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TITLE 9

Land Use Code

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TITLE 9
Land Use Code

Chapter 2
Review Processes¹

9-2-1. Types of Reviews.

- (a) Purpose: This section identifies the numerous types of administrative and development review processes and procedures. The review process for each of the major review types is summarized in table 2-1 of this section.
- (b) Summary Chart:

TABLE 2-1: REVIEW PROCESSES SUMMARY CHART

I. ADMINISTRATIVE REVIEWS	II. ADMINISTRATIVE REVIEWS – CONDITIONAL USES	III. DEVELOPMENT REVIEW AND BOARD ACTION
Building permits	Accessory Units (Dwelling, Owners, Limited)	Annexation/initial zoning
Change of address	Antennas for Wireless Telecommunications Services	BOZA variances
Change of street name	Bed and Breakfasts	Concept plans
Demolition, moving and removal of buildings with no historic or architectural significance, per section 9-11-23, "Review of Permits for Demolition, On-Site Relocation and Off-Site Relocation of Buildings Not Designated," B.R.C. 1981	Cooperative Housing Units	Demolition, moving and removal of buildings with potential historic or architectural significance, per section 9-11-23, "Review of Permits for Demolition, On-Site Relocation and Off-Site Relocation of Buildings Not Designated," B.R.C. 1981
Easement vacation	Daycare Centers	Landmark alteration certificates other than those that may be approved by staff per section 9-11-14, "Staff Review of Application for Landmark Alteration Certificate," B.R.C. 1981
Extension of development approval/staff level	Detached Dwelling Units with Two Kitchens	Lot line adjustments
Landmark alteration certificates (staff review per section 9-11-14, "Staff Review of Application for Landmark Alteration Certificate," B.R.C. 1981)	Drive-Thru Uses	Lot line elimination
Landscape standards variance	Group Home Facilities	Minor Subdivisions
Minor modification	Home Occupations	Out of City utility permit
Nonconforming use (extension, change of use (inc. parking))	Manufacturing Uses with Off-Site Impacts	Rezoning
Parking deferral per subsection 9-9-6(e), B.R.C. 1981	Neighborhood Service Centers	Site review
Parking reduction of up to fifty percent per subsection 9-9-6(f), B.R.C. 1981	Offices, Computer Design and Development, Data Processing, Telecommunications, Medical or Dental Clinics and Offices or Addiction Recovery Facilities in the Service Commercial Zoning Districts	Subdivisions
Parking stall variances	Recycling Facilities	Use review
Public utility	Religious Assemblies	Vacations of street, alley or access easement
Rescission of development approval	Residential Care, Custodial Care and Congregate Care Facilities	
Revocable permit	Residential Development in Industrial Zoning Districts	
Right of way lease	Restaurants and Taverns	
Setback variance	Sales or Rental of Vehicles on Lots Located Five Hundred Feet or Less from a Residential Zoning District	
Site access variance	Service Stations	
Solar exception	Shelters (Day, Emergency, Overnight, temporary)	
Zoning verification	Temporary Sales	
	Transitional Housing	

¹ Adopted by Ordinance No. 7476.

Ordinance Nos. 7522 (2007); 7568 (2007)

9-2-2. Administrative Review Procedures.

- (a) Purpose: Administrative review of projects will occur at various times in project development to ensure compliance with the development standards of the city.
- (b) Scope of Administrative Review: Every application found in this title that permits an administrative review or action shall be subject to the following procedures. The list of administrative reviews is found in columns I and II of table 2-1 of this section. Any reference that authorizes an action by the city manager that is not specifically identified in column I or II of the chart shall be assumed to be an informal application procedure.
- (c) Application Requirements:
 - (1) Those reviews not identified in column I or II of the chart shall submit an application in the form of a letter addressed to the city manager.
 - (2) The administrative review requests found in columns I and II shall be submitted on an application form provided by the city manager. No application will be accepted until it is determined to be complete. This determination will be made within five days of the submission of the application.
 - (3) The letter or application shall include the information required and address all criteria identified in the code section under which review and action is sought or required.
 - (4) If, in the city manager's judgment, the application does not contain sufficient information to permit an appropriate review, the manager may request additional information from the applicant. This additional information may include, without limitation, a written statement describing the operating characteristics of proposed and existing uses and a site plan showing dimensions, distances, topography, adjacent uses, location of existing and proposed improvements, including but not limited to landscaping, parking and buildings.
- (d) Administrative Review Decision:
 - (1) Approval: If the city manager approves an administrative review application, a building permit or approval may then be issued, provided that all other requirements of this code and all other ordinances of the city are satisfied.
 - (2) Denial: An administrative review application will be denied for failure to comply with this code or another ordinance of the city. If a development application is denied, the reasons for the denial will be stated in writing.
 - (3) Judicial Review: Any person aggrieved by the final decision of the city manager may seek judicial review pursuant to subsection 9-4-4(g), B.R.C. 1981.

9-2-3. Variances and Interpretations.

- (a) Purpose: This section identifies those standards that can be varied by either the city manager or the Board of Zoning Adjustment (BOZA). Some standards can be varied by the city manager through an Administrative Review process, others by BOZA by another level of Administrative Review. The city manager may defer any administrative decision to BOZA.
- (b) Interpretations: The city manager may decide questions of interpretation and application of the regulations of this title as a ministerial function. Interpretations made by the city manager of chapters 9-6, "Use Standards," 9-7, "Form and Bulk Standards," and 9-8, "Intensity Standards," B.R.C. 1981, may be appealed to the BOZA by filing an application in compliance with this section.
 - (1) Planning Board Call-Up: A member of the planning board may call-up any interpretation of the BOZA through the procedures of section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981. The planning board may consider the record, or any portion thereof, of the hearing before the BOZA in its consideration of the matter.

- (2) City Council Call-Up: The city council may call-up for review any interpretation of the BOZA upon which the planning board has acted pursuant to the procedures of section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981. The council may consider the record, or any portion thereof, of the hearing before the planning board in its consideration of the matter.
- (c) Administrative Variances: The city manager may grant a variance from:
- (1) The minimum yard setback requirement and the building separation requirements of section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, of up to twenty percent of the required yard setback, if the manager finds that the application satisfies all of the requirements in subsection (h) of this section and if the applicant obtains the written approvals of impacted property owners.
 - (2) The minimum requirements of section 9-7-9, "Side Yard Bulk Plane," and section 9-7-10, "Side Yard Wall Articulation," for lots 4,600 square feet or less or for lots forty-eight feet in width or less based on the average lot width measured at the front yard setback, midpoint of the lot and the rear yard setback, if the city manager finds that the application satisfies all of the requirements of paragraph (h)(5) of this section.
 - (3) The minimum requirements of section 9-7-11, "Maximum Building Coverage," and section 9-8-2, "Floor Area Ratio Requirements," to existing single-family dwelling units, by up to two hundred square feet. The purpose of this administrative variance is to permit minor modifications to single-family dwelling units that will allow residents or a family member of a head of household with existing or anticipated impairments that restricts their ability to perform a major life activity to be in the home. This variance may be granted if the city manager finds that:
 - (A) The request meets the requirements of subparagraphs (h)(5)(A) and (B) of this section; and
 - (B) The improvements are necessary to remedy any impairment, or anticipated impairment, that would prohibit or significantly restrict a resident's or a family member of a head of household's ability to perform a major life activity as compared to the ability of the average person in the general population to perform the same activity.
 - (4) The height of the plane above a side lot line in bulk plane requirements of section 9-7-9, "Side Yard Bulk Plane," B.R.C. 1981, and the side yard wall articulation standards of section 9-7-10, "Side Yard Wall Articulation Standards," B.R.C. 1981, may varied by up to twenty percent and the building coverage requirements of section 9-7-11, "Maximum Building Coverage," or the floor area ratio requirements of section 9-8-2, "Floor Area Ratio Requirements," by up to two hundred square feet for existing single-family dwelling units if the manager finds that the application satisfies all of the requirements in subsection (h) of this section.
 - (5) Maximum variance that may be granted to a lot under paragraph (3) or (4) above shall be a total of two hundred square feet of floor area or building coverage.
 - (6) If written approvals of impacted property owners cannot be obtained, the applicant may apply for consideration of the variance before the BOZA.
 - (7) Applicants shall apply for the variance on a form provided by the city manager and shall pay the application fee required by title 4, "Licenses and Permits," B.R.C. 1981, at time of submittal of the application.
 - (8) The city manager may also grant variances or refer variance requests to the BOZA to allow development not in conformance with the provisions of this title which otherwise would result in a violation of federal legislation, including but not limited to the Federal Fair Housing Act or the Americans with Disabilities Act.
- (d) Board of Zoning Adjustment (BOZA): The BOZA may grant variances from the requirements of:
- (1) Setback, separation and bulk plane requirements listed in section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, and standards referred to in that section;
 - (2) The building coverage requirements of section 9-7-11, "Maximum Building Coverage," and chapter 9-10, "Nonconformance Standards," B.R.C. 1981;

- (3) The spacing requirements for mobile homes of section 9-7-13, "Mobile Home Park Form and Bulk Standards," B.R.C. 1981;
- (4) The porch setback and size requirements of section 9-7-4, "Setback Encroachments for Front Porches," B.R.C. 1981;
- (5) The side yard wall articulation standards of section 9-7-10, "Side Yard Wall Articulation Standards," B.R.C. 1981;
- (6) The size and parking setback requirements for accessory units of subsection 9-6-3(a), B.R.C. 1981;
- (7) The total cumulative building coverage requirements for accessory buildings of section 9-7-8, "Accessory Buildings in Residential Zones," B.R.C. 1981;
- (8) The use of a mobile home for nonresidential purposes subject to the requirements of subsection 10-12-6(b), B.R.C. 1981;
- (9) The parking requirements of subsection 9-9-6(d), B.R.C. 1981, with regards to parking in landscaped front yard setbacks; and
- (10) Sign code variances and appeals as permitted by subsection 9-9-21(s), B.R.C. 1981.

In granting any variance, the board may attach such reasonable conditions and safeguards as it deems necessary to implement the purposes of this title.

- (e) Application Requirements: A person having an interest in the property for which the variance is requested or a person having an interest in an interpretation by the city manager of section 9-6-1, "Schedule of Permitted Land Uses," or 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, may file an application on a form provided by the city manager that shall include, without limitation, the following, but the manager may waive particular application requirements if not required for review of the interpretation at issue:
 - (1) The written consent of the owners of the property for which the variance is requested or, in case of a request for review of an interpretation, a statement of the person's interest in the interpretation at issue;
 - (2) A list of property owners within three hundred feet;
 - (3) An improvement survey;
 - (4) A site plan including building height and setback;
 - (5) A building floor plan and building elevation plan;
 - (6) A demolition plan, if the applicant proposes to remove any part of the roof or remove any walls;
 - (7) In case of a variance, a written statement addressing the applicable criteria for approval of subsection (h), (i) or (j) of this section; and
 - (8) Any other information pertinent to the request. In addition, in case of a variance, the submitted application shall include the fee prescribed by section 4-20-43, "Development Application Fees," B.R.C. 1981.
- (f) Public Notice: After receiving an application for a variance or an interpretation review, the city manager shall provide notice as specified in section 9-4-3, "Public Notice Requirements," B.R.C. 1981.
- (g) Public Hearing: Except as provided in subsection (c) of this section, the BOZA shall hear a request for a variance or interpretation review at a public hearing, for which notice pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981, shall be provided.

(h) Criteria for Variances: The BOZA may grant a variance only if it finds that the application satisfies all of the applicable requirements of paragraph (h)(1), (h)(2), (h)(3) or (h)(4) of this section and the requirements of paragraph (h)(5) of this section.

