



**CITY OF BOULDER  
PLANNING BOARD MEETING AGENDA**

**DATE:** August 27<sup>th</sup>, 2024

**TIME:** 6:30 p.m.

**PLACE:** Virtual Meeting

---

**1. CALL TO ORDER**

**2. PUBLIC PARTICIPATION**

**3. APPROVAL OF MINUTES**

A. The 06/18/2024 Planning Board Minutes are scheduled for approval.

**4. DISCUSSION OF DISPOSITIONS, PLANNING BOARD CALL-UPS/CONTINUATIONS**

**5. PUBLIC HEARING ITEMS**

A. **AGENDA TITLE:** Public hearing and consideration of the following related to an area of land at 2801 Jay Rd.:

1. Boulder Valley Comprehensive Plan (BVCP) land use map designation change from Public (PUB) to Mixed Density Residential (MXR) (LUR2023-00019); and

2. Recommendation on a petition to annex an approximately 4.86-acre area of land at 2801 Jay Rd., including adjacent right-of-way, with an initial zoning designation of Residential – Mixed 2 (RMX-2) (LUR2023-00018).

**6. MATTERS FROM THE PLANNING BOARD, PLANNING DIRECTOR, AND CITY ATTORNEY**

**7. DEBRIEF MEETING/CALENDAR CHECK**

**8. ADJOURNMENT**

For more information call (303) 441-1880. Board packets are available after 4 p.m. Friday prior to the meeting, online at [www.bouldercolorado.gov](http://www.bouldercolorado.gov).  
\*\*\* SEE REVERSED SIDE FOR MEETING GUIDELINES \*\*\*

**CITY OF BOULDER PLANNING BOARD  
VIRTUAL MEETING GUIDELINES**

**CALL TO ORDER**

The Board must have a quorum (four members present) before the meeting can be called to order.

**AGENDA**

The Board may rearrange the order of the agenda or delete items for good cause. The Board may not add items requiring public notice.

**PUBLIC PARTICIPATION**

The public is welcome to address the Board (3 minutes\* maximum per speaker) during the Public Participation portion of the meeting regarding any item not scheduled for a public hearing. The only items scheduled for a public hearing are those listed under the category PUBLIC HEARING ITEMS on the Agenda. **Any exhibits introduced into the record must be provided to the Board Secretary for distribution to the Board and admission into the record via email 24 hours prior to the scheduled meeting time.**

**DISCUSSION AND STUDY SESSION ITEMS**

Discussion and study session items do not require motions of approval or recommendation.

**PUBLIC HEARING ITEMS**

A Public Hearing item requires a motion and a vote. The general format for hearing of an action item is as follows:

**1. Presentations**

- Staff presentation (10 minutes maximum\*).
- Applicant presentation (15-minute maximum\*). Any exhibits introduced into the record at this time must be provided to the Board Secretary for distribution to the Board and admission into the record.
- Planning Board questioning of staff or applicant for information only.

**2. Public Hearing**

Each speaker will be allowed an oral presentation (3 minutes maximum\*). The pooling of time will not be allowed.

- Speakers should introduce themselves, giving name and address. If officially representing a group, homeowners' association, etc., please state that for the record as well.
- The board requests that, prior to offering testimony, the speaker disclose any financial or business relationship with the applicant, the project, or neighbors. This includes any paid compensation. It would also be helpful if the speaker disclosed any membership or affiliation that would affect their testimony.
- Speakers are requested not to repeat items addressed by previous speakers other than to express points of agreement or disagreement. Refrain from reading long documents and summarize comments wherever possible. Long documents may be submitted via email 24 hours prior to the scheduled meeting time and will become a part of the official record.
- Speakers should address the Land Use Regulation criteria and, if possible, reference the rules that the Board uses to decide a case.
- Any exhibits introduced into the record at the hearing must be emailed to the Secretary for distribution to the Board and admission into the record **24 hours prior to the meeting.**
- Citizens can email correspondence to the Planning Board and staff at [boulderplanningboard@bouldercolorado.gov](mailto:boulderplanningboard@bouldercolorado.gov), up to **24 hours prior to the Planning Board meeting**, to be included as a part of the record.
- Applicants under Title 9, B.R.C. 1981, will be provided the opportunity to speak for up to 3 minutes prior to the close of the public hearing. The board chair may allow additional time.

**3. Board Action**

- Board motion. Motions may take any number of forms. With regard to a specific development proposal, the motion generally is to either approve the project (with or without conditions), to deny it, or to continue the matter to a date certain (generally in order to obtain additional information).
- Board discussion. This is undertaken entirely by members of the Board. The applicant, members of the public or city staff participate only if called upon by the Chair.
- Board action (the vote). An affirmative vote of at least four members of the Board is required to pass a motion approving any action. If the vote taken results in either a tie, a vote of three to two, or a vote of three to one in favor of approval, the applicant shall be automatically allowed a rehearing upon requesting the same in writing within seven days.

**MATTERS FROM THE PLANNING BOARD, DIRECTOR, AND CITY ATTORNEY**

Any Planning Board member, the Planning Director, or the City Attorney may introduce before the Board matters which are not included in the formal agenda.

**ADJOURNMENT**

The Board's goal is that regular meetings adjourn by 10:30 p.m. and that study sessions adjourn by 10:00 p.m. Agenda items will not be commenced after 10:00 p.m. except by majority vote of Board members present.

**VIRTUAL MEETINGS**

For Virtual Meeting Guidelines, refer to <https://bouldercolorado.gov/government/board-commission/planning-board> page for the approved Planning Board's Rules for Virtual Meetings.

\*The Chair may lengthen or shorten the time allotted as appropriate. If the allotted time is exceeded, the Chair may request that the speaker conclude his or her comments

**CITY OF BOULDER**  
**PLANNING BOARD ACTION MINUTES**  
**June 18, 2024**  
**Virtual Meeting**

A permanent set of these minutes and a tape recording (maintained for a period of seven years) are retained in Central Records (telephone: 303-441-3043). Minutes and streaming audio are also available on the web at: <http://www.bouldercolorado.gov/>

**PLANNING BOARD MEMBERS PRESENT:**

Jorge Boone, Chair  
Mark McIntyre, Vice Chair  
ml Robles  
Claudia Hanson Thiem  
Mason Roberts  
Kurt Nordback  
Laura Kaplan

**PLANNING BOARD MEMBERS ABSENT:**

**STAFF PRESENT:**

Sarah Horn, City Planner Senior  
Kristofer Johnson, Comprehensive Planning Manager  
Charles Ferro, Development Review Planning Senior Manager  
Brad Mueller, Director Planning & Development Services  
Thomas Remke, Board Specialist  
Hella Pannewig, Senior Counsel  
Vivian Castro-Wooldridge, Planning Engagement Strategist

**1. CALL TO ORDER**

**2. PUBLIC PARTICIPATION**

In Person: No one spoke.

Virtual: No one spoke.

**3. APPROVAL OF MINUTES**

A. The Planning Board Minutes from April 16<sup>th</sup>, 2024 are set for approval.

**M. McIntyre** made a motion seconded by **K. Nordback** to approve the April 16<sup>th</sup>, 2024 Planning Board Minutes. The board voted 7-0. Motion approved.

B. The Planning Board Minutes from May 7<sup>th</sup>, 2024 are set for approval.

**M. McIntyre** made a motion seconded by **K. Nordback** to approve the May 7<sup>th</sup>, 2024 Planning Board Minutes. The board voted 6-0 (L. Kaplan abstained due to being absent at the May 7<sup>th</sup> meeting). Motion approved.

#### **4. DISCUSSION OF DISPOSITIONS, PLANNING BOARD CALL-UPS / CONTINUATIONS**

#### **5. PUBLIC HEARING ITEMS**

#### **6. MATTERS FROM THE PLANNING BOARD, PLANNING DIRECTOR, AND CITY ATTORNEY**

**A. Matters:** Form Based Code to Implement the East Boulder Subcommunity Plan

**S. Horn** and **K. Johnson** introduced the item and presented it to the board.

**S. Horn** and **K. Johnson** answered questions from the board.

#### **Board Discussion:**

Board members provided feedback on draft updates to the form-based code related to implementing the goals of the East Boulder Subcommunity Plan and comments received about the current regulations.

**L. Kaplan** noted that she appreciated the residential contribution of this update. She commended staff for balancing concerns around preserving light industrial space, providing flexibility, and ensuring residential production.

**ml Robles** appreciated the challenge of trying to codify “place”. She noted it is important to analyze the consequences of Subcommunity plans, including impacts to jobs/housing balance.

**K. Nordback** noted that his biggest concerns are relationships to the transportation system, limitations of the design and construction standards, and the change to residential regulation.

**J. Boone** agreed with **ml Robles** about enhancing the clarity of expected outcomes. He noted that **M. Roberts’** questions raised interest points including providing housing, resources, and spaces that appeal to families. He would like to clarify the intention of “research and development” uses to ensure that standard office spaces don’t end up in spaces that are targeted for light industrial uses.

**C. Hanson Thiem** echoed **M. Roberts’** concerns about playgrounds and outdoor space needs. She suggested that tying requirements to total residential square footage rather than total number of units could take away the incentive for developers to dodge requirements by building a lesser number of larger units. She also expressed concerns with the highest design standards for building frontages being put along car-oriented streets and noted that it would be good to avoid turning paseos and smaller alleyways into dumping grounds for the backsides of buildings, when they could instead be nice community spaces and passageways.

**M. McIntyre** echoed his colleagues' appreciation for staff's work and agreed that the overall goals are important to bring certainty and simplification to redeveloping the East Boulder Subcommunity area. He wondered how the city will be able to impose housing requirements without creating some strange outlying situations. For example, he noted that requiring mixed-use residential in a 120,000 square foot life sciences laboratory seems incompatible and inappropriate.

**M. Roberts** agreed generally with his colleagues and appreciated that there appears to be flexibility while meeting the stated goals of the plan. He commented on the courtyard requirement along Arapahoe and 55<sup>th</sup>, noting that he likes the idea, but that it would only work if there are major changes to those roads. He would be curious to know how introducing industrial-residential mixes impacts the longevity of industrial stock.

**7. DEBRIEF MEETING/CALENDAR CHECK**

**8. ADJOURNMENT**

The Planning Board adjourned the meeting at 8:16 p.m.

APPROVED BY

\_\_\_\_\_  
Board Chair

\_\_\_\_\_  
DATE

DRAFT



**CITY OF BOULDER  
PLANNING BOARD**

**MEETING DATE: August 27, 2024**

**AGENDA TITLE:** Public hearing and consideration of the following related to an area of land at 2801 Jay Rd.:

1. Boulder Valley Comprehensive Plan (BVCP) land use map designation change from Public (PUB) to Mixed Density Residential (MXR) (LUR2023-00019); and
2. Recommendation on a petition to annex an approximately 4.86-acre area of land at 2801 Jay Rd., including adjacent right-of-way, with an initial zoning designation of Residential – Mixed 2 (RMX-2) (LUR2023-00018).

Applicant: Margaret Freund, Fulton Hill Properties  
Owner: MJF 2801 Jay Road Development LLC

**PRESENTER(S)**

Brad Mueller, Director Planning & Development Services  
Charles Ferro, Senior Planning Manager  
Shannon Moeller, Planning Manager

**OBJECTIVE**

1. Planning Board hears staff and applicant presentations
2. Planning Board holds Public Hearing
3. Planning Board discussion and action on the proposed BVCP land use map change and recommendation to City Council on the proposed Annexation and Initial Zoning

**SUMMARY**

Project Name: 2801 Jay  
Location: 2801 Jay  
Size of Annexation: 4.86-acres (211,548 square feet), including:  
4.58-acres 2801 Jay property  
0.28-acres adjacent Jay Road right-of-way  
Zoning: Existing – Unincorporated Boulder County: Rural Residential – RR  
Proposed – City of Boulder: Residential – Mixed 2 (RMX-2)

Comprehensive Plan: Existing – Public / Semi-Public (PUB)  
Proposed – Mixed Density Residential (MXR)

### **KEY ISSUES FOR DISCUSSION**

Staff has identified the following key issues to help guide the board’s discussion:

1. Is the proposed annexation consistent with State statutes and BVCP policies, including BVCP Policy 1.17, Annexation?
2. Does the proposed change to the BVCP land use map to Mixed Density Residential (MXR) meet the applicable criteria?
3. Is the proposed initial zoning of Residential – Mixed 2 (RMX-2) consistent with the initial zoning standards in the Boulder Revised Code?

### **EXECUTIVE SUMMARY**

The purpose of this item is for Planning Board to consider an action on the proposed BVCP land use map change and to make a recommendation on the proposed Annexation and Initial Zoning. The Planning Board will consider the requests at a public hearing.

### **STAFF RECOMMENDATION**

Staff Findings and Recommendation:

1. Staff finds the proposed annexation to be consistent with State statutes and BVCP policies.
2. Staff finds the proposed change to the BVCP land use map to Mixed Density Residential (MXR) consistent with the applicable criteria.
3. Staff finds the proposed initial zoning of Residential – Mixed 2 (RMX-2) is consistent with the Boulder Valley Comprehensive Plan goals and land use designation Mixed Density Residential (MXR) and appropriate for the subject property.

Therefore, staff recommends that Planning Board adopt the following Motions:

**Suggested Motion Language:**

*Motion to approve the proposed Boulder Valley Comprehensive Plan land use map change for the property located at 2801 Jay Road to Mixed Density Residential (MXR), incorporating this staff memorandum as findings of fact, pertaining to case number LUR2023-00019.*

*Motion to recommend to City Council approval of the proposed annexation of the property located at 2801 Jay Road, including adjacent right-of-way, with an initial zoning of Residential – Mixed 2 (RMX-2) under case number LUR2023-00018, incorporating the staff memorandum as findings of fact, and subject to the terms and conditions in the proposed annexation agreement.*

### **PUBLIC FEEDBACK**

Consistent with [Section 9-4-3, Public Notice Requirements, B.R.C. 1981](#), staff provided notification to all property owners within 600 feet of the subject location of the application, and signs have been posted by the applicant indicating the review requested. Written comments are included in [Attachment F](#).

## **BACKGROUND**

**Existing Conditions:** As shown in **Figure 1**, the subject property is located at 2801 Jay Rd. in unincorporated Boulder County near the intersection of 28th Street and Jay Road. The approximately 4.58-acre property is located immediately east of city limits.



**Figure 1: Vicinity Map**



**Figure 2: Existing Site**

As shown in **Figure 2**, the property contains a church building and a parking lot. City Church Boulder currently operates on the property, and the property was previously used by the Boulder First Church of the Nazarene for many years. In 2021, the property was sold by the Colorado District of the Church of the Nazarene to the current owner. The property is served by city water per an out of city utility agreement and revocable permit signed in 1987 (Rec. No. 00849223). The property contains a 42 foot tall monopole for telecommunications and associated equipment.

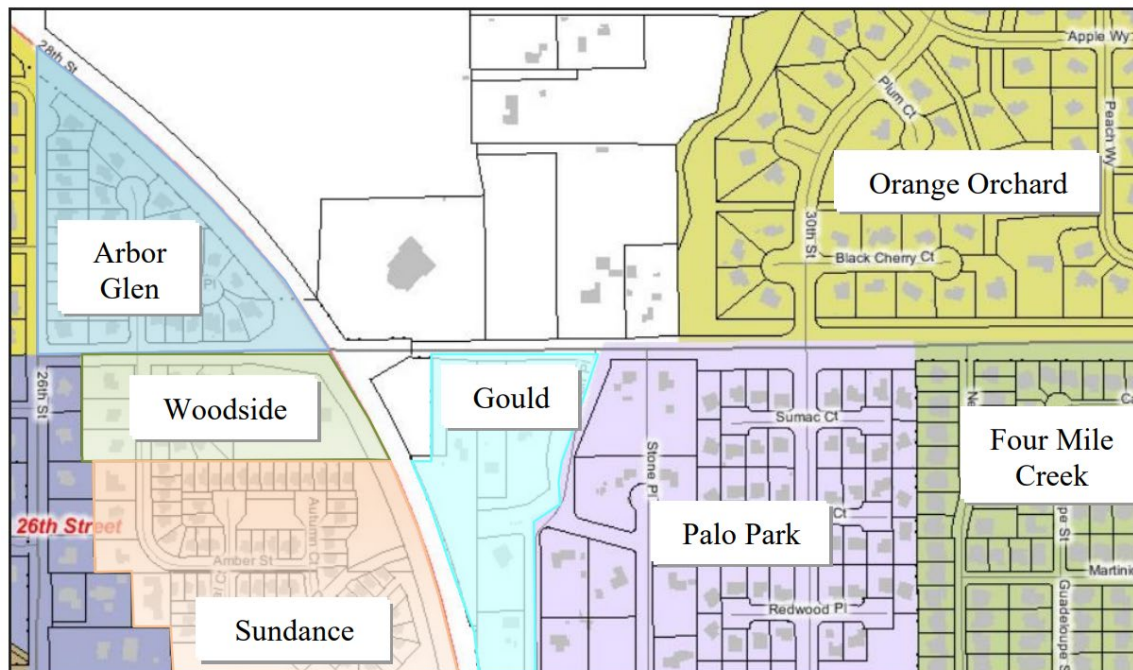


The property is mostly flat with some gentle slopes. It contains an active prairie dog colony and some limited mature landscaping and trees.

**Surrounding Area:** The site is located at the edge of current city limits, with properties to the north, east, and southeast located primarily in unincorporated Boulder County (city annexed areas are shown “ghosted” and surrounded by a red dashed line in **Figure 1**). Accordingly, the residential lots immediately to the east and south in unincorporated Boulder County are large with a semi-rural character. The Farmer’s Ditch flows through this area approximately 350 feet east of the subject property. Further to the east along Jay Rd. are the Orange Orchard, Palo Park and Four Mile Creek neighborhoods (refer to **Figure 3**, Surrounding Residential Neighborhoods). Orange Orchard and Palo Park, both located in unincorporated Boulder County, are suburban-style developments, with half-acre and quarter-acre lots, respectively. Further to the southeast, the Four Mile Creek development is annexed to the city and zoned Residential – Low 2 (RL-2), with approximately quarter-acre lots with primarily single-family homes and some duplexes.

To the west of the site, across 28th St. (U.S. 36), is land annexed into the city, including areas currently zoned RL-2 with low-density residential land use. The Arbor Glen and Woodside developments are comprised of lots between approximately 0.15 and 0.25 acres and suburban style homes. The Sundance neighborhood to the southwest is characterized by small lots (0.10 acre or less) and modest homes.

In addition to nearby residential, a variety of uses exists in the immediate area, near the intersection of U.S. 36 and Jay Road. A building permit has been issued for the single-story worship building (Lubavitch Synagogue) immediately to the south across Jay Road (2810 Jay Rd). The Peace Lutheran Church is located catty-corner to the site on the southwest corner of the intersection of Jay Road and 28th Street.

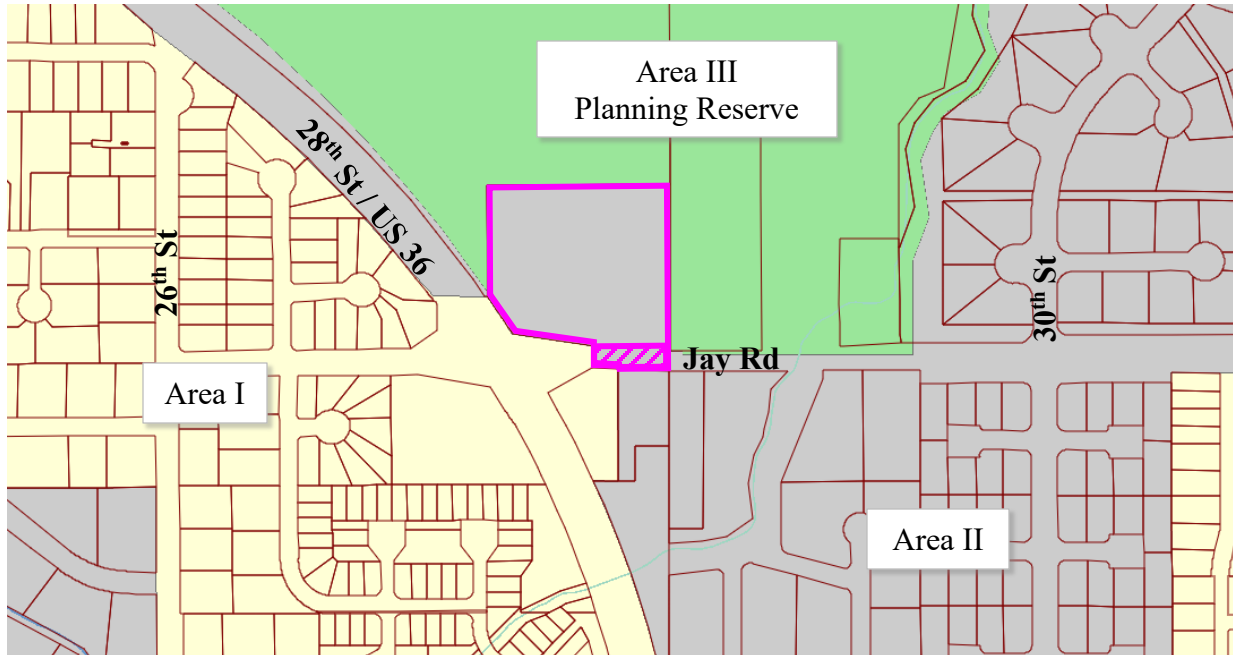


**Figure 1: Surrounding Residential Neighborhoods**

**BVCP Planning Areas:** The subject property is located in Area II in the BVCP, which is the “area now under county jurisdiction where annexation to the city can be considered consistent with Policies 1.08 Adapting to Limits on Physical Expansion, 1.10 Growth Requirements and 1.17 Annexation. New urban development may only occur coincident with the availability of

adequate facilities and services. Master plans project the provision of services to this area within the planning period.”

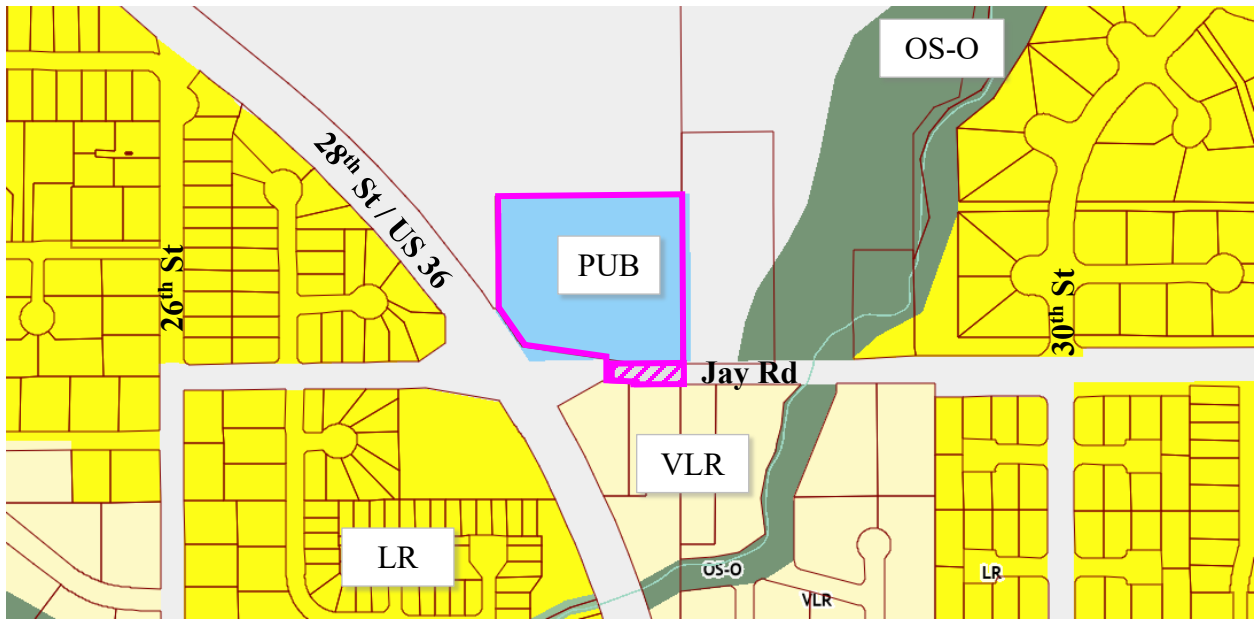
The north and east boundaries of the subject property are adjacent to the Area III Planning Reserve (refer to **Figure 4**). The Area III Planning Reserve is rural land uses where the city intends to maintain the option of limited service area expansion. As part of the Major Update to the 2015 BVCP, City Council directed staff not to move forward with a Service Area Expansion Assessment into this area. Since then, City Council has prioritized the initiation of the Urban Services Study. This work is a preliminary step to help the community and decision makers understand the scope and extent of providing city services to this area and weigh the potential costs and benefits of expanding services here for future generations. The Urban Services Study is currently underway in 2024.



**Figure 4: BVCP Planning Areas**

**Existing BVCP Land Use Designation:** As shown in **Figure 5**, the underlying Boulder Valley Comprehensive Plan (BVCP) land use designation is Public / Semi-Public (PUB), which reflects the current religious assembly use. Public land use designations encompass a wide range of public and private nonprofit uses that provide a community service.

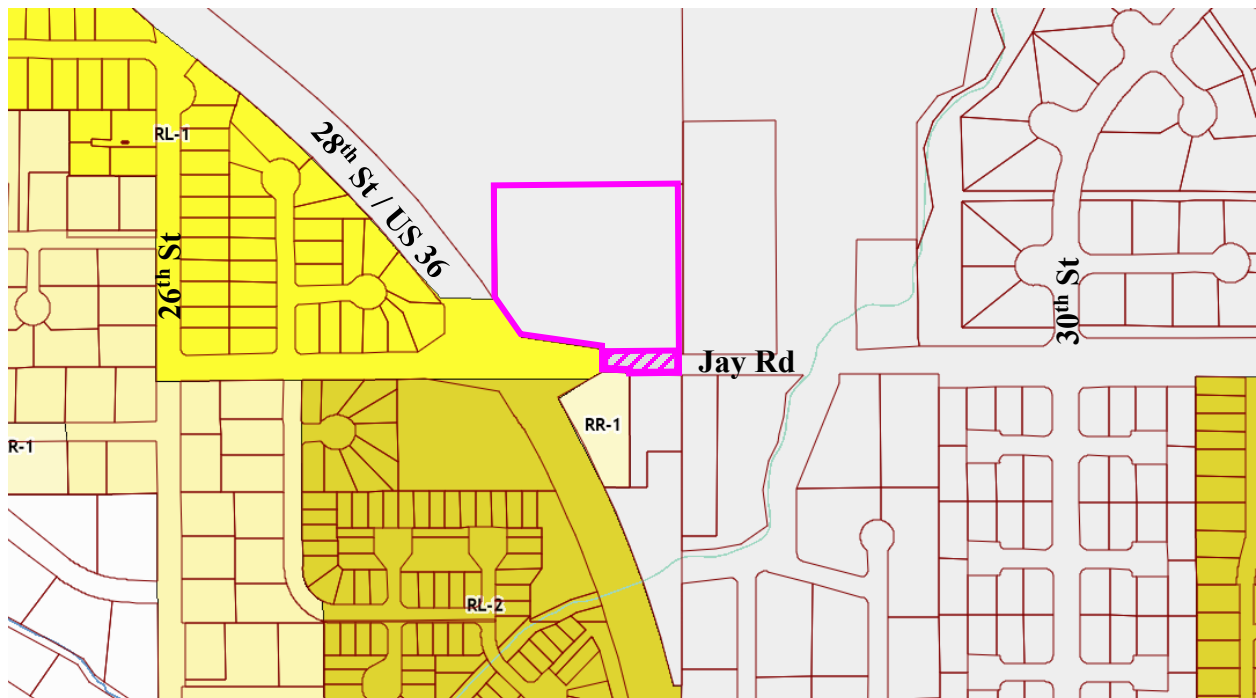
<p><b>Public / Semi-Public (PUB)</b></p>	<p><b>Characteristics and Location:</b> PUB land use designations encompass a wide range of public and private non-profit uses that provide a community service. They are dispersed throughout the city.</p> <p><b>Uses:</b> This category includes municipal and public utility services (e.g., the municipal airport, water reservoirs and water and wastewater treatment plants). It also includes: educational facilities (public and private schools and the university); government offices, such as city and county buildings, libraries and the jail; government laboratories; and nonprofit facilities (e.g., cemeteries, places of worship, hospitals, retirement complexes) and may include other uses as allowed by zoning.</p>
--	---



**Figure 5: BVCP Land Use Designations**

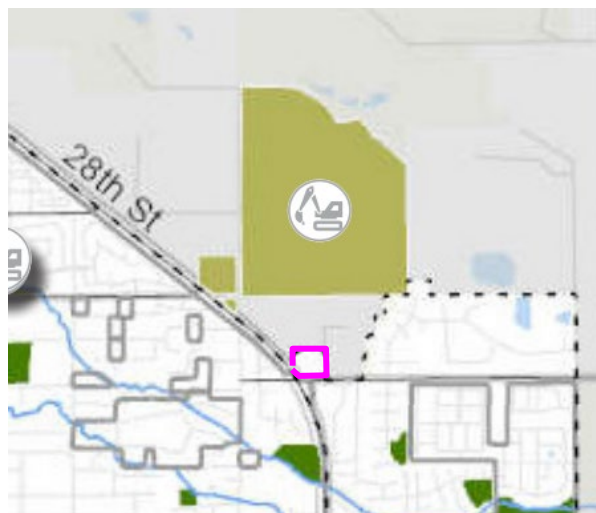
**Existing Zoning:** The property is located in unincorporated Boulder County with a county zoning of RR – Rural Residential, which is defined as “Residential areas developed at a density and character compatible with agricultural uses” (Article 4-103, Boulder County Land Use Code). Nearby properties under Boulder County zoning are primarily also zoned RR – Rural Residential, with the exception of the Palo Park 2 Subdivision to the south, which is SR – Suburban Residential.

Surrounding city zoning districts are shown in **Figure 6**. Annexation of the subject property provides an opportunity to consider the appropriate zoning and land use designation for the area proposed to be annexed. The applicant’s specific proposal for annexation, land use change, and initial zoning is discussed later in the memo.



**Figure 6: Surrounding City Zoning Districts**

**Parks Master Plan:** As shown in **Figure 7**, a large property to the north within the Area III Planning Reserve area is owned by the city and included in the [2022 Boulder Parks and Recreation Master Plan Update](#), which is shown on the map to the right. The 187 acres of land are planned for long-term future park needs. At this time there are no development plans for this park space.



*Figure 7: Future Park to the North*

**Prior Review History:**

**2022 Concept Plan Review:** On [December 6, 2022](#), the Planning Board considered a Concept Plan Review (LUR2022-00038) proposing a residential development with 84 for-sale dwelling units consisting of townhome, duplex, and triplex housing types with 40% of the units (34) proposed to be middle income affordable units; a change to the BVCP land use map designation from PUB to MXR; annexation of the property; and initial zoning of the property as RMX-2.

Planning Board heard presentations from staff and the applicant team, and 18 community members spoke on the proposal. Regarding the proposed land use designation change, a majority of board members were less concerned with whether the property would be designated with an MR (staff recommended) or MXR (applicant proposed) land use designation, but were primarily concerned with the design of the proposal in addressing issues such as transportation, quality open space and providing a desirable development.

Regarding the proposed initial zoning, a majority of board members agreed that the proposed RMX-2 zoning district would be appropriate and consistent with the goals of the BVCP in support of allowing for a wide range of housing within the city.

Additionally, board members discussed the proposed conceptual design and its compatibility with the surrounding area. The board provided helpful feedback. Refer to the [December 6, 2022](#) Planning Board archive for packet materials and meeting minutes.

On January 5, 2023, City Council “called-up” the Concept Plan for a public hearing, which was held on [February 16, 2023](#). Council heard presentations from staff and the applicant team, and nine community members spoke on the proposal. Council unanimously supported the proposed land use map designation change to MXR and an annexation with an initial zoning of RMX-2, and supported the overall proposal to provide “missing middle” housing on this site. Council agreed the proposal would be compatible with the surrounding area and provided feedback on the conceptual design. Council referred the item to the Transportation Advisory Board (TAB) and Design Advisory Board (DAB); the boards’ feedback on the proposed architectural and transportation design will take place during the Site Review process under a future application.

**2015 Concept Plan Review:** On [October 1, 2015](#), the Planning Board considered a Concept Plan Review (LUR2015-00074) for a residential proposal consisting of 94 permanently affordable dwelling units (51 row houses in seven buildings and 38 apartments in one building). At the time, staff and the Planning Board supported a lower density residential development than the 94 units proposed.

2016 Annexation and Site Review: In 2016, following the Concept Plan Review, a petition for Annexation and Initial Zoning (LUR2016-00077) and Site Review (LUR2016-00078) were reviewed by staff, but the items were subsequently withdrawn by the applicant; therefore no decision for approval or denial was made. The proposal at the time included an initial zoning of RMX-2 and a site plan with 66 units, a neighborhood daycare and a café.

2016 BVCP Update Request: In 2016, as part of the 2015 BVCP Update, the city reviewed a request to amend the Comprehensive Plan Land Use Designation of the site to MXR. At the time, city staff recommended a land use map designation change to MR, Medium Density Residential. The proposed land use designation request was subsequently withdrawn; the site remains designated PUB – Public.

## **PROCESS**

### **Annexation:**

The property is not currently within City limits and to allow for future redevelopment of the property under city jurisdiction, the land would have to be annexed. Land may be considered for annexation to the City, if the annexation would comply with state annexation statutes and the policies of Boulder Valley Comprehensive Plan (BVCP). The property borders the Boulder city limits with sufficient contiguity per state statute and is located within Area II of the BVCP, the area that may be considered for annexation. If a property is annexed, zoning is established consistent with to the goals and land use designations of the Boulder Valley Comprehensive Plan.

The city's annexation policies are located within Policy 1.17 of the BVCP. An annexation agreement is required to establish the terms and conditions of the annexation. Standard terms and conditions, such as right-of-way dedication requirements, affordable housing contributions, and fees are established through city codes and policies.

Most annexations involve two public hearings. The first is conducted by the Planning Board, who will make a recommendation to the City Council whether or not the annexation should be approved, and the terms and conditions of annexation, and initial zoning that should be applied. The City Council then holds a second public hearing before making a decision.

### **Land Use Map Change:**

The BVCP land use designation for the 2801 Jay property is Public / Semi-Public (PUB), reflective of the existing church use. The applicant requests a land use designation change to Mixed Density Residential (MXR) to allow for future redevelopment of the property with residential uses. The change must be found to be consistent with criteria for land use map changes established in the Boulder Valley Comprehensive Development Plan IGA attached to the BVCP as Appendix B. The amendment procedures can be found in Section A.1 of Exhibit B to the IGA). The process to change the land use map designation for this property requires approval by the Planning Board and City Council. There is no Boulder County call-up requirement because the site is less than 5 acres in size. The land use map change request may be considered concurrently with the annexation application.

