



# Use Review

## Attachment to Land Use Review Application

### HOW TO USE THIS ATTACHMENT

**Process Information** contains general information about the review type and the process used to review your application. Keep this section as a reference while your application proceeds through the review process.

**Application Requirements and Checklist** contains material that **you are required to fill out and submit with your application**. The Application Submittal Requirements Checklist describes the minimum information to be included in your application. Your application will not be accepted for review unless all the information is present.

Use the information in this attachment to prepare your application. The information in this, and related, attachments **identify the criteria that will be used to evaluate your application**. Your application should **focus on demonstrating how your proposal complies with all the criteria**. Effective use of this attachment can help you avoid costly revisions to your application later.

### Process Information

#### USE REVIEW SUMMARY

Each of the city's zoning districts is intended for a predominant use, such as single-family residences or commercial businesses. Other uses (as designated in [Section 9-6-1](#), B.R.C. 1981) may be allowed if it is demonstrated that a particular use is appropriate at a proposed location. Use review is the discretionary review process to determine if the impacts of a proposed use on the surrounding area are minimized and acceptable. In addition, use review approval is required to determine whether certain changes to non-conforming uses are acceptable.

Applications for reviews are submitted to the Planning and Development Services Center and are reviewed through the Land Use Review process (see attached Land Use Review Process Summary). This review process takes approximately three to four months to complete and includes public notification. Use review uses must be found to meet the applicable review criteria listed in [Section 9-2-15](#), B.R.C. 1981. A list of the use review criteria is attached.

Use review application for nonresidential uses in a residential or public zoning district require approval by the Planning Board. All other use review applications are decided by the Planning and Development Services Department. Planning and Development Department decisions on use reviews are final after a 14-day "call-up" period. These decisions may be called-up by the Planning Board for a final decision or appealed to the Planning Board by the applicant or any interested person. All use review decisions are issued in a document called "Notice of Disposition." The disposition specifies approval, approval with conditions (and lists those conditions), or denial.

Uses approved through use review must be established within three years, after which they expire if they have not been implemented.

Also, any use review use which is discontinued for more than three years or replaced by another use expires.

Use review approvals are specific to the description of the use and the operating characteristics that the applicant details in the written statement. Any future change in characteristics may require a new use review application if the characteristics are inconsistent with the written statement or the conditions of approval.

## USE REVIEW CRITERIA

To approve a use review application, the approving agency must find that the application meets the applicable use review criteria. These criteria are found in [Section 9-2-15\(e\) and \(f\)](#), B.R.C. 1981 and are listed below. An application for use review must include a written statement which addresses how the proposal meets the applicable criteria.

**Section (e) below applies to all use review applications.**

**Use review applications for non-conforming uses must meet the criteria listed in both sections (e) and (f) below.**

**(e) Criteria for Review:** No use review application will be approved unless the approving agency finds all 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 or community, cultural, and educational 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 or the character established by adopted design guidelines or plans for the 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 studio or workshop, 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 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 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. This paragraph (4) shall not apply to reconstruction or restoration permitted pursuant to Paragraph [9-10-3\(c\)\(4\)](#), B.R.C. 1981, with respect to density and other pre-existing nonconformities of the use or nonstandard features of the building.
- (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.

## LAND USE REVIEW

Planning & Development Services coordinates development reviews through a Land Use Review process. The various review types are listed on the [Land Use Review Application Form](#) and include annexation, site review, use review, form-based code review, and preliminary plat for subdivision. The Land Use Review process is summarized below.

## PRE-APPLICATION

If you are considering filing a development review application, a pre-application review may be beneficial. An interdepartmental city staff team is available to answer questions about applicable regulations, application requirements, and how they may affect a project on a particular site. Many pre-application questions can be answered without need for a meeting. Occasionally, staff will determine that a meeting will be the most effective approach. In most cases, pre-application review is optional; however, there are certain types of projects and reviews for which city staff recommends a pre-application review. A pre-application review and meeting are required before an application for a form-based code review is filed. Please refer to the [Pre-Application Review](#) handout for more information.