(1) Physical Conditions or Disability:

(A) There are:

(i) Unusual physical circumstances or conditions, including, without limitation, irregularity, narrowness or shallowness of the lot or exceptional topographical or other physical conditions peculiar to the affected property; or

(ii) There is a physical disability affecting the owners of the property or any member of the family of an owner who resides on the property which impairs the ability of the disabled person to utilize or access the property; and

(B) The unusual circumstances or conditions do not exist throughout the neighborhood or zoning district in which the property is located; and

(C) Because of such physical circumstances or conditions the property cannot reasonably be developed in conformity with the provisions of this chapter; and

(D) Any unnecessary hardship has not been created by the applicant.

(2) Energy Conservation:

(A) The variance will permit construction of an addition to a building that was constructed on or before January 1, 1983;

(B) The proposed addition will be an integral part of the structure of the building;

(C) The proposed addition will qualify as a "solar energy system" as defined in chapter 9-16, "Definitions," B.R.C. 1981, or will enable the owner of the building to reduce the net use of energy for heating or cooling purposes by a minimum of ten percent over the course of a year of average weather conditions for the entire building; and

(D) The costs of constructing any comparable addition within existing setback lines so as to achieve comparable energy purposes would be substantially greater than the cost of constructing the addition which is proposed for the variance.

(3) Solar Access:

(A) The volume of that part of the lot in which buildings may be built consistent with this code has been reduced substantially as a result of the provisions of section 9-9-17, "Solar Access," B.R.C. 1981;

(B) The proposed building or object would not interfere with the basic solar access protection provided in section 9-9-17, "Solar Access," B.R.C. 1981; and

(C) The volume of the proposed building to be built outside of the building setback lines for the lot will not exceed the amount by which the buildable volume has been reduced as a result of the provisions of section 9-9-17, "Solar Access," B.R.C. 1981.

(4) Designated Historic Property: The property could be reasonably developed in conformity with the provisions of this chapter, but the building has been designated as an individual landmark or recognized as a contributing building to a designated historic district. As part of the review of an alteration certificate pursuant to chapter 9-11, "Historic Preservation," B.R.C. 1981, the approving authority has found that development in conforming locations on the lot or parcel would have an adverse impact upon the historic character of the individual landmark or the contributing building and the historic district, if a historic district is involved.

- (5) Requirements for All Variance Approvals:
- (A) Would not alter the essential character of the neighborhood or district in which the lot is located;
 - (B) Would not substantially or permanently impair the reasonable use and enjoyment or development of adjacent property;
 - (C) Would be the minimum variance that would afford relief and would be the least modification of the applicable provisions of this title; and
 - (D) Would not conflict with the provisions of section 9-9-17, "Solar Access," B.R.C. 1981.
- (i) Floor Area Variances for Accessory Dwelling Units: The BOZA may grant a variance to the maximum floor area allowed for an accessory dwelling unit under subsection 9-6-3(a), B.R.C. 1981, only if it finds that the application satisfies all of the following applicable requirements:
- (1) That the interior configuration of the house is arranged in such a manner that the space to be used as the accessory dwelling unit cannot feasibly be divided in conformance with the size requirements;
 - (2) That the variance, if granted, meets the essential intent of this title, and would be the minimum variance that would afford relief; and
 - (3) That the strict application of the provisions at issue would impose an undue and unnecessary hardship on the individual and that such hardship has not been created by the applicant.
- (j) Variances for Parking Spaces in Front Yard Setbacks: The BOZA may grant a variance to the requirements of section 9-9-6, "Parking Standards," B.R.C. 1981, to allow a required parking space to be located within the front yard setback if it finds that the application satisfies all of the following requirements:
- (1) The dwelling unit was built in an RR-1, RR-2, RE or RL-1 zoning district;
 - (2) The dwelling unit originally had an attached carport or garage that met the off-street parking requirements at the time of initial development or, at the time of initial construction, an off-street parking space was not required and has not been provided;
 - (3) The garage or carport was converted to living space prior to January 1, 2005;
 - (4) The current property owner was not responsible for the conversion of the parking space to living area and can provide evidence as such;
 - (5) A parking space in compliance with the parking regulations of section 9-9-6, "Parking Standards," B.R.C. 1981, cannot reasonably be provided anywhere on the site due to the location of existing buildings, lack of alley access or other unusual physical conditions;
 - (6) Restoring the original garage or carport to a parking space would result in a significant economic hardship when comparing the cost of restoration to the cost of any other proposed improvements on the site; and
 - (7) The proposed parking space to be located within the front yard setback space shall be paved with asphalt, concrete or other similar permanent hard surface and shall comply with section 9-9-5, "Site Access Control," B.R.C. 1981, shall not be less than nine feet in width or more than sixteen feet in width, and shall not be less than nineteen feet in length. No parking space shall encroach into a public right of way or obstruct a public sidewalk.
- (k) Conformity With Approved Site Plan: No person granted a variance shall fail to build in conformity with the approved site plan.
- (l) Expiration of Variance Approval: A variance granted by the BOZA or city manager automatically expires within one hundred eighty days of the date on which it is granted or within such other time as the BOZA or the city manager prescribes, unless a building permit for such variance is applied for within such period. The city manager may

grant a one time extension for any approved variance not to exceed ninety days. Extension in excess of ninety days shall be approved by the decision authority for good cause shown. Extensions shall not exceed six months and only if an application for such extension is made prior to the expiration of the period.

Ordinance Nos. 5623 (1994); 6046 (1999); 6083 (1999); 7182 (2002); 7287 (2003); 7401 (2004); 7522 (2007); 7535 (2007); 7624 (2008); 7684 (2009); 7699 (2009)

9-2-4. Good Neighbor Meetings and Management Plans.

- (a) Purpose and Applicability: Good neighbor meetings and management plans are required for some uses, such as shelters and some restaurants and taverns, in order to ensure that applicants, owners and operators of specific uses are informed of the effects of their use upon neighboring properties, and are educated about ways to mitigate, reduce or eliminate potential impacts upon neighboring properties. The specific use standards of chapter 9-6, "Use Standards," B.R.C. 1981, identify those uses that must complete these procedures.
- (b) Good Neighbor Meeting: When required, owners and operators shall conduct a good neighbor meeting that meets the following standards:
 - (1) Meeting With Surrounding Property Owners Required: Prior to submitting an application, the owner or operator shall be required to organize, host and participate in a meeting with the surrounding property owners. The time and place of the meeting shall be approved by the city manager. Nothing in this section shall relieve the owner or operator of the responsibility to otherwise comply with all other laws applicable to the property or business.
 - (2) Purpose of Meeting: The purpose of the meeting described in subsection (a) of this section is to provide interested persons in the surrounding neighborhood an opportunity to inform the facility owner or operator of the concerns of the neighborhood. The facility owner or operator shall also provide interested persons in the surrounding neighborhood an opportunity to comment on its proposed management plan. The issues to be addressed at this meeting may include, without limitation, hours of operation; client and visitor arrival and departure times; coordinated times for deliveries and trash collection; mitigation of noise impacts; security; the facility's drug and alcohol policy; loitering; employee education; the facility's responsibilities as good neighbors; neighborhood outreach and methods for future communication; and dispute resolution with the surrounding neighborhood.
 - (3) Notice for the Meeting: Notice of the meeting shall be provided as set forth in section 9-4-3, "Public Notice Requirements," B.R.C. 1981.
 - (4) Waiver of Requirement: The city manager may waive the requirement that the applicant organize, host and participate in a good neighbor meeting upon finding that the applicant will not require a use review, and that the needs of the facility's clients for anonymity and a safe and secure environment will be compromised by such a meeting.
- (c) Management Plan: When required, owners and operators shall develop a management plan that addresses how the applicant will mitigate the potential adverse impacts that a facility may have on the surrounding neighborhood. The approving authority will not approve a management plan unless it adequately addresses such impacts. The following standards apply to the preparation, submission and approval of a management plan:
 - (1) Elements of a Management Plan: The management plan shall contain the following components that address the mitigation of potential adverse impacts the facility may have on the surrounding neighborhood, to the extent necessary: hours of operation; client and visitor arrival and departure times; coordinated times for deliveries and trash collection; mitigation of noise impacts; security; the facility's drug and alcohol policy; loitering; employee education; the facility's responsibilities as good neighbors; neighborhood outreach and methods for future communication; and dispute resolution with the surrounding neighborhood.
 - (2) Preparation and Distribution of a Proposed Management Plan: The owner or operator shall prepare a proposed management plan and present it to the surrounding property owners at the good neighbor meeting required by subsection (a) of this section.

- (3) **Submission of a Management Plan:** After the good neighbor meeting, the applicant shall submit a revised management plan with its application.
- (4) **Approved Management Plan:** An approved management plan shall be used to define the operating characteristics of a facility. No person shall operate a facility in violation of an approved management plan.
- (5) **Amendment of a Management Plan:** When the owner or operator changes the operating characteristics in a manner that does not comply with the approved management plan, the owner or operator shall resubmit a management plan. No owner or operator shall fail to resubmit a management plan that meets the requirements of this section. The city manager is authorized to require an owner or operator to organize, host and participate in a good neighbor meeting if the city manager determines that such a meeting will be of assistance in identifying additional adverse impacts that may have been created by the facility. The amended management plan shall address how the facility will address any additional adverse impacts that have been identified by the city manager. The city manager will approve the amended management plan upon finding that any such additional adverse impacts will be mitigated by amendments to the management plan.
- (6) **Management Plan as a Condition of a Use Review Approval:** A management plan shall be incorporated into the conditions of approval if the applicant is required to complete a use review pursuant to section 9-2-15, "Use Review," B.R.C. 1981.

Ordinance No. 7522 (2007)

9-2-5. Development Review Process.

- (a) **Purpose:** The development review process is established in order to provide a uniform and consistent method for evaluating and reviewing all proposals for discretionary review.
- (b) **Compliance Required:** No person shall commence or complete construction of any structure or part thereof which requires a development review under this title without first complying with all applicable requirements of this title, receiving approval under this title, and complying with any condition of approval given under this title. No person shall use, occupy or maintain any structures or part thereof for which a discretionary review approval under this title is required if no such approval was given, or in violation of any condition of approval.

9-2-6. Development Review Application.

- (a) **Application Requirements for Use Review and Site Review:** A person having a demonstrable property interest in land to be included in a development review may file an application for approval on a form provided by the city manager that shall include the following:
 - (1) The written consent of the owners of all property to be included in the development;
 - (2) An improvement survey of the land;
 - (3) Development plans including site, landscaping, building plans and building elevations as applicable;
 - (4) A written statement addressing the criteria for approval;
 - (5) All information required in sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, for the type of review requested;
 - (6) Any other information that the applicant wishes to submit; and
 - (7) The fee prescribed by section 4-20-43, "Development Application Fees," B.R.C. 1981, for the type of review requested.
- (b) **Combined Reviews:** If a development proposal, by its nature, requires more than one type of approval under sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, the following will apply in addition to other requirements of this chapter:

- (1) All applicable fees will be collected as prescribed in section 4-20-43, "Development Application Fees," B.R.C. 1981.
 - (2) The notice requirements of subsection (c) of this section shall be met for each individual type of approval required, although such notices may be combined in one document, one posting and one publication.
 - (3) The approving agency will apply the criteria for each type of approval required under sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981.
- (c) Public Notice of Application: The city manager shall provide the public notice for a development review application as specified in section 9-4-3, "Public Notice Requirements," B.R.C. 1981.
- (d) Notice - Mineral Estate: The applicant shall notify all owners of a mineral estate as specified in subsection 9-4-3(e), B.R.C. 1981.
- (e) Inactive Applications:
- (1) If, at any point in a development review process, the city manager has notified the applicant that additional or corrected materials are required, and the applicant has not submitted those materials within sixty days after the date of such notification, the application will be considered withdrawn. The city manager may extend the sixty-day period if requested by the applicant prior to its expiration and upon the applicant's demonstrating good cause for the additional delay.
 - (2) Any re-submittal of the application after the sixty day deadline will be treated as a new application for purposes of review, scheduling, public notice and payment of application fees.

