

CITY PLANNING COMMISSION AGENDA

STAFF: Carli Hiben, Program Coordinator

FILE NO(S):
CPC AP 21-00210

PROJECT: APPEAL OF DENIAL OF A SHORT TERM RENTAL RENEWAL APPLICATION
3285 EL POMAR ROAD
COLORADO SPRINGS, CO 80906

APPLICANT/OWNER: PATRICK & DEANNA QUINLAN
1725 COLONIAL PARK DRIVE
MONUMENT, CO 80132



PROJECT SUMMARY:

1. **Project Description:** This is a request to appeal the administrative Denial of a Short Term Rental renewal application for 3285 El Pomar Road, Colorado Springs, CO, 80906, which was denied by Staff on December 7, 2021.

The property is zoned R (Estate single-family residential) and is located east of El Pomar Road, north of its intersection with Penrose Boulevard.

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 application and deny the appeal.

BACKGROUND:

1. **Site Address:** 3285 El Pomar Road – Tax Schedule Number 7435401017
2. **Existing Zoning/Land Use:** R (Estate single-family residential)

3. Surrounding Zoning/Land Use: The surrounding properties to the north, west, and south are zoned R (Estate single-family residential) and the property to the east is zoned C5 (Intermediate business).
4. Annexation: The property was annexed in 1980 as part of the 6079.02 acre the Reannexation of Southwest Annexation area.
5. Master Plan/Designated Master Plan Land Use: None.
6. Legal Description: Lot 4, a Replat of Tiffany Park Subdivision, Colorado Springs, Colorado
7. Zoning Enforcement Action: None
8. Physical Characteristics: 3285 El Pomar Road is improved with a single-family residence, consisting of a total of 20,298 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 81 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 application:
 - a. **December 15, 2019** – original STR permit (STR-1394) issued to Patrick Quinlan.
 - b. **December 22, 2020** – STR permit annual fee submitted via the online payment portal. STR renewal application was never received by staff and a permit was not issued.
 - c. **November 16, 2021** - the property owners were notified that staff did not receive a complete renewal application in 2020 and their permit was deemed expired.
 - d. **November 17, 2021** – STR Renewal application for STR-1394 was submitted.
 - e. **December 7, 2021** – the applicant was notified that staff was unable to renew the permit as the permit pursuant to City Code 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..."
 - f. **December 17, 2021** – Patrick & Deanna Quinlan filed an appeal of the Denial of Short Term Rental renewal application.

Pursuant to City Code Section 7.5.1703, a complete renewal application shall be submitted to staff for review. City Code requires all permit holders to display their permit within the unit. As the subject property had not received their updated permit for 2020, the property owners were operating their rental contrary to Code.

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

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.*

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.

Section 7.5.1706

E. The permit with all local contact information and emergency safety information shall be prominently displayed within the short term rental unit.

The property owner provided the attached appeal statement, which states (in part),

“...In consideration of all available evidence, including evidence that the Department was not “fully staffed” and not returning Mr. Quinlan’s calls at the time of his renewal application, the Quinlans believe that their 2020-2021 STR permit renewal application was most likely lost or misplaced by the Department. As such, the denial of the Quinlan’s 2021-2022 STR application is erroneous and unreasonable.

The Quinlans further submit that even if the Department did not receive the 2020-2021 renewal application, that fact the Department received and retained their application fee demonstrates that the Department had actual knowledge of the Quinlan’s full intention to comply with the renewal process. If the Department did not receive the application, the Department acted unreasonably in failing to follow up with the Quinlans upon discovering that the fee had been paid...”

The payment received from the Quinlans was made through the STR online payment portal. All applicants were encouraged to utilize the online payment portal and submit their applications electronically.

The intent behind the aforementioned email sent in June 2019, stated (in part),

“Short Term Rental Staff are diligently working to ensure that all of our records are correct and up-to-date, please let us know if you are no longer renting your property or have removed your listing from all hosting platforms. Additionally, if you have chosen to not rent (permanently or temporarily) due to COVID-19 in recent months and feel comfortable sharing that information with us, please feel encouraged to do so. Know that the Planning Department is not looking to shut down any active rentals as that is not within our purview, but rather are interested in the impacts of the pandemic.”