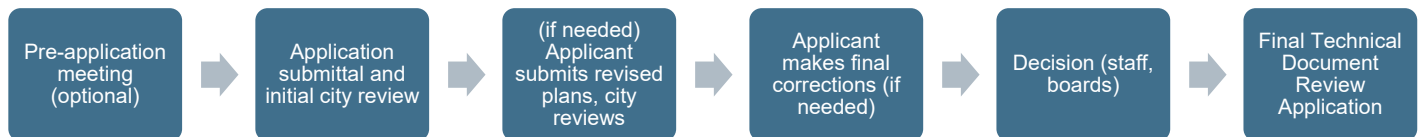
## APPLICATION

Application forms are due by 10 a.m. on the business day prior to the application deadline to be considered for review on the next available track. Remaining application materials and fees are due by 10 a.m. on the application deadline. Track calendars are available on the [Development Review and Plan Case Applications webpage](#), refer to

the LUR Calendar for this application type. Please review the [Development Review Application Guide](#) for instructions on how to submit.

## REVIEW SCHEDULE

Each application is assigned to a "track" based on availability of staff resources to conduct the review. The track assigned determines the land use review schedule which the project will follow and helps applicants gauge the time needed to complete the review process. A generalized diagram of the land use review process appears below. Once a review track has been assigned, the city commits to this time schedule, assuming the applicant meets appropriate deadlines. In addition, the schedule may be accelerated or a project may be placed on a later track based on the applicant's response time, the number of revisions, and staff, Planning Board or City Council work volume.



## REVIEWERS

The land use review process includes review by the Development Review Committee (DRC) which is made up of representatives from city departments and other referral agencies. Each representative provides review comments about how the application complies with code and policy requirements within their area of responsibility. When the interests of individual departments diverge, developing consensus is the responsibility of the Policy Resolution Group (PRG), made up of supervisors of Planning and Development Services and the City Attorney's Office.

## INITIAL REVIEW AND REVIEW OF REVISED PLANS

Public notice, by mail and posting a sign on the property, occurs during the initial review. The applicant is responsible for posting of a sign that is issued by the Planning and Development Services Center.

During a project's initial review, a summary of the city's findings, a list of requirements and informational comments are identified and given to the applicant in the form of Development Review Results and Comments.

Projects are reviewed for conformance with development standards and requirements and some are evaluated against qualitative design criteria. City comments and/or a decision are issued approximately three weeks after the start of the assigned review track.

Issuance of the Development Review Results and Comments concludes the services covered by the initial application fee. Note that each additional review after the third review may require additional fees based on the application type.

The case manager is available to meet with the applicant to review and discuss the city comments. After considering the issues identified in the initial review, the applicant is given the opportunity to propose revisions. Revisions must be submitted, or a written request for continuance received within 60 days from the date of city comments; otherwise, staff will either take action on the latest plans on file or the application is voided. Revised applications are evaluated by DRC staff members and review of revision comments are issued by the case manager within three weeks after the start of the assigned review track.

## DECISIONS/CALL-UPS/APPEALS

Depending on the potential impact, Boulder's land use regulations assign approval authority to either city staff, Planning Board, or both Planning Board and City Council. After the completion of staff review, Planning & Development Services either issues a staff decision or refers the project to the Planning Board or City Council. For site review, use review, form-based code review and subdivision (at final plat review), a "Notice of Disposition" is issued. This is a one or two-page document stating the decision and listing any conditions of approval. These decisions are final after a 14-day "call-up" period. Staff-level decisions may be called up by the Planning Board for a

final decision or appealed to the Planning Board by the applicant or any interested person. Planning Board and City Council decisions are also issued as Dispositions.