Ordinance Nos. 6093 (1999); 7117 (2001); 7210 (2002)

9-2-7. Development Review Action.

No development review application will be accepted unless and until it is determined to be complete. Such determination will be made within five days after the submission of the application. The city manager will review the application and provide the applicant with a list of any deficiencies.

- (a) City Manager Review and Recommendation:
- (1) The city manager shall, after acceptance of the application, review the application for compliance with the review criteria. The city manager shall provide the applicant with a written evaluation of the application and whether it meets or does not meet applicable criteria, and what modifications the applicant may wish to consider in order to meet applicable criteria and obtain the city manager's support.
 - (2) The applicant shall be afforded a maximum of sixty days to make any corrections or changes recommended by the city manager. If corrections or changes are not submitted in the prescribed time period, the application shall be considered withdrawn.
 - (3) The city manager shall approve the application in whole or in part, with or without modifications and conditions, deny the application or may refer the application to the planning board for review or decision, as provided in sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, for the type of review requested.
 - (4) The manager will mail a written disposition of approval or denial with the reasons for denial to the applicant, appeal body and to any person that requested notification of the final decision. A decision not referred to, appealed to or called-up by the planning board is final fourteen days after the date of approval indicated on the disposition.
- (b) Planning Board Review and Recommendation: Development review applications requiring a decision by the planning board shall be reviewed as follows:

- (1) Referral: The city manager shall refer to the planning board any application for a development review which requires a board decision as required by sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, and any other application which the manager deems appropriate.
- (2) Decision: Within thirty days of the public hearing provided for in section 9-2-8, "Public Hearing Requirement," B.R.C. 1981, or within such other time as the agency and the applicant mutually agree, the board will either grant the application in whole or in part, with or without modifications and conditions, or deny it. The board will review the application in accordance with the standards and guidelines established in sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, for the type of review requested. The decision will specifically set forth in what respects the application meets or fails to meet the standards and criteria set forth in sections 9-2-14, "Site Review," and 9-2-15, "Use Review," B.R.C. 1981, for the type of review requested. A planning board decision not called up by the city council is final thirty days after the date of the decision.
- (3) Appeal and Call-Ups:
 - (A) The applicant or any interested person may appeal the city manager's decision pursuant to section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
 - (B) A member of the planning board may call-up an application for review pursuant to section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
- (c) City Council Call-Up: The city council may call-up any planning board decision pursuant to section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
- (d) Building Permit Pending Appeal: A building permit may be applied for after the initial approval of a development review application, but no building permit will be issued until after any and all applicable call-up or appeal periods have expired. An applicant for such a permit bears all risks of subsequent disapproval and waives any claims arising from the permit application.
- (e) Judicial Review: Any person aggrieved by the final decision of the city manager may seek judicial review pursuant to subsection 9-4-4(g), B.R.C. 1981.

9-2-8. Public Hearing Requirements.

Within sixty days after a referral, appeal or call-up pursuant to section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981, the approving agency, after publishing notice pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981, will hold a public hearing on the application.

9-2-9. Specific Use Standards – General.

- (a) Development Agreement: After the approving agency has finally approved an application for use review or site review, the owner and the city manager will execute a development agreement that incorporates all conditions of the approval, including, without limitation, time limits for completion of the development, and, if applicable, requirements for appropriate easements or deed restrictions if unique conditions of approval apply. The development agreement shall be binding on all parties thereto, shall run with the land and will be recorded upon execution by the city clerk in the office of the County Clerk and Recorder of Boulder County. Any violation of a development agreement is a violation of this title.
- (b) Final Approved Plans: The applicant shall file a paper or electronic copy containing the approved site plan, any applicable restrictions or modifications to the underlying zoning district, and any conditions approved by the approving agency. The paper or electronic copy shall be filed with the city manager, who will endorse and date the approved site plan. The location of the approved development will be included on an official map showing development in the city. The paper or electronic copy will remain on file in the planning department.
- (c) Expiration: Unless expressly waived by the city manager for good cause, pursuant to a request made prior to expiration of the approval, if the applicant fails to file the final approved plans according to the specifications in subsection (b) above or sign the development agreement within ninety days of final approval, the approval expires.

Ordinance No. 7699 (2009)

9-2-10. Amendment Procedures.

An approved use review may be amended pursuant to subsection 9-2-15(h), B.R.C. 1981. An approved site review may be amended pursuant to subsection 9-2-14(l) or (m), B.R.C. 1981. The city manager may approve, without notice, minor modifications to a use review or a site review under the procedures prescribed by subsection 9-2-14(k), B.R.C. 1981.

9-2-11. Compliance With Development Agreement.

- (a) Issuance of the Certificate of Occupancy or Certificate of Completion: Prior to issuance of a certificate of occupancy pursuant to a building permit or a certificate of completion for a use undertaken pursuant to a development agreement, the city manager will determine whether the provisions of the development agreement have been met. If the manager so finds, the manager will sign the certificate of occupancy or the certificate of completion. If not, the manager will provide to the developer or its successors an opportunity for a hearing before the planning board under chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, which will determine whether the development complies with the agreement and may:
 - (1) Revoke the site review or use review approval;
 - (2) Impose additional conditions or modifications to carry out the purposes of the original approval; or
 - (3) Seek enforcement remedies as provided in chapter 9-15, "Enforcement," B.R.C. 1981.
- (b) Request for Planning Board Hearing for Failure to Comply With the Development Agreement: At any time after the execution of a development agreement, any person aggrieved by an alleged failure of the developer or its successors to comply with the development agreement may request a hearing, conducted pursuant to the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, before the planning board. The planning board will determine whether the conditions of the agreement have been met and may:
 - (1) Revoke the site plan or use review approval;
 - (2) Impose additional conditions or modifications to carry out the purposes of the original approval; and
 - (3) Seek enforcement remedies as provided in chapter 9-15, "Enforcement," B.R.C. 1981.

Ordinance No. 7079 (2000)

9-2-12. Development Progress Required.

- (a) Three-Year Rule: The applicant must begin and substantially complete the approved site review or use review as specified in the development agreement within three years from the time of the final approval of the site or use review or as modified by a development schedule incorporated in the development agreement. For the purposes of this section, *substantially complete* means the time when the construction is sufficiently complete so the owner can occupy the work or portion thereof for the use for which it is intended. If the project is to be developed in stages, the applicant must begin and substantially complete the development of each stage within three years of the time provided for the start of construction of each stage in the development agreement. Failure to substantially complete the development or any development stage within three years of the approved development schedule shall cause the unbuilt portion of the development approval to expire. Nothing in this section is deemed to create a vested property right in any applicant; such vested property right may only be created pursuant to the provisions of section 9-2-19, "Creation of Vested Rights," B.R.C. 1981.
- (b) Extension: Prior to the expiration of a use review or site review approval, the applicant may request an extension of the time allowed for the completion of the development.
 - (1) City Manager Level Extension: The city manager may grant up to two six-month extensions for each phase of the development if such extension will enable the applicant to substantially complete the phase of development or is necessary to allow the applicant to request an extension from the planning board.

- (2) **Planning Board Level Extension:** The planning board may grant an extension of a development approval, pursuant to a hearing, conducted under the provisions of chapter 1-3, "Quasi-Judicial Hearings," B.R.C. 1981, after the applicant has exhausted any extension granted pursuant to paragraph (b)(1) of this section. The applicant shall be required to demonstrate that it exercised reasonable diligence in completing the project according to the approved development schedule and of good cause as to why the extension should be granted.
- (A) **Criteria for Demonstrating Reasonable Diligence:** An applicant may show that it has exercised reasonable diligence by providing evidence that it has done substantial work towards completing the project. Such evidence may include, without limitation, drafting plans for building permit or technical document review, applications for building permits or other permits that are required prior to the issuance of building permits, site preparation and grading or commencement of the construction of a portion of the project.
 - (B) **Criteria for Demonstrating Good Cause:** An applicant may show good cause as to why an extension should be granted by providing evidence that includes, without limitation, the following: a demonstration of the applicant's ability to complete the project within the extension; the extension is needed because of the size of the project or phasing of the development; or economic cycles and market conditions prevented the construction of the project during the original approval period.
 - (C) **Additional Conditions:** As part of a hearing to consider an extension, the planning board may impose additional conditions on the applicant in order to ensure compliance with any amendments to this title enacted after the date of the original approval.
- (c) **Building Permits:** Upon issuance of a building permit pursuant to a development review approval, the applicant must adhere to the schedule for construction and inspection as defined in the city building code, chapter 10-5, "Building Code," B.R.C. 1981. In addition to the provisions of this title, all provisions of the building code regarding expiration and termination of building permits shall apply.
- (d) **Annexations/Six-Month Rule:** If an owner of property not located within the city, for which a development review application is approved, fails to annex the property to the city within six months of the date of approval, the approval shall expire unless the approving agency extends the time period, upon a finding of good cause predicated upon a written request of the applicant delivered to the city manager before the expiration of the six-month period.
- (e) **Rescission of Development Approval:** If after use review, site review, Planned Development (PD), Planned Residential Development (PRD) or Planned Unit Development (PUD) approval is granted pursuant to this chapter the owner of property desires to develop, instead, under the provisions of chapters 9-6, "Use Standards," 9-7, "Form and Bulk Standards," and 9-8, "Intensity Standards," B.R.C. 1981, the owner may request rescission of such use review, site review, PD, PRD or PUD approval by filing a written request for rescission with the city manager. The city manager will grant a rescission of such use review, site review, PD, PRD or PUD approval if no building permit has been issued for the development and neither the city nor the developer has taken any actions in detrimental reliance on the terms of the development agreement. The city manager may also rescind a site review, PD, PRD or PUD approval if the existing or proposed development complies with all the use, form and intensity requirements of chapters 9-6, "Use Standards," 9-7, "Form and Bulk Standards," and 9-8, "Intensity Standards," B.R.C. 1981, and there is no substantial public benefit in maintaining the original approval. An owner may also request a rescission of a use review or special review approval in order to return the property to a use that is permitted as a matter of right, or as a conditional use if it is able to meet all applicable standards for such use under this title.

Ordinance No. 7577 (2007)

9-2-13. Concept Plan Review and Comment.

- (a) **Purpose of Concept Plan Review:** The purpose of the concept plan review step is to determine a general development plan for the site, including, without limitation, land uses, arrangement of uses, general circulation patterns and characteristics, methods of encouraging use of alternative transportation modes, areas of the site to be preserved from development, general architectural characteristics, any special height and view corridor limitations, environmental preservation and enhancement concepts, and other factors as needed to carry out the objectives of this title, adopted plans and other city requirements. This step is intended to give the applicant an opportunity to solicit com-

ments from the planning board authority early in the development process as to whether the concept plan addresses the requirements of the city as set forth in its adopted ordinances, plans and policies.