Staff received communications from multiple permit holders that they were no longer operating and staff wanted to be sure that department records were accurate, largely because of the separation requirements in place.

Notification of upcoming expiration is sent out as a courtesy on a monthly basis to all permit holders but not required. As indicated in the City Code, application, email from Staff at the time of issuance, and website, permits are valid for one year. Instructions on how to renew are available on the STR website. There was NOT a gap in the continuity of the program. Applications for both new STRs and renewals continued to be submitted and approved permits issued

In summary, staff was unable to approve the renewal application as the original permit expired. Upon expiration, their grandfathered status of having a non-owner occupied STR in a single-family residential zone district was voided.

Ordinance History

The STR Program began in January 2019 (Ordinance No.18-122).

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.

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.

The Short Term Rental Permit (STR-1394) was issued to Patrick Quinlan December 2019. Staff has no proof that the renewal application was submitted December 2020. Records indicate that payment was made in December 2020 and that the receipt of the application was pending; therefore, no permit was issued, voiding the grandfathered status of having a non-owner occupied STR in a single-family residential zone district.

Previous Action Related to Other STRs

CPC AP-21-00036 (1425 Winding Ridge Terrace)

On April 15, 2021, City Planning Commission heard an appeal for a Notice and Order to Abate issued to the subject 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.

CPC AP 21-00098 (430 & 440 West 24th Street)

On August 19, 2021, City Planning Commission heard two appeals for administratively denied Short Term Rental renewal applications.

The Motion for CPC AP 21-00098 failed with a 3-4-2 vote as the Planning Commission upheld the Denial of a Short Term Rental application. The majority of the Commissioners present stated that they were there to vote on what the Code says at this time, while other members believed that this technicality of the code was harming the residents in an unreasonable manner. The Commissioners agreed that a work session should be scheduled and City Council should work on revising this Section of the Code.

CPC AP 21-00119 (1950 & 1952 Woodburn Street)

The Motion for CPC AP 21-00119 failed with a 3-4-2 vote as the Planning Commission upheld the Denial of a Short Term Rental application. The Commissioners were concerned with the refinancing issue, as they believe it effects the applicant, at no fault of their own. Other members believed that this technicality of the code was harming the residents in an unreasonable manner. The Commissioners agreed that a work session should be scheduled and City Council should work on revising this Section of the Code.

On September 28, 2021, City Council heard an appeal (CPC AP 21-00119) for denied Short Term Rental renewal applications.

The Motion for CPC AP 21-00119 passed with a 5-3-1-0 vote to uphold the appeal and overturn the administrative denial of a short term rental permit for 1950 & 1952 Woodburn Street, based upon the findings that the appellant has met the requirements of City Code Section 7.5.1704, that the appellant has substantiated that the appeal satisfies the review criteria set forth in City Code Sections 7.5.906.A.4 and 7.5.906.B, on the condition that the appellant submit proof that the appellant was the sole owner of any LLCs that owned the property during the term of the license.

City Council members discussed the way in which City Code Section 7.5.1702 was written and agreed that they did not believe it should be changed. They instructed staff to make an additional note on the application and on the STR webpage to better clarify the transfer of ownership. The majority voted to uphold the appeal based upon the appellant's circumstances.

CPC AP 21-00157 (116 South 14th Street)

On October 21, 2021, City Planning Commission heard two appeals for administratively denied Short Term Rental renewal application.

The Motion for CPC AP 21-00157 failed with a 2-4-3 vote as the Planning Commission upheld the Denial of a Short Term Rental application. The majority of the Commissioners present stated that they were there to vote on what the Code says at this time, while other members believed that this technicality of the code was harming the residents in an unreasonable manner.

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

A. 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.

B. 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 21-00210- APPEAL OF DENIAL OF SHORT TERM RENTAL RENEWAL APPLICATION

Deny the appeal and uphold the denial of the Short Term Rental renewal application, based on the City Code Sections 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.