Several types of Land Use Review applications do not have dispositions issued and follow a slightly different review process at the time of the project decision. For example, out-of-city utility permits are approved by city staff and subject to a call-up by the City Council. Annexations follow a state law approval process, including a recommendation by the Planning Board and approval of an ordinance after two readings by City Council. For additional information on the steps towards a final decision for a particular application type, please refer to the application attachment for the review type in the [Applications and Forms Database](#) or contact Planning and Development Services.

## **EXPIRATION OF APPROVAL FOR SITE, USE, AND FORM-BASED CODE APPROVALS**

For site, use, and form-based code reviews, the applicant must sign a development agreement and file a final approved plan (containing the disposition of the approval) within 90 days. If this is not complied with the approval expires. In some cases, a waiver of this expiration timeline can be requested.

The applicant must also begin and substantially complete the approved project within three years from the date of final approval (or as modified by a specific development schedule). If a project is not completed within three years, or according to the project's approved development schedule, the approval expires. If the project is not completed within this time frame, the applicant may request administrative extension of the development approval. Up to two six-month extensions can be granted by staff. After that, extensions can only be granted by the Planning Board, after a public hearing, and upon a showing by the applicant that reasonable diligence has been exercised to complete the project.

## **TECHNICAL DOCUMENT AND PERMIT REVIEW**

### **TECHNICAL DOCUMENT REVIEW AND PERMIT REVIEW**

The conditions of approval for most Land Use Review applications will generally require several documents to be prepared, filed and recorded depending on the review type. These may include final plans (architecture, site, landscape), a subdivision final plat and agreement, a development agreement, engineering plans, and dedications of easements or rights-of-way.

For city review and approval of these technical and final documents, the applicant files a Technical Document Review application. The Technical Document Review process (TEC DOC) is similar to Land Use Review (same application deadlines, but no hearings are involved).

### **PERMIT REVIEW**

After the required technical documents have been approved, the applicant may file a building permit application for any new construction. Information on building permits is available on the [Building Permits and Inspections webpage](#). The applicant may also need to obtain other permits or approvals to complete the project, including growth management allocations and floodplain development permits.

# Application Requirements and Checklist

This section includes the following documents, to be filled out completely and submitted with your application, as specified on the [Land Use Review application form](#) and on the Use Review checklist.

- Use Review Checklist
- Use Review Written Statement form
- [Sign Posting Requirements Acknowledgement Form](#)
- [Land Use Review Project Fact Sheet](#)

## USE REVIEW APPLICATION REQUIREMENTS

A use review application must meet the basic requirements listed in the city's land use regulations (found in Section [9-2-6\(a\)](#) and [9-2-15\(b\)](#), B.R.C. 1981). These requirements are detailed below and are listed on the Land Use Review Application Form. An application fee, as specified on the application form, is also required. In addition, an applicant may submit any additional materials which may be appropriate to the review.

All required materials must be included in order for an application to be accepted by Planning and Development Services staff. Incomplete applications will not be accepted and will be returned to the applicant.

Complete the checklist below, marking those items as they are included in your application submittal, and sign at the end. The checklist is intended to assist the applicant in collecting all of the required materials and to assist the Planning and Development Services Center in determining that all of the application requirements are met.

Application form(s), required application materials and fees are due by 10 a.m. on the application deadline. Please review the [Online Development Review Application Guide](#) for instructions on how to submit.

