

CITY PLANNING COMMISSION AGENDA

STAFF: Carli Hiben, Program Coordinator

FILE NO(S):
CPC AP 21-00157

PROJECT: **APPEAL OF DENIAL OF A SHORT TERM RENTAL RENEWAL APPLICATION**
116 SOUTH FOURTEENTH STREET
COLORADO SPRINGS, CO 80904

APPLICANT/OWNER: **14TH STREET LTD**
10956 ASHURST WAY
HIGHLANDS RANCH, CO 80130



PROJECT SUMMARY:

1. **Project Description:** This is a request to appeal the Denial of a Short Term Rental renewal application for 116 South Fourteenth Street, Colorado Springs, CO, 80904. Said renewal application was denied by Staff on September 20, 2021.

The property is zoned R2 (Two-Family Residential) and is located on the west side of South Fourteenth Street, southwest of West Colorado Avenue and northeast of West Cucharas Street.

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:** 116 South Fourteenth Street – Tax Schedule Number 7413206016

2. Existing Zoning/Land Use: R2 (Two-Family Residential)
3. Surrounding Zoning/Land Use: The surrounding properties to the North and to the East are zoned C5 (Intermediate Business) and to the South and to the West are zoned R2 (Two-Family Residential).
4. Annexation: The property was annexed in 1890 as part of the 280.93 acre West Side Colorado Springs Annexation.
5. Master Plan/Designated Master Plan Land Use: Westside Master Plan
6. Legal Description: Northerly 50 Feet of Lots 9 & 10, Block 61, West Colorado Springs, Colorado Springs, Colorado
7. Zoning Enforcement Action: None
8. Physical Characteristics: 116 South Fourteenth Street is improved with a two-family residence, consisting of a total of 5,000 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 291 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 116 South Fourteenth Street expired on September 30, 2021 (STR-1003) and October 31, 2021 (STR-1246). The STR permits were originally issued in September 2019 (STR-1003) and October 2019 (STR-1246). As required, renewals in 2020 and 2021 were submitted prior to expiration. **While there are two STR permits specific to this property, this appeal request is specific to the denial of STR-1003 as the renewal for STR-1246 has not been submitted.**

An STR Renewal application for STR-1003 was submitted on September 20, 2021. Staff was not aware of nor notified of the previous ownership transfer and learned that it had occurred while reviewing the recent renewal application. Pursuant to City Code Section 7.5.1702.B, STR permits expire upon a transfer of ownership. On September 20, 2021, the applicant was notified that staff was unable to renew the permit due to transfer of ownership and the renewal application was denied.

116 South Fourteenth Street was transferred from Chyenne R. & Jon O. Ueland to 14th Street Ltd on July 9, 2020. Because the STR property is non-owner occupied, they would not be eligible for new non-owner occupied STR permit as the subject property is within 500' of seven other non-owner occupied STRs (**See '116 S 14th Street - 500' Buffer' attachment**). Although a renewal application was submitted for STR-1003, it was denied pursuant to City Code Section 7.5.1702.B as well as City Code Section 7.5.1704.C, which states:

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

C. 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. 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.

On September 29, 2021, the property owner filed an appeal of the Denial of Short Term Rental renewal application.

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 September 29, 2021, which states (in part),

"Ms. Ueland appeals the denial of her renewal request by the Department on account of such denial being (1) against the express intent of the ordinance and (2) unreasonable. See City Code Section 7.5.906.A.4.

Ms. Ueland 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 circumstance would have the effect of severing 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. Ueland's actions do not contravene this intended purpose. Instead, Ms. Ueland simply engaged in necessary and appropriate estate planning for the purpose of ensuring that the needs of her disabled child would be met upon Ms. Ueland's demise.

For all intents and purposes, Ms. Ueland retained full legal ownership and control of the property throughout all relevant time periods. The 14th Street Ltd. LLC is and has always been owned, operated, exclusively controlled by Ms. Ueland.

Through Ms. Ueland's actions there can be no appreciable or conceivable detriment to the community or to the Department. Conversely, the position taken by the Department is adverse to the economic prosperity of the City of Colorado Springs and limits the availability of affordable short-term rentals to Colorado Springs citizens and visitors.

The Department's written statement in a prior matter involving a STR permit renewal denial indicates that it has already created non-codified exceptions to 7.5.1702(B): "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." This exception is not codified or otherwise written outside of the Division's written statement made pursuant to the prior appellate process.

The reason why such exception was created, Ms. Ueland submits, is because a literal reading of the Code leads to absurd results. For example, if Ms. Ueland were to divorce, re-marry and retitle the property into the name of both her and her subsequent spouse, the Department's position, if followed, would result in the expiration of her STR permit. This is certainly not the intent behind City Code Section 7.5.1702.B. For the purpose of City Code Section 7.5.1702.B, the change of ownership from Ms. Ueland individually to an entity owned and controlled by Ms. Ueland is tantamount to a legal name change..."

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. 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 as it is currently written. 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.

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 updated was sent on December 6, 2019, in which the property owner of 116 South Fourteen 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.

116 South Fourteenth Street Permit Denial

The property is improved with a two-family residence in a R2 (Two-Family Residential) Zone District. Because there are seven existing non-owner occupied Short Term Rental permits within 500' (**See '116 S 14th 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-1003 & STR-1246 were issued to Chyenne R. & Jon O. Ueland, not the current owner, 14th Street Ltd, as listed with the El Paso County Assessor. The STR licenses expired upon transfer of the property.

Previous Action

On April 15, 2021, City Planning Commission heard an appeal (CPC AP 21-00036) 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.

On August 19, 2021, City Planning Commission heard two appeals (CPC AP 21-00098 & CPC AP 21-00119) for 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. The City Planning Commission voted as follows:

Aye: Commissioner Wilson, Commissioner Slattery, Chair Graham, Commissioner Almy

No: Commissioner Raughton, Commissioner McMurray, Commissioner Eubanks

Absent: Vice Chair Hente, Commissioner Rickett

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. The City Planning Commission voted as follows:

Aye: Commissioner Wilson, Commissioner Slattery, Chair Graham, Commissioner Almy

No: Commissioner Raughton, Commissioner McMurray, Commissioner Eubanks

Absent: Vice Chair Hente, Commissioner Rickett

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

§7.5.1704: SHORT TERM RENTAL UNIT PERMIT REVIEW CRITERIA

The Manager may approve or approve with conditions an application for, or renewal of, a short term rental unit permit if the following criteria and specific regulations are met:

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.

§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.

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.

Staff believes 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. 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:

The 1980 Westside Master Plan references this area as residential low density, 0-10 units per acre. As outlined in Chapter 3 'Objectives', Objective 3 encourages the development of a variety of housing types, include single family and higher density multi-family.

While the property is in conformance with the Master Plan, the appeal is not applicable.

STAFF RECOMMENDATION:

CPC AP 21-00157- 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 7.5.1702.B and 7.5.1704.C, and that the appellant has not substantiated that the appeal satisfies the review criteria outlined in City Code Section 7.5.906.A.4.