

CITY PLANNING COMMISSION AGENDA

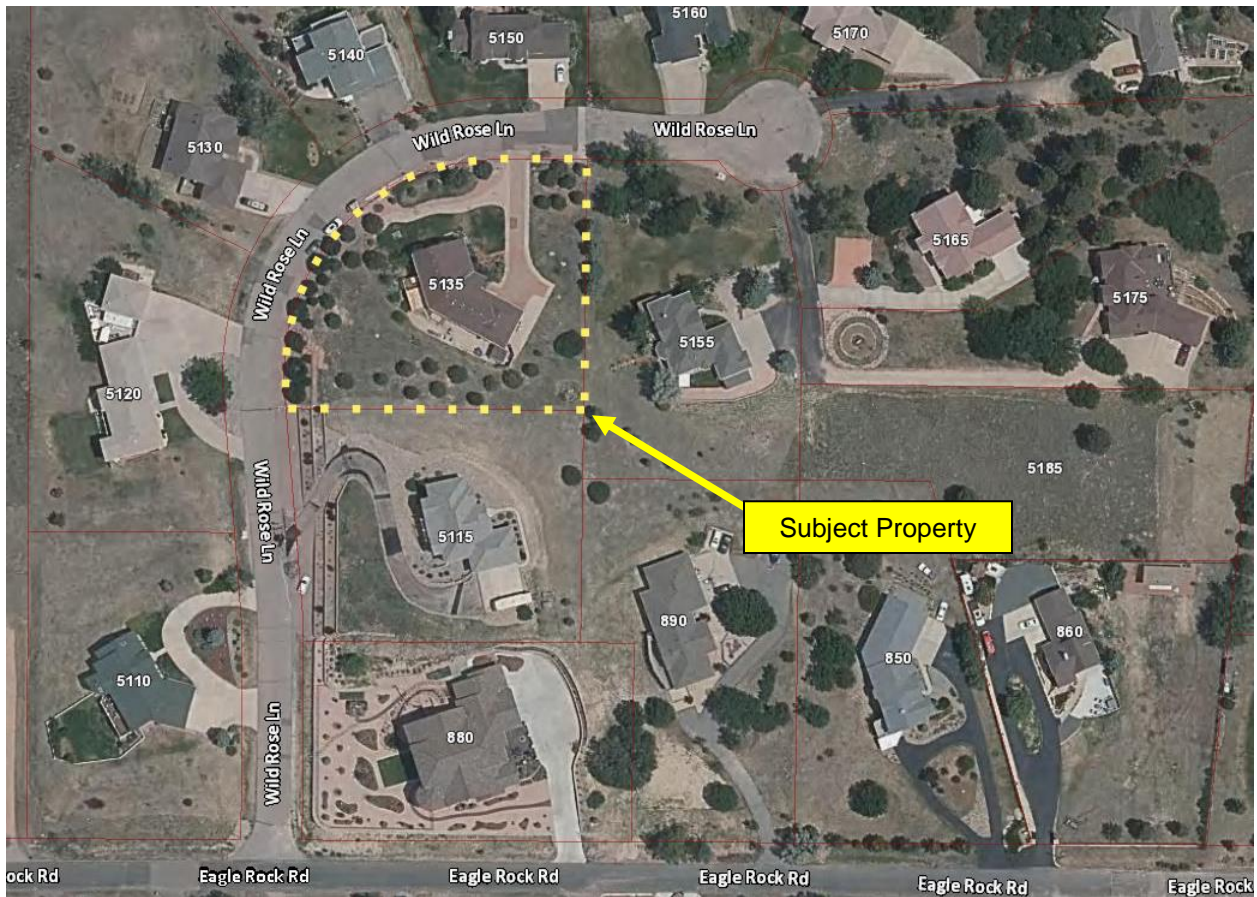
STAFF: Carli Hiben, Program Coordinator

FILE NO(S):
APPL-22-0002

**PROJECT: APPEAL OF APPROVAL OF SHORT TERM RENTAL APPLICATION
5135 WILD ROSE LANE
COLORADO SPRINGS, CO 80918**

**APPLICANT/OWNER: JENNY E VOSTATEK
5135 WILD ROSE LANE
COLORADO SPRINGS, CO 80918**

**APPEALLANT: RONALD TOMAN
5155 WILD ROSE LANE
COLORADO SPRINGS, CO 80918**



PROJECT SUMMARY:

1. **Project Description:** This is a request to appeal the administrative approval of an owner-occupied Short Term Rental renewal application for 5135 Wild Rose Lane, Colorado Springs, CO, 80918. Said renewal application was approved by Staff on October 24, 2022.

The property is zoned R (single-family) and is located on the east side of Wild Rose Lane, northeast of its intersection with Eagle Rock Road.

