



Legislation Text

File #: CPC AP 21-00157, **Version:** 4

An appeal of the Planning Commission's decision to uphold the administrative denial of the Short Term Rental permits for 116 South Fourteenth Street for an ownership change, pursuant to City Code Section 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.B.

(Quasi-Judicial)

Presenter:

Carli Hiben, Program Coordinator

Peter Wysocki, Director of Planning and Community Development

Summary:

Owner/Applicant: 14th Street Ltd

Original Appellant to City Planning Commission: 14th Street Ltd

Location: 116 S Fourteenth Street; located on the west side of South Fourteenth Street, southwest of West Colorado Avenue and northeast of West Cucharras Street.

The owner of 116 S Fourteenth Street is appealing the City Planning Commission's decision to uphold the administrative denial of the Short Term Rental permit for 116 S Fourteenth Street due to an ownership change pursuant to City Code Section 7.5.1702.B. The appellant is not eligible for a new Short Term Rental permit as they are designated as being non-owner occupied and active non-owner occupied Short Term Rentals are within the established 500' buffer, pursuant to Section 7.5.1704.C.

Previous Council Action:

N/A

Background:

Timeline of the denial of the Short Term Rental (STR) applications:

The non-owner occupied 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.

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.

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. In the appellant's appeal statement, they state that - "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 denial of Ms. Ueland's STR application was not due to a name change due to marriage or divorce. The applications were denied because the property title transferred from an individual to an entity. Staff is unable to monitor and verify who the owners of LLCs are, especially when a title transfers from one entity to another entity, one person to another entity, etc.

116 South Fourteenth Street was transferred from Chyenne R. & Jon O. Ueland to 14th Street Ltd on July 9, 2020.

Because the STR permit expired, a new permit would be required to continue operations; however, the property is not eligible for new non-owner occupied STR permits as the subject property is within 500' of seven other non-owner occupied STRs (See '116 S 14th Street - 500' Buffer' attachment).

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.

Any adverse economic impacts to the property owner are not relevant when applying the Code.

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. The information is also referenced on the STR website and in the email that is sent to all permit holders at the time of permit issuance.

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) - Mandates 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, in which the property owner of 116 South Fourteenth 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 amendment process. Substantial media coverage communicated the change in regulations, as well. Adopted Ordinances are available to the public for reference on the City’s Short Term Rental website.

116 South Fourteenth Street Permit Denial

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 a new non-owner occupied STR permit 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.”

Financial Implications:

N/A

Board/Commission Recommendation:

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.

CPC AP 21-00124 (1046 E Monroe Street)

On November 18, 2021, City Planning Commission heard two appeals for administratively denied Short Term Rental renewal applications.

The Motion for CPC AP 21-00124 passed with a 6-2-1 to uphold the appeal and overturn the administrative denial of a short term rental permit for 1046 E Monroe 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, on the condition that City Staff will verify ownership of the property and the property owner will provide proof that the ownership did not change.

CPC AP 21-00169 (118 & 120 N Corona Street)

The Motion for CPC AP 21-00169 passed with a 6-2-1 to uphold the appeal and overturn the administrative denial of a short term rental permit for 118 & 120 N Corona 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, on the condition that City Staff will verify ownership of the property and the property owner will provide proof that the ownership did not change.

Stakeholder Process:

There is no stakeholder process in the denial of a Short Term Rental renewal application. To notify the public of the appeal process for both the Planning Commission and City Council public hearings, the site was posted for 10 days prior to the hearings and postcards were mailed to the 93 property

owners within 1,000 feet of the subject property. Staff received no communications in support or opposition of the request.

Alternatives:

1. Uphold the action of the City Planning Commission;
2. Modify the decision of the City Planning Commission;
3. Reverse the action of the City Planning Commission; or
4. Refer the matter back to the City Planning Commission for further consideration

Proposed Motion:

Deny the appeal and uphold the Planning Commission's decision to deny the appeal of the administrative denial of the Short Term Rental permit for 116 South Fourteenth Street for an ownership change, pursuant to City Code Section 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.B.

N/A