## USE REVIEW CHECKLIST

- A complete [Land Use Review Application Form](#), including signatures by, or the written consent of, the owners of all property to be included in the development.
- A completed [Sign Posting Acknowledgment form](#).
- An improvement survey or improvement location certificate by a registered surveyor, of the subject property.
- The legal description of the subject property.
- A vicinity map (8 ½"x11") indicating the site and names of adjacent streets. If the site is less than one acre, the map must be drawn at a minimum scale of 1":200'.
- Written statement which describes the proposal and addresses how the application meets the applicable criteria for approval (found in Sections 9-2-15(e) and 9-2-15(f), B.R.C. 1981 and attached). This 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 use review criteria are met. This may include specifics such as number of students and grade levels for a school, number of children and their ages for a day care center, or the operating characteristics for a business. Please use the attached written statement format to help in preparing a written statement for your application.
- Site development plan(s), drawn to a standard engineering scale, showing the major details of the development, including without limitation the location of buildings and structures, useable open space, off-street parking areas, off-street loading areas, services and refuse areas, means of ingress and egress, landscaping, screening, and existing and proposed signs.

- Architectural floor plans and elevations, drawn to a standard architectural scale of the existing structure(s) and any proposed additions or renovations, including the maximum height of all buildings and building elevations showing exterior colors and materials.
- A completed [vested property rights option form](#).
- A completed [Land Use Review Project Fact Sheet](#).
- Current title insurance commitment or attorney memorandum based on an abstract of title, current to within 30 days.
- The use review fee, as stated on the Land Use Review Application Form.
- [Preliminary Determination of Inclusionary Zoning Compliance form](#). Only applies to projects that include residential and mixed uses. See the Inclusionary Zoning handout for specific requirements and form or go online to [www.boulderadffordablehomes.com](http://www.boulderadffordablehomes.com)
- Any other information that the applicant wishes to submit.

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(signature of person who filled out checklist)

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(print name)

## USE REVIEW WRITTEN STATEMENT

Submit with your application.

### ► KEY INFORMATION

Please provide the following information. Please type or print complete, detailed responses. Please also select use types from the Use Table in [Section 9-6-1](#) of the Boulder Revised Code.

EXISTING

Use of building and land:

Hours of operation:

Number of employees (indicate full and part time)

Estimated number of trips to site per day (indicate mode of transportation used to reach the site)

PROPOSED

Use of building and land:

Hours of operation:

Number of employees (indicate full and part time)

Estimated number of trips to site per day (indicate mode of transportation used to reach the site)



Uses on adjacent/surrounding properties:

Narrative: In the space provided below or in an attached letter, please type or print a narrative describing the proposal in specific detail. Only one written narrative is necessary per development project.

► **USE REVIEW CRITERIA**

In the space provided below, please indicate how the proposal will meet the Use Review criteria.

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 non-residential 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 or the character established by adopted design guidelines or plans for the area; and

**6. Conversion of Dwelling Units to Non-Residential 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.

► **ADDITIONAL CRITERIA FOR MODIFICATION TO NON-CONFORMING USES**

A non-conforming use is described as any use of a building or use of a lot that is not permitted under [Section 9-6-1](#), “Schedule of Permitted Uses of Land,” B.R.C. 1981, but excludes a conforming use in a non-standard building or on a non-standard lot; a legal existing use that has been approved as a conditional use or a use review use, or a use approved pursuant to a valid special review or a use review approval. A non-conforming use also includes an otherwise conforming use, except a single dwelling unit on a lot, that does not meet the parking and residential density requirements, including, without limitation, the requirements for minimum lot area per dwelling unit; useable open space per dwelling unit, or required off-street parking requirements for [Section 9-6-1](#), “Schedule of Bulk Requirements,” B.R.C. 1981.

**1. Reasonable Measures Required:** The applicant has undertaken all reasonable measures to reduce or alleviate the effects of the non-conformity upon the surrounding area, including without limitation objectionable conditions, glare, visual pollution, 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 Non-Conformity / Improvement of Appearance:** The proposed change or expansion will either reduce the degree of non-conformity of the use or improve the physical appearance of the structure or the site without increasing the degree of non-conformity;

**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 non-conforming use to another non-conforming use; and

(B) Unless a variance to the setback requirements has been granted pursuant to [Section 9-2-3](#), “Variances”, 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; and

**5. No Increase in Floor Area Over Ten Percent:** The change or expansion will not result in an 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.