

Quick Facts

Applicant / Property Owner

Estifanos Dagne

Appellant

Estifanos Dagne

Address / Location

5539 Cody Mesa Court

TSN(s)

6313326025

Zoning and Overlays

PDZ HS AO

Site Area

8644 SQ. FT.

Applicable Code

7.5.510: Short Term Rental Permit

7.3.301: Residential Uses:

C. Short Term Rental

Project Summary

This is an appeal of the administrative denial of an Owner Occupied Short Term Rental application for 5539 Cody Mesa Court, Colorado Springs, CO, 80918. Said renewal application was denied by Staff on January 10, 2025.

The property is zoned PDZ (Planned Development Zone) and is located on the northwest side of Austin Bluffs Parkway, southeast of the Cody Mesa Court and Jamesport Drive intersection.

File Number	Application Type	Decision Type
APPL-25-0002	Appeal	Quasi-Judicial



APPEAL OF SHORT TERM RENTAL PERMIT APPLICATION

Planning Commission February 12, 2025

Staff Report by Case Planner: Carli Hiben

Background

Prior Land-Use History and Applicable Actions

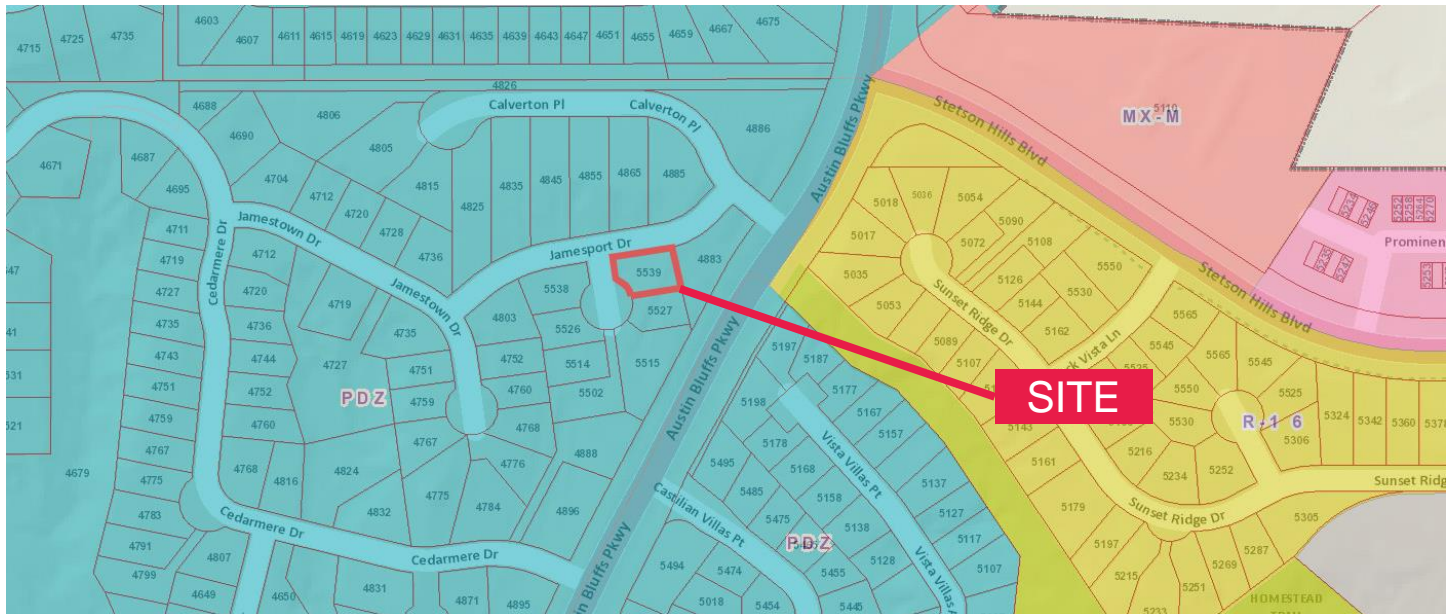
Action	Name	Date
Annexation	Ridgeline Addition	01/10/1986
Subdivision	Austin Heights Subdivision Fil No. 1	09/03/2003
Master Plan	Austin Heights	10/07/1986
Prior Enforcement Action	ENF23-00375	01/26/2023
	ENF24-09310	12/02/2024

Surrounding Zoning and Land Use

Adjacent Property Existing Conditions

	Zoning	Existing Use	Special Conditions
North	PDZ	Single-Family	N/A
West	PDZ	Single-Family	N/A
South	PDZ	Single-Family	N/A
East	PDZ & R-1 6	Single-Family	N/A

Zoning Map



Stakeholder Involvement

Public Notice

Public Notice Occurrences (Poster / Postcards)

In accordance with City Code Section 7.5.406, public notice was provided for the Planning Commission public hearing.

