

**TOWN OF BERTHOUD**

**ORDINANCE NO. 1217**

**AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO,  
REVISING CERTAIN SECTIONS OF CHAPTER 30 OF THE  
BERTHOUD MUNICIPAL CODE**

WHEREAS, the Town Board of Trustees for the Town of Berthoud and Planning staff for the Town have recommended certain changes to the Development Code (Chapter 30 of the Berthoud Municipal Code) of the Town to minimize delay, clarify notice procedures, and eliminate issues of interpretation relating to the concepts of waiver and variance; and

WHEREAS, the Town has held a public hearing on the suggested amendments and standards, and the Planning Commission has recommended approval of the same; and

WHEREAS, the Town Board, desires to amend Chapter 30 of the Berthoud Municipal Code to implement the changes recommended by staff and approved by the Planning Commission;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF THE TOWN OF BERTHOUD, COLORADO THAT TABLE 1.1 AND CERTAIN PORTIONS OF CHAPTER 30 OF THE BERTHOUD MUNICIPAL CODE ARE HEREBY AMENDED AND THE REVISED SECTIONS OF CHAPTER 30 ARE ENACTED AND ADOPTED AS SET FORTH BELOW:

**Table 1.1 Hearing and notification requirements**

	<b>Hearing</b>	<b>Publication</b>	<b>Mailed notice</b>	<b>Post sign</b>
<b>Annexation</b>	Before Commission as regular agenda item. Before Town Board per C.R.S.	4 successive weeks starting at least 30 days prior to Statutory Hearing.	Yes, to property owners within 300 feet no less than 25 days and no more than 30 days prior to Statutory Hearing.	Yes, no less than 30 days prior to Statutory Hearing.

<b>Zoning</b>	Before Commission as regular agenda item and Town Board as hearing.	No less than 15 days prior to Commission meeting.	Yes, to property owners w/in 300 feet sent no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
<b>Rezoning</b>	Before Commission as regular agenda item and Board as hearing.	No less than 15 days prior to hearing.	Yes, to properties within 300 foot area sent no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
<b>Text Amendment to Development Code (Chapters 10-11)</b>	Before Board as hearing.	No less than 15 days prior to hearing.	No.	No.
	<b>Hearing</b>	<b>Publication</b>	<b>Mailed notice</b>	<b>Post sign</b>
<b>Concept Plan</b>	Before both Commission and Board as regular agenda items.	No less than 5 days prior to Commission meeting.	Yes, to properties within 300 feet no less than 5 days prior to meeting.	Yes, no less than 5 days prior to Commission meeting.
<b>Preliminary Plat</b>	Before Planning Commission as regular agenda item and Board as hearing.	No less than 5 days prior to meeting.	Yes, to property owners within 300 feet no less than 5 days prior to meeting.	Yes, no less than 5 days prior to Commission meeting.

<b>Final Plat</b>	Before Planning Commission as Hearing. <u>No</u> Board meeting or hearing.	No less than 5 days prior to Commission meeting.	Yes, to property owners within 300 feet no less than 5 days prior to Commission hearing.	Yes, no less than 5 days prior to Commission hearing.
<b>Conveyance Plat</b>	Before Commission as regular agenda item and Board as hearing.	No less than 5 days prior to Commission meeting.	Yes, to property owners within 300 feet, and referral agencies no less than 5 days prior to Commission meeting.	Yes, no less than 5 days prior to Commission meeting.
<b>PUD or amendment to PUD</b>	Before Commission as regular agenda item and Board as hearing.	No less than 15 days prior to hearing.	Yes, to property owners within 300 feet, and referral agencies no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
<b>Comprehensive Plan Amendment</b>	Before Planning Commission as hearing and Board as regular agenda item.	No less than 15 days prior to Commission hearing.	No	No
<b>Text Amendment to Development Code (Chapters)</b>	Before Planning Commission as regular item	No less than 15 days prior to hearing.	No.	No.

