

APPEAL OF SHORT TERM RENTAL PERMIT APPLICATION

Planning Commission August 14, 2024

Staff Report by Case Planner: Carli Hiben



Quick Facts

Applicant / Property Owner

Donna Robin Gregory &
Kevin Chase Gregory

Appellant

Randall J. Knize &
Natalia V. Safonova

Address / Location

6060 Briarcliff Road

TSN(s)

6317401008

Zoning and Overlays

PDZ HS

Site Area

25,100 SQ. FT.

Applicable Code

UDC

Project Summary

This is a request to appeal the administrative approval of an Owner Occupied Short Term Rental renewal application for 6060 Briarcliff Road, Colorado Springs, CO, 80918. Said renewal application was approved by Staff on June 26, 2024.

The property is zoned PDZ (Planned Development Zone) and is located on the east side of Briarcliff Road, southwest of its intersection with Applewood Ridge Circle.

File Number	Application Type	Decision Type
APPL-24-0004	Appeal	Quasi-Judicial



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Background

Prior Land-Use History and Applicable Actions

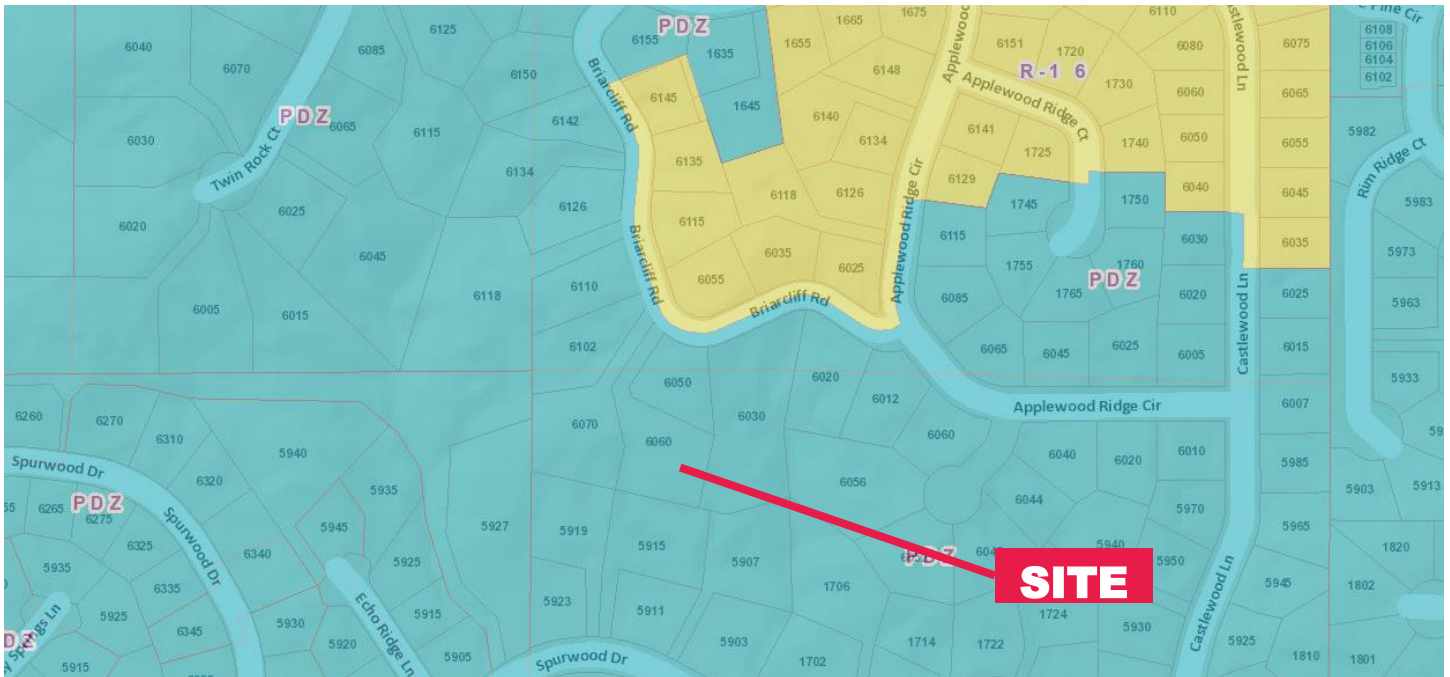
<i>Action</i>	<i>Name</i>	<i>Date</i>
Annexation	North Colorado Springs Addition #1	12/01/1969
Subdivision	Erindale Subdivision Filing No. 6	12/27/1972
Master Plan	N/A	N/A
Prior Enforcement Action	ENF23-09813	10/13/2023

Surrounding Zoning and Land Use

Adjacent Property Existing Conditions

	<i>Zoning</i>	<i>Existing Use</i>	<i>Special Conditions</i>
North	PDZ & R-1 6	Single-Family	N/A
West	PDZ	Single-Family	N/A
South	PDZ	Single-Family	N/A
East	PDZ	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	226
Number of Comments Received	Four (4) comments were received at the time this Staff Report was prepared. See Attachment No.1- Public Comments.