Postcard Mailing Radius

1000'

Number of Postcards Mailed

230

Number of Comments Received

Zero (0) comments were received at the time this Staff Report was prepared.

Short Term Rental Permit (STR-0867)

1. Timeline of the Short Term Rental application:

- a. **October 25, 2022** – Original owner occupied STR permit (A-STRP-22-0261) issued to Estifanos Dagne.
- b. **January 26, 2023** – Code Enforcement Case ENF23-00375 – Complaint received from neighboring property owners. Complaint alleged that the permit holder did not live on the property and was not operating as an owner occupied STR. The complaint also included concerns regarding loud parties, parking violations, neighborhood disturbances, and outdoor fires. The Code Enforcement Officer visited the property several times in the attempt to make contact, but the owner was not there. The permit expired October 31, 2023, and



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the Code Enforcement Officer spoke with the owner. The owner indicated that they were no longer operating as a short term rental, but that they would apply for a new permit before the spring. The case was closed as the listing was no longer active. Please see Attachment No. 1- Code Enforcement Case ENF23-00375.

- c. **October 12, 2023** – The City Planning Department received a letter from Orten Cavanagh Holmes & Hunt, LLC Attorneys at Law. The letter was sent on behalf of the Austin Heights Homeowner's Association, demanding that the STR permit be revoked on the basis of the illegal operation of an owner occupied STR. The permit could not be revoked as an investigation was still taking place with Code Enforcement. Please see Attachment No. 2- Demand Letter.
- d. **January 31, 2024** – Short Term Rental permit renewed as is required pursuant to City Code Section 7.5.510.C.3(a). A new application should have been required, but a temporary change of staff led to the issuance of a renewal.
- e. **November 26, 2024** – The City Planning Department received a notarized affidavit, signed by the HOA President, John R. Henniger, stating that 5539 Cody Mesa Court is not occupied by the property owner, Estifanos Dagne, for 185 days per year. The affidavit also included other issues with the rental, including loud parties, parking issues, sidewalks being blocked, disturbances in the neighborhood, and police activity. Eight names were listed as witnesses to the ongoing issues at 5539 Cody Mesa Court. Please see Attachment No. 3- HOA Affidavit.
- f. **December 2, 2024** – Code Enforcement Case ENF24-09310 – Complaint received from neighboring property owners. Complaint stated that there was still an active listing for a Short Term Rental, but the permit expired October 31, 2024. Please see Attachment No. 4- Code Enforcement Case ENF24-09310.
- g. **January 2, 2025** – Estifanos Dagne submitted a late Short Term Rental renewal application. Attachment No. 5- STR Application Submittal Documents.
- h. **January 10, 2025** – Staff denied the STR application based on the late renewal as well as the complaints that have been filed, the letter received from the representing attorneys in 2023, and the affidavit that was provided by the HOA on November 26, 2024. Staff found that the application for an owner occupied short term rental at 5539 Cody Mesa Court does not meet the Unified Development Code (UDC) review criteria, specifically City Code Section 7.3.301.C.4.b: No non-owner occupied Short Term Rentals shall be located in the R-E, R-1 9, R-1 6 zone districts, or single-family PDZ districts. See Attachment No. 6- Permit Denial.
- i. **January 14, 2025** – Estifanos Dagne filed an appeal of the denial of the Short Term Rental application. See Attachment No. 7- Appeal Submittal Form, and Attachment No. 8- Appeal Statement and Associated Documents.

The appeal submitted by the property owner at 5539 Cody Mesa Court contends the administrative denial of their Short Term Rental Permit application was made in error. The appellant provided the attached appeal statement (in *italics*), which states (in part), followed by Staff comments in **bold**,

"The property at 5539 Cody Mesa Court is my primary residence, and I have continuously resided there for more than 185 days annually, in full compliance with City Code Section 7.6.301. I can provide substantial documentation, including utility bills, driver's license, car registration, and additional proof to support my primary residency status."

