



PRE-APPLICATION REVIEW SUMMARY

Date of Meeting: March 17, 2022
Location of Request: 4455 BROADWAY
Applicant/Contact: DANICA POWELL, TRESTLE STRATEGY GROUP
Andrew Ghadimi, Emerald Management
Case Manager: Elaine McLaughlin, Senior Planner, 303-441-4130
Meeting Attendees: City of Boulder Team:
Michelle Allen, Inclusionary Housing, 303-441-4076
Scott Kuhna, Civil Engineering, 303-441-4071
Chris Ricciardiello, Landscape Architecture, 303-441-3138
David Thompson, Transportation Engineering, 303-441-4417
Curtis Weller, Floodplain Engineering, 303-441-4053
Applicant Team:
Danica Powell, Trestle Strategies
Marine Sioban, Trestle Strategies
Andrew Ghadimi, Emerald Investments
David Dadone, BMoCA
Gwen Burak, BMoCA
Sage Ziemba, BMoCA

Case Number: PAR2022-00004
Proposal: The project team envisions a mixed-use program that is integrated into the North Boulder community and focuses on socio-economic accessibility, creative placemaking, and community amenities via residential, retail, and nonprofit arts center space. The plan is to use existing zoning to build approximately 29,000 square-feet of residential inRM-1 and 36,000 square-feet of mixed use along Broadway with 17,500 square-feet of nonprofit art space, open to the public, on the corner of Broadway/Violet (see site plan, attached).

QUESTIONS/TOPICS OF DISCUSSION:

1. Height

Our understanding is that these properties will be eligible for a height variance. Can staff describe the expectations on the project to qualify for additional height that could be envisioned along Broadway?

Land Use Code section 9-2-14(b)(1)(E), B.R.C. 1981 identifies the allowed height modification standards. They include as follows:

- (E) *Height Modifications: A development which exceeds the permitted height requirements of Section 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, is required to complete a site review and is not subject to the minimum threshold requirements. No standard other than height may be modified under the site review unless the project is also eligible for site review. A development that exceeds the permitted height requirements of Section 9-7-5 or 9-7-6, B.R.C. 1981, must meet any one of the following circumstances in addition to the site review criteria:*
- (i) *The height modification is to allow a roof that has a pitch of 2:12 or greater in a building with three or fewer stories and the proposed height does not exceed the maximum height permitted in the zoning district by more than ten feet.*
 - (ii) *The building is in the Industrial General, Industrial Service, or Industrial Manufacturing Zoning District and has two or fewer stories or the height is necessary for a manufacturing, testing, or other industrial process or equipment.*
 - (iii) *The height modification is to allow up to the greater of two stories or the maximum number of stories permitted in*

Section 9-7-1, B.R.C. 1981, in a building and the height modification is necessary because of the topography of the site.

- (iv) At least forty percent of the floor area of the building is used for units that meet the requirements for permanently affordable units in Chapter 9-13, "Inclusionary Housing," B.R.C. 1981.
- (v) The height modification is to allow an emergency operations antenna.
- (vi) The building or use meets the requirements of Paragraph 9-2-14(h)(2)(K), "Additional Criteria for Height Bonuses and Land Use Intensity Modifications."

Note, in the MU-2 zoning district, there are only 2 stories allowed by right. Therefore, any need to amend the height due to topography can only be done to achieve a maximum of two stories.

The buildings shown as 3 stories and 50 or 55 feet cannot be built today even under a request for a height modification. The provision of height modifications over the by-right height is intended to create a community benefit by building out "meaningful" floor area within a useable story rather than building bulk or height for height sake. In other words, community benefit was created to ensure that bulky and tall buildings are not built.

In the meeting the applicant asked about the height of the recently approved municipal library. Staff confirmed that the library was approved at 35 feet and two stories.

2. Site Review

Is site review required if the applicant proposes redevelopment on either property? Is site review required if the applicant proposes redevelopment on both at once?

Land Use Code section 9-2-14(b)(1)(c), "Common Ownership," B.R.C. 1981 applies as follows,

"All contiguous lots or parcels under common ownership or control, not subject to a planned development, planned residential development, planned unit development, or site review approval, shall be considered as one property for the purposes of determining whether the maximum site review thresholds below apply. If such lots or parcels cross zoning district boundaries, the lesser threshold of the zoning districts shall apply to all of the lots or parcels."

In this case, the lesser threshold under the Land Use Code section 9-2-14(b)(1)(A), B.R.C. 1981 (Table 2-2) is under the RM-1 zoning in which 2 acres or more requires Concept Plan and Site Review.

It is important to note that the previous Site Review approval for the former Blue Spruce Auto located at 4403 Broadway LUR2011-00071 has expired. If a Site Review is pursued, staff will document that the previous approval is expired and void.