## **PROJECT DESCRIPTION**

**BVCP Land Use Map Change:** The applicant is requesting a BVCP land use map change from Public / Semi-Public (PUB) to Mixed Density Residential (MXR). A land use map change to a residential category would allow for an initial residential zoning of the property to allow for future redevelopment of the property with residential uses. Further information and analysis of the proposed land use designation is discussed later in the memo under **Key Issue #2**.

**Annexation and Initial Zoning:** The applicant is requesting annexation by petition into the City of Boulder with an initial zoning of Residential – Mixed 2 (RMX-2). The existing church building is proposed to remain until such time as the property is redeveloped. Any redevelopment of the property would be required to go through a future Site Review process. Further information and analysis of the proposed initial zoning is discussed later in the memo under **Key Issue #3**.

Refer to the **Key Issues** analysis for staff’s analysis of applicable state statutes, BVCP policies, land use designation change, and proposed initial zoning.

### **Annexation Terms**

The proposed Annexation Agreement (**Attachment C**) contains terms and conditions for this annexation. The applicant wishes to proceed with annexation and establish annexation agreement terms prior to entering the Site Review process for a specific design proposal. Thus, the terms of the annexation agreement are intended to provide a balance that enables flexibility and creative solutions in a future Site Review process for a site design and density that can realize a residential project with significant amounts of on-site permanently affordable housing, while also establishing minimum standards to ensure that the site design is compatible with the surrounding area and that the proposal will meet city affordable housing goals and transportation requirements. The specific terms of the annexation agreement include:

#### Right-of-Way Dedications, Quit Claim, and Public Improvements:

- Quit claim a 306 square-foot area within Jay Road to the city to “clean up” title to a portion of Jay Road adjacent to the property.
- Quit claim a 561 square-foot area of public right-of-way to the city for an additional five-foot wide portion of Jay Road to accommodate future streetscape improvements along Jay Road.
- Future public improvements to the right-of-way adjacent to the property in Jay Road and US 36/28<sup>th</sup> Street, as determined through a future Site Review process, including:
  - Detached sidewalks and landscape along Jay Road and US 36/28<sup>th</sup> Street;
  - Intersection improvements to the Jay Road and US 36/28<sup>th</sup> Street intersection;
  - Jay Road improvements including a new left-turn lane to enter the site and a new left turn lane approaching the intersection with US 36/28<sup>th</sup> Street; a center median; a raised pedestrian/bike crossing across the channelized right turn lane on westbound Jay Road at the intersection with US 36/28<sup>th</sup> Street; and reconstruction of the existing transit stop with standard boarding area and concrete shelter pad behind the detached sidewalk.
- Construction of a multi-use path or other improvements called for on the Transportation Master Plan or adopted connections plans at the time the site review is filed. The city may also require payment to allow for the city to construct the improvement at a later time. This is intended to ensure that the timing and design of the path is properly coordinated with properties to the north of the site.
- Dedication of the eastern 30 feet of the property for public right-of-way which will be established as a two-way vehicular access, tree lawn, and detached sidewalk. Dedication of this right-of-way resolves an earlier concern from the adjacent property owners and Boulder County regarding use of the property to the east to access the subject property. Dedication also ensures that potential future through access to the Area III properties to the north is included in the design of any future development on the subject property.

#### Allowance for Existing Uses:

- Allowance for the existing church and existing telecommunication tower and equipment pad to remain. The church is expected to remain until redevelopment of the property; any changes to the church use would be reviewed through the city's standard review processes. Any changes to the telecommunication tower and equipment would be limited to the eligible facilities request process consistent with federal law. The tower would be required to be removed upon termination of the existing lease.

#### Utility Connections and Fees:

- Requirement for the existing structure on the property to connect to the city's wastewater utility within 365 days of the effective date of the annexation ordinance. The property is currently served by city water.
- Payment of \$135,300 in Stormwater Plant Investment Fees (PIF's) prior to first reading of the annexation ordinance.

#### Community Benefit:

- Community benefit requirements for residential development of the property would require that no less than 30% of the new dwelling units on the property be for-sale, deed restricted permanently affordable units. This may be achieved either through construction of the affordable units by the developer concurrently with construction of market rate units, or through conveyance of fee simple lots to the city or an entity designated by the city. Any land so conveyed to the city or its designated entity must be roughly graded and provided with utility service stub outs street connections, and large enough to allow for construction of the number of permanently affordable units required to be constructed pursuant to the annexation agreement. Cash-in-lieu is not an option for meeting the community benefit requirements.
- Construction standards of the affordable units are specified in terms of type (minimum of 18% of three bedroom, two bath units with the remaining units being a minimum of two bedrooms, one bath); parking (all affordable units shall provide at least one vehicular parking space, and at least 45% shall have a carport or garage); size (two bedroom units shall be at least 1,000 square-feet and three-bedroom units shall be at least 1,250 square-feet); and with design quality equal to that of market-rate units. This is intended to ensure that the sizes and types of affordable units and parking provided meets the needs of expected residents.
- Pricing for two-bedroom affordable units shall be affordable to households earning no more than 100% of the area median income (the "AMI") and qualifying household incomes shall be set at a maximum of 120%; and three-bedroom units shall be affordable to households earning no more than 120% of the AMI and qualifying household incomes shall be set at a maximum of 150% of the AMI. This is intended to ensure that the affordable units are priced to meet the "middle income" tier of the city's affordable housing goals.
- Access to any amenities provided on the annexation property to owners of market rate units shall be provided equally to owners of affordable units.

#### Design and Compatibility:

- The future development proposal shall be required to be reviewed through the Site Review process.
- The design of the eastern right-of-way is specified as two travel lanes, tree lawn, and detached sidewalk and is intended to serve as both a vehicular access as well as a physical separation between the future redevelopment and the residential properties in the east in unincorporated Boulder County.

- Buildings along the eastern property line and eastern half of the northern property line are limited to two stories above grade and required to have sloped roof forms. This requirement is intended to ensure that the development will be compatible with adjacent properties in unincorporated Boulder County while allowing for more design flexibility and a variety of forms and heights toward Jay Road and 28<sup>th</sup> Street.
- Shared useable open space must be located adjacent to the eastern property line, unless otherwise approved during the site review process. This is intended to provide additional visual buffering and a transition to adjacent properties in the county that are developed at a lower density.
- The proposal would not be subject to any subcommunity or area plans or design guidelines if the site review application is submitted before January 1, 2027. Note that currently no subcommunity or area plans are adopted for the area nor is their creation part of the city’s workplan. The applicant requested this to have a period of relative certainty of what design requirements will apply to the property. The applicant expressed this was important to ensure financial feasibility of a development that meets the community benefit requirements of the annexation agreement.

Density Calculations and Total Units:

- Density calculations for determining the maximum number of units per acre shall be measured prior to the dedication of right-of-way. This is to ensure that required right-of-way dedications along the eastern property line and Jay Road, and any possible additional right-of-way dedications as part of the development review process will not reduce ability of the property to provide an adequate number of total dwelling units necessary to support the financial viability of a residential development where 30% of units are permanently affordable to middle income households.
- The percentage numbers of permanently affordable units required for a density bonus under Section 9-8-4, “Housing Types and Density Bonuses Within an RMX-2 Zoning District,” B.R.C. 1981, is not being modified with the annexation agreement.
- Market units are limited in size to 3,000 square-feet (excluding garage), but may be increased to 3,500 square-feet if less than 78 total units are approved on the property. This is to encourage more total market rate dwelling units of smaller sizes, while recognizing that if fewer total units are constructed on the site, larger market rate units may be necessary to support the financial viability of the development and the 30% on-site affordable units.

Design Flexibility through Site Review:

- Private streets may be permitted by the approving authority through the site review process. This is to allow for potential flexibility in the ownership structure and subdivision of the property, allowing the property to be developed as a condominium proposal or as fee-simple private lots fronting onto either public or private streets, if approved through site review.
- Solar access provisions may be modified by the approving authority through the site review process to ensure that townhomes on individual lots are allowed when constructed at a zero setback from lot lines.

**ANALYSIS OF KEY ISSUES**

**1. Is the proposed annexation consistent with State statutes and BVCP policies, including BVCP Policy 1.17, Annexation?**



**State Statutes:** The applicant is requesting annexation by petition as provided by state law. Annexations must comply with Colorado Revised Statutes (C.R.S.), Article 12 of Title 31. Staff has reviewed the annexation petition for compliance with Sections 31-12-104, 31-12-105, and 31-12-107, C.R.S. and finds that the application is consistent with the statutory requirements, as affirmed by the criteria below (refer to **Attachment B** for the Annexation Petition):

- An annexation petition was filed meeting the requirements of Section 31-12-107, C.R.S.
- Landowners of more than 50 percent of the area proposed for annexation, excluding streets, have petitioned to annex.
- The annexation petition has been filed with the City Clerk of the City of Boulder.
- There is a community interest between the property proposed for annexation and the city of Boulder. As more than one-sixth of the perimeter of the area proposed to be annexed is contiguous, a community of interest is presumed.
- The subject property does not include any area included in another annexation proceeding involving a municipality other than the city of Boulder.
- The annexation would not remove the property from one school district and add it to another.
- The property has more than one-sixth contiguity with the City of Boulder. The annexation has approximately 19% (approximately one-fifth) contiguity.
- The annexation would not have the effect of extending the City of Boulder's boundaries any further than three miles from any point of the existing City boundaries in any one year.

**BVCP Policies:** Additionally, annexations must comply with city policies *1.08 Adapting to Limits on Physical Expansion*, *1.10 Growth Requirements* and *1.17 Annexation* in the BVCP. Staff finds that the proposal is consistent with these city policies, as well as consistent with the general goals, objectives, and recommendations of the BVCP, particularly housing related policies. The proposal creates opportunities for permanently affordable housing that supports a mixture of housing types and provides for the integration of affordable housing on-site. Overall, staff finds that the proposal is consistent with the following BVCP policies:

- 1.08 Adapting to Limits on Physical Expansion
- 1.10 Growth Requirements
- 1.11 Jobs: Housing Balance
- 1.13 Definition of Comprehensive Planning Areas I, II & III
- 1.15 Definition of New Urban Development
- 1.17 Annexation
- 2.03 Compact Development Pattern
- 2.15 Compatibility of Adjacent Land Uses
- 2.34 Design of Newly Developing Areas
- 7.07 Mixture of Housing Types
- 7.11 Balancing Housing Supply with Employment Base
- 7.12 Permanently Affordable Housing for Additional Intensity
- 7.15 Integration of Permanently Affordable Housing

Refer to **Attachment D** for staff’s summary of the proposal’s consistency with these policies.

**2. Does the proposed change to the BVCP land use map to Mixed Density Residential (MXR) meet the applicable criteria?**

As noted earlier in the memo, the applicant proposes a land use map change in order to allow for higher density residential development of the property. While Public zoning would be consistent with the Public land use designation, development of residential units under Public zoning is limited to a density of no more than 6.2 dwelling units per acre and would require a Use Review. A land use map change may be considered concurrent with a request for annexation. Land use map changes for properties located in Area II require approval of the Planning Board and City Council. Since the property is less than five acres in size, the city’s decision is not subject to call-up by the Board of County Commissioners of Boulder County. Applications for land use designation changes that are made outside of a mid-term or five-year BVCP update must be found to be consistent with BVCP policies and satisfy several other factors listed in Appendix B of the BVCP.

The proposed Mixed Density Residential designation for new development (outside of Pre-WWII neighborhoods) is characterized by the goal of providing a substantial amount of affordable housing in mixed-density neighborhoods that have a variety of housing types and densities. Refer to description in the BVCP:

Land Use Category	Characteristics, Uses & BVCP Density/Intensity
<p><b>Mixed Density Residential (MXR)</b></p>	<p><b>Characteristics and Locations:</b> MXR areas surround downtown in the Pre-World War II older neighborhoods and are located in some areas planned for new development. Additionally, in older downtown neighborhoods that were developed with single-family homes but for a time were zoned for higher densities, a variety of housing types and densities are found within a single block. The city’s goal is to preserve the current neighborhood character and mix of housing types and not exacerbate traffic and parking problems in those older areas. Some new housing units may be added.</p> <p>For areas designated for new development (outside of the Pre-WWII neighborhoods), the goal is to provide a substantial amount of affordable housing in mixed-density neighborhoods that have a variety of housing types and densities.</p> <p><b>Uses:</b> Consists of single-family and multi-family residential units. May include some complementary uses implemented through zoning.</p> <p><b>BVCP Density/Intensity:</b> 6 to 20 dwelling units per acre</p>

The criteria for a Land Use Map change are found in Appendix B to the BVCP. To be eligible for a Land Use Map change, the city must find that that the proposed change:

- ✓ a) on balance, is consistent with the policies and overall intent of the comprehensive plan; *Staff finds that the proposed Land Use Map change is, on balance, consistent with the policies and overall intent of the comprehensive plan, as detailed in the staff summary of consistency with BVCP policies (Attachment D).*  
*The site was historically designated “Public” reflective of the existing church use. The proposal for a Land Use Map change from “Public” to “Mixed Density Residential” is consistent with comprehensive plan policies and the overall intent of the comprehensive plan to address Boulder’s increasing need for housing and housing affordability challenge, particularly for middle income households.*

- ✓ b) would not have significant cross-jurisdictional impacts that may affect residents, properties or facilities outside the city;

*The subject property is a developed site containing an existing church building, parking lot, and other site improvements. The land use map change would allow for future redevelopment with residential dwelling units. Staff finds that the proposal to change the land use map designation from “Public” to “Mixed Density Residential” will not have significant cross-jurisdictional impacts. To that end, the following items were included in the review of the proposal:*

- *The proposal was updated during the review process to provide dedication of the eastern 30 feet of the subject property as right-of-way to ensure adequate transportation access is provided for the subject property from Jay Road. This is intended to ensure that access to the property does not create impacts on adjacent property in the county.*
- *The annexation agreement requires the applicant to construct transportation improvements upon redevelopment.*
- *The applicant has coordinated with Boulder County Public Works regarding review of utility main placements to ensure the proposal is acceptable. Due to the location at the edge of the city, some utility mains may pass through unincorporated county areas. The county has reviewed and approved the preliminary alignments and will review construction documents at the time of a future design proposal.*
- *The terms of the annexation agreement also include design and compatibility requirements to further ensure a future design is compatible with surrounding properties.*

- ✓ c) would not materially affect the land use and growth projections that were the basis of the comprehensive plan;

*The Boulder Valley Comprehensive Plan (adopted 2021), page 9, states:  
“As of January 2015, the City of Boulder (Area I) had approximately 44,725 housing units, 104,800 residents and 98,500 jobs. The remainder of the Service Area (Area II) had approximately 5,700 housing units, 12,000 residents and 3,000 jobs. About 30,000 students attend the University of Colorado.*

*“Over the next 25 years, Area I is projected to add about 6,500 housing units, 19,000 residents and 19,000 jobs. CU student enrollment could increase by a range of 5,000 to 15,000 additional students by 2030. Most of the growth that will occur in Area II will be preceded by annexation to the city; therefore, it is included in the projection numbers for Area I. Since there is little vacant land left in the city’s Service Area, most of this growth will occur through redevelopment.”*

*The proposal involves a land use map change affecting 4.58 acres that is expected to yield approximately 15-20 dwelling units per acre, or between 68 and 91 units, which would equate to approximately 1.05 to 1.40% of the 6,500 additional housing units projected for the 25 years beginning in 2015. Given the relatively small size of the property and number of units that could be permitted, staff finds the proposal will not materially affect the land use and growth projections.*

- ✓ d) does not materially affect the adequacy or availability of urban facilities and services to the immediate area or to the overall service area of the City of Boulder;

*Staff finds the proposal does not materially affect adequacy or availability of urban facilities and services. The proposed land use map change would allow the property to be annexed and zoned for mixed-density residential uses and a future redevelopment to take place. The proposed land use map change and annexation have been reviewed by applicable city departments to ensure adequate public facilities and services. The proposal will be required to construct necessary improvements to serve the redevelopment, such as utility connections and transportation improvements, consistent with the annexation agreement, Boulder Revised Code, and Design and Construction Standards.*

- ✓ e) would not materially affect the adopted Capital Improvements Program of the City of Boulder; and

*Staff finds that the proposal will not materially affect the adopted Capital Improvement Program. As noted above, the applicant for a redevelopment proposal would be responsible for improvements consistent with annexation agreement, Boulder Revised Code, and Design and Construction Standards.*

- ✓ f) would not affect the Area II/Area III boundaries in the comprehensive plan.

*The proposal is located in Area II, the area where annexation may be considered. The proposal would not alter the Area II/Area III boundaries.*

Based on the analysis above, city staff have determined that the BVCP land use map change is appropriate.

**3. Is the proposed initial zoning of Residential – Mixed 2 (RMX-2) consistent with the initial zoning standards in the Boulder Revised Code?**

Initial zoning is established pursuant to Section 9-2-18, “Zoning of Annexed Land,” B.R.C. 1981. If a property is annexed, zoning will be established consistent with the goals and Land Use Map of the BVCP. As described above, the application proposes a land use designation change for the property to Mixed Density Residential, which is characterized by provision of a substantial amount of affordable housing and a variety of housing types and density, ranging from six to 20 units per acre. As described above, staff finds that the proposed Land Use Map change meets the criteria for such change. The proposed zoning assumes approval of the Land Use Map change to Mixed Density Residential.

The proposed zoning of Residential Mixed - 2 is consistent with a land use map designation of Mixed Density Residential. The RMX-2 zoning district is described as: “Medium density residential areas which have a mix of densities from low density to high density and where complementary uses may be permitted.” (Section 9-5-2(c)(1)(E), B.R.C. 1981).

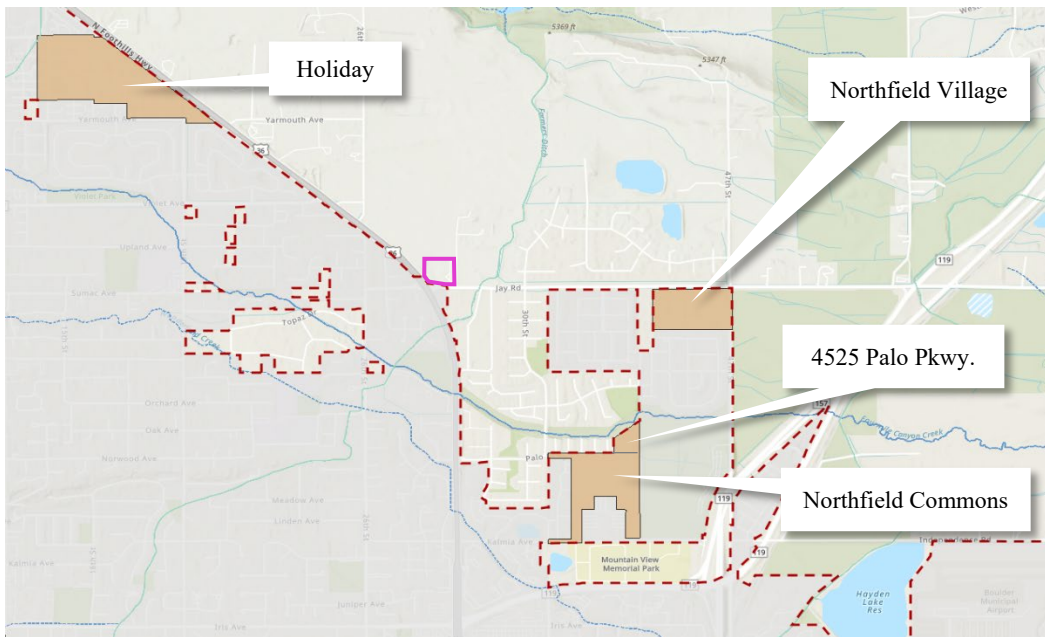
Per Chapter 6, “Use Standards,” of the Boulder Revised Code, the RMX-2 zone district requires a variety in housing types; properties between one and five acres in size must provide at least two housing types, and no more than 50% of the development may be one housing type.

Per Chapter 8, “Intensity Standards,” of the Boulder Revised Code, a minimum of 15% of the site must be provided as usable open space. The RMX-2 zoning district permits a maximum of 10 dwelling units per acre, with density bonuses possible depending on the percentage of affordable units provided on site, up to a maximum of 20 dwelling units per acre. A density bonus may be requested through the Site Review process pursuant to 9-8-4, Housing Types and Density Bonuses Within an RMX-2 Zoning District, B.R.C. 1981, subject to the discretion of the approving authority. The annexation agreement requires a minimum of 30% on-site affordable units, which would be consistent with a 5 unit per acre density bonus, allowing a density of up to 15 units per acre. The proposal could provide a higher percentage of on-site affordable units (e.g. 35% or 40%) at the time of site review to achieve a higher density bonus to allow up to 18 or 20 units per acre, respectively. Given the property size of 4.579 acres prior to right-of-way dedications, the chart below provides potential unit counts in various scenarios.

RMX-2 Density Bonus Calculations			
Percent On-Site Affordable	30%	35%	40%
Density Permitted with Density Bonus per 9-8-4, B.R.C. 1981	15 du/acre	18 du/acre	20 du/acre
Maximum Number of Units	68	82	91

Historically, the RMX-2 zoning district has been used for newly developing or redeveloping properties where affordable housing is provided on-site, often at the edges of the city. Refer to **Figure 8** for map of existing RMX-2 zoned properties. The proposal would be consistent with this zoning practice. Examples include:

- Holiday: Annexed in 1990, portions of the Holiday neighborhood have a land use designation of MXR and an associated zoning district of RMX-2. The Site Review approval (LUR2001-00030) included a density bonus to allow development of up to 20 dwelling units per acre in RMX-2 as the proposal included over 40% permanently affordable housing as a Boulder Housing Partners project and part of the North Boulder Subcommunity Plan.
- 4525 Palo Parkway: Annexed in 2016, the 3.2-acre property has a land use designation of MR and is zoned RMX-2. The Site Review approval (LUR2016-00027) included a density bonus for up to 14 dwelling units per acre. The proposal was a 100% permanently affordable housing project by Boulder Housing Partners and Habitat for Humanity.
- Northfield Village and Northfield Commons: Annexed in 2004, the properties have land use designations of MR and LR and are zoned RMX-2. The Site Review approval (LUR2003-00033) averaged 8-9 dwelling units per acre. The proposal included 45% permanently affordable housing.



**Figure 8: Properties Zoned RMX-2**

Staff finds that the RMX-2 zoning district, including the allowed residential uses, emphasis on provision of permanently affordable housing, and controls on density and design through the Site Review process, is appropriate for the site, helps ensure compatibility with the surrounding area, and is consistent with the proposed Mixed Density Residential land use and with the goals, policies, and objectives of the BVCP.

The initial zoning ordinance is anticipated to be included in the annexation ordinance for the area proposed to be annexed.

**Attachments:**

Attachment A – Annexation Map

Attachment B – Annexation Petition

Attachment C – Annexation Agreement

Attachment D – Analysis of BVCP Policies, Boulder Revised Code, and State Statutes



Attachment E – Staff Review and Referral Comments

Attachment F – Public Comments

# ANNEXATION MAP

2801 JAY ROAD  
 A PARCEL OF LAND LOCATED IN THE NORTHWEST QUARTER OF SECTION 17,  
 TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M.,  
 COUNTY OF BOULDER, STATE OF COLORADO  
 TOTAL AREA = 4.8565 ACRES

## LEGEND

-  PUBLIC LAND CORNER FOUND
-  PROPERTY CONTIGUOUS TO EXISTING CITY OF BOULDER LIMITS
- TOTAL PERIMETER OF AREA TO BE ANNEXED = 1888.16 FEET
- ONE SIXTH OF TOTAL PERIMETER = 314.69 FEET
- PERIMETER CONTIGUOUS TO EXISTING CITY LIMITS = 358.30 FEET

OWNER: MJF 2801 JAY RD DEVELOPMENT LLC,  
 A VIRGINIA LIMITED LIABILITY COMPANY  
 1000 CARLSLE AVENUE  
 RICHMOND, VIRGINIA 23231

SURVEYOR: SITEMWORKS  
 2101 PEARL STREET  
 BOULDER, COLORADO 80302

## LEGAL DESCRIPTION

(FOR AREA TO BE ANNEXED)

A PARCEL OF LAND LOCATED IN THE SW 1/4 OF THE NW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 17, T1N, R70W, OF THE 6TH P.M. THENCE N89°31'47"E ALONG THE SOUTH LINE OF THE NW 1/4 OF SAID SECTION 17, A DISTANCE OF 1332.33 FEET TO THE CENTER WEST 1/16 CORNER OF SECTION 17, THE POINT OF BEGINNING;

THENCE S00°23'39"E, A DISTANCE OF 30.00 FEET;  
 THENCE S89°31'47"W, A DISTANCE OF 133.23 FEET;  
 THENCE N00°23'39"W, A DISTANCE OF 7.86 FEET;  
 THENCE N87°05'28"W, A DISTANCE OF 70.19 FEET;  
 THENCE N00°28'13"W, A DISTANCE OF 62.37 FEET;  
 THENCE N81°46'13"W, A DISTANCE OF 217.87 FEET;  
 THENCE 119.12 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 02°20'00", A RADIUS OF 2925.00 FEET AND A CHORD WHICH BEARS N34°16'08"W, A DISTANCE OF 119.11 FEET;  
 THENCE N00°22'12"W, A DISTANCE OF 293.23 FEET;  
 THENCE N89°32'02"E, A DISTANCE OF 484.78 FEET TO A POINT ON THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17;  
 THENCE S00°25'44"E, ALONG THE SAID EAST LINE, A DISTANCE OF 439.50 FEET;  
 THENCE S00°25'44"E, A DISTANCE OF 30 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 211,548 SQUARE FEET OR 4.8565 ACRES MORE OR LESS.


## SURVEY NOTES

- THIS MAP IS NOT A LAND SURVEY PLAT OR AN IMPROVEMENT SURVEY PLAT. THE PURPOSE OF THIS MAP IS TO SHOW THE AREA TO BE ANNEXED TO THE CITY OF BOULDER, COLORADO.
- THIS ANNEXATION IS BASED ON AN IMPROVEMENT SURVEY PLAT PREPARED BY FLATIRONS, INC., JOB NUMBER 16-66,821, DATED 02/29/16.
- NOTICE: ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED ON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVERED SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BE BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON. CRS-13-80-105 (3)(c).

## CERTIFICATION

THIS IS TO CERTIFY THAT THIS MAP WAS MADE UNDER MY DIRECT RESPONSIBILITY, SUPERVISION AND CHECKING AND THAT IT IS A TRUE AND CORRECT REPRESENTATION OF THE AREA TO BE ANNEXED TO THE CITY OF BOULDER, COLORADO, AND THAT AT LEAST ON SIXTH (1/6) OF THE BOUNDARY OF SAID PARCEL IS CONTIGUOUS TO THE PRESENT CITY OF BOULDER, COLORADO.

*A. John Burr*  
 A. JOHN BURR, PLS 24302  
 FOR AND ON BEHALF OF  
 SITEMWORKS



**2801 Jay Road**  
 Boulder, Colorado 80301

#	Date	Description
1	05/01/23	Initial Submittal
2	08/14/23	City Comments
3	10/16/23	City Comments
4	11/03/23	City Comments
5	02/12/24	City Comments
6	03/07/24	City Comments

Project No: 23142A  
 By: MRF/JAS/DPA  
 File: 23142A-1.dwg

## Annexation Map

Sheet

**V-101**

Z:\SiteWorks\Projects - Documents\2023 Projects\23142-2801 Jay Road\07-Drawings\07.01.01-Annexation Map\23142A-1.dwg

**ANNEXATION PETITION**  
**Submit with your application.**

**Annexation Information**

Location of property to be annexed: 2801 Jay Road

Legal Description: See attached

Size of property: 4.8565 ac Requested Zoning: RMX-2

**Impact Report**

If the area proposed for annexation is more than ten acres in size, an annexation impact report as required by state law (31-12-105.5, C.R.S.) must be submitted to the Planning Department prior to the first reading of the ordinance annexing the subject property by City Council. The Board of County Commissioners may waive this requirement. If so, a letter from the Board must be submitted to the Planning Department.

**Districts**

Please check those districts in which the property proposed for annexation is included:

- Boulder Valley School District
- Left Hand Water District
- St. Vrain School District
- Other (list)
- Boulder Rural fire District
- Rocky Mountain Fire District

**Property Owners**

List below all owners or lienholders of the property proposed for annexation (please print):

1. MJF 2801 Jay Rd Development LLC
2. The Colorado District of the Church of Nazarene (Lender)
3. \_\_\_\_\_
4. \_\_\_\_\_



**Please Note:**

No person shall petition to the city of Boulder for annexation of any real property until he has first read and thereafter follows these instructions in the execution of the within petition:

1. Every person signing the within annexation petition must personally insert the information required on the signature page(s) attached to the petition.
2. The person or persons who circulate the within petition must witness the signatures of every person signing this petition and so certify by executing the affidavit attached on the last page of this petition.
3. The following definitions of terms shall be applicable throughout this petition and every subsequent step of the annexation proceeding commenced pursuant to this petition:

- a. Landowner: means the owner in fee of any undivided interest in a given parcel of land. If the mineral estate has been severed, the landowner is the owner in fee of an individual interest in the surface estate and not the owner in fee of an individual interest in the mineral estate. In the case of multiple landowners, such as tenants in common or joint tenants, only one such landowner need petition for annexation, and the signature of one such landowner shall be sufficient, provided however, that said signing landowner had become liable for taxes in the last preceding calendar year or is exempt by law from payment of taxes, and provide further, that no other owner in fee of an individual interest of the same property objects to the annexation of the said property within 14 days after the filing of the annexation petition by submitting a written statement of his objections to the City Council.

A purchaser of real property shall be deemed a landowner for the purpose of an annexation petition if:

- (1) The said purchaser is purchasing the land pursuant to a written contract duly recorded, and
- (2) The said purchaser has paid the taxes thereon for the next preceding tax year.

A corporation, non-profit, owning land shall be deemed a landowner, and the same persons authorized to convey land for the corporation shall sign the within petition on behalf of such corporation.

- b. Nonresident Landowner: means any person owning property in the area proposed to be annexed, who is not a qualified elector as herein below defined, and who is at least eighteen (18) years of age as attested to by a sworn affidavit.
- c. Identical Ownership: means a situation where each owner has exactly the same degree of interest in a separate parcel of two or more parcels of land.
- d. Contiguous: means that one-sixth of the boundary of the territory proposed for annexation and the city limits must coincide. Contiguity as referred to in this petition or subsequent annexation proceedings is not affected by the existence of a platted street or alley, public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway between the city limits of the city of Boulder and the territory to be annexed.

4. This petition must be filed with the City Clerk of the city of Boulder.

5. This petition should be filed in the following manner:
  - a. All blanks herein contained should be filled out and completed.
  - b. Each signer shall, before signing said petition, carefully read the contents hereof.
  - c. The signatures attached to this petition must have been signed within 180 days immediately preceding the filing of the said petition with the City Clerk.
  - d. After filing of the petition, no person having signed said petition shall thereafter be permitted to withdraw his/her signature from said petition.
  - e. This petition shall be accompanied by at least four copies of an annexation map containing the following information:
    1. A written legal description of the boundaries of the area proposed to be annexed.
    2. A map showing the boundaries of the area proposed to be annexed.
    3. Within the boundaries of the area proposed to be annexed, the location of each ownership tract in unplatted land and, if part or all of the area has been platted, the boundaries and the plat numbers of the plots or of the lots and blocks shall be shown.
    4. The portion of the boundaries of the area proposed to be annexed which is contiguous to the city limits of the city of Boulder, as the same exist at the time this annexation petition is to be filed, must be shown and the dimensions thereof indicated.

**Submit with your application.**

**TO THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO, GREETINGS:**

The undersigned hereby petition(s) the city of Boulder to annex to the city of Boulder the territory shown on the map(s) attached hereto and described on the attachment hereto:

This Petition is signed by landowners qualified to sign. It is intended that this Petition be a one hundred percent (100%) petition for annexation as described in C.R.S. 1973, Section 31-12-107(l)(g), (as amended).

In support of this petition, the undersigned state(s) and allege(s) as follows, to wit:

1. That it is desirable and necessary that the above described territory be annexed to the city of Boulder.
2. That petitioners are landowners of one hundred percent (100%) of the territory, excluding streets and alleys, herein proposed for annexation to the city of Boulder.
3. That no less than one-sixth of the aggregate external boundaries of the above described territory hereby petitioned to the city of Boulder is contiguous to the city limits of the city of Boulder.
4. That a community of interest exists between the above described territory and the city of Boulder, And that the same is urban, or will be urbanized in the near future, and further that the said territory is integrated or is capable of being integrated in the city of Boulder.
5. That in establishing the boundaries of the above described territory, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, has been divided into separate parts or parcels without the written consent of the landowner or landowners thereof, except and unless such tracts or parcels are already separated by a dedicated street, road or other public way.
6. That in establishing the boundaries of the above described territory, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate comprising twenty acres or more which, together with the buildings and improvements situate thereon, have an assessed valuation in excess of \$200,000 for ad valorem tax purposes for the year next preceding the filing of the within petition for annexation, has been included within the above.
7. That the above described territory does not include any area which is the same or substantially the same area in which an election for an annexation to the city of Boulder was held within the twelve months preceding the filing of this petition.
8. That the above described territory does not include any area included in another annexation proceeding involving a city other than the city of Boulder.

9. That at least four copies of an annexation map setting forth with reasonable certainty a written legal description of the boundaries of the area proposed to be annexed, a delineation of the outer boundaries of the above described territory, and the location of each ownership, tract and/or the boundaries and the plat numbers of plats and lots and blocks, the portion of the boundary contiguous with the existing city limits of the city of Boulder, and the dimensions of said contiguous boundary, all upon a material and of a size suitable for recording or filing with the City Clerk of the city of Boulder, and the dimensions of said contiguous boundary, all upon a material and of a size suitable for recording or filing with the City Clerk of the city of Boulder, accompany, have been attached hereto and hereby constitute a part of this petition.
10. That the above described territory is not presently a part of any incorporated city, city and county, or town.
11. That the above area described will (not) result in the detachment of area from any school district and the attachment of the same to another school district (and the resolution of school board of the district to which the area will be attached approving this annexation request).

### ANNEXATION PETITION

Signature of petitioners requesting annexation of property to the city of Boulder, Colorado

Date of signature of each petitioner

Mailing address of each petitioner

Description of property included within the area proposed for annexation owned by each person signing this petition. (Attach separate sheet, if necessary).

 3/7/24

MJF 2801 Jay Rd Development LLC  
1000 Carlisle Avenue  
Richmond, VA 23231

Entire Parcel  
(see attached legal description)

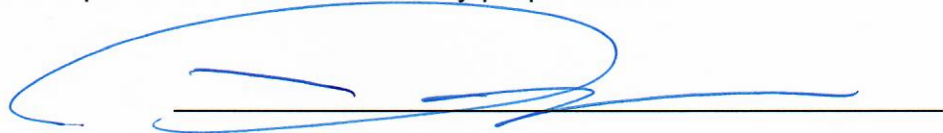
— Margaret J. Freund  
Manager of  
MJF 2801 Jay Rd Development LLC

**CIRCULATOR'S AFFIDAVIT**  
**CIRCULATOR'S AFFIDAVIT**

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF BOULDER    )

Donald P. Ash

\_\_\_\_\_ ,  
being first duly sworn, upon oath deposes and says that she/he was the circulator  
of the above and foregoing petition and that the signatures on said petition are the  
signatures of the persons whose names they purport to be.

