

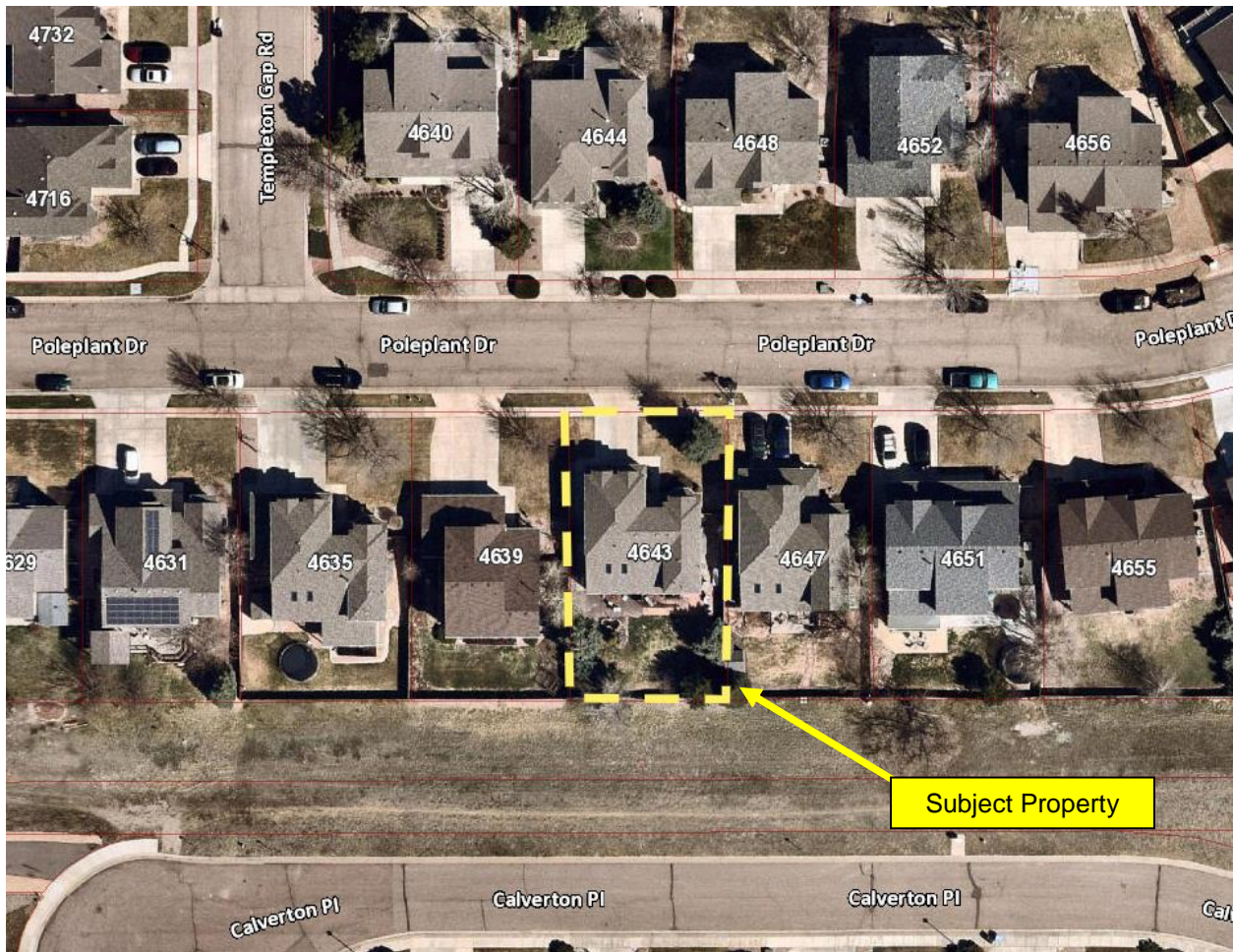
CITY PLANNING COMMISSION AGENDA

STAFF: Carli Hiben, Program Coordinator

FILE NO(S):
CPC AP 22-00121

PROJECT: **APPEAL OF DENIAL OF SHORT TERM RENTAL RENEWAL APPLICATION**
4643 POLEPLANT DRIVE
COLORADO SPRINGS, CO 80918

APPLICANT/OWNER: **JULIE THOMPSON VOLK & JEROME D. VOLK**
19714 LINDENMERE 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 4643 Poleplant Drive, Colorado Springs, CO, 80918. Said renewal application was denied by Staff on July 14, 2022.

The property is zoned PUD (Planned Unit Development) for single-family development and is located on the south side of Poleplant Drive, southeast of its intersection with Templeton Gap 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 Denials of the Short Term Rental renewal application and deny the appeal.