1-9)	and Town Board as hearing.			
	<b>Hearing</b>	<b>Publication</b>	<b>Mailed notice</b>	<b>Post sign</b>
<b>Variances &amp; Appeals</b>	Board of Adjustment (BOA) as hearing	No less than 15 days prior to hearing.	Yes, to property owners within 300 feet no less than 15 days prior to BOA hearing.	Yes, no less than 15 days prior to BOA hearing.
<b>Conditional Use</b>	Before Planning Commission as regular agenda item, Town Board as hearing.	No less than 15 days prior to hearing.	Yes, to property owners within 300 feet, and referral agencies no less than 15 days prior to Commission meeting.	Yes, no less than 15 days prior to Commission meeting.
<b>Minor Subdivision</b>	Before Planning Commission as hearing.	No less than 5 days prior to hearing.	Yes, to property owners within 300 feet no less than 5 days prior to Commission hearing.	Yes, no less than 5 days prior to Commission hearing.

**30-3-108      Board of Adjustment**

**A. Purpose.** Pursuant to §31-23-307(1), C.R.S., the Board of Trustees hereby appoints the Planning Commission of the Town of Berthoud to serve as the Board of Adjustment. The Board of Adjustment shall hear and decide variances, waiver requests, and appeals from and review any order, requirement, decision, or determination made by any administrative official charged with the enforcement of any ordinance with respect to the Development Code of the Town of Berthoud.

**B.** The Board of Adjustment shall have the following powers and duties, all of which shall be subject to and in compliance with the laws of the state, in harmony with the purpose and intent of this code and the most appropriate development of the neighborhood:

1. To hear and decide appeals from, and review any order, requirement, decision or determination made by an administrative official charged with enforcement of the provisions of this code;
2. To authorize variances from the terms of Chapter 30-2, Design Standards, Chapter 30-3, Zoning; and Chapter 30-7 Signs, where the strict enforcement of this title would create a situation which would result in unreasonable application of these standards, considering whether:
  - a. Such relief may be granted without substantial detriment to the neighborhood or the public good and without substantially impairing the intent and purposes of this code, and;
  - b. Provided that there are exceptional circumstances applying to the specific piece of property which do not generally apply to the remaining property in the same zoning area or neighborhood, and;
  - c. That the requested variance shall not authorize any permanent use not permitted in the zoning district, and;

d. If the hardship on which the request for variance is based, in whole or in part, is self-inflicted, that will be a highly significant fact which is a material element bearing on the issue, and will weigh heavily against the owner or applicant seeking the variance, or;

e. In circumstances where the property owners affected most directly, e.g. neighbors, concur in writing with the variance that fact shall be given significant (but not conclusive) weight in favor of the request

3. To authorize, as variances, alterations in nonconforming uses and buildings, provided the board of adjustment determines:

- a. That the total area devoted to the altered nonconforming use will not be greater than the total area devoted to the current nonconforming use, and
- b. The altered nonconforming building or use will not have any greater adverse impact on the neighborhood than the current nonconforming building or use.

4. To perform each and all of the duties specified in section 31-23-307 C.R.S., together with all other duties or authority which may hereafter be conferred on it by the laws of the state.

5. The Board of Trustees reserves the authority to act as the Board of Adjustment with respect to all matters in the Development Code and as allowed per Section 31-23-307 C.R.S, specifically:

- a. All variances not related to Chapter 30-2 Design Standards; Chapter 30-3 Zoning, and Chapter 30-7 Signs.
- b. All appeals not related to Chapter 30-2 Design Standards; Chapter 30-3 Zoning, and Chapter 30-7 Signs.

**B. Procedures generally.** The board of adjustment shall hold a public hearing on all applications and appeals, subject to the following:

1. Notice shall be given in accordance with the provisions of section 30-1-117 of this code.
2. Unless otherwise stated in the board of adjustment's minutes, all variances granted shall be commenced within six months of the time such variance is granted; otherwise the variance shall be null and void.
3. The concurring vote of a majority of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of any administrative official, or to decide in favor of the applicant in order to implement a variance.

**C. Appeal procedures.**

Every appeal to the board of adjustment shall be filed in writing not later than one month from the date of the order, requirement, decision, or determination being appealed. The board shall have no jurisdiction on any appeal not brought within thirty days from the date of the order, requirement, decision, or determination.

**D. Administrative Variances**

The Community Development Director is authorized to approve administrative variances from setback requirements up to ten percent (10%) of the required setback after finding the proposed setback is consistent with the intent and purpose of this code, and the requirements of this Section.