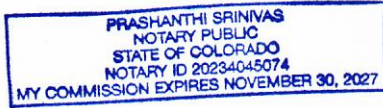


Donald P. Ash

\_\_\_\_\_  
Circulator

Subscribed and sworn to before me this 7 day of March, A.D. 20 24.

Witness my hand and official seal. My commission expires: 11/30/2027.



\_\_\_\_\_  
Notary Public

**CIRCULATOR'S AFFIDAVIT**

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF BOULDER    )

\_\_\_\_\_ ,  
being first duly sworn, upon oath deposes and says that she/he was the circulator  
of the above and foregoing petition and that the signatures on said petition are the  
signatures of the persons whose names they purport to be.

\_\_\_\_\_  
Circulator

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 20 \_\_\_\_\_.

Witness my hand and official seal. My commission expires: \_\_\_\_\_.

# LEGAL DESCRIPTION

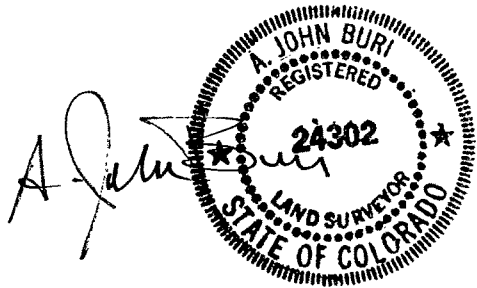
(FOR AREA TO BE ANNEXED)

A PARCEL OF LAND LOCATED IN THE SW 1/4 OF THE NW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 17, T1N, R70W, OF THE 6TH P.M. THENCE N89°31'47"E ALONG THE SOUTH LINE OF THE NW 1/4 OF SAID SECTION 17, A DISTANCE OF 1332.33 FEET TO THE CENTER WEST 1/16 CORNER OF SECTION 17, THE POINT OF BEGINNING;

THENCE S00°23'39"E, A DISTANCE OF 30.00 FEET;  
THENCE S89°31'47"W, A DISTANCE OF 133.23 FEET;  
THENCE N00°23'39"W, A DISTANCE OF 7.86 FEET;  
THENCE N87°05'28"W, A DISTANCE OF 70.19 FEET;  
THENCE N00°28'13"W, A DISTANCE OF 62.37 FEET;  
THENCE N81°46'13"W, A DISTANCE OF 217.87 FEET;  
THENCE 119.12 FEET ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 02°20'00", A RADIUS OF 2925.00 FEET AND A CHORD WHICH BEARS N34°16'08"W, A DISTANCE OF 119.11 FEET;  
THENCE N00°22'12"W, A DISTANCE OF 293.23 FEET;  
THENCE N89°32'02"E, A DISTANCE OF 484.78 FEET TO A POINT ON THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17;  
THENCE S00°25'44"E, ALONG THE SAID EAST LINE, A DISTANCE OF 439.50 FEET;  
THENCE S00°25'44"E, A DISTANCE OF 30 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 211,548 SQUARE FEET OR 4.8565 ACRES.



A. JOHN BURI P.L.S. #24302  
FOR AND ON BEHALF OF  
SITWORKS  
03/07/24  
PROJECT NO. 23142

UNPLATTED  
REC. NO. 1414887

N89°32'02"E 484.78'

UNPLATTED  
REC. NO. 1414887

N0°22'12"W 293.23'

2801 JAY ROAD  
APN: 146317200006  
REC. NO. 3890811  
REC. NO. 03409296

UNPLATTED  
REC. NO. 3421738

S0°25'44"E 439.50'

AREA TO BE ANNEXED

$\Delta=2^{\circ}20'00''$   
 $R=2925.00'$   
 $L=119.12'$   
 $CH=N34^{\circ}16'08''W$   
 $119.11'$

HIGHWAY 36  
28TH STREET

N81°46'13"W 217.87'

N0°23'39"W 7.86'

S0°25'44"E 30.00'

JAY ROAD

N89°31'47"E 1332.33'

N0°28'13"W 62.37'

S0°23'39"E 30.00'

POINT OF COMMENCEMENT  
WEST QUARTER CORNER  
SEC. 17, T1N, R70W, OF THE 6TH P.M.

N87°05'28"W 70.19'

S89°31'47"W 133.23'

POINT OF BEGINNING  
CENTER WEST 1/16 CORNER  
SEC. 17, T1N, R70W, 6TH P.M.

# ANNEXATION EXHIBIT

1

SCALE: 1" = 100'



**siteworks**  
creativity for  
the built environment

## 2801 Jay Road

2801 Jay Road  
Boulder, CO 80301

Project: 23142A  
File: 23142A-3.dwg  
Date: 10/02/23



For Administrative Use Only

Grantor: City of Boulder and MJF 2801 Jay RD Development LLC  
Grantee: MJF 2801 Jay RD Development LLC and City of Boulder  
Case No. LUR2023-00018

ANNEXATION AGREEMENT

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the CITY OF BOULDER, a Colorado home rule city, hereinafter referred to as "City," and MJF 2801 JAY RD DEVELOPMENT LLC, a Virginia limited liability company, hereinafter referred to as "Applicant."

RECITALS

- A. The Applicant is the owner of the real property generally described as 2801 Jay Road and more particularly described on Exhibit A attached hereto and incorporated herein (the "Property").
- B. The Applicant is interested in obtaining approval from the City of a request for the annexation of the Property with an initial zoning designation of Residential - Mixed 2 (RMX-2).
- C. The City is interested in ensuring that certain terms and conditions of annexation be met by the Applicant in order to protect the public health, safety and welfare and prevent the placement of an unreasonable burden on the physical, social, economic, or environmental resources of the City.

NOW, THEREFORE, in consideration of the recitals, promises and covenants herein set forth and other good and valuable consideration herein receipted for, the parties agree as follows:

COVENANTS

1. Requirements Prior to First Reading. Prior to the first reading of the annexation ordinance before City Council, the Applicant shall:

- a) sign this Agreement.
- b) provide to the City an updated title commitment current within 30 days of the date of the first reading of the annexation ordinance.
- c) Pay the following to the City:

i) <u>Plant Investment Fees (PIF's)</u>	
Stormwater	\$2.46/square foot of impervious area
	Existing Impervious Area: 55,000 sf:
	<u>\$135,300</u>
<b>Total Due Prior to First Reading</b>	<b>\$135,300</b>

- d) Execute the following documents, at no cost to the City, the final forms of which are subject to approval of the City Manager:
  - i) A deed of dedication substantially in the form attached hereto and incorporated herein as Exhibit B conveying to the City, in fee and clear of monetary liens and encumbrances, the easterly 30-foot portion of Property for the extension of Violet Avenue as generally shown on Exhibit B attached hereto and incorporated herein (the “2801 ROW”).
  - ii) A quitclaim deed substantially in the form attached hereto and incorporated herein as Exhibit C conveying to the City, in fee and clear of monetary liens and encumbrances, the 306 square foot portion of Property as generally shown on Exhibit C attached hereto and incorporated herein.
  - iii) A quitclaim deed substantially in the form attached hereto and incorporated herein as Exhibit D conveying to the City, in fee and clear of monetary liens and encumbrances, the 561 square foot portion of Property as generally shown on Exhibit D attached hereto and incorporated herein.

2. Water and Wastewater Connection Requirements. Within 365 days of the effective date of the annexation ordinance, any existing structures on the Property required to be connected to the water utility, wastewater utility, or both under the Boulder Revised Code shall be connected to the City’s utilities to which connection is required or be demolished. The City Manager, in her discretion, may grant one or more 180-day extensions of the 365-day compliance deadline for good cause shown by the Applicant. The City Manager will consider, among other factors, pending development projects and/or applications for the Property, the Property’s current and/or future use, the status of ongoing vertical or infrastructure construction on portions of the Property, and environmental concerns in her decision. If the Applicant connects any existing structures on the Property, then the Applicant agrees to perform the following:

- a) For connection to the City’s water utility:
  - a. Submit an application that meets the requirements of Chapter 11-1, “Water Utility,” B.R.C. 1981, and obtain City approval to connect to the City’s water utility.
  - b. Pay all applicable fees and charges associated with a service line connection to the City’s water utility, including but not limited to the water plant investment fee and all applicable water utility connection and inspection fees.
  - c. Construct the individual service lines to the Property and connect the existing structures required to be so connected to the City’s water utility.

- b) For connection to the City’s wastewater utility:
  - a. Submit an application that meets the requirements of Chapter 11-2, “Wastewater Utility,” B.R.C., 1981, and obtain City approval to connect to the City’s wastewater utility.
  - b. Pay all applicable fees and charges associated with a service line connection to the City’s wastewater utility, including but not limited to the wastewater plant investment fee and all applicable wastewater utility connection and inspection fees.
  - c. Construct the individual service line to the Property and connect the existing structures required to be so connected to the City’s wastewater utility.
3. Existing Wells. The City agrees that it will not prohibit the Applicant from using existing wells for irrigation purposes, even if served by the City water utility. Under no circumstances may existing wells be used for domestic water purposes once the Applicant has connected to city water utility. No person shall make any cross connections to the City’s municipal water supply system from any well on the Property.
4. Historic Drainage. The Applicant agrees to convey drainage from the Property in an historic manner that does not materially and adversely affect abutting properties.
5. Ditch Company Approval. If the Property is abutting or crossed by an existing irrigation ditch or lateral, the Applicant agrees not to relocate, modify, or alter the ditch or lateral until and unless written approval is received from the appropriate ditch company.
6. Existing Nonstandard Buildings and/or Nonconforming Uses. There are no nonstandard buildings or structures on the Property. The only nonconforming use on the Property that will be recognized by the City and temporarily allowed to continue to exist is a freestanding wireless communications facility tower and equipment pad and enclosure that is currently on the Property and more particularly identified in Exhibit E, attached hereto and incorporated herein, that was approved under Boulder County Land Use Docket #SU-05-004 (the “County Approval”) (the “Tower”). No changes other than “eligible facilities requests”, as defined under the Boulder Revised Code shall be made to the Tower and, for purposes of eligible facilities requests, the Tower shall be considered a “legal nonconforming tower structure” as referenced in the definition for “substantial change” in Section 9-16-1, “Definitions,” B.R.C. 1981. Notwithstanding the foregoing, the City Manager shall have the authority to process and review any eligible facilities request for this Tower consistent with federal laws, rules, regulations, and orders applicable to the request. The Tower shall be removed upon termination of the Option and Lease Agreement dated April 8, 2005, as amended by the First Amendment to Option and Lease Agreement dated March 3rd, 2015, for the Tower between Church of the Nazarene and New Cingular Wireless, PCS, LLC (the “Lease”) and in no event later than by February 28, 2045. The Lease shall not be renewed or extended in time if terminated for any reason before February 28, 2045.
7. Existing Church Use. There is also an existing church on the Property. A church use requires a use review within the RMX-2 zoning district. The existing church use may be

continued, without a use review, upon annexation of the Property. Any changes to the church use, except connection to City utility services as required under this Agreement, shall be made in accordance with the applicable standards and processes for the use under the Boulder Revised Code.

8. New Construction. All new construction commenced on the Property after annexation shall comply with all City of Boulder laws, taxes, and fees, except as modified by this Agreement.
9. Waiver of Vested Rights. The Applicant waives any vested property rights that may have arisen under Boulder County jurisdiction. This Agreement shall replace any such rights that may have arisen under Boulder County jurisdiction. The Applicant acknowledges that nothing contained herein may be construed as a waiver of the City's police powers or the power to zone and regulate land uses for the benefit of the general public.
10. Dedications. The Applicant acknowledges that any dedications and public improvements required herein with this annexation are rationally related and reasonably proportionate to the impact of the development of the Property as set forth in this Agreement.
11. Original Instruments. Prior to the first reading of the annexation ordinance, the Applicant shall provide an original of this Agreement signed by the Applicant, along with any instruments required in this Agreement. The City agrees to hold (and not record) such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that Applicant withdraws from this Agreement pursuant to the terms of this Agreement, or the City does not annex the Property, the City agrees that it will not record any such documents and will return all such original documents to the Applicant. The Applicant agrees that it will not encumber or in any way take any action that compromises the quality of such documents while they are being held by the City.
12. No Encumbrances. The Applicant agrees that between the time of signing this Agreement and the time when final legislative action on the annexation of this Property has occurred, the Applicant shall neither convey ownership nor further encumber the Applicant's Property, without the express approval from the City. Prior to the recording of this Agreement with the Boulder County Clerk and Recorder, Applicant agrees not to execute transactional documents encumbering the Property or otherwise affecting title to the Property without first notifying the City and submitting revised title work within five (5) working days of any such transaction.
13. Breach of Agreement. In the event that the Applicant breaches or fails to perform any required action under or fails to pay any fee specified under this Agreement, the Applicant acknowledges that the City may take all reasonable actions to cure the breach, including but not limited to, the filing of an action for specific performance of the obligations herein described. In the event the Applicant fails to pay any monies due under this Agreement or fails to perform any affirmative obligation hereunder, the Applicant agrees that the City

- may collect the monies due in the manner provided for in Section 2-2-12, B.R.C., 1981, as amended, as if the said monies were due and owing pursuant to a duly adopted ordinance of the City or the City may perform the obligation on behalf of the Applicant and collect its costs in the manner herein provided. The Applicant agrees to waive any rights he may have under Section 31-20-105, C.R.S., based on the City's lack of an enabling ordinance authorizing the collection of this specific debt, or acknowledges that the adopting of the annexation ordinance is such enabling ordinance.
14. Failure to Annex. In the event that the Property is not annexed to the City: (a) this Agreement and any document executed pursuant hereto shall be null and void and of no consequence; and (b) the City shall promptly return to Applicant all monies tendered to the City pursuant to this Agreement, including, without limitation, the stormwater PIF fee pursuant to Section 1(c)(i) above.
  15. Future Interests. This Agreement and the covenants set forth herein shall run with the land and be binding upon the Applicant, the Applicant's successors and assigns and all persons who may hereafter acquire an interest in the Property, or any part thereof. If it shall be determined that this Agreement contains an interest in land, that interest shall vest, if at all, within the lives of the undersigned plus 20 years and 364 days.
  16. Right to Withdraw. The Applicant retains the right to withdraw from this Agreement up until the time that final legislative action has been taken on the ordinance that will cause the Property to be annexed into the City. The final legislative action will be the vote of the City Council after the final reading of the annexation ordinance. The Applicant's right to withdraw shall terminate upon the City Council's final legislative action approving the annexation. In the event that the Applicant withdraws from this Agreement in the manner described above, this Agreement shall be null and void and shall have no effect regarding the Applicant. The City agrees, within 30 days of a request by the Applicant after a withdrawal, to return all previously submitted fees, application, and easement and/or rights of way dedication documents which the Applicant submitted pursuant to this Agreement to the City.
  17. Community Benefit. The Applicant agrees that this is a voluntary agreement. Prior to a building permit application for any new dwelling unit on the Property, the Applicant and City shall execute and record with the Boulder County Clerk and Recorder covenants and deed restrictions that will require and secure construction of permanently affordable dwelling units on the Property consistent with the terms of this Agreement.
    - a) Affordable Units. The Applicant agrees that a certain percentage of the total number of new dwelling units constructed on the Property shall be developed and sold as for-sale deed restricted permanently affordable units ("Affordable Units"). The required percentage of Affordable Units depends on the number of dwelling units that will be constructed on the Property, except that the Applicant agrees that in any event no less than 30 percent (30%) of new dwelling units constructed on the Property shall be Affordable Units. If a density bonus is approved for the Property under Section 9-8-4, "Housing Types and Density Bonuses Within the RMX-2 Zoning District," B.R.C. 1981, the Applicant shall provide the percentage of Affordable Units on the

Property that is required under Section 9-8-4, B.R.C. 1981, for the bonus that is approved. The Applicant may satisfy the affordable housing requirement of this Agreement through any combination of the following means:

1. Concurrent On-site Construction. Construction of Affordable Units consistent with the terms of this Agreement and concurrently with construction of the Market Units. To ensure concurrency, a final certificate of occupancy may not be issued for a Market Unit unless at least an equivalent number of final certificates of occupancy has been issued for Affordable Units as Market Units on the Property. For purposes of this Agreement, "Market Units" means dwelling units that are intended to be sold at a price determined by the Property owner based on market conditions and demand and not subject to a deed restricting covenant establishing pricing requirements for the units.
2. Conveyance of Fee Simple Title. Conveyance of fee simple title to the City of Boulder, or an entity designated by the City of Boulder, at no cost to the City of Boulder or the designated entity, in one or more platted lots of the Property for construction of the required percentage of Affordable Units consistent with a site review approval for the development of the Property (the "Affordable Lot"). The Affordable Lot shall be platted consistent with the standards of Chapter 9-12, "Subdivision," B.R.C. 1981, except as may be expressly modified by this Agreement. The Affordable Lot shall meet the requirements described in the balance of this Section 17(a)(2) below to the City Manager's satisfaction.
  - i. The Affordable Lot shall be in an environmentally acceptable condition as supported by a Phase I Environmental Assessment, to be provided by the Applicant at no cost to the City. The City Manager may require other studies or assessments to make this determination, at no cost to the City.
  - ii. Satisfactory proof of title is provided to the City Manager within thirty days before the effective date of conveyance to the City or its designee. The Affordable Lot shall be free of all monetary liens and encumbrances and free of encumbrances other than: (a) this Agreement and other City development approvals and easements necessary for the development of the Property consistent with this Agreement and City approvals for the Property; and (b) those listed as exceptions in Exhibit F\_, but excluding those exceptions in Exhibit C that affect only that portion of the Property other than the Affordable Lot. All property taxes and special taxes will be current before the title for the "Affordable Lot" is conveyed. The Affordable Lot will be conveyed by special warranty deed before application of any building permit for a new dwelling unit on the Property. The conveyed Affordable Lot will be fully owned by the City or its designee.
  - iii. The Affordable Lot shall be of a size and include all rights to adequately and reasonably allow for construction of all Affordable Units required to be constructed on the Property pursuant to the terms of this Agreement and site

review approval. Any lot conveyed for this purpose shall be a finished lot. A lot shall be considered finished if, consistent with technical documents approvals for such improvements and City of Boulder Design and Construction Standards and the Boulder Revised Code standards, the lot has been roughly graded and provided with the underground water, sanitary sewer, and stormwater mains and service stub outs to the property line for the lot (service lines are not required) necessary to serve the Affordable Units and the streets required for the construction of the Affordable Units under the site review approval and/or this Agreement. Any future development of the lot conveyed under this paragraph with permanently affordable dwelling units shall meet the requirements of this Agreement for Affordable Units.

3. No cash-in-lieu. Cash-in-lieu shall not be an option for meeting the Community Benefit requirements of this Agreement nor for the Applicant's inclusionary housing obligation set forth in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981 .
- b) Type. All of the Affordable Units must be for-sale units. A minimum of eighteen percent (18%) of the Affordable Units shall have three bedrooms and two baths. The remainder of the Affordable Units shall have a minimum of two bedrooms and one bath.
- c) Parking. Each Affordable Unit shall have at least one parking space for an automobile. At least 45 percent (45%) of the Affordable Units shall include a carport or garage of adequate size to store one automobile. The remaining Affordable Units may have any type of parking, including at grade uncovered parking.
- d) Design Quality. The Affordable Units shall be of comparable quality in design, construction, workmanship and materials to the Market Units.
- e) Location. There is no requirement as to where Affordable Units are located within the development; Affordable Units may be evenly distributed or concentrated in one or more locations within the development.
- f) Pricing and size. The total number of Affordable Units shall be divided into two pricing categories:
  - a. All two-bedroom Affordable Units on the Property shall have a minimum size of 1,000 square feet and be priced to be affordable to households earning no more than 100% of the area median income (the "AMI") and qualifying household incomes shall be set at a maximum of 120% of the AMI.
  - b. All three-bedroom Affordable Units on the Property shall have a minimum size of 1,250 square feet and be priced to be affordable to households earning no more than 120% of the AMI and qualifying household incomes shall be set at a maximum of 150% of the AMI.

- c. The initial sales price of an Affordable Unit shall be based on the affordable pricing sheet established by the City Manager as in effect at the time of building permit issuance for the Affordable Unit. Pricing of future Affordable Unit resales shall be permanently restricted based on the initial sale price of the Affordable Unit and as described in the individual final permanently affordable deed restricting covenant executed by individual purchasers.
- g) Rounding. Any percentage requirement in this Paragraph 17 that results in a fraction is subject to standard rounding (0.5 and above rounds up).
- h) Housing Inspections. The City will retain a housing construction inspector (the “Inspector”) to inspect and monitor construction of the Affordable Units. These inspections are to ensure the Affordable Units meet all contractual requirements and result in high quality, well-constructed housing. All costs for the time of the Inspector and any other costs incurred shall be borne by the Applicant.
- i) Affordable Agreement. Prior to a building permit application for any new dwelling unit for the Property, the Applicant and City shall execute and record with the Boulder County Clerk and Recorder an on-site agreement (“On-site Agreement”) which includes but is not limited to details concerning required housing inspections, and specific requirements for a homeownership association.
- j) Covenants. Prior to a building permit application for any new dwelling unit for the Property, the Applicant and City shall execute and record with the Boulder County Clerk and Recorder a permanently affordable deed restricting interim covenant (“Interim Covenant”) and related required documents to permanently secure the affordability of the Affordable Units. Upon the sale of an Affordable Unit to an affordable purchaser, a permanently affordable deed restricting covenant shall be executed by the individual purchasers and recorded with the Boulder County Clerk and Recorder. Upon sale of all Affordable Units to affordable purchasers, the Interim Covenant shall be released.
- k) Modification of Affordable Housing. The Applicant and the City Manager, or her delegate, may agree to modify the requirements set forth in this Paragraph 17 for developments with dwelling units provided that the City Manager finds the proposed development or land conveyance would provide an affordable housing benefit that provides a community benefit at least equivalent to the housing benefit provided by the Affordable Units required herein. The City Manager may not accept cash-in-lieu to satisfy the requirement for any of the on-site Affordable Units required under this Agreement.
- l) Consistency with Chapter 9-13, “Inclusionary Housing,” B.R.C. 1981, and related Administrative Regulations. Except as specifically modified by this Agreement, implementation of the affordable housing requirements under this Agreement will be consistent with Chapter 9-13, “Inclusionary Housing,” B.R.C. 1981, and related Inclusionary Housing Administrative Regulations of the City of Boulder.



- m) Amenities. Access to any amenities provided to the Market Unit owners, including but not limited to open space and parks, shall equally be provided to the Affordable Unit owners.
18. Community Benefit for Nonresidential Development. For any nonresidential development of the Property requiring payment of the capital facility impact fee for affordable housing under Section 4-20-62, "Capital Facility Impact Fee," B.R.C. 1981, as may be amended from time to time, the Applicant agrees to pay the fee for affordable housing at a rate two-times the rate otherwise required to be paid for such development. This increased fee shall be paid in accordance with the standards applicable at the time of the development requiring payment of said fee.
19. Market Unit Size and Tenure. No dwelling unit on the Property shall have more than 3,000 square feet of floor area, excluding 500 square feet in a garage; provided, however, that if the total number of dwelling units allowed on the Property pursuant to an approved site review application is seventy-eight (78) or fewer, then the maximum square footage for each Market Unit shall increase to 3,500 square feet. The floor area requirements for the Market Units shall be based on the "floor area" definition found in Section 9-16-1, "General Definitions," B.R.C 1981.
20. Zoning. The Property shall be annexed to the City with an initial zoning classification of Residential - Mixed 2 (RMX-2), and except as otherwise set forth herein, shall be subject to all of the rights and restrictions associated with that zoning. Nothing in this Agreement shall limit the city's police power to zone and regulate this Property.
21. Subordination. Prior to first reading of the annexation ordinance, the Applicant shall obtain and submit to the City an agreement between any lender with a security interest in the Property and the City, executed by the mortgagee, in which the mortgagee consents to this Agreement and subordinates any interest in the Property to this Agreement in a form subject to approval of the City Manager and essentially as attached in Exhibit G.
22. Compatibility and Site Review. Prior to any application for a building permit for a new dwelling unit or a new principal use on the Property, the Applicant shall file with the City, and obtain approval of, a site review application which shall be reviewed and approved in accordance with the standards of Section 9-2-14, "Site Review," B.R.C. 1981, as in effect at the time such application is filed. A site review will be required regardless of whether the proposal meets the minimum thresholds for a required site review under Section 9-2-14, B.R.C. 1981, or whether the proposal would otherwise require a site review application. In order to address the compatibility criteria in Section 9-2-14(h)(3), B.R.C. 1981, the site review application shall include, without limitation, the following:
- a) Eastern Right-of-Way Design. The Applicant's site review plans shall provide a public street along the eastern Property line that includes only two motor vehicle travel lanes (two-way travel) with a combined width of 20 feet, curb and gutter on the east and west side of the travel lanes and an eight-foot wide tree lawn and five-foot wide detached sidewalk on the west side of the street only (collectively, the "2801 ROW

Improvements”). The Applicant agrees that, as part of a site review approval, it will dedicate to the City a public access easement immediately to the west of the 2801 ROW as may be necessary to accommodate the eight-foot wide tree lawn and five-foot wide detached sidewalk noted above, but the parties agree that the public access easement for said improvements will not extend more than one foot beyond the edge of the sidewalk. The parties further agree that for the initial redevelopment of the Property no in-fee right-of-way dedication will be required along the eastern Property line for this public street in addition to the 2801 ROW dedication.

- b) Maximum Stories and Building Design. The Applicant’s site review plans shall show buildings of up to three stories, but no more than two-stories in height above finished grade and with sloped roof forms along the entire eastern Property line and along no less than the eastern half of the northern Property line. This requirement shall not apply if the site review application is filed in 2030 or later and the City of Boulder has at that time adopted a subcommunity or area plan or design guidelines that apply to the Property. If such a plan or guidelines have been adopted at that time, the Property shall be developed consistent with the character established for the area in such plan or guidelines.
  - c) Shared Useable Open Space. The Applicant’s site review plans shall include a shared useable open space area on the Property meeting the requirements of Section 9-9-11, “Useable Open Space,” B.R.C. 1981, and the needs of the anticipated residents, occupants, tenants, and visitors of the Property. This shared open space area shall be located adjacent to the eastern Property line unless a different location is approved by the approving authority of the site review.
  - d) Future Adopted Plans. If a site review application for the Property is submitted before January 1, 2027, then development of the Property shall not be subject to any subcommunity plan, area plan, or design guidelines then in effect.
23. Public Improvements. As part of the required site review approval for the initial redevelopment of the Property, the Applicant agrees to provide or improve, at no cost to the City, certain public improvements on and off the Property. The specific improvement requirements will be determined in the site review process and may include, without limitation, dedication of rights-of-way and easements for and construction of the following consistent with applicable standards of the Boulder Revised Code and City of Boulder Design and Construction Standards (“DCS”):
- a) Detached sidewalks and landscape areas along both Jay Road and US 36/28<sup>th</sup> Street in the locations where the Property directly abuts the public right-of-way or public easements for Jay Road and US 36/28<sup>th</sup> Street;
  - b) Intersection improvements at the intersection of Jay Road and US 36/28<sup>th</sup> Street;
  - c) Jay Road improvements including:
    - a. A new left turn lane to enter the Property and a new left turn lane approaching the intersection with US 36/28<sup>th</sup> Street;
    - b. A center median;
    - c. A raised pedestrian/bicycle crossing across the channelized right turn lane on

- westbound Jay Road at the intersection with 28<sup>th</sup> Street; and
- d. Reconstruction of a standard RTD boarding area and concrete shelter pad behind the detached sidewalk meeting RTD standards;
  - d) The 2801 ROW Improvements; and
  - e) A multi-use path and other improvements that may be anticipated in the City of Boulder Transportation Master Plan or an adopted connections plan for the area at the time the site review application is filed. Instead of requiring construction of any such public improvement at the time of the development of the approved site review plans, the City may require payment, to the City, of the cost of construction of the improvement to allow for construction thereof by the City at a later time.
24. Solar Access. The approving authority of a site review for the Property shall have the authority to modify under the site review process, the solar access standards of Section 9-9-17, "Solar Access," B.R.C. 1981, for lots developed with townhouses where the modification is required to allow for townhouses to be built on individual lots, for example, to allow a zero setback from lot lines where two townhouses are attached.
25. Density Calculation. In the initial redevelopment of the Property with dwelling units meeting the Affordable Unit requirements under Paragraph 17 of this Agreement, when determining the maximum number of dwelling units allowed per acre pursuant to such standards in Section 9-8-1, "Schedule of Intensity Standards," B.R.C., 1981, and pursuant to the standard in Section 9-8-4, "Housing Types and Density Bonuses Within an RMX-2 Zoning District," B.R.C., 1981, the size of the Property, as measured prior to any dedications, will be considered the basis, or more particularly, the "lot or parcel" for such analysis. However, in no event shall the density of the Property exceed the maximum density allowed (pursuant to the same methodology) under the land use map designation of the Boulder Valley Comprehensive Plan for the Property.
26. Density Bonus. In a site review or amendment thereto for the development or redevelopment of the Property, when determining for purposes of a density bonus under Section 9-8-4, "Housing Types and Density Bonuses Within an RMX-2 Zoning District," B.R.C. 1981, whether permanently affordable dwelling units on the Property meet the requirements for permanently affordable units set forth in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, any Affordable Units meeting the requirements set forth in Paragraph 17 shall be considered meeting the requirements of Chapter 9-13 for this particular purpose. This paragraph does not modify the required percentage numbers of units that are permanently affordable units for any of the density bonuses available under Section 9-8-4, B.R.C. 1981.
27. Stormwater Requirements. Any development of the Property shall meet drainage and stormwater quality requirements of the Boulder Revised Code and City of Boulder Design and Construction Standards ("City Stormwater Requirements"). The Applicant will design and construct, at no cost to the City, any on-site and off-site drainage or stormwater quality systems that are necessary to meet City Stormwater Requirements for the development of the Property, as determined by the City Manager, which may include without limitation modifications to the Farmer's Ditch. The Applicant shall be responsible for obtaining any

required approval(s) from the Farmer's Ditch for stormwater generated or discharged from or modified by the Applicant's Property.

28. Private Streets. The approving authority of a site review for initial redevelopment of the Property with Affordable Units meeting the requirements of Paragraph 17 of this Agreement, shall have the authority to modify the standards of the Boulder Revised Code and DCS to allow for approval of a subdivision of the Property under Chapter 9-12, "Subdivision," B.R.C. 1981, with private streets and lots that do not front on or have direct access to a public street, but rather solely front on and have frontage on a private street, if the approving authority finds that the application meets the site review criteria.

*(signature page follows)*

EXECUTED on the day and year first above written.

MJF 2801 JAY RD DEVELOPMENT LLC,  
a Virginia limited liability company

By: \_\_\_\_\_  
Margaret J. Freund, Manager

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by Margaret J. Freund as Manager of MJF 2801 JAY RD DEVELOPMENT LLC.

Witness my hand and official seal.

My commission expires:\_\_\_\_\_

[Seal]

\_\_\_\_\_  
Notary Public

CITY OF BOULDER, COLORADO

By: \_\_\_\_\_  
Nuria Rivera-Vandermyde, City Manager

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney's Office

Date: \_\_\_\_\_

Exhibits

- Exhibit A      Legal Description of Property
- Exhibit B      Deed of Dedication
- Exhibit C      Quitclaim Deed
- Exhibit D      Quitclaim Deed
- Exhibit E      Map of Tower
- Exhibit F      Title Exceptions
- Exhibit G      Subordination Agreement

**EXHIBIT A**

**LEGAL DESCRIPTION**

**2801 Jay Road**

THAT PORTION OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT SE CORNER OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17; THENCE NORTH 0 DEGREES 18 MINUTES 05 WEST, 469.50 FEET ALONG THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 17; THENCE SOUTH 89 DEGREES 38 MINUTES 05 WEST, 485.20 FEET PARALLEL TO THE EAST-WEST CENTERLINE OF SAID SECTION 17; THENCE SOUTH 0 DEGREES 18 MINUTES 05 SECONDS EAST, 469.50 FEET PARALLEL TO THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 17 TO A POINT ON THE EAST-WEST CENTERLINE OF SAID SECTION 17; THENCE NORTH 89 DEGREES 38 MINUTES 05 SECONDS EAST, 485.20 FEET ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 17 TO THE POINT OF BEGINNING,

EXCEPT THOSE PARCELS CONVEYED IN DEED RECORDED NOVEMBER 17, 1956 IN BOOK 1030 AT PAGE [80](#) AND IN RULE AND ORDER RECORDED FEBRUARY 8, 1978 UNDER RECEPTION NO. [264461](#), COUNTY OF BOULDER, STATE OF COLORADO.

**EXHIBIT B**  
**DEED OF DEDICATION**  
**(Public Street)**

MJF 2801 JAY RD DEVELOPMENT LLC, a Virginia limited liability company, "Grantor", for good and valuable consideration of LESS THAN FIVE HUNDRED DOLLARS, the receipt of which is hereby acknowledged, does hereby dedicate, transfer, grant, sell and convey to the CITY OF BOULDER, a Colorado home rule city, "Grantee", whose legal address is 1777 Broadway, Boulder, Colorado 80302, for public use forever, as a public street right-of-way, that certain real property situated in Boulder County, Colorado described on Exhibit 1 attached hereto and incorporated herein by reference, together with all use, rights, and privileges as are necessary and incidental to the reasonable and proper use of same.

Grantor, for itself and its successors and assigns, does hereby covenant and agree that it shall not obstruct or interfere with public use of such right-of-way.

Grantor warrants its ability to grant and convey the subject real property.

The terms of this Deed of Dedication shall be binding upon Grantor and its successors and assigns, and all other successors to themselves in interest and shall continue as a servitude running in perpetuity with the property described above.

IN WITNESS WHEREOF, the Grantor has executed this deed this \_\_\_\_ day of \_\_\_\_\_, 2024.

GRANTOR:

MJF 2801 JAY RD DEVELOPMENT LLC,  
a Virginia limited liability company

By: \_\_\_\_\_  
Margaret J. Freund, Manager

STATE OF COLORADO )  
  ) ss.  
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by Margaret J. Freund as Manager of MJF 2801 Jay RD Development LLC.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

[Seal]

\_\_\_\_\_  
Notary Public



**EXHIBIT 1  
(PAGE 1 OF 2)**

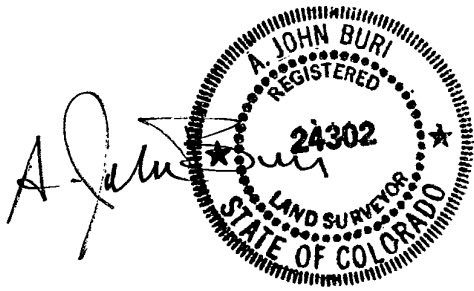
LEGAL DESCRIPTION – ROW DEDICATION

A PARCEL OF LAND LOCATED IN THE NW 1/4 OF SECTION 17, T1N, R70W, OF THE 6TH P.M. COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER WEST 1/16 CORNER OF SECTION 17, T1N, R70W OF THE 6TH P.M.; THENCE N00°25'44"W, A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND RECORDED 10/22/2014 AT RECEPTION NO. 03409296 OF THE BOULDER COUNTY RECORDS, THE POINT OF BEGINNING.

