibits were entered into the hearing record during the hearing:

Exhibits 1 - 14: As enumerated in Exhibit 1, the Staff Report

The action taken herein and the requirements, limitations and/or conditions imposed by this decision are, to the best of the Examiner’s knowledge or belief, only such as are lawful and within the authority of the Examiner to take pursuant to applicable law and policy.

FINDINGS OF FACT

1. On June 21, 2022, the Gold Bar City Council adopted Ordinance No. 757 establishing business licensing and zoning requirements for STRs. STRs had not previously been allowed in Gold Bar. Ordinance No. 757 became effective later that same month. The business license provisions for STRs are contained in Chapter 5.20 GBMC; the zoning regulations for STRs are contained in GBMC 17.16.030 - .038. STRs are a listed Conditional Use in all residential zones. [GBMC 17.16.030(f), 17.20.040, and 17.24.030]

Hejazi’s STR CUP is the first application to be processed under Ordinance No. 757 regulations. (Testimony)

2. Parcel 003 contains approximately 0.32 acres and is located on the north side (right bank) of May Creek between the creek and 1st Avenue W. It contains a double-wide mobile home, detached two-car garage, and a small (presumably) recreational structure near the creek shoreline. The parcel is fenced with a low (appears to be 3’ – 4’ high) chain link fence. A paved driveway leads from 1st Avenue W to the garage, with a turnaround loop in the front yard. The parcel is mostly lawn with shrubs and other landscaping around the mobile home. (Exhibit 4, PDF 19 & 20)
3. Hejazi and her “co-applicant,” Colin Bohn (“Bohn”), purchased Parcel 003 to use as a seasonal residence. They both enjoy hiking in the summer and skiing in the winter. Parcel 003 gives them a base closer to those activities than are their full-time residences. They seek approval to use the residence as an STR to at least partially off-set the cost of owning the residence and to maintain some use of it when they cannot be using it (so that it doesn’t sit empty for long periods of time). (Testimony)
4. Section 17.16.035 GBMC sets forth criteria for approval of an STR CUP. Those criteria and the facts associated with each are:

“The following criteria shall be met in order for Conditional Use approval of a property to be authorized by the city as a short-term rental dwelling.

“1. Occupancy. Maximum occupancy of the rental shall be based on the International Building Code [“IBC”] standards. The property owner shall be responsible for ensuring that the dwelling unit is in conformance with its maximum occupancy.”

Facts: The residence on Parcel 003 is a double-wide mobile home with an IBC classification of R-3 which allows 10 or fewer occupants. (Exhibit 14, PDF 69) Hejazi has established an occupancy limit of 6. (Exhibit 12, PDF 54)

“2. Parking. At least one (1) additional off-street parking space shall be provided for the vacation rental use, in addition to all other parking required for the dwelling. Parking on-site along the front property line shall not exceed forty (40) percent of the front-yard frontage. The number of vehicles at a vacation rental residence shall not at any time exceed the number of available parking spaces on the subject property. However, this limitation shall not apply to condominium dwellings.”

Facts: Parcel 003 has four (4) off-street parking spaces. (Exhibit 14, PDF 70)

“3. Signage. No outdoor advertising signs related to the vacation dwelling shall be allowed on the site.”

Facts: No such signs are proposed.

“4. Solid Waste Collection. Weekly solid waste collection is required during all months.”

Facts: This requirement is not addressed directly in the record. Hejazi’s guest rules require guests to place their trash in a “gray trash bin on the west side of the garage”. (Exhibit 12, PDF 54)

“5. Local Property Representative. Where the property owner does not reside full-time within twenty-five (25) miles driving distance of Gold Bar, a local property manager shall be designated. The local property manager shall reside full-time within twenty-five (25) miles driving distance from Gold Bar. The local representative or property owner shall be responsible for responding to complaints about the rental. The name, address, and telephone contact number of the property owner or local representative shall be kept on file at the city of Gold Bar. Additionally, a notice that states the name, address, and telephone number of the property owner or local representative will be sent to all property owners within one hundred fifty (150) feet of the short-term rental property. If the local representative changes, the owner of the short-term rental property shall be required to send out new notices to all property owners within one hundred fifty (150) feet of the subject property.”

Facts: Hejazi’s full-time residence is located 21.9 road miles from Parcel 003 according to Google Earth’s “Directions” app. Bohn lives at 1915 106th Street SW in Everett. (Exhibit 1, PDF 5) Bohn’s residence is 36.3 road miles from Parcel 003 according to Google Earth’s “Directions” app. [Official notice of Google Earth information] Hejazi understands that if

she were to relocate to Bohn's residence or to any residence which was more than 25 miles from the residence on Parcel 003, she would have to retain a local representative. (Testimony)

- “6. Informational Sign. A sign shall be posted conspicuously inside the dwelling to provide information on maximum occupancy, location of off-street parking, contact information for the property owner or local representative, evacuation routes, and the renter's responsibility not to trespass on private property or to create disturbances.”

