

CITY PLANNING COMMISSION AGENDA

STAFF: Carli Hiben, Program Coordinator

FILE NO(S):
CPC AP 21-00098

PROJECT: APPEAL OF DENIAL OF TWO SHORT TERM RENTAL RENEWAL APPLICATIONS
430 N 24TH Street & 440 N 24TH Street
Colorado Springs, CO 80904

APPLICANT/OWNER: RI Property 3 LLC, c/o Paul Rising
15770 Pineycove Court
Colorado Springs, CO 80921



PROJECT SUMMARY:

1. Project Description: This is a request to appeal the Denial of two (2) Short Term Rental renewal applications for 430 N 24th Street & 440 N 24th Street, Colorado Springs, CO, 80904. Said renewal applications were denied on June 28, 2021.

Both properties are zoned R2 (Two-Family Residential) and are located south/southwest of the intersection of West St. Vrain and North Twenty-Fourth Street.

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 applications and deny the appeal.

BACKGROUND:

1. Site Address: 430 N 24TH Street & 440 N 24th Street – Tax Schedule Numbers 7411114017 & 7411114018

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 1917 as part of the 371.324 acre Colorado City & Vicinity Annexation.
5. Master Plan/Designated Master Plan Land Use: Westside Master Plan
6. Legal Description: Lot 12 & Lot 13, Block 39, East Colorado City
7. Zoning Enforcement Action: None
8. Physical Characteristics: 430 N 24th Street & 440 N 24th Street are improved with a two-family residence (one unit on each property), consisting of a total of 7,200 square feet (3,600 square feet for each address). There is a common wall on the interior property lines between 430 N 24th Street & 440 N 24th Street.

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 80 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 430 N 24th Street (STR-1608) and 440 N 24th Street (STR-1609) expired on May 31, 2021. The STR permits were originally issued in May 2020 and were up for renewal in May 2021.

Staff sent a renewal reminder notice to the property owner on April 19, 2021. As no renewal applications were received by May 31, 2021, Staff sent out a final notice on June 15, 2021, noting that failure to return the application and renewal fee by June 29, 2021 would be cause for initiation of Code Enforcement action.

STR Renewal applications for STR-1608 and STR-1609 were submitted on June 21, 2021. On June 23, 2021, the applicant was notified that staff was unable to renew the permits due to a transfer of ownership. After further discussion with the property owner and internal staff, the renewal applications were officially denied on June 28, 2021.

Both properties were transferred from Tara Investments LLC to RI Property 3 LLC on January 25, 2021. Staff was not notified of the ownership transfer and learned that said transfer had occurred while reviewing the applications. Pursuant to City Code Section 7.5.1702.B, STR permits expire upon a transfer of ownership. Because the STR properties are non-owner occupied, they would not be eligible for new non-owner occupied STR permits as the subject properties are within 500' of two other non-owner occupied STR (**See '430 & 440 W 24th Street - 500' Buffer' attachment**). Although renewal applications were submitted for STR-1608 and STR-1609, they were both 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 6, 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.

Staff believes that the appellant did not provide adequate justification that the administrative decision for denial was made erroneously. The appellant contends that the property has never changed hands and has instead switched to another LLC for protection purposes per the advice of their financial advisor. Further, the appellant stated that the expiration of their STR permits would cause financial hardship as these properties are specifically tied to their livelihood. Financial hardships or impacts do not qualify as valid reasoning to renew an STR permit that is not in compliance with established regulations or to grant an appeal.

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.

430 N 24th Street & 440 N 24th Street Permit Denials

The subject properties are improved with a two-family residence (one unit on each property) within an R2 (Two-Family Residential) Zone District. There is a common wall on the interior property lines between 430 N 24th Street & 440 N 24th Street. Because there are two existing non-owner occupied Short Term Rental properties within 500’ (**See ‘430 & 440 W 24th Street - 500’ Buffer’ attachment**),

the subject properties are 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-1608 & STR-1609 were issued to Tara Investments LLC, not the current owner, RI Property 3 LLC, as listed with the El Paso County Assessor. The STR license issuance date is May 21, 2020 and expired on May 31, 2021.

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:

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 21-00098- 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.