

CITY PLANNING COMMISSION AGENDA

STAFF: Carli Hiben, Program Coordinator

FILE NO(S):
CPC AP 21-00119

PROJECT: APPEAL OF DENIAL OF TWO SHORT TERM RENTAL RENEWAL APPLICATIONS
1950 & 1952 WOODBURN STREET
COLORADO SPRINGS, CO 80906

APPLICANT/OWNER: TARA L. SORENSON
15620 WILDWIND TERRACE
COLORADO SPRINGS, CO 80908



PROJECT SUMMARY:

1. Project Description: This is a request to appeal the Denial of two (2) Short Term Rental renewal applications for 1950 & 1952 Woodburn Street, Colorado Springs, CO, 80906. Said renewal applications were denied on July 16, 2021.

The property is zoned R2 (Two-Family Residential) and is located west of the intersection of Woodburn Street and Terrace Drive.

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

BACKGROUND:

1. Site Address: 1950 & 1952 Woodburn Street – Tax Schedule Number 6430334002

2. Existing Zoning/Land Use: R2 (Two-Family Residential)
3. Surrounding Zoning/Land Use: All surrounding properties are zoned R2 (Two-Family Residential)
4. Annexation: The property was annexed in 1980 as part of the 6,075.39 acre, Reannexation of Southwest Annexation.
5. Master Plan/Designated Master Plan Land Use: None.
6. Legal Description: Unplatted – TRACT IN SW4NW4 OF SEC 30-14-66 AS FOLS, BEG ON W LN OF WOODBURN ST 570 FT N FROM N LN OF PLAT OF BROADMOOR, TH S 84< W 168 FT, N 1<15' W 86 FT, N 88<50' E 169 FT TO W LN OF SD ST, TH S ON SD LN 72.3 FT TO POB
7. Zoning Enforcement Action: None
8. Physical Characteristics: 1950 & 1952 Woodburn Street is improved with a two-family residence (main residence and unit in the basement), consisting of a total of 12,700 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 93 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:

The STR permits for 1950 Woodburn Street (STR-0779) and 1952 Woodburn Street (STR-0780) expired on July 31, 2021. The STR permits were originally issued in July 2019. As required, renewals in 2020 and 2021 were submitted prior to expiration.

STR Renewal applications for STR-0779 and STR-0780 were submitted on June 24, 2021. Staff was not aware of or notified of the previous ownership transfers and learned that they had occurred while reviewing the recent renewal applications. Pursuant to City Code Section 7.5.1702.B, STR permits expire upon a transfer of ownership. On June 25, 2021, the applicant was notified that staff was unable to renew the permits due to transfer of ownership. After further discussion with the property owner and internal staff, the renewal applications were officially denied on July 16, 2021.

The title has been transferred three times from the original STR permit issuance date. The property was transferred from Highland Properties 2919 LLC to Tara L. Sorenson in August 2019. In February 2020, the property transferred from Tara L. Sorenson to 1952 Woodburn LLC. The property then transferred back to Tara L. Sorenson in December 2020.

Permits expire upon the transfer of ownership per City Code Section 7.5.1702.B. The property would not be eligible for new non-owner occupied STR permits as the subject properties are within 500' of two other non-owner occupied STRs (**See '1950 & 1952 Woodburn Street - 500' Buffer' attachment**). The renewal applications for STR-0779 and STR-0780 were denied pursuant to City Code Section 7.5.1702.B, which states:

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.

On July 26, 2021, the property owner filed an appeal of the Denial of Short Term Rental renewal applications.

City Code Section 7.5.906: APPEALS: A perfected appeal shall operate as a stay of the zoning enforcement decision unless the Manager certifies in writing that the condition giving rise to the decision constitutes an imminent hazard to the public health, safety and welfare or the violation is of a short term nature that by the time an appeal hearing is held, the violation will have been terminated or moved to another site.

The property owner provided the attached appeal statement, dated July 18, 2021, which states (in part),

“Ms. Sorenson appeals the denial of her renewal request by the Division on account of such denial being (2) against the express intent of the ordinance, (3) unreasonable, (4) erroneous, and (5) contrary to law. See City Code Section 7.5.906.A.4.

Ms. Sorenson submits that the intended purpose of City Code Section 7.5.1702.B is to ensure that legal control over the properties being benefited by a STR permit does not transfer away from the individual or entity to whom the permit was initially granted, Such circumstances would have the effect of serving the relationship between the applicant/permit holder and the City of Colorado Springs in a manner that would make it more difficult to ensure compliance with applicable STR regulations. Ms. Sorenson’s actions do not contravene the intended purpose. Instead, Ms. Sorenson simply engaged in financial and legal maneuvering for the purpose of (1) ensuring proper management of the property, (2) limiting her personal liability and (3) ensuring the continued affordability of the property.

