

CHERRY HILLS VILLAGE
COLORADO

2450 E. Quincy Avenue
Cherry Hills Village, CO 80113
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Village Center
Telephone 303-789-2541
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Planning and Zoning Commission
Meeting Agenda
Tuesday, November 24, 2009

6:30 p.m.

1. Call to Order
2. Roll Call of Members
3. Approval of November 10, 2009 Minutes
4. Agenda Items
 - a. Proposed Addition of Satellite Dish Antenna Regulations to the City's Zoning Ordinance
5. Reports
6. Adjournment

Agenda is subject to change.

If you will need special assistance in order to attend this meeting, please notify the City of Cherry Hills Village at 303-789-2541 at least 48 hours in advance.

- D R A F T -

Minutes of the

Planning and Zoning Commission of the City of Cherry Hills Village, Colorado

Held on Tuesday, November 10, 2009 at 6:30 p.m.

At the Village Center

CALL TO ORDER

Chairman Ira Plotkin called the meeting to order at 6:30 p.m.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners: Chairman Ira Plotkin; Commissioner Laura Christman; Commissioner Jacque McIntyre; Commissioner Joe Poche; and Commissioner Jim Rubin.

Also present at the meeting were the following staff members: Mr. Rob Zuccaro, Planning Manager; Ms. Laurel Landsman, Community Development Clerk; and Deputy City Attorney David Foster, for the City of Cherry Hills Village, Colorado.

Absent were Commissioner Ann Kerr and Commissioner Stephanie Blucher.

APPROVAL OF MINUTES

Commissioner Christman made a motion, seconded by Commissioner McIntyre, to accept the October 27, 2009 minutes as written. The motion passed unanimously.

AGENDA ITEMS

Proposed Amendments to Section 16-16-50 of the Municipal Code Concerning Exterior Lighting

Mr. Zuccaro began by saying there were two proposed amendments to the Municipal Code before the Commission tonight. The first of the two amendments concerns exterior lighting under Section 16-16-50 of the Municipal Code. He said that as a result of the study sessions on exterior lighting, the sections include Purpose and Intent, Lighting Requirements, Exceptions, Nonconforming Lights, and Procedures for New Development.

Mr. Zuccaro said that Staff recommends approval of the proposed amendments to Section 16-16-50 as written. He then asked for any questions or comments concerning these proposed amendments.

Commissioner Christman requested that the amendments be clear that pre-existing light fixtures would still be subject to the nuisance code.

Mr. Zuccaro responded saying that the nuisance code includes any light source on a property so all lighting is subject to the nuisance code. This would include tennis court lighting at clubs that would be grandfathered in Section D of the proposed amendments.

The Commissioners and Mr. Zuccaro discussed language changes saying that an item should be added for lighting approved through Article 20 of the Zoning Ordinance.

Commissioner Rubin said he thought that the intent was not to prohibit uplighting and said he thought there was a conflict in the language.

Mr. Zuccaro stated that a new sentence could be added in Section B2 to remove the conflict so that uplighting is clearly allowed with shielding.

Discussion ensued about how to require lighting plans and whether to require them prior to Certificate of Occupancy or at the time of initial permit.

Mr. Zuccaro suggested that one way to ensure that lighting was addressed was to have an inspection added to the list of inspections that would cause the inspectors to review lighting on a property prior to Certificate of Occupancy. He also said a stamp with conditional language concerning lighting requirements and limitations could be put on building plans at plan review.

Commissioner McIntyre said that she would like to see the lighting review take place early in the process.

Chairman Plotkin said that he thought the City should be concerned only with fully shielded or not shielded lights, the number of lumens of the lights, etc. and not type or style of fixtures.

Commissioner Christman agreed saying that while the location of the lights is important, early review/approval of lighting shouldn't be precluded.

Commissioner Rubin suggested that requiring the general location of light fixtures, shielding, and number of lumens could be required of builders/homeowners at time of permit, but that the design of the fixtures may not be known at that time.

Deputy City Attorney David Foster suggested that a document be created so that in the absence of a lighting schedule and detailed lighting plan, a condition could be placed on the permit and the document acknowledged by the builder/homeowner. This could be added to Section E.

