

**ORDINANCE NO. 2**

Series 2001

January 16, 2001: Introduced as Council Bill No. 01 Series of 2001 by Doug Tisdale, seconded by Viola Lahana, and considered by the title only on first reading. Passed unanimously.

February 6, 2001: Considered in full text on second reading. Passed unanimously. Designated as Ordinance No. 2, Series 2001.

**AN ORDINANCE FOR THE CITY OF CHERRY HILLS VILLAGE REQUIRING THE MERGING OF NONCONFORMING OR SUBSTANDARD LOTS WITH ADJACENT PROPERTY UNDER THE SAME OWNERSHIP, PROHIBITING THE CREATION OF SUBSTANDARD LOTS, AND PROHIBITING THE TRANSFER OF LOTS OF RECORD WITHOUT FIRST OBTAINING SUBDIVISION APPROVAL**

WHEREAS, the City of Cherry Hills Village is authorized to regulate the subdivision, planning, land use, and development of property within the City; and

WHEREAS, consistent with C.R.S. §§ 31-23-207 and 31-23-303, the City's Master Plan and its zoning regulations seek to achieve and promote the health, safety, and welfare of the City by guiding and accomplishing a coordinated, adjusted, and harmonious development of the City which will, in accordance with present and future needs, best promote and ensure adequate provision for traffic; the promotion of safety from fire, flood waters, and other dangers; adequate provision for light and air; proper distribution of land uses to avoid undue concentration of population and to prevent overcrowding of land; the promotion of good civic design and arrangement; and the maintenance of property values, value of buildings, and community character; and

WHEREAS, the City's zoning regulations establish minimum lot sizes for property within the City and these minimum lot sizes are of critical importance in advancing and accomplishing the goals, objectives, and policies of the City's Master Plan; and

WHEREAS, there exist within the City lots or parcels of land that fail to conform to the minimum lot size for the lot or parcel's zone district and are therefore nonconforming or substandard lots; and

WHEREAS, nonconforming and substandard lots undermine and harm the goals, objectives, and purposes of the City's Master Plan by potentially permitting development on lots that will be incompatible and inconsistent with other properties within the same zone district; and

WHEREAS, Colorado appellate courts recognize that one purpose of zoning and land use regulation is to eliminate nonconforming or substandard lots as quickly as possible and these courts have upheld regulatory efforts to reduce and eliminate nonconforming lots and uses; and

WHEREAS, where a nonconforming or substandard lot is owned by the same owner as a contiguous lot, the merger of these lots into a larger or conforming parcel of land meeting at least the minimum lot size requirement for the applicable zone district will advance and accomplish the goals, objectives, and policies of the City's Master Plan; and

WHEREAS, where a nonconforming or substandard lot is owned by the same owner as a contiguous lot, the merger of these lots into a larger or conforming parcel of land will not deprive the owner of all economic use of the merged lot,

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

Section 1. Title 6 of the City Code for the City of Cherry Hills Village is hereby amended by the addition of a new Section 6-2-7 entitled "Merger of Nonconforming Lots of Record" to read in full as follows:

**6-2-7:MERGER OF NONCONFORMING LOTS OF RECORD:**

**A. Merger of Lots Required:**

Where two or more contiguous lots of record are under identical ownership upon or after the effective date of this Section (February 25, 2001, hereinafter the "Effective Date"), and all, one, or more of such contiguous lots fail(s) to conform to the applicable minimum lot area requirement for such lot(s), all such contiguous lots of record shall be merged and considered for the purpose of this Title 6 and of Title 7 as a single and undivided lot. The merger of lots required by this Section shall be interpreted in a manner consistent with the ownership parcels depicted on the property ownership maps prepared by the Arapahoe County Assessor's Office, dated December 31, 2000, ("Assessor's Ownership Maps") as supplemented and amended by the accompanying "Owners Report, Full Report, Report by Tax Authorities" dated February 25, 2001, prepared by the Arapahoe County Assessor's Office. The Assessor's Ownership Maps and accompanying Owner's Report are available for public inspection during normal business hours at the City Hall, 2450 East Quincy Avenue, Cherry Hills Village, Colorado. Where, following the merger of lots in accordance with this Section as depicted on the Assessor's Ownership Maps, the merged lot fails to conform to the minimum lot area requirement for such lot in the applicable zone district, such merged lot shall be further subject to merger with other contiguous lots of record under identical ownership in a manner consistent with this Section.

