



CHERRY HILLS VILLAGE
COLORADO

2450 E. Quincy Avenue
Cherry Hills Village, CO 80113
www.cherryhillsvillage.com

City Hall
Telephone 303-789-2541
FAX 303-761-9386

Planning and Zoning Commission
Meeting Agenda
Tuesday, September 12, 2023 @ 5:00 p.m.

This meeting will be held in person with no virtual participation.

Agenda

1. Call to Order
2. Roll Call of Members
3. Pledge of Allegiance
4. Audience Participation Period (limit 5 minutes per speaker)
5. Consent Agenda
 - a. Approval of Minutes for the meetings of:
 - i. May 9, 2023
6. New Business
 - a. Code Amendments Related to Hardships for Variances and Floodplain Variances – Paul Workman, Community Development Director
7. Reports
 - a. Members of the Planning and Zoning Commission
 - b. City Staff
 - c. City Attorney
8. Adjournment

Notice: Agenda is subject to change.
If you will need special assistance in order to attend any of the City's public meetings, please notify the City of Cherry Hills Village at 303-789-2541, 72 hours in advance.

**Minutes of the
Planning and Zoning Commission of the City of Cherry Hills Village, Colorado
Held on Tuesday, May 9, 2023, at 5:00 p.m.**

Chair Lucas called the meeting to order at 5:03 pm.

ROLL CALL

Present at the meeting were the following Planning and Zoning Commissioners:
Commissioner Shari Leigh, Commissioner David Wyman, Commissioner Doris Kaplan,
Chair Bill Lucas, and Commissioner Sheida Lahabi

Absent from the meeting were the following Planning and Zoning Commissioners:
Commissioner Mike LaMair, Commissioner Britta Miles

Present at the meeting were the following staff members: Evin King Assistant City Attorney;
Paul Workman, Community Development Director; Jan Peciak, Planning and Building Permit
Technician

AUDIENCE PARTICIPATION PERIOD

None

CONSENT AGENDA

Approval of Minutes – March 14, 2023

Commissioner Wyman made a motion to approve the minutes from the March 14, 2023,
meeting. The motion was seconded by Commissioner Leigh. The motion passed with all in
favor.

NEW BUSINESS

4545 S University Blvd Site Plan Amendment

Community Development Director Paul Workman gave a presentation regarding the proposed
Site Plan Amendment at 4545 S University Blvd. Mr. Workman provided information about St.
Mary's Academy, the scope of proposed work, the city engineer's and sewer district's analysis of
the proposed work, municipal code criteria, staff analysis of the code criteria, public comments,
and staff's recommendation for approval, subject to one condition, of the site plan amendment
request.

Commissioner Wyman asked about the underlayment for the artificial turf and if during heavy
rainfall, is there sufficient capacity of the storm drainage system to deal with the potential
increase in stormwater volume. Mr. Workman responded that ICON Engineering, the City's
engineering consultant, did an analysis of the plans. The synthetic turf will have a perforated

drainage system underneath it and will function very much like the current system. The result of this is no increase in the historical rate of release to the drainage system and surrounding properties.

Commissioner Wyman stated that, in the interest of full disclosure, he is on the board of the Cherry Hills Village Sanitation District, and that there are still some unresolved issues that need to be addressed. The manhole that is part of the project gets used frequently and for that reason, extra care should be taken to make sure all the rules and regulations are taken into consideration and followed.

Chair Lucas then asked if the applicant wanted to say anything to the commission. Roger Brown of 7680 E.6th Ave, Denver, CO 80230, a representative of St. Mary's Academy, stated the purpose of the site plan amendment. He said that by converting to synthetic turf, approximately 250,000 gallons of water can be saved annually. In addition to the water savings, it makes the field more consistent and playable on a more regular basis. It also eliminates mowing the field, which was a concern of surrounding neighbors due to the noise generated. No change will occur in the use of the field, no lights or audio are being added. The applicant also stated that they have been working with Stanford University and will utilize an organic fill instead of a rubber one.