Facts: Hejazi has developed a guidebook which will be kept in the residence for guest usage. The guidebook includes the required information as well as a list of local businesses that guests may find helpful. Bohn testified that they are still adding local references to that list. (Exhibit 12, PDF 51 – 58; testimony)

- “7. Other Standards. The short-term rental dwelling shall meet all applicable requirements of the zone in which it is located, including, but not limited to:

“a. Setbacks.”

Facts: The existing residence meets setback requirements. No changes are proposed.

“b. Maximum height.”

Facts: The existing residence meets building height requirements. No changes are proposed.

“c. Lot coverage.”

Facts: The existing structures meet lot coverage requirements. No changes are proposed.

“d. All short-term rentals must be separated by two hundred fifty (250) feet from any other short-term rental. Measurement is from building to building.”

Facts: Since this is the first STR to be proposed or approved in Gold Bar, this requirement is not relevant. Any and all subsequent STR applications will have to show that the nearest portion of their residences are at least 250 feet, straight-line measurement, from the nearest portion of the residence on Parcel 003 and any other STRs that have subsequently been approved.

5. Three members of the public testified during the hearing. One (Julia Palekha) opposes STRs in principal. Another (Emily Ellson) worries about STRs proliferating in the City and harming the small-town feel of Gold bar. The third (Starla Shaulis) believes that it is prudent to have STR use of a seasonal home to prevent it from sitting empty for long periods, but is also concerned about the number of STRs that could be established in Gold Bar.

6. Hejazi has also applied for the required business license. (Exhibit 3, PDF 15)

The criteria for approval of an STR business license differ somewhat from the STR CUP approval criteria.⁴ The business license criteria expressly prohibit use of an STR “for a wedding, banquet, reception, bachelor or bachelorette party, concert, fundraiser, sponsored event, or any similar group activity.” [GBMC 5.20.020(A)(3)] They also require proof “that the dwelling is insured as a short-term or vacation rental.” [GBMC 5.20.020(A)(7)] The business license criteria also require issuance of a Certificate of Occupancy as a transient accommodation and an “annual safety inspection.” [GBMC 5.20.020(A)(8)] Lastly, the business license criteria require that “[a]ll short-term or vacation rentals must comply with all city codes and ordinances, including but not limited to GBMC Chapter 8.16, Nuisances and Chapter 8.20, Fireworks.” [GBMC 5.20.020(A)(9)]

7. The Director recommends approval of the STR CUP subject to one condition: That Hejazi provide a certificate of insurance. (Exhibit 14, PDF 71) Hejazi does not object to the recommended condition. (Testimony)
8. Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

LEGAL FRAMEWORK⁵

The Examiner is legally required to decide this case within the framework created by the following principles:

Authority

A CUP is a Type III application which is subject to an open record hearing before the Examiner. The Examiner makes a final decision on the application which is subject to the right of reconsideration and appeal to Superior Court. [GBMC 2.26.120, .125, and .140; GBMC 19.01.030; and GBMC 19.06.060]

The examiner’s decision may

grant, deny, or grant with such conditions, modifications, and restrictions as the examiner finds reasonable to make the application or appeal compatible with its environment, the Gold Bar Municipal Code, the Gold Bar Comprehensive Plan, other official policies and objectives, and land use regulatory enactments. Examples of the kinds of conditions, modifications, and restrictions that may be imposed include, but are not limited to, additional setbacks, screenings in the form of fencing or landscaping, easements, dedications, or additional right-of-way and performance bonds[.]

[GBMC 2.26.120(B)]

⁴ Which is not surprising given that one is licensing a business and the other is authorizing a land use: The focus of each is different.

⁵ Any statement in this section deemed to be either a Finding of Fact or a Conclusion of Law is hereby adopted as such.

Review Criteria

Short-Term Rental

The special review criteria for STRs in GBMC 17.16.035 have been listed in Finding of Fact 4, above.