**30-3-109 Waivers**

**A. Purpose.** The Planning Commission may authorize waivers in regards to platting, zoning and design standards for multiple lots from the Development Code of the Town of Berthoud with respect to the requirements of the following chapters only: Chapter 30-2, Design Standards, Chapter 30-3, Zoning, or Chapter 30-7, Signs. Waivers are authorized in the following in cases:

- a. Where, due to exceptional conditions peculiar to the site, practical difficulties or an unnecessary hardship is placed on the landowner.

- b. The waiver shall not be granted if it would be detrimental to the public good, create a conflict with the Town Comprehensive Plan, or impair the intent and purpose of this Code.

**B. Processes eligible for waiver request.**

Applicants may seek a waiver from all or portions of the following processes identified in this Code:

- a. Subdivision procedures in conjunction with Concept, Preliminary or Final Plat, platting requirements, and;
- b. Zoning regulations limited to setback encroachments or height limitations in conjunction with Concept Plan, Preliminary Plat, or Final Plat approval
- c. Design Standards limited to Site Plan, Preliminary Plat, or Final Plat application and approval.
- d. Waivers are only granted in conjunction with an application and hearing for Rezoning, PUD, Concept Plan, Preliminary Plat, Final Plat, or Site Plan approval.

**C. Waiver application.**

1. Waiver request in conjunction with other applications. The applicant shall submit the following to the Town in conjunction with another application (re-zoning or PUD amendment, Concept Plan, Final Plat, Site Plan, or Preliminary Plat only). All other cases shall follow the variance procedures.

- a. Explanation letter – identifying the waiver being requested and explaining what exceptional condition, practical difficulty, or unnecessary hardship exists to require the waiver. The letter shall also address how the waiver, if granted, will not be detrimental to the public good, create a conflict with the Town Comprehensive Plan or impair the intent and purpose of this Code.

**D. Waiver criteria for approval.** The condition of any waiver authorized shall be stated in writing in the minutes of the Board with the justifications set forth. Waivers may be granted only if they meet the following criteria:

1. The waiver, if granted, will not alter the essential character of the neighborhood or district in which the property is located, nor diminish the value, use or enjoyment of adjacent property.

2. The waiver, if granted, is the minimum waiver of applicable Code provision that will afford relief and is the least modification possible of the Code provisions which are in question.

3. That such practical difficulties or unnecessary hardship has not been created by the applicant.

### **30-6-112 Development agreements**

**A. Agreements and Improvements.** A Development Agreement stating that the applicant agrees to construct any required public improvements shown in the final plat documents together with security in a form approved by the Town is required. No subdivision plat (except for Conveyance) shall be signed by the Town or recorded at the office of the Larimer or Weld County Clerk, and no building permit shall be issued for development until a Development Agreement between the Town and the applicant has been executed. Such agreement shall include a list of all agreed-upon public improvements and landscaping, an estimate of the cost of such improvements, the form of guarantee for the improvements, and any other provisions or conditions deemed necessary by the Board to ensure that all improvements will be completed in a timely, quality and cost-effective manner.

**B. Other agreements or contracts setting forth the plan, method and parties responsible for the construction of any required public improvements shown in the final plat documents may also be required.**

**C. As required by this Code and all applicable laws, rules and regulations, the applicant shall apply to the Town for inspection of improvements.**

**D. The following improvements shall typically be constructed as determined by the Town:**

**1. Road grading and surfacing.**

2. Curbs.
3. Street lights.
4. Sidewalks.
5. Sanitary sewer collection system.
6. Storm sewers or storm drainage system, as required.
7. Potable water distribution.
8. Non-potable water distribution.
9. Fire hydrants.
10. Utility distribution system for public parks and open space.
11. Street signs at all street intersections.
12. Permanent reference monuments and monument boxes.
13. Underground telephone, electricity and gas lines.
14. Berm or fence along major arterial and collector streets.
15. Required landscaping including on open space.
16. Required landscaping including park improvements.
17. Tree lawns.
18. Under drains.
19. Trails, trail heads and associated improvements.
20. Required floodway improvements.
21. Required irrigation ditch improvements.
22. Required off-site improvements.