3. Split zoning

How should the project approach split zoning on 4401 Broadway, in the case there are potential conflicting regulations such as with setbacks or other standards? How would the number of stories be applied with the split zone district?

The Land Use Code addresses this circumstance in section 9-9-2(d), "Zoning Standards for Lots in Two or More Zoning Districts," B.R.C. 1981 that states,

"Existing buildings located in more than one zoning district shall be regulated according to the applicable use standards for the zoning district in which the majority of the existing building is located. Any building additions or site improvements shall be regulated according to the zoning district in which such additions or improvements are located. In the event that an existing building is split in half between two zoning districts, the city manager shall determine which use standards shall apply based upon the historic use of the building and the character of the surrounding area."

It is important to note that the applicant must design the property to comply with the intensity standards for each respective zone district as it applies to the site. The setbacks vary somewhat between the zoning districts but can be modified through Site Review.

4. **Rooftop**

The project is considering activated rooftop space such as a cafe or communal space for the building. Are there any concerns from staff about active uses on the rooftop? Does the stair and/or elevator count towards the

Under the MU-2 zoning district the following uses require a Use Review

"Restaurants, brewpubs, and taverns over 1,000 square feet in floor area, or which close after 11 p.m., or with an outdoor seating area of 300 square feet or more."

That applies to cafe space on a roof.

Note that an Arts/Crafts studio would need to be clearly defined prior to any application submittal. As described in the Land Use Code under definitions, 9-16:

"Art or craft studio space means the workshop of an artist, sculptor, photographer, craftsperson, furniture maker, or cabinet maker PRIMARILY USED FOR on-site production of unique custom goods by hand manufacturing involving the use of hand tools and small-scale equipment, which may include an accessory gallery."

Note that for exhibit or gallery space be able to be qualified as an "accessory gallery" it would have to meet the following definition:

"Accessory sales means incidental retail sales where sales do not exceed fifteen percent (twenty-five percent in an IS zone) of the gross floor area of the principal use and if the products sold are directly related to the principal use. Examples, art work sold at an artist's studio, convenience goods in a hotel or motel, health care products sold by a healing arts practitioner, or a factory outlet store selling products manufactured on the site."

Therefore, the gallery space could not exceed fifteen percent of the gross floor area of the principal use.

In addition, an Arts/Crafts Studio is allowed by right for 2,000 square feet or less of floor area per lot or parcel, otherwise by Use Review only.

CLARIFICATION DURING MEETING. In the meeting, the applicant clarified that the "art center" is intended instead to be a "museum." However, in that regard please note, a "museum" use is not permitted in the MU-2 zoning district.

In addition, if the roof deck were intended to be an event space, note that such a use is regulated as "indoor amusement establishment" (definition follows) which is not permitted in either the MU-2 or the RM-1 zoning districts.

"Indoor amusement establishment means a commercial operation open to the public without membership requirements, including, without limitation, bowling alleys, indoor arcades, theaters, pool halls, skating rinks, dance halls, and reception/banquet facilities."

5. **Community Benefit**

The project would like to request a height modification across the site utilizing BRC9-2-14-K (iv) Alternative Community Benefit through the incorporation of rentcontrolled/affordable art studios and providing non profit, public cultural arts space as an anchor to the entire project. Would this satisfy the alternative community benefit requirement for a height modification and additional square footage?

If a non-profit arts center qualifies for the community benefit, would the following zoning adjustments be allowed?

- 1. Maximum height for buildings in Parcel A (RM-1) increased from 35' to 45'.**
- 2. Maximum height for buildings in Parcel B (MU-2) increased from 35' to 55'.**
- 3. Number of stories for buildings in Parcel B (MU-2) increased from 2 to 3.**
- 4. An addition of 17,500 sf to the maximum F.A.R. for Parcel B (MU-2). The added area would be used exclusively for the community benefit.**

The Community Benefit section related to Height Modifications is found under the Land Use Code section 9-2-14(h)(2)(K), "Additional Criteria for Height Bonuses and Land Use Intensity Modifications," B.R.C. 1981 as follows:

"A building proposed with a fourth or fifth story or addition thereto that exceeds the permitted height requirements of Section 9-7-5, "Building Height," or 9-7-6, "Building Height, Conditional," B.R.C. 1981, together with

any additional floor area or residential density approved under Subparagraph (h)(2)(l)(iii), may be approved if it meets the requirements of this Subparagraph (h)(2)(K). For purposes of this Subparagraph (h)(2)(K), bonus floor area shall mean floor area that is on a fourth or fifth story and is partially or fully above the permitted height and any floor area that is the result of an increase in density or floor area described in Subparagraph (h)(2)(l)(iii). The approving authority may approve a height up to fifty-five feet if the building is in an area designated in Appendix J, "Areas Where Height