Short Term Rental Permit (STR-0867)

1. Timeline of the Short Term Rental application:
 - a. **July 22, 2019** – Original owner occupied STR permit (STR-0867) issued to Donna Gregory.



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- b. **October 19, 2020, July 27, 2021, July 26, 2022, & July 20, 2023** – Short Term Rental permit renewed as is required pursuant to City Code Section 7.5.510.C.3(a).
- c. **October 13, 2023** – Code Enforcement Case ENF23-09813 – Complaint received from neighboring property owners (6070 Briarcliff Road). Complaint alleged that the permit holder was providing prepared food to guests. The Short Term Rental Checklist, signed by the permit holder prior to issuance, indicates that “No meals shall be prepared for or served to the renter by the owner or the owner’s agents”. This issue was resolved as the permit holder at 6060 Briarcliff Road complied with the Code Enforcement officer. Other complaints included in the Case relate to the shared driveway and an STR in a single-family zone district. These items were not addressed by Code Enforcement as they are not a Code violation. The Short Term Rental remains in good standing. Please see Attachment No. 2- Code Enforcement Case.
- d. **June 26, 2024** – Short Term Rental permit renewed as is required per City Code Section 7.5.510.C(3)(a).
- e. **July 8, 2024** – Randall J. Knize filed an appeal of the approval of the Short Term Rental renewal application. See Attachment No. 3 - Appeal Submittal Form, and Attachment No. 4 - Appeal Statement.

The permit holders, Donna & Kevin Gregory, submitted their initial owner occupied STR permit application in July 2019.

The appeal provided from the neighboring property owner states that the property owner at 6060 Briarcliff Road should not be permitted to have a Short Term Rental permit as they have a shared driveway and the shared driveway should only be utilized by both parties that live at 6060 Briarcliff Road and 6070 Briarcliff Road. The appellant provided the attached appeal statement (in *italics*), which states (in part), followed by Staff comments in **bold**,

“The short term rental at 6060 Briarcliff cannot be accessed solely using the 6060 Briarcliff property, but requires access using the 6070 Briarcliff property. Therefore, the application filed by the owners of 6060 Briarcliff do either erroneously or inaccurately describe the property in their application.

City Code does not prohibit property owners with shared driveways from receiving a Short Term Rental permit. City Staff verified that there were no driveway permits on file with the City’s Public Works Department and reviewed the recorded plat to verify that there were not any notes related to the shared driveway at 6060 Briarcliff Road and 6070 Briarcliff Road. Staff was unable to locate any sort of exception in the warranty deed relating to the shared driveway. The STR permit holder provided a response to the appeal and within the response, an Easement Agreement was provided. See Attachment No. 5 – Easement and Attachment No. 6 – Appeal Response.

‘The short term rental unit permit does not run with the property, but is issued to the specific owner of the property’. It does not say the permit applies to the address given on the application. So what property is referenced in this quote? The only reasonable interpretation is that it must be the property(ies) that are used for the short term rental. Accepting this, the rental application must be accurate and state that 6070 Briarcliff must be used for this short term rental (I do not think the commission would ever accept an application that does not include other properties essential to an application). Further words in the Ordinance only refer to property and never to properties, lending credence to multiple properties are not eligible for operation as short term rentals.

The Short Term Rental permit was issued to the property owner at 6060 Briarcliff Road in 2019. The permits were renewed annually and issued to Donna Gregory. The owners of 6060 Briarcliff Road rent their basement to a maximum of two occupants. The permit application and the permit do not need to include 6070 Briarcliff Road as the rental is not being operated there.

Part of the driveway for 6060 and 6070 Briarcliff is used by both owners and is explicitly laid out in a 1992 easement, which codifies previous common law easement. This easement specifically states that the upper



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driveway between 10 and 16 feet wide can be used by both owners, There is no statement about commercial or airbnb use of this section of the driveway.

Disagreements between neighboring property owners regarding an easement on private property would be considered a civil matter. In regard to the Short Term Rental application, City Staff would not be involved in the enforcement of the easement document.

Per City Code, Short Term Rentals are not commercial uses and are permitted anywhere there is a residential unit. Below is the definition of a Short Term Rental Unit.

“A residential dwelling unit, or portion of such a unit, that is rented for less than thirty (30) days at a time, with the exception of dwelling units owned by the federal government, the state or the City, or any of their agencies, or facilities licensed by the state as health care facilities.”

The Short Term Rental application that was submitted met all established Code requirements in the Unified Development Code, thus it was not deemed necessary to establish conditions of approval.

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

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



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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)*

Staff finds that the STR application was complete, and all the application requirements have been met. See Attachment No. 7 – 2024 Renewal Application.

[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.*



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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.

Staff finds that the above review criteria has been met for the Short Term Rental at 6060 Briarcliff Road.

Statement of Compliance

APPL-24-0004- APPEAL OF APPROVAL OF SHORT TERM RENTAL RENEWAL APPLICATION

The Short Term Rental permit at 6060 Briarcliff Road is in compliance with City Code Section 7.5.510 and Section 7.3.301.C, and the Short Term Rental remains in good standing with the City. The appellant has not substantiated that the appeal satisfies the review criteria outlined in City Code Section 7.5.415.A(2).