**E. Time for completion.** Commencement of construction of all or a portion of the approved final plat shall occur within three years from the date of recordation of said final plat. The required time for the completion of all required improvements for all or a portion of said final plat shall be three years from Town's issuance of a grading or other permit to commence construction. However, the Board may, for good cause shown,

extend such time for commencement or completion of the required improvements upon request from the applicant. Upon completion of such improvements within the required time and approval thereof by the Town, the Town shall cause the cash or letter of credit to be released within thirty days of the Town's acceptance of such improvements and receipt of the required as-built drawings. When such improvements are not completed within the required time, the Town may cause the proceeds of the cash, letter of credit or other financial guarantee to be used to close or complete the required improvements in accordance with the terms and provisions of the Development Agreement.

**F. Type and amount of security.** The Town will accept security or collateral in the following types and amounts:

1. Payment and performance bonds in the amount of 100% of the cost of improvements plus 15% contingency, or
2. Cash, certified funds, irrevocable letter of credit, or other form of security as approved by the Town in the amount of 25% of the cost of improvements plus contingency.

**G. No partial release of security.** No portion of the security for improvements will be released until the expiration of the warranty period. The required warranty period shall commence upon completion and initial approval of all required improvements and landscaping in accordance with the terms and provisions of the Development Agreement.

**H. Warranty.** All workmanship and materials for required improvements shall be warranted for a minimum period of two years as specified in the Development Agreement and this Code.

**I. Exception for trees within public right-of-way.** Builders or owners of residential properties shall plant street trees per this Code prior to the issuance of any certificate of occupancy. If weather prevents timely planting of street trees, funds in an

amount and form acceptable to the Town for planting of such trees at a later time must be placed in escrow with the Town prior to issuance of a certificate of occupancy. Warranty for all street trees shall be one year from date of planting.

**J. Platting Required.** No final plat shall be recorded until the Developer and, if applicable, the Metropolitan District have executed a satisfactory Development Agreement with the Town providing for the installation of all public infrastructure required for the development as set forth in the Plat. In addition, no Development Agreement shall be recorded until all on and off-site easements and rights of way necessary for all public improvements have been acquired, and a Landscape Plan has been approved by the Town.

## **PART III –GENERAL PROVISIONS**

### **1. INTERPRETATION**

**THIS ORDINANCE SHALL BE SO INTERPRETED AND CONSTRUED AS TO EFFECTUATE ITS GENERAL PURPOSE.**

### **2. VALIDITY**

**IF ANY PART OR PARTS OF THIS ORDINANCE IS/ARE, FOR ANY REASON, HELD TO BE INVALID, SUCH DECISION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THIS ORDINANCE. THE TOWN BOARD HEREBY DECLARES THAT IT WOULD HAVE CODIFIED THESE PROVISIONS AND EACH PART OR PARTS THEREOF, IRRESPECTIVE OF THE FACT THAT ANY ONE PART OR PARTS BE DECLARED INVALID.**

### **3. REPEAL OF OLD ORDINANCES**

**EXISTING ORDINANCES OR PARTS OF ORDINANCES AND TOWN OF BERTHOUD DEVELOPMENT CODE SECTIONS COVERING THE SAME MATTERS AS EMBRACED IN THIS CODIFICATION ARE HEREBY REPEALED AND ALL ORDINANCES OR PARTS OF ORDINANCES AND TOWN OF BERTHOUD DEVELOPMENT CODE SECTIONS INCONSISTENT WITH THE PROVISIONS OF THIS ORDINANCE ARE HEREBY REPEALED.**

### **4. EFFECTIVE IMMEDIATELY**

**THE TOWN BOARD HEREBY FINDS, DETERMINES AND DECLARES THAT THIS ORDINANCE IS NECESSARY AND PROPER FOR THE HEALTH, SAFETY AND**

**WELFARE OF THE TOWN OF BERTHOUD AND THE INHABITANTS THEREOF,  
AND SHALL THEREFORE TAKE EFFECT IMMEDIATELY UPON PASSAGE.**

PASSED, ADOPTED, SIGNED AND APPROVED on this the 29<sup>TH</sup> day of March, 2016.

TOWN OF BERTHOUD

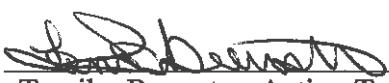
By:



David Gregg, Mayor

ATTEST:

By:



Tamiko Brewster, Acting Town Clerk