The City's Short Term Rental application requires applicants to provide two forms of proof of residency. Those items that are accepted include a valid driver's license or State I.D. Card, valid vehicle registration, voter registration, dependent's school registration, conceal carry permit. Utility bills and mail are not accepted. The property owner did provide a valid copy of his driver's license as well as his vehicle

registration, however, the other items provided with the appeal statement would not be considered valid forms of proof of residency for their owner occupied STR.

“The Austin Heights Homeowner’s Association affidavit, cited in the denial letter, contains inaccuracies and unsubstantiated claims. Contrary to the affidavit’s allegations, the property has not been operated as a non-owner occupied STR. The affidavit does not provide verifiable evidence to support its claims...The denial appears to rely primarily on the unverified HOA affidavit rather than concrete evidence of non-compliance.

The Short Term Rental Permit application was denied by Staff on January 10, 2025, based upon the information provided by the Austin Heights HOA and the lapsed permit. The affidavit provided was signed and notarized.

In addition to the letter provided by the HOA in October 2023 and the affidavit provided by the HOA in November 2024, Staff found the Code Enforcement case notes included information relating to the property including various police reports with CSPD and a complaint with CSFD. The Code Enforcement Officer was unable to make contact with each of their onsite inspections that occurred in 2023 and 2024, which resulted in open Code Enforcement cases that could not be closed until the rental listings had been taken down.

Pursuant to City Code Section 7.6.301, an owner occupied Short Term Rental can be defined as follows:

“PROPERTY, OWNER-OCCUPIED: A property that is actually occupied by the property's owner for no less than one hundred and eighty-five (185) days per year.”

2. Background:

Ordinance History

- Program adoption (Ordinance No. 18-112)
 - Established Short Term Rental application/permit process. Went into effect December 31, 2018.
 - 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).

Previous Action Related to Other STRs



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The City has not received any other similar STR appeals.

Compliance with Relevant Code Sections and Review Criteria [UDC 7.5.510(C)(1) & UDC 7.3.301(C)(3)]

7.5.510(C): Short Term Rental Permit

1. *Application: The application for a Short Term Rental Permit shall include the following:*
 - a. *A safety self-inspection certification;*
 - b. *A Sales Tax license customer ID;*
 - c. *The name, address, and contact information, including a 24-hour contact phone number, for the owner, the owner's property manager, or agent within El Paso County, or a Colorado Springs resident who can be contacted in the event of an emergency and respond within one (1) hour;*
 - d. *Proof of insurance;*
 - e. *Proof that the use-specific standards that apply to a Short Term Rental in Section [7.3.301C](#) (Short Term Rental) will be met;*
 - f. *Election of an owner occupied or non-owner occupied Short Term Rental Permit; and*
 - g. *A statement that the owner has read and understands the rules and regulations for a Short Term Rental.*
2. *Manager's Decision: The Manager shall review the Short Term Rental Permit application and within ten (10) business days after the determination of application completeness approve, approve with conditions, or deny the petition in accord with Subsection [7.5.407D.1](#) (Manager), the standards applicable to Short Term Rentals in Subsection 7.3.301C (Short Term Rental), and the review criteria in Section [7.5.409](#) (General Criteria for Approval).*
3. *Post-Decision Actions and Limitations: The Manager's decision on a Short Term Rental Permit application is subject to the following:*
 - a. *The Short Term Rental Permit is valid for one (1) year from the date of issuance and may be renewed for additional one (1) year periods; and*
 - b. *The Short Term Rental Permit does not run with the property but is issued to the specific owner of the property. The permit expires 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. (Ord. 23-03)*

The STR did not meet the requirements outlined in 3.a., “The Short Term Rental Permit is valid for one (1) year from the date of issuance and may be renewed for additional one (1) year periods.” The permit expired October 31, 2024. The permit had also expired October 31, 2023 during the previous year’s renewal cycle.

7.3.301: Residential Uses

C. Short Term Rental

3. *General Standards and Review Criteria: A Short Term Rental shall comply with the following standards, which must be met at the time of permit application and at all times thereafter:*
 - a. *The sleeping quarters for Short Term Rental tenants shall not be in nonresidential areas within buildings or accessory structures (e.g., shed, garage, etc.) that do not contain finished living space; in commercial or industrial spaces such as retail stores or warehouses; outdoors (e.g., tent, etc.); or in a recreational vehicle.*

b. The maximum number of units that may be used as Short Term Rental is as follows:

(1) For properties with up to four (4) dwelling units, one (1) unit within each lawful dwelling unit on a property, up to a maximum of four (4) Short Term Rentals per property.

