

**ORDINANCE NO.11**  
**Series 2003**

November 4, 2003: Introduced as Council Bill 14 Series of 2003 by Bonnie Blum, seconded by Doug Tisdale, and considered by the title only on first reading. Passed unanimously.

December 16, 2003: Considered in full text on second reading. Passed unanimously. Designated as Ordinance No. 11 Series 2003.

**A BILL FOR AN ORDINANCE  
 OF THE CITY OF CHERRY HILLS VILLAGE AMENDING  
 SECTIONS 16-18-10, 16-18-50, 16-18-60, 16-18-70, AND 16-3-20  
 PERTAINING TO THE APPROVAL OF CONDITIONAL USE PERMITS AND THE  
 ABILITY OF THE CITY COUNCIL TO GRANT VARIANCES WHEN REQUESTED  
 WITH A CONDITIONAL USE PERMIT**

WHEREAS, the City of Cherry Hills Village is a home rule municipal corporation organized in accordance with article XX of the Colorado Constitution; and

WHEREAS, the City of Cherry Hills Village is authorized to approve conditional use permit pursuant to Article XVIII of the City Code for the City of Cherry Hills Village; and

WHEREAS, the City Council is authorized to create and maintain a Board of Adjustment and Appeals to hear applications for variances in the regulations governing land use; and

WHEREAS, from time-to-time, an applicant for a conditional use permit also seeks a variance for the same project; and

WHEREAS, under the current provisions of the City Code, applicants seeking approval of a conditional use permit and a variance are subjected to two different hearings on two different dates; and

WHEREAS, it would be most efficient in terms of time and cost to consider an application for a conditional use permit simultaneously with any associated request for a variance on the same project; and

WHEREAS, combining the hearing for a conditional use permit and an associated request for a variance would not impair the public's opportunity to be heard regarding either of these types of applications and, in fact, such combination of the applications would enable the public to attend only one hearing, thus saving the public's time; and

WHEREAS, the City Council desires to authorize applicants for a conditional use permit to also submit any associated request for a variance in the same application and to authorize the Planning and Zoning Commission and the City Council to act on both applications without the need to submit the matter to the Board of Adjustment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CHERRY HILLS VILLAGE, COLORADO, ORDAINS:

**Section 1.** Subsection 16-18-10 of the City Code for the City of Cherry Hills Village, entitled "Legislative purpose" is hereby amended to read in full as follows:

**Sec. 16-18-10. Legislative purpose.**

The City Council hereby declares that certain uses of land designated as conditional uses within any zone district may be authorized by City Council subject to compliance with the standards and review and approval procedures set forth in this Article. Such uses may exist within the corporate limits of the City only upon application to and review by the Planning and Zoning Commission and approved by the City Council based on findings by the Planning and Zoning Commission and City Council that:

- (1) The proposed use is specified as an authorized conditional use within the applicable zone district.



(2) The proposed use, at the size and intensity contemplated and at the proposed location, is necessary for the neighborhood immediately benefited by the proposed use and compatible with the surrounding community.

(3) The use proposed will not be detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or to property, improvements or potential development in the vicinity of the proposed use. This determination may, without limitation, be based on:

a. The nature of the proposed site, including its size, shape and topography and the proposed size, location and arrangement of structures;

b. The accessibility and patterns of pedestrian and vehicular traffic, including the type and volume of such traffic, location of points of ingress and egress and the adequacy of off-street parking and loading, where applicable;

c. The degree of conformity with the requirements and conditions listed in Sections 16-18-20 and 16-18-30 below, as applicable; and

d. The provisions for landscaping, screening, unobstructed open space, service areas, lighting and signage.

(4) The proposed use will comply with the applicable zoning district regulations and all other applicable provisions of this Chapter and of this Code, and will not be inconsistent with the Master Plan.

(5) Where an applicant for a proposed conditional use also requests a variance to a standard imposed by this Chapter 16, the City Council may grant such variance as part of the approval of the conditional use upon a finding that all criteria for approval of a variance are met as set forth by Section 16-3-50.

**Section 2.** Subsection 16-18-50 of the City Code for the City of Cherry Hills Village, entitled "Application procedures" is hereby amended to read in full as follows:

**Sec. 16-18-50. Application procedures.**

The official application form for a conditional use permit shall be provided by the Community Development Department which shall generally contain the requirements specified below and elsewhere in this Chapter. Actual requirements will be dependent upon the type and nature of the conditional use being requested. An application for a conditional use permit is separate and distinct from any requirement to file an application for a rezoning or a subdivision plat as may be required elsewhere in this Code. An applicant for a conditional use permit may, however, include with the application for conditional use an application for a variance to be considered by the Planning Commission and the City Council together with the conditional use permit application. General application requirements shall include:

(1) Supplemental information. The conditional use permit application shall also include the existing land use and a written description of the proposed use detailing the nature of the proposed structure, including its function and, where appropriate, hours of operation and traffic generation. Other requirements as specified in the official application form shall be provided to enable thorough and accurate analysis of the request.

