



City of Boulder Planning & Development Services

CITY OF BOULDER

LAND USE REVIEW RESULTS AND COMMENTS

DATE OF COMMENTS: **July 5, 2019**
CASE MANAGER: **Sloane Walbert**
PROJECT NAME: **WATERVIEW**
LOCATION: **5801 ARAPAHOE RD**
REVIEW TYPE: **Use Review**
REVIEW NUMBER: **LUR2019-00022**
APPLICANT: **BILL HOLICKY, COBURN PARTNERS**
DESCRIPTION: **Request for Use Review approval of the following uses within the development:**

- **Residential uses within the IG zone district;**
- **Professional, technical, or other offices in Buildings A1 and A2 in the RH-4 zone district;**
- **Convenience retail sales in Buildings A1 and A2 in the RH-4 zone district; and**
- **Restaurant, brewpub, or tavern within the RH-4 zone district with 60 indoor and 32 outdoor seats.**

Refer to LUR2019-00021 for companion Site Review.

I. REVIEW FINDINGS

Additional information and revisions to the plan documents are required as indicated below. Refer to Site Review comments for additional information.

II. CITY REQUIREMENTS

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

Floodplain

Alysha Geiger, 303-441-4053

Please see all comments associated with LUR2019-00021.

Land Use

Sloane Walbert, 303-441-4231

The application materials refer to "home occupation" units. As defined in Section 9-16-1, B.R.C. 1981, a home occupation means an occupation or profession conducted as an accessory use within a dwelling unit. Home occupations are allowed in all dwelling units as long the business activities meet the criteria in Section 9-6-3(d) of the land use code. Therefore, it appears that these units are intended as "live-work" units, which are defined as a "structure with a combination of uses where work activities occur as allowed in the industrial zoning districts and includes a dwelling unit for the business occupant, but not including a caretaker dwelling unit. Such unit shall have only one kitchen and shall be occupied by either the owner, the tenant, or the owner's or tenant's employee plus any other persons that may be allowed to occupy a dwelling unit pursuant to Section 9-8-5, "Occupancy of Dwelling Units," B.R.C. 1981. The unit must be the residence of a person responsible for the work performed on the premises. Live-work units require a use review to operate in the IG district". Please add this use to Use Review application and address potential impacts of the live-work units and how these impacts will be mitigated.

Legal Documents

Julia Chase, 303-441-3052

Please resubmit the Vested Rights form. The Boulder Revised Code requires an applicant to list the specific elements of a site review plan in which the applicant seeks to create vested rights. To properly create those rights, please list the specific elements you wish to create vested rights in. The code gives examples of what may be listed, including type of use, density, building height, building footprint location and architecture.

This could look something like this:

Site Review (Case No. LUR2019-00021): Number of multi-family residential buildings, number of residential dwelling units with approved unit types, building footprint locations, above grade floor area for each building, below grade floor area for each building, building architecture, the percentage of affordable units, and square footage of commercial space.

Instead of listing exact numbers, the Applicant may wish to keep the description general since the approved numbers (such as square footage) may differ from what is listed in the form depending on the conditions of approval the approving body may impose. Please note that uses are not approved in a site review.

Also, please review the following code section below applicable to establishing Vested Rights, in particular the notice requirements that are the responsibility of the applicant is Section 9-2-20(b)(3), B.R.C. shown below in bold:

9-2-20. - Creation of Vested Rights.

(b) Establishing a Vested Property Right: In order to establish a vested property right as defined in § 24-68-102(5), C.R.S., for a site specific development plan, the applicant shall meet all of the following requirements:

(1) Public Hearing Required: For those site specific development plan approvals not requiring a public hearing before the planning board, the applicant shall request, in writing, that its application be referred to the planning board for hearing under the city manager's discretionary power pursuant to paragraph 9-2-7(b)(1), B.R.C. 1981. The city manager will refer any such requested application to the planning board for public hearing pursuant to Subsection 9-4-4(d), B.R.C. 1981.

