

ORDINANCE NO. 10-07

INTRODUCED BY:

Councilperson Radloff

Councilperson Hoffman

**AN ORDINANCE OF THE CITY OF CASTLE PINES NORTH,
COLORADO AMENDING SECTION 26, CONCERNING THE BOARD
OF ADJUSTMENT AND VARIANCE PROCEDURES, AND SECTION 33,
CONCERNING THE PLANNING COMMISSION, OF THE ZONING
ORDINANCE OF THE CITY OF CASTLE PINES NORTH**

WHEREAS, pursuant to Article 23, Title 31 of the Colorado Revised Statutes, for the purposes of promoting health safety, morals, and the general welfare of the community, the City of Castle Pines North ("City") has authority to regulate the development of land within the City; and

WHEREAS, Section 31-23-307, C.R.S., provides that the governing bodies of municipalities shall appoint a five member board of adjustment ("Board"), each member to be appointed for three years unless established otherwise by ordinance; and

WHEREAS, the City previously adopted, by Ordinance No. 08-02, as amended by Ordinance No. 08-04, zoning and subdivision regulations based on the regulations adopted by Douglas County, Colorado referred to herein as the City of Castle Pines North Zoning Ordinance ("Zoning Ordinance"); and

WHEREAS, Section 26 of the Zoning Ordinance establishes procedures for considering variances and other applications through the Board of Adjustment; however, it is silent on the formation of the Board, membership, vacancies and other similar criteria; and

WHEREAS, by Resolution No. 10-63, the City Council appointed five of its members to serve as the Board on an interim basis in order to timely consider a pending variance application; and

WHEREAS, the City Council desires to repeal Resolution No. 10-63 and in its place to establish an independent Board consisting of five members possessing qualifications as provided herein; and

WHEREAS, the City Council further desires to amend and update the criteria of approval for a variance; and

WHEREAS, the City Council also desires to appoint a citizen board to serve as the Planning and Zoning Commission in order to allow for citizen participation on City land use matters; and

WHEREAS, in order to appoint citizens to the Planning and Zoning Commission, the City Council desires to repeal Resolution No. 08-03, which previously authorized the City Council to serve as the Planning Commission; and

WHEREAS, given the size of the City, the City Council initially anticipates that the citizen members appointed to serve as the Planning and Zoning Commission shall also serve as the Board of Adjustment.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO:

Section 1. The recitals contained above are incorporated herein by reference and are adopted as findings and determinations of the City Council.

Section 2. Section 2602, titled *Variance Limitations*, of the City of Castle Pine North Zoning Ordinance, is hereby repealed and restated to read in full as follows:

2602 Board of Adjustment.

2602.01 Establishment and Powers.

There is hereby established a board of adjustment (in this Section referred to as the "Board") which shall have the following duties and responsibilities:

(1) To vary or modify the application of the regulations or provisions of any zoning district or Planned Development ("PD") establishing document of the City relating to the construction or alteration of buildings or structures where there are practical difficulties or unnecessary hardships, in conformity with this Section. No variances shall be granted to permit uses not otherwise permitted in the applicable district. The Board is authorized to grant variances or modifications such as, but not limited to:

- (a) minimum area of a lot;
- (b) maximum height, minimum setback, and square footage requirements of structures, fences or signs;
- (c) minimum off-street parking requirements; and
- (d) width of lots and square footage of lot area.

(2) To hear and decide appeals from and to review any order, requirement, decision, or determination made by any City official charged with the enforcement of any Zoning Ordinance or PD establishing document adopted by the City, and to reverse, affirm, modify, or amend any such order, requirement, decision, or determination.

2602.02 Composition and Appointments.

The Board shall consist of five members with one alternate member, each to serve for a three year term; except that the terms of three members first appointed shall be three (3)

years and two members shall be two (2) years. Members of the Board shall be residents of the City and shall be appointed at large. Members of the Board shall not be members of the City Council. Members of the Board may serve individually or collectively on the Planning and Zoning Commission. Board members may be paid a meeting stipend subject to and as set by City Council resolution. The Board shall adopt bylaws and rules of procedure, based on those in effect for the City Council, to govern its responsibilities of officers, procedures and rules for meetings and public hearings, requirements for applications for consideration, requirements for re-submittal of applications, if desired, and other internal operations, all in accordance with applicable state statute and this Section.

2602.03 Quorum and Required Vote.

A quorum of the Board shall consist of four members. A concurring vote of four (4) members of the Board shall be necessary to reverse any order, requirement, decision or determination of any City official charged with the enforcement of any Zoning Ordinance or PD establishing document adopted by the City or to grant a variance or otherwise decide in favor of an applicant on any matter considered by the Board under the provisions of Colorado law or this Zoning Ordinance.