Commissioner Rubin made a motion, seconded by Commissioner Christman, to recommend to the City Council approval of the amendments to Section 16-16-50 of the Municipal Code concerning exterior lighting as outlined in the staff memorandum dated November 10, 2009 with additions and changes noted.

Commissioner Rubin – Aye
Commissioner Christman – Aye
Chairman Plotkin – Aye
Commissioner Poche – Aye
Commissioner McIntyre – Aye

The motion passed unanimously.

Proposed Amendments to Section 16-8-80 of the Municipal Code Concerning R-3A Zone District Buffer Requirements and to Division 4, Article III, Chapter 17 of the Municipal Code Concerning Procedures for Minor Adjustments to Subdivision Plats

Mr. Zuccaro said that the Commission saw amendments similar to these proposed amendments earlier in the year on September 8th. The purpose of these amendments is to set forth a procedure for removal of a R-3A buffers and amending plats. The amendments seen at the September 8th meeting outlined an administrative procedure. Mr. Zuccaro reported that City Council gave staff the direction to include a public hearing process rather than have an administrative review. He stated that the new review procedure for removal of a buffer falls under Division 4, Article III of the Subdivision Ordinance, which would be expanded to allow for the consideration of minor amendments to subdivision plats.

Mr. Zuccaro asked the Commission for their questions or comments.

Chairman Plotkin said that it was his understanding that two public hearings were necessary for minor subdivision and plat amendments.

Commissioner Christman suggested that second sentence in paragraph (a) of the Buffer Requirement about land dedications be removed. She said that she didn't think that the language as written was consistent with the Master Plan.

Chairman Plotkin suggested leaving the language intact with the question raised for City Council about whether eliminating the land dedication language harms the intent of Section A.

Deputy City Attorney Foster suggested adding language that a buffer may be removed "unless previously used as a credit for land dedication" to paragraph (f).

After some discussion about the language of the amendments, Chairman Plotkin said he would entertain motions.

Commissioner Christman made a motion, seconded by Commissioner Rubin, to eliminate the second sentence of Section 16-8-80(a) Buffer Requirement.

Commissioner Rubin – Aye
Commissioner Christman – Aye

Chairman Plotkin – Nay
Commissioner Poche – Aye
Commissioner McIntyre – Aye

Motion passed with four Ayes and one Nay.

Commissioner Christman made a motion, seconded by Commissioner Rubin, to add additional language that a buffer may be removed “unless previously used as a credit for land dedication” to paragraph (f).

Commissioner Rubin – Aye
Commissioner Christman – Aye
Chairman Plotkin – Aye
Commissioner Poche – Nay
Commissioner McIntyre – Aye

The motion passed with four Ayes and one Nay.

Deputy City Attorney Foster suggested adding headings A and B to the definitions in Article III, Division 4.

Commissioner Christman made a motion to amend Section 17-3-320(3), seconded by Commissioner McIntyre, so that it reads “Does not create or result in the creation of a lot or parcel of land that would violate or fail to conform to any applicable zoning or other standard, including but not limited to lot area, building height, setback, private road or private drive standards, parking, drainage requirements or access, or public amenities including public roads, easements, rights-of-way, parks, open spaces or trails.”

Commissioner Rubin – Aye
Commissioner Christman – Aye
Chairman Plotkin – Aye
Commissioner Poche – Aye
Commissioner McIntyre – Aye

The motion passed unanimously.

Commissioner Rubin moved and Commissioner McIntyre seconded, to recommend to the City Council approval of the amendments to Section 16-8-80 of the Zoning Ordinance and Division 4, Article III of the Subdivision Ordinance as outlined in the staff memorandum dated November 10, 2009 with changes noted.

Commissioner Rubin – Aye
Commissioner Christman – Aye
Chairman Plotkin – Aye
Commissioner Poche – Aye
Commissioner McIntyre – Aye

The motion passed unanimously.

REPORTS

There were no reports.

ADJOURNMENT

A motion was made by Commissioner Christman, seconded by Commissioner McIntyre, to adjourn the meeting at 7:30 p.m.

The motion passed unanimously.

The meeting adjourned at 7:30 p.m.

