

CITY PLANNING COMMISSION AGENDA

STAFF: Carli Hiben, Program Coordinator

FILE NO(S):
CPC AP 22-00107

**PROJECT: APPEAL OF DENIAL OF SHORT TERM RENTAL RENEWAL APPLICATIONS
2525 & 2527 N CASCADE AVENUE
COLORADO SPRINGS, CO 80907**

**APPLICANT/OWNER: ORSILLO REAL ESTATE VENTURES, LLC
1890 TRAPPERS GLEN COURT
COLORADO SPRINGS, CO 80919**



PROJECT SUMMARY:

1. **Project Description:** This is a request to appeal the administrative denial of two Short Term Rental renewal applications for 2525 & 2527 North Cascade Avenue, Colorado Springs, CO, 80907. Said renewal applications were denied by Staff on June 7, 2022.

The property is zoned R1-6000 (Single-Family Residential) and is located on the east side of North Cascade Avenue, north of its intersection with East Van Buren Street.

2. **Applicant's Appeal Statement:** (see 'Appeal Statement' attachment)
3. **Community Development Department's Recommendation:** Staff recommends the City Planning Commission affirm the Administrative Denials of the Short Term Rental renewal applications and deny the appeal.

BACKGROUND:

1. **Site Address:** 2525 & 2527 North Cascade Avenue – Tax Schedule Number 6331339004
2. **Existing Zoning/Land Use:** R1-6000 (Single-Family Residential)
3. **Surrounding Zoning/Land Use:** The surrounding properties to the North are zoned R4 (Multi-family Residential) & R2 (Two-family Residential), the properties to the East are zoned R2 (Two-family Residential) and the surrounding properties to the West are zoned R4 (Multi-family Residential), and the properties to the South are zoned R1-600 (Single-family Residential)
4. **Annexation:** The property was annexed in 1950 as part of the 3.768 acre 2400 & 2500 North Cascade Annexation.
5. **Master Plan/Designated Master Plan Land Use:** Old North End Neighborhood
6. **Legal Description:** Lots 1 & 2, Block 56, Roswell Addition No. 1, Colorado Springs, CO
7. **Zoning Enforcement Action:** None
8. **Physical Characteristics:** 2525 & 2527 North Cascade Avenue are located on one parcel, improved with two separate residential units, consisting of a total of 13,873 square feet in lot area.

STAKEHOLDER PROCESS AND INVOLVEMENT:

There is no stakeholder process in the denial of a Short Term Rental (herein referred to as "STR") renewal application. To notify the public of the appeal process, the site was both posted for 10 days prior to the City Planning Commission hearing and 199 postcards mailed to notify property owners located within 1,000 feet of the subject property.

ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN:

1. **Timeline of the denial of the Short Term Rental applications:**
 - a. **December 5, 2019** – Original STR permit (STR-1374) issued to Gigi Orsillo for 2525 N Cascade Avenue. The property owner was Landon Orsillo. The property is considered non-owner occupied.
 - b. **January 31, 2020** - The second STR permit (STR-1517) issued to Gigi Orsillo for 2527 N Cascade Avenue. The property owner was Landon Orsillo.

Because the application was submitted prior to the effective date of Ordinance 19-101 (December 26, 2019), which established restrictions for non-owner occupied permits and limitations in single-family zone districts, the property was deemed legal-nonconforming, allowing the establishment of two short term rentals in a single-family zone district.

- c. **November 16, 2020** – Both STR permits were renewed as is required by Code.
- d. **December 29, 2020** – The property title transferred from Landon Orsillo to OREV LLC. Landon Orsillo is not a member of OREV, LLC.
- e. **December 31, 2021** – STR-1374 & STR-1517 were up for renewal.
- f. **February 5, 2022** - Two STR Renewal application for STR-1374 & STR-1517 were submitted per City Code Section 7.5.1702.C.
- g. **February 17, 2022** - The applicant was notified that staff was unable to renew the permit due to transfer of ownership. They were given a copy of the STR Ownership Transfer Interpretation and Policy and Non-Transfer of Ownership Affidavit. A signed and notarized copy of the affidavit was requested in order to move forward with issuing the STR permits.
- h. **March 29, 2022** – A signed and notarized Non-Transfer of Ownership Affidavit was submitted. The applicants were advised that the affidavit was incomplete and could not be processed as it was not signed by the original property owner, Landon Orsillo, and they did not complete the required information on the affidavit relating to the natural persons who have interest in the business entity and the previous property owner information (**See Short Term Rental Unit Permit Affidavit – Non-Transfer of Ownership**).
- i. **April 4, 2022** - The applicant requested a meeting with the City Attorney.
- j. **June 6, 2022** – The applicant provided information for their legal counsel and a meeting was scheduled for this day with City Planning and Attorney’s Office staff.
- k. **June 7, 2022** – The applicant was notified that staff was unable to renew their permits due to a transfer of ownership and that the circumstances did not meet the criteria outlined in the recently adopted Short Term Rental Transfer Interpretation and Policy (**See Short Term Rental Transfer Interpretation and Policy attachment**).
- l. **June 16, 2022** – OREV LLC filed an appeal of the Denial of the Short Term Rental renewal applications.