The merger of lots required by this Section shall be subject to the following:

1. No merger of lots in accordance with this Section shall result in the location of more than one existing and lawfully established single family residential dwelling unit on a merged lot. Where a merger would otherwise result in more than one existing and lawfully established single family residential dwelling unit to be located on a merged lot, the merger of lots required by this Section shall result in the creation of the largest possible lot for each existing single family residential dwelling unit.
2. No merger of lots in accordance with this Section shall result in the merger of two or more lots that, prior to merger, each conform to at least one hundred percent (100%) of the minimum lot area requirement for such lots in the applicable zone district.
3. Where, by the application of this Section, a lot of record that fails to conform to the applicable minimum lot area requirement for such lots *could* be merged with more than one lot conforming to at least one hundred percent (100%) of the applicable minimum lot area for such lot, the following criteria shall govern in determining which of such conforming lots shall be merged with the lot that fails to conform to the applicable minimum lot area requirement:
  - a. The conforming lot sharing the greatest percentage of contiguity with a lot that fails to conform to the applicable minimum lot area requirement shall be merged; or
  - b. Where the application of (a) above fails to determine the appropriate manner of merging lots, the smallest of the

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conforming lots shall be merged with the lot that fails to conform to the applicable minimum lot area requirement; or

- c. Where the application of (a) and (b) fails to determine the appropriate manner of merging lots, then the conforming lot with the greatest frontage upon a public street shall be merged with the lot that fails to conform to the applicable minimum lot area requirement; or
- d. Where the application of (a), (b), and (c) fails to determine the appropriate manner of merging lots, then the easternmost conforming lot shall be merged with the lot that fails to conform to the applicable minimum lot area requirement; or
- e. Where the application of (a), (b), (c), and (d) fails to determine the appropriate manner of merging lots, then the northernmost conforming lot shall be merged with the lot that fails to conform to the applicable minimum lot area requirement.

B. Administrative Determination and Appeal:

Any owner of a lot of record subject to the merger of such lot as required by this Section shall be entitled to a written administrative determination from the City concerning the application and effect of this Section upon the owner's lot(s). A request for an administrative determination from the City must be made in writing signed by the owner and shall include a copy of the owner's deed for each of the owner's contiguous lots of record. Such administrative determination shall be subject to appeal to the Board of Adjustment in accordance with Section 6-3-2(A).

C. Variances and Exemptions Authorized:

1. Variance. Any owner of property subject to the merger of lots required by this Section may request that the Board of Adjustment grant a variance for such property from the strict application of this Section. A request for a variance shall be applied for and processed in accordance with Sections 6-3-3 and 6-3-4, except that the application requirements of Section 6-3-3(B)(5)(b) shall require a description of evidence supporting the necessary findings to be made pursuant to this subsection. The Board of Adjustment may grant a variance from the strict requirements of this Section and permit the merger of lots into a different configuration than required by this Section where the Board finds the following:
  - a. The variance is the minimum variance that will make possible the reasonable use of the affected property; and
  - b. The variance will advance the intent of this Section by merging nonconforming or substandard lots into larger or conforming lots; and
  - c. One of the following:
    - (i) The lot created by the strict application of this Section would be illogical due to lot configuration or topography; or

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- (ii) The application of this Section would reduce the size of a tract or parcel of land recognized upon the Effective Date of this Section as a discrete taxable tract or parcel by the Arapahoe County Assessor's Office upon which a single family residential dwelling unit was lawfully established and is currently existing; or
- (iii) The merger of lots as required by this Section would result in the location of immovable lawfully established structures, including but not limited to barns, water wells, and garages, which are accessory to a lawfully established single family residential dwelling unit to be located on different lots, or
- (iv) The merger of lots as required by this Section would significantly and adversely diminish the protection and preservation of significant established and healthy vegetation, wildlife habitat or foraging areas, or natural resources including, but not limited to, water resources or wetlands.

The Board of Adjustment may impose reasonable conditions upon the approval of any variance including, but not limited to, requiring the owner to apply for and receive approval of a lot consolidation, minor lot adjustment, or other form of subdivision necessary or desirable to document the merger of property and the variance granted by the Board of Adjustment.

2. Exemption. Any owner of property subject to the merger of lots required by this Section may request that the City Council grant an exemption for such property from the application of this Section. A request for an exemption shall be made in writing submitted to the City Manager and shall detail the specific reasons for the requested exemption. The owner shall be entitled to a public hearing upon such request and written notice of the date and time of the public hearing shall be mailed or delivered by the City to the owner not less than seven (7) days before the date of the public hearing. The City Council may grant an exemption from the requirements of this Section where the owner establishes that:

- a. Either:
  - (i) the application of this Section will deprive the owner of all reasonable economic use of the lot that is created by the application of this Section; or
  - (ii) the application of this Section unreasonably and substantially impairs enforceable rights of the owner; and
- b. a variance to the strict application of this Section as authorized by (1) above could not be granted which would alleviate or eliminate the condition of (a) or (b) above cited by the Owner as the basis for the special exception.