(2) Elements of Plans to Be Vested: The applicant shall state clearly in its application those specific elements of the plan in which the applicant seeks to create vested rights, including, without limitation, type of use, density, building height, building footprint location and architecture.

(3) Notice of Approval: If a site specific development plan is approved by the planning board, the applicant shall cause a notice advising the general public of the site specific development plan approval and the creation of a vested property right to be published in a newspaper of general circulation no later than fourteen days following final approval. Further, the applicant shall provide the city manager with the newspaper's official notice of said publication no later than ten days following the date of publication.

Plan Documents

Sloane Walbert, 303-441-4231

1. Please submit a management plan for the proposed restaurant/brewpub/tavern use based on the standards of Section 9-2-4, "Good Neighbor Meetings and Management Plans," B.R.C. 1981.
2. A use review is required for establishing residential uses within the IG zone district, which requires consistency with the criteria of Sections 9-2-15(e) and 9-6-3(f), B.R.C. 1981. The following items are required for use review applications for residential development in industrial zoning districts:
 - (A) Environmental Assessment: A report that addresses each of the items required by the American Society for Testing and Materials Standards (ASTM) E-1527 and E-1528. The report shall be current and with a completion date within five years of the date of application. This documentation is necessary for staff to evaluate the criteria concerning environmental suitability in Section 9-6-3(f).
 - (B) Contiguity Map: A map that demonstrates that the proposed residential development meets the contiguity requirements of Paragraph (g)(2) of this section.

3. Additional detail is necessary for the proposed commercial and office uses in the RH-4 zone district. Please revise the request and plans based on the use categories in Table 6-1, B.R.C. 1981 and corresponding definitions in Section 9-16-1. For example, the application requests "office uses." However, there are several types of office uses in the use table, which have different operational characteristics. Are medical or dental offices anticipated? What are the hours of operation for all uses? Expected number of employees? Please be as detailed in the written statement as possible to avoid future additional use reviews.
4. Provide a construction noise mitigation plan for the residential units, as required per Section 9-6-3(f), B.R.C. 1981. Note, the applicant will be required to provide written certification prior to the issuance of a certificate of occupancy that the sound abatement and attenuation measures in the approved plan were incorporated in the construction and site design as recommended by a professional engineer.

Wetland

Alysha Geiger, 303-441-4053

Please see all comments associated with LUR2019-00021.

III. INFORMATIONAL COMMENTS

1. Discretionary Review Track Submittal Date Changes

On May 6, Planning and Development Services changed the existing LUR and TEC Review tracks to three week cycles. This means that applications are routed for review every three weeks instead of on the first and third Mondays of each month. The new submittal calendar is published on the city's development services website at <https://bouldercolorado.gov/plan-develop>. Administrative applications (ADRs, AURs, PARs) are routed every other Monday but remain on a two week review cycle. This change is being made to create a more predictable and reliable review schedule and to better manage staff's workload.

2. Drainage, Luke McKay, (303) 817-5302, mckayl@bouldercolorado.gov

Please see all comments associated with LUR2019-00021.

3. Landscaping, Luke McKay, (303) 817-5302, mckayl@bouldercolorado.gov

Please see all comments associated with LUR2019-00021.

4. Legal Documents, Julia Chase, 303-441-3052

The Applicant will be required to sign a Development Agreement, if approved. When staff requests, the Applicant shall provide the following:

- a. an updated title commitment current within 30 days; and
- b. any additional documentation pertaining to signature authority, as may be necessary.

5. Neighborhood Comments, Sloane Walbert, 303-441-4231

Staff has received a large number of written responses regarding the proposed project, which have been forwarded to the applicant for consideration. Staff recommends organizing a neighborhood meeting following receipt of these review comments.

6. Next Steps, Sloane Walbert, 303-441-4231

Revisions to the plan documents are required. Please address the comments herein and resubmit **five (5) hard copies** (only one (1) copy of the drainage report) and **one (1) digital copy** of the revised plans to the front counter of the at the Planning and Development Services Center. The application deadlines for the review track system can be found at <https://bouldercolorado.gov/plan-develop>. Staff is happy to meet with you to discuss these comments in detail at your convenience.