- (b) **Projects Required to Complete Concept Review and Comment:** Any applicant for a development that exceeds the "Site Review Required" thresholds set forth in paragraph 9-2-14(b)(1), B.R.C. 1981, shall complete the concept review process prior to submitting an application for site review.
- (c) **Application Requirements:** A concept plan should be preliminary plan for the development of a site of sufficient accuracy to be used for discussing the plan's conformance with adopted ordinances, plans and policies of the city. The concept plan provides the public, the city manager and the planning board opportunity to offer input in the formative stages of the development. An application for a concept plan review and comment may be filed by a person having a demonstrable property interest in land to be included in a site review on a form provided by the city manager and shall include the following:
 - (1) The written consent of the owners of all property to be included in the development;
 - (2) A context map, drawn to scale, showing the site and an area of not less than three hundred feet radius around the site, including streets, zoning, general location of buildings and parking areas of abutting properties;
 - (3) A scaled and dimensioned schematic drawing of the site development concept and an area of not less than two hundred feet around the site, showing:
 - (A) Access points and circulation patterns for all modes of transportation;
 - (B) Approximate locations of trails, pedestrian and bikeway connections, on-site transit amenities and parking areas;
 - (C) Approximate location of major site elements, including buildings, open areas, natural features such as watercourses, wetlands, mature trees and steep slopes; and
 - (D) Proposed land uses and approximate location;
 - (4) Architectural character sketches showing building elevations and materials; and
 - (5) A written statement that describes, in general how the proposed development meets this title, city plans and policies, and addresses the following:
 - (A) Techniques and strategies for environmental impact avoidance, minimization or mitigation;
 - (B) Techniques and strategies for practical and economically feasible travel demand management techniques, including, without limitation, site design, land use, covenants, transit passes, parking restrictions, information or education materials or programs that may reduce single-occupant vehicle trip generation to and from the site; and
 - (C) Proposed land uses and, if it is a development that includes residential housing type, mix, sizes and anticipated sale prices, the percentage of affordable units to be included; special design characteristics that may be needed to assure affordability.
- (d) **Public Notice of Application:** After receiving an application the city manager shall provide public notification pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981.
- (e) **Additional Information or Processes:** Based on the concept plan submission, and to the extent that such requirements can be determined from the information provided by the applicant, the city manager will identify additional information or processes that may be needed prior to or concurrent with site review, such as:
 - (1) Variances and exceptions to existing standards necessary to achieve the defined objectives for the site, and the process and approving agency for the required changes;

- (2) Processes, permits and approvals that may be needed, including, without limitation, wetland permits, floodplain permits, flood map revisions, special large water user or sanitary sewer pretreatment agreements, rezonings or Boulder Valley Comprehensive Plan changes;
 - (3) Need for any further environmental studies or impact studies; and
 - (4) Public infrastructure improvements needed to serve the development, including, without limitation, transportation improvements such as streets, alleys, transit stops and shelters, other alternative mode facilities and connections, and acceleration and deceleration lanes, water, wastewater and flood control.
- (f) **Review of and Comment on Concept Plans:** Upon receipt of an application for a concept plan review, the city manager will review the submitted materials for general compliance with the requirements of this title, and prepare staff comments. The scope of staff comments will differ from application to application, at the discretion of the city manager. The city manager will forward the application, any comments received from neighbors and other interested persons and any staff comments to the planning board. The planning board shall review the concept plan at a public meeting held pursuant to the provisions of subsection 2-3-1(b), B.R.C. 1981. Planning board members may provide individual comments on the concept plan. A concept plan review and comment shall not relieve the applicant of the burden required to seek approvals for elements of the plan that require review and approval under the Boulder Revised Code.
- (g) **Guidelines for Review and Comment:** The following guidelines will be used to guide the planning board's discussion regarding the site. It is anticipated that issues other than those listed in this section will be identified as part of the concept plan review and comment process. The Planning Board may consider the following guidelines when providing comments on a concept plan:
- (1) Characteristics of the site and surrounding areas, including, without limitation, its location, surrounding neighborhoods, development and architecture, any known natural features of the site including, without limitation, mature trees, watercourses, hills, depressions, steep slopes and prominent views to and from the site;
 - (2) Community policy considerations including, without limitation, the review process and likely conformity of the proposed development with the Boulder Valley Comprehensive Plan and other ordinances, goals, policies and plans, including, without limitation, sub-community and sub-area plans;
 - (3) Applicable criteria, review procedures and submission requirements for a site review;
 - (4) Permits that may need to be obtained and processes that may need to be completed prior to, concurrent with or subsequent to site review approval;
 - (5) Opportunities and constraints in relation to the transportation system, including, without limitation, access, linkage, signalization, signage and circulation, existing transportation system capacity problems serving the requirements of the transportation master plan, possible trail links and the possible need for a traffic or transportation study;
 - (6) Environmental opportunities and constraints including, without limitation, the identification of wetlands, important view corridors, floodplains and other natural hazards, wildlife corridors, endangered and protected species and habitats, the need for further biological inventories of the site and at what point in the process the information will be necessary;
 - (7) Appropriate ranges of land uses; and
 - (8) The appropriateness of or necessity for housing.

Ordinance Nos. 5669 (1994); 5777 (1998); 5994 (1998); 6093 (1999)

9-2-14. Site Review.

- (a) **Purpose:** The purpose of site review is to allow flexibility and encourage innovation in land use development. Review criteria are established to promote the most appropriate use of land, improve the character and quality of

new development, to facilitate the adequate and economical provision of streets and utilities, to preserve the natural and scenic features of open space, to assure consistency with the purposes and policies of the Boulder Valley Comprehensive Plan and other adopted plans of the community, to ensure compatibility with existing structures and established districts, to assure that the height of new buildings is in general proportion to the height of existing, approved and known to be planned or projected buildings in the immediate area, to assure that the project incorporates, through site design, elements which provide for the safety and convenience of the pedestrian, to assure that the project is designed in an environmentally sensitive manner and to assure that the building is of a bulk appropriate to the area and the amenities provided and of a scale appropriate to pedestrians.

(b) Scope: The following development review thresholds apply to any development that is eligible or that otherwise may be required to complete the site review process:

(1) Development Review Thresholds:

- (A) Minimum Thresholds for Voluntary Site Review: No person may apply for a site review application unless the project exceeds the thresholds for the "minimum size for site review" category set forth in table 2-2 of this section or a height modification pursuant to subsection (e) below on any lot is requested.
- (B) Minimum Thresholds for Required Site Review: No person may apply for a subdivision or a building permit for a project that exceeds the thresholds for the "concept plan and site review required" category set forth in table 2-2 of this section until a site review has been completed.
- (C) Common Ownership: All contiguous lots or parcels under common ownership or control, not subject to a planned development, planned residential development, planned unit development or site review approval, shall be considered as one property for the purposes of determining whether the maximum site review thresholds below apply. If such lots or parcels cross zoning district boundaries, the lesser threshold of the zoning districts shall apply to all of the lots or parcels.
- (D) Previously Approved Developments: Previously approved valid planned unit developments that do not otherwise meet the minimum site review thresholds may be modified or amended consistent with the provisions of this title pursuant to subsections (k) and (l) of this section.
- (E) Height Modifications: A development which exceeds the permitted height requirements of section 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, is required to complete a site review and is not subject to the minimum threshold requirements. No standard other than height may be modified under the site review unless the project is also eligible for site review.

TABLE 2-2: SITE REVIEW THRESHOLD TABLE

Zoning District Abbreviation	Use	Form	Intensity	Minimum Size for Site Review	Concept Plan and Site Review Required	Former Zoning District Abbreviation
A	A	a	1	2 acres	-	(A-E)
BC-1	B3	f	15	1 acre	3 acres or 50,000 square feet of floor area	(CB-D)
BC-2	B3	f	19	1 acre	2 acres or 25,000 square feet of floor area or any site in BVRC	(CB-E)
BCS	B4	m	28	1 acre	3 acres or 50,000 square feet of floor area	(CS-E)
BMS	B2	o	17	0	3 acres or 50,000 square feet of floor area	(BMS-X)
BR-1	B5	f	23	0	3 acres or 50,000 square feet of floor area	(RB-E)
BR-2	B5	f	16	0	3 acres or 50,000 square feet of floor area	(RB-D)

BT-1	B1	f	15	1 acre	2 acres or 30,000 square feet of floor area	(TB-D)
BT-2	B1	e	21	0	2 acres or 30,000 square feet of floor area	(TB-E)
DT-1	D3	p	25	0	1 acre or 50,000 square feet of floor area	(RB3-X/E)
DT-2	D3	p	26	0	1 acre or 50,000 square feet of floor area	(RB2-X)
DT-3	D3	p	27	0	1 acre or 50,000 square feet of floor area	(RB2-E)
DT-4	D1	q	27	0	1 acre or 50,000 square feet of floor area	(RB1-E)
DT-5	D2	p	27	0	1 acre or 50,000 square feet of floor area	(RB1-X)
IG	I2	f	22	2 acres	5 acres or 100,000 square feet of floor area	(IG-E/D)
IM	I3	f	20	2 acres	5 acres or 100,000 square feet of floor area	(IM-E/D)
IMS	I4	r	18	0	3 acres or 50,000 square feet of floor area	(IMS-X)
IS-1	I1	f	11	2 acres	5 acres or 100,000 square feet of floor area	(IS-E)
IS-2	I1	f	10	2 acres	5 acres or 100,000 square feet of floor area	(IS-D)
MH	MH	s	-	5 or more units are permitted on the property	-	(MH-E)
MU-1	M2	i	18	0	1 acre or 20 dwelling units	(MU-D)
MU-2	M3	r	18	0	3 acres or 50,000 square feet of floor area	(RMS-X)
MU-3	M1	n	24	5 or more units are permitted on the property	1 acre or 20 dwelling units or 20,000 square feet of nonresidential floor area	(MU-X)
MU-4	B2	o	24.5	0	3 acres or 50,000 square feet of floor area	0
P	P	c	5	2 acres	5 acres or 100,000 square feet of floor area	(P-E)
RE	R1	b	3	5 or more units are permitted on the property	-	(ER-E)
RH-1	R6	j	12	0	2 acres or 20 dwelling units	(HR-X)
RH-2	R6	c	12.5	0	2 acres or 20 dwelling units	(HZ-E)
RH-3	R7	l	14	5 or more units are permitted on the property	2 acres or 20 dwelling units	(HR1-X)
RH-4	R6	h	15	5 or more units are permitted on the property	2 acres or 20 dwelling units	(HR-D)
RH-5	R6	c	19	5 or more units are permitted on the	2 acres or 20 dwelling	(HR-E)

				property	units	
RH-6	R8	j	17.5	5 or more units are permitted on the property	3 acres or 20 dwelling units	-
RH-7	R7	i	14	5 or more units are permitted on the property	2 acres or 20 dwelling units	-
RL-1	R1	d	4	5 or more units are permitted on the property	3 acres or 18 dwelling units	(LR-E)
RL-2	R2	g	6	5 or more units are permitted on the property	3 acres or 18 dwelling units	(LR-D)
RM-1	R3	g	9	5 or more units are permitted on the property	2 acres or 20 dwelling units	(MR-D)
RM-2	R2	d	13	5 or more units are permitted on the property	2 acres or 20 dwelling units	(MR-E)
RM-3	R3	j	13	5 or more units are permitted on the property	2 acres or 20 dwelling units	(MR-X)
RMX-1	R4	d	7	5 or more units are permitted on the property	2 acres or 20 dwelling units	(MXR-E)
RMX-2	R5	k	8	0	2 acres or 20 dwelling units	(MXR-D)
RR-1	R1	a	2	5 or more units are permitted on the property	-	(RR-E)
RR-2	R1	b	2	5 or more units are permitted on the property	-	(RR1-E)

- (2) Poles Above the Permitted Height: The city manager will follow the following procedures for the review, recommendation, call-up and effective date for the approval of poles above the permitted height.
- (A) Light Poles at Government-Owned Facilities: The city manager will determine whether or not to approve an application for light poles at government-owned recreation facilities between thirty-five and fifty-five feet in height, subject to call-up by the planning board pursuant to the procedures set forth in subsection 9-2-7(b), B.R.C. 1981.
 - (B) Poles Over Fifty-Five Feet in Height: The city manager will determine whether or not to approve all applications for poles over fifty-five feet in height, subject to call-up by the city council pursuant to the procedures set forth in subsection 9-2-7(c), B.R.C. 1981.
- (3) Exceptions: The following developments that exceed the maximum site review thresholds set forth in this section shall not be required to complete a site review:
- (A) Minor modifications and amendments to approved development review applications;
 - (B) Building permits for additions to existing structures that do not exceed a cumulative total, over the life of the building, of twenty-five percent of the size of the building on which the addition is proposed and that do not alter the basic intent of an approved development;
 - (C) Subdivisions solely for the purpose of amalgamating lots or parcels of land;