A special exception granted by the City Council pursuant to this subsection shall be made by resolution and such resolution shall be effective upon recordation in the records of the Arapahoe County Clerk and Recorder.

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D. Later Subdivision, Consolidation, and Lot Adjustment Permitted:

The merger of lots in accordance with this Section shall not preclude the owner's application for, and the City's approval of:

1. A subdivision of such newly created lot where the application and subdivision plat conform to all other applicable provisions of Title 6 and Title 7 of the City Code for the City of Cherry Hills Village.
2. A lot consolidation plat evidencing the merger of lots required by this Section where such application and plat conforms to all other applicable provisions of Title 6 and Title 7 of the City Code for the City of Cherry Hills Village.
3. A minor adjustment of lot lines for any newly created lot where such application and plat conforms to all other applicable provisions of Title 6 and Title 7 of the City Code for the City of Cherry Hills Village.

Section 2. Title 6 of the City Code for the City of Cherry Hills Village is hereby amended by the addition of a new Section 6-2-8 entitled "No Sale to Create Substandard Parcels" to read in full as follows:

**6-2-8: NO SALE TO CREATE SUBSTANDARD PARCELS:**

It shall be unlawful for any person to sell, convey, transfer, dispose of, or otherwise divide any property within the City of Cherry Hills Village where such sale, conveyance, transfer, disposition, or other division would result in, create, or leave a lot or parcel of land that fails to meet the minimum lot area established for such property by the applicable zone district. In addition to any other remedy available to the City of Cherry Hills Village, the City shall not recognize or permit the use of a lot or parcel created in violation of this Section, unless and until such lot or parcel is properly consolidated with other lots or subdivided and meets all applicable requirements of this Title 6, Title 7, and the City Code for the City of Cherry Hills Village.

This Section shall not apply to the sale, conveyance, transfer, disposition, division, or dedication of property to the City of Cherry Hills Village, that is subject to and accepted by the City, for the purpose of providing land for a public use such as, but not limited to, park, open space, trail, right-of-way, utility access, and drainage management.

Section 3. Title 6 of the City Code for the City of Cherry Hills Village is hereby amended by the addition of a new Section 6-2-9 entitled "No Transfer Without Legal Subdivision" to read in full as follows:

**6-2-9: NO TRANSFER WITHOUT LEGAL SUBDIVISION:**

It shall be unlawful for any person to sell, convey, transfer, dispose of, or otherwise divide any property within the City of Cherry Hills Village where such sale, conveyance, transfer, disposition, or division would divide a lot of record into two or more parcels of land. In addition to any other remedy available to the City of Cherry Hills Village, the City shall not recognize or permit the use of a parcel of land created in violation of this Section, unless and until such parcel of land is lawfully subdivided in accordance with Title 7 and meets all applicable requirements of this Title 6 of the City Code for the City of Cherry Hills Village.

This Section shall not apply to the following:

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1. Any division of land resulting from the foreclosure of a deed of trust, mortgage, or other security interest recorded prior to the Effective Date of this Section; or

2. Any division of land ordered by a court of competent jurisdiction pursuant to the law of eminent domain; or

3. Any division of land that is to be created by a contract concerning the sale of a part or parcel of such land where the contract is expressly contingent upon the purchaser's obtaining final approval from the City of a subdivision plat accurately describing such division of land pursuant to Title 7 of the City Code for the City of Cherry Hills Village and such approval is granted by the City of Cherry Hills Village; or

4. The sale, conveyance, transfer, disposition, division, or dedication of property to the City of Cherry Hills Village that is subject to and accepted by the City, for the purpose of providing land for a public use such as, but not limited to, park, open space, trail, right-of-way, utility access, and drainage management.

Section 4. 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.

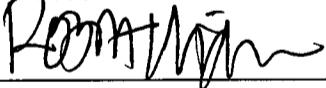
Adopted as Ordinance No.2 Series 2001, by the City Council of the City of Cherry Hills Village, Colorado this 6<sup>TH</sup> day of February, 2001.

  
John F. Welborn, Mayor

ATTEST:

  
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Darlene French, City Clerk

APPROVED AS TO FORM:

  
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Robert C. Widner, City Attorney

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