BACKGROUND:

1. Site Address: 4643 Poleplant Drive – Tax Schedule Number 6313322019
2. Existing Zoning/Land Use: PUD (Planned Unit Development) single-family residential
3. Surrounding Zoning/Land Use: The surrounding properties to the North, South, East, and West are also located in single-family PUDs.
4. Annexation: The property was annexed in 1981 as part of the 615.71 acre Pring Ridge Addition No. 6 Annexation.
5. Master Plan/Designated Master Plan Land Use: Norwood
6. Legal Description: Lot 8 Sierra Ridge Subdivision, Filing No. 9, Colorado Springs, CO
7. Zoning Enforcement Action: **Code Enforcement Case No.1901544:** Operating a STR without a permit (March 2019). **Code Enforcement Case No. 2205665:** Operating a non-owner occupied STR without a permit (July 2022).
8. Physical Characteristics: 4643 Poleplant Drive is improved with a single-family residence, consisting of a total of 6,586 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 247 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. **March 1, 2019** – Code Enforcement Case No.1901544 – Operating a Short Term Rental without a permit
 - b. **May 28, 2019** – Original STR permit (STR-0678) issued to Julie Thompson-Volk. This permit was considered owner occupied as this was the owner/applicant's primary residence.
 - c. **May 30, 2020** – Short Term Rental permit renewed as is required per City Code Section 7.5.1702.C.
 - d. **May 17, 2021** – Short Term Rental permit renewed as is required per City Code.
 - e. **May 23, 2022** – The two page renewal application and a non-owner occupied STR affidavit for STR-0678 was submitted. Staff reached out to the applicant to advise that the property was permitted to have an owner occupied short term rental permit. Non-owner occupied STR permit applications submitted after December 26, 2019 are not permitted in single-family zoning districts (R, R-1 9000, R-1 6000 or single-family PUDs).

- f. **May 24 – July 7, 2022** – Staff corresponded with the applicant through numerous emails and phone conversations discussing the City Code requirements.
- g. **July 14, 2022** – The applicant was notified that staff was unable to renew their permit, or issue a new permit, for a new non-owner occupied STR permit does not meet the City Code review criteria, specifically Section 7.5.1704.D. The property at 4643 Poleplant Drive is zoned as a single-family PUD zone district and therefore does not permit a non-owner occupied STR property as a use.
- h. **July 15, 2022** – Code Enforcement Case No. 2205665 – Operating a non-owner occupied Short Term Rental without a permit.
- i. **July 23, 2022** – Julie Thompson-Volk filed an appeal of the Denial of the Short Term Rental renewal application.

The appellant submitted their initial STR permit application in May 2019. They are not considered to be a legal-nonconforming or ‘grandfathered’ non-owner occupied STR as a non-owner occupied STR application was not submitted prior to December 26, 2019. The property owner would not be eligible for a new non-owner occupied STR permit as the subject property is located in a single-family zone district (R1-6000).

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 appellant provided the attached appeal statement (in *italics*), which states (in part), followed by Staff comments in **bold**,

“...The applicable ordinances do not prevent one from changing from an owner occupied to a non-owner occupied unit. That is not specified anywhere in writing within the ordinances...”

When an entitlement or allowance is granted based on a previous ordinance that is no longer in effect, those rights carry forward with the property unless a change is made. The granted rights are what are claimed as being “grandfathered” or vested to. Grandfathered (vested) rights are voided if the allowance is changed and the use must then fully comply with the current Code requirements.

At the STR ordinance’s inception (Ordinance 18-112), non-owner occupied STRs were permitted in single-family zone districts (R, R1-9, R1-6, and single-family PUDs) and those who had permits approved prior to December 26, 2019 granting a non-owner occupied STR were able to maintain as such. The December 26, 2019 date is key as that is when Ordinance 19-101 went into effect, establishing a differentiation between the two permit types –

- **Non-owner occupied STRs**
 - **After December 26, 2019, no new non-owner occupied STRs in single-family zone districts (R, R1-9, R1-6, and single-family PUDs); and**

- After December 26, 2019, any non-owner occupied STR permit must comply with a 500' buffer separation between other non-owner occupied STRs in any zone district;
- Owner occupied STRs
 - Requires that the operator resides in the home 185+ days annually; and
 - Can locate in any zone district with no buffer requirements.

If ownership of an approved STR permit changed after December 26, 2019, the rights would be forfeited, requiring a new permit application to be submitted. Grandfathering does not allow for those who had a permit under the original Code/approval prior to December 26, 2019 to change ownership types at will.

In this case, the appellant was granted an owner occupied STR permit in a single-family zone district and had maintained their annual renewals, allowing the use to continue and remain compliant with the Code. This use is still permitted today (owner occupied STR in a single-family) with the caveat that the owner resides in the home for 185+ days annually. The property owner is not vested to the non-owner occupied allowance as they do not have a non-owner occupied STR permit. A change in ownership requires a new permit but because the Code does not allow for non-owner occupied STRs to locate in single-family zone districts, a new non-owner occupied permit cannot be granted for this property due to it being located in a single-family PUD zone district.

"...The adverse impacts would be that I will likely make this home a long term rental..."

Staff was unable to approve the application in 2022 as the property is not eligible for a non-owner occupied Short Term Rental permit pursuant to City Code Section 7.5.1704.D.

When a non-owner occupied STR permit application is denied, the applicant is advised that they are still permitted to operate a long term rental (30+ days) or an owner occupied STR.

"...I employ several people to help me operate my STR. If this permit is denied, those people will lose their jobs..."

City Staff is required to uphold and enforce the City Code as it is currently written. Any adverse economic impacts to the property owner and/or their employees are not relevant when applying the Code.

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).

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. The email provided information relating to Code changes which would be going into effect on December 26, 2019. This email was sent to emails provided by the applicants (Ms. Thompson-Volk being one of the recipients).

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.

Previous Action Related to Other STRs

The City has not received any other similar STR appeals.

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:

The Norwood Master Plan references this area as residential, 3.5 – 5.5 dwelling units per acre.

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

STAFF RECOMMENDATION:

CPC AP 22-00121- APPEAL OF DENIAL OF SHORT TERM RENTAL RENEWAL APPLICATION

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