Ira Plotkin, Chairman

Laurel Landsman, Community Development Clerk

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ITEM: 4a

MEMORANDUM

TO: CHAIRMAN PLOTKIN AND MEMBERS OF THE PLANNING AND ZONING COMMISSION

FROM: ROBERT A. ZUCCARO, PLANNING MANAGER

SUBJECT: PROPOSED ADDITION OF SATELLITE DISH ANTENNA REGULATIONS TO THE CITY'S ZONING ORDINANCE

DATE: NOVEMBER 24, 2009

PROPOSAL:

Staff is presenting a proposal for the addition of comprehensive satellite dish antenna regulations to Zoning Ordinance for review and recommendation to the City Council. The proposed regulations allow satellite dish antennas less than one meter in diameter without restriction (as required by the Federal Communications Commission), and up to three antennas between one and four meters in diameter subject to location and design criteria. Satellite dish antenna that exceed the number or size requirements would only be permitted as a *conditional use* under Article XVIII of the Zoning Ordinance. Additionally, an amortization period is included in the regulations requiring that any non-conforming satellite dish antenna come into compliance with the adopted regulations within six years of the date of adoption of the ordinance.

BACKGROUND:

Currently, satellite dish antenna regulations fall under Section 16-16-140 of the Zoning Ordinance, which restricts "television antenna" to five feet above the ridgeline of the house or 35 feet above the natural grade. There are no restrictions on the size, location or the total number of antennas allowed. Concerns have recently been raised in the community regarding the possible negative visual impacts and negative impacts on property values by allowing an unlimited number and size of satellite dish antennas.

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ANALYSIS:

Because the City's current regulations do not provide any restrictions on the size, location or number of satellite dish antennas, the possibility exists that satellite dish antenna could be installed a such a manner as to create a negative impact on adjacent properties diminishing the enjoyment of such property. The proposed regulations provide reasonable allowances for satellite dish antennas consistent with Federal Communications Commission requirements.

RECOMMENDATION:

Staff recommends approval of the proposed amendments to the Zoning Ordinance outlined in Exhibit A for the purpose of adopting comprehensive regulations concerning satellite dish antennas.

RECOMMENDED MOTION:

"I move to recommend to the City Council approval of the proposed amendments to the City's Zoning Ordinance as outlined in Exhibit A to the staff memorandum dated November 24, 2009, for the purpose of adopting comprehensive regulations concerning satellite dish antennas."

ATTACHMENTS:

Exhibit A: Draft Council Bill 20, Series 2009

DRAFT

COUNCIL BILL 20
SERIES OF 2009

INTRODUCED BY: _____
SECONDED BY: _____

**A BILL FOR AN ORDINANCE
OF THE CITY OF CHERRY HILLS VILLAGE
AMENDING CHAPTER 16 OF THE CHERRY HILLS VILLAGE MUNICIPAL CODE,
CONCERNING ZONING, BY (1) AMENDING SECTIONS 16-5-10, 16-12-10 and 16-13-10
CONCERNING PERMITTED USES IN THE VARIOUS ZONE DISTRICTS; 16-5-20, 16-6-20,
16-7-20, 16-8-20, 16-9-20, 16-10-20, AND 16-12-20 CONCERNING CONDITIONAL USES IN
THE VARIOUS ZONE DISTRICTS; AND 16-8-20 CONCERNING REQUIREMENTS AND
CONDITIONS FOR SPECIFIC CONDITIONAL USES; AND (2) THE ADDITION OF SECTION
16-16-150 CONCERNING SATELLITE DISH ANTENNAS; ALL FOR THE PURPOSE OF
ADOPTING COMPREHENSIVE REGULATIONS CONCERNING SATELLITE DISH
ANTENNAS**

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 regulate property within the boundaries of the City to further the health, safety and welfare of the citizens of the City of Cherry Hills Village; and

WHEREAS, in order to protect the aesthetic concerns of the residents and property owners of the City, the City Council has determined that standards regulating the placement of Satellite Dish Antennas are necessary; and

WHEREAS, in order to protect the health and safety of residents of the City, the City Council has determined to set forth standards for the installation of Satellite Dish Antennas; and

WHEREAS, the burdens created to individual property owners by imposing an amortization schedule for removal of nonconforming Satellite Dish Antennas are outweighed by the benefits that will be provided to all citizens of the City; and

WHEREAS, the determination of a six year amortization period for removal of nonconforming Satellite Dish Antennas is reasonable and provides a rational basis for the amortization schedule based upon the formula used by the United States Internal Revenue Service ("IRS") to depreciate Satellite Dish Antennas.