(2) Fees. Persons applying for a conditional use permit shall pay for planning and engineering review services and other consultant fees including, without limitation, legal fees and other direct expenses incurred on behalf of the City and made necessary as a result of said application. The applicant shall pay an initial fee as set forth in Appendix A to this Code and make an initial deposit into a non-interest-bearing escrow account held by the City at the time the application is filed with the City. The amount of this initial deposit shall be as set forth in Appendix A to this Code. The City shall have the right and authority to make disbursements from said escrow account at its sole discretion to cover the City's cost for planning and engineering review services, attorney and other consultant fees, and other direct expenses incurred with regard to said application. Any balances remaining in the escrow account at the conclusion of said application, such as approval, denial or withdrawal, shall be returned to the applicant without interest. In the event said funds are exhausted before completion of said application, the applicant will make a supplemental deposit to said escrow account in an amount determined by the City Manager. Failure to make necessary supplemental deposits shall cause the application process to cease until the required deposits are made.



(3) Site plan: In addition to the official permit application form, the applicant shall submit a site plan. The site plan shall show all contiguous real property ownership or interests of the applicant. For purposes of this Section, public rights-of-way shall not be considered to interrupt this requirement. A site plan shall include, at a minimum:

- a. An area map showing existing ownership of the subject property and all abutting property; and showing existing zoning and land use or the subject property and all property lying within five hundred (500) feet;
- b. Historic, existing and proposed contours expressed in one-foot increments based upon the USGS datum;
- c. Location of existing improvements, within one-tenth (0.1) foot of actual location;
- d. Location of proposed improvements;
- e. Location of existing and proposed streets and City rights-of-way within one-tenth (0.1) foot of actual location;
- f. Location of existing easements of record within one-tenth (0.1) foot of actual location;
- g. Adjacent lots;
- h. Professional land surveyor stamp;
- i. Landscaping; and
- j. Parking.

(4) Architectural drawings. Typical elevation drawings of each structure included within the site, showing: the architectural style; the general dimensions and gross floor area of each; the specifications of all exterior building materials to be used on each structure, including types of siding and roofing materials and their textures and color; and the location of all mechanical equipment and an indication as to how such equipment will be screened from adjacent properties.

(5) Materials required to accompany permit application. If no subdivision of the proposed development site is required, and if it is determined by the City Manager to be in the best interest of the City, one (1) or more of the following may be required:

- a. A soils report.
- b. An agreement between the applicant and the City that provides the City with whatever it deems necessary to assure that the proposed facility will be constructed as proposed and that the future operation and maintenance of the facility is properly provided for both as to management and funding. Such agreement may require approval of covenants, escrow deposits, performance and payment bonds or any other method of assurance required by the City.
- c. Any other information pertinent to the application that addresses issues raised during the review process, or which the applicant feels is necessary.

(6) Additional material required. Additional written and graphic materials may be required by the City Manager to accurately establish conformity of an application with the intent and standards of this Article, other applicable provisions of this Code and the Master Plan.

(7) Where an applicant for a proposed conditional use permit also requests a variance to a standard imposed by this Chapter, the applicant shall include with the application all information and materials identified in Section 16-3-70 sufficient to permit the Planning and Zoning Commission and the City Council to review the request for a variance for conformance with the criteria of Section 16-3-50.

**Section 3.** Subsection 16-18-60 of the City Code for the City of Cherry Hills Village, entitled "Review procedures" is hereby amended to read in full as follows:



**Sec. 16-18-60. Review procedures.**

Applications for conditional use permits shall be subject to the following review and approval procedures:

(1) Planning and Zoning Commission review procedure.

a. Upon receipt of a complete permit application, fee and escrow deposit and after determining that no further information is necessary, the City Manager shall refer the application for conditional use to the Planning and Zoning Commission, by setting the same on the next available Planning and Zoning Commission agenda. The Planning and Zoning Commission shall hold a public hearing preceded by public notice thereof as provided in Subsection 16-2-40(c) above.

b. The Planning and Zoning Commission shall determine whether the application meets the statement of legislative purpose set forth in Section 16-18-10 above and is based on the evidence and testimony presented at the public hearing. The Planning and Zoning Commission may recommend approval, approval with conditions or denial of the application. The Planning and Zoning Commission may table the matter to a date certain pending the provision of further information.

c. The Planning and Zoning Commission may recommend conditions other than the minimum requirements and conditions established in Sections 16-18-20 and 16-18-30 above and deemed reasonably essential for the health, safety and general welfare of the public.

d. The Planning and Zoning Commission shall have the authority to hear and make recommendation to the City Council regarding any requests for variances to this Chapter brought in conjunction with the application process outlined in this Article. In hearing such requests, the Planning and Zoning Commission will utilize the criteria contained in Section 16-3-50(b)(1) through (9) of this Chapter.

