

CITY PLANNING COMMISSION AGENDA

STAFF: Carli Hiben, Program Coordinator

FILE NO(S):
CPC AP 21-00162

PROJECT: **APPEAL OF DENIAL OF A SHORT TERM RENTAL RENEWAL APPLICATION**
309 NORTH 28TH STREET
COLORADO SPRINGS, CO 80904

APPLICANT/OWNER: **309 N 28TH ST LLC / MATT TOLOOEE**
106 NORTH TEJON STREET
COLORADO SPRINGS, CO 80903



PROJECT SUMMARY:

1. **Project Description:** This is a request to appeal the administrative Denial of a Short Term Rental renewal application for 309 North 28th Street, Colorado Springs, CO, 80903, which was denied by Staff on September 30, 2021.

The property is zoned R4 (Multi-Family Residential) and is located on the southeast side of the corner of North 28th Street and West Uintah 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 applications and deny the appeal.

BACKGROUND:

1. Site Address: 309 North 28th Street – Tax Schedule Number 7411209006
2. Existing Zoning/Land Use: R4 (Multi-Family Residential)
3. Surrounding Zoning/Land Use: The surrounding properties to the north and east are zoned R4 (Multi-Family Residential) and the properties to the south and the west are zoned R2 (Two-Family Residential).
4. Annexation: The property was annexed in 1951 as part of the 13.43 acre Cockrum's Addition Annexation.
5. Master Plan/Designated Master Plan Land Use: Westside Master Plan
6. Legal Description: Lot 5 and the Northeasterly 53 Feet of Lot 6, Block 8, Glen View Resubdivision Colorado Springs
7. Zoning Enforcement Action: None
8. Physical Characteristics: 309 North 28th Street is improved with a single-family residence, consisting of a total of 7,950 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 276 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. **October 15, 2019** – original STR permit (STR-1200) issued to ET Investments Group LLC
 - b. **December 10, 2020** – STR permit was renewed.
 - c. **August 31, 2020** - The subject property was transferred from ET Investments Group LLC to 309 N 28th St LLC.
 - d. **September 30, 2021** - STR Renewal application for STR-1200 was submitted per City Code Section 7.5.1702.B
 - e. **September 30, 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. **October 7, 2021** – 309 N 28th St LLC filed an appeal of the Denial of Short Term Rental renewal application.
 - g. **October 31, 2021** - The STR permit (STR-1200) for 309 N 28th Street was up for renewal on October 31, 2021 and staff discovered that the STR permit had officially expired August 31, 2020.

Staff did renew the STR permit 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 permit is non-owner occupied, they would not be eligible for a new non-owner occupied STR permit as the subject property is within 500' of one other non-owner occupied STR (**See '309 N 28th St - 500' Buffer' attachment**).

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.

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

"i. The ordinance which are in dispute are the following: City Code Section 7.5.1702.B 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."

ii. Item #2 - It is unreasonable. This is the best choice to pick, however, we do not think it is necessarily "unreasonable." Rather, we want to further explain the situation so both parties have more clarity on the matter.

iii. This property has been a Short-Term Rental for many years with great rating from AirBnb and VRBO (super Host status). There have never been any issues with the guests that are hosted at this property and, as a matter of fact, they have added to the sense of community in the neighborhood. The property was originally owned by ET Investments LLC, which Matt Tolooee is 50% owner, and now the property is under its own LLC; but the same person (Matt) as the owner. The decision to transfer title was solely a strategic decision by the owners to hold properties under their own individual LLCs as opposed to all under one company. The property has been maintained and managed by the same property management company who will continue to do an excellent job maintaining the property to ensure the neighborhood appeal and property values stay strong."

The transfer of the property from one entity to another entity, for strategic business purposes 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. The property owner transferred the title from one LLC (which had multiple members) to another LLC.

In summary, while the appellant did submit the 2021 renewal on-time, it was discovered by staff that ownership of the STRs had been transferred and therefore automatically expired per Code. Further, since the subject STRs are non-owner occupied and are within 500 feet of another non-owner occupied STR, they are not eligible for new STR permits.

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 updates was sent on December 6, 2019, which the property owner of 308 North 28th 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. Substantial media coverage communicated the change in regulations, as well.

Short Term Rental Permit STR-1200 was issued to ET Investments Group LLC, not to the current owner, 309 N 28th St LLC, as listed with the El Paso County Assessor. The STR license 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:

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 21-00162- 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.