Furthermore, Ms. Sorenson, by changing listed ownership of the property to 1952 Woodburn LLC was simply complying City Code 7.5.906.A.4 which allows for the property to be managed by a third party on behalf of the owner and controlled by Ms. Sorenson. For all intents and purposes, Ms. Sorenson retained full legal ownership and control of the property throughout all relevant time periods.

Through these actions there is no appreciable or conceivable detriment to the community or to the Division. Conversely, the position taken by the Division is adverse to the economic prosperity of the City of Colorado Springs and limits the availability of affordable short term rentals to Colorado Springs Visitors...”

The transfer of the property from an entity to an individual, and vice versa, for financial and legal maneuvering is irrelevant to the Section of Code which states that, “*The permit shall not be transferred or assigned to another individual, person, entity...*”

City Code Section 7.5.1702.B. (inaccurately described as Section 7.5.906.A.4 in the appeal statement above) does allow the property to be managed by a third party on behalf of the property owner; however, this Section of Code also prohibits the transfer of ownership.

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

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.

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As a further reminder to STR applicants, the above-referenced Section 7.5.1702.B is listed on Page 5 of the STR application. Owners/Applicants are required to read through and, with initialed sign off, acknowledge all language on the application.

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, in which the property owner of 1950 & 1952 Woodburn Street received. The informational email provided information relating to Code changes which would be going into effect on December 26, 2019. 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.

1950 & 1952 Woodburn Avenue Permit Denials

The properties are improved with a two-family residence (the main residence and a unit in the basement) within an R2 (Two-Family Residential) Zone District. Because there are four existing non-owner occupied Short Term Rental permits (located on two properties) within 500’ (**See ‘1950 & 1952 Woodburn Street - 500’ Buffer’ attachment**), the subject property is not eligible for new non-owner occupied STR permits pursuant to City Code Section 7.5.1704 C, which states:

No non-owner occupied Short Term Rental unit shall be located within five hundred feet (500') of another non-owner occupied Short Term Rental unit. The five hundred feet (500') separation measurement shall be made in a straight line without regard to intervening structures or objects

from the nearest property line of the proposed short term rental unit to the nearest property line of another Short Term Rental unit.

Short Term Rental Permits STR-0779 & STR-0780 were issued to Highland Properties 2919 LLC, not the current owner, Tara L. Sorenson, as listed with the El Paso County Assessor. The STR license issuance date is July 8, 2019 and expired upon transfer of the property.

Previous Action

In April 2021, City Planning Commission heard an appeal for a Notice and Order to Abate issued to an STR property for change of ownership, which thus expired the permit. The Motion failed with a 3-4-2 vote as the Planning Commission upheld the Notice and Order to Abate.

When applying the Code, Staff remains consistent in upholding the policy that ANY transfer of ownership results in the expiration of the STR permit automatically with the exception of name changes due to marriage and/or divorce.

The following code regulations explain the reason for the denial of the STR renewal applications.

§7.5.1702: SHORT TERM RENTAL UNIT PERMIT REQUIRED

It shall be a violation of this part for the owner or short-term rental tenants to fail to comply with the following rules and regulations:

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.

Staff believes 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. The subject property is within the Westside neighborhood, an established neighborhood, identified on PlanCOS Vibrant Neighborhoods Framework map (**see 'PlanCOS Vision Map' attachment**). The goal of this neighborhood typology is to recognize, support, and enhance the existing character while supporting ongoing investment and improved adaptation.

Specific policies of PlanCOS that appear to support the project are listed below:

- Policy VN-2.A: Promote neighborhoods that incorporate common desired neighborhood elements.
- Strategy VN-2.A-3: Projects that provide a variety of housing types and sizes and meeting the needs of residents and families through various life stages and income levels.
- Policy VN-3.A: Preserve and enhance the physical elements that define a neighborhood's character.

Although staff finds STRs to support the goals and policies within PlanCOS, the appeal request is not applicable.

4. Conformance with the Area's Master Plan:

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

STAFF RECOMMENDATION:

CPC AP 21-00098- APPEAL OF DENIAL OF SHORT TERM RENTAL RENEWAL APPLICATIONS

Deny the appeal and uphold the denial of the Short Term Rental renewal applications, based on the City Code Section 7.5.1702.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.