- (D) Subdivisions solely for the purpose of conveying property to the city; and
 - (E) City of Boulder public projects that are otherwise required to complete a public review process.
- (c) Modifications to Development Standards: The following development standards of B.R.C. 1981 may be modified under the site review process set forth in this section:
- (1) 9-7-1, "Schedule of Form and Bulk Standards," and standards referred to in that section except for the floor area requirements.
 - (2) 9-8-1, "Schedule of Intensity Standards," table 8-1, minimum lot area (in square feet unless otherwise noted) and the floor area ratio standards to permit the averaging of floor area across multiple building sites within a zoning district.
 - (3) 9-8-4, "Housing Types and Density Bonuses Within an RMX-2 Zoning District."
 - (4) 9-9-2(b), "Maximum Permitted Buildings on a Lot."
 - (5) 9-9-2(e), "Entire Use Located on One Lot."
 - (6) 9-9-3(a), "Window Requirements for Buildings."
 - (7) 9-9-4, "Public Improvements" and subsection 9-12-12(a), "Standards for Lots and Public Improvements," "Conditions Required," only to the extent that certain development criteria for alternative street standards are noted in the City of Boulder Design and Construction Standards.
 - (8) 9-9-5, "Site Access Control."
 - (9) 9-9-6, "Parking Standards."
 - (10) 9-9-7, "Sight Triangles."
 - (11) 9-9-9, "Off-Street Loading Standards."
 - (12) 9-7-13, "Mobile Home Park Form and Bulk Standards."
 - (13) 9-9-12, "Landscaping and Screening Standards."
 - (14) 9-9-11(c), "Open Space Standards for Buildings Over Twenty-Five Feet in Height."
 - (15) 9-9-11, "Useable Open Space," to the extent permitted in paragraphs 9-9-11(f)(2), (f)(4), (f)(6), (h)(2) and (i)(7), B.R.C. 1981.
 - (16) 9-9-13, "Streetscape Design Standards."
 - (17) 9-2-14(h)(2)(I) and (h)(2)(J), land use intensity modifications for nonresidential buildings.
 - (18) 9-9-14, "Parking Lot Landscaping Standards."
 - (19) 9-9-15, "Fences and Walls."
 - (20) 9-9-17, "Solar Access."
 - (21) Standards for wall signs on parapet walls to the extent permitted by paragraph 9-9-18(d)(14)(D), B.R.C. 1981.
 - (22) 10-12-7, "Accessory Structures."
 - (23) 10-12-13, "Mobile Home Park Environmental Standards."
 - (24) 10-12-14, "Nonresidential Uses in Mobile Home Parks."

- (25) 10-12-18, "Windbreaks."
 - (26) 10-12-19, "Mobile Home Park Streets and Walkways."
 - (27) 10-12-23, "Permanent Buildings."
- (d) Application Requirements: An application for approval of a site plan may be filed by any person having a demonstrable property interest in land to be included in a site review on a form provided by the city manager that includes, without limitation:
- (1) All materials and information required by subsection 9-2-6(a), B.R.C. 1981;
 - (2) A site plan with a north arrow showing the major details of the proposed development, prepared on a scale of not less than one inch equals one hundred feet providing sufficient detail to evaluate the features of the development required by this section. The site plan shall contain, insofar as applicable, the information set forth in this subsection;
 - (3) The existing topographic character of the land, showing contours at two-foot intervals;
 - (4) The site and location of proposed uses with dimensions indicating the distance from lot lines;
 - (5) The location and size of all existing and proposed buildings, structures and improvements, and the general location of adjacent streets, structures and properties;
 - (6) The maximum height of all buildings and building elevations showing exterior colors and materials;
 - (7) The density and type of uses;
 - (8) The internal traffic and circulation systems, off-street parking areas, service areas, loading areas and major points of access to public rights-of-way;
 - (9) The location, height and size of proposed signs, lighting and advertising devices;
 - (10) The areas that are to be conveyed, dedicated or reserved as parks, recreation areas, playgrounds, outlots or open space and as sites for schools and other public buildings;
 - (11) The areas that are to be conveyed, dedicated or reserved for streets, alley and utility easements;
 - (12) The areas subject to the one hundred-year flood as defined in chapter 9-16, "Definitions," B.R.C. 1981, and any area of the site that is within a designated space conveyance zone or high hazard zone;
 - (13) A general landscaping plan at the time of initial submission to be followed by a detailed landscaping plan once the site plan has been approved, showing the spacing, sizes and specific types of landscaping materials and whether the plant is coniferous or deciduous;
 - (14) A shadow analysis depicting shadows on December 21, as described in the solar analysis instructions provided by the city manager, and depicting shadows calculated pursuant to subsection 9-9-17(d), B.R.C. 1981, for those buildings that affect adjacent properties;
 - (15) A written statement containing the following information:
 - (A) A statement of the current ownership and a legal description of all of the land included in the project;
 - (B) An explanation of the objectives to be achieved by the project, including, without limitation, building descriptions, sketches or elevations that may be required to describe the objectives;
 - (C) A development schedule indicating the approximate date when construction of the project or phases of the project can be expected to begin and be completed; and

- (D) Copies of any special agreements, conveyances, restrictions or covenants that will govern the use, maintenance and continued protection of the goals of the project and any related parks, recreation areas, playgrounds, outlots or open space;
 - (16) Materials required by the City of Boulder Design and Construction Standards, including, without limitation, a traffic study, master utility plan, utility report and storm water report and plan for any application that proposes to construct or have an impact on public improvements; and
 - (17) Plans for preservation of natural features existing on the site or plans for mitigation of adverse impacts to natural features existing on the site from the proposed development and anticipated uses. Natural features include, without limitation, healthy long-lived trees, significant plant communities, ground and surface water, wetlands, riparian areas, drainage areas and habitat for species on the federal Endangered Species List, "Species of Special Concern in Boulder County" designated by Boulder County, or prairie dogs (*Cynomys ludovicianus*) which is a species of local concern.
- (e) Additional Application Requirements for Height Modification: The following additional application requirements apply if the development proposal includes a request for the modification of the permitted height:
- (1) Preliminary building plans including sketches and elevations illustrating the proposed building or pole and indicating how the height was calculated;
 - (2) For developments in all Downtown (DT) districts, a model, at a scale of no less than one inch equals thirty feet, of the proposed building and all buildings and property within one hundred feet of the proposed project;
 - (3) For developments in all Downtown (DT) districts, an illustration of the proposed building shown from street level demonstrating the pedestrian view, including, without limitation, a perspective, computer model or photographic montage;
 - (4) A shadow analysis, as described in the solar analysis instructions provided by the city manager, that shows the shadow cast by a thirty-five-foot building located at the required setback and the shadow cast by the proposed building;
 - (5) A list of the height of each principal building located or known to be proposed or approved within one hundred feet of the proposed project;
 - (6) A written statement and drawings which describe the way in which the proposal accommodates pedestrians, including, without limitation, uses proposed for the ground level, percent of transparent material at the ground level, and signage and graphics; and
 - (7) A detailed plan showing the useable open space and a written statement of how it serves the public interest.
- (f) Public Notification: After receiving an application the city manager shall provide public notification pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981, shall be provided.
- (g) Review and Recommendation: The city manager will review and decide an application for a site review in accordance with the provisions of section 9-2-6, "Development Review Application," B.R.C. 1981, except for an application involving the following, which the city manager will refer with a recommendation to the planning board for its action:
- (1) A reduction in off-street parking of more than fifty percent subject to compliance with the standards of subsection 9-9-6(f), B.R.C. 1981.
 - (2) A reduction of the open space or lot area requirements allowed by subparagraph (h)(2)(I) of this section.
 - (3) An application for any principal or accessory building above the permitted height for principal buildings set forth in section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981.

- (4) An increase in density in the RH-1, RH-2 and RH-3 districts consistent with section 9-8-3, "Density in the RH-1, RH-2, RH-3 and RH-7 Districts," B.R.C. 1981.
- (h) Criteria for Review: No site review application shall be approved unless the approving agency finds that:
- (1) Boulder Valley Comprehensive Plan:
- (A) The proposed site plan is consistent with the purposes and policies of the Boulder Valley Comprehensive Plan.
- (B) The proposed development shall not exceed the maximum density associated with the Boulder Valley Comprehensive Plan residential land use designation. Additionally, if the density of existing residential development within a three hundred-foot area surrounding the site is at or exceeds the density permitted in the Boulder Valley Comprehensive Plan, then the maximum density permitted on the site shall not exceed the lesser of:
- (i) The density permitted in the Boulder Valley Comprehensive Plan, or
- (ii) The maximum number of units that could be placed on the site without waiving or varying any of the requirements of chapter 9-8, "Intensity Standards," B.R.C. 1981.
- (C) The proposed development's success in meeting the broad range of BVCP policies considers the economic feasibility of implementation techniques required to meet other site review criteria.
- (2) Site Design: Projects should preserve and enhance the community's unique sense of place through creative design that respects historic character, relationship to the natural environment and its physical setting. Projects should utilize site design techniques which enhance the quality of the project. In determining whether this subsection is met, the approving agency will consider the following factors:
- (A) Open Space: Open space, including, without limitation, parks, recreation areas and playgrounds:
- (i) Useable open space is arranged to be accessible and functional;
- (ii) Private open space is provided for each detached residential unit;
- (iii) The project provides for the preservation of or mitigation of adverse impacts to natural features, including, without limitation, healthy long-lived trees, significant plant communities, ground and surface water, wetlands, riparian areas, drainage areas and species on the federal Endangered Species List, "Species of Special Concern in Boulder County" designated by Boulder County, or prairie dogs (*Cynomys ludovicianus*) which is a species of local concern and their habitat;
- (iv) The open space provides a relief to the density, both within the project and from surrounding development;
- (v) Open space designed for active recreational purposes is of a size that it will be functionally useable and located in a safe and convenient proximity to the uses to which it is meant to serve;
- (vi) The open space provides a buffer to protect sensitive environmental features and natural areas; and
- (vii) If possible, open space is linked to an area- or city-wide system.
- (B) Open Space in Mixed Use Developments (Developments That Contain a Mix of Residential and Nonresidential Uses):
- (i) The open space provides for a balance of private and shared areas for the residential uses and common open space that is available for use by both the residential and nonresidential uses that will meet the needs of the anticipated residents, occupants, tenants and visitors of the property; and

- (ii) The open space provides active areas and passive areas that will meet the needs of the anticipated residents, occupants, tenants and visitors of the property and are compatible with the surrounding area or an adopted plan for the area.
- (C) Landscaping:
- (i) The project provides for aesthetic enhancement and a variety of plant and hard surface materials, and the selection of materials provides for a variety of colors and contrasts and the preservation or use of local native vegetation where appropriate;
 - (ii) Landscape design attempts to avoid, minimize or mitigate impacts to important native species, plant communities of special concern, threatened and endangered species and habitat by integrating the existing natural environment into the project;
 - (iii) The project provides significant amounts of plant material sized in excess of the landscaping requirements of sections 9-9-12, "Landscaping and Screening Standards," and 9-9-13, "Streetscape Design Standards," B.R.C. 1981; and
 - (iv) The setbacks, yards and useable open space along public rights-of-way are landscaped to provide attractive streetscapes, to enhance architectural features and to contribute to the development of an attractive site plan.
- (D) Circulation: Circulation, including, without limitation, the transportation system that serves the property, whether public or private and whether constructed by the developer or not:
- (i) High speeds are discouraged or a physical separation between streets and the project is provided;
 - (ii) Potential conflicts with vehicles are minimized;
 - (iii) Safe and convenient connections accessible to the public within the project and between the project and existing and proposed transportation systems are provided, including, without limitation, streets, bikeways, pedestrianways and trails;
 - (iv) Alternatives to the automobile are promoted by incorporating site design techniques, land use patterns and supporting infrastructure that supports and encourages walking, biking and other alternatives to the single-occupant vehicle;
 - (v) Where practical and beneficial, a significant shift away from single-occupant vehicle use to alternate modes is promoted through the use of travel demand management techniques;
 - (vi) On-site facilities for external linkage are provided with other modes of transportation, where applicable;
 - (vii) The amount of land devoted to the street system is minimized; and
 - (viii) The project is designed for the types of traffic expected, including, without limitation, automobiles, bicycles and pedestrians, and provides safety, separation from living areas and control of noise and exhaust.
- (E) Parking:
- (i) The project incorporates into the design of parking areas measures to provide safety, convenience and separation of pedestrian movements from vehicular movements;
 - (ii) The design of parking areas makes efficient use of the land and uses the minimum amount of land necessary to meet the parking needs of the project;
 - (iii) Parking areas and lighting are designed to reduce the visual impact on the project, adjacent properties and adjacent streets; and