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

Section 1. That Section 16-5-10 of the City of Cherry Hills Village Municipal Code, concerning permitted uses in the R-1 zone district, is hereby amended by the addition of a new subsection (9) to read as follows:

Sec. 16-5-10. Permitted uses.

(9) Satellite Dish Antennas that are less than one meter in diameter, or up to three antennas between 1 and 4 meters in diameter. All Satellite Dish Antennas shall meet all requirements of Section 16-16-150 (a) through (c) of this Chapter. Satellite Dish Antennas more than one meter in diameter shall additionally meet all requirements of Section 16-16-150 (d) and (e) of this Chapter.

Section 2. That Section 16-5-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the R-1 zone district, is hereby amended to read as follows:

Sec. 16-5-20. Conditional uses.

The following uses shall be permitted as conditional uses in the R-1 District: guardhouse; wireless communication facilities; Satellite Dish Antennas that exceed the number and size limitations set forth in Section 16-5-10(9) of the Code.

Section 3. That Section 16-6-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the R-2 zone district, is hereby amended to read as follows:

Sec. 16-6-20. Conditional uses.

The following uses shall be permitted as conditional uses in the R-2 District: guardhouse; wireless communication facilities; Satellite Dish Antennas that exceed the number and size limitations set forth in Section 16-5-10(9) of the Code.

Section 4. That Section 16-7-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the R-3 zone district, is hereby amended to read as follows:

Sec. 16-7-20. Conditional uses.

The following uses shall be permitted as conditional uses in the R-3 District: guardhouse; wireless communication facilities; Satellite Dish Antennas that exceed the number and size limitations set forth in Section 16-5-10(9) of the Code.

Section 5. That Section 16-8-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the R-3A zone district, is hereby amended to read as follows:

Sec. 16-8-20. Conditional uses.

The following uses shall be permitted as conditional uses in the R-3A District: guardhouse; wireless communication facilities; Satellite Dish Antennas that exceed the number and size limitations set forth in Section 16-5-10(9) of the Code.

Section 6. That Section 16-9-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the R-4 zone district, is hereby amended to read as follows:

Sec. 16-9-20. Conditional uses.

The following uses shall be permitted as conditional uses in the R-4 District: guardhouse; wireless communication facilities; Satellite Dish Antennas that exceed the number and size limitations set forth in Section 16-5-10(9) of the Code.

Section 7. That Section 16-10-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the R-5 zone district, is hereby amended to read as follows:

Sec. 16-10-20. Conditional uses.

The following uses shall be permitted as conditional uses in the R-5 District: guardhouse; wireless communication facilities; Satellite Dish Antennas that exceed the number and size limitations set forth in Section 16-5-10(9) of the Code.

Section 8. That Section 16-12-10 of the City of Cherry Hills Village Municipal Code, concerning permitted uses in the C-1 zone district, is hereby amended by the addition of a new subsection (5) to read as follows:

Sec. 16-12-10. Permitted uses.

(5) Satellite Dish Antennas that are less than one meter in diameter, or up to three antennas between 1 and 4 meters in diameter. All Satellite Dish Antennas shall meet all requirements of Section 16-16-150 (a) through (c) of this Chapter. Satellite Dish Antennas more than one meter in diameter shall additionally meet all requirements of Section 16-16-150 (d) and (e) of this Chapter.

Section 9. That Section 16-12-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the C-1 zone district, is hereby amended to read as follows:

Sec. 16-12-20. Conditional uses.

The following uses shall be permitted as conditional uses in the C-1 District: wireless communication facilities; Satellite Dish Antennas that exceed the number and size limitations set forth in Section 16-12-10(5) of the Code.