Conditional Use Permit

The GBMC does not specify review criteria for CUPs. However, several code sections provide guidance. In addition to GBMC 2.26.120(B), quoted immediately above, GBMC 17.72.060 and GBMC 19.04.010(B) are particularly relevant:

When considering an application for a conditional use permit or special use permit, the [Examiner] shall consider the applicable standards, criteria, and policies established by this title as they pertain to the proposed use and may impose specific conditions precedent to establishing the use in order to satisfy the criteria of this chapter. The conditions may:

- A. Increase requirements in the standards, criteria, or policies established by this title;
- B. Stipulate the exact locations and means of minimizing hazards to life, limb, property damage, erosion, landslides, or traffic;
- C. Require structural features or equipment essential to serve the same purpose set forth in subsection (B) of this section,
- D. Impose conditions similar to those set forth in subsections (B) and (C) of this section as deemed necessary to establish parity with uses permitted in the same zone and their freedom from nuisance generating features and matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters; provided, the [Examiner] may not, in connection with action on a conditional use permit or special use permit, reduce the requirements specified by this title as pertaining to any use nor otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;
- E. Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses within the general area in which the use is proposed to be located;
- F. Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibrations, odors, and hazards or public need;
- G. Require the posting of construction and maintenance bonds or other securities sufficient to secure to the city the estimated costs of construction and/or installation and/or maintenance of required improvements.

[GBMC 17.72.060]

During project permit application review, [Gold Bar] shall determine whether the items listed in this subsection are defined in the development regulations applicable to the proposed project. In the absence of applicable development regulations, [Gold Bar] shall

determine whether the items listed in this subsection are defined in [Gold Bar's] adopted comprehensive plan. This determination of consistency shall include the following:

1. The type of land use permitted at the site, including uses that may be allowed under certain circumstances, if the criteria for their approval have been satisfied;
2. The level of development, such as units per acre, density of residential development in urban growth areas, or other measures of density; and
3. Availability and adequacy of infrastructure and public facilities identified in the comprehensive plan, if the plan or development regulations provide for funding of these facilities as required by RCW Chapter 36.70A; and
4. Character of the development, such as development standards.

[GBMC 19.04.010(B)]

Vested Rights

The City has no vesting regulations. "Vesting" serves to "fix" the regulations against which a development application is judged. [*Potala Village Kirkland, LLC v. City of Kirkland*, __ Wn. App. __ (Div. I, 2014)]

In the 1950s, the [state] supreme court first adopted the common law vested rights doctrine [for building permit applications]. ... In cases that followed, Washington courts applied the vested rights doctrine to permit applications other than building permit applications. They included conditional use permit applications, grading permit applications, shoreline substantial development permit applications, and septic permit applications.

In 1987, the legislature enacted legislation regarding the vested rights doctrine. The session laws added ... RCW 19.27.095(1) and RCW 58.17.033(1) respectively ... [which] only refer to building permit applications and subdivision applications. ...

Most recently, in *Town of Woodway v. Snohomish County*, the [state] supreme court reiterated that "[w]hile it originated at common law, the vested rights doctrine is now statutory."

[*Potala*, Slip Opinion 6 – 8 and 11] "With these points in mind, [the *Potala* court held] that the filing of [an] application for [a] shoreline substantial development permit, without filing an application for a building permit, [does] not vest rights to zoning or other land use control ordinances." [*Potala*, Slip Opinion at 12] The *Potala* court "express[ed] no opinion on whether or to what extent the vested rights doctrine applies to permits other than shoreline substantial development permits. These questions [were] not before [it]." [*Potala*, Slip Opinion at 25] Therefore, whether the vested rights doctrine still applies to CUPs is debatable.

Vesting is not particularly important in this case as the City has made no development regulations changes between the time the applications were filed and this date.

Standard of Review

The standard of review is preponderance of the evidence. The applicant has the burden of proof. [GBMC 19.05.060]

Scope of Consideration

The Examiner has considered: all of the evidence and testimony; applicable adopted laws, ordinances, plans, and policies; and the pleadings, positions, and arguments of the parties of record.

CONCLUSIONS OF LAW

1. A Hearing Examiner is a quasi-judicial hearing officer, not a legislative official. In simple terms, that means that the Examiner must apply the regulations as adopted by the City's legislative officials, not write an alternate version. The Examiner has no authority to rewrite or otherwise amend adopted regulations. Likewise, the Examiner has no authority to entertain challenges to the content of adopted regulations when considering an application before the Examiner. [RCW 36.70B.030 & .040]

In the context of this case, that means that the Examiner cannot consider the objections and concerns of those who testified in opposition to all or some of the City's STR regulations. The question and issue before the Examiner is Does Hejazi's application comply with the adopted criteria for approval? If not, Can the application be conditioned to comply with those criteria? If it can, it must be approved. The question is not Does the Examiner think that the adopted regulations should be different in some fashion? The Examiner has no authority to consider that question.

