

# Memorandum

## City of Lawrence

### Planning and Development Services

TO: Lawrence/Douglas County Planning Commission  
FROM: Planning Staff  
Date: 13 May 2014  
RE: Follow-up Study for Special Use Permit (SUP-14-00049): Runaway Pony Bed & Breakfast, 603 Tennessee Street

On the day of the hearing for the renewal of a Special Use Permit to allow the operation of a Bed & Breakfast use in an RS-5 District, it was brought to the attention of staff that conditions potentially existed which were not in compliance with the City Code and/or conditions delineated within the approved Special Use Permit.

These items include:

1. 603 Tennessee Street is the primary residence of the owner
2. Number of beds and number of rooms for guests
3. Exterior yard conditions of 603 Tennessee Street
4. The presence of an employee/resident manager
5. Parking requirements for guests and potential employees

Following the deferral and request for more information by the Planning Commission on 23 April 2014 (Vote: 10-0), staff has studied the above listed items to ascertain the facts and varying levels of detail, as well as to study the compliance of the bed & breakfast use with the applicable codes and requirements.

SUP-4-3-09 was approved in 2009 for the applicant to utilize her principal residence as a bed & breakfast, ancillary to the use being an owner-occupied dwelling. Through the comments at the public hearing for SUP-14-00049 on 21 April 2014, a site inspection on 1 May 2014, and researching available information, staff has made the following determinations to the above listed items:

Determination of Issues for SUP-14-00049, Runaway Pony Bed and Breakfast, 603 Tennessee Street					
Item	Code	Requirement	Staff Determination	Compliance	
1	The Primary Residence of the Owner	Article 5, § 20-504 (1)	A Bed and Breakfast with 3 or fewer guest bedrooms shall be operated as an incidental use to the Principal Use of an Owner-occupied Structure.	While inconclusive, information suggests that 603 Tennessee may not be the owner's primary residence.	Inconclusive
2	Number of Beds and Number of Rooms for Guests	Article 5, § 20-504; Ordinance 8456, § 3	The real property described in Section Two hereinabove shall hereafter allow a Bed and Breakfast Establishment with three or fewer guest bedrooms operated (10 total occupants) as an incidental use to the principal use of the owner-occupied structure, for a five (5) year period of time from the effective date of this ordinance.	Structure has been advertised in multiple sources as offering more than 3 bedrooms. Seven beds observed during site visit on 1 May 2014. (2 additional rooms restricted from observation due to guest occupancy.)	Not Compliant
3	Exterior Yard Conditions	Chapter 9, Article 6			Compliant
4	Presence of an employee/resident manager	Article 5, § 20-504, (1)	A Bed and Breakfast with 3 or fewer guest bedrooms shall be operated as an incidental use to the Principal Use of an Owner-occupied Structure.	People, besides the owner, are handling some of the operations of the Bed & Breakfast in an on-going and consistent fashion.	Not Compliant
5	Parking Requirements for Guests and Potential Employees	Article 9, § 20-902	1 per guest room + 1 per 1.5 employees	5 spaces required, 4 provided	Not Compliant

### 1. The Primary Residence of the Owner

Section 20-504 of the Land Development Code states: "A Bed and Breakfast with 3 or fewer guest bedrooms shall be operated as an incidental use to the Principal Use of an Owner-occupied Structure." The operational definition of "owner-occupied" is a structure where an individual resides a majority of the time when within the City.

Since April's Planning Commission meeting, staff has been informed of legal documents filed with the Douglas County District Court indicating 1941 Massachusetts Street as the applicant's residence during periods in 2011 (April 15<sup>th</sup> to June 11<sup>th</sup>) and 2012 (December 8<sup>th</sup>, 2011 to February 6<sup>th</sup>, 2012). Additionally, through discussions at the 21 April 2014 Planning Commission meeting, as well as through questions raised by the commission and subsequent research by staff, the information obtained suggests that 603 Tennessee Street may not be the primary residence of the owner.

It is inconclusive whether 603 Tennessee Street is the primary residence of the owner. At the least, the owner spends time away from 603 Tennessee Street, thus not meeting the intent of having the owner-occupant operate the bed & breakfast use in a consistent fashion.

## **2. Number of Beds and Number of Rooms for Guests**

As part of the original approval given by Planning Commission (24 August 2009) and City Commission (1<sup>st</sup> Reading: 15 September 2009/2<sup>nd</sup> Reading: 22 September 2009), the Special Use Permit was, "granted for up to three guest rooms. Use of additional guest rooms shall require a new public hearing." The operation of the structure with more than three guest bedrooms would be a violation of the conditions of the Special Use Permit. At present, the bed & breakfast is being advertised on multiple websites as having six to seven bedrooms with availability to sleep 10 guests. An increase exceeding the three permitted rooms has not been approved previously.

During the site visit on 1 May 2014, staff observed various minor discrepancies in the current layout and function of the rooms when compared against the approved site plan dated 25 August 2011. The findings are outlined below, as well as on the attached annotated Site Plan.

- A. The Owner-Occupant Suite has been relocated to the basement-level;
- B. The bedroom and the sitting room have been reversed from the Basement Plan;
- C. Beds were located in rooms designated as guest sitting rooms and library/business center room;
- D. One additional bed on the 2<sup>nd</sup> Floor, and two additional beds on the 3<sup>rd</sup> Floor; bringing the total number of beds observed to seven

During the site visit, Ms. Hearn indicated that the bed & breakfast did have two occupied guest rooms: one room detailed on the approved site plan as a guest sitting room, and one approved as a guest bedroom.