Staff was not aware nor notified of the ownership transfer and learned that it had occurred while reviewing the recent renewal applications for 2021. Pursuant to City Code Section 7.5.1702.B., STR permits expire upon a transfer of ownership.

Further, because the STR permits are non-owner occupied, they would not be eligible for new non-owner occupied STR permits as the subject property is located in a single-family zone district (R1-6000).

Section 7.5.1702

B. The Short Term Rental unit permit does not run with the property, but is issued to the specific owner of the property. The permit shall expire upon sale or transfer of the property. The permit shall not be transferred or assigned to another individual, person, entity, or address but may be managed by a third party on behalf of the owner.

Section 7.5.1704

D. No non-owner occupied short term rental unit shall be located in R, R1-6000, or R1-9000 single-family zoning districts or single-family PUD zoning districts. Where an owner occupied short term rental unit is owned by an active duty military service member whose permanent duty station is within El Paso County, the Manager shall waive this requirement for

the owner for up to one (1) year if the service member receives orders to report to a temporary duty station outside of El Paso County.

The appellant's attorney provided the attached amended appeal statement (in *italics*), which states (in part), followed by Staff comments in **bold**,

"We believe the denial was based on the request to change the permit holder from Gigi Orsillo (a/k/a Jeneva Orsillo) to OREV, and due to the transfer of title via quit claim deed on December 29, 2020 from Landon Orsillo to OREV, LLC. The transfer, however, was to the title owner of the property and did not violate the spirit or intent of the zoning ordinance, City Code Section 7.5.1704.B. It would be unfair and unreasonable to deny the applications under the facts and circumstances of this case and would result in a major and unfair loss to OREV without any comparable benefit to the community..."

The property title transferred on December 29, 2020 from Landon Orsillo to OREV, LLC. When meeting with the appellant's legal counsel, Staff was advised that Landon Orsillo is not an owner or member of OREV, LLC.

City Staff is required to uphold and enforce the City Code as it is currently written. Any adverse economic impacts to the property owner are not relevant when applying the Code.

"...According to the memo published on February 14, 2022 entitled 'Short Term Rental Ownership Transfer Interpretation and Policy' the Commission states that, 'the Department will ascertain who the beneficial owner of the property is (without regard to corporate form) and whether the beneficial ownership has changed since the issuance of the permit'..."

On January 13, 2022 (amended on February 14, 2022), the Department produced the Short Term Rental Ownership Transfer Interpretation and Policy. The Code of the City of Colorado Springs, 2001 as amended ("City Code") Section 7.5.104(B), empowers the Director of Planning and Community Development (the "Manager") to make interpretations of the Zoning Code. This policy was not required to be approved by the City Planning Commission and City Council pursuant to Code. This policy is intended to provide guidance for uniform application of City Code and to provide notice to permit holders of the interpretation by the Manager.

To determine whether a permit has expired due to the transfer of the property, the Department will ascertain who the beneficial owner of the property is (without regard to corporate form) and whether the beneficial ownership has changed since the issuance of the permit. Per the data listed on the County Assessor's website, Landon Orsillo was the property owner at the time of the initial issuance of STR-1374 & STR-1517 and at the time of the 2020 renewals of STR-1374 & STR-1517.

As stated above, Staff has been advised that Landon Orsillo is not a member of OREV, LLC and Mr. Orsillo is not able to complete the Non-Transfer of Ownership Affidavit as is required.

"...The initial permits were applied for by Gigi Orsillo. Gigi Orsillo mistakenly used her individual name but she at all times intended to be seeking the permit in behalf of OREV as the beneficial owner of the property..."

Ms. Orsillo completed the property owner information on the application at the time in which Landon Orsillo was the owner/title holder. Upon the transfer from Landon Orsillo to OREV, LLC, the permit expired pursuant to City Code Section 7.5.1702.B.

“...OREV is now, and always has been, the beneficial owner of the property. At the time of the initial application, the property was owned by Landon Orsillo, a family member, but he took title on an interim basis pursuant to a contract with and as an agent for OREV...”

The City’s Short Term Rental Ownership Transfer Interpretation and Policy permits the change in ownership of the property from natural person(s) to a business entity if the only member(s) is (are) the same natural person(s), and conversely. The title of the subject property transferred from an individual (Landon Orsillo) to a multi-member business entity, in which Landon Orsillo is not a member.