- (iv) Parking areas utilize landscaping materials to provide shade in excess of the requirements in subsection 9-9-6(d), and section 9-9-14, "Parking Lot Landscaping Standards," B.R.C. 1981.
- (F) Building Design, Livability and Relationship to the Existing or Proposed Surrounding Area:
- (i) The building height, mass, scale, orientation, architecture and configuration are compatible with the existing character of the area or the character established by adopted design guidelines or plans for the area;
 - (ii) The height of buildings is in general proportion to the height of existing buildings and the proposed or projected heights of approved buildings or approved plans or design guidelines for the immediate area;
 - (iii) The orientation of buildings minimizes shadows on and blocking of views from adjacent properties;
 - (iv) If the character of the area is identifiable, the project is made compatible by the appropriate use of color, materials, landscaping, signs and lighting;
 - (v) Buildings present an attractive streetscape, incorporate architectural and site design elements appropriate to a pedestrian scale, and provide for the safety and convenience of pedestrians;
 - (vi) To the extent practical, the project provides public amenities and planned public facilities;
 - (vii) For residential projects, the project assists the community in producing a variety of housing types, such as multi-family, townhouses and detached single-family units as well as mixed lot sizes, number of bedrooms and sizes of units;
 - (viii) For residential projects, noise is minimized between units, between buildings and from either on-site or off-site external sources through spacing, landscaping and building materials;
 - (ix) A lighting plan is provided which augments security, energy conservation, safety and aesthetics;
 - (x) The project incorporates the natural environment into the design and avoids, minimizes or mitigates impacts to natural systems;
 - (xi) Cut and fill are minimized on the site, the design of buildings conforms to the natural contours of the land, and the site design minimizes erosion, slope instability, landslide, mudflow or subsidence, and minimizes the potential threat to property caused by geological hazards.
- (G) Solar Siting and Construction: For the purpose of ensuring the maximum potential for utilization of solar energy in the city, all applicants for residential site reviews shall place streets, lots, open spaces and buildings so as to maximize the potential for the use of solar energy in accordance with the following solar siting criteria:
- (i) Placement of Open Space and Streets: Open space areas are located wherever practical to protect buildings from shading by other buildings within the development or from buildings on adjacent properties. Topography and other natural features and constraints may justify deviations from this criterion.
 - (ii) Lot Layout and Building Siting: Lots are oriented and buildings are sited in a way which maximizes the solar potential of each principal building. Lots are designed to facilitate siting a structure which is unshaded by other nearby structures. Wherever practical, buildings are sited close to the north lot line to increase yard space to the south for better owner control of shading.
 - (iii) Building Form: The shapes of buildings are designed to maximize utilization of solar energy. Buildings shall meet the solar access protection and solar siting requirements of section 9-9-17, "Solar Access," B.R.C. 1981.

- (iv) Landscaping: The shading effects of proposed landscaping on adjacent buildings are minimized.
- (H) Additional Criteria for Poles Above the Permitted Height: No site review application for a pole above the permitted height will be approved unless the approving agency finds all of the following:
 - (i) The light pole is required for nighttime recreation activities, which are compatible with the surrounding neighborhood, or the light or traffic signal pole is required for safety or the electrical utility pole is required to serve the needs of the city; and
 - (ii) The pole is at the minimum height appropriate to accomplish the purposes for which the pole was erected and is designed and constructed so as to minimize light and electromagnetic pollution.
- (I) Land Use Intensity Modifications:
 - (i) Potential Land Use Intensity Modifications:
 - a. The density of a project may be increased in the BR-1 district through a reduction of the lot area requirement or in the Downtown (DT), BR-2 or MU-3 districts through a reduction in the open space requirements.
 - b. The open space requirements in all Downtown (DT) districts may be reduced by up to one hundred percent.
 - c. The open space per lot requirements for the total amount of open space required on the lot in the BR-2 district may be reduced by up to fifty percent.
 - d. Land use intensity may be increased up to twenty-five percent in the BR-1 district through a reduction of the lot area requirement.
 - (ii) Additional Criteria for Land Use Intensity Modifications: A land use intensity increase will be permitted up to the maximum amount set forth below if the approving agency finds that the criteria in paragraph (h)(1) through subparagraph (h)2(H) of this section and following criteria have been met:
 - a. Open Space Needs Met: The needs of the project's occupants and visitors for high quality and functional useable open space can be met adequately;
 - b. Character of Project and Area: The open space reduction does not adversely affect the character of the development nor the character of the surrounding area; and
 - c. Open Space and Lot Area Reductions: The specific percentage reduction in open space or lot area requested by the applicant is justified by any one or combination of the following site design features not to exceed the maximum reduction set forth above:
 - 1. Close proximity to a public mall or park for which the development is specially assessed or to which the project contributes funding of capital improvements beyond that required by the parks and recreation component of the development excise tax set forth in chapter 3-8, "Development Excise Tax," B.R.C. 1981: maximum one hundred percent reduction in all Downtown (DT) districts and ten percent in the BR-1 district;
 - 2. Architectural treatment that results in reducing the apparent bulk and mass of the structure or structures and site planning which increases the openness of the site: maximum five percent reduction;
 - 3. A common park, recreation or playground area functionally useable and accessible by the development's occupants for active recreational purposes and sized for the number of inhabitants of the development, maximum five percent reduction; or developed facilities within the project designed to meet the active recreational needs of the occupants: maximum five percent reduction;

4. Permanent dedication of the development to use by a unique residential population whose needs for conventional open space are reduced: maximum five percent reduction;
5. The reduction in open space is part of a development with a mix of residential and nonresidential uses within a BR-2 zoning district that, due to the ratio of residential to nonresidential uses and because of the size, type and mix of dwelling units, the need for open space is reduced: maximum reduction fifteen percent; and
6. The reduction in open space is part of a development with a mix of residential and nonresidential uses within a BR-2 zoning district that provides high quality urban design elements that will meet the needs of anticipated residents, occupants, tenants and visitors of the property or will accommodate public gatherings, important activities or events in the life of the community and its people, that may include, without limitation, recreational or cultural amenities, intimate spaces that foster social interaction, street furniture, landscaping and hard surface treatments for the open space: maximum reduction twenty-five percent.

(J) Additional Criteria for Floor Area Ratio Increase for Buildings in the BR-1 District:

- (i) Process: For buildings in the BR-1 district, the floor area ratio ("FAR") permitted under table 8-2, section 9-8-2, "Floor Area Ratio Requirements," B.R.C. 1981, may be increased by the city manager under the criteria set forth in this subparagraph.
- (ii) Maximum FAR Increase: The maximum FAR increase allowed for buildings thirty-five feet and over in height in the BR-1 district shall be from 2:1 to 4:1.
- (iii) Criteria for the BR-1 District: The FAR may be increased in the BR-1 district to the extent allowed in subparagraph (h)(2)(J)(ii) of this section if the approving agency finds that the following criteria are met:
 - a. Site and building design provide open space exceeding the required useable open space by at least ten percent: an increase in FAR not to exceed 0.25:1.
 - b. Site and building design provide private outdoor space for each office unit equal to at least ten percent of the lot area for buildings twenty-five feet and under and at least twenty percent of the lot area for buildings above twenty-five feet: an increase in FAR not to exceed 0.25:1.
 - c. Site and building design provide a street front facade and an alley facade at a pedestrian scale, including, without limitation, features such as awnings and windows, well-defined building entrances and other building details: an increase in FAR not to exceed 0.25:1.
 - d. For a building containing residential and nonresidential uses in which neither use comprises less than twenty-five percent of the total square footage: an increase in FAR not to exceed 1:1.
 - e. The unused portion of the allowed FAR of historic buildings designated as landmarks under chapter 9-11, "Historic Preservation," B.R.C. 1981, may be transferred to other sites in the same zoning district. However, the increase in FAR of a proposed building to which FAR is transferred under this subparagraph may not exceed an increase of 0.5:1.
 - f. For a building which provides one full level of parking below grade, an increase in FAR not to exceed 0.5:1 may be granted.

(K) Additional Criteria for Parking Reductions: The off-street parking requirements of section 9-9-6, "Parking Standards," B.R.C. 1981, may be modified as follows:

- (i) Process: The city manager may grant a parking reduction not to exceed fifty percent of the required parking. The planning board or city council may grant a reduction exceeding fifty percent.

- (ii) Criteria: Upon submission of documentation by the applicant of how the project meets the following criteria, the approving agency may approve proposed modifications to the parking requirements of section 9-9-6, "Parking Standards," B.R.C. 1981 (see tables 9-1, 9-2, 9-3 and 9-4, if it finds that:
 - a. For residential uses, the probable number of motor vehicles to be owned by occupants of and visitors to dwellings in the project will be adequately accommodated;
 - b. The parking needs of any nonresidential uses will be adequately accommodated through on-street parking or off-street parking;
 - c. A mix of residential with either office or retail uses is proposed, and the parking needs of all uses will be accommodated through shared parking;
 - d. If joint use of common parking areas is proposed, varying time periods of use will accommodate proposed parking needs; and
 - e. If the number of off-street parking spaces is reduced because of the nature of the occupancy, the applicant provides assurances that the nature of the occupancy will not change.
- (L) Additional Criteria for Off-Site Parking: The parking required under section 9-9-6, "Parking Standards," B.R.C. 1981, may be located on a separate lot if the following conditions are met:
 - (i) The lots are held in common ownership;
 - (ii) The separate lot is in the same zoning district and located within three hundred feet of the lot that it serves; and
 - (iii) The property used for off-site parking under this subparagraph continues under common ownership or control.
- (i) Planning Board Call-Up: The planning board may call-up any final site review decision by the city manager pursuant to section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
- (j) Subdivisions: An approved site plan may be subdivided under chapter 9-12, "Subdivision," B.R.C. 1981. The approved site plan may substitute for a preliminary plat if it meets the requirements of section 9-12-6, "Application Requirements for a Preliminary Plat," B.R.C. 1981. As part of subdivision review, the city manager will consider conditions of the site plan approval and assure that they will be met within the future subdivision.
- (k) Minor Modifications to Approved Site Plans: Changes to the site plan, building plans and landscaping plans may be approved by the city manager without an amendment to the site plan if such changes are minor. All minor modifications shall be noted, signed and dated on the approved site plan. For proposed minor modifications of site review projects that are partially or totally developed, the applicant shall provide notice to any owners of property within the development that might be affected as determined by the city manager. In determining whether a proposed change is a minor modification, the following standards shall apply:
 - (1) Setbacks on the perimeter of a development cannot be varied by a minor modification to less than the minimum setbacks permitted by the underlying zoning district;
 - (2) The floor area of the development, including principal and accessory buildings, may be expanded by the cumulative total of no more than the greater of ten percent or two hundred square feet or, in the case of a building that exceeds the permitted height, no more than five percent, except that the portion of any building over thirty-five feet in height may not be expanded under the provisions of this paragraph;
 - (3) Commercial and industrial building envelopes may be moved or expanded by no more than the greater of ten feet, or ten percent of the length of the building, measured along the building's axis in the direction that the building is being moved;