Chair Lucas asked if anyone had any questions. Commissioner Wyman asked if they already had a synthetic field. Mr. Brown responded that their primary competition field was converted to synthetic turf and they are very happy with the outstanding performance of the field.

Commissioner Lahabi asked if the two fields will be using the same product. Mr. Brown replied that they are similar products with the same appearance, but this new field will use a better variation of the product.

Commissioner Lahabi also asked about the organic fill of the synthetic turf and if any chemicals will be leached into the water and thus into the ground. Mr. Brown responded by restating that the fill is organic, and they will not be using a rubber fill material. Commissioner Leigh joined the conversation by stating that in her research, synthetic turfs have been known to leach toxic chemicals into the water and ground and if this aspect of the product has been incorporated into their engineering study. Mr. Brown answered back by stating that they have considered it and they will eliminate the use of fertilizer, weed killer, and pesticides by switching to synthetic turf. One of the school's core values is being a good steward of the environment and this switch will be a positive step towards protecting that environment. Commissioner Leigh asked if they have looked specifically into the chemicals that may be leached into the runoff water. Mr. Brown replied that this is a very typical product that is used all over the country and it has been studied very carefully by not only the manufacturer but also their subcontractor. Commissioner Leigh then asked what the City can expect as far as chemicals that are being leached into the water. Mr. Brown stated that the amount of leached chemicals will be very minimal. The amount of

pesticide and weed killer they will not be using was much more significant compared to the amount of leached chemicals by the synthetic turf.

Chair Lucas then thanked Mr. Brown and asked the other commissioners if they had any questions.

Commissioner Leigh asked how synthetic turf is considered consistent with a semi-rural environment. Chair Lucas responded that in the recent master plan, the words semi-rural were taken out because it does not mean anything different than semi-urban. He stated that the term semi-rural does not really take turf into consideration. If it did, the City would question the use of traditional lawns of bluegrass and only allow native grasses. It has more to do with lot size and lighting and such and to protect the City's bridal paths and parks.

Commissioner Leigh inquired if anyone has weighed the difference in how the field is now with all the pesticides and chemicals that need to be put on it, and the water used versus the new synthetic turf and the potential of it to leach toxic chemicals into the water. In addition, the synthetic turf will at some point have to be replaced which means more plastic products will have to be manufactured and shipped and installed and the old synthetic tuft will be thrown away. Commissioner Leigh asked if anyone has done a comparison between those two with some of these points in consideration. Chair Lucas said the commission may not have looked at that level of detail during the Master Plan.

Chair Lucas asked if Mr. Workman can add anything to Commissioner Leigh's points. Mr. Workman responded that they did not get into that level of detail during the Master Plan. He said that it is correct that the Master Plan has moved away from the words semi-rural character. Instead, it focuses more on what the character of the City is, such as the examples that Chair Lucas has already given.

Chair Lucas asked if there were any more questions or deliberation needed.

Commissioner Wyman made a motion to recommend approval of the Site Plan Amendment, subject to the condition in the staff report.

The motion was seconded by Chair Lucas.

	AYES	NAYS
KAPLAN	X	
LAHABI	X	
LEIGH	X	
LUCAS	X	
WYMAN	X	
TOTAL	5	

The motion passed.

REPORTS

a. Members of the Planning and Zoning Commission

Congratulations went out to Commissioner Lahabi and her newborn daughter.

b. City Staff

Mr. Workman updated the commission on SB23-213 noting that it had died in the legislature, but staff expects similar legislation in the 2024 legislative session.

c. City Attorney

None

ADJOURNMENT

Chair Lucas adjourned the meeting at 5:31 pm.

William Lucas, Chair

Jan Peciak, Planning and Building Permit Technician

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ITEM: 6A

MEMORANDUM

TO: CHAIR LUCAS AND MEMBERS OF THE COMMISSION

FROM: PAUL WORKMAN, COMMUNITY DEVELOPMENT DIRECTOR

SUBJECT: CLARIFYING HARDSHIPS REGARDING LAND USE APPLICATIONS

DATE: SEPTEMBER 12, 2023

ISSUE:

Should the Planning and Zoning Commission (“Commission”) vote to recommend certain changes to the Municipal Code (“Code”) related to the phrase “hardship” and “exceptional hardship” to City Council (“Council”)?