Modifications May Be Considered," and one of the following criteria is met:

- (i) *Residential Developments: If the development is residential, it will exceed the requirements of Subparagraph 9-13-3(a)(1)(A), B.R.C. 1981, as follows:*
 - a. *For bonus units, the inclusionary housing requirement shall be increased as follows: Instead of twenty-five percent, at least thirty-six percent of the total number of bonus units shall be permanently affordable units. If the building is a for-sale development, at least fifty percent of all the permanently affordable units required for the building shall be built in the building; this fifty percent on-site requirement may not be satisfied through an alternative means of compliance. A minimum of one bonus unit shall be assumed to be provided in the building if any bonus floor area is in the building.*
 - b. *For purposes of this Subparagraph (i), bonus units shall mean a number of units that is determined as follows: A percentage of all the units in the building that equals in number the percentage of bonus floor area in the building. For example, if twenty percent of the building's floor area is bonus floor area and the building has one hundred units, twenty percent of those one hundred units are bonus units, resulting in twenty bonus units.*
 - c. *The city manager shall review the development's compliance with this increased inclusionary housing requirement pursuant to the standards and review procedures of Chapter 9-13, "Inclusionary Housing," B.R.C. 1981.*
- (ii) *Non-Residential Developments. For non-residential developments, the applicant shall pay the affordable housing portion of the capital facility impact fee in [Section 4-20-62](#), B.R.C. 1981, at a rate of 1.43 above the base requirement for the bonus floor area. In a building with several types of non-residential uses, the bonus floor area of each type identified under [Section 4-20-62](#), B.R.C. 1981, shall be a percentage of the bonus floor area that equals in number the percentage of the total floor area in the building of such use type. For nonresidential uses with a fee that is calculated per room or bed under [Section 4-20-62](#), B.R.C. 1981, the increased rate for the affordable housing portion of the fee shall apply to bonus rooms or bonus beds as applicable under that section; the number of bonus rooms or bonus beds shall be determined consistent with the methodology for bonus units in Subparagraph (i)b. above.*
- (iii) *Mixed Use. If the development is a residential mixed-use development, the requirements of Subsections (i) and (ii) above shall apply to the bonus floor area according to the percentage of the total building floor area of each use.*
- (iv) *Alternative Community Benefit. Pursuant to the standard in this Subparagraph (iv), the approving authority may approve an alternative method of compliance to provide additional benefits to the community and qualify for a height bonus together with any additional floor area or density that may be approved under Subparagraph (h)(2)(l). The approving authority will approve the alternative method of compliance if the applicant proposes the alternative method **of compliance and demonstrates that the proposed method will improve the facilities or services delivered by the city, including without limitation any police, fire, library, human services, parks and recreation, or other municipal office, or land or service, and is of a value that is equivalent to or greater than the benefits required by this Subparagraph (h)(2)(K).***

**Note: the subparagraph (h)(2)(l) cited above is not relevant to the MU-2 or RM-1 zoning district, rather it states, "the density of a project may be increased in the BR-1 district through a reduction of the lot area requirement or in the Downtown (DT), BR-2 or MU-3 districts through a reduction in the open space requirements.*

6. Access

The project is considering a parking drive off Broadway. Will staff support access on Broadway? Will the existing curb cuts on Broadway remain available for this development?

If the Site Review threshold is met for the project, staff would require the site to be in compliance with the city's site access standards contained in Section 9-9-5 "Site Access Control," of the Boulder Revised Code, 1981. That said, if a site review application is submitted for the site improvements, the Boulder Revised Code allows the applicant to request a modification of the city's site access

standards. In considering the request, staff would evaluate the impacts of the project to the Broadway multi-modal corridor and its users if site access was permitted from Broadway. This information would be included in the project's traffic study.

7. Floodplain

The applicant's understanding is that the floodplain demonstrates "Conveyance characteristics" on the property. Will there be additional floodproofing or conveyance requirements for development on this property?

The property is not impacted by the conveyance zone, just the 100-yr floodplain. The specific floodplain requirements are determined by the structure's purpose and the flood zone it resides in. If substantial amounts of fill are brought onto the property it will be necessary to access if historic flow paths are affected. Please reference the specific requirements provided below.

8. How do the requirements for floodproofing change across the property, since only a portion of the property is in the floodplain?

Most of the property is in the 100-yr floodplain. Floodplain requirements within the 100-yr floodplain vary by the structure's purpose and the flood zone it resides in. If any portion of a structure is in the floodplain the entire structure is in the floodplain. Please reference the specific requirements provided below.

9. Will any of the floodplain improvements along Fourmile Creek change the floodplain conditions on this property? If so, how should the project consider future improvements?

