

**SAVANNAH ZONING BOARD OF APPEALS  
STAFF REPORT**

**PETITIONER:**       **PATRICK CONNELL AS AGENT FOR JASON COMBS DBA PECHORIN PROPERTIES, LLC.**

**FILE NO:**           **16-000576-ZBA**

**ADDRESS:**         **508 W. 37<sup>TH</sup> STREET**

**DATE:**             **FEBRUARY 25, 2016**

**Nature of Request**

The petitioner, Patrick Connell, as agent for Jason Combs dba Pechorin Properties, LLC, is requesting approval of an appeal of a decision by the Zoning Administrator finding that the operation of a Short Term Vacation Rental was “not” a non-conforming use.

**Findings**

1.       The subject property is a 3,030-square foot residential located at 508 E. 37<sup>th</sup> Street and comprising a two-story frame house. The property is zoned R-4 (Four-family residential).
2.       On February 10, 2016, acting Zoning Administrator issued a determination to the petitioner holding that the request for a business license to operate a Short Term Vacation Rental from the subject property was “not permitted” within the R-4 (Four-family Residential) zoning district.
3.       The petitioner filed a timely appeal of the determination and requests reversal of the Zoning Administrator’s ruling.

**Staff Recommendation**

In 2015, the petitioner attempted to rezone the subject property from the current R-4 to R-B-C (Residential-Business-Conservation) in order to legally operate either a “bed and breakfast” or a “Short Term Vacation Rental” (STVR) on the property. The Short Term Vacation Rental use is permitted in the R-B-C district (#9d, Section 8-3025(b)). The petition for rezoning this property was denied by the Savannah City Council (see attached “MPC COMPLETE FILE-001684-ZA”).

The petitioner next sought to obtain a business license for the Short Term Vacation Rental in January of 2016, but was denied by Business License Inspector Aislee Jackson, which was later confirmed by City Engineer/Development Services Director Julie McLean as acting Zoning Administrator. The Zoning Administrator ruled that the STVR use is “not” permitted in the R-4 zoning district. (See attached).

The petitioner cites two Southeast District Court cases, Cherokee County v. Martin (2002) and JWIC, Inc. v. City of Sylvester (2004), which held that zoning ordinances, which restrict private land use, must be regarded strictly as they are written. The language of the Savannah Zoning Ordinance did not include a use that was directly applicable to the STVR use prior to 2015. The use of “Inn” and “Bed and Breakfast Guest Unit” business classifications was used as a stop-gap measure in 2014 as the city sought to bring some regulation to the rapidly proliferating STVRs in the City.

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In 2014, the proliferation of the so-called “Air BnB” use – Internet-driven rentals of private homes to guests on a per-night basis – came to the notice of the Mayor and Aldermen, and the City determined to enact legislation specific to the new form of commercial activity. Prior to the effective date of the new use, the City of Savannah regarded Short Term Vacation Rentals as “Inns” and/or “Bed and Breakfast Guest Units” under the ordinance, and several such use approvals (actually “Air BnB” rentals) were approved by the Savannah Board of Appeals during that time.

In the present appeal, the petitioner maintains that the use of a Short Term Vacation Rental, which is not permitted in the R-4 zoning district, should be considered in his case a “non-conforming” or “grandfathered” use, and that the petitioner should therefore be permitted to continue the use. The petitioner maintains that the use was in operation prior to the adoption of the Short Term Vacation Rental ordinance, which was created in late 2014 and went into effect Jan. 1, 2015. If the petitioner’s use had been a pre-existing legal use, predating the adoption of the STVR use, it would, in fact, be a legal non-conforming use.

However, the petitioner’s STVR was not a “legal” use prior to the adoption of the STVR use in January of last year. It was an *illegal* commercial use in a residential district, and therefore did not become non-conforming with the adoption of the new use into the ordinance; it remained simply an illegal use.

The existence of Short Term Vacation Rentals had been unnoticed officially by the City of Savannah prior to 2014. Like most elements of the Zoning Ordinance, unless a complaint is raised about the operation of a commercial activity, the city takes no action to enforce the strict reading of the ordinance. The Zoning Administrator has an extremely limited staff and enforcement is generally “complaint driven.”

The petitioner is correct that the business Mr. Combs was operating was neither an “inn” nor a “bed and breakfast guest unit.” However, the petitioner is incorrect in all other assertions in his petition.

The petitioner is incorrect in the assertion that the use of the property as a “two-family dwelling” (which he equates with the STVR use) was permitted in the “R-6” zoning district. The minimum lot area for a two-family residential use in the R-4 district, in which the petitioner’s property is located, is 7,200 square feet. This is more than double the lot area of the subject property (3,030 square feet). Mr. Combs’ property is too small ever to have been a legal “two-family dwelling.” This provision of the ordinance has been in effect for decades. If the petitioner was operating “a two-family use” prior to 2015, it was an illegal use, not a “non-conforming” use, even if he had not been previously cited for the use.

The petitioner is incorrect in asserting that the use, itself, was not regarded under the ordinance. In fact, commercial activities are defined under the provisions governing the R-4 zoning district. While neither exactly identical to an “inn” or a “bed and breakfast guest unit,” the Air BnB practice of using the Internet to book short term stays for stranger tenants is still a “commercial” activity under the ordinance.

R-4 is defined in Section 8-3021(7) as: “*four-family residential* The purpose of this district shall be to

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maintain the dwelling unit density to not more than 12 dwelling units per net acre of residential land in order to protect the property in this district from the depreciating effects of more densely developed residential uses.” The R-4 zoning district is not “mixed use” such as the Mid-City’s TN-2 or the Victorian PNC’s 3R districts, where the STVR use is permitted with ZBA review and approval. The R-4 district allows no commercial activities, at all, other than home occupations and offices for residential complexes. If the petitioner was operating any business, including an Air BnB business, from his home in the R-4 district, it was an illegal, not a non-conforming use, even if he had not been cited for the use.

The Mayor and Aldermen have determined that STVRs are commercial in nature. Therefore, since all other justifications presented by the petitioner in support of his appeal, and the policy of the Mayor and Aldermen is that the STVR use is a commercial use, and commercial uses are and have been illegal in the R-4 zoning district, staff recommends **denial** of the petitioner’s appeal of the Zoning Administrator’s determination.