BACKGROUND:

Two types of land use applications require that an applicant establish hardship or exceptional hardship for approval. However, currently, the definitions of “hardship” and “exceptional hardship” do not exist or are unclear and inconsistently applied. Therefore, Council requested a discussion regarding the interpretation and application of the phrases as they apply to land use applications in an effort to ensure consistent application and to provide guidance to staff and future applicants. On May 16, 2023, Council held a study session and has directed Staff to make changes to the language within the Code, as well as add a definition for the term “exceptional hardship.”

DISCUSSION:

As discussed above, the Code, specifically Chapter 16 (Zoning), has two land use application types that require the establishment of a hardship for approval: (1) variance applications and (2) floodplain variance applications.

Variance applications are heard and decided by the Board of Adjustment and Appeals (“BOAA”). A variance provides relief from a City-wide standard (such as setbacks, height, and bulk plane) when site-specific conditions warrant the requested relief. The Code establishes nine approval criteria for a variance, all of which must be met to authorize a variance. The first approval criteria requires the establishment of an “exceptional and unnecessary hardship”. For brevity, the language below is an excerpt of the operative section, but a copy of the entire section is provided in the packet as **Exhibit A** (proposed changes included).

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COLORADO

16-7-520. – Variances.

16-7-520(b): Limitations. No variance shall be authorized unless the Board finds all of the following:

- (1) The applicant would suffer an exceptional and unnecessary **hardship** (emphasis added) as a result of the application of this Chapter, which hardship is not generally applicable to other lands or structures in the same zone district because of:
 - (a) The unusual configuration of the subject property boundaries;
 - (b) Unique or highly unusual circumstances related to the location of existing buildings or structures thereon;
 - (c) The existence of exceptional topographic conditions thereon; or
 - (d) Comparable circumstances that are specific to the subject property.

Items (a) through (d) specify particular circumstances that may cause and support a finding of the requisite hardship.

Floodplain Variance applications are initially heard by the Planning and Zoning Commission, which makes a recommendation to Council to approve, approve with conditions, or deny the request. Ultimately, Council is the final decision maker for these applications. The Code states that only bank stabilization and pond dredging are allowed by right in a floodplain and everything else requires a floodplain variance. The intent of the floodplain variance process is to allow improvements (or relief) from the floodplain regulations within a designated floodplain. There are four approval criteria for a floodplain variance, with the third criteria requiring the establishment of a hardship. For brevity, the language below is an excerpt of the operative section, but a copy of the entire section is provided in the packet as **Exhibit B** (proposed changes included).

16-7-530. – Floodplain variances.

16-7-530(f): Approval Standards (Generally). A floodplain variance may be granted for the purposes other than ¹Functionally Dependent Uses... only upon a finding by the City Council that:

- (3) The floodplain variance is only issued upon:
 - (a) Showing a good and sufficient cause;
 - (b) A determination that failure to grant the variance would result in exceptional **hardship** (emphasis added) to the applicant; and
 - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, the creation of nuisances, fraud on or victimization of the public, or conflict with other City laws or ordinances.

¹ A Functionally Dependent Use is a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage related manufacturing facilities. Section 16-9-130 CHV Municipal Code.

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Unlike the variance application's use of hardship, this section of code does not provide circumstances that may cause and support a finding of a requisite hardship.

Chapter 16 (Zoning) does not define the term "hardship" or "exceptional hardship." While the Code section authorizing variances provides some additional context for the term, the floodplain variance language does not. This could lead to reasonable interpretations of what constitutes a hardship that differ.

ANALYSIS:

Based on the Council discussion, staff is proposing the following amendments:

16-7-520(b)(1):

The applicant would suffer an exceptional ~~and unnecessary~~ hardship as a result of the application of this Chapter, which ~~hardship~~ is not generally applicable to other lands or structures in the same zone district...