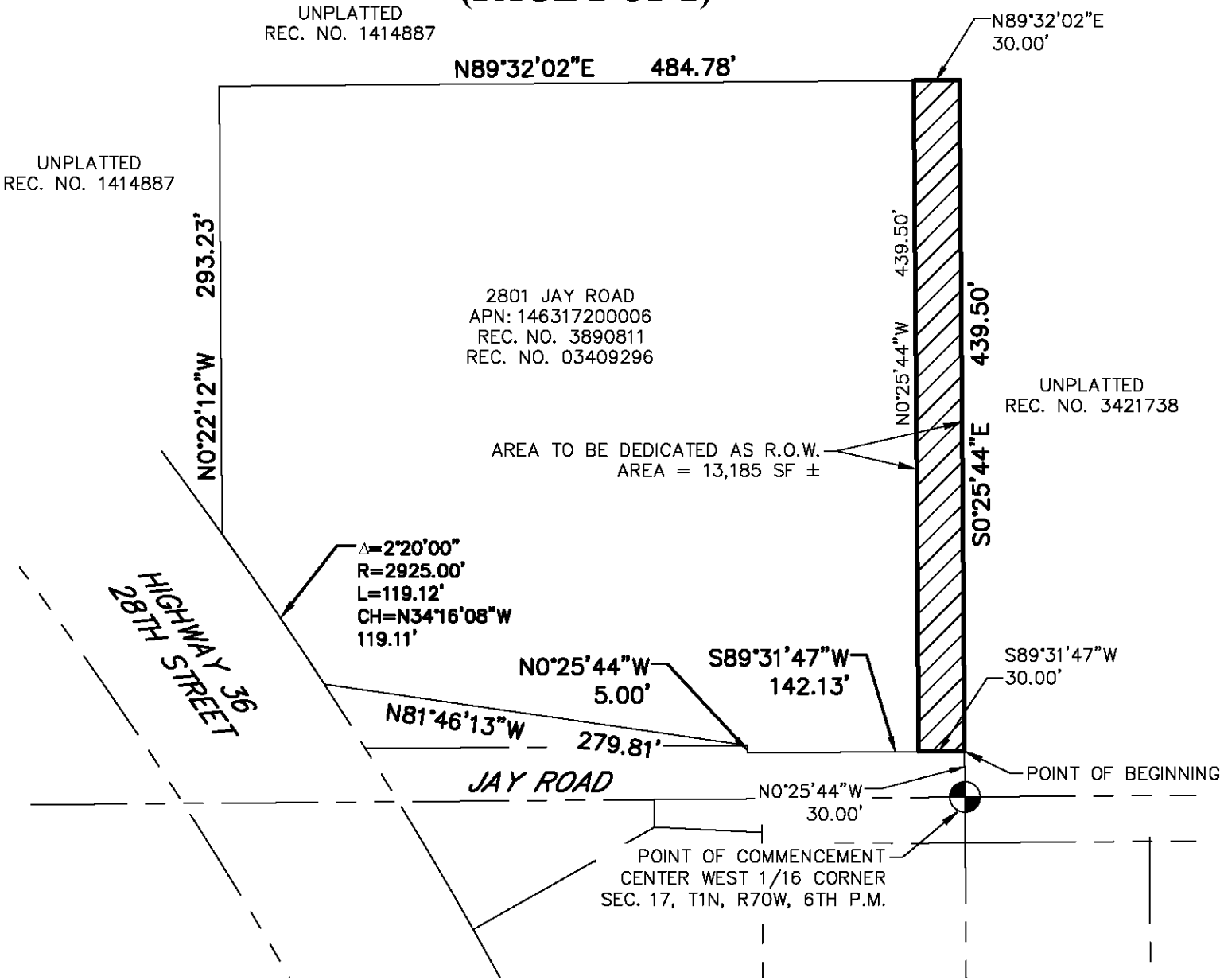
THENCE S89°31'47"W ALONG THE SOUTHERLY LINE OF SAID PARCEL, A DISTANCE OF 30.00 FEET; THENCE N00°25'44"W, A DISTANCE OF 439.50 FEET TO A POINT ON THE NORTH LINE OF SAID PARCEL; THENCE N89°32'02"E ALONG THE NORTH LINE OF SAID PARCEL, A DISTANCE OF 30.00 FEET; THENCE S00°25'44"E ALONG THE EAST LINE OF SAID PARCEL, A DISTANCE OF 439.50 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 13,185 SQUARE FEET MORE OR LESS.



A. JOHN BURI P.L.S. #24302  
FOR AND ON BEHALF OF  
SITWORKS  
10/16/23  
PROJECT NO. 23142

# EXHIBIT 1 (PAGE 2 OF 2)



**1** **ROW DEDICATION**

SCALE: 1" = 100'

**EXHIBIT C**

**QUITCLAIM DEED**

**THIS DEED**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, between MJF 2801 JAY RD DEVELOPMENT LLC, a Virginia limited liability company, grantor, and the CITY OF BOULDER, a Colorado home rule city, existing under and by virtue of the laws of the State of Colorado, grantee, whose legal address is 1777 Broadway, Boulder, Colorado 80302, grantee.

**WITNESS**, that the grantor, for and in consideration of the sum of LESS THAN FIVE HUNDRED DOLLARS, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise, release, sell and QUITCLAIM unto the grantee, its successors and assigns forever, all the right, title, interest, claim and demand which the grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Boulder and State of Colorado, described as follows:

SEE EXHIBIT 1 ATTACHED

**TO HAVE AND TO HOLD** the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the grantor, either in law or equity, to the only proper use, benefit and behoof of the grantee, its successors and assigns forever.

*(signature page follows)*

IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.

MJF 2801 JAY RD DEVELOPMENT LLC,  
a Virginia limited liability company

By: \_\_\_\_\_  
Margaret J. Freund, Manager

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024, by Margaret J. Freund as Manager of MJF 2801 JAY RD DEVELOPMENT LLC.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

[Seal]

\_\_\_\_\_  
Notary Public

**EXHIBIT 1  
(PAGE 1 OF 2)**

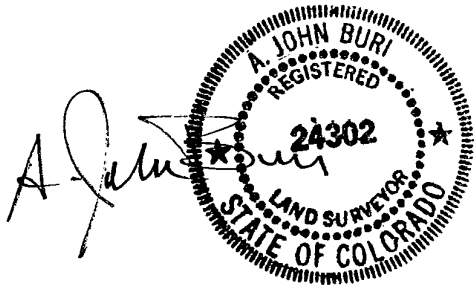
LEGAL DESCRIPTION – QUITCLAIM DEED

A PARCEL OF LAND LOCATED IN THE NW 1/4 OF SECTION 17, T1N, R70W, OF THE 6TH P.M. COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER WEST 1/16 CORNER OF SECTION 17, T1N, R70W OF THE 6TH P.M.; THENCE N00°25'44"W, A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND RECORDED 10/22/2014 AT RECEPTION NO. 03409296 OF THE BOULDER COUNTY RECORDS; THENCE S89°31'47"W ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 142.13 FEET TO THE POINT OF BEGINNING.

THENCE S89°31'47"W, A DISTANCE OF 61.11 FEET; THENCE N00°15'49"W, A DISTANCE OF 5.00 FEET; THENCE N89°31'47"E, A DISTANCE OF 61.09 FEET; THENCE S00°25'44"E ALONG THE SOUTHERLY LINE OF SAID PARCEL, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING.

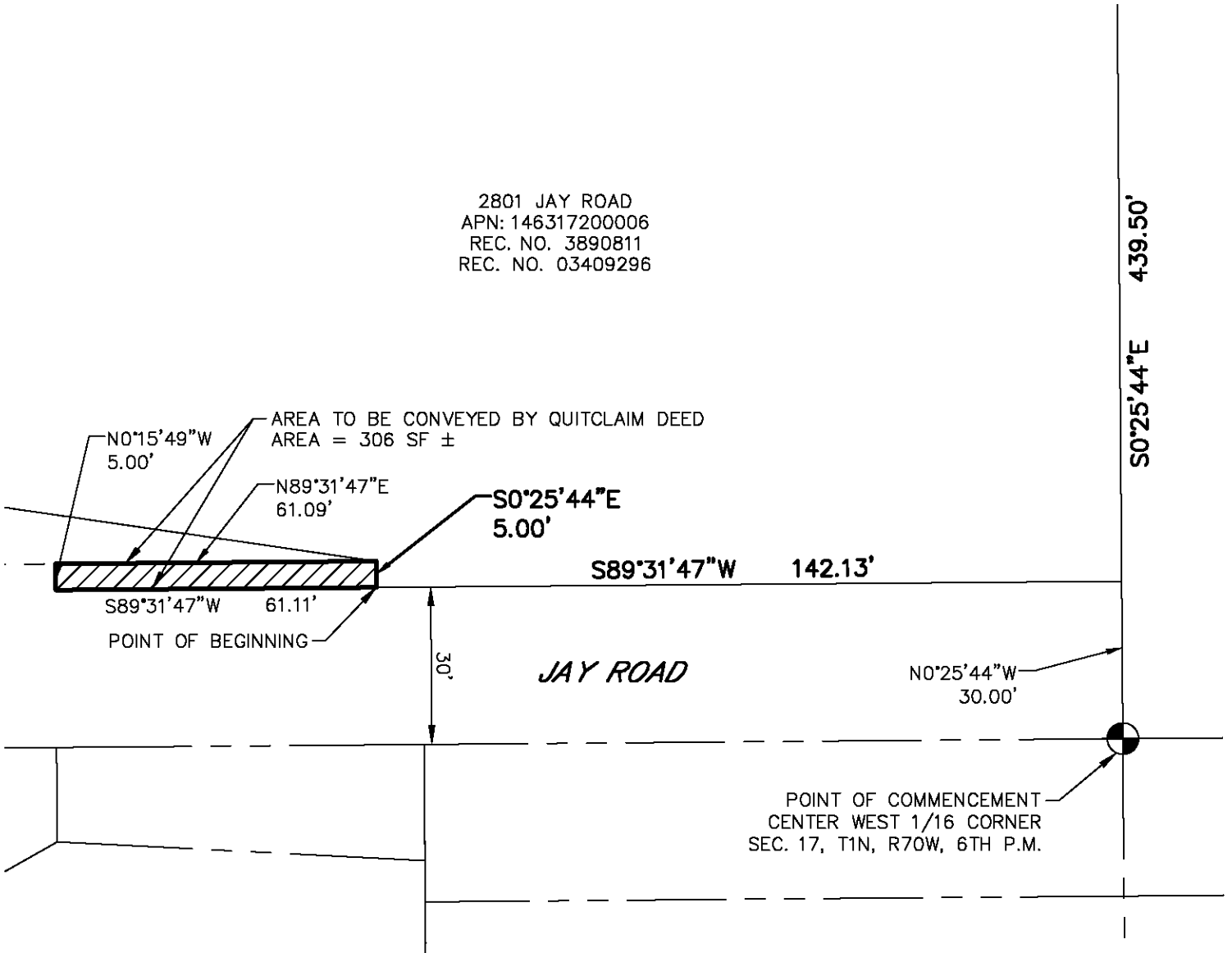
SAID PARCEL CONTAINS 306 SQUARE FEET MORE OR LESS.



A. JOHN BURI P.L.S. #24302  
FOR AND ON BEHALF OF  
SITWORKS  
10/16/23  
PROJECT NO. 23142

# EXHIBIT 1 (PAGE 2 OF 2)

2801 JAY ROAD  
APN: 146317200006  
REC. NO. 3890811  
REC. NO. 03409296



**1** QUITCLAIM DEED EXHIBIT

SCALE: 1" = 30'



**EXHIBIT D**

**QUITCLAIM DEED**

**THIS DEED**, made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, between MJF 2801 JAY RD DEVELOPMENT LLC, a Virginia limited liability company, grantor, and the CITY OF BOULDER, a Colorado home rule city, existing under and by virtue of the laws of the State of Colorado, grantee, whose legal address is 1777 Broadway, Boulder, Colorado 80302, grantee.

**WITNESS**, that the grantor, for and in consideration of the sum of LESS THAN FIVE HUNDRED DOLLARS, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold and QUITCLAIMED, and by these presents does remise, release, sell and QUITCLAIM unto the grantee, its successors and assigns forever, all the right, title, interest, claim and demand which the grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Boulder and State of Colorado, described as follows:

SEE EXHIBIT 1 ATTACHED

**TO HAVE AND TO HOLD** the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever of the grantor, either in law or equity, to the only proper use, benefit and behoof of the grantee, its successors and assigns forever.

*(signature page follows)*

IN WITNESS WHEREOF, the grantor has executed this deed on the date set forth above.

MJF 2801 JAY RD DEVELOPMENT LLC,  
a Virginia limited liability company

By: \_\_\_\_\_  
Margaret J. Freund, Manager

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2024, by Margaret J. Freund as Manager of MJF 2801 JAY RD DEVELOPMENT LLC.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

[Seal]

\_\_\_\_\_  
Notary Public



**EXHIBIT 1  
(PAGE 1 OF 2)**

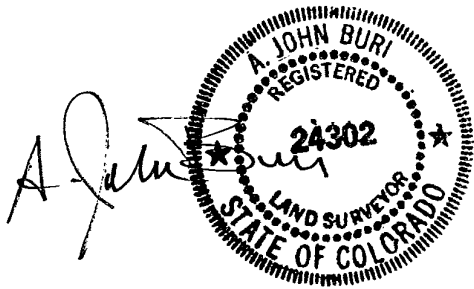
LEGAL DESCRIPTION – R.O.W. DEDICATION

A PARCEL OF LAND LOCATED IN THE NW 1/4 OF SECTION 17, T1N, R70W, OF THE 6TH P.M. COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER WEST 1/16 CORNER OF SECTION 17, T1N, R70W OF THE 6TH P.M.; THENCE N00°25'44"W, A DISTANCE OF 30.00 FEET TO THE SOUTHEAST CORNER OF A PARCEL OF LAND RECORDED 10/22/2014 AT RECEPTION NO. 03409296 OF THE BOULDER COUNTY RECORDS; THENCE S89°31'47"W ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING.

THENCE S89°31'47"W ALONG THE SOUTH LINE OF SAID PARCEL, A DISTANCE OF 112.13 FEET; THENCE N00°25'44"W ALONG THE SOUTHERLY LINE OF SAID PARCEL, A DISTANCE OF 5.00 FEET; THENCE N89°31'47"E, A DISTANCE OF 112.13 FEET; THENCE S00°25'44"E, A DISTANCE OF 5.00 FEET TO THE POINT OF BEGINNING.

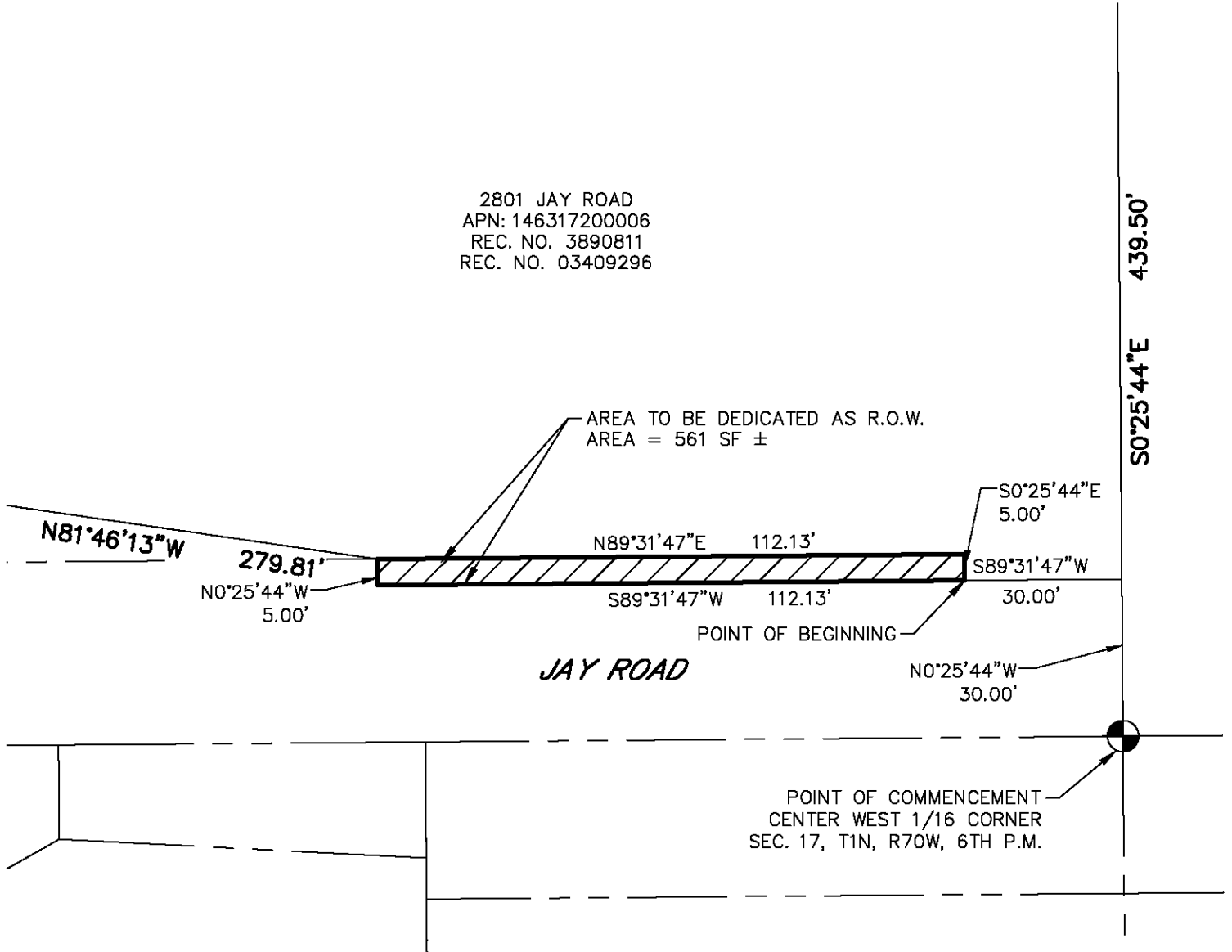
SAID PARCEL CONTAINS 561 SQUARE FEET MORE OR LESS.



A. JOHN BURI P.L.S. #24302  
FOR AND ON BEHALF OF  
SITWORKS  
10/16/23  
PROJECT NO. 23142

# EXHIBIT 1 (PAGE 2 OF 2)

2801 JAY ROAD  
APN: 146317200006  
REC. NO. 3890811  
REC. NO. 03409296

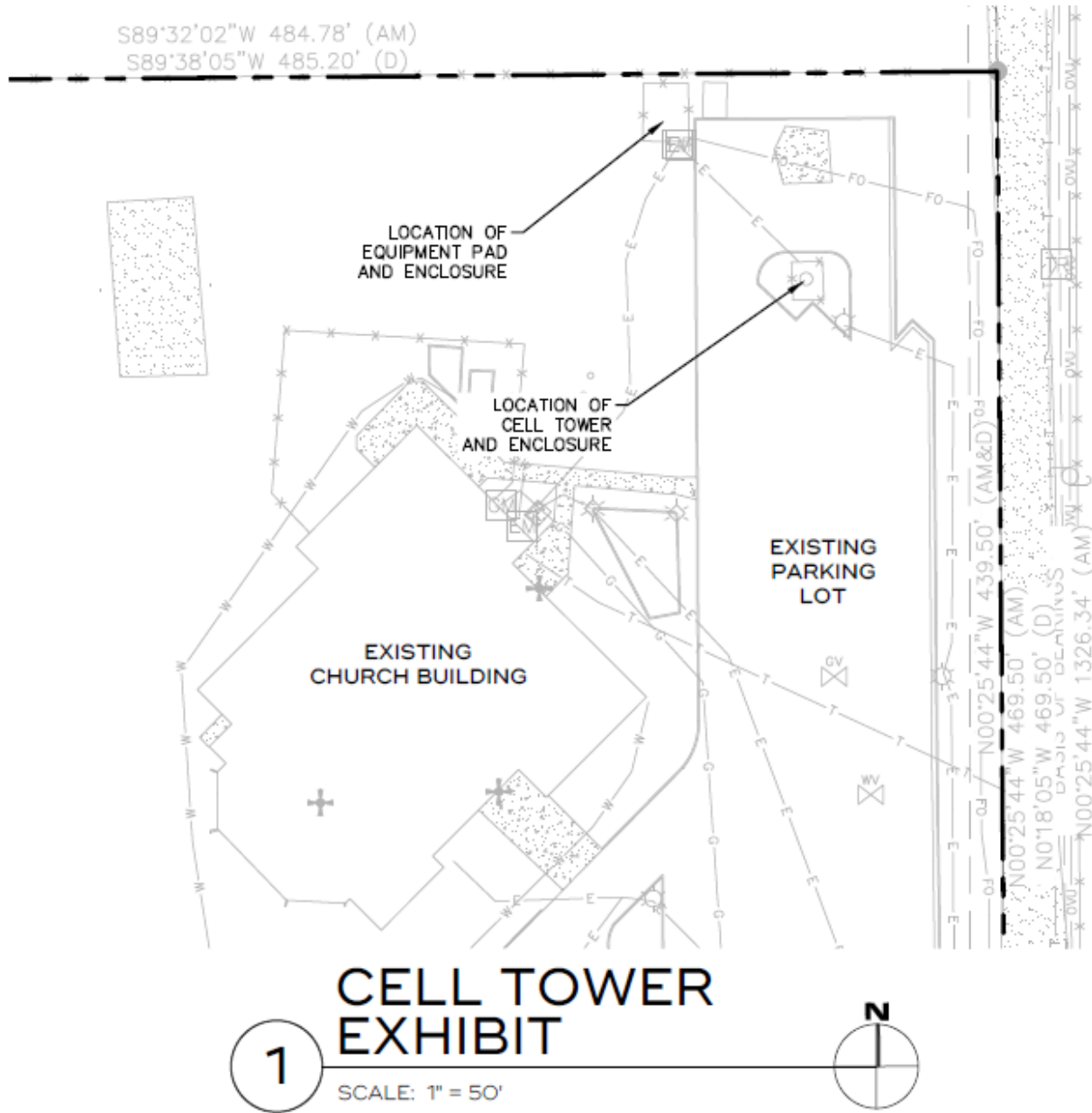


**1** R.O.W. DEDICATION 

SCALE: 1" = 30'

**EXHIBIT E**

**MAP OF TOWER**



**EXHIBIT F**  
**TITLE EXCEPTIONS**

1. TAXES FOR THE YEAR OF CONVEYANCE, PAYABLE JANUARY 1 THE FOLLOWING YEAR, A LIEN NOT YET DUE AND PAYABLE.
2. RIGHT OF THE PROPRIETOR OF A VEIN OR LODGE TO EXTRACT AND REMOVE HIS ORE THEREFROM, SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES HEREBY GRANTED, AND A RIGHT OF WAY FOR DITCHES OR CANALS CONSTRUCTED BY THE AUTHORITY OF THE UNITED STATES, AS RESERVED IN UNITED STATES PATENT RECORDED JANUARY 08, 1902 IN BOOK 167 AT PAGE **59**.
3. TERMS, CONDITIONS, PROVISIONS, BURDENS, OBLIGATIONS AND EASEMENTS AS SET FORTH AND GRANTED IN DECREE RECORDED JANUARY 17, 1975 UNDER RECEPTION NO. **126971**.
4. RIGHTS OF THE PUBLIC IN AND TO ANY PORTION OF SUBJECT PROPERTY FOR ROAD RIGHT OF WAY PURPOSES, AS SET FORTH IN DECREE RECORDED JANUARY 17, 1975 UNDER RECEPTION NO. **126971**.
5. ANY TAX, LIEN, FEE, OR ASSESSMENT FOR THE YEAR OF CONVEYANCE AND NOT YET DUE AND PAYABLE BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED JANUARY 13, 1989, UNDER RECEPTION NO. **00962510**.
6. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN DECLARATION OF COVENANTS RECORDED SEPTEMBER 30, 1993 UNDER RECEPTION NO. **01343144**.
7. LEASE BETWEEN FIRST CHURCH OF THE NAZARENE, LANDLORD, AND NEW CINGULAR WIRELESS PCS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TENANT, AS SHOWN BY MEMORANDUM OF LEASE RECORDED FEBRUARY 14, 2006, UNDER RECEPTION NO. **2756479**.

MEMORANDUM OF AGREEMENT BY AND BETWEEN COLORADO DISTRICT OF THE CHURCH OF THE NAZARENE, AND NEW CINGULAR WIRELESS PCS, LLC, IN CONNECTION WITH SAID LEASE WAS RECORDED MAY 22, 2015 UNDER RECEPTION NO. **03447476**.

NOTE: THE PRESENT OWNERSHIP OF THE LEASEHOLD CREATED BY SAID LEASE AND OTHER MATTERS AFFECTING THE INTEREST OF THE LESSEE ARE NOT SHOWN HEREIN.

8. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN DEVELOPMENT AGREEMENT RECORDED FEBRUARY 16, 2006 UNDER RECEPTION NO. **2756996**.

**EXHIBIT G**  
**SUBORDINATION AGREEMENT**

THIS SUBORDINATION AGREEMENT (“Agreement”) is executed by The Colorado District of the Church of the Nazarene, a Colorado nonprofit corporation, whose address is 4120 East Fountain Boulevard, Colorado Springs, Colorado 80916 (“Mortgagee”) for the benefit of MJF 2801 Jay RD Development LLC, a Virginia limited liability company, whose mailing address is c/o Fulton Hill Properties, 1000 Carlisle Avenue, Richmond, VA 23231 (“Mortgagor”), and by the City of Boulder, a Colorado home rule city (“the City”):

A. Mortgagor is the owner of that certain real property in Boulder County, State of Colorado, generally known as 2801 Jay Road and more particularly described in **Exhibit 1** (“Property”); and

B. Mortgagee is the holder of a promissory note made by Mortgagor, dated June 1, 2021, in the original principal amount of Two Million Four Hundred Forty Thousand and No One-Hundredths Dollars (\$2,440,000.00) (“Note”), which is secured by a Deed of Trust encumbering the Property dated June 4, 2021, a copy of which is attached hereto as **Exhibit 2** and incorporated herein by this reference (“Mortgage”); and

C. Concurrently with this Agreement, Mortgagor is entering into an annexation agreement with the City, which is more particularly described in **Exhibit 3** attached hereto and incorporated herein by this reference (“Annexation Agreement”); and

D. Upon Mortgagor’s request, Mortgagee has consented to and agreed to subordinate the Mortgage to the terms of the Annexation Agreement, which Mortgagee has reviewed and approved; and

E. The Annexation Agreement, which would not otherwise be agreed to by the City, is being agreed to by the City in reliance on this Agreement.

F. The parties agree that the Annexation Agreement provides a benefit to the Property.

NOW THEREFORE in consideration of the above and mutual covenants and promises contained herein, and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is represented and agreed as follows:

1. The Mortgage is subordinated and hereafter shall be junior to the Annexation Agreement to the extent necessary to permit the City to enforce the purposes and terms of the Annexation Agreement in perpetuity and to prevent any modification or extinguishments of the Annexation Agreement by the exercise of any right of Mortgagee.

2. The priority of the Mortgage with respect to any valid claim on the part of Mortgagee to the proceeds of any sale, condemnation proceedings, or insurance, or to the leases,

rents, and profits of the Property, is not affected hereby, and any lien that may be created by the City's exercise of its rights under the Annexation Agreement shall be junior to the Mortgage.

3. Mortgagee shall not be joined as a defendant in any action to enforce the Annexation Agreement, or seeking damages, fees, or costs of any kind pursuant to the Annexation Agreement, and the Mortgage shall have priority over any judgment entered for any costs, fees, or damages under the Annexation Agreement, unless the violation representing the grounds for the action was caused by Mortgagee or its agents or employees or the Mortgagee is a fee owner of the Property.

4. If at any time in an action to enforce the Annexation Agreement, the City obtains injunctive relief requiring that the Property be restored in any respect, Mortgagee shall not be held liable for any costs of restoration, regardless of who is in possession of the Property, unless Mortgagee or its agents or employees is responsible for the condition requiring restoration or Mortgagee is the fee owner of the Property.

5. In the event of a foreclosure of the Mortgage, whether by judicial decree or pursuant to a power of sale, the Annexation Agreement shall not be extinguished but shall survive and continue to encumber the Property.

6. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns.

7. This Agreement shall be recorded immediately after the Annexation Agreement.

Entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Mortgagee:  
The Colorado District of the Church of the Nazarene,  
a Colorado nonprofit corporation

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

[NOTARY BLOCK ON FOLLOWING PAGE]

State of Colorado )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2024, by \_\_\_\_\_, as \_\_\_\_\_ of  
The Colorado District of the Church of the Nazarene.

Witness my hand and official seal.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

CITY OF BOULDER, COLORADO

By: \_\_\_\_\_  
Nuria Rivera-Vandermyde, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney's Office

Date: \_\_\_\_\_

**EXHIBITS**

- |                  |                                |
|------------------|--------------------------------|
| <b>Exhibit 1</b> | Legal Description for Property |
| <b>Exhibit 2</b> | Mortgage                       |
| <b>Exhibit 3</b> | Annexation Agreement           |



**EXHIBIT 1**  
**to**  
**Subordination Agreement**

**Legal Description**

**2801 Jay Road**

THAT PORTION OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE 6TH P.M., DESCRIBED AS FOLLOWS:

BEGINNING AT SE CORNER OF THE SW 1/4 OF THE NW 1/4 OF SECTION 17; THENCE NORTH 0 DEGREES 18 MINUTES 05 WEST, 469.50 FEET ALONG THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 17; THENCE SOUTH 89 DEGREES 38 MINUTES 05 WEST, 485.20 FEET PARALLEL TO THE EAST-WEST CENTERLINE OF SAID SECTION 17; THENCE SOUTH 0 DEGREES 18 MINUTES 05 SECONDS EAST, 469.50 FEET PARALLEL TO THE EAST LINE OF THE SW 1/4 OF THE NW 1/4 OF SAID SECTION 17 TO A POINT ON THE EAST-WEST CENTERLINE OF SAID SECTION 17; THENCE NORTH 89 DEGREES 38 MINUTES 05 SECONDS EAST, 485.20 FEET ALONG THE EAST-WEST CENTERLINE OF SAID SECTION 17 TO THE POINT OF BEGINNING, EXCEPT THOSE PARCELS CONVEYED IN DEED RECORDED NOVEMBER 17, 1956 IN BOOK 1030 AT PAGE [80](#) AND IN RULE AND ORDER RECORDED FEBRUARY 8, 1978 UNDER RECEPTION NO. [264461](#), COUNTY OF BOULDER, STATE OF COLORADO.

**EXHIBIT 2**  
**to**  
**Subordination Agreement**  
**Mortgage**

[to be attached to the Subordination Agreement]

**EXHIBIT 3**  
**to**  
**Subordination Agreement**  
**Annexation Agreement**

[to be attached to the Subordination Agreement]

**Attachment D**  
**Staff Analysis of BVCP Policies, Boulder Revised Code, and State Statutes**

**BOULDER VALLEY COMPREHENSIVE PLAN POLICIES**

**Policy 1.08 Adapting to Limits on Physical Expansion**

As the community expands to its planned physical boundaries, the city and county will increasingly emphasize preservation and enhancement of the physical, social and economic assets of the community. Cooperative efforts and resources will be focused on maintaining and improving the quality of life within defined physical boundaries, with only limited expansion of the city.

*The proposal enhances the assets of the community by providing much needed additional land for residential uses. Any redevelopment of the property with dwelling units requires a substantial provision of permanently affordable, on-site, for-sale middle income housing. Any nonresidential redevelopment requires payment of an increased capital facility impact fee for affordable housing. The proposal is limited expansion of the city to within Area II, the area which may be considered for annexation.*

**Policy 1.10 Growth Requirements**

The overall effect of urban growth must add significant value to the community, improving quality of life. The city will require development and redevelopment to provide significant community benefits, achieve sustainability goals for urban form and maintain or improve environmental quality as a precondition for further housing and community growth.

*The proposal is consistent with urban growth requirements that require redevelopment to provide significant community benefit, in particular, the annexation agreement requires significant support for the creation of permanently affordable housing.*

**Policy 1.11 Jobs: Housing Balance**

Boulder is a major employment center, with more jobs than housing for people who work here. This has resulted in both positive and negative impacts, including economic prosperity, significant in-commuting and high demand on existing housing. The city will continue to be a major employment center and will seek opportunities to improve the balance of jobs and housing while maintaining a healthy economy. This will be accomplished by encouraging new housing and mixed-use neighborhoods in areas close to where people work, encouraging transit oriented development in appropriate locations, preserving service commercial uses, converting commercial and industrial uses to residential uses in appropriate locations, improving regional transportation alternatives and mitigating the impacts of traffic congestion.

*The proposal provides the opportunity to improve the balance of jobs and housing as the proposed annexation would increase the residential development potential of the property.*

**Policy 1.13 Definition of Comprehensive Planning Areas I, II & III**

The Boulder Valley Planning Area is divided into three major areas:

...

Area II is the area now under county jurisdiction where annexation to the city can be considered consistent with Policies 1.08 Adapting to Limits on Physical Expansion, 1.10 Growth Requirements and 1.17 Annexation. New urban development may only occur coincident with the availability of adequate facilities and services. Master plans project the provision of services to this area within the planning period.

*The proposed annexation and land use map change is within Area II and can be considered for annexation and redevelopment consistent with these policies.*

**Policy 1.15 Definition of New Urban Development**

It is intended that ‘new urban development’, including development within the city, not occur until and unless adequate urban facilities and services are available to serve the development as set out in Chapter VII Urban Service Criteria and Standards. ‘New urban development’ is defined to include: a. All new residential, commercial and industrial development and redevelopment within the city; or b. Any proposed development within Area II (subject to a county discretionary review process before the Board of County Commissioners) that the county determines exceeds the land use projections and/or is inconsistent with maps or policies of the Boulder Valley Comprehensive Plan in effect at that time.