Section 10. That Section 16-13-10 of the City of Cherry Hills Village Municipal Code, concerning permitted uses in the C-2 zone district, is hereby amended by the addition of a new subsection (3) to read as follows:

Sec. 16-13-10. Permitted uses.

(3) Satellite Dish Antennas that are less than one meter in diameter, or up to three antennas between 1 and 4 meters in diameter. All Satellite Dish Antennas shall meet all requirements of Section 16-16-150 (a) through (c) of this Chapter. Satellite Dish Antennas more than one meter in diameter shall additionally meet all requirements of Section 16-16-150 (d) and (e) of this Chapter.

Section 11. That Section 16-13-20 of the City of Cherry Hills Village Municipal Code, concerning conditional uses in the C-2 zone district, is hereby amended to read as follows:

Sec. 16-13-20. Conditional uses.

The following uses shall be permitted as conditional uses in the C-2 District: retail uses (the provisions and procedures relating to conditional uses found in Article XVIII of this Chapter

shall apply); wireless communication facilities; Satellite Dish Antennas that exceed the number and size limitations set forth in Section 16-13-10(3) of the Code.

Section 12. That Section 16-16-150 shall be added to the Cherry Hills Village Municipal Code concerning regulation of Satellite Dish Antennas to read as follows:

Sec. 16-16-150. Satellite Dish Antennas.

(a) Purpose, intent and applicability: The City Council finds that these regulations, to the extent allowable under Federal law and specifically 47 C.F.R. Sec. 1.4000, are necessary in order to:

(1) To provide for the use of Satellite Dish Antennas in the City subject to certain standards;

(2) To protect the public health, safety and general welfare of the community;
and

(3) To minimize adverse visual effects of Satellite Dish Antennas on all residents and property owners within the City in a nondiscriminatory manner through careful design and siting standards.

This Section shall not govern television antennae governed by Sec. 16-16-140 or tower or wireless communication facilities governed by Sec. 16-16-130 of this Code.

(b) Definitions:

Satellite Dish Antennas is defined as an antenna that is designed to receive one of the following: direct broadcast satellite service, including direct-to-home satellite service; video programming services via multi-point distribution services, including multi-channel multi-point distribution services, instructional television fixed services and local multi-point distribution services; or television broadcast signals.

Nonconforming Satellite Dish Antennas is defined as a Satellite Dish Antenna that was installed prior to the effective date of this section which could not be installed in its current location under the terms of this section of this Code.

(c) All Satellite Dish Antennas shall comply with the standards promulgated by the Federal Communications Commission (FCC) regarding radio frequency emissions.

(d) General requirements/location and design criteria. All Satellite Dish Antennas shall:

(1) Comply with applicable accessory structure setbacks;

(2) Comply with applicable accessory structure height limits, except that wall or roof mounted antennae may extend five feet above the highest point of the roof or structure to which it is mounted;

(3) Be screened from view from adjacent properties and rights-of-way to the maximum extent possible; and

(4) Be located in the rear or side yard of a lot.

(e) Wall-mounted facilities shall be mounted as flush to the building wall as possible.

(f) Nonconforming Satellite Dish Antennas shall be removed or re-installed in conformance with this section on or before January 1, 2015, consistent with the amortization schedule adopted by the IRS for Satellite Dish Antennas.

Section 13. That Section 16-18-20 of the City of Cherry Hills Village Municipal Code, concerning requirements and conditions for specific uses as conditional uses is hereby amended by the addition of a new subsection (d) to read as follows:

Sec. 16-18-20. Requirements and conditions for specific uses.

(d) Satellite Dish Antennas. In addition to meeting all other requirements of this Article, Satellite Dish Antennas must meet the requirements of Section 16-16-150 of this Chapter.

Section 14. 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.

Section 15. Effective Date. This Ordinance shall become effective ten (10) days after publication on second reading in accordance with Section 4.5 of the Charter for the City of Cherry Hills Village.

Adopted as Ordinance No. ____, Series 2009, by the City Council of the City of Cherry Hills Village, Colorado this ____ day of _____, 2009.

Michael J. Wozniak, Mayor

ATTEST:

APPROVED AS TO FORM:

Laura Smith, City Clerk

Kenneth S. Fellman, City Attorney

Published in *The Villager*

Published _____

Legal # _____