16-7-520(e):

Variances Run with the Land. Every variance shall transfer and run with the land as provided for in Section 16-7-520(g)(4).

16-7-530(f)(1):

The relevant factors in Section 16-7-360, *Floodplain Development Permit*, subsection (e)(2) (including standards referenced therein) have been weighed, and favor ~~the granting~~ of the floodplain variance.

16-9-130:

Arbitrary means a determination not based on codified standards, rules, or laws.

Capricious means a willful and unreasonable determination without consideration or regard for the facts and circumstances.

Exceptional hardship means that a physical condition exists on a property such that the applicable standard(s) are so unreasonable that the strict application of the standard(s) results in an arbitrary or capricious interference with basic property rights.

EXHIBIT(S):

Exhibit A: 16-7-520. – Variances.

Exhibit B: 16-7-530. – Floodplain variances.

Sec. 16-7-520. Variances.

- (a) Generally. The Board of Adjustment and Appeals ("Board") may authorize variances from the requirements of this Chapter subject to terms and conditions fixed by the Board. A variance from the terms of this Chapter shall be considered an extraordinary remedy, and the limitations set forth in subsection (c), below are intended to constrain the Board's power to authorize variances.
- (b) Limitations. No variance shall be authorized unless the Board finds all of the following:
- (1) The applicant would suffer an exceptional ~~and unnecessary~~ hardship as a result of the application of this Chapter, which ~~hardship~~ is not generally applicable to other lands or structures in the same zone district because of:
 - a. The unusual configuration of the subject property boundaries;
 - b. Unique or highly unusual circumstances related to the location of existing buildings or structures thereon;
 - c. The existence of exceptional topographic conditions thereon; or
 - d. Comparable circumstances that are specific to the subject property.
 - (2) There are no design alternatives or alternative locations for buildings or structures that would obviate the need for the requested variance or would reduce the amount of the variance required.
 - (3) The strict enforcement of the provisions of this Chapter deprives the applicant of rights enjoyed by a majority of the other properties in the same zone district under the terms of this Chapter.
 - (4) The need for the variance does not result from the intentional, reckless, or grossly negligent actions of the applicant or his agent, a violation of any provision of this Chapter, or a previously granted variance.
 - (5) Reasonable protections are afforded adjacent properties.
 - (6) The requested variance will not cause an undesirable change in the character of the neighborhood or have an adverse effect on the physical or environmental conditions of the surrounding property.
 - (7) The variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
 - (8) The reasons set forth by the applicant justify the granting of the variance. For purposes of making this finding, the Board may not consider issues of inconvenience or aesthetics.
 - (9) The granting of the variance will:
 - a. Reflect the spirit of this Chapter;
 - b. Secure the public safety and welfare; and
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- c. Ensure that substantial justice is done.
- (c) Conditions of Approval. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter and the Master Plan and particularly the standards set forth in this Section. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this Chapter and punishable as provided in Article VIII, *Enforcement*.
- (d) Use Variances Prohibited. Under no circumstances shall the Board grant a variance to allow a use that is prohibited by this Chapter in the zone district in which the subject property is located. Also, neither a nonconforming use of neighboring lands or structures in the same zone district, nor a permitted or nonconforming use of lands or structures in other districts shall be considered grounds for the issuance of a variance.
- (e) Variances Run with the Land. Every variance shall transfer and run with the land as provided for in Section 16-7-520(g)(4).
- (f) No Precedent. The granting of any variance shall not constitute or be construed as a precedent, ground or cause for any other variance.
- (g) Effect and Limitations of Approval. Unless otherwise expressly provided by a written resolution of the Board granting a variance, every variance shall be limited in its effect as follows:
- (1) A variance shall only authorize the specific improvement described in the application for variance subject to such conditions affecting such improvement as may be imposed by the Board.
 - (2) A variance shall be initially effective for a period of one (1) year commencing upon the date the variance is granted by the Board. A variance shall expire and be void in the event that a building permit is not issued prior to the expiration of the one-year time period for the improvement authorized by the variance.
 - (3) The Director may approve an extension of the initial one-year time period for an additional one (1) year where the Director finds that:
 - a. The applicant requested an extension in writing prior to the initial one-year expiration date and just cause exists; and
 - b. The extension would not adversely affect or harm adjacent property owners.
 - (4) Following the construction of the improvement authorized by the variance, the variance shall remain effective only during such period of time that the specific improvements described in the application for variance exists. Repairs and cosmetic alteration of the improvement shall be permitted subject to applicable requirements imposed by uniform building or safety codes, provided that such repair or alteration does not increase or enlarge the improvement beyond the scope of the improvement approved by the Board. The destruction of the improvement by
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any cause or for any reason whatsoever other than destruction by act of God shall cause the variance to expire and become void.