2. Background:

Ordinance History

The STR Program began in January 2019. The original ordinance (Ordinance No.18-122) establishes that the transfer of ownership is not permitted, pursuant to Section 7.5.1702.B –

The Short Term Rental unit permit does not run with the property, but is issued to the specific owner of the property. The permit shall expire upon sale or transfer of the property. The permit shall not be transferred or assigned to another individual, person, entity, or address but may be managed by a third party on behalf of the owner.

After the initial adoption of the STR program, City Council directed Staff to amend the existing Code to include the following –

- Sales tax (Ordinance No. 19-49)
 - Mandate that all STR permit holders be in full compliance of sales tax requirements with the City of Colorado Springs.
- Occupancy Limitations (Ordinance No. 19-82)
 - Limits the occupancy of an STR dwelling unit to two people per bedroom, plus two, with a maximum occupancy of 15 persons.
- Non-owner vs owner occupied requirements (Ordinance No. 19-101)
 - Defines “owner occupied” as residing on the property for a minimum of 185 days per year;
 - Establishes a 500’ buffer between non-owner occupied STRs; and
 - Precludes new non-owner occupied STRs in single-family zoned districts (R, R-1 9000, R-1 6000, and single-family PUDs).

Ordinance 19-101 went into effect on December 26, 2019 and as such, established that any existing non-owner occupied STR was vested to Ordinance 18-122 so long as permits were renewed prior to expiration and met all other established regulations to remain in compliance. While the most recent amendments were moving through the City Council review process, Staff communicated this information to all permit holders through numerous emails in an effort of maintaining transparency.

One of the emailed updates was sent on December 6, 2019. The email provided information relating to Code changes which would be going into effect on December 26, 2019. This email was sent to emails provided by the applicants (Ms. Orsillo being one of the recipients). The email stated (in part) –

*“As mentioned in previous emails, the changes that were discussed yesterday will not impact current permit holders as long as the permit is renewed prior to expiration, **assuming no changes to ownership occur**. For those that are owner occupied now and change to non-owner occupied, the density restrictions WOULD apply after the regulations go into effect.”*

Public updates and hearings were also held with both Planning Commission and City Council conveying the information. Substantial media coverage communicated the change in regulations, as well.

Short Term Rental Ownership Transfer Interpretation and Policy

City Staff worked on producing an internal policy to circumvent the number of denied short term rental renewal applications that were occurring due to transfers of ownership and City Code Section 7.5.1702.B. On January 13, 2022, on behalf of Planning Director Peter Wysocki, Assistant Planning Director Michael Tassi signed the STR Ownership Transfer Interpretation and Policy. This interpretation and policy allows the transfer of ownership to occur as long as the circumstances meet one of the following exceptions:

1. Change in the named trustee or named remainder beneficiaries of a trust that owns the property;
2. In the event of marriage, addition of a spouse as an owner of the property or addition of a spouse as a member/owner of a business entity which owns the property;
3. In the event of divorce, removal of a former spouse as an owner of the property or removal of a former spouse as a member/owner of a business entity which owns the property;
4. Removal of the decedent's name if the property was owned by joint tenants with right of survivorship; or
5. Change in ownership of the property from natural person(s) to a business entity if the only member(s) is (are) the same natural person(s), and conversely.

When a change in ownership not considered a transfer occurs, the property owner is required to execute an affidavit.

Previous Action Related to Other STRs

The City has not received any other similar STR appeals since the creation of the Short Term Rental Ownership Transfer Interpretation and Policy.

Staff finds that the denial of the Short Term Rental renewal applications meets the criteria as set forth in City Code.

3. Conformance with the City Comprehensive Plan:
Staff has evaluated the proposed application and its consistency with the City's current comprehensive plan (herein referred to as "PlanCOS"). PlanCOS provides the guidance for the maintenance of vibrant neighborhoods, accomplished through the protection, enhancement, and/or revitalization of the character and functions within each area. PlanCOS generally supports STRs and the Code related to non-owner occupied STRs was established to implement the vision of PlanCOS.

4. Conformance with the Area's Master Plan:

The Old North End has adopted design guidelines that dictate aesthetics of the built environment, but is silent on permitted uses.

STAFF RECOMMENDATION:

CPC AP 22-00107- APPEAL OF DENIAL OF SHORT TERM RENTAL RENEWAL APPLICATIONS

Affirm the administrative denial of the Short Term Rental renewal applications and deny the appeal, based on the City Code Sections 7.5.1702.B and 7.5.1704.D., and that the appellant has not substantiated that the appeal satisfies the review criteria outlined in City Code Section 7.5.906.A.4.