2602.04 Removal.

Members of the Board may be removed by majority vote of City Council for non-performance of duty or misconduct upon presentation of written charges after a hearing. Failure to attend regular meetings on a consistent basis may be considered cause for removal.

Section 3. Section 2603, titled *Variance – Approval Criteria*, is hereby repealed and restated to read in full as follows:

2603 Variance – Approval Criteria.

The Board may, following a public hearing, grant a variance and thus vary the application of the Zoning Ordinance and regulations only upon a finding that all of the following criteria are met:

- A. The subject property was properly and timely posted in accordance with this Section; and
- B. By reason of exceptional narrowness, shallowness or shape of a specific piece of property, or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of the property, the strict application of the Zoning Ordinances and regulations would result in peculiar and undue practical difficulties for, or peculiar and unnecessary hardship on, the property owner; and

- C. The variance, if granted, will not adversely affect the adjacent property or neighborhood; and
- D. The variance, if granted, will not substantially or permanently impair the appropriate use or development of adjacent property; and
- E. The variance, if granted, will not be contrary to the purpose of the City's Comprehensive Plan; and
- F. The variance, if granted, is the minimal variance that will afford the relief with the least modification possible of the Zoning Ordinances and regulations; and
- G. Any circumstances justifying a variance were not created by the owner of the property and are not due to or the result of general conditions in the zone district in which the property is located; and
- H. Development or use of the property for which the variance is sought, if limited by a literal enforcement of the provisions of this Zoning Ordinance and regulations, cannot yield a reasonable return in service, use or income as compared to adjacent conforming property in the same district; and
- I. The variance will not alter the essential character of the district in which the property is located for which the variance is sought; and
- J. The variance will not adversely affect the public health, safety or welfare; and
- K. All concerns raised by the Community Development Department or other City departments or referral agencies have been adequately addressed.

Section 4. Section 3301, titled *Intent*, of the City of Castle Pines North Zoning Ordinance, is hereby repealed and restated to read in full as follows:

3301 Planning Commission.

3301.01 Establishment and Powers.

There is hereby established a Planning and Zoning Commission to review all land use applications and make formal recommendations to the City Council, in accordance with this Zoning Ordinance and with the powers and duties established in Title 31, Article 23, Parts 2 and 3, C.R.S. The Planning and Zoning Commission may be referred to herein as the Commission or the Planning Commission.

3301.02 Composition and Appointments.

The Commission shall consist of five members with one alternate member, each to serve for a three (3) year term; except that the terms of three members first appointed shall be

three (3) years and two members shall be two (2) years. Members of the Commission shall be residents of the City and shall be appointed at large. Members of the Commission shall not be members of the City Council. Members of the Commission may serve individually or collectively on the Board of Adjustment. Commission members may be paid a meeting stipend subject to and as set by City Council resolution. The Commission may adopt bylaws and rules of procedure, based on those in effect for the City Council, to govern its responsibilities of officers, procedures and rules for meetings and public hearings, requirements for applications for consideration, requirements for re-submittal of applications, if desired, and other internal operations, all in accordance with applicable state statute and this Section.

3301.03 Quorum and Required Vote.

A quorum of the Commission shall consist of three members. A concurring vote of three (3) members of the Commission shall be necessary to make recommendations on any land use applications and for other planning and zoning matters before the Commission. A concurring vote of four (4) members of the Commission shall be necessary to adopt by resolution the City's Comprehensive Plan, or any amendments thereto, subject to ratification of such Plan by the City Council.

3301.04 Removal.

Members of the Commission may be removed by majority vote of City Council for non-performance of duty or misconduct upon presentation of written charges after a hearing. Failure to attend regular meetings on a consistent basis may be considered cause for removal.

Section 5. Resolution No. 10-63, appointing an interim board of adjustment, is repealed as of the effective date of this Ordinance.


Section 6. Resolution No. 08-03, appointing the City Council to serve as the Zoning Commission, is repealed as of the effective date of this Ordinance.

Section 7. **Effective Date.** This Ordinance shall become effective thirty days after publication following final passage.

INTRODUCED, READ, AND PASSED, ON FIRST READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO the 14th day of September, 2010.

READ, PASSED, AND ADOPTED ON SECOND READING, AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO the 12th day of October, 2010.


CITY OF CASTLE PINES NORTH:


Jeffrey T. Huff, Mayor

ATTEST:


Sharon DeRouen, City Clerk

Approved as to form:


Linda C. Michow, City Attorney

CERTIFICATION OF PUBLICATION

I hereby attest and certify that the within and foregoing Ordinance was introduced and read on first reading at a regular meeting of the Castle Pines North City Council on September 14, 2010; published in full in the *Douglas County News-Press*; and finally passed and adopted by the City Council on October 12, 2010 following a duly noticed public meeting and ordered published by title only, with amendments if any, one time in the *Douglas County News-Press* on October 28, 2010.

ATTEST:


City Clerk or Deputy City Clerk