(2) For multi-family buildings held in common ownership, each owner shall be limited to two (2) Short Term Rentals per property. Entities under common control shall be considered a single owner for the purpose of evaluating ownership of dwelling units.

c. The owner shall obtain a Sales Tax license from the City Sales Tax Office and shall not be indebted or obligated in any manner to the City.

d. The owner shall maintain weekly residential trash collection services and comply with Section 6.4.104 (Preparation for Collection) of this Code.

e. The owner shall maintain and provide proof of property liability insurance in the amount of not less than \$500,000 or provide proof that property liability coverage in an equal or higher amount is provided by any and all hosting platforms through which the owner will rent the Short Term Rental. Proof of liability insurance is not required if Short Term Rental reservations are handled exclusively by hosting platforms (websites) that extend liability coverage of not less than \$500,000 under terms acceptable to the Manager.

f. The owner shall not be classified as a repeat offender or a chronic repeat offender pursuant to Section 7.5.907 (Penalties) and shall not have had a Short Term Rental Permit revoked within the preceding two (2) years.

4. Location Requirements:

a. Except as provided in Subsection c below, no non-owner occupied Short Term Rental shall be located within five hundred (500) feet of another non-owner occupied Short Term Rental.

b. Except as provided in Subsection c below, no non-owner occupied Short Term Rental shall be located in the R-E, R-1 9, or R-1 6 zone districts or single-family PDZ districts.

c. Where an owner occupied Short Term Rental is owned by an active duty military service member whose permanent duty station is within El Paso County, the Manager shall waive the requirements in Subdivisions a and b above 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.

5. Operating Requirements: *All Short Term Rental owners and tenants shall comply with the following rules and regulations:*

a. All short-term tenants shall comply with all applicable noise, housing, public health, fire, and safety ordinances of the City.

b. Parking in private driveways shall be used first, with overflow parking on the street where permitted. Parking on-site in non-driveway areas (i.e., front yard areas, parkways, and rear yards) shall be prohibited.

c. No meals shall be prepared for or served to the short-term tenants by the owner or the owner's agents.

d. Use of the Short Term Rental for any commercial or large social events or gatherings, such as weddings, is prohibited.



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- e. *The Permit with all local contact information and emergency safety information shall be prominently displayed within the Short Term Rental.*
- f. *The City issued Short Term Rental Permit number shall be used in all rental marketing materials.*
- g. *During the term that a Short Term Rental is occupied by a short-term tenant, the owner or the local contact person designated by the owner shall be available at all times for the purpose of responding within one (1) hour to complaints regarding the condition or operation of the Short Term Rental or the conduct of short-term tenants. If the local contact person designated by the owner changes, the owner shall update the permit on file within three (3) days.*
- h. *Maximum overnight occupancy of a Short Term Rental shall be limited to two (2) occupants per bedroom, plus an additional two (2) occupants per dwelling unit. The maximum overnight occupancy per dwelling unit shall be fifteen (15) occupants.*

Staff finds that the above review criteria was not met, specifically City Code Section 7.3.301.C.4.b: *No non-owner occupied Short Term Rental shall be located in the R-E, R-1 9, or R-1 6 zone districts or single-family PDZ districts.* 5539 Code Mesa Court is located in a single-family PDZ.

Owner occupied short term rentals are those properties that are actually occupied by the property's owner for no less than one hundred and eighty-five (185) days per year (City Code Section 7.6.301). The Austin Heights Homeowner's Association provided an affidavit, which lists numerous STR violations, including that the STR at the Property is operating as a non-owner occupied Short Term Rental. Because evidence indicates the Property is non-owner occupied and it is in a single-family zone district, and there is not a current license in effect at the property, an STR is not permitted per the UDC.

Statement of Compliance

APPL-25-0002- APPEAL OF DENIAL OF SHORT TERM RENTAL APPLICATION

The Short Term Rental permit at 5539 Cody Mesa Court is not in compliance with City Code Section 7.5.510.C.3.a, and Section 7.3.301.C.4.b. The appellant has not substantiated that the appeal satisfies the review criteria outlined in City Code Section 7.5.415.A(2).