(2) City Council review procedure:

a. The application for a conditional use permit along with the Planning and Zoning Commission's recommendation are considered by the City Council at a public hearing. Notice shall be given of the public hearing pursuant to the requirements of Subsection 16-2-40(c) above.

b. The City Council shall determine if the application meets the statement of legislative purpose set forth in Section 16-18-10 above based on the evidence and testimony presented at the public hearing. The City Council may recommend approval, approval with conditions or denial of the application. The City Council may table the matter to a date certain pending the provision of further information.

c. The City Council may require conditions other than the minimum requirements and conditions established in Sections 16-18-20 and 16-18-30 above and deemed reasonably essential for the health, safety and general welfare of the public.

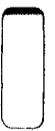
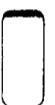
d. The City Council shall have the authority to hear and decide any requests for variances to this Chapter brought in conjunction with the application process outlined in this Article. In hearing such requests, the City Council will utilize the criteria contained in Subsections 16-3-50(b)(1) through (9) of this Chapter. A majority vote of a quorum of the City Council present and voting shall be required to approve any variance brought in conjunction with the application process outlined in this Article.

**Section 4.** Subsection 16-18-70 of the City Code for the City of Cherry Hills Village, entitled "Amendments" is hereby amended to read in full as follows:

**Sec. 16-18-70. Amendments.**

(a) The procedure for amending any approved conditional use permit shall be the same as prescribed for original approval. No amendment approved by the City Council after consideration and recommendation from the Planning and Zoning Commission shall violate the conditions, requirements or limitations set forth in this Code. Provided that the applicable conditions of Subsection (b) below are met, the City Manager may approve administrative amendments for the following specified changes: relocation of structures, parking and open spaces, but not including any variation from the maximum or minimum standards for each established by the approved conditional use permit.

(b) The City Manager may approve a request for an administrative amendment to an approved conditional use, which does not contain any of the following:



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- (1) A change to any specific conditions attached to the original permit, or to any subsequent amendment thereto, approved by the Planning and Zoning Commission;
- (2) A change in the approved use;
- (3) An increase in the approved gross floor area greater than five percent (5%) above the amount approved in the application by the City Council after consideration and recommendation from the Planning and Zoning Commission;
- (4) An increase in the structure/building height;
- (5) An increase in the approved access to public streets;
- (6) A reduction of required private and/or public open space;
- (7) A reduction of required off-street parking and loading space; or
- (8) A reduction of required landscaping and/or screening requirements; or
- (9) A change to any variance approved for the property.

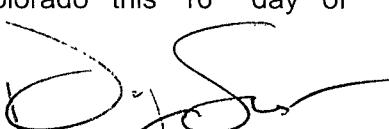
**Section 5.** Subsection 16-3-20 of the City Code for the City of Cherry Hills Village, entitled "Authority" is hereby amended to read in full as follows:

**Sec. 16-3-20. Authority.**

The Board shall have the power to hear and decide appeals under this Chapter and Chapter 18 of this Code except where this authority is specifically granted to the City Council in Article XIX of this Chapter; requests for variances under this Chapter except where this authority is specifically granted to the City Council in Article XIX Articles XX and XVIII of this Title Chapter requests for special exceptions under this Chapter where authorized; and applications brought pursuant to the nonconformance provisions of Article XIV of this Chapter.

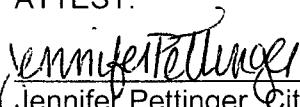
**Section 6.** Severability. If any provision of this ordinance should be found by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remaining portions or applications of this ordinance that can be given effect without the invalid portion, provided that such remaining portions or applications of this ordinance are not determined by the court to be inoperable. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, despite the fact that any one or more section, subsection, sentence, clause, phrase, or portion would be declared invalid or unconstitutional.

Adopted as Ordinance No. 11 Series 2003, by the City Council of the City of Cherry Hills Village, Colorado this 16<sup>th</sup> day of December, 2003.

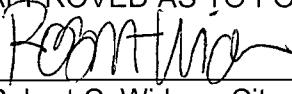


Douglas Scott, Mayor

ATTEST:

  
Jennifer Pettinger, City Clerk

APPROVED AS TO FORM:

  
Robert C. Widner, City Attorney