*The annexation and land use map change will allow the proposed redevelopment to occur within the city consistent with this policy. Staff has determined that adequate urban facilities and services will be available to serve a development on this property, including:*

*Public water: The existing structure is connected to city water services via an out of city utility agreement.*

*Public sewer: The applicant will be responsible for extension of public sanitary sewer main to serve the property consistent with City of Boulder Design and Construction Standards.*

*Stormwater and flood management: The applicant will be responsible for meeting all standards for stormwater and flood management, including discharge of stormwater runoff and compliance with adopted flood plain regulations.*

*Urban fire protection and emergency medical care: The property will be served by Boulder Fire Rescue. Fire Station 5 is located less than 1 mile to the west.*

*Urban police protection: The property will be served by Boulder Police. The station at 1805 33<sup>rd</sup> Street serves the overall community.*

*Multi-modal transportation (streets, sidewalks, multiuse paths): The proposal includes dedication of right-of-way for transportation improvements and requirements for the construction of transportation improvements to streets, sidewalks, and multiuse paths upon redevelopment as required in the annexation agreement.*

*Urban parks: The property is served by the 8-acre Elks neighborhood park less than one-half mile to the southwest and the 65-acre Foothills Community Park located 1.5 miles to the northwest.*

*Schools: BVSD has the existing capacity to serve this development at all grade levels.*

**Policy 1.17 Annexation**

The policies in regard to annexation to be pursued by the city are:

- a. Annexation will be required before adequate facilities and services are furnished.

*City services will be available to the property with annexation. The property is served by city water per an out of city utility agreement and revocable permit signed in 1987. Per the terms of the annexation agreement, the existing structure on the property would be required to connect to wastewater utilities within 365 days of the effective date of annexation. The applicant has demonstrated that adequate access, water, wastewater, and stormwater utilities can be provided to the site. Payment of appropriate fees and installation of infrastructure is the responsibility of the applicant.*

- n/a b.** The city will actively pursue annexation of county enclaves, substantially developed properties along the western boundary below the Blue Line and other substantially developed Area II properties. County enclave means an unincorporated area of land entirely contained within the outer boundary of the city. Terms of annexation will be based on the amount of development potential as described in (c), (d) and (e) of this policy. Applications made to the county for development of enclaves and Area II lands in lieu of annexation will be referred to the city for review and comment. The county will attach great weight to the city's response and may require that the landowner conform to one or more of the city's development standards so that any future annexation into the city will be consistent and compatible with the city's requirements.

*Not applicable; the property is not a county enclave, along the western boundary or a fully developed Area II property.*

- n/a c.** In 2016, the city adopted Ordinance 8311 which changed the location of the Blue Line. This change to the Blue Line was intended to clarify the location of the Blue Line and permit water service to existing development in the area, while reinforcing the protection of the foothill's open space and mountain backdrop. Both entire properties which and properties where the developed portions (1) are located in Area II and (2) were moved east of the Blue Line in 2016 shall be considered substantially developed and no additional dwelling units may be added. No water services shall be provided to development west of the Blue Line.

*Not applicable; the property is not west of the Blue Line.*

- n/a d.** Annexation of existing substantially developed areas will be offered in a manner and on terms and conditions that respect existing lifestyles and densities. The city will expect these areas to be brought to city standards only where necessary to protect the health and safety of the residents of the subject area or of the city. The city, in developing annexation plans of reasonable cost, may phase new facilities and services. The county, which now has jurisdiction over these areas, will be a supportive partner with the city in annexation efforts to the extent the county supports the terms and conditions being proposed.

*The annexation allows for continuation of the existing uses of the property. However, while the property is developed with an existing church building, it is intended to be wholly redeveloped in the future as residential and, if annexed with RMX-2 zoning, the property will have significant redevelopment potential. Refer to criterion "e." below.*

- ✓ e. In order to reduce the negative impacts of new development in the Boulder Valley, the city will annex Area II land with significant development or redevelopment potential only if the annexation provides a special opportunity or benefit to the city. For annexation consideration, emphasis will be given to the benefits achieved from the creation of permanently affordable housing. Provision of the following may also be considered a special opportunity or benefit: receiving sites for transferable development rights (TDRs), reduction of future employment projections, land and/or facilities for public purposes over and above that required by the city's land use regulations, environmental preservation or other amenities determined by the city to be a special opportunity or benefit. Parcels that are proposed for annexation that are already developed and which are seeking no greater density or building size would not be required to assume and provide that same level of community benefit as vacant parcels unless and until such time as an application for greater development is submitted.

*The property is located in Area II and significant redevelopment potential exists for the property if it is annexed with RMX-2 zoning. The annexation will allow for significant redevelopment of the property with residential dwelling units. The proposal includes terms of the annexation agreement requiring a minimum of 30% of the dwelling units on the Property to be for-sale, permanently affordable middle-income housing. Staff finds that the creation of this permanently affordable housing is a special opportunity and benefit to the city and provides community benefit. Nonresidential development is required to pay the capital facility impact fee for affordable housing at a rate two-times otherwise required, thereby also providing an affordable housing benefit.*

*Additionally, the proposal will allow for additional benefits, including:*

- *Following annexation, the property will be connected to city utilities including wastewater, reducing the public health threats from the possibility of failing septic systems.*
- *Upon annexation, the proposal dedicates the eastern thirty feet of the subject property to the city as public right-of-way, ensuring access is available to the subject property as well as to the properties to the north in Area III.*
- *Upon redevelopment, the proposal will be required to upgrade transportation infrastructure within and adjacent to the site consistent with the terms of the annexation agreement; e.g. sidewalks, bike lanes, vehicle turn lanes, intersection improvements, transit stop facilities, etc.*
- *A redevelopment proposal will be subject to the terms of the annexation agreement which include compatibility requirements of the proposed design to adjacent residential properties in unincorporated Boulder County and will be required to undergo the Site Review process, ensuring that the future redevelopment is designed to respect existing lifestyles and densities.*

- n/a f. Annexation of substantially developed properties that allow for some additional residential units or commercial square footage will be required to demonstrate community benefit commensurate with their impacts. Further, annexations that resolve an issue of public health without creating additional development impacts should be encouraged.

*Not applicable; if annexed with RMX-2 zoning, the property will have significant development potential. Criterion "e." would apply to the proposal.*

- ✓ g. There will be no annexation of areas outside the boundaries of the Boulder Valley Planning Area, with the possible exception of annexation of acquired open space.

*The subject property is within Area II of the Boulder Valley Planning Area.*

- n/a h. Publicly owned property located in Area III, and intended to remain in Area III, may be annexed to the city if the property requires less than a full range of urban services or requires inclusion under city jurisdiction for health, welfare and safety reasons.

*The property is not publicly owned and no portion of Area III is proposed to be annexed.*

- n/a i. The Gunbarrel Subcommunity is unique because the majority of residents live in the unincorporated area and because of the shared jurisdiction for planning and service provision among the county, city, Gunbarrel Public Improvement District and other special districts. Although interest in voluntary annexation has been limited, the city and county continue to support the eventual annexation of Gunbarrel. If resident interest in annexation does occur in the future, the city and county will negotiate new terms of annexation with the residents.

*Not applicable, property not located within Gunbarrel Subcommunity.*

### **Policy 2.03 Compact Development Pattern**

The city and county will, by implementing the comprehensive plan (as guided by the Land Use Designation Map and Planning Areas I, II, III Map), ensure that development will take place in an orderly fashion, take advantage of existing urban services, and avoid, insofar as possible, patterns of leapfrog, noncontiguous, scattered development within the Boulder Valley. The city prefers redevelopment and infill as compared to development in an expanded Service Area to prevent urban sprawl and create a compact community.

*The proposal allows for compact redevelopment of an existing developed property. The proposed right-of-way dedications along the eastern property line and in Jay Road and proposed transportation improvements help ensure that existing and future development will take place in an orderly fashion.*

### **Policy 2.15 Compatibility of Adjacent Land Uses**

To avoid or minimize noise and visual conflicts between adjacent land uses that vary widely in use, intensity or other characteristics, the city will use tools such as interface zones, transitional areas, site and building design and cascading gradients of density in the design of subareas and zoning districts. With redevelopment, the transitional area should be within the zone of more intense use.

*The proposal avoids conflicts between the proposed mixed density residential redevelopment and less intense residential uses in unincorporated Boulder County by providing compatibility*



*standards in the annexation agreement that create an area of transition. These include requirements for a maximum of two stories above grade and sloped roof forms for residences at the northeast and east edges of the property and the creation of visual and physical separation at the east edge of the property via a dedicated right-of-way and location of shared open space.*

#### **Policy 2.34 Design of Newly Developing Areas**

The city will encourage a neighborhood concept for new development that includes a variety of residential densities, housing types, sizes and prices, opportunities for shopping, nearby support services and conveniently sited public facilities, including roads and pedestrian connections, parks, libraries and schools.

*The proposal supports a neighborhood concept through the proposed MXR land use and RMX-2 zoning which require a mix of housing types on the property and will provide a mix of prices including market-rate and middle-income permanently affordable for-sale housing. The proposed annexation agreement includes requirements for infrastructure improvements to Jay Road and the intersection of Jay Road and US 36/28<sup>th</sup> Street and a multi-use path connection.*

#### **Policy 7.07 Mixture of Housing Types**

The city and county, through their land use regulations and housing policies, will encourage the private sector to provide and maintain a mixture of housing types with varied prices, sizes and densities to meet the housing needs of the low-, moderate- and middle-income households of the Boulder Valley population. The city will encourage property owners to provide a mix of housing types, as appropriate. This may include support for ADUs/OAUs, alley houses, cottage courts and building multiple small units rather than one large house on a lot.

*The proposed MXR land use designation and RMX-2 zoning require a mixture of housing types (at least two housing types on a property less than 5 acres in size). The minimum 30% on-site middle-income permanently affordable housing required by the annexation agreement ensures both market-rate and middle-income price points are provided on the property.*

#### **Policy 7.11 Balancing Housing Supply with Employment Base**

The Boulder Valley housing supply should reflect, to the extent possible, employer workforce housing needs, locations and salary ranges. Key considerations include housing type, mix and affordability. The city will explore policies and programs to increase housing for Boulder workers and their families by fostering mixed-use and multi-family development in proximity to transit, employment or services and by considering the conversion of commercial- and industrial-zoned or -designated land to allow future residential use.

*The proposal will increase the supply of permanently affordable middle-income housing, a key focus area of the Boulder Valley Comprehensive Plan. The proposal will convert an existing non-residential property to residential uses.*

#### **Policy 7.12 Permanently Affordable Housing for Additional Intensity**

The city will develop regulations and policies to ensure that when additional intensity is provided through changes to zoning, a larger proportion of the additional development potential for the

residential use will be permanently affordable housing for low-, moderate- and middle-income households.

*The proposed MXR land use designation and RMX-2 zoning are designed to provide additional intensity (bonus density) when higher percentages of affordable housing is provided on-site. The proposal will provide a minimum of 30% on-site permanently affordable housing per the terms of the annexation agreement. The terms of the annexation agreement accommodate additional intensity to support the required on-site for sale permanently affordable middle income housing.*

**Policy 7.15 Integration of Permanently Affordable Housing**

Permanently affordable housing, whether publicly, privately or jointly developed and financed will be dispersed throughout the community. Where appropriate, the city will encourage new and affordable units provided on the site of and integrated into new housing developments.

*Redevelopment of the property with dwelling units will provide on-site permanently affordable housing and market-rate housing.*

**BOULDER REVISED CODE**

**ANNEXATION REQUIREMENTS  
SECTION 9-2-17**

- ✓ (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.

*See checklists above and below.*

- ✓ (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 section 31-12-108.5, C.R.S.

*The proposed annexation will not create an unreasonable burden on the city. The conditions of the annexation agreement include terms and conditions to ensure that this requirement is met, including dedication of land for public improvements/rights-of-way, requirements for installation of transportation improvements upon redevelopment, payment of Stormwater Plant Investment Fees (PIFs), and requirements for community benefit in the form of on-site permanently affordable housing, among other requirements.*

- ✓ (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.

*The annexation agreement shall be signed by the owners of land petitioning the city for annexation prior to the 1<sup>st</sup> Reading of the annexation ordinance. The agreement does not involve any city installation of public improvements.*

## **ZONING OF ANNEXED LAND SECTION 9-2-18**

- ✓ (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.

*Initial zoning is established pursuant to Section 9-2-18, "Zoning of Annexed Land," B.R.C. 1981. If a property is annexed, zoning will be established consistent with the goals and Land Use Map of the BVCP. As described in the staff memo, the application proposes a land use designation change for the property to Mixed Density Residential, which is characterized by provision of a substantial amount of affordable housing and a variety of housing types and density, ranging from six to 20 units per acre. The proposed zoning assumes approval of the Land Use Map change to Mixed Density Residential.*

*The proposed zoning of Residential Mixed - 2 is consistent with a land use map designation of Mixed Density Residential. The RMX-2 zoning district is described as: "Medium density residential areas which have a mix of densities from low density to high density and where complementary uses may be permitted." (Section 9-5-2(c)(1)(E), B.R.C. 1981).*

*Staff finds that the RMX-2 zoning district, including the allowed residential uses, emphasis on provision of permanently affordable housing, and controls on density and design through the Site Review process, is appropriate for the site, helps ensure compatibility with the surrounding area, and is consistent with the proposed Mixed Density Residential land use and with the goals, policies, and objectives of the BVCP, including those noted above in this checklist.*

- ✓ (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.

*Public notice has been provided consistent with 9-4-3, "Public Notice Requirements," B.R.C. 1981. A public notice has been sent to property owners within 600 feet and notice posted on the property.*

- ✓ (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.

*The city will follow the required sequence of events for adopting an ordinance proposing zoning of land.*

- ✓ (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.

*The city will follow the requirements for placing the zoning upon 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.

*There is no minimum lot area in the RMX-2 zoning district and there are no dwelling units currently on the property.*

- n/a (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 of the Boulder Valley Comprehensive Plan.

*Not applicable; the slope of the site does not exceed fifteen percent slope.*

## COLORADO REVISED STATUTES

### COLORADO STATE STATUTES TITLE 31, ARTICLE 12

*Staff has reviewed the annexation petition for compliance with Sections 31-12-104, 31-12-105, and 31-12-107, C.R.S. and with section 30 of article II of the state constitution and finds that the application is consistent with the statutory and constitutional requirements, as affirmed by the findings below.*

#### ELIGIBILITY FOR ANNEXATION § 31-12-104

- (1) No unincorporated area may be annexed to a municipality unless one of the conditions set forth in section 30 (1) of article II of the state constitution first has been met. An area is eligible for annexation if the provisions of section 30 of article II of the state constitution have been complied with and the governing body, at a hearing as provided in section 31-12-109, finds and determines:

*The conditions of the state constitution have been met. The applicant has filed a petition for annexation that is signed by persons comprising more than fifty percent of landowners in the area and owning more than fifty percent of the area, excluding public streets, and alleys and any land owned by the City of Boulder.*

- ✓ (a) That not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the annexing municipality. Contiguity shall not be affected by the existence of a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, public lands, whether owned by the state, the United States, or an agency thereof, except county-owned open space, or a lake, reservoir, stream, or other natural or artificial waterway between the annexing municipality and the land proposed to be annexed. Subject to the requirements imposed by section 31-12-105 (1) (e), contiguity may be established by the annexation of one or more parcels in a series, which annexations may be completed simultaneously and considered together for the purposes of the public hearing required by sections 31-12-108 and 31-12-109 and the annexation impact report required by section 31-12-108.5.

*The property has more than 1/6th contiguity to the city limits. The perimeter of the area being annexed is 1,888.16 feet. A minimum of 314.69 feet must be contiguous to city limits to meet the 1/6 requirement. 358.3 feet are contiguous.*

- ✓ (b) That a community of interest exists between the area proposed to be annexed and the annexing municipality; that said area is urban or will be urbanized in the near future; and that said area is integrated with or is capable of being integrated with the annexing municipality. The fact that the area proposed to be annexed has the contiguity with the annexing municipality required by paragraph (a) of this subsection (1) shall be a basis for a finding of compliance with these requirements unless the governing body, upon the

basis of competent evidence presented at the hearing provided for in section 31-12-109, finds that at least two of the following are shown to exist:

*The contiguity required by paragraph (a) satisfies the finding that a community of interest exists.*

n/a (I) Less than fifty percent of the adult residents of the area proposed to be annexed make use of part or all of the following types of facilities of the annexing municipality: Recreational, civic, social, religious, industrial, or commercial; and less than twenty-five percent of said area's adult residents are employed in the annexing municipality. If there are no adult residents at the time of the hearing, this standard shall not apply.  
*Not applicable; the property is non-residential and there are no residents.*

n/a (II) One-half or more of the land in the area proposed to be annexed (including streets) is agricultural, and the landowners of such agricultural land, under oath, express an intention to devote the land to such agricultural use for a period of not less than five years.  
*Not applicable; the property is not agricultural.*

n/a (III) It is not physically practicable to extend to the area proposed to be annexed those urban services which the annexing municipality provides in common to all of its citizens on the same terms and conditions as such services are made available to such citizens. This standard shall not apply to the extent that any portion of an area proposed to be annexed is provided or will within the reasonably near future be provided with any service by or through a quasi-municipal corporation.  
*Not applicable; it is physically practicable to extend to the area urban services.*

✓ (2) (a) The contiguity required by paragraph (a) of subsection (1) of this section may not be established by use of any boundary of an area which was previously annexed to the annexing municipality if the area, at the time of its annexation, was not contiguous at any point with the boundary of the annexing municipality, was not otherwise in compliance with paragraph (a) of subsection (1) of this section, and was located more than three miles from the nearest boundary of the annexing municipality, nor may such contiguity be established by use of any boundary of territory which is subsequently annexed directly to, or which is indirectly connected through subsequent annexations to, such an area.

*Not applicable; the area previously annexed that establishes contiguity does not meet the description above.*

✓ (b) Because the creation or expansion of disconnected municipal satellites, which are sought to be prohibited by this subsection (2), violates both the purposes of this article as expressed in section 31-12-102 and the limitations of this article, any annexation which uses any boundary in violation of this subsection (2) may be declared by a court of competent jurisdiction to be void ab initio in addition to other remedies which may be

provided. The provisions of section 31-12-116 (2) and (4) and section 31-12-117 shall not apply to such an annexation. Judicial review of such an annexation may be sought by any municipality having a plan in place pursuant to section 31-12-105 (1) (e) directly affected by such annexation, in addition to those described in section 31-12-116 (1). Such review may be, but need not be, instituted prior to the effective date of the annexing ordinance and may include injunctive relief. Such review shall be brought no later than sixty days after the effective date of the annexing ordinance or shall forever be barred.

*Proposal does not create or expand any disconnected municipal satellite.*

- ✓ (c) Contiguity is hereby declared to be a fundamental element in any annexation, and this subsection (2) shall not in any way be construed as having the effect of legitimizing in any way any noncontiguous annexation.

*Proposal meets all contiguity requirements.*

### **LIMITATIONS**

#### **§ 31-12-105**

- (1) Notwithstanding any provisions of this part 1 to the contrary, the following limitations shall apply to all annexations:

- ✓ (a) In establishing the boundaries of any territory to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, shall be divided into separate parts or parcels without the written consent of the landowners thereof unless such tracts or parcels are separated by a dedicated street, road, or other public way.

*The entire property is proposed to be annexed, and no land held in identical ownership is divided.*

- ✓ (b) In establishing the boundaries of any area proposed to be annexed, no land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate, comprising twenty acres or more (which, together with the buildings and improvements situated thereon has a valuation for assessment in excess of two hundred thousand dollars for ad valorem tax purposes for the year next preceding the annexation) shall be included under this part 1 without the written consent of the landowners unless such tract of land is situated entirely within the outer boundaries of the annexing municipality as they exist at the time of annexation. In the application of this paragraph (b), contiguity shall not be affected by a dedicated street, road, or other public way.

*The property is not twenty acres or more. The written consent of the landowner has been obtained for this annexation.*

- ✓ (c) No annexation pursuant to section 31-12-106 and no annexation petition or petition for an annexation election pursuant to section 31-12-107 shall be valid when annexation proceedings have been commenced for the annexation of part or all of such territory to another municipality, except in accordance with the provisions of section 31-12-114. For the purpose of this section, proceedings are commenced when the petition is filed with the clerk of the annexing municipality or when the resolution of intent is adopted by the governing body of the annexing municipality if action on the acceptance of such petition or on the resolution of intent by the setting of the hearing in accordance with section 31-12-108 is taken within ninety days after the said filings if an annexation procedure initiated by petition for annexation is then completed within the one hundred fifty days next following the effective date of the resolution accepting the petition and setting the hearing date and if an annexation procedure initiated by resolution of intent or by petition for an annexation election is prosecuted without unreasonable delay after the effective date of the resolution setting the hearing date.

*No annexation proceedings have been commenced for the annexation of the property to another municipality.*

- ✓ (d) As to any annexation which will result in the detachment of area from any school district and the attachment of the same to another school district, no annexation pursuant to section 31-12- 106 or annexation petition or petition for an annexation election pursuant to section 31-12-107 is valid unless accompanied by a resolution of the board of directors of the school district to which such area will be attached approving such annexation.

*The annexation will not result in a change to the school district.*

- ✓ (e) (I) Except as otherwise provided in this paragraph (e), no annexation may take place that would have the effect of extending a municipal boundary more than three miles in any direction from any point of such municipal boundary in any one year. Within said three-mile area, the contiguity required by section 31-12-104 (1) (a) may be achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Prior to completion of any annexation within the three-mile area, the municipality shall have in place a plan for that area that generally describes the proposed location, character, and extent of streets, subways, bridges, waterways, waterfronts, parkways, playgrounds, squares, parks, aviation fields, other public ways, grounds, open spaces, public utilities, and terminals for water, light, sanitation, transportation, and power to be provided by the municipality and the proposed land uses for the area. Such plan shall be updated at least once annually. Such three-mile limit may be exceeded if such limit would have the effect of dividing a parcel of property held in identical ownership if at least fifty percent of the property is within the three-mile limit. In such event, the entire property held in identical ownership may be annexed in any one year without regard to such mileage limitation. Such three-mile limit may also be exceeded for the annexation of an enterprise zone.



*The annexation will not extend the municipal boundary by more than three miles. The Boulder Valley Comprehensive Plan and city departmental plans establish a plan for the area to be annexed. Any public improvements required to develop the area proposed for annexation and connect to city services will be provided by the applicant.*

n/a (II) Prior to completion of an annexation in which the contiguity required by section 31-12-104 (1) (a) is achieved pursuant to subparagraph (I) of this paragraph (e), the municipality shall annex any of the following parcels that abut a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, where the parcel satisfies all of the eligibility requirements pursuant to section 31-12-104 and for which an annexation petition has been received by the municipality no later than forty-five days prior to the date of the hearing set pursuant to section 31-12-108 (1):

*Not applicable; the proposal does not achieve contiguity pursuant to subparagraph (I) of paragraph (e).*

n/a (A) Any parcel of property that has an individual schedule number for county tax filing purposes upon the petition of the owner of such parcel;

n/a (B) Any subdivision that consists of only one subdivision filing upon the petition of the requisite number of property owners within the subdivision as determined pursuant to section 31-12- 107; and

n/a (C) Any subdivision filing within a subdivision that consists of more than one subdivision filing upon the petition of the requisite number of property owners within the subdivision filing as determined pursuant to section 31-12-107.

n/a (e.1) The parcels described in subparagraph (II) of paragraph (e) of this subsection (1) shall be annexed under the same or substantially similar terms and conditions and considered at the same hearing and in the same impact report as the initial annexation in which the contiguity required by section 31-12-104 (1) (a) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway. Impacts of the annexation upon the parcels described in subparagraph (II) of paragraph (e) of this subsection (1) that abut such platted street or alley, public or private right-of-way, public or private transportation right-of-way or area, or lake, reservoir, stream, or other natural or artificial waterway shall be considered in the impact report required by section 31-12- 108.5. As part of the same hearing, the municipality shall consider and decide upon any petition for annexation of any parcel of property having an individual schedule number for county tax filing purposes, which petition was received not later than forty-five days prior to the hearing date, where the parcel abuts any parcel described in subparagraph (II) of paragraph (e) of this subsection (1) and where the parcel otherwise satisfies all of the eligibility requirements of section 31-12-104.

n/a (e.3) In connection with any annexation in which the contiguity required by section 31-12- 104 (1) (a) is achieved by annexing a platted street or alley, a public or private right-of-way, a public or private transportation right-of-way or area, or a lake, reservoir, stream, or other natural or artificial waterway, upon the latter of ninety days prior to the date of the hearing set pursuant to section 31-12- 108 or upon the filing of the annexation petition, the municipality shall provide, by regular mail to the owner of any abutting parcel as reflected in the records of the county assessor, written notice of the annexation and of the landowner's right to petition for annexation pursuant to section 31-12-107. Inadvertent failure to provide such notice shall neither create a cause of action in favor of any landowner nor invalidate any annexation proceeding.

- ✓ (f) In establishing the boundaries of any area proposed to be annexed, if a portion of a platted street or alley is annexed, the entire width of said street or alley shall be included within the area annexed.

*Neither Jay Road nor Highway 36 are platted streets or alleys. A portion of Jay Road adjacent to the property is proposed to be annexed. The entire width of the street is included in the annexation.*

- ✓ (g) Notwithstanding the provisions of paragraph (f) of this subsection (1), a municipality shall not deny reasonable access to landowners, owner of an easement, or the owner of a franchise adjoining a platted street or alley which has been annexed by the municipality but is not bounded on both sides by the municipality.

*The proposal does not involve denying reasonable access to any street or alley.*

- ✓ (h) The execution by any municipality of a power of attorney for real estate located within an unincorporated area shall not be construed to comply with the election provisions of this article for purposes of annexing such unincorporated area. Such annexation shall be valid only upon compliance with the procedures set forth in this article.

*The proposal does not involve power of attorney.*

### **PETITIONS FOR ANNEXATION AND FOR ANNEXATION ELECTIONS** **§ 31-12-107**

(1) Petition for annexation in accordance with section 30 (1) (b) of article II of the state constitution:

- ✓ (a) Persons comprising more than fifty percent of the landowners in the area and owning more than fifty percent of the area, excluding public streets and alleys and any land owned by the annexing municipality, meeting the requirements of sections 31-12-104 and

31-12-105 may petition the governing body of any municipality for the annexation of such territory.

*Landowners of more than 50 percent of the area who comprise more than 50 percent of the landowners in the area have petitioned to annex, excluding any public streets and alleys and any land owned by the annexing municipality.*

- (b) The petition shall be filed with the clerk.

*The annexation petition has been filed with the City Clerk of the City of Boulder.*

- (c) The petition shall contain the following:

*The petition meets the following requirements.*

- (I) An allegation that it is desirable and necessary that such area be annexed to the municipality;
- (II) An allegation that the requirements of sections 31-12-104 and 31-12-105 exist or have been met;
- (III) An allegation that the signers of the petition comprise more than fifty percent of the landowners in the area and own more than fifty percent of the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality;
- (IV) A request that the annexing municipality approve the annexation of the area proposed to be annexed;
- (V) The signatures of such landowners;
- (VI) The mailing address of each such signer;
- (VII) The legal description of the land owned by such signer;
- (VIII) The date of signing of each signature; and
- (IX) The affidavit of each circulator of such petition, whether consisting of one or more sheets, that each signature therein is the signature of the person whose name it purports to be.

- (d) Accompanying the petition shall be four copies of an annexation map containing the following information:

*An annexation map has been received that contains this information.*

- (I) A written legal description of the boundaries of the area proposed to be annexed;
- (II) A map showing the boundary of the area proposed to be annexed;
- (III) Within the annexation boundary map, a showing of the location of each ownership tract in unplatted land and, if part or all of the area is platted, the boundaries and the plat numbers of plots or of lots and blocks;

(IV) Next to the boundary of the area proposed to be annexed, a drawing of the contiguous boundary of the annexing municipality and the contiguous boundary of any other municipality abutting the area proposed to be annexed.

- (e) No signature on the petition is valid if it is dated more than one hundred eighty days prior to the date of filing the petition for annexation with the clerk. All petitions which substantially comply with the requirements set forth in paragraphs (b) to (d) of this subsection (1) shall be deemed sufficient. No person signing a petition for annexation shall be permitted to withdraw his signature from the petition after the petition has been filed with the clerk, except as such right of withdrawal is otherwise set forth in the petition.

*The petition meets this limitation.*

- (f) The clerk shall refer the petition to the governing body as a communication. The governing body, without undue delay, shall then take appropriate steps to determine if the petition so filed is substantially in compliance with this subsection (1).

*The city manager has determined that the petition is in compliance with this section and the clerk and city council are taking these required steps.*

- (g) If the petition is found to be in substantial compliance with this subsection (1), the procedure outlined in sections 31-12-108 to 31-12-110 shall then be followed. If it is not in substantial compliance, no further action shall be taken.

*This procedure is being followed by the City of Boulder.*



## City of Boulder Planning & Development Services

DATE OF COMMENTS: **May 26, 2023**  
CASE MANAGER: **Shannon Moeller**  
PROJECT NAME: **2801 JAY RD**  
LOCATION: **2801 JAY RD**  
REVIEW TYPE: **Annexation/Standard, BVCP Update**  
REVIEW NUMBER: **LUR2023-00018, LUR2023-00019**  
APPLICANT: **MARGARET FREUND, FULTON HILL PROPERTIES**

**DASH ASH, SITEWORKS**  
**COLLIN ACKERMAN**  
**DANIEL ROTNER, RHAP ARCHITECTURE AND PLANNING**  
**LIZ HANSON, HANSON BUSINESS STRATEGIES**

DESCRIPTION: **Annexation and Initial Zoning proposal for the 4.58-acre property at 2801 Jay Rd. to be annexed with an initial zoning of RMX-2. Boulder Valley Comprehensive Plan (BVCP) Land Use Designation Change proposal to amend the land use designation on the 4.58-acre property at 2801 Jay Rd. from PUB to MXR.**

### I. REVIEW FINDINGS

Staff has completed the initial review of the BVCP Land Use Designation Change and Annexation/Initial Zoning requests. While staff appreciates the efforts to bring forward a project supportive of the city's housing goals, additional information and revisions to the documents are necessary as indicated below. A meeting to discuss the comments is scheduled for Friday June 18<sup>th</sup> at 2 p.m. Staff is happy to work with the applicant team to clarify any of the comments.

### II. CITY REQUIREMENTS

The section below addresses issues that must be resolved prior to project approval.

#### Access/Circulation

Thomas Pankau, 303-441-4369

1. The 12'-wide multi-use path depicted on the city's Transportation Master Plan on this site shall be designed to eliminate as many conflict points with motor vehicles as possible. Prior to any building permits on this site or approval of site construction documents the owner shall dedicate a 16'-wide public access easement for the multi-use path. At the discretion of the city manager and prior to issuance of any building permits for this site the owner shall either construct the multi-use path as a part of the development project or provide an estimate for construction of the path and pay that amount to the city for future construction of the path. City will require dedication of the 16'-wide public access easement as a condition of Site Review.
2. Given the limited amount of information about the development at this location, including the lack of a transportation impact study, city transportation staff are evaluating future needs for improvements related to the safety and circulation of the intersection of Jay Road and US-36 and to accommodate the increased trips generated from the development of this site. Staff will have additional comments in the next few weeks which may require additional dedication of right-of-way near the southwest corner of the parcel.
3. Jay Road and US 36 Improvements:  
At the time of development of this site, improvements to Jay Road will be required and shall improve Jay Road to meet DCS standards for a residential arterial street, consistent with the city's design standards for detached sidewalks and landscape areas. Improvements shall include an 8'-wide detached sidewalk separated from the back of the street curb by an 8'-wide landscape area along the site's frontage for both Jay Road and US-36. Additional Jay Road improvements shall include (1) the construction of a new left-turn lane to enter the site and at the intersection of Jay Road and US-36; (2) the construction of a center median on Jay Road; (3) the construction of a raised pedestrian/bike crossing across the channelized right-turn lane on westbound Jay Road at the intersection; (4) the construction of a westbound buffered bike lane on Jay Road; and (5) the reconstruction of the existing transit stop on westbound Jay Road, which includes the construction of a concrete bus stop pad on Jay Road, construction of a standard RTD boarding area and concrete shelter pad behind the detached sidewalk according to RTD standards. An additional 5 feet-width of right-of-way is required to accommodate the streetscape improvements along Jay and US 36 and should be dedicated as right-of-way (in-fee) to the city.

Upon resubmittal, the Applicant shall provide a legal description and associated exhibit for the additional right-of-way. Once the exhibit has been approved, then City staff will prepare the dedication documents to be signed prior to the 1st reading of the annexation ordinance. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that the City does not annex the Property, the City agrees that it will return all such original documents to the Applicant.

4. "Voilet" Avenue / East Property Line

As a condition of this annexation the owner shall dedicate a 30-foot-wide section of right-of-way along the eastern boundary of the site for the extension of Voilet Avenue. Upon resubmittal, the Applicant shall provide a legal description and associated exhibit for the proposed 30 feet of ROW. Once the exhibit has been approved, then City staff will prepare the dedication document to be signed by the owner prior to the 1st reading of the annexation ordinance. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that the City does not annex the Property, the City agrees that it will return all such original documents to the Applicant.

At the time of development, the application shall design and construct improvements for at least one half of the cross section of Voilet Avenue that is needed to serve the development and, which shall be consistent with the standards in the DCS for a residential collector street. This includes the construction of a detached 5'-wide sidewalk, paved section, 8'-wide landscape strip and curb-and-gutter according to DCS standards. Depending on the final site review, the limits of asphalt paving for Voilet Ave may be extended to the north property line of the site if needed for site circulation, or the applicant may be required to pay to city the cost to construct the final improvements up to the north property line.

Improvements within the court decreed access located east of the property will require Boulder County review and approval as this area is not eligible for annexation to the city of Boulder. If the applicant desires, city staff will schedule a coordination meeting with County Public Works staff to discuss county requirements.

**Comprehensive Planning**

Christopher Ranglos, 303-441-4174 / Shannon Moeller, 303-441-3216

Proposal Summary

The applicant is requesting to annex the subject property at 2801 Jay Road into the City of Boulder. As part of the request, the applicant is also proposing a change to the Boulder Valley Comprehensive Plan (BVCP) Land Use Map from Public (PUB) to Mixed Density Residential (MXR). Annexations and Land Use Map changes are typically reviewed with Site Review applications in order for the City to understand how the property will be developed to the fullest extent possible. If the current proposal is supported by Planning Board and City Council, a Site Review application would be required post-annexation per 9-214(b)(1), B.R.C. 1981. -This is unless, of course, either body requires a Site Review prior to making a decision to change the land use designation of this property.

Annexation

The property is located in Area II in the BVCP, which is the "area now under county jurisdiction, where annexation to the city can be considered consistent with policies 1.08 Adapting to Limits on Physical Expansion, 1.10 Growth Requirements and 1.19 Annexation. Per Annexation Policy 1.19(b,) the city will actively pursue annexation of county enclaves, Area II properties along the western boundary, and other fully developed Area II properties. New urban development may only occur coincident with the availability of adequate facilities and services and not otherwise. However, the current annexation proposal also includes a portion of land on the eastern side that is associated with road access to the site and installation of a water main and conflicts with the Area III-Planning Reserve boundary. This is inconsistent with criteria for a Land Use Map Change including: (b) would not have significant cross-jurisdictional impacts that may affect residents, properties, or facilities outside the city and (f) would not affect the Area II/Area III boundaries in the comprehensive plan. Service area expansions (i.e, changes of the Area III-Planning Reserve to Area II) are not permitted prior to the completion of a Baseline Urban Services Study per the BVCP.