2. **Applicant's Appeal Statement:** (see '**Appeal Statement**' attachment)
3. **Community Development Department's Recommendation:** Staff recommends the City Planning Commission affirm the Administrative approval of the Short Term Rental renewal application and deny the appeal based on the fact that all of the required submittal documents were provided.

BACKGROUND:

1. **Site Address:** 5135 Wild Rose Lane – Tax Schedule Number 6320005016
2. **Existing Zoning/Land Use:** R: Estate Single-Family Residential Zone District
3. **Surrounding Zoning/Land Use:** The surrounding properties to the North, South, East, and West are also zoned single-family (R: Estate Single-Family Residential Zone District).
4. **Annexation:** The property was annexed in 1969 as part of the 3,149.47 acre North Colorado Springs Addition No. 1 Annexation.
5. **Master Plan/Designated Master Plan Land Use:** None.
6. **Legal Description:** Lot 16, Eagle Vista Estates, Colorado Springs, CO
7. **Zoning Enforcement Action:**
 - a. **Code Enforcement Case No. 2201178:** Operating a non-owner occupied STR without a permit (February 2022).
 - b. **Code Enforcement Case No. 2208724:** Operating a non-owner occupied STR without a permit (September 2022).
8. **Physical Characteristics:** 5135 Wild Rose Lane is improved with a single-family residence, consisting of a total of 43,560 square feet (1 acre) 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 39 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. **October 26, 2021** – Original owner occupied STR permit (STR-2054) issued to Jenny Vostatek.
 - b. **February 17, 2022** – Code Enforcement Case No. 2201178 – Complaint received from neighboring property owners. Complaint alleged that the permit holder was operating a non-owner occupied Short Term Rental without a permit.

- c. **September 26, 2022** – Code Enforcement Case No. 2201178 – Complaint received from neighboring property owners. Complaint alleged that the permit holder was operating a non-owner occupied Short Term Rental without a permit.
- d. **October 24, 2022** – Short Term Rental permit renewed as is required per City Code Section 7.5.1702.C. All of the required documents were provided at that time, which includes a signed affidavit, one form of proof of residency, proof of liability insurance, and a completed six-page application.
- e. **October 28, 2022** – Ron Toman filed an appeal of the approval of the Short Term Rental renewal application.

The permit holder, Jenny E. Vostatek, submitted their initial owner occupied STR permit application in October 2021. All of the required documents were provided at that time, which includes a signed affidavit, one form of proof of residency, proof of liability insurance, and a completed six-page application. The property owner would not be eligible for a non-owner occupied STR permit as the subject property is located in a single-family zone district (R: Estate Single-Family Residential).

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 renewal application that was received in October 2022 included all of the documents that are required in order to obtain an owner occupied STR permit. City Code Section 7.5.1703 outlines a general list of items that shall be submitted with each STR application. An internal policy expands on that list and requires specific items that shall be submitted in order to receive a STR permit.

Section 7.5.1703

- A. *Applicants for a short term rental unit permit, including applicants for renewal, shall submit a completed application form which contains such information as required by the Manager, and shall pay all fees required for a permit application. The application shall be reviewed administratively by the Manager who shall approve or deny the application within ten (10) days of submittal.*
- B. *The permit application or renewal application shall include:*
 - 1. *Standard City application;*
 - 2. *Safety self-inspection certification;*
 - 3. *Sales Tax license customer ID;*
 - 4. *The name, address and contact information including a 24-hour contact phone number for the owner or the owner's property manager or agent within El Paso County or a Colorado Springs resident who can be contacted in the event of an emergency and respond within one hour;*
 - 5. *Proof of insurance;*
 - 6. *Proof that short term rental unit permit review criteria will be met; and*
 - 7. *A statement that the owner has read and understands the rules and regulations for a short term rental unit set forth in this part. (Ord. 18-112)*

After the Code amendments to the STR Program were adopted in December 2019, specifically the differentiation between owner and non-owner occupied STRs, an internal policy was established to ensure compliance. This requirement was loosened during Covid, but was re-established in 2022, requiring that that property owner submit the following for all renewal applications:

- Completed Short Term Rental Checklist and Owner Acknowledgment (4 pages)

- Proof of primary residence – this can be satisfied by providing two of the following: valid driver's license or State I.D. Card, valid vehicle registration, voter registration, dependent's school registration. Mail does not count as proof of residency. City Staff reserves the right to ask for additional proof of residency upon request.
- \$119 permit fee.
- Signed Short Term Rental Affidavit
- Proof of at least \$500,000 in liability insurance (Proof can be provided by hosting platform contract acknowledging insurance coverage through the platform i.e. AirBnb/VRBO, policy information, or other documentation)
- Proof of listing on hosting platform i.e. AirBnB/VRBO (emailed link or screenshot)

In October 2022, the property owner provided two forms of proof of residency (a Colorado driver's license and a dependent's school registration), a signed and notarized affidavit, proof of liability insurance, proof of listing, and a Short Term Rental checklist and owner acknowledgment. Staff was able to proceed with the issuance of the renewal application as all of the required documents were provided and the property owner provided a notarized affidavit, swearing under penalty of perjury that they would occupy the residence for 185+ days throughout the year (October 2022 – October 2023).