2. The evidence in Finding of Fact 4, above, shows by well more than a preponderance that Hejazi's application complies with all of the established criteria in GBMC 17.16.035 with but one exception. The exception is Criterion 4: "Weekly solid waste collection is required during all months." In reality, Criterion 4 is an on-going requirement more than it is an initial approval requirement. An applicant could include a statement in their application that they will provide weekly garbage collection year round, but that doesn't prove that weekly garbage collection has occurred. In fact, no statement made before the STR is in operation could prove that weekly garbage service has occurred.

The solution is simple: Impose a condition on the permit requiring weekly solid waste collection during all months. Such a condition will be added.

3. The condition recommended by the Director ("Provide certificate of insurance.") will not be included. The insurance requirement is a part of the STR business licensing provisions, not the zoning provisions. It would be an appropriate condition/requirement precedent to issuance of the business license, but not a condition on the zoning approval.
4. Hejazi has represented that the maximum allowed number of guests will be six (6). The house has three bedrooms. (Exhibit 12, PDF 53) Six persons is an appropriate capacity for a three-bedroom residence. Since Hejazi has stated that occupancy will be limited to six (Exhibit 12, PDF 54) and the floor plan demonstrates comfortable capacity for six guests (Exhibit 12, PDF 53), the STR permit will limit guest occupancy to six.

HEARING EXAMINER DECISION

RE: LS-001-2024 (Yasmine Hejazi STR CUP)

March 18, 2024

Page 9 of 11

5. Hejazi lives within 25 driving miles of Parcel 003; her co-applicant lives further than 25 driving miles from Parcel 003. Subsection 17.16.035(5) GBMC requires the owner to live full-time within 25 driving miles of the STR or retain a local agent who does live within 25 driving miles of Parcel 003. This is not an issue now as Hejazi testified that she lives at the Storm Lake Road address. However, there was some slight indication in her testimony that maybe she might at some time live elsewhere. A permit condition is unnecessary as the code mandates that she live full-time within 25 driving miles of Parcel 003. This Conclusion of Law is simply a reminder to Hejazi of that requirement and notice that failure to maintain compliance with GBMC 17.16.035(5) (as well as all other requirements of the GBMC, for that matter) would constitute violation of the permit and the GBMC and would subject her to enforcement action by the City.
6. No need exists for imposition of the type of special conditions discussed in GBMC 17.72.060. This STR will use an existing single-family residence; no new construction is proposed. The STR will use the residence as a residence with appropriate occupancy limits; it will not be any more dangerous to the neighborhood than it has been in the past. Neither construction nor maintenance bonds are necessary as there will be no new construction nor any new landscaping that would need maintenance until well established.
7. Hejazi's STR passes the "consistency" test: STRs are allowed as Conditional Uses in all residential zones in the City; the STR does not change the density of development; utilities will not be taxed beyond their present level of use; and the existing residence has been a part of the neighborhood for some time.
8. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

DECISION

Based upon the preceding Findings of Fact and Conclusions of Law, the testimony and evidence submitted at the open record hearing, and the Examiner's site view, the Examiner **GRANTS** the requested Conditional Use Permit for Short-Term Rental of the residence at 504 1st Avenue W **SUBJECT TO THE ATTACHED CONDITIONS.**

Decision issued March 18, 2024.

ls\ John E. Galt

John E. Galt
Hearing Examiner

HEARING PARTICIPANTS ⁶

Yasmine Hejazi
Emily Ellson
Julia Palekha

Rich Norris
Starla Shaulis
Colin Bohn

NOTICE of RIGHT of RECONSIDERATION

This Decision is final subject to the right of any party of record to file a written request for reconsideration within seven (7) calendar days of the date this Decision was mailed to the parties. See GBMC 2.26.125 for additional information and requirements regarding reconsideration.

NOTICE of RIGHT of APPEAL

This Decision is final subject to the right of a party of record with standing, as provided in RCW 36.70C.060, to file a land use petition in Superior Court in accordance with the procedures of GBMC 2.26.140 and 19.06.060. Any appeal must be filed within 21 days following the issuance of this Decision unless reconsideration has been requested. See GBMC 2.26.140 and 19.06.060 for additional information and requirements regarding judicial appeals.

The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.”

⁶ The official Parties of Record register is maintained by the City’s Hearing Clerk.

CONDITIONS OF APPROVAL
LS-001-2024
YASMINE HEJAZI SHORT-TERM RENTAL

This Conditional Use Permit is subject to compliance with all applicable provisions, requirements, and standards of the Gold Bar Municipal Code, standards adopted pursuant thereto, and the following special conditions:

1. This Conditional Use Permit authorizes the single-family residence at 504 1st Avenue W to be used as a short-term rental for up to six (6) persons.
2. The owner/permittee shall provide weekly solid waste collection for the residence at 504 1st Avenue W during all months as required by GBMC 17.16.035(4).