Staff believe BVCP annexation policies related to adequate urban facilities and services could be met, however, without a concurrent site review application, staff is unable to determine adequacy of facilities and services, in particular those related to multimodal transportation; refer to Transportation comments for further requirements. It should also be noted that there is no city wastewater main near this property. Off-site wastewater main construction per the City of Boulder Design and Construction Standards (DCS) is necessary to serve the development, which the applicant has indicated an understanding of being financially responsible for in the written statement; refer to Utilities comments for further

requirements. The proposed utility plan also depicts a proposed off-site water main in the County within the Area III – Planning reserve; this should be relocated onto the subject property within right-of-way to be dedicated to the city; refer to Utilities comments.

Proposed annexations with additional development potential must also demonstrate community benefit consistent with BVCP policies in order to offset the negative impacts of additional development in the Boulder Valley. For proposed residential development, emphasis is given to the provision of permanently affordable housing. The policy and practice for the past several years has been that 40 to 60 percent of the new residential development in annexations be permanently affordable. According to the proposal, 40 percent of the total 84 for-sale units will be permanently affordable middle-income (34 units).

**Land Use**

The location and characteristics of this land make it potentially suitable for new development with urban services. This is based on the apparent lack of sensitive environmental areas, hazard areas, and significant agricultural lands, the feasibility of efficient urban service extension, and contiguity to the existing Service Area, to maintain a compact community.

However, the requested BVCP land use map change to a Mixed Density Residential (MXR) designation is not compatible with the character of the surrounding area, which primarily consists of low-density single-family developments, as either large rural /estate lots or formal subdivisions. Mixed Density Residential allows up to 20 dwelling units per acre. This is significantly higher than neighboring subdivisions that range from 1.1 to 9.2 dwelling units per acre (refer to Table 1 below):

**TABLE 1**

	<b>Subdivision</b>	<b>Estimated Density (Dwelling Units Per Acre)</b>
<b>Proposal</b>		20
<b>Northeast</b>	Orange Orchard	2.1
<b>South</b>	Gould	1.1
<b>Southeast</b>	Palo Park	5.9
<b>Southeast</b>	Four Mile Creek	5.6
<b>West</b>	Arbor Glen	5.6
<b>West</b>	Sundance	9.2
<b>Average Density of Select Subdivisions</b>		4.9

Notes: Residential density is reflected in dwelling units per acre. Calculations reflect select sum of select subdivision’s area that includes lots with housing units. Common area/shared ownership lots without housing units and rights of way were excluded from the calculations, with the exception of the Palo Park townhomes (south side of Subdivision #4 above) which have individual lots for townhome units and shared open space. Subdivision boundaries based on city’s GIS database.

Several BVCP policies were created to protect residential neighborhoods from overly intense or incompatible development, which could destabilize the established neighborhood character. Per the vision and recommendations in the BVCP, redevelopment projects should become a coherent part of the neighborhood in which they are placed (see policy 2.41(b) Enhanced Design for All Projects).

Staff believe the proposed mass, scale and density of development is not appropriate within the established character of the neighborhoods surrounding the site. Without the benefit of a concurrent Site Review application, staff is not able to confirm that an appropriate transition is provided to adjacent more rural properties.

On balance, staff finds the Land Use Map change proposal inconsistent with the policies and overall intent of the comprehensive plan. A concurrent Site Review or Major Update to the BVCP in 2025 would provide a better opportunity for the applicant, city staff and the community to determine a more defined future for the area and assign the land use and zoning that is most consistent with the surrounding neighborhoods.

**Staff Recommendation**

Staff finds that the proposed Land Use Map change from Public (PUB) to Mixed Density Residential (MXR) represents a significant change in character to the area and is inconsistent with the policies and overall intent of the comprehensive plan. Staff recommends avoiding the use of and any impacts to Area III-Planning Reserve lands- and a more suitable Boulder Valley Comprehensive Plan (BVCP) land use designation change to Medium Density Residential (MR) to

accompany the applicant's proposed annexation and RMX-2 zoning designation.

## Drainage

Erik Saunders, 303-441-4493

As a condition of annexation, the applicant is required to convey drainage in an historic manner, which does not adversely affect neighboring properties. Based on the Utilities comment related to a potential need for imported fill, it may further be necessary to demonstrate suitability of site development as it relates to drainage design to ensure adverse impacts aren't created for adjacent properties. Update plans and provide additional information as necessary.

## Fees

Erik Saunders, 303-441-4493

Based on the limited application data supplied and the 2023 Schedule of Fees, the following fees will be due prior to the first reading of the annexation ordinance: Plant Investment Fees (PIF's) for existing impervious area: Stormwater \$2.46/square foot of impervious area (~55,000 sq ft) -> \$135,300.

## Legal Documents

Julia Chase, 303-441-3052

1. Annexation Petition: Upon resubmittal, provide a newly signed petition with the changes shown on the marked up version attached.
2. Annexation Map: Upon resubmittal, provide a revised version of the annexation map with the changes shown on the marked-up version attached.
3. Quitclaim Deed: Upon resubmittal, provide a legal description for the Area of Concern identified on the survey prepared by Flatirons, Inc. and is described in Note #16. Prior to the 1st reading of the annexation ordinance, the Applicant shall sign a quitclaim deed for the area depicted as the "Area of Concern" (Refer to Note #16) on the survey prepared by Flatirons, Inc. on 3/14/2016. Note #16 indicates that "the Boulder County Right-of-Way Department could not find any information support a 35' Right-of-Way width on the north side of the Section Line at this location. Therefore, it is unclear if the hatched area of concern is right-of-way or part of the subject parcel."

## Miscellaneous

Erik Saunders, 303-441-4493

1. Prior to first reading of the annexation ordinance, the applicant shall sell and convey, or execute an agreement to sell and convey, to the City any interests in water or water rights associated with, or appurtenant to the Subject Property including any and all interests, be they contractual interests or otherwise.
2. The applicant is responsible for obtaining approvals for any relocations or modifications to irrigation ditches or laterals from the impacted ditch company. This includes the release of stormwater runoff into any ditch or lateral. The applicant is advised that revisions to any approved city plans necessary to address ditch company requirements may require reapplication for city review and approval at the applicant's expense.

## Plan Documents

Shannon Moeller, 303-441-3216

1. Additional information is necessary to confirm 1/6 contiguity of the subject parcel.
  - a) Provide additional documentation to confirm the extents of the Jay Rd. and 28th St. ROW that were previously annexed and identify the ordinances on the annexation map that are being used to establish contiguity. Note that additional ROW may need to be annexed, and additional ROW may need to be dedicated in light of anticipated improvements.
  - b) The ROW status of the "Area of Concern" noted on Note 16 of the survey, and the triangular parcel noted as "Excepted Portion (Rec. No. 264461)" adjacent to the property need to be clarified.
2. The existing wireless facility monopole on the property, once annexed, would not comply with Sec. 9-6-4(f)(1)(A), B.R.C. 1981, which requires the antenna for the wireless communications facility to be attached to a principal building designed and constructed for a primary purpose other than supporting a wireless communications facility. As part of the resubmittal, clarify the proposal in regard to the existing monopole. Additionally, provide copies of the Option and Lease Agreements dated April 8, 2005, and copies of the First Amendments to Option and Lease Agreement dated March 3rd, 2015, for a communication facility on the 2801 Jay property. Are there separate Options and Amendments between the Church of Nazarene and New Cingular Wireless PCS, LLC, and between the Colorado District of the Church of Nazarene and New Cingular Wireless PCS, LLC? Please advise.



## Attachment E - Staff and Referral Comments

3. The existing religious assembly use, once annexed, would be nonconforming to Sec. 9-6-1 "Schedule of Permitted Land Uses," B.R.C. 1981 which requires a Use Review for the use. As part of the resubmittal, clarify the proposal in regards to the use of the existing building; is there an intention to continue this use upon annexation?
4. The written statement on page 6 refers to a trip generation and assignment report being included in the application; this item was not received as part of the subject application.
5. The written statement on page 3 refers to requests related to private streets or modifications to street standards with the stated purpose of allowing a homeowners' association (instead of a condominium association) with the intent that this arrangement would keep monthly fees low. Please provide additional clarification regarding the goal of this request and how this difference in the association type would make a demonstrable difference in the long-term cost on residents, including maintenance of private streets and improvements. Note that the subdivision regulations do not reference condominiums or common interest communities directly. The city typically requires creation of a common interest community and creation of an owners association for ownership and maintenance of common facilities, such as detention ponds, water quality features, and other features serving more than one property owner.
6. Additional information is necessary to determine what improvements, if any, can be located to the east of the subject property in the County / Area III – Planning Reserve. The existing access road has not been accepted by Boulder County as right-of-way and maintenance responsibilities of the access road are not being done by the County. Generally, staff is not supportive of placing the access to serve the subject development on a separate property that is not annexed or maintained by the city. Also note that access to a public road in unincorporated Boulder County is regulated by the Boulder County.

### Review Process

Shannon Moeller, 303-441-3216

Staff is unable to support the modifications to the land use and subdivision standards listed in the submitted Fact Sheet as part of an annexation agreement. Generally, modifications to development standards would be reviewed concurrent with a Site Review. A Site Review application has not been submitted. The drawings provided in the written statement are not a substitute for a detailed Site Review, do not provide adequate information regarding the feasibility of the proposal in meeting typical city standards and the site review criteria that would allow the city to properly evaluate a modification request, and do not quantify the extent to which city standards would need to be modified to accommodate the proposal. The drawings provided in the written statement also do not clearly address items of concern noted during the Concept Plan process including the location and design of open space located along the public right-of-way, providing open space amenities for families/children, providing adequate right-of-way dedications, providing standard street sections/detached sidewalks and tree lawns, request for private streets, addressing alignment and design of the multi-use path, providing a transition in building massing/perceived density across the site, providing detention/water quality facilities to accommodate increased impervious area on the site and clarifying how those relate to open space calculations, revising design to provide well-defined community edges, reducing excess paved surfaces, addressing access and traffic concerns, among others. Staff continues to recommend providing a concurrent Site Review with annexation and BVCP land use change requests.

Deryn Wagner, 720-601-5048

Design and construction of adjacent city parks property with Area III of the Boulder Valley Comprehensive Plan is at least 10 years out, given ongoing and upcoming city analysis for the full area, as well as budget limitations for park construction. Therefore, although supported by the Transportation Master Plan, design and construction of the proposed multiuse path connection through the site should be delayed until the time the city is prepared to move forward with Area III. To that end, staff request that the applicant commit to payment of the cost of design and construction of the path segment, according to cost estimates relevant at the time of payment, rather than pursuing the work at this time.

### Utilities

Erik Saunders, 303-441-4493

1. The sanitary sewer main extension necessary to serve the proposed development is shown to be constructed across and within private property. It shall be necessary to dedicate public utility easement in accordance with the standards set forth in section 4.04 of the City of Boulder Design and Construction Standards, (DCS), prior to first reading of the annexation ordinance. Dedication of a public utility easement requires a separate Technical Document Review application.
2. The proposed sanitary sewer main extension entering the property in the southwest corner of the site is shown to be routed between two buildings without the requisite dimension for the required public utility easement. Per section 4.04 of the DCS, public utility easements shall be a minimum of 25 feet wide, but the distance between the structures at the closest point scales to approximately 18 feet. Public Utility Easements must be provided in accordance with all

standards set forth in the DCS. A future site plan may not have any buildings within the utility easement area.

3. Given the limited utilities information provided based on the conceptual nature of the site development shown, it is necessary to provide a Utility Report prepared in accordance with the standards set forth in section 5.02 and 6.02 of the DCS. The proposed sanitary sewer main extension will require a wastewater collection system analysis to determine any system impacts based on the proposed demands of the development. The analysis will need to show conformance with the city's Wastewater Collection System Master Plan, July 2016. The analysis must include all downstream flows discharging to the collection network up to the manhole in the northwest corner of the Elks Club property.
4. The proposed sanitary sewer main extension as shown has the northeastern terminus very near the minimum depth of cover requirement. Based on the conceptual site layout it appears necessary to extend the main northward perhaps as much as 300 feet to adequately serve the entire development. Given the existing grades on the site, continuation of the 1% slope would cause the main to be near ground surface. It is unclear if the intent is to import significant fill to raise the site to ensure the utilities meet standards. A more detailed utilities design is required to demonstrate conformance to city standards is possible prior to annexation. Update submittal accordingly.
5. Proposed Sanitary Manhole 4 is shown within the private property boundary addressed as 2810 Jay Road without direct vehicular maintenance access. The manhole should be relocated further north to the right-of-way outside of the fenced area. Update plans accordingly.
6. Proposed Sanitary Manhole 4 is shown with an invert error of early one foot. Based on the 1% slope of the proposed main, the downstream section of pipe will not connect correctly with the existing terminal manhole. Update inverts as necessary.
7. The proposed sanitary sewer main extension requires multiple crossings of Colorado Department of Transportation (CDOT) right-of-way. As a condition of annexation, it shall be necessary to receive required permissions for the proposed utilities crossings of CDOT right-of-way.
8. The east branch of the proposed water main loop extension into the site is shown to be constructed within the roadway on the adjacent property where no public utility easement exists. It shall be necessary to construct all public improvements within public rights-of-way or public utility easements dedicated as necessary within the property boundary. Update accordingly.
9. As a condition of annexation, any existing structures requiring the use of a waste disposal system shall be connected to the city's wastewater system in accordance with Section 11-2-8, B.R.C. 1981 within 180 days of the second reading of the annexation ordinance or the existing structures must be demolished.
10. As a condition of annexation, the applicant is required to abandon any existing septic system in accordance with Boulder County Health Department and State regulations.
11. Mapping on the Northern Colorado Water Conservancy District (NCWCD) website shows this property already being located within the NCWCD District and Sub-district.

### III. INFORMATIONAL COMMENTS

1. Boulder Valley Comprehensive Plan, Annexations and Community Benefit, Michelle Allen, allenm@bouldercolorado.gov  
Proposed annexations with additional development potential need to demonstrate community benefit consistent with Boulder Valley Comprehensive Plan (BVCP) policies to offset the negative impacts of additional development in the Boulder Valley. For proposed residential development or potential residential development, emphasis is given to the provision of permanently affordable housing. The BVCP lists the following additional benefits that may be considered as part of an annexation request: Receiving sites for transferable development rights; Reduction of future employment projections; Land or facilities for public purposes over and above that required by the land use regulations; Environmental preservation; or other amenities determined by the city to be a special opportunity or benefit.

City proposes that 40% of all housing units be made permanently affordable, details in the annexation agreement to

include:

- a. All of the units must be for-sale and attached townhome style.
  - b. A covenant is required prior to building permit submittal for any units on the property.
  - C. Level of affordability. Affordable prices to include all three middle income tiers of 80%, 100% and 120% of area median income (AMI). Mix TBD
  - c. Concurrency requirement. The affordable units to be constructed concurrent to the market units; the last market units may not receive a certificate of occupancy (CO") until all of the affordable units receive a CO.
  - d. Minimum unit size and number of bedrooms specified.
  - e. Any amenities provided in the project must be shared equally with the affordable owners.
  - f. Affordable unit floor plan, design and unit location must be approved by HHS planning staff.
  - g. Housing inspections required at the applicant's cost.
  - h. Size limit of 3,000 sq. ft. on the market units
  - i. Single family homes not permitted
2. Prior to the 1st Reading of the Annexation Ordinance, the applicant must sign the annexation agreement and provide an updated title commitment current within 30 days.
  3. Referral Comments, Shannon Moeller, 303-441-3216  
Referral comments were received from Boulder Valley School District (refer to attachments).

The Boulder Valley Comprehensive Plan provides for a 30-day response period to receive referral comments from the County on the request; those comments are forthcoming and will be transmitted once received.

4. Review Process, Shannon Moeller, 303-441-3216  
BVCP Land Use Map Change: A change to the land use designation must be found to be consistent with the policies and overall intent of the comprehensive plan and the criteria in the BVCP Amendment Procedures located in "Exhibit B" of the BVCP.

Annexation and Initial Zoning: An annexation and initial zoning must be found to be consistent with BVCP Policy 1.17 Annexation; Annexation Requirements in Section 9-2-17; and Zoning of Annexed Land in Section 9-2-18, B.R.C. 1981.

The proposal exceeds 2 acres or 20 units in the proposed RMX-2 zoning district which requires a mandatory Site Review per 9-2-14(b)(1) "Development Review Thresholds," B.R.C. 1981. Applicant is advised that a concurrent Site Review is recommended with an annexation proposal.

Applicant is advised that the Site Review criteria adopted by City Council on Feb. 16, 2023, in Ord. 8515 are effective on July 1, 2023. The updated site review criteria shall be applied to site review applications submitted on or after the effective date. Complete site review applications submitted before the effective date shall be considered under the standards in effect at the time of application. At its meeting on Jan. 5, 2023, the City Council referred the item to TAB and DAB for review. These reviews take place during the site review process.

5. Transportation, Tom Pankau, pankaut@bouldercolorado.gov  
Annexation application provides limited details to review transportation impacts and mitigations. Future site review application(s), including a full traffic study and TDM plans may generate additional comments and requirements for this property at that time. The following comments are provided as informational for future site review application:

Bicycle parking will need to be provided for the residential units that will not have garages. Table 9-8 "Off-Street Bicycle Parking Requirements" from the Boulder Revised Code, (B.R.C.) 1981 is to be used to determine the number of bicycle parking spaces to be provided on the site. The design standards for bicycle parking are contained in Section 9-9-6(g), B.R.C. 1981 and Section 2.11(G) of the City's Design and Construction Standards.

If the site is subdivided into lots for future ownership, then the neighborhood streets will be required to be dedicated as public streets in public right-of-way (in-fee) to the city and built to the City's Design and Construction Standards. This is consistent with the city's subdivision standards and staff's desire to not create future financial obligations to the residents of the neighborhood for the repair and maintenance of private streets. The final street section would need to be determined in Site Review and with transportation analysis; however, based upon what was proposed in the previous concept plan, it is staff's recommendation that the primary internal streets be designed to the City's Design and Construction standards of a residential collector street as this street design provides the minimum street width to accommodate on-street parking while also allowing for vehicle circulation. The internal streets must also provide convenient pedestrian/bicycle circulation within and through the site. Staff will also require the width of

the residential sidewalks to be 5'-wide.

At the time of site review application, a Traffic Study will be required in accordance with Section 2.02 of the City of Boulder Design and Construction Standards (DCS) as the vehicle trips expected to be generated by the project during the AM or PM peak hours exceed 20 vehicles. The Traffic Study must be prepared consistent with Section 2.03 of the DCS.

At the time of site review application, a Transportation Demand Management (TDM) Plan consistent with the requirements contained in Section 2.03(l) of the City of Boulder Design and Construction Standards and Section 9-2-14(h)(2)(D)(iv) and (v) of the B.R.C. 1981 is required to be submitted with outlines strategies to mitigate traffic impacts created by the proposed development and implementable measures for promoting alternative modes of travel.

Depending on the traffic generated from the development and information contained within the Traffic Study, a CDOT access permit may be required to be submitted for the Jay Road access to US-36 according to State Highway Access Code Section 2.6 Changes in Land Use and Access Use. The property owners shall be required to prepare this application and obtain approval through the city.

6. Urban Wildlife, Valerie Matheson, 303-441-3004

There is an active prairie dog colony on the 2801 Jay Road site.

The City of Boulder has guidelines for managing conflicts between prairie dogs and human land uses. The City's Urban Wildlife Management Plan (UWMP) describes a "six-step" decision making process for managing prairie dogs when they are in conflict with human land uses. The "six-step" decision making process includes:

Step 1. Minimize conflicts with the wildlife through non-removal methods.

Step 2. Remove animals on a portion of the site where conflicts are occurring.

Step 3. Evaluate potential for relocation.

Step 4. Consider animal recovery programs (ferret or raptor).

Step 5. Evaluate trapping and individual euthanasia.

Step 6. If earlier steps not feasible and pesticides must be used:

– Pay into city habitat mitigation fund

– Notify the city

– Post notice on property of pesticide application

Evaluating the potential for relocation (Step 3) includes passive relocation (closing burrows where prairie dogs cannot remain) and active relocation (physically moving the prairie dogs to another site). Relocation activities are prohibited March 1- June 1 due to the prairie dog birthing season. Relocations occur between June 1 and October 15. Relocation efforts begun prior to Oct. 1, may be completed under appropriate conditions up to Nov. 1.

Requests to relocate prairie dogs onto land managed by the City of Boulder must be made in writing by March 1, to the director of the Open Space and Mountain Parks Department.

Passive relocation requires a Special Use Permit from the city, and active relocation that move prairie dogs off site requires a permit from the State of Colorado. To apply for a Special Use Permit for passive relocation, complete the General Data in addition to numbers 1, 2 & 18 of the Prairie Dog Lethal Control Permit Application referenced below. There are no costs associated with applying for a Special Use Permit, and processing time is approximately two weeks.

If removal is required and there are no relocation sites available (Step 4), City ordinance requires landowners to obtain a permit from the city before using any form of lethal control on prairie dogs. In order to obtain a permit, the landowner must demonstrate the following:

- A reasonable effort has been made to relocate the prairie dogs to another site;
- The most humane method of lethal control possible will be used;
- One of the following three conditions exist:
  1. the land on which the prairie dogs are located will be developed within 15 months of the date of the application,
  2. a principal use of the land will be adversely impacted in a significant manner by the presence of prairie dogs on the site, or
  3. an established landscaping or open space feature will be adversely impacted by the prairie dogs; and
- the landowner has an adequate plan designed to prevent the reentry of prairie dogs onto the land after the prairie dogs are lawfully removed.

Prairie Dog Lethal Control Permit Application Form can be found on the city website or by following this link: <https://bouldercolorado.gov/sites/default/files/2021-02/312prairiedogpmtapp.pdf>.

Attachment E - Staff and Referral Comments

The waiting period after the submission of an application is a minimum of three to five months. If the city determines that relocation alternatives exist during or after the initial three-to-five month period, it may delay issuing the permit for an additional 12 months in order to allow relocation to occur.

The basic administrative fee for a lethal control permit is \$1,500. An applicant for a prairie dog lethal control permit must also pay a fee of \$1,200 per acre of active prairie dogs habitat lost, pro-rated for any partial acres of lost habitat.

For additional information contact: Valerie Matheson, Urban Wildlife Conservation Coordinator, (303) 441-3004, mathesonv@bouldercolorado.gov.



## City of Boulder Planning & Development Services

DATE OF COMMENTS: **September 8, 2023**  
CASE MANAGER: **Shannon Moeller**  
PROJECT NAME: **2801 JAY RD**  
LOCATION: **2801 JAY RD**  
REVIEW TYPE: **Annexation/Standard, BVCP Update**  
REVIEW NUMBER: **LUR2023-00018, LUR2023-00019**  
APPLICANT: **MARGARET FREUND, FULTON HILL PROPERTIES**  
**DASH ASH, SITEWORKS**  
**COLLIN ACKERMAN**

**DANIEL ROTNER, RHAP ARCHITECTURE AND PLANNING**  
**LIZ HANSON, HANSON BUSINESS STRATEGIES**

DESCRIPTION: **Annexation and Initial Zoning proposal for the 4.58-acre property at 2801 Jay Rd. to be annexed with an initial zoning of RMX-2. Boulder Valley Comprehensive Plan (BVCP) Land Use Designation Change proposal to amend the land use designation on the 4.58-acre property at 2801 Jay Rd. from PUB to MXR.**

### I. REVIEW FINDINGS

Staff has completed the review of the first revisions resubmittal for the proposed BVCP Land Use Designation Change and Annexation/Initial Zoning requests. While staff appreciates the efforts to bring forward a project supportive of the city's housing goals, the documentation provided to date is not sufficient for staff to determine that the application meets minimum requirements for an annexation established in Section 9-2-17, B.R.C. 1981, including whether adequate urban facilities and services are available for this proposed annexation. Completing the engineering necessary to demonstrate if and how the site can be served by city utilities is a significant threshold issue for the annexation and requires the applicant to submit additional analysis. It will be difficult for staff to advance the application without this information.

As indicated in the previous review, the proposal of an MXR land use designation may be supportable; however, the documentation provided remains inadequate to clearly demonstrate compatibility with the surrounding area. The concept plan provided a theoretical basis for an MXR land use designation, but please see details below for specific elements that remain unaddressed at this time. Staff will coordinate on a time to discuss process options moving forward.

### II. CITY REQUIREMENTS

The section below addresses issues that must be resolved prior to project approval.

#### Access/Circulation

Thomas Pankau, 303-441-4369

#### 1. Jay Road and US 36 Improvements:

Initial Review: At the time of development of this site, improvements to Jay Road will be required and shall improve Jay Road to meet City of Boulder Design and Construction (DCS) standards for a residential arterial street, consistent with the city's design standards for detached sidewalks and landscape areas. Improvements shall include an 8'-wide detached sidewalk separated from the back of the street curb by an 8'-wide landscape area along the site's frontage for both Jay Road and US-36. Additional Jay Road improvements shall include (1) the construction of a new left-turn lane to enter the site and at the intersection of Jay Road and US-36; (2) the construction of a center median on Jay Road; (3) the construction of a raised pedestrian/bike crossing across the channelized right turn lane on westbound Jay Road at the intersection;- (4) the construction of a westbound buffered bike lane on Jay Road; and (5) the reconstruction of the existing transit stop on westbound Jay Road, which includes the construction of a concrete bus stop pad on Jay Road, construction of a standard RTD boarding area and concrete shelter pad behind the detached sidewalk according to RTD standards. An additional 5 feet width of right-of-way is required to accommodate the streetscape improvements along Jay and US 36 and should be dedicated as right-of-way (in-fee) to the city.

Upon resubmittal, the Applicant shall provide a legal description and associated exhibit for the additional right-of-way. Once the exhibit has been approved, then City staff will prepare the dedication documents to be signed prior to the 1st reading of an annexation ordinance. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute

acceptance of such documents by the City. In the event that the City does not annex the Property, the City agrees that it will return all such original documents to the Applicant.

Updated 09/08/23: Applicant response to this comment was acknowledged. The necessary legal descriptions for the 5' width of additional right-of-way dedication along the entire frontage of Jay Road is still required with this annexation. This right-of-way is necessary to accommodate minimum streetscape improvements and includes the portion of the southern parcel line that is 142.13' in length found in 'ExMap-B\_2801 JayRd...'. Additional improvements to Jay Road are still conceptual and additional analysis will be conducted at time of Site Review. The Site Review analysis may identify the need for dedication of additional right-of-way beyond the annexation dedication and will be a condition for approval of any future Site Review application. The City does not agree to the applicants proposal for a square foot limitation of future right-of-way dedication until further analysis can be conducted and more details are provided for the development.

2. Public Street at East Property Line

Initial Review: As a condition of this annexation the owner shall dedicate a 30-foot-wide section of right-of-way along the eastern boundary of the site for the extension of a new public street. Upon resubmittal, the Applicant shall provide a legal description and associated exhibit for the proposed 30 feet of ROW. Once the exhibit has been approved, then City staff will prepare the dedication document to be signed by the owner prior to the 1st reading of the annexation ordinance. The City agrees to hold such documents until after final legislative action on the annexation of this Property has occurred. Final legislative action by the City Council shall constitute acceptance of such documents by the City. In the event that the City does not annex the Property, the City agrees that it will return all such original documents to the Applicant.

At the time of development, the application shall design and construct improvements for at least one half of the cross section of Public Street that is needed to serve the development and, which shall be consistent with the standards in the DCS for a residential collector street. This includes the construction of a detached 5'-wide sidewalk, paved section, 8'-wide landscape strip and curb-and-gutter according to DCS standards. Depending on the final site review, the limits of asphalt paving for the Public Street may be extended to the north property line of the site if needed for site circulation, or the applicant may be required to pay to city the cost to construct the final improvements up to the north property line.

Improvements within the court decreed access located east of the property will require Boulder County review and approval as this area is not eligible for annexation to the city of Boulder. If the applicant desires, city staff will schedule a coordination meeting with County Public Works staff to discuss county requirements.

Updated 09/08/23: Applicant response to this condition was acknowledged. The proposed widths for the sidewalk and landscape along this new street do not meet the standards for a residential street in the DCS and are not accepted in order to avoid future reconstruction of the streetscape to bring it up to standard. Proposed landscaping in the future travel/asphalt area along the east property line is not acceptable. Landscaping and buffering for the proposed project will be expected to occur on the property and cannot use the right-of-way that has future intended uses as a part of the street. Not enough detail has been provided for the street that accesses the property. Review of the paved width and on-street parking shall be performed at time of Site Review application in order to determine adequate circulation and emergency access requirements are met for the site. The proposed 20' of paved width may be required to be a two-way street to allow proper site ingress and egress and meet emergency access requirements. The name of this street (previously referred to as Violet Ave) will be determined at the time of subdivision.

**Drainage**

Erik Saunders, 303-441-4493

1. As a condition of annexation, the applicant is required to convey drainage in an historic manner, which does not adversely affect neighboring properties. Based on the Utilities comment related to a potential need for imported fill, it is required to demonstrate suitability of site development as it relates to drainage design to ensure adverse impacts aren't created for adjacent properties. Update plans and provide additional information as necessary.
2. No continuous public storm sewer infrastructure is present adjacent to the site due to the undeveloped and rural nature of the area. The applicant's comment responses acknowledge the likelihood of fill being imported to the site, which will result in elevated condition with respect to the surrounding area. It is also noted that the proposed detention areas toward the southern portion of the site along with the fill will create a likely need for stormwater conveyance infrastructure to be constructed as part of site development. As such, it is necessary as part of this application to demonstrate the ability to construct all relevant storm water infrastructure, as required, to convey

collected runoff to an approved discharge location(s) or the existing city storm sewer network.

Note: Any stormwater outfall proposed to discharge to the Farmers Ditch must receive preliminary approval from the ditch company prior to annexation approval.

**Fees**

Erik Saunders, 303-441-4493

Based on the limited application data supplied and the 2023 Schedule of Fees, the following fees will be due prior to the first reading of the annexation ordinance: Plant Investment Fees (PIF's) for existing impervious area: Stormwater \$2.46/square foot of impervious area (~55,000 sq ft) -> \$135,300.

**Comprehensive Planning**

Christopher Ranglos, 303-441-4174 / Shannon Moeller, 303-441-3216

**Annexation**

The property is located in Area II in the BVCP, which is the "area now under county jurisdiction, where annexation to the city can be considered consistent with policies 1.08 Adapting to Limits on Physical Expansion, 1.10 Growth Requirements and 1.19 Annexation. Per Annexation Policy 1.19(b,) the city will actively pursue annexation of county enclaves, Area II properties along the western boundary, and other fully developed Area II properties. New urban development may only occur coincident with the availability of adequate facilities and services and not otherwise.

BVCP annexation policies related to adequate urban facilities and services might be able to be met; however, without additional information, staff is unable to determine adequacy of facilities and services at this time, in particular those related to utilities. It should be noted that, significantly, there is no city wastewater main near this property. Off-site wastewater main construction per the City of Boulder Design and Construction Standards (DCS) is necessary to serve the development, which the applicant has indicated an understanding of being financially responsible for in the written statement; refer to Utilities comments above for further requirements.

Proposed annexations with additional development potential must also demonstrate community benefit consistent with BVCP policies in order to offset the negative impacts of additional development in the Boulder Valley. For proposed residential development, emphasis is given to the provision of permanently affordable housing. The policy and practice for the past several years has been that 40 to 60 percent of the new residential development in annexations be permanently affordable. Please continue to specifically indicate how community benefit requirements will be satisfied in the proposed annexation agreement outline.

**Land Use**

The location and characteristics of this land make it potentially suitable for new development with urban services. This is based on the apparent lack of sensitive environmental areas, hazard areas, and significant agricultural lands, the feasibility of efficient urban service extension, and contiguity to the existing Service Area, to maintain a compact community.

Several BVCP policies were created to protect residential neighborhoods from overly intense or incompatible development, which could destabilize the established neighborhood character. Per the vision and recommendations in the BVCP, redevelopment projects should become a coherent part of the neighborhood in which they are placed (see policy 2.41(b) Enhanced Design for All Projects).

The requested BVCP land use map change to a Mixed Density Residential (MXR) designation may be compatible with the character of the surrounding area with appropriate transitions to surrounding areas, which primarily consist of low-density single-family developments as either large rural /estate lots or formal subdivisions. Mixed Density Residential allows up to 20 dwelling units per acre and is significantly higher than neighboring subdivisions that range from approximately 1 to 9 dwelling units per acre. Many different approaches exist to establish compatibility with surrounding areas including strategically locating height or density away from adjacent properties, providing landscape buffers, using enhanced community open space to mitigate long building walls and large impervious areas, and incorporating different use typologies such as rowhomes, detached units, etc.

The proposed mass, scale and density of development cannot be effectively evaluated to determine compatibility within the established character of the neighborhoods surrounding the site. Without the benefit of more detailed proposed site plan information, staff is not able to confirm that an appropriate transition would be provided to adjacent more rural properties.

Based on the information received to date, the proposed Land Use Map change proposal lacks sufficient detail to clearly demonstrate consistency with the policies and overall intent of the comprehensive plan. Either more detailed and specific compatibility commitments in the Annexation Agreement or through participation in the future Major Update to the BVCP



in 2025 would provide opportunities for the applicant, city staff and the community to determine a more defined future for the area and assign the land use and zoning that is most consistent with the surrounding neighborhoods. (The other option, as previously discussed but for which you have indicated an interest in avoiding, is a concurrent Site Review.)

## Plan Documents

Shannon Moeller, 303-441-3216

We have discussed your preference to draft terms of annexation without the aid of a Site Review application. Staff appreciates the draft terms of annexation you have prepared. However, at this time, the draft and accompanying conceptual diagrams do not either fully provide certainty for a proposed outcome, nor do they fully acknowledge that certain standards and conclusions will be deferred and decided at the time of Site Review.

Specifically, the following items are not supportable as part of an Annexation Agreement as they are items that can only be evaluated later as part of a Site Review and/or subdivision waiver per 9-2-14 and 9-12-12 B.R.C. 1981:

- Proposal for exemption from lot width standards. A proposal for a reduced lot width can be requested as part of typical review process(es) and is not necessary as part of an Annexation Agreement. It is impossible to commit to a lot width standard without knowledge of all other site elements.
- Proposal for setback modifications. A proposal for setback modifications can be requested as part of typical Site Review process and is not necessary as part of an Annexation Agreement. Setbacks variances can only be evaluated in the context of a full plan, which shows streets, open space, easements, and other critical elements.
- Proposal for solar access modifications. A proposal for solar access modifications can be requested as part of typical Site Review process and is not necessary as part of an Annexation Agreement. Note that solar access modifications would only be considered regarding internal property lines and not to allow increased solar shading on adjacent properties.

