

CITY PLANNING COMMISSION AGENDA

STAFF: Carli Hiben, Program Coordinator

FILE NO(S):
CPC AP 21-00124

PROJECT: APPEAL OF DENIAL OF SHORT TERM RENTAL RENEWAL APPLICATION
1046 East Monroe Street
Colorado Springs, CO 80907

APPLICANT/OWNER: Happy Places II LLC, c/o M. Irene Verstraete
201 Springridge Court
Colorado Springs, CO 80906



PROJECT SUMMARY:

1. **Project Description:** This is a request to appeal the administrative Denial of a Short Term Rental renewal application for 1046 East Monroe Street, Colorado Springs, CO, 80907, which was denied on July 22, 2021.

The property is zoned R1-6 (Single-Family Residential) and is located north/northwest of the intersection of East Monroe Street and Paseo Road.

2. **Applicant's Appeal Statement:** (see 'Appellant 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:** 1046 East Monroe Street – Tax Schedule Number 6405209021
2. **Existing Zoning/Land Use:** R1-6 (Single-Family Residential)
3. **Surrounding Zoning/Land Use:** All surrounding properties are zoned R1-6 (Single-Family Residential)

4. Annexation: The property was annexed in 1949 as part of the 352.5584 acre Golf Club Acres, etc. Annexation.
5. Master Plan/Designated Master Plan Land Use: None.
6. Legal Description: Westerly 9 feet of Lot 16 + Lot 17 Except the Westerly 9 feet, Block 3 Golf Club Addition 2 Colorado Springs
7. Zoning Enforcement Action: None
8. Physical Characteristics: 1046 East Monroe Street is improved with a single-family residence, consisting of a total of 9,861 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 86 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. **August 16, 2019** – original STR permit (STR-0950) issued to M. Irene Verstraete.
 - b. **August 16, 2020** – STR permit was renewed.
 - c. **August 13, 2020** - The subject property was transferred from M. Irene Verstraete to Happy Places II, LLC.
 - d. **July 20, 2021** - STR Renewal application for STR-0950 was submitted per City Code Section 7.5.1702.B
 - e. **July 22, 2021** - the applicant was notified that staff was unable to renew the permit due to transfer of ownership and the renewal applications were denied.
 - f. **August 2, 2021** – Happy Places II, LLC filed an appeal of the Denial of Short Term Rental renewal application.
 - g. **August 31, 2021** - The STR permit (STR-0950) for 1046 E Monroe Street was up for renewal on August 31, 2021 and staff discovered that the STR permit had officially expired August 13, 2020.
 - h. **September 11, 2021** – The appellant submitted a postponement request to the November 18, 2021 City Planning Commission meeting.

Staff did renew STR permits in 2020, but was not aware nor notified of the previous 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 within 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 property owner provided the attached appeal statement, dated August 2, 2021, which states (in part),

“My lawyer highly recommended that I place my investment property in an LLC not only to limit my liability with what may occur at the property after the insurance reached the maximum limit, but it would also protect my investment property if I for any reason was sued personally...While I understand why the code is in place to prevent permits from passing from one entity unto another entity my appeal is based on a point that no one else has addressed. While an LLC is currently considered an entity in the Code and an LLC can be transferred to another individual/individuals the Airbnb account cannot be transferred...”

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

City Code Section 7.5.1702.B. 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.

In summary, while the appellant did submit the 2021 renewal on-time, it was discovered by staff that ownership of the STR had been transferred and therefore automatically expired per Code. Further, since the subject STR is non-owner occupied and is located in a single-family zone district, they are not eligible for a new STR permit.

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.

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

One of the emailed updates was sent on December 6, 2019, which the property owner of 1046 East Monroe Street received. The 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. Adopted Ordinances are available to the public for reference on the City’s Short Term Rental website. Substantial media coverage communicated the change in regulations, as well.

Short Term Rental Permit STR-0950 was issued to M. Irene Verstraete, not the current owner, Happy Places II, LLC, as listed with the El Paso County Assessor. The STR license issuance date is August 16, 2019 and expired upon transfer of the property.

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.

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:

CPC AP 21-00124- APPEAL OF DENIAL OF SHORT TERM RENTAL RENEWAL APPLICATIONS

Deny the appeal and uphold the denial of the Short Term Rental renewal application, 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.