Staff understands that the relocation of the owner-occupied suite to the basement-level was to help optimize the operation of the bed & breakfast, and does not have an issue with this adjustment.

## **3. Exterior Yard Conditions**

The exterior yard of the property was inspected to ascertain if there were code violations of the City's adopted Property Maintenance Code. Staff walked the yard accompanied by Ms. Hearn. Staff observed two mounds of compost and a mound of mulch north of the detached garage. Ms. Hearn advised the compost and mulch was going to be used in the near future for the flower bed that is located between the garage and house.

Staff also observed a large pile of leaves on the east side of the detached garage. Ms. Hearn advised the leaves were put there during last fall and her intentions were to eventually use them as compost. There was one additional mulch pile at the southeast corner of the house, which will also be spread throughout the garden bed at that location in the near future.

Section 302.2 (Grading and drainage) of the Property Maintenance Code prohibits the storage of mounded soil, gravel, or mulch. Due to Ms. Hearn

stating she would be using the compost and mulch in the near future, Staff informed her there was not a violation of City Code.

The accumulation of leaves is not regulated by City Code.

#### **4. Presence of an Employee/Resident Manager**

Based on the responses by the applicant and the public during the Planning Commission meeting on 21 April 2014, and through researching reviews provided on multiple websites, staff is of the opinion that there are individuals other than the owner conducting some of the operations of the bed & breakfast. The review websites city staff were able to locate are attached to this memo. These reviews contain references to a resident manager being their contact when visiting/staying at Runaway Pony Bed & Breakfast, 603 Tennessee Street.

The intent of this code is that the owner operates the bed & breakfast. Hiring cleaning and other services, and having others operate the business during extended owner absence, complies with this intent; however, constant employment, whether as a volunteer or paid-employee, would not, in staff's opinion, meet the intent of the code.

#### **5. Parking Requirements for Guests and Potential Employees**

Article 9, Section 20-902, Schedule A, sets the required off-street parking a bed & breakfast use would need to operate: 1 per guest room + 1 per 1.5 employees. (p. 9-6) Assuming the number of guest rooms is 3 as previously approved, and including the requirements for an employee plus the owner, this would require 5 parking spaces. When approved in 2009, the use was approved with 4 off-street parking spaces.

#### **Staff Findings**

The intent of the Land Development Code is to allow for a homeowner to utilize his/her principal residence as a bed & breakfast, ancillary to the use being an owner-occupied dwelling. The Land Development Code also establishes a "Bed and Breakfast Inn" for an instance where the owner does not occupy the structure as their principal residence, or in the instance the owner does not oversee the day-to-day operations of the establishment.

The compliance issues primarily affect required off-street parking and the level of intensity at this location. Even so, the bed & breakfast use has operated without a complaint since it began operation in 2011.

#### **Options**

Given the items presented before the Planning Commission on 23 April 2014, and the information obtained as requested by the Commission since the item's deferral, the options available to the Planning Commission are:

1. Deny the Special Use Permit based on the findings of non-compliance;

2. Provide the applicant a timeframe to come into compliance and extend the Special Use Permit for 6 months, with the following conditions:
  - A. Owner shall comply with the original conditions of the Special Use Permit and Site Plan Performance Agreement;
  - B. Submit a log of guests to demonstrate compliance with the code requirement of no more than three (3) guest rooms being utilized for the operation of the bed & breakfast use;
  - C. Staff will monitor booking and other similar websites for evidence of volunteers/employees;
  
3. Approve the Special Use Permit for the bed & breakfast use for 5 years, subject to the following conditions:
  - A. A Special Use Permit renewal is granted for up to three guest rooms. Use of additional guest rooms shall require a new public hearing;
  - B. A Special Use Permit renewal is granted for 5 years. A new Special Use Permit shall be required to continue the bed & breakfast use; or
  
4. Provide the applicant an opportunity to seek approval of a Special Use Permit for designation as a Bed & Breakfast Inn, (*Section 20-504, (2): A Bed and Breakfast establishment with 4 or more guest bedrooms is considered a Bed and Breakfast Inn. (i) A Bed and Breakfast Inn shall have a full-time resident manager or Owner on the site and be licensed by the State of Kansas to do business. (ii) A Bed and Breakfast Inn shall only be permitted if it is adjacent to or within ready Access to an Arterial or Collector Street,*) subject to the following conditions:
  - A. Grant an extension of the existing Special Use permit to allow for continued operation while the applicant seeks a new Special Use Permit for a Bed & Breakfast Inn;
  - B. Approval of a bed & breakfast inn would include the following conditions at a minimum:
    - i. Grant a Special Use Permit approval for 5 years. A new Special Use Permit shall be required to continue the bed & breakfast use;
    - ii. Owner shall comply with the original conditions of the Special Use Permit, Site Plan Performance Agreement, and items delineated in Section 20-504;
      1. A Bed and Breakfast Inn shall have a full-time resident manager or owner on the site and be licensed by the State of Kansas to do business;
    - iii. Obtain Lodging License from the Kansas Department of Agriculture in accordance with Kansas State Statutes.