The appeal provided from the neighboring property owners states that the property owner does not live in the residence and they are not operating an owner occupied short term rental permit. The appellant provided the attached appeal statement (in *italics*), which states (in part), followed by Staff comments in **bold**,

“The ordinance provisions that are in dispute are Ordinance 19-101 which states: OWNER OCCUPIED: the property is occupied by the owner for not less than one hundred and eighty-five (185) days each year.

The appellant claims that the administrative decision is incorrect because it is erroneous. It was based on inadequate and/or incorrect substantiation. Proof of occupancy submitted is a driver license and a student application both of which are unreliable, may be outdated, and do not provide conclusive proof that the applicant has lived at the property for a minimum of 185 days. Those documents merely reflect the address of 5135 Wild Rose Lane.

The applicant provided the items that are accepted by the City's Planning Department and as the driver's license is valid and the student registration/student affidavit is current, staff is unable to determine that the documents are incorrect, and that the property owner will not live there 185 days out of the upcoming permit year.

Notwithstanding a signed and notarized affidavit swearing that this property, 5135 Wild Rose Lane is the applicant's primary residence, Neighbors are willing to testify that the applicant, husband and seven children have not occupied this residence since moving to their primary residence at 1365 Northfield Rd Colorado Springs CO 80919. Occupy is defined as “to reside”, “to dwell in”. The burden placed on the appellant to conclusively prove this fact is unreasonable and would require something like a security camera record.

Staff is not able to question or verify an applicant's living situation with their family. While City staff appreciates residents reaching out to Neighborhood Services/Code Enforcement, the submittal was complete and met established Code requirements, thus we are unable to deny the submittal.

In identifying the benefits and adverse impacts created by the decision, there were no benefits identified. Adverse impacts were identified in a letter to the City on Feb 18, 2022. Eleven neighbors stated that: "As neighbors to this property, we are concerned about the additional traffic in our Cul-de-sac. We are also concerned about security/privacy/party issues because our properties on Wild Rose Lane are un-fenced per our covenants. It is not appropriate for a STR."

No City Department, including Neighborhood Services or PD, has any documentation of complaints or issues relating to parking or noise issues at 5135 Wild Rose Lane.

Two days before the renewal application was submitted, all (100%) of the neighbors residing in Eagle Vista Estates signed a letter on September 25th, 2022, requesting that the STR permit not be renewed because of the adverse impact on the Eagle Rock community. CONDITIONS OF APPROVAL per City code 7.5.1705 is to ensure that the use, value and qualities of the neighborhood surrounding the proposed location will not be adversely affected.

Regarding burdens placed on the appellant (which is the community of ERNI), this would be auto and pedestrian traffic in the Cul-de-sac from non-residents that we would have to avoid when leaving our homes. Also, the burden of proof regarding compliance with Ordinance 19-101 was placed on the appellant community rather than on the owner of the STR. It should be reversed."

The STR application that was submitted met all established Code requirements in Part 17 'Short Term Rental Unit', thus it was not deemed necessary to establish conditions of approval.

As stated above, the City does not have any documentation of complaints or issues relating to parking or noise issues at 5135 Wild Rose Lane. Applicants are encouraged to provide at least one parking space in the driveway and the maximum occupancy at 5135 Wild Rose Lane is 12 occupants.

2. Background:

Ordinance History

- Program adoption
 - Established Short Term Rental application/permit process
 - Purpose: To facilitate the permitting of short term rental units subject to appropriate restrictions and standards and to allow for varied accommodations and experiences for visitors while retaining the character of residential neighborhoods
 - Short Term Rental Unit: A residential dwelling unit, or portion of such unit, that is rented for less than 30 days at a time.
 - Short Term Rentals are permitted as accessory uses in all zone districts where residential dwelling units are allowed.
 - Permit transfer not permitted

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).

Previous Action Related to Other STRs

The City has not received any other similar STR appeals.

Staff finds that the approval of the Short Term Rental renewal application 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:

A Master Plan for this area has not been established and is not applicable.

STAFF RECOMMENDATION:

APPL 22-0002- APPEAL OF APPROVAL OF SHORT TERM RENTAL RENEWAL APPLICATION

Deny the appeal and affirm the administrative approval of the Short Term Rental renewal application, based on City Code Section 7.5.1703.A-B., and that the appellant has not substantiated that the appeal satisfies the review criteria outlined in City Code Section 7.5.906.A.4.