(Ord. 7, §1, 2019)

(Supp. No. 31, Update 2)

Sec. 16-7-530. Floodplain variances.

- (a) Generally. Floodplain variances are required for development within areas of special flood hazards or areas covered by a LOMR-F, except for the limited development that is permissible by Floodplain Development Permit.
- (b) Variances for Historic Buildings and Structures. The City Council may issue variances for the reconstruction, rehabilitation, or restoration of buildings or structures listed on the National Register of Historic Places or the State Inventory of Historic Places upon a determination that the proposed repair or rehabilitation will not preclude the building or structure's continued designation as historic, and the variance is the minimum necessary to preserve the historic character and design of the building or structure.
- (c) Quantum of Proof.
 - (1) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half (½) acre or less in area, contiguous to and surrounded by lots with existing buildings or structures constructed below the base flood level, provided that the record shows compliance with the approval standards set out in (and referenced by) this Section.
 - (2) As the lot area increases beyond one-half (½) acre, the technical justification required for issuing a floodplain variance increases.
- (d) Conditions of Approval. Upon consideration of the relevant factors in Section 16-7-360, *Floodplain Development Permit*, subsection (c) (including standards referenced therein), and the intent of Article V, *Floodplain Management and Flood Damage Prevention*, the City Council may attach such conditions to the granting of floodplain variances as it deems necessary to further the purpose and objectives of Article V, *Floodplain Management and Flood Damage Prevention*, as stated in Section 16-5-30, *Statement of Purpose*.
- (e) Limitations. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (f) Approval Standards (Generally). A floodplain variance may be granted for purposes other than Functionally Dependent Uses (see subsection (g), below, for Functionally Dependent Uses) only upon a finding by the City Council that:
 - (1) The relevant factors in Section 16-7-360, *Floodplain Development Permit*, subsection (e)(2) (including standards referenced therein) have been weighed, and favor ~~the granting of~~ the floodplain variance.
 - (2) The floodplain variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (3) The floodplain variance is only issued upon:
 - a. Showing a good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the applicant, and

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- c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, the creation of nuisances, fraud on or victimization of the public, or conflict with other City laws or ordinances.
 - (4) Any applicant to whom a variance is granted shall be given written notice that the building or structure will be permitted to be built with the lowest floor elevation below the Base Flood Elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
 - (g) Approval Standards (Functionally Dependent Uses). A floodplain variance may be granted for new construction and substantial improvements and for other development necessary for the conduct of a Functionally Dependent Use provided that:
 - (1) The grant of the floodplain variance is limited by the provisions of subsections (b), (c), (d), (e), and (f), above, as applicable; and
 - (2) The building, structure, or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
 - (h) Records. The Floodplain Administrator shall maintain a record of all actions on floodplain variances, and shall report outcomes to the Federal Emergency Management Agency upon request.

(Ord. 7, §1, 2019)

16-9-130. – Definitions

Arbitrary means a determination not based on codified standards, rules, or laws.

Capricious means a willful and unreasonable determination without consideration or regard for the facts and circumstances.

Exceptional hardship means that a physical condition exists on a property such that the applicable standard(s) are so unreasonable that the strict application of the standard(s) results in an arbitrary or capricious interference with basic property rights.