7. **Review Process**, Sloane Walbert, 303-441-4231

Pursuant to the "Use Standards" found in section 9-6-1, B.R.C. 1981, a Use Review is required for the following proposed uses:

- Residential uses within the IG zone district;
- Professional, technical, or other offices in Buildings A1 and A2 in the RH-4 zone district;
- Convenience retail sales in Buildings A1 and A2 in the RH-4 zone district; and
- Restaurant, brewpub, or tavern within the RH-4 zone district with 60 indoor and 32 outdoor seats.

The purpose of a Use Review is to determine if a particular use and its potential impacts are appropriate for a proposed location (refer to Section 9-2-15(a), B.R.C. 1981). Use Review is typically a staff level decision with a 14-day Planning Board call-up period. However, staff has the discretion to refer all development review applications directly to the Planning Board for review. Given the companion Site Review request, staff will be referring the Use Review application to Planning Board for a public hearing and decision.

Use Review approvals are valid for three years, after which they expire if they have not been implemented. In addition, any Use Review use that is discontinued for at least one year or replaced by another use expires. Use Review approvals are specific to the description of the use and the operating characteristics that the applicant details in the written statement. Any future change in these characteristics will require a new Use Review application.

The applicant should note that a Declaration of Use is required for residential uses in industrial zones. Before receiving a building permit, all owners shall sign a declaration of use, including all the conditions for continued use, to be recorded in the office of the Boulder County Clerk and Recorder to serve as actual and constructive notice to potential tenants of the owner's property status as a residential use within an industrial zoning district classification.

The applicant should note the city is considering [changes to the Land Use Table](#) to align the use standards with the BVCP policies and explore more compatible and updated land uses. This may impact whether a Use Review is necessary for the proposed convenience retail sales

8. **Scenic Easement & Trail Easement**, Luke McKay, (303) 817-5302, mckayl@bouldercolorado.gov
Please see all comments associated with LUR2019-00021.

9. **Signs**, Gabby Hart 303-441-4159/hartg@bouldercolorado.gov

Please note that all proposed signs require separate review and permit approval. Signs will not be reviewed as a part of Site Review or Technical Document review unless a specific modification is requested and specifically called out on the plans. Section 9-9-21(k), B.R.C. 1981 allows for the standards dealing with sign setbacks from property lines, spacing between projecting and freestanding signs and sign lettering and graphic symbol height to be varied through the Site Review process; however, any proposed variations to the sign code standards must be specifically referenced in the requested variations to the land use regulations and called out on the plan set in order to be valid following approval of the application.

While it is preferable to remove all signs from the Site Review and Technical Document plan sets to avoid any potential future confusion, ghosting the images into the set with a notation that it is under a separate permit is acceptable. Please note that illustration of a sign on the plan set does not grant a modification.

Please refer to section 9-9-21 B.R.C. 1981 for sign related requirements. Note that for parcels with multiple zoning districts, the limitations on area, number, and height of signs are based on the zoning district the building is located in. Buildings A1 and A2 will be limited by the regulations for the RH-4 zoning district and the remaining buildings will be limited by the IG zoning district.

10. Transportation

Transportation comments for the use review application have been included in the project's site review comments.

11. Zoning, Sloane Walbert, 303-441-4231

The project site is zoned both Industrial General (IG) and Residential High-4 (RH-4). The IG zone district is defined as: *“General industrial areas where a wide range of light industrial uses, including research and manufacturing operations and service industrial uses are located. Residential uses and other complementary uses may be allowed in appropriate locations”*. The RH-4 zone district is defined as: *“High density residential areas primarily used for a variety of types of attached residential units, including, without limitation, apartment buildings, and where complementary uses may be allowed”*.

IV. FEES

Please note that current development review fees include a \$131 hourly rate for reviewer services following the initial city response (these written comments). Please see the P&DS Questions and Answers brochure for more information about the hourly billing system.