- (4) Principal and accessory buildings not within an approved building envelope may be expanded or moved by no more than ten feet in any direction within the development in residential districts and lots abutting residential districts. The resulting setbacks shall not be less than the minimum allowed setback of the underlying zone;
 - (5) Dwelling unit type may not be changed;
 - (6) The portion of any building over the permitted height under section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, may not be expanded under the provisions of this subsection;
 - (7) No increase may be granted to an open space reduction or to a parking reduction in excess of that allowed in subsection 9-9-6(f), B.R.C. 1981; and
 - (8) No change may alter the basic intent of the site plan approval.
- (l) Minor Amendments to Approved Site Plans:
- (1) Standards: Changes to approved building location or additions to existing buildings which exceed the limits of a minor modification, may be considered through the minor amendment process, if the following standards are met:
 - (A) In a residential zone as set forth in section 9-5-2, "Zoning Districts," B.R.C. 1981, all approved dwelling units within the development phase have been completed;
 - (B) In residential zones, dwelling unit type is not changed;
 - (C) The required open space per dwelling unit requirement of the zone is met on the lot of the detached dwelling unit to be expanded; and
 - (D) The total open space per dwelling unit in the development is not reduced by more than ten percent of that required for the zone; or
 - (E) If the residential open space provided within the development or an approved phase of a development cannot be determined, the detached dwelling unit is not expanded by more than ten percent and there is no variation to the required setbacks for that lot;
 - (F) For a building in a nonresidential use module, the building coverage is not increased by more than twenty percent, the addition does not cause a reduction in required open space, and any additional required parking that is provided is substantially accommodated within the existing parking arrangement;
 - (G) The portion of any building over the permitted height under section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, is not increased;
 - (H) The proposed minor amendment does not require public infrastructure improvements or other off-site improvements.
 - (2) Amendments to the Site Review Approval Process: Applications for minor amendment shall be approved according to the procedures prescribed by this section for site review approval, except:
 - (A) If an applicant requests approval of a minor amendment to an approved site review, the city manager will determine which properties within the development would be affected by the proposed change. The manager will provide notice pursuant to subsection 9-4-3(b), B.R.C. 1981, of the proposed change to all property owners so determined to be affected, and to all property owners within a radius of six hundred feet of the subject property.
 - (B) Only the owners of the subject property shall be required to sign the application.
 - (C) The minor amendment shall be found to comply with the review criteria of subparagraphs (h)(2)(A), (h)(2)(C) and (h)(2)(F) of this section.

- (D) The minor amendment is found to be substantially consistent with the intent of the original approval, including conditions of approval, the intended design character and site arrangement of the development, and specific limitations on additions or total size of the building which were required to keep the building in general proportion to others in the surrounding area or minimize visual impacts.
- (E) The city manager may amend, waive or create a development agreement.

(m) Amendments to Approved Site Plans:

- (1) No proposal to modify, structurally enlarge or expand any approved site review, other than a minor modification or minor amendment, will be approved unless the site plan is amended and approved in accordance with the procedures prescribed by this section for approval of a site review, except for the notice and consent provisions of this subsection.
- (2) No proposal to modify, structurally enlarge or expand that portion of a building over the permitted height will be approved unless the site plan is amended and approved in accordance with the procedures prescribed by this section for approval of a building above the permitted height.
- (3) If an applicant requests approval of an amendment to an approved site plan, the city manager shall provide public notice pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981.
- (4) The owners of all property for which an amendment is requested shall sign the application.

Ordinance Nos. 5656 (1994); 5776 (1996); 5777 (1996); 5930 (1997); 5986 (1998); 6082 (1999); 6093 (1999); 7018 (1999); 7182 (2002); 7242 (2002); 7287 (2003); 7334 (2004); 7349 (2004); 7364 (2004); 7484 (2006); 7522 (2007); 7577 (2007); 7597 (2008); 7624 (2008); 7655 (2009); 7684 (2009); 7699 (2009)

9-2-15. Use Review.

- (a) Purpose: Each zoning district established in section 9-5-2, "Zoning Districts," B.R.C. 1981, is intended for a predominant use, but other uses designated in section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, may be allowed by use review if a particular use is demonstrated to be appropriate in the proposed location. Nonconforming uses may be upgraded or expanded under this section if the change would not adversely affect the traffic and the environment of the surrounding area or if the change would reduce the degree of the nonconformity or improve the appearance of the structure or site without increasing the degree of nonconformity. Nonstandard buildings may be changed, expanded or modified consistent with the criteria and standards set forth in this section and subsection 9-10-3(a), B.R.C. 1981.
- (b) Application Requirements: An application for an approval of a use review use may be filed by any person having a demonstrable interest in land for which a use review use is requested and shall be made on a form provided by the city manager that includes, without limitation:
 - (1) All materials and information required by subsection 9-2-6(a), B.R.C. 1981;
 - (2) A complete site plan showing the major details of the development, including, without limitation, location of buildings and structures, useable open space, off-street loading areas, service and refuse areas, means of ingress and egress, landscaping, screening and existing and proposed signs;
 - (3) A written statement indicating how the application meets the criteria for approval of subsection (e) of this section. Such written statement shall include information relating to the intensity of uses, amount of traffic generated, hours of operation and other information that is necessary to determine how the criteria of subsection (e) of this section will be met; and
 - (4) For industrial and commercial uses, the city manager may require the applicant to provide the following additional information and meet the following requirements:
 - (A) A pollution prevention audit;

- (B) Long-term plans for reducing air emissions and use of hazardous materials;
 - (C) Data on air emissions control processes and demonstration that appropriate emission control technology is being used;
 - (D) A description of plans for chemical handling, storage, chemical waste disposal and spill prevention;
 - (E) A description of water and energy conservation measures planned for the use; and
 - (F) Plans for recycling and minimizing waste.
- (c) Public Notification: After receiving an application the city manager shall provide public notification pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981, shall be provided.
- (d) Review and Recommendation:
- (1) The city manager will review applications for use review of a nonresidential use in residential zoning districts, attached and detached dwelling units or a residential use in a P district, and will submit a recommendation to the planning board for its final action pursuant to subsection 9-2-7(b), B.R.C. 1981.
 - (2) The city manager shall review and make decisions on all other use review applications pursuant to subsection 9-2-7(a), B.R.C. 1981.
 - (3) Reviews by either the city manager or planning board shall be pursuant to section 9-2-7, "Development Review Action," B.R.C. 1981.
- (e) Criteria for Review: No use review application will be approved unless the approving agency finds all of the following:
- (1) Consistency With Zoning and Nonconformity: The use is consistent with the purpose of the zoning district as set forth in section 9-5-2, "Zoning Districts," B.R.C. 1981, except in the case of a nonconforming use;
 - (2) Rationale: The use either:
 - (A) Provides direct service or convenience to or reduces adverse impacts to the surrounding uses or neighborhood;
 - (B) Provides a compatible transition between higher intensity and lower intensity uses;
 - (C) Is necessary to foster a specific city policy, as expressed in the Boulder Valley Comprehensive Plan, including, without limitation, historic preservation, moderate income housing, residential and nonresidential mixed uses in appropriate locations and group living arrangements for special populations; or
 - (D) Is an existing legal nonconforming use or a change thereto that is permitted under subsection (f) of this section;
 - (3) Compatibility: The location, size, design and operating characteristics of the proposed development or change to an existing development are such that the use will be reasonably compatible with and have minimal negative impact on the use of nearby properties or for residential uses in industrial zoning districts, the proposed development reasonably mitigates the potential negative impacts from nearby properties;
 - (4) Infrastructure: As compared to development permitted under section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, in the zone, or as compared to the existing level of impact of a nonconforming use, the proposed development will not significantly adversely affect the infrastructure of the surrounding area, including, without limitation, water, wastewater and storm drainage utilities and streets;
 - (5) Character of Area: The use will not change the predominant character of the surrounding area; and

- (6) Conversion of Dwelling Units to Nonresidential Uses: There shall be a presumption against approving the conversion of dwelling units in the residential zoning districts to nonresidential uses that are allowed pursuant to a use review, or through the change of one nonconforming use to another nonconforming use. The presumption against such a conversion may be overcome by a finding that the use to be approved serves another compelling social, human services, governmental or recreational need in the community including, without limitation, a use for a daycare center, park, religious assembly, social service use, benevolent organization use, art or craft studio space, museum or an educational use.
- (f) Additional Criteria for Modifications to Nonconforming Uses: No application for a change to a nonconforming use shall be granted unless all of the following criteria are met in addition to the criteria set forth above:
- (1) Reasonable Measures Required: The applicant has undertaken all reasonable measures to reduce or alleviate the effects of the nonconformity upon the surrounding area, including, without limitation, objectionable conditions, glare, adverse visual impacts, noise pollution, air emissions, vehicular traffic, storage of equipment, materials and refuse, and on-street parking, so that the change will not adversely affect the surrounding area.
 - (2) Reduction in Nonconformity/Improvement of Appearance: The proposed change or expansion will either reduce the degree of nonconformity of the use or improve the physical appearance of the structure or the site without increasing the degree of nonconformity.
 - (3) Compliance With This Title/Exceptions: The proposed change in use complies with all of the requirements of this title:
 - (A) Except for a change of a nonconforming use to another nonconforming use; and
 - (B) Unless a variance to the setback requirements has been granted pursuant to section 9-2-3, "Variances and Interpretations," B.R.C. 1981, or the setback has been varied through the application of the requirements of section 9-2-14, "Site Review," B.R.C. 1981.
 - (4) Cannot Reasonably Be Made Conforming: The existing building or lot cannot reasonably be utilized or made to conform to the requirements of chapter 9-6, "Use Standards," 9-7, "Form and Bulk Standards," 9-8, "Intensity Standards," or 9-9, "Development Standards," B.R.C. 1981.
 - (5) No Increase in Floor Area Over Ten Percent: The change or expansion will not result in a cumulative increase in floor area of more than ten percent of the existing floor area.
 - (6) Approving Authority May Grant Zoning Variances: The approving authority may grant the variances permitted by subsection 9-2-3(d), B.R.C. 1981, upon finding that the criteria set forth in subsection 9-2-3(h), B.R.C. 1981, have been met.
- (g) Conditions of Approval: The approving agency may impose modifications or conditions on the use review approval in order to assure compliance with the criteria set forth in subsections (e) and (f) of this section. In the case of a nonconforming use, conditions may also be imposed to reduce nonconformity and to improve site design.
- (h) Amendments and Minor Modifications: No person shall expand or modify any approved use review use. However, the approved site plan may be modified as provided in subsection 9-2-14(k), B.R.C. 1981, if it does not expand the use, any changes conform to section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981; the impact on other uses of the approved use review is not changed; and the change complies with all other provisions of this title and any other ordinance of the city.
- (i) Expiration: Any use review approval or previously approved special review which is discontinued for at least one year shall expire. The city manager, upon a finding of good cause, may grant an extension not to exceed six months from the original date of expiration.
- (j) Appeals and Call-Ups:
- (1) The applicant or any interested person may appeal the city manager's decision pursuant to section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

- (2) A member of the planning board may call-up the city manager's decision pursuant to section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.
- (3) The city council may call-up any planning board decision pursuant to section 9-4-4, "Appeals, Call-Ups and Public Hearings," B.R.C. 1981.

Ordinance Nos. 6063 (1999); 7117 (2001); 7182 (2002); 7334 (2004); 7336 (2004); 7522 (2007); 7568 (2007)

9-2-16. Annexation Requirements.