The following items are not supportable as part of the Annexation Agreement due to issues described below:

- Proposal for maximum allowable density to be calculated based upon gross square footage of the property (i.e., before dedications), rather than net square footage of the property (i.e., after dedications).
  - a) The proposal references as a justification for this request the 90/96 Arapahoe/Silver Saddle Annexation Agreement and that the density for the project received a density "bonus." That is not the case. The Silver Saddle project allowed for density to be distributed (averaged) across the overall site review area which can be permitted in a Site Review per 9-2-14(c)(2) which states: "...permit the averaging of . . . density standards, as applicable, across multiple lots that are subject to the site review and within the same zoning district. Averaged across these lots, the standards modified under this paragraph must be met and not result in an intensity or density greater than permitted by the zoning district." There was no density "bonus" at Silver Saddle nor was there any allowance to use any dedicated right-of-way toward calculating density.
  - b) Proposal to calculate based on gross square footage would be a departure from density calculations throughout the city and density is part of the concern on the subject property regarding compatibility with the character of the surrounding area.
- Proposal for private streets not subject to Design and Construction Standards or proposal for public streets with waivers for non-standard designs, specifically requesting one-way streets for front door presence, use of the alleyways for fire truck access, non-standard right-of-way width and sidewalk width and attached sidewalks.
  - a) The proposal references the 90/96 Arapahoe/Silver Saddle Annexation Agreement and that the design proposal allowed for a "creative design." The Silver Saddle project is not a relevant analog in this regard as the location and existing site constraints (topography, creek path, ditch, and historic buildings) resulted in the vacation of existing ROW where the proposal was unable to meet minimum DCS requirements; the design resulted from site constraints rather than a self-imposed request.
  - b) The Silver Saddle proposal also did not include individual private lots.
  - c) The Silver Saddle proposal also provided adequate engineering design details and information such that staff was able to determine support for the request, which have not been provided in this case.
  - d) Adequate information has not been provided for staff to consider if or how the proposal for private streets would be advantageous for future homeowners (through the proposed Homeowners' Association) in light of the financial burden this may place on future permanently affordable homeowners to maintain private roadways.
  - e) The proposal for attached sidewalks and excess street pavement and parking does not constitute an improved design that would warrant a waiver.
- The proposed wording throughout the proposed document regarding submitting a "substantially similar" density, application, and roads/design to what was proposed with the Concept Plan is subjective at best and would lead to interpretation issues between staff, the applicant, community members and decision-makers. The conceptual images provided with the Concept Plan Review and as part of the annexation submittal do not clearly indicate the

## Attachment E - Staff and Referral Comments

proposal can resolve outstanding design issues, and staff is unable to verify that the proposal can be built as proposed, even if there was complete support for the design as depicted. Outstanding issues continue to include the location and design of open space located along the public right of way, providing open space amenities for families/children, providing adequate right of way dedications, providing standard street sections/detached sidewalks and tree lawns, request for private streets, design of the multi-use path, providing a transition in building massing/perceived density across the site, providing detention/water quality facilities to accommodate increased impervious area on the site and clarifying how those relate to open space calculations, provision of well-defined community edges, excess paved surfaces, and access and traffic concerns, among others.

- The items above generally identify that standards and alternatives can be determined and approved through future process (i.e., subdivision and site planning). Please revise the Annexation Agreement outline to reflect these changes.

### Legal Documents

Julia Chase, 303-441-3052

1. Annexation Petition: Upon resubmittal, provide a newly signed petition with the changes shown on the marked up version attached.
2. Annexation Map: Upon resubmittal, provide a revised version of the annexation map with the changes shown on the marked-up version attached.
3. Exhibit Maps: Upon resubmittal, provide new exhibits with the changes shown on the attachments. (Note: Please upload each exhibit as a 2-page document. So, the Page 1 of 2 and Page 2 of 2 for the Quitclaim Exhibit should be uploaded as one document. Page 1 of 2 and Page 2 of 2 for the ROW Dedication should be uploaded as a second document.)

### Miscellaneous

Erik Saunders, 303-441-4493

Initial Review: The applicant is responsible for obtaining approvals for any relocations or modifications to irrigation ditches or laterals from the impacted ditch company. This includes the release of stormwater runoff into any ditch or lateral. The applicant is advised that revisions to any approved city plans necessary to address ditch company requirements may require reapplication for city review and approval at the applicant's expense.

Updated 09/08/23: In reference to the Drainage Comment above, given the stormwater collection, conveyance and discharge implications as they may relate to impacts to the Farmers Ditch, in accordance with city standards, if site design necessitates construction of new public stormwater infrastructure, any discharge to the ditch must receive written approval and permission from the ditch company prior to annexation approval.

### Review Process

Deryn Wagner, 720-601-5048

Design and construction of adjacent city parks property with Area III of the Boulder Valley Comprehensive Plan is at least 10 years out, given ongoing and upcoming city analysis for the full area, as well as budget limitations for park construction. Therefore, although supported by the Transportation Master Plan, design and construction of the proposed multiuse path connection through the site should be delayed until the time the city is prepared to move forward with Area III. To that end, staff request that the applicant commit the cost of design and construction of the path segment, according to cost estimates relevant at the time of payment, rather than pursuing the work at this time. (Note: This comment was not addressed with the first resubmittal. Please provide a response with any future resubmittal.)

### Utilities

Erik Saunders, 303-441-4493

1. Initial Review: The sanitary sewer main extension necessary to serve the proposed development is shown to be constructed across and within private property. It shall be necessary to dedicate public utility easement in accordance with the standards set forth in section 4.04 of the City of Boulder Design and Construction Standards, (DCS), prior to first reading of an annexation ordinance. Dedication of a public utility easement requires a separate Technical Document Review application.

Updated 09/08/23: If the proposed sanitary sewer extension routing south across Jay Road, tying into the main within the synagogue property, is to be considered as a viable alignment for sanitary sewer to meet the requirements of demonstrating the property has access to urban services, the public utility easement must be dedicated prior to

annexation approval.

Note: Preliminary easement proposal may require modification and expansion into the synagogue parking lot at time of dedication to ensure the sanitary alignment needed for the proposed change of direction at MH 5 is a minimum of 90 degrees.

2. While we recognize that limited utilities information has been provided based on the conceptual nature of the site development shown, it is still necessary to provide a Utility Report as a part of this application and prepared in accordance with the standards set forth in section 5.02 and 6.02 of the DCS. The proposed sanitary sewer main extension will require a wastewater collection system analysis to determine any system impacts based on the proposed demands of the development. The analysis will need to show conformance with the city's Wastewater Collection System Master Plan, July 2016. The analysis must include all downstream flows discharging to the collection network up to the manhole in the northwest corner of the Elks Club property.
3. As a condition of annexation, any existing structures requiring the use of a waste disposal system shall be connected to the city's wastewater system in accordance with Section 11-2-8, B.R.C. 1981 within 180 days of the second reading of the annexation ordinance or the existing structures must be demolished.
4. As a condition of annexation, the applicant is required to abandon any existing septic system in accordance with Boulder County Health Department and State regulations.
5. One of the fundamental considerations when evaluating a proposal to annex property into the city is the ability of the city to provide the full suite of urban services to the property. The range of urban services can be extensive, but particularly important are municipal water, sewer and stormwater utilities. Since there is no wastewater nor storm sewer infrastructure adjacent to the site, it is necessary for the applicant to demonstrate that these utilities are available and/or can be constructed to connect the site to existing city networks. Further, it must be shown that these extensions of the network can be made to adequately serve the site without compromising existing infrastructure or straining current capacities. As such, per the original review comment, it shall be necessary to provide a Utility Report prepared in accordance with the standards set forth in section 5.02 and 6.02 of the DCS to demonstrate the increased impacts generated by the proposed development can be accommodated by the existing systems or show how those systems will be modified or expanded to meet city standards based on the proposed impacts. The proposed sanitary sewer main extension will require a wastewater collection system analysis to determine system impacts based on the proposed demands of the development. The analysis will need to show conformance with the city's Wastewater Collection System Master Plan, July 2016. In addition, since the required public utility easements across private property necessary to extend the wastewater main south along US 36 have not yet been secured and dedicated, the option to construct sanitary main east within Jay Road should be the alignment to be provided with the required evaluation and analysis of system impacts. Additional options may be included in the Report, but the preliminary design layout and plans must be limited to an extension scenario that can be constructed at the time of annexation. Update submittal materials accordingly including preparation of the Utility Report as described above. The Report must consider the maximum number of units anticipated based on the Land Use and Zoning request.

### III. INFORMATIONAL COMMENTS

1. Boulder Valley Comprehensive Plan, Annexations and Community Benefit, Michelle Allen, allenm@bouldercolorado.gov  
The following amends the previous comments concerning the level of affordability. Affordable prices are to include two middle income tiers; 100% and 120% of area median income (AMI).
2. Prior Informational Comments, Shannon Moeller, 303-441-3216  
Please refer to earlier review comment letter for prior informational comments.
3. Referral Comments, Shannon Moeller, 303-441-3216  
Additional referral comments were received from Boulder County based on the revised submittal (refer to attachments).



## City of Boulder Planning & Development Services

DATE OF COMMENTS: **November 3, 2023**  
CASE MANAGER: **Shannon Moeller**  
PROJECT NAME: **2801 JAY RD**  
LOCATION: **2801 JAY RD**  
REVIEW TYPE: **Annexation/Standard, BVCP Update**  
REVIEW NUMBER: **LUR2023-00018, LUR2023-00019**  
APPLICANT: **MARGARET FREUND, FULTON HILL PROPERTIES**  
**DASH ASH, SITEWORKS**  
**COLLIN ACKERMAN**  
**DANIEL ROTNER, RHAP ARCHITECTURE AND PLANNING**  
**LIZ HANSON, HANSON BUSINESS STRATEGIES**

DESCRIPTION: **Annexation and Initial Zoning proposal for the 4.58-acre property at 2801 Jay Rd. to be annexed with an initial zoning of RMX-2. Boulder Valley Comprehensive Plan (BVCP) Land Use Designation Change proposal to amend the land use designation on the 4.58-acre property at 2801 Jay Rd. from PUB to MXR.**

### I. REVIEW FINDINGS

Staff has completed the review of the second revisions resubmittal for the proposed BVCP Land Use Designation Change and Annexation/Initial Zoning requests. Staff appreciates the efforts to update the proposed Annexation Agreement outline and written statement in recognition of prior review comments and discussions.

Staff believe that the intent expressed in the written statement regarding compatibility and the understanding that a subsequent Site Review process is necessary, along with the continued commitment to the city's housing goals, brings the project into *consistency* with the policies and overall intent of the BVCP. Please see 'Comprehensive Planning' and 'Plan Documents' comments for additional specific information regarding language to be added to the annexation agreement.

Please note that there continue to be unresolved engineering issues; documentation remains necessary for staff to determine that the application meets minimum requirements for an annexation established in Section 9-2-17, B.R.C. 1981, including whether adequate urban facilities and services are available for this proposed annexation. Please refer to comments for outstanding items to resolve.

Staff is happy to coordinate on a time to discuss remaining items going forward as necessary.

### II. CITY REQUIREMENTS

The section below addresses issues that must be resolved prior to project approval.

#### Comprehensive Planning

Christopher Ranglos, 303-441-4174 / Shannon Moeller, 303-441-3216

#### Annexation

The subject property is located in Area II in the BVCP, which is the "area now under county jurisdiction, where annexation to the city can be considered consistent with policies 1.08 Adapting to Limits on Physical Expansion, 1.10 Growth Requirements and 1.19 Annexation. Per Annexation Policy 1.19(b,) the city will actively pursue annexation of county enclaves, Area II properties along the western boundary, and other fully developed Area II properties. New urban development may only occur coincident with the availability of adequate facilities and services and not otherwise.

Off-site wastewater main construction per the City of Boulder Design and Construction Standards (DCS) is necessary to serve the development, which the applicant has indicated an understanding of being financially responsible for in the written statement. BVCP annexation policies related to adequate urban facilities and services might be able to be met; however, additional information related to utilities and drainage is still required; refer to 'Drainage,' 'Miscellaneous,' and 'Utilities' comments for further requirements and revisions.

**Land Use**

The applicant is requesting a Land Use Map change from Public (PUB) to Mixed Density Residential (MXR) to accompany the requested RMX-2 zoning designation. Several BVCP policies were created to protect residential neighborhoods from overly intense or incompatible development, which could destabilize the established neighborhood character. Per the vision and recommendations in the BVCP, redevelopment projects should become a coherent part of the neighborhood in which they are placed (see policy 2.41(b) Enhanced Design for All Projects).

Staff finds that the requested change in land use *could* represent a significant change in character to the area, however, the applicant has provided additional compatibility commitments which can be taken into consideration, such as the dedication of 30-feet of public right of way along the eastern property line; limitations of building stories along the eastern and most northern buildings; and provision of shared open space positioned at easterly end of site to provide relief to massing.

Further, the applicant understands that the MXR land use designation could allow up to 20 dwelling units per acre, but that this density is not guaranteed, and compatibility will ultimately be established pursuant to the mandatory subsequent Site Review process, which requires demonstration of compliance with Site Review criteria, including those related to compatibility.

After thorough consideration and with additional compatibility commitments provided by the applicant through the annexation agreement, staff finds that, on balance, the Land Use Map change from Public (PUB) to Mixed Density Residential (MXR) can be found consistent with the policies and overall intent of the BVCP.

Please refer to 'Plan Documents' comments for additional information regarding Annexation Agreement language related to Compatibility.

**Drainage**

Erik Saunders, 303-441-4493

Prior Review: No continuous public storm sewer infrastructure is present adjacent to the site due to the undeveloped and rural nature of the area. The applicant's comment responses acknowledge the likelihood of fill being imported to the site, which will result in elevated condition with respect to the surrounding area. It is also noted that the proposed detention areas toward the southern portion of the site along with the fill will create a likely need for stormwater conveyance infrastructure to be constructed as part of site development. As such, it is necessary as part of this application to demonstrate the ability to construct all relevant storm water infrastructure, as required, to convey collected runoff to an approved discharge location(s) or the existing city storm sewer network.

Note: Any stormwater outfall proposed to discharge to the Farmers Ditch must receive preliminary approval from the ditch company prior to annexation approval.

Updated 11/3/23: As stated previously, prior to approval of this annexation application, it shall be necessary to receive preliminary approval of any proposed discharge of new or modified stormwater flows; and/or proposed stormwater infrastructure improvements to the Farmers Ditch. Provide written acknowledgement and preliminary approval of the proposed stormwater infrastructure improvements and discharge of stormwater flows from the site to the Famers Ditch channel crossing of Jay Road at the time of next submittal.

**Land Use**

Michelle Allen, 303-441-4076

1. Affordable Housing Community Benefit

Note that affordable housing community benefit for annexations is negotiated; Inclusionary Housing as such does not apply however, IH rules may be applied where specifically stated in the annexation agreement. Additionally, each annexation is independently determined; other annexations do not set precedent.

The following items are anticipated to be incorporated into the Annexation Agreement. Final draft annexation agreement language will be provided following the next resubmittal.

Affordable Housing Community Benefit. The Applicant agrees that this is a voluntary agreement. The Applicant further agrees that at least 40 percent of the total number of new dwelling units constructed on the Property shall be developed and sold as for-sale deed restricted Affordable Units. Cash-in-lieu may not be substituted for these required on-site Affordable Units.

a) Type. All of the affordable units must be for-sale attached townhomes. A minimum of six of the Affordable units shall have three bedrooms and two baths. The remainder of the affordable units shall have a minimum of two bedrooms and one bath. No fewer than 15 affordable units shall include a carport of adequate size to store one

automobile. The remaining affordable units may have at-grade, uncovered parking.

- b) **Design Quality.** The Affordable Units shall be of comparable quality in design, construction, workmanship and materials to the Market Units.
- c) **Location.** The distribution of the affordable units shall conform to the extent possible to the distribution in Concept Plan LUR2022-00038 or as such plan may be amended through Site Review.
- d) **Pricing and size.** The total number of Affordable Units shall be divided into two pricing categories:
- i. All two-bedroom Affordable Units on the Property shall have a minimum size of 1,000 sq. ft. with a price affordable to households earning no more than 100% of the area median income (the "AMI") and qualifying household incomes set at a maximum of 120% of the AMI.
  - ii. All three-bedroom Affordable Units on the Property shall have a minimum size of 1,300 sq. ft. with a price affordable to households earning no more than 120% of the AMI and qualifying household incomes set at a maximum of 150% of the AMI.
  - iii. The initial sales price of an Affordable Unit shall be based on the affordable pricing sheet established by the City Manager as in effect at the time of building permit issuance for the Affordable Unit. Pricing of future Affordable Unit resales shall be permanently restricted based on the initial sale's price of the Affordable Unit and as described in the individual final permanently affordable deed restricting covenant executed by individual purchasers.
- e) **Rounding.** Any percent referenced in this Paragraph 16 that results in a fraction is subject to standard rounding (0.5 and above rounds up).
- f) **Housing Inspections.** The City will retain a housing construction inspector (the "Inspector") to inspect and monitor construction of the Affordable Units. These inspections are to ensure the Affordable Units meet all contractual requirements and result in high quality, well-constructed housing. All costs for the time of the Inspector and any other costs incurred shall be borne by the Applicant.
- g) **Concurrency.** The Applicant shall develop the Affordable Units concurrently with Market Units. Building permits for no less than one half of the affordable units must be issued before building permits are issued for one half of the market units. Final certificates of occupancy for market units may not be issued unless and until final certificates of occupancy have been issued for an equivalent number of market units.
- h) **Affordable Agreement.** Prior to a building permit application for any new dwelling unit for the Property, including the replacement home for the existing home, the Applicant and City shall execute and record with the Boulder County Clerk and Recorder an on-site agreement ("On-site Agreement") which includes but is not limited to details concerning required Housing Inspections, concurrent construction and specific requirements for the homeownership association.
- i) **Covenants.** Prior to a building permit application for any new dwelling unit for the Property, including the replacement home for the existing home, the Applicant and City shall execute and record with the Boulder County Clerk and Recorder a permanently affordable deed restricting interim covenant ("Interim Covenant") and related required documents to permanently secure the affordability of the Affordable Units. Upon the sale of an Affordable Unit to an affordable purchaser a permanently affordable deed restricting covenant shall be executed by the individual purchasers and recorded with the Boulder County Clerk and Recorder. Upon sale of all Affordable Units to affordable purchasers, the Interim Covenant shall be released.
- j) **Modification of Affordable Housing.** The Applicant and the City Manager, or her delegate, may agree to modify the requirements set forth in this Paragraph 16 provided that the City Manager finds the proposed development would provide an affordable housing benefit that provides a community benefit at least equivalent to the housing benefit provided by the Affordable Units required herein. The City Manager may not accept cash-in-lieu to satisfy the requirement for any of the on-site Affordable Units required under this Agreement.
- k) **Consistency with Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, and related Administrative Regulations.** Except as specifically modified by this Agreement, implementation of the affordable housing requirements under this Agreement will be consistent with Chapter 9-13, "Inclusionary Housing," B.R.C. 1981, and related Inclusionary Housing Administrative Regulations of the City of Boulder.
- l) **Amenities.** Access to any amenities provided to the Market Unit owners, including but not limited to open space and parks, shall equally be provided to the Affordable Unit owners.

17. Market Unit Size and Tenure. No newly constructed Market Unit shall be a detached single-family home. No unit in the development shall have more than 3,000 square feet of floor area, excluding 500 sq. ft in a garage. The floor area requirements for the Market Units shall be based on the "floor area" definition found in Section 9-16-1 "General Definitions" B.R.C 1981.

**Legal Documents**

Julia Chase, 303-441-3052

1. Annexation Map: Upon resubmittal, provide a revised version of the annexation map with the changes shown on the marked-up version attached.
2. Exhibit Maps: Upon resubmittal, provide new exhibits with the changes shown on the attachments.

**Miscellaneous**

Erik Saunders, 303-441-4493

Initial Review: The applicant is responsible for obtaining approvals for any relocations or modifications to irrigation ditches or laterals from the impacted ditch company. This includes the release of stormwater runoff into any ditch or lateral. The applicant is advised that revisions to any approved city plans necessary to address ditch company requirements may require reapplication for city review and approval at the applicant's expense.

Updated 09/08/23: In reference to the Drainage Comment above, given the stormwater collection, conveyance and discharge implications as they may relate to impacts to the Farmers Ditch, in accordance with city standards, if site design necessitates construction of new public stormwater infrastructure, any discharge to the ditch must receive written approval and permission from the ditch company prior to annexation approval.

Updated 11/3/23: Similar to updated Drainage comment above, prior to approval of this annexation application, it shall be necessary to receive preliminary approval of any proposed discharge of new or modified stormwater flows; and/or proposed stormwater infrastructure improvements to the Farmers Ditch. Provide written acknowledgement and preliminary approval of the proposed stormwater infrastructure improvements and discharge of stormwater flows from the site to the Famers Ditch channel crossing of Jay Road at the time of next submittal.

**Plan Documents**

Shannon Moeller, 303-441-3216

Staff appreciates the efforts to update the annexation agreement outline and written statement. In support of the proposed MXR land use and the applicant's commitments to provide for compatibility to adjacent land uses consistent with BVCP Policy 2.41, staff anticipates language related to compatibility to be included with the annexation agreement. Specific draft language will be provided for review following the next resubmittal, however generally staff expects the requirements to include the following:

- a) A Site Review shall be required prior to any application for a building permit.
- b) Design standards for the eastern right-of-way may be included; this will be discussed further with transportation staff regarding necessity and specificity of any language.
- c) Maximum stories related to the easternmost and eastern approximately two-thirds of the northernmost structures, and sloped roof requirements.
- d) Provision of shared useable open space adjacent to eastern property line.
- e) Language will note that above items are subject to final review at the time of Site Review; no approval of any design is being made at this time.

Additionally, please note that while staff appreciates the inclusion of the diagrams in the written statement as a general illustration, these will not be included in the annexation agreement to ensure that they are not misunderstood as approval of any particular design.

**Referral Comments**

Shannon Moeller, 303-441-3216

Please note that additional referral comments were received from Boulder County based on the revised submittal (refer to attachments) which include unresolved concerns. Staff will coordinate with the applicant and the County regarding the items.

**Utilities**

Erik Saunders, 303-441-4493

1. As a condition of annexation, any existing structures requiring the use of a waste disposal system shall be

connected to the city's wastewater system in accordance with Section 11-2-8, B.R.C. 1981 within 180 days of the second reading of the annexation ordinance or the existing structures must be demolished.

2. As a condition of annexation, the applicant is required to abandon any existing septic system in accordance with Boulder County Health Department and State regulations.
3. East portion of Offsite Utility Plan (2), Sheet C-201 of the Utility Report, has the proposed storm sewer outfall at the intersection with Farmers Ditch <2> identified in Keyed Notes as "Existing 12" Water Main to Remain". Update notation and identifier accordingly.
4. The Utility Report (Report) includes incorrect load forecasting factors for both wastewater and water demand calculations. The proposed development generally consists of single-family attached units numbering approximately 86 total units. The existing public utilities networks evaluated as part of the Report also primarily, if not exclusively, serve single-family development. However, the Report has assessed the impacts to the existing wastewater collection and water distribution networks based on modelling the proposed units, and many of the existing units, as multi-family units. The Report must be updated to show proposed wastewater discharges and water demand impacts based on 3.2 persons per single-family unit (attached and detached), this includes all townhome units, duplexes (2 units), single-family homes. Update Report accordingly.

### III. INFORMATIONAL COMMENTS

1. Prior Informational Comments, Shannon Moeller, 303-441-3216  
Please refer to earlier review comment letter for prior informational comments.





## City of Boulder Planning & Development Services

DATE OF COMMENTS: **March 15, 2024**  
CASE MANAGER: **Shannon Moeller**  
PROJECT NAME: **2801 JAY RD**  
LOCATION: **2801 JAY RD**  
REVIEW TYPE: **Annexation/Standard**  
REVIEW NUMBER: **LUR2023-00018**  
APPLICANT: **MARGARET FREUND, FULTON HILL PROPERTIES**

**DASH ASH, SITEWORKS**  
**COLLIN ACKERMAN**  
**DANIEL ROTNER, RHAP ARCHITECTURE AND PLANNING**  
**LIZ HANSON, HANSON BUSINESS STRATEGIES**

DESCRIPTION: **Annexation and Initial Zoning proposal for the 4.58-acre property at 2801 Jay Rd. to be annexed with an initial zoning of RMX-2. Related to the concurrent BVCP land use designation change application under case no. LUR2023-00019.**

### I. REVIEW FINDINGS

Staff appreciates the efforts to update draft Annexation Agreement. Responses to the redlined agreement will be forthcoming. As noted in the comments below, staff will meet internally to further discuss some of the outstanding items to work towards resolution.

Please note that there continue to be unresolved engineering issues; documentation remains necessary for staff to determine that the application meets minimum requirements for an annexation established in Section 9-2-17, B.R.C. 1981, including whether adequate urban facilities and services are available for this proposed annexation. Please refer to comments for outstanding items to resolve.

Staff is happy to coordinate on a time to discuss remaining items going forward as necessary.

### II. CITY REQUIREMENTS

The section below addresses issues that must be resolved prior to project approval.

#### Access/Circulation

Thomas Pankau, 303-441-4369

Transportation review has marked up some items in the forthcoming draft Annexation Agreement for correction.

#### Drainage

Erik Saunders, 303-441-4493

No continuous public storm sewer infrastructure is present adjacent to the site due to the undeveloped and rural nature of the area. And, with reference to applicant comment responses which acknowledge the likelihood of fill being imported to the site resulting in an elevated condition with respect to the surrounding area, and noting the proposed detention areas toward the southern portion of the site, stormwater conveyance infrastructure is likely to be required to be constructed as part of site development. As such, it is necessary as part of this application to demonstrate the ability to construct all relevant storm water infrastructure, as required, to convey collected runoff to an approved discharge location(s) or the existing city storm sewer network.

Note: Any stormwater outfall proposed to discharge to the Farmers Ditch must receive preliminary approval from the ditch company prior to annexation approval.

#### Updated 11/3/23:

As stated previously, prior to approval of this annexation application, it shall be necessary to receive preliminary approval of any proposed discharge of new or modified stormwater flows; and/or proposed stormwater infrastructure improvements to the Farmers Ditch. Provide written acknowledgement and preliminary approval of the proposed stormwater infrastructure improvements and discharge of stormwater flows from the site to the Farmers Ditch channel crossing of Jay Road at the time of next submittal.

#### Updated 3/08/24:

The requirement to show suitable and approved discharge location(s) for stormwater flows remains unmet and must be

demonstrated prior to approval of the annexation application. Per section 7.01(H) of the City of Boulder Design and Construction Standards, storm runoff shall not be conveyed into an irrigation ditch without written approval and permission from the affected ditch company. Unless an alternative design can be provided that eliminates the need to modify discharge in any way to the Farmers Ditch, it shall be necessary to receive preliminary approval from the Farmers Ditch Company, and provide evidence of such, for any proposed discharge of new or modified stormwater flows; and/or proposed stormwater infrastructure improvements to the Farmers Ditch.

### Land Use

Sloane Walbert, 303-441-4231

Staff are meeting internally to discuss the community benefit package and ensuring the ongoing feasibility of housing development on the site. Staff is also planning to meet with Habitat for Humanity to discuss the feasibility of their partnership and how the housing would be provided by Habitat. Comments and proposed annexation language are forthcoming based on these discussions.

### Miscellaneous

Erik Saunders, 303-441-4493

The applicant is responsible for obtaining approvals for any relocations or modifications to irrigation ditches or laterals from the impacted ditch company. This includes the release of stormwater runoff into any ditch or lateral. The applicant is advised that revisions to any approved city plans necessary to address ditch company requirements may require reapplication for city review and approval at the applicant's expense.

Updated 09/07/23:

In reference to the Drainage Comment above, given the stormwater collection, conveyance and discharge implications as they may relate to impacts to the Farmers Ditch, in accordance with city standards, if site design necessitates construction of new public stormwater infrastructure, any discharge to the ditch must receive written approval and permission from the ditch company prior to annexation approval.

Updated 11/3/23:

Similar to updated Drainage comment above, prior to approval of this annexation application, it shall be necessary to receive preliminary approval of any proposed discharge of new or modified stormwater flows; and/or proposed stormwater infrastructure improvements to the Farmers Ditch. Provide written acknowledgement and preliminary approval of the proposed stormwater infrastructure improvements and discharge of stormwater flows from the site to the Farmers Ditch channel crossing of Jay Road at the time of next submittal.

Updated 03/08/24:

This requirement remains unmet and must be demonstrated prior to approval of the annexation application.

### Utilities

Erik Saunders, 303-441-4493

1. As a condition of annexation, any existing structures requiring the use of a waste disposal system shall be connected to the city's wastewater system in accordance with Section 11-2-8, B.R.C. 1981 within 180 days of the second reading of the annexation ordinance or the existing structures must be demolished.

Updated 03/08/24:

The City Manager may modify and amend the timelines for connection to the city's wastewater collection system for good cause as necessary to protect public health and safety.

2. As a condition of annexation, the applicant is required to abandon any existing septic system in accordance with Boulder County Health Department and State regulations.

### III. INFORMATIONAL COMMENTS

1. Prior Informational Comments, Shannon Moeller, 303-441-3216  
Please refer to earlier review comment letter for prior informational comments.



# City of Boulder Planning & Development Services

DATE OF COMMENTS: **July 3, 2024**  
CASE MANAGER: **Shannon Moeller**  
PROJECT NAME: **2801 JAY RD**  
LOCATION: **2801 JAY RD**  
REVIEW TYPE: **Annexation/Standard**  
REVIEW NUMBER: **LUR2023-00018**  
APPLICANT: **MARGARET FREUND, FULTON HILL PROPERTIES**  
**DASH ASH, SITEWORKS**  
**COLLIN ACKERMAN**  
**DANIEL ROTNER, RHAP ARCHITECTURE AND PLANNING**  
**LIZ HANSON, HANSON BUSINESS STRATEGIES**

DESCRIPTION: **Annexation and Initial Zoning proposal for the 4.58-acre property at 2801 Jay Rd. to be annexed with an initial zoning of RMX-2. Related to the concurrent BVCP land use designation change application under case no. LUR2023-00019.**

## I. REVIEW FINDINGS

Staff appreciates the efforts to reach resolution on the draft Annexation Agreement and looks forward to discussing the remaining items next week.

Please note that there continue to be unresolved engineering issues as noted below to demonstrate that adequate urban facilities and services are available for this proposed annexation. Please refer to comments for outstanding items to resolve.

This item has been placed on the Planning Board calendar for August 27<sup>th</sup>; City Council 1<sup>st</sup> and 2<sup>nd</sup> Readings are currently scheduled on October 17 and December 5; in order to proceed forward on August 27<sup>th</sup>, a final annexation agreement must be reached and outstanding engineering issues must be resolved by Friday July 19<sup>th</sup>. Additionally, staff can adjust the dates if more preferable dates become available and/or if applicant prefers alternative dates that have been previously discussed.

## II. CITY REQUIREMENTS

The section below addresses issues that must be resolved prior to project approval.

### Access/Circulation

Thomas Pankau, 303-441-4369

Transportation review has marked up some items in the forthcoming draft Annexation Agreement for correction.

### Drainage

Erik Saunders, 303-441-4493

No continuous public storm sewer infrastructure is present adjacent to the site due to the undeveloped and rural nature of the area. And, with reference to applicant comment responses which acknowledge the likelihood of fill being imported to the site resulting in an elevated condition with respect to the surrounding area, and noting the proposed detention areas toward the southern portion of the site, stormwater conveyance infrastructure is likely to be required to be constructed as part of site development. A such, it is necessary as part of this application to demonstrate the ability to construct all relevant storm water infrastructure, as required, to convey collected runoff to an approved discharge location(s) or the existing city storm sewer network.

Note: Any stormwater outfall proposed to discharge to the Farmers Ditch must receive preliminary approval from the ditch company prior to annexation approval.

Updated 11/3/23:

As stated previously, prior to approval of this annexation application, it shall be necessary to receive preliminary approval of any proposed discharge of new or modified stormwater flows; and/or proposed stormwater infrastructure improvements to the Farmers Ditch. Provide written acknowledgement and preliminary approval of the proposed

stormwater infrastructure improvements and discharge of stormwater flows from the site to the Farmers Ditch channel crossing of Jay Road at the time of next submittal.

Updated 3/08/24:

The requirement to show suitable and approved discharge location(s) for stormwater flows remains unmet and must be demonstrated prior to approval of the annexation application. Per section 7.01(H) of the City of Boulder Design and Construction Standards, storm runoff shall not be conveyed into an irrigation ditch without written approval and permission from the affected ditch company. Unless an alternative design can be provided that eliminates the need to modify discharge in any way to the Farmers Ditch, it shall be necessary to receive preliminary approval from the Farmers Ditch Company, and provide evidence of such, for any proposed discharge of new or modified stormwater flows; and/or proposed stormwater infrastructure improvements to the Farmers Ditch.

Updated 07/03/24:

The applicant has provided a drainage design that bypasses the Farmers Ditch as the site stormwater runoff outfall location and instead utilizes the Boulder County stormwater conveyance system (inlets, storm sewer pipe, roadside swale/ borrow ditch, etc.), in the area of the intersection of 30th Street and Jay Road. In accordance with correspondence between the applicant and Boulder County Public Works, there was acknowledgement and agreement by the County that under certain circumstances, and with special conditions, their system could, and the County would agree to, accept stormwater discharge from the 2801 Jay Road site. While the current design appears to satisfy the hydraulic requirements for conveyance of site storm flows to the Boulder County operated stormwater utility system, it fails to meet specifically identified conditions necessary for approval and acceptance by Boulder County. As such, the design as submitted would not be constructable and therefore does not satisfy the requirements of the above comments. Pending approval of the current design by Boulder County Public Works, or preparation, review and acceptance of a revised design that can meet the conditions established by the County PW for approval, the comment remains unmet. Update submittal materials and/or plans as necessary.

### III. INFORMATIONAL COMMENTS

1. Prior Informational Comments, Shannon Moeller, 303-441-3216  
Please refer to earlier review comment letter for prior informational comments.



**Planning Office**  
 720-561-5794  
 Fax: 720-561-5118  
[www.bvsd.org](http://www.bvsd.org)

6500 East Arapahoe, PO Box 9011  
 Boulder, CO 80301

May 23, 2023

City of Boulder  
 Planning and Development Services  
 Attn: Shannon Moeller, AICP  
 P.O. Box 791  
 Boulder, CO 80306

RE: 2801 Jay Rd. Annexation

Dear Shannon:

Thank you for submitting the 2801 Jay Rd. Annexation referral application for review by the Boulder Valley School District (BVSD). BVSD reviews development application in terms capacity impacts on neighborhood schools and impacts on school land or facilities. This new development application proposes to add 50 duplex/triplex and 34 townhome units with an expected maximum student impact of 11 additional students in the Crest View Elementary, Centennial Middle, and Boulder High school feeder system. The current school capacity status including this project's impacts are as follows:

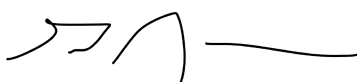
School	Current Capacity Status (Oct. '22)				Project Impact		
	Student Population*	Program Capacity '22	School Enrollment	Perc. Capacity	Student Impact	New Enrollment	New % Capacity
Elementary	723	639	434	67.9%	5	439	68.7%
Middle	724	753	566	75.2%	3	569	75.6%
High School	2440	1990	2059	103.5%	3	2062	103.6%
<b>Total</b>	<b>3887</b>		<b>3059</b>		<b>11</b>		

\*represents the number of BVSD students for the given grade level living within the attendance area.