- (a) Compliance With State Statutes and Boulder Valley Comprehensive Plan: All annexations to the city shall meet the requirements of § 31-12-101 et seq., C.R.S., and shall be consistent with the Boulder Valley Comprehensive Plan and other ordinances of the city.
- (b) Conditions: No annexation of land to the city shall create an unreasonable burden on the physical, social, economic or environmental resources of the city. The city may condition the annexation of land upon such terms and conditions as are reasonably necessary to ensure that this requirement is met. Such terms and conditions may include, without limitation, installation of public facilities or improvements, dedication of land for public improvements, payment of fees incidental to annexation, or covenants governing future land uses. In annexations of hillside areas, the city council may impose conditions designed to mitigate the effects of development on lands containing slopes of fifteen percent or greater. In annexations of more than ten acres, the applicant shall provide the information necessary to enable the city to prepare an annexation impact report when required by § 31-12-108.5, C.R.S.
- (c) Annexation Agreement: Owners of land petitioning the city for annexation of their property shall enter into an annexation agreement with the city stating any terms and conditions imposed on said property, prior to the first reading of the annexation ordinance. Upon annexation, such agreements shall be recorded to provide notice to future purchasers of said property. Where the annexation agreement provides that the city may install public improvements and that the owners of the annexed property will pay for such improvements, the costs of such improvements constitute an assessment against the annexed property as they accrue. If, after notice, any such assessment is not paid when due, the city manager shall certify the amount of the principal, interest and penalties due and unpaid, together with ten percent of the delinquent amount for costs of collection to the county treasurer to be assessed and collected in the same manner as general taxes are assessed and collected as provided by section 2-2-12, "City Manager May Certify Taxes, Charges and Assessments to County Treasurer for Collection," B.R.C. 1981.

9-2-17. Zoning of Annexed Land.

- (a) Generally: Zoning of annexed land or land in the process of annexation shall be considered an initial zoning and shall be consistent with the goals and land use designations of the Boulder Valley Comprehensive Plan.
- (b) Public Notification: When zoning of land is proposed in the process of annexation, the city manager will provide notice pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981.
- (c) Sequence of Events: An ordinance proposing zoning of land to be annexed shall not be finally adopted by the city council before the date of final adoption of the annexation ordinance, but the annexation ordinance may include the zoning ordinance for the annexed property.
- (d) Placement on Zoning Map: Any land annexed shall be zoned and placed upon the zoning map within ninety days after the effective date of the annexation ordinance, notwithstanding any judicial appeal of the annexation. The city shall not issue any building or occupancy permit until the annexed property becomes a part of the zoning map.
- (e) Nonconformance: A lot annexed and zoned that does not meet the minimum lot area or open space per dwelling unit requirements of section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981, may be used notwithstanding such requirements in accordance with this code or any ordinance of the city, if such lot was a buildable lot under Boulder County jurisdiction prior to annexation.

- (f) Slopes: Notwithstanding the provisions of subsection (a) of this section, any land proposed for annexation that contains slopes at or exceeding fifteen percent shall not be zoned into a classification which would allow development inconsistent with policies 4.13, 4.16 and 4.17 of the Boulder Valley Comprehensive Plan.

9-2-18. Rezoning.

- (a) Initiation: An amendment to rezone any area of the city may be initiated by the city council, the planning board or a person with an ownership interest in property proposed for rezoning.
- (b) Application Requirements: A property owner applicant shall pay the filing fee prescribed by section 4-20-43, "Development Application Fees," B.R.C. 1981, and file an application for approval on a form provided by the city manager that shall include, without limitation:
 - (1) A list of the names and addresses of all owners of all property for which the rezoning is requested and for all property within three hundred feet of the boundaries of the area for which the rezoning is requested;
 - (2) An improvement survey;
 - (3) The legal description of all property included in the rezoning; and
 - (4) A written statement addressing the criteria for approval in subsections (e) and (f) of this section.
- (c) Public Notification: When an amendment to the zoning map is proposed, except an amendment incidental to a general or comprehensive revision of the map, the city manager will provide notice pursuant to section 9-4-3, "Public Notice Requirements," B.R.C. 1981.
- (d) Hearing: The planning board shall hear a request for rezoning at a public hearing and shall make a recommendation for approval or denial to the city council. After considering the planning board's recommendation, the city council shall make the final determination on a request for rezoning at a public hearing held in accordance with the adopted Council Procedure of title 2, "Government Organization," (Appendix) B.R.C. 1981.
- (e) Criteria: The city's zoning is the result of a detailed and comprehensive appraisal of the city's present and future land use allocation needs. In order to establish and maintain sound, stable and desirable development within the city, rezoning of land is to be discouraged and allowed only under the limited circumstances herein described. Therefore, the city council shall grant a rezoning application only if the proposed rezoning is consistent with the policies and goals of the Boulder Valley Comprehensive Plan, and, for an application not incidental to a general revision of the zoning map, meets one of the following criteria:
 - (1) The applicant demonstrates by clear and convincing evidence that the proposed rezoning is necessary to come into compliance with the Boulder Valley Comprehensive Plan map;
 - (2) The existing zoning of the land was the result of a clerical error;
 - (3) The existing zoning of the land was based on a mistake of fact;
 - (4) The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, including, but not limited to, steep slopes, floodplain, unstable soils and inadequate drainage;
 - (5) The land or its surrounding environs has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area or to recognize the changed character of the area; or
 - (6) The proposed rezoning is necessary in order to provide land for a community need that was not anticipated at the time of adoption of the Boulder Valley Comprehensive Plan.
- (f) Additional Criteria for the MU-4, RH-3, RH-6 and RH-7 zoning districts. In the MU-4, RH-3, RH-6 and RH-7 zoning districts, for an application not incidental to a general revision of the zoning map, the city council shall also find that the rezoning meets the following criteria, in addition to subsection (e) above:

- (1) Transportation. The land proposed for rezoning is:
 - (A) Subject to a right of way plan for the immediate area;
 - (B) The right of way plan is capable of being implemented to the extent necessary to serve the property and to connect to the arterial street network through collector and local streets, alleys, multi-use paths and sidewalks concurrent with redevelopment; and
 - (C) The public infrastructure can be paid for by way of redevelopment under the provisions of section 9-9-8, "Reservations, Dedication and Improvement of Rights-of-Way," B.R.C. 1981, without contribution of funds by the city, or that there is a plan for financing and construction that has been approved by city council through the capital improvement program and the city council anticipates appropriating such funds within two years of the rezoning.
- (2) Water, Wastewater and Stormwater Management and Flood Control. The city council shall determine whether there are adequate public facilities available for the rezoning area. The city council shall determine whether there are adequate water, wastewater and stormwater management and flood control facilities by considering the following:
 - (A) Whether the infrastructure meets the requirements of the City of Boulder Design and Construction Standards, adopted city master plans, the Boulder Valley Comprehensive Plan, subcommunity plans and area plans.
 - (B) Whether the land proposed to be rezoned has adequate water, wastewater and stormwater management and flood control public facilities that are:
 - (i) In place at the time of the rezoning request;
 - (ii) Under construction and will be available at the time that the impacts of the proposed development will occur; or
 - (iii) Guaranteed by an enforceable development agreement ensuring that the public facilities will be in place at the time that the impacts of the proposed development will occur.
 - (C) Whether the property owner has, or will in the future, paid its fair share of the infrastructure needs of the surrounding area, as described in city master plans, subcommunity plans or area plans.
- (3) Travel Demand Management Services. In the MU-4, RH-6 and RH-7 zoning districts, the property subject to the rezoning is located within an area that has parking and transportation related service provided by a general improvement district or an equivalent organization or otherwise meets the trip generation requirements of section 9-9-22, "Trip Generation Requirements for the MU-4, RH-6 and RH-7 Zoning Districts," B.R.C. 1981.
- (g) Solar Access Areas: A request for rezoning may seek to amend a solar access area, as defined in subsection 9-9-17(c), B.R.C. 1981, if all applicable requirements of subsection 9-9-17(e), B.R.C. 1981, are met.

Ordinance No. 7655 (2009)

9-2-19. Creation of Vested Rights.

- (a) Site Specific Development Plan: For the purpose of this title and article 68 of title 24, C.R.S., as amended, the term *site specific development plan* means any project which requires a use review or site review. For the purposes of § 24-68-102.5, C.R.S., an application shall be deemed submitted upon the application for a use review, pursuant to section 9-2-15, "Use Review," B.R.C. 1981, or a site review, pursuant to section 9-2-14, "Site Review," B.R.C. 1981.
- (b) Establishing a Vested Property Right: In order to establish a vested property right as defined in § 24-68-102(5), C.R.S., for a site specific development plan, the applicant shall meet all of the following requirements:

- (1) **Public Hearing Required:** For those site specific development plan approvals not requiring a public hearing before the planning board, the applicant shall request, in writing, that its application be referred to the planning board for hearing under the city manager's discretionary power pursuant to paragraph 9-2-7(b)(1), B.R.C. 1981. The city manager will refer any such requested application to the planning board for public hearing pursuant to subsection 9-4-4(d), B.R.C. 1981.
 - (2) **Elements of Plans to Be Vested:** The applicant shall state clearly in its application those specific elements of the plan in which the applicant seeks to create vested rights, including, without limitation, type of use, density, building height, building footprint location and architecture.
 - (3) **Notice of Approval:** If a site specific development plan is approved by the planning board, the applicant shall cause a notice advising the general public of the site specific development plan approval and the creation of a vested property right to be published in a newspaper of general circulation no later than fourteen days following final approval. Further, the applicant shall provide the city manager with the newspaper's official notice of said publication no later than ten days following the date of publication.
 - (4) **Compliance With Conditions of Approval:** The applicant shall meet and maintain all conditions of final approval for the site specific development plan.
- (c) **Void:** An applicant's failure to meet all of the above requirements renders the site specific development plan approval void and results in the waiver of the applicant's right to create a vested property right pursuant to § 24-68-103(1), C.R.S.
 - (d) **Applicability of Ordinances That Are General in Nature:** The establishment of a vested property right shall not preclude the application of city ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation including, without limitation, the provisions of chapter 9-3, "Overlay Districts," section 9-9-17, "Solar Access," chapters 9-12, "Subdivision," 9-13, "Inclusionary Zoning," and 9-14, "Residential Growth Management System," B.R.C. 1981, and the city's building, fire, plumbing, electrical and mechanical codes. Approval of a site specific development plan shall not constitute an exemption from or waiver of any other provisions of this code pertaining to the development and use of property.
 - (e) **City Council Approval:** The three-year vesting period for site specific development plan approvals shall not be extended to a longer time period, including by amendments to such approvals, unless such extensions are included in the development agreement and adopted by ordinance of the city council.

Ordinance Nos. 5778 (1996); 7079 (2000)

9-2-20. Required Improvements and Financial Guarantees.

- (a) **Fees:** If public improvements or private improvements in lieu of public improvements are included within any application governed by this title, or are required as a condition of approval of the application, the applicant shall pay, in addition to any other fees, the public improvement inspection fees specified in section 4-20-43, "Development Application Fees," B.R.C. 1981. The applicant shall also provide the financial guarantees for public or other improvements required by sections 9-12-13, "Subdivider Financial Guarantees" and 9-12-14, "Public Improvement Warranty," B.R.C. 1981, as if the applicant were a subdivider. These fees and guarantees are due after final approval of the application by the city and are a condition of the approval.
- (b) **Security:** If at the time of a request for a certificate of occupancy or certificate of completion all work required by a building permit or development agreement is not completed, the developer shall provide financial security in the form of an escrow of funds with the city, a letter of credit or other financial guarantee that is acceptable to the city attorney to secure the installation or completion of improvements required by this title or the terms of a development agreement, including, without limitation, landscaping, building and site treatment and public improvements.
- (c) **Amount and Term:** The city manager shall establish the amount and term of the financial guarantee.
- (d) **Time Frame:** The developer shall install or complete the improvements within the time specified in the development agreement.

- (e) Annual Review: The city manager shall review the financial guarantee annually to assure that it meets the full current cost of installing or completing the improvements that it guarantees and may require the developer to augment the guarantee to meet such costs.
- (f) Collection: If the improvements are not completed within the required time, the city manager may cause them to be completed and collect against the financial guarantee, or, if the guarantee is exhausted, against the developer for their full cost of completion.
- (g) In Addition: The requirements of this section are in addition to any requirements for financial guarantees under any other provision of this code.