BVSD can serve this development at all grade levels with existing capacity. Although Boulder High School is currently operating above their program capacity, the school has a sizeable open enrollment population that can be managed to accommodate additional neighborhood students.

If you have any other questions, concerns, or further clarifications, feel free to contact me at 303-245-5794 or via e-mail at [glen.segrue@bvsd.org](mailto:glen.segrue@bvsd.org).

Sincerely,



Glen Segrue, A.I.C.P.  
 Senior Planner

**TO:** Shannon Moeller, AICP  
**FROM:** Hannah Hippely, AICP Long Range Planning Division Manager  
**RE:** LUR2023-00018, LUR2023-00019 - 2801 Jay Road  
**DATE:** June 12, 2023

---

After reviewing the provided materials, Boulder County's Department of Community Planning & Permitting has the following comments:

1. Within the Boulder Valley Comprehensive Plan (BVCP) the subject property is designated as Area II, which is an area under County jurisdiction where annexation to the City of Boulder can be considered consistent with Policies 1.08 Adapting to Limits of Physical Expansion, 1.09 Growth Requirements, and 1.17 Annexation.
2. The application proposes New Urban Development as defined in Section 1.14 of the BVCP. Such development is not to occur "until and unless adequate urban services and facilities are available to serve the development." Urban services are defined in Chapter 7 of the BVCP as "public water, public sewer, stormwater and flood management, urban fire protection and emergency medical care, urban police protection, multimodal transportation and developed urban parks". A basic premise of the comprehensive plan is that adequate urban facilities and services are a prerequisite for new urban development and that, within the Boulder Valley, the City of Boulder is the provider of these services. The project fails to meet these requirements as multimodal transportation needs are not provided for within the annexation area. The proposal will have impacts and require improvements on Jay Road, all of which should be included in the annexation. Additionally, the proposed annexation area does not include the area of the proposed access road into the site which is located on the parcel adjacent to the east. Areas impacted by or supporting new urban development, where construction and long-term maintenance of City facilities is required are to be annexed and developed under City standards. The proposal does not meet the minimum requirements of the BVCP for new urban development.
3. The Future Land Use Map contained in the BVCP identifies the future use of the subject parcel as Public Land Use. The proposal requests a Land Use Map change to MXR. Land Use Map changes in Area II under the BVCP may occur concurrently with annexation and are a city decision, with call-up to the county as described in the referral & call up procedures of the BVCP. If the map change is less than 5 acres in size, the call up procedures do not apply. Criteria are found in the BVCP which states:  
To be eligible for a Land Use Map change, the proposed change:
  - a) on balance, is consistent with the policies and overall intent of the comprehensive plan;

The subject property is a developed site with no known environmental resources of concern on the urbanized municipal edge, its redevelopment is consistent with the core values expressed in the BVCP and specific goals related to housing.

b) would not have significant cross-jurisdictional impacts that may affect residents, properties or facilities outside the city;

All required areas where construction of improvements and facilities needed to support the proposed development must be included in the annexation. The lack of planning for multimodal transportation needs and the incorporation into the City of Boulder the areas where improvements are necessary is required otherwise there would be significant impacts on residents, properties and facilities outside of the city.

The areas needed to develop adequate multimodal transportation facilities must be annexed however an amendment to the Planning Areas Map and service area expansion Area III Planning Reserve to Area II is required prior to being eligible for annexation.

This can only take place during a mid-term or major update.

Alternatively, the project could be redesigned to provide for all of the required transportation facilities internal to the subject parcel. In this scenario it is likely that improvements to Jay Road would still be necessary, and those areas along with the entire associated width of Jay Road should also be annexed.

c) would not materially affect the land use and growth projections that were the basis of the comprehensive plan;

At this time, it is difficult to say if the current Future Land Use Map designation resulted from the existing land use (church) in place at the time of the map creation or if it was designated as such as a result of specific land use or growth projections. However given the small size of the site and it is unlikely that the redevelopment of the site would materially affect growth projections.

d) does not materially affect the adequacy or availability of urban facilities and services to the immediate area or to the overall service area of the City of Boulder;

As previously described annexation of the subject parcel as proposed does not allow for the provision of adequate urban facilities. If the project were redesigned to provide the transportation facilities needed to serve the development within the boundaries of the parcel itself (as the church currently does) and areas of Jay Road where improvements would be needed (turning lanes, bicycle improvements, etc.) were included in the annexation the criterion would be met.

e) would not materially affect the adopted Capital Improvements Program of the City of Boulder; and

City staff is best suited to analyze this criterion.

f) would not affect the Area II/Area III boundaries in the comprehensive plan.

As proposed, the project will need to annex areas that are designated Area III – Planning Reserve in order to meet the criteria for a Land Use Map change. A service area expansion is one that moves lands from Area III – Planning Reserve to Area II and may occur at either a mid-term or major update. The city may consider an expansion into the Area III Planning Reserve following acceptance of a baseline urban services study by City Council. Initiating a service area expansion plan is a city decision. Approval of a service area expansion plan and change from Area III – Planning Reserve to Area II would be decided by the City and the County through the four body review and approval process.

4. As part of the southernmost portion of Area III, this annexation and development could set the stage for the future development of Area III Planning Reserve to the north and east of the subject property particularly in regards to the development of a complete and connected multimodal transportation system. Considerations of the access road proposed to be developed to serve the site needs to be evaluated in terms of the larger context of the potential future of the Area III– Planning Reserve. Without these considerations the use of Jay Road to access the Planning Reserve could be impaired and push all future development in the Area III – Planning Reserve to access from US 36 to the west.

This concludes the Department of Community Planning & Permitting comments at this time. We look forward to continuing to provide feedback and input throughout this process.





## Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303-441-3930  
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • [www.BoulderCounty.org](http://www.BoulderCounty.org)

**TO:** Shannon Moeller, AICP  
**FROM:** Hannah Hippely, AICP Long Range Planning Division Manager  
**RE:** LUR2023-00018, LUR2023-00019 - 2801 Jay Road  
**DATE:** August 31, 2023

---

After reviewing the provided updated materials, Boulder County's Department of Community Planning & Permitting has revised our previous comments:

1. Within the Boulder Valley Comprehensive Plan (BVCP) the subject property is designated as Area II, which is an area under County jurisdiction where annexation to the City of Boulder can be considered consistent with Policies 1.08 Adapting to Limits of Physical Expansion, 1.09 Growth Requirements, and 1.17 Annexation.
2. The application proposes New Urban Development as defined in Section 1.14 of the BVCP. Such development is not to occur "until and unless adequate urban services and facilities are available to serve the development." Urban services are defined in Chapter 7 of the BVCP as "public water, public sewer, stormwater and flood management, urban fire protection and emergency medical care, urban police protection, multimodal transportation and developed urban parks". A basic premise of the comprehensive plan is that adequate urban facilities and services are a prerequisite for new urban development and that, within the Boulder Valley, the City of Boulder is the provider of these services. The proposal will have impacts to Jay Road, potentially from the US 36 intersection to Hwy 119 intersection. The project is also likely to require improvements on Jay Road and the materials do not identify the extend of the transportation impact or the needed offsite improvements. Until the proposal identifies these impacts and needs and the annexation area includes those areas, the project fails to meet these requirements as multimodal transportation needs cannot be determined to be fully provided for within the annexation area. As is, the proposal does not meet the minimum requirements of the BVCP for new urban development. The annexation of Jay Road from US 36 to Hwy 119 concurrent with the annexation of the subject property could allow the details of the offsite improvements to be considered at a later date and allow the county to be reasonably confident that the necessary facilities would be developed within the city.
3. The Future Land Use Map contained in the BVCP identifies the future use of the subject parcel as Public Land Use. The proposal requests a Land Use Map change to MXR. Land Use Map changes in Area II under the BVCP may occur concurrently with annexation and are a city decision, with call-up to the county as described in the referral & call up procedures of the BVCP. If the map change is less than 5 acres in size, the call up procedures do not apply. Criteria are found in the BVCP which states:  
To be eligible for a Land Use Map change, the proposed change:

**Claire Levy** County Commissioner **Marta Loachamin** County Commissioner **Ashley Stolzmann** County Commissioner

a) on balance, is consistent with the policies and overall intent of the comprehensive plan;

The subject property is a developed site with no known environmental resources of concern on the urbanized municipal edge, its redevelopment is consistent with the core values expressed in the BVCP and specific goals related to housing.

The private street network through the site and the stub to the north do not consider future needs. As part of the southernmost portion of Area III, this annexation, Land Use Map change, and development will influence the future of the Area III Planning Reserve to the north and east particularly regarding the development of a complete and connected multimodal transportation system. Considerations of the transportation network needs to be evaluated in terms of the larger context and the potential future of the Area III– Planning Reserve and the need for connectivity through this site from Jay Road to the north boundary of the parcel. Without advanced planning for connectivity future transportation relies primarily on access to Foothills Highway.

#### 6.15 Concurrent Land Use & Transportation Planning

Overall citywide transportation and land use planning will continue to be coordinated. Future major changes to the Land Use Map and policies of this plan and the TMP should, to the extent practicable, be coordinated, modeled and evaluated concurrently.

Staff recommends that a right of way of a width sufficient for an appropriate city street (a county local road required 60 feet of right of way) to be dedicated along the eastern border of the property thus coordinating the proposed Land Use Map change for this site with future transportation needs. Without such advanced planning the goals of creating a complete street and transportation network, developing walkable neighborhoods, supporting the safety of people using the transportation network, and the development of a low stress walk and bike network expressed in the BVCP cannot be realized.

b) would not have significant cross-jurisdictional impacts that may affect residents, properties or facilities outside the city;

All required areas where construction of improvements and facilities needed to support the proposed development must be included in the annexation. The lack of planning for multimodal transportation needs and the incorporation into the City of Boulder the areas where improvements are necessary is required otherwise there would be significant impacts on residents, properties, and facilities outside of the city. The amendment to the plan which moved the access road into the site addressed the previously identified issue regarding the need for a service area expansion (Area III Planning Reserve to Area II). In this current scenario, improvements to Jay Road would be still likely be necessary, and those areas should also be annexed.

c) would not materially affect the land use and growth projections that were the basis of the comprehensive plan;

At this time, it is difficult to say if the current Future Land Use Map designation resulted from the existing land use (church) in place at the time of the map creation or if it was designated as such as a result of specific land use or growth projections. However, given the small size of the site and it is unlikely that the redevelopment of the site would materially affect growth projections.

d) does not materially affect the adequacy or availability of urban facilities and services to the immediate area or to the overall service area of the City of Boulder;

As previously described annexation of the subject parcel as proposed does not allow for the provision of adequate urban facilities. If the project were redesigned to provide the transportation facilities needed the annexation the criterion could be met. Considerations regarding the other necessary urban services are best analyzed by city staff who have knowledge of the city service plans and infrastructure.

e) would not materially affect the adopted Capital Improvements Program of the City of Boulder; and  
City staff is best suited to analyze this criterion.

f) would not affect the Area II/Area III boundaries in the comprehensive plan.

As revised, the project will no longer need to annex areas that are designated Area III – Planning Reserve in order to meet the criteria for a Land Use Map change.

4. The property is rather uniquely situated at the edge of Planning Area II and surrounded on three sides by the Planning Reserve Area III. This presents a challenge in designing the site to respond to the existing rural nature of the area while understanding that the BVCP holds the Planning Reserve as a potential outlet to meet the evolving needs of the community and thus the nature of surrounding area could change over time to become more urban. Site and urban design sensitive to this context is critical to the redevelopment of this site.

This concludes the Department of Community Planning & Permitting comments at this time. We look forward to continuing to provide feedback and input throughout this process.



## Community Planning & Permitting

Courthouse Annex • 2045 13th Street • Boulder, Colorado 80302 • Tel: 303-441-3930  
Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • [www.BoulderCounty.org](http://www.BoulderCounty.org)

**TO:** Shannon Moeller, AICP  
**FROM:** Hannah Hippely, AICP Long Range Planning Division Manager  
**RE:** LUR2023-00018, LUR2023-00019 - 2801 Jay Road  
**DATE:** November 3, 2023

---

After reviewing the provided updated materials, Boulder County's Department of Community Planning & Permitting has revised our previous comments:

1. Within the Boulder Valley Comprehensive Plan (BVCP) the subject property is designated as Area II, which is an area under County jurisdiction where annexation to the City of Boulder can be considered consistent with Policies 1.08 Adapting to Limits of Physical Expansion, 1.09 Growth Requirements, and 1.17 Annexation.
2. The application proposes New Urban Development as defined in Section 1.14 of the BVCP. Such development is not to occur "until and unless adequate urban services and facilities are available to serve the development." Urban services are defined in Chapter 7 of the BVCP as "public water, public sewer, stormwater and flood management, urban fire protection and emergency medical care, urban police protection, multimodal transportation and developed urban parks". A basic premise of the comprehensive plan is that adequate urban facilities and services are a prerequisite for new urban development and that, within the Boulder Valley, the City of Boulder is the provider of these services. The proposal will have impacts to Jay Road, potentially from the US 36 intersection to Hwy 119 intersection. The project is also likely to require improvements on Jay Road and the materials do not identify the extend of the transportation system impact or the needed offsite improvements. Until the proposal identifies these impacts and needs and the annexation area includes those areas, the project fails to meet these requirements as multimodal transportation needs cannot be determined to be fully provided for within the annexation area. As is, the proposal does not meet the minimum requirements of the BVCP for new urban development. The annexation of Jay Road from US 36 to Hwy 119 concurrent with the annexation of the subject property could allow the details of the offsite improvements to be considered at a later date and allow the county to be reasonably confident that the necessary facilities would be developed within the city.
3. The Future Land Use Map contained in the BVCP identifies the future use of the subject parcel as Public Land Use. The proposal requests a Land Use Map change to MXR. Land Use Map changes in Area II under the BVCP may occur concurrently with annexation and are a city decision, with call-up to the county as described in the referral & call up procedures of the BVCP. If the map change is less than 5 acres in size, the call up procedures do not apply. Criteria are found in the BVCP which states:  
To be eligible for a Land Use Map change, the proposed change:

**Claire Levy** County Commissioner **Marta Loachamin** County Commissioner **Ashley Stolzmann** County Commissioner

a) on balance, is consistent with the policies and overall intent of the comprehensive plan;

The subject property is a developed site with no known environmental resources of concern on the urbanized municipal edge, its redevelopment is consistent with the core values expressed in the BVCP and specific goals related to housing.

As part of the southernmost portion of Area III, this annexation, Land Use Map change, and development will influence the future of the Area III Planning Reserve to the north and east particularly regarding the development of a complete and connected multimodal transportation system. The transportation network needs should be evaluated in terms of the larger context and the potential future of the Area III– Planning Reserve and the need for connectivity through this site from Jay Road to the north boundary of the parcel. Without advanced planning for connectivity development of the Planning Reserve relies primarily on access to Foothills Highway.

#### 6.15 Concurrent Land Use & Transportation Planning

Overall citywide transportation and land use planning will continue to be coordinated. Future major changes to the Land Use Map and policies of this plan and the TMP should, to the extent practicable, be coordinated, modeled and evaluated concurrently.

Staff recommends that a right of way of a width sufficient for an appropriate city street (a county local road requires 60 feet of right of way) to be dedicated along the eastern border of the property thus coordinating the proposed Land Use Map change for this site with future transportation needs. Without such advanced planning the goals of creating a complete street and transportation network, developing walkable neighborhoods, supporting the safety of people using the transportation network, and the development of a low stress walk and bike network expressed in the BVCP cannot be realized.

The current proposal includes a 30 foot right of way dedication along the east boundary, however no analysis of the system or future needs was provided to support any conclusion regarding the adequacy of this dedication.

b) would not have significant cross-jurisdictional impacts that may affect residents, properties or facilities outside the city;

All required areas where construction of improvements and facilities needed to support the proposed development must be included in the annexation. The lack of planning for multimodal transportation needs and the incorporation into the City of Boulder the areas where improvements are necessary is required otherwise there would be significant impacts on residents, properties, and facilities outside of the city. The previous

amendment to the plan which moved the access road into the site addressed the previously identified issue regarding the need for a service area expansion (Area III Planning Reserve to Area II) however, impacts on and needed improvements to Jay Road remain unaddressed by this 3<sup>rd</sup> submittal. This criterion is not met.

c) would not materially affect the land use and growth projections that were the basis of the comprehensive plan;

At this time, it is difficult to say if the current Future Land Use Map designation resulted from the existing land use (church) in place at the time of the map creation or if it was designated as such as a result of specific land use or growth projections. However, given the small size of the site and it is unlikely that the redevelopment of the site would materially affect growth projections.

d) does not materially affect the adequacy or availability of urban facilities and services to the immediate area or to the overall service area of the City of Boulder;

As previously described annexation of the subject parcel as proposed does not allow for the provision of adequate urban facilities. If the project were redesigned to provide the transportation facilities needed the annexation the criterion could be met. Considerations regarding the other necessary urban services are best analyzed by city staff who have knowledge of the city service plans and infrastructure.

e) would not materially affect the adopted Capital Improvements Program of the City of Boulder; and

City staff is best suited to analyze this criterion.

f) would not affect the Area II/Area III boundaries in the comprehensive plan.

As revised, the project will no longer need to annex areas that are designated Area III – Planning Reserve in order to meet the criteria for a Land Use Map change.

4. The property is rather uniquely situated at the edge of Planning Area II and surrounded on three sides by the Planning Reserve Area III. This presents a challenge in designing the site to respond to the existing rural nature of the area while understanding that the BVCP holds the Planning Reserve as a potential outlet to meet the evolving needs of the community and thus the nature of surrounding area could change over time to become more urban. Site and urban design sensitive to this context is critical to the redevelopment of this site.

This concludes the Department of Community Planning & Permitting comments at this time. We look forward to continuing to provide feedback and input throughout this process.

**RE: 23142 2801 Jay Road Drainage**

Webster, Dave <dwebster@bouldercounty.gov>

Tue 7/23/2024 2:54 PM

To: Dash Ash <Dash@siteworksstudio.com>

Dash,

Thank you for transmitting the Draft Utilities Plan and Drainage Letter in connection with the 2801 Jay Road Annexation Proposal. I have reviewed those documents with other county staff in the Public Works Department. The Utilities Plan is generally acceptable to Boulder County, with acknowledgment that the proposed 1,000+ feet of new 18-inch storm sewer pipe (constructed outside the roadway), the county's existing storm sewer system at Jay Road and 30<sup>th</sup> Street, and the outfall (roadside) ditch east of 30<sup>th</sup> Street will be maintained by the city.

We understand that the preference is to utilize existing city services to minimize impacts to Jay Road, including discharging storm drainage to the Farmers Ditch and connecting the sanitary sewer to the synagogue property south of Jay Road. It seems those options may be achievable during the site review process as the developer works with the ditch company and synagogue property on the necessary agreements.

After the property is annexed, and during site review, it will be important to further develop the Utilities Plan to determine how Jay Road will ultimately be impacted. At some point during this process, a discussion between the city and county about annexing Jay Road from 28<sup>th</sup> Street east to a reasonable extent may become necessary.

Regards,  
Dave

**Dave Webster, P.E.**  
*Engineering Project Manager*  
**BOULDER COUNTY PUBLIC WORKS**  
(T) 720-564-2660

*Work schedule M – Th*

---



Public Comments

**From:** Ariella Futral <ariella.futral@gmail.com>  
**Sent:** Tuesday, July 25, 2023 1:41 PM  
**To:** Moeller, Shannon <MoellerS@bouldercolorado.gov>  
**Subject:** LUR2022-00038 - 2801 Jay Road

Hello Shannon,

I hope you are well. I got your email from Pete L'Orange whom I had written to regarding the proposed development at 2801 Jay Rd. He thought you might be the person handling this and directed me to you.

I am writing in response to the proposed redevelopment at 2801 Jay Rd LUR2022-00038. which is to include 84 for-sale dwelling units ranging from 1,050 SF to 1,800 SF, consisting of townhome, duplex, and triplex housing types.

As a Boulder resident since 1978, I have seen a lot of change occur. What was once a small town is now a crowded city. When my husband and I returned here to raise our child after living abroad, we chose to live on the edge of town as Boulder had become so dense. We wanted to live in what is currently called "Rural North Boulder" for the quick access to nature and to get away from the hectic traffic and density within the city. We have loved living here with wide-open spaces so close. It is quiet, there is breathing room, and wildlife seem to flourish here.

The proposed 84 unit condo is going to destroy the rural aspect of our neighborhood and increase greenhouse gasses. Currently there is a church there and a farm across the street. It really is the 'edge of town'. This development will ruin that. Having a high-density development will mean tons of construction, noise, traffic, and ultimately an end to our experience of being 'rural'. This property is currently in unincorporated Boulder County, the proposed redevelopment would be part of a proposal to annex it into the City of Boulder. This expands the city and greatly reduces the natural surroundings.

In addition, there are already multiple accidents at Jay and 28th weekly. Having this type of density in this area will only increase these. There are few ways for someone coming from Jay heading west to get into town, they either have to go left on 28th or take Jay to 26th street and head south. Having this type of increase in residents will make it impossible to drive on 26th - which is a quieter residential street. The traffic will increase noise and the risk of accidents, especially as 26th is used by many kids who go to Centennial Middle School via bike and walking.

We absolutely believe in equitable housing and while the proposed development will have a fraction used for this (as per city requirements) it isn't enough to feel that this type of development is solving the housing crisis. This type of project would be better suited at Iris and 28th - a huge expanse of dying business and parking lots. The perfect place for high-density condo living.

I do hope the planning board will consider opposing this development.

I look forward to hearing from you.

Thank you for your time.  
Ariella Futral

**From:** Robyn Kube <robkube@dietzedavis.com>  
**Sent:** Wednesday, August 2, 2023 9:53 AM  
**To:** Moeller, Shannon <MoellerS@bouldercolorado.gov>  
**Subject:** 2801 Jay Road/LUR2023-00018-19

Shannon,

I understand that Margaret Freund submitted a formal annexation and initial zoning application in connection with the subject property.

I wanted to make sure that I am on the email list for this application and wondered where in the process this is. As you may recall, I am especially concerned about Ms. Freund's assumption, as evidenced by the drawings she has submitted in connection with the application, that she will be able to access the project via a narrow dirt track located to the east on private land within the County and not part of her annexation request. This track, even if it might somehow be available for use for this project, is irregularly shaped and not wide enough to support access for this development if the development were located in the County. I have had conversations with the County Attorney's office regarding this issue and suggest that County Transportation should be included in any referrals for this application.

Thank you for your consideration,

Robyn Kube



Robyn W. Kube, President  
Dietze and Davis, P.C.  
2060 Broadway, Suite 400  
Boulder, CO 80302  
(303) 447-1375

*Serving the West from Boulder since 1972*

**From:** [Kay Bingham](#)  
**To:** [boulderplanningboard](#)  
**Subject:** 28th/Jay Project  
**Date:** Monday, August 26, 2024 5:16:41 PM

---

**External Sender Notice** This email was sent by an external sender.

Planning Board:

My husband and I are long term Boulder homeowners. We are distressed by the lack of middle income housing and hopeful that the proposed project at 28th and Jay will go forward.

We know the intersection is busy and will require improvements like sidewalks, or maybe an underpass for pedestrians and bikes?

I hope this and more middle income projects will be improved. We have more than enough luxury housing.

Kay and Larry Bingham  
3235 6th. St.  
Boulder

**From:** [Robyn Kube](#)  
**To:** [boulderplanningboard](#)  
**Cc:** [Moeller, Shannon](#)  
**Subject:** 2801 Jay Rd (LUR2023-00018, LUR2023-00019)  
**Date:** Friday, August 23, 2024 4:10:18 PM  
**Attachments:** [20240822 Crittenden\\_email.docx](#)

---

**External Sender Notice** This email was sent by an external sender.

I have lived in the Woodside subdivision southwest of 2801 Jay Road for 35 years. I am also a long-time cyclist and real estate attorney in Boulder, so am very familiar with the proposed redevelopment that has been working its way through the City's Planning Department for almost 10 years. Its primary appeal has always been the prospect of affordable housing.

In 2016 the Applicant proposed to use the site to satisfy the affordable house component for a related development now under construction at Iris and Broadway. That proposal anticipated 94 units. The high density and its expected impact on Jay Road, in general, and at its intersection with US 36/28<sup>th</sup> Street, specifically, derailed those efforts.

The 2022 proposal reduced the density to 84 units, with 40% for middle income affordable housing, but density, transportation and traffic issues remained a problem. Still, the project's timing and the possibility of affordable housing made it appealing, especially to City Council, whose members were so enthused they incorrectly reinterpreted the Boulder Valley Comp Plan standard of compatibility with the neighborhood to mean compatible with the neighborhood **as it might be in the future**, not at the time of review.

The Applicant is now seeking annexation separate from Site Review. This allows the Applicant to leave concerns about the ultimate design of the project for a later date, while still dangling the prospect of affordability housing as an incentive.

My concerns about the proposed redevelopment have always been tied to the related impact on Jay Road, especially near its intersection with US 36/28<sup>th</sup> Street. Jay is highly used by cyclists like me and for competitive events. I generally support the annexation of this site because it provides the only opportunity to improve Jay Road and make it safer. But I cannot support the proposed upzoning precisely due to its likely adverse impacts on Jay Road and because, with the possibility of more than 100 units on the site, it is too incompatible with the neighborhood. This was noted by Staff in their November 3, 2023 comments and in the attached comments of Jennifer Crittenden. It is completely unclear as to what changed between November 2023 and August 2023, such that Staff now takes the position that the proposed zoning is compatible with the neighborhood.

I want to thank Staff for all of its hard work on this matter, but am also compelled to take issue

with following provisions in the proposed Annexation Agreement because they do not further the goals of the Comp Plan or the interests of the City in providing affordable housing:

- **Section 17 Community Benefit.** This is the most objectionable provision because it **does not** require the Applicant to construct **any** affordable housing. Section a).1 is quite appealing, but Section a).2 allows the Applicant, with limited restrictions, to convey a portion of the property to the City and leave the City to bear the cost of building the affordable housing, while the Applicant reaps the benefits of selling the market rate units. This is even worse that what occurred with the developer of The Academy project on 4<sup>th</sup> Street, who failed to construct the related affordable housing at the old Fruehauf's site on 33<sup>rd</sup>, and then agreed to donate the Fruehauf site to the City **and** pay a substantial sum into the City's Affordable Housing Fund. See, <https://boulderreportinglab.org/2023/07/31/developers-abandon-affordable-senior-housing-project-at-fruehaufs-property-amid-rising-costs/>.
- **Section 19 Market Unit Size/Section 20 Zoning.** Units of 3,000 or up to 3,500 square feet, exclusive of the garage, are larger than the units in the Arbor Glen, Woodside and Sundance subdivisions across US 36/28<sup>th</sup> Street. Those larger unit sizes, especially when coupled with the high density allowed by the proposed zoning discussed above, will further exacerbate this project's incompatibility with the neighborhood.
- **Section 25 Density Calculations.** To the extent this provision is intended to allow the Applicant to build the same number of units on a tract of land made smaller by required dedications, it is objectionable because it would effectively result in higher density, which would further increase the incompatibility with the neighborhood. This provision was also initially rejected by Staff.
- **Conveyance of the eastern 30' for a public road.** This conveyance is appropriate, but the additional verbiage indicating that the street may be used as a continuation of the non-existent Violet Avenue and thereby be used to access future developments to the north is problematic because it fails to take into the impact of that future use on Jay Road.

In conclusion, I urge Planning Board to support the proposed annexation, but not the proposed zoning because that zoning violates the Comp Plan requirement of compatibility with the neighborhood. For the same reasons, I believe that Sections 19 and 20 of the Annexation Agreement should be amended (to reduce the allowable size of the units and the density), and Section 25 should be eliminated (as originally proposed by Staff), and the conveyance provision should be revised to eliminate any reference to Violet Avenue. Lastly, and most

importantly, option a).2 in Section 17 of the Agreement should be deleted as it incentivizes the Applicant to avoid the obligations associated with the affordable housing component of this redevelopment - its key selling point – and push those obligations onto the City. This is unacceptable and should not be allowed to set a precedent for future annexations.

Thank you for your consideration.

Robyn Kube  
4160 Amber Place  
Boulder 80304

From: Jennifer Crittenden <[geojennie1@yahoo.com](mailto:geojennie1@yahoo.com)>  
 To: "[MoellerS@boulder.colorado.gov](mailto:MoellerS@boulder.colorado.gov)" <[MoellerS@boulder.colorado.gov](mailto:MoellerS@boulder.colorado.gov)>  
 Date: 08/22/2024 12:20 PM MDT  
 Subject: 2801 Jay Road/LUR2023-00018-19

Shannon,

Contrary to the information presented in Figure 8 on page 17 of 117 of the attached document, the proposed land use change for the subject property is not compatible with the immediately adjacent properties. The example RMX-2-zoned properties of the Holiday, Northfield Village, 4525 Palo Parkway, and Northfield Commons neighborhoods are not adjacent to the subject property and do not have similar traffic-related issues as those presented by the Jay Rd and Highway 36 intersection that directly abut the property to the south and west.

Placing up to 20 units per acre on this tiny parcel of land that is allowed by the RMX-2 code is inconsistent with the actual adjacent surrounding neighborhoods. Site review comments dated November 3, 2023 determined that the Land Use Map change from PUB to the requested RMX-2 “could represent a significant change in character to the area” and the site review comments dated May 26, 2023 (Pg 82 of 117; Attachment E – Staff and Referral Comments) remarked that the MXR designation is not compatible with the character of the surrounding area. Nothing has physically changed since the factually detailed description that the May 26, 2023 review provides. That review included the following comments.

Land Use

The location and characteristics of this land make it potentially suitable for new development with urban services. This is based on the apparent lack of sensitive environmental areas, hazard areas, and significant agricultural lands, the feasibility of efficient urban service extension, and contiguity to the existing Service Area, to maintain a compact community.

However, the requested BVCP land use map change to a Mixed Density Residential (MXR) designation is not compatible with the character of the surrounding area, which primarily consists of low-density single-family developments, as either large rural /estate lots or formal subdivisions. Mixed Density Residential allows up to 20 dwelling units per acre. This is significantly higher than neighboring subdivisions that range from 1.1 to 9.2 dwelling units per acre (refer to Table 1 below):

TABLE 1

	Subdivision	Estimated Density (Dwelling Units Per Acre)
Proposal		20
Northeast	Orange Orchard	2.1
South	Gould	1.1
Southeast	Palo Park	5.9
Southeast	Four Mile Creek	5.6
West	Arbor Glen	5.6
West	Sundance	9.2

Average Density of Select Subdivisions	4.9
--	-----

Notes; Residential density is reflected in dwelling units per acre; Calculations reflect select sum of select subdivision's area that includes lots with housing units; Common area shared ownership lots without housing units and rights of way were excluded from the calculations? with the exception of the Palo Park townhomes (south side of Subdivision - 0 above) which have individual lots for townhome units and shared open space; Subdivision boundaries based on city's GIS database;

Several BVCP policies were created to protect residential neighborhoods from overly intense or incompatible development, which could destabilize the established neighborhood character. Per the vision and recommendations in the BVCP, redevelopment projects should become a coherent part of the neighborhood in which they are placed (see policy 2.41(b) Enhanced Design for All Projects).

Staff believe the proposed mass, scale and density of development is not appropriate within the established character of the neighborhoods surrounding the site. Without the benefit of a concurrent Site Review application, staff is not able to confirm that an appropriate transition is provided to adjacent more rural properties.

On balance, staff finds the Land Use Map change proposal inconsistent with the policies and overall intent of the comprehensive plan. A concurrent Site Review or Major Update to the BVCP in 2025 would provide a better opportunity for the applicant, city staff and the community to determine a more defined future for the area and assign the land use and zoning that is most consistent with the surrounding neighborhoods.

**Staff Recommendation**

Staff finds that the proposed Land Use Map change from Public (PUB) to Mixed Density Residential (MXR) represents a significant change in character to the area and is inconsistent with the policies and overall intent of the comprehensive plan. Staff recommends avoiding the use of and any impacts to Area III-Planning Reserve lands- and a more suitable Boulder Valley Comprehensive Plan (BVCP) land use designation change to Medium Density Residential (MR) to accompany the applicant's proposed annexation and RMX-2 zoning designation.

The traffic at Jay and Highway 36/28<sup>th</sup> is still heavy, fast, and dangerous and a development of this magnitude will likely only exacerbate an already hazardous intersection.

Please consider limiting the size of this development to a less dense format that is in line with a maximum density of that of the Sundance neighborhood.

Sincerely,  
  
Jennifer Crittenden  
4176 Amber Pl  
Boulder CO, 80304



**From:** [Macon Cowles](#)  
**To:** [boulderplanningboard](#); [Moeller, Shannon](#)  
**Subject:** Annexation of the Church of the Nazarene property, 28th & Jay Road  
**Date:** Monday, August 26, 2024 8:27:21 AM

**External Sender Notice** This email was sent by an external sender.

Dear Planning Board and Staff:

This development is giving us what we say we want: 84 for sale units, of which 34 are permanently affordable for sale middle income units. There have not been more than a handful of for-sale permanently affordable middle income units built in our town since the [Middle Income Housing Strategy](#) was adopted in 2016. We say we want for sale units, and that we want permanently affordable *middle income* units as part of the development: well here it is. Please support the annexation with the proposed zoning of RMX-2. Boulder makes it so easy to build big expensive single family homes, but so very difficult to build housing for middle income folks. This project has been in the planning department pipeline now for 2 years.

In February 2023, planning board failed to wholeheartedly endorse this plan because of the complaints from adjacent neighbors about the things that adjacent wealthy homeowners always complain about: Height, density, traffic, parking, compatibility with the neighborhood. Here is a quote still from an opponent on p. 116 of 117 of the packet. “The proposed 84 unit condo is going to destroy the rural aspect of our neighborhood and increase greenhouse gasses.” This is the statement of someone who lives at 4060 Crystal Ct., ½ mile southwest of the proposed project, adjacent to the Elks park, on *the other side of 28<sup>th</sup> Street*.

Council called up the project and, contrary to Planning Board’s tepid reception, expressed support, unanimously, for the project I September 2023.

We have a tight urban growth boundary in Boulder. Good for us. It has brought many benefits. This site has been in Area II, available for annexation, for 40 years. We cannot allow the rural residents of the County to think that compatibility with rural lots is going to limit our meeting housing needs of Boulder in this project, or in the Planning Reserve. So let’s start practicing that here: by standing up for these 84 new homes.

Thank you.

Macon Cowles  
 1726 Mapleton Ave.

Boulder, Colorado 80304  
macon.cowles@gmail.com  
(303) 447-3062