The current projects along Fourmile Creek will not result in any change to the regulatory floodplain. No new projects that will alter the floodplain are proposed in the 5-year capital improvements program. Plan around the current regulatory floodplain.

10. The BRC allows for additional building height to accommodate buildings that are raised above the BFE in the 100-year floodplain. How is this calculated? How is this applied to new development projects?

Please refer to the Floodplain Permit Application Guidance Document (linked below) for an explanation on how to determine the BFE. The lowest flood of new residential developments must be elevated to 2-feet above the BFE. The lowest floor of new non-residential developments must be elevated to 2-feet above the BFE or floodproofed to 2-feet above the BFE. New mixed-use developments must have their lowest floor of the residential areas elevated to 2-feet above the BFE, otherwise the non-residential lowest floor must be floodproofed to 2-feet above the BFE.

Please note, there currently is no code allowance to exceed the by-right height with a height modification due to the need to elevate above the BFE.

11. Easements and underground utilities

Are there any planned improvements for underground utilities in this area, including any requirements to underground Xcel lines?

Per Section 9-12-12 of the Boulder Revised Code, "Newly installed telephone, electric, and cable television lines and other similar utility service are placed underground. Existing utilities are also placed underground unless the subdivider demonstrates to the manager that the cost substantially outweighs the visual benefit from doing so. But transformers, switching boxes, terminal boxes, meter cabinets, pedestals, ducts, electric transmission and distribution feeder lines, communication long distance trunk and feeder lines, and other facilities necessarily appurtenant to such facilities and to underground utilities may be placed above ground within dedicated easements or public rights-of-way."

12. Transportation improvements

Given that Broadway is under construction, are there any additional planned roadway improvements?

The Shining Mountain Waldorf School will be constructing public improvements on the south side of Violet Ave.

13. Are there any additional multi-use path or other transportation connections that are required for this project?

The project's requirement to construct multi-modal transportation improvements will be identified by staff when either a Concept Plan or Site Plan is submitted for the project.

14. Will the project be required to make improvements on Violet?

The requirement for the project to construct public improvements along Violet Ave and 10th Street will be identified by staff when either a Concept Plan or Site Plan is submitted for the project. These public improvements could include the widening of the streets to provide on-street parking and the detaching of the existing sidewalks on Violet Ave and 10th Street.

15. Building located at 4433 Broadway

The property owner owns the building at 4433 Broadway, which is located on city property and is allowed to remain due to a granted easement on the building. If the property owner is willing to dedicate the building to the city for community use (such as for Ponderosa community center or to a nonprofit), can the square footage be attributed back to the project? Can it be considered an alternate form of community benefit?

The applicant could make that as a dedication for city services but it would only apply as community benefit if there were greater than four stories in a new building on the site, and that was the intent in dedicating the floor area for community services.

16. New Structure Floodplain Requirements

New Residential Flood Requirements

The lowest floor must be elevated 2-feet above BFE. New basements (including underground parking) are not allowed. Crawlspace and at grade garages are allowed with flood venting. Fill is allowed. New parking is allowed if flood depths are less than 18-inches. New fences are allowed provided the applicant demonstrates proper anchoring such that the fence will not wash away in a flood event.

New Non-Residential Flood Requirements

The lowest floor must be elevated 2-feet above BFE or floodproofed to 2-feet above BFE. New basements (including underground parking) are allowed. Crawlspace and at grade garages are allowed with flood venting. Fill is allowed. New parking is allowed if flood depths are less than 18-inches. New fences are allowed provided the applicant demonstrates proper anchoring such that the fence will not wash away in a flood event.

New Mixed-Use Flood Requirements

The lowest floor of residential areas must be elevated 2-feet above BFE, otherwise the non-residential lowest floor must floodproofed to 2-feet above BFE. New basements (including underground parking) are allowed. Crawlspace and at grade garages are allowed with flood venting. Fill is allowed. New parking is allowed if flood depths are less than 18-inches. New fences are allowed provided the applicant demonstrates proper anchoring such that the fence will not wash away in a flood event.

17. Floodplain Mixed Use Definition

Mixed-use has a different definition in the floodplain code than the planning code. Per B.R.C. 9-16-1 "Mixed-use structure means any structure with both residential uses and nonresidential uses where no less than twenty-five percent of the finished floor area contains nonresidential uses. (Floodplain)"

ADDITIONAL COMMENTS:

Addressing

The applicant has provided the addresses as 4455 Broadway for this Pre-Application however note that the city has the following addresses for the property which seem to exclude the 4455 address:

4401, 4403 , 4405 , 4411, 4415, 4417, 4419, 4423, 4449 , 4459 Broadway.

Note that irrespective of the existing addressing, at the time of a Site Review approval and Technical Document applications an Address Plat will be required to be submitted that will help to clean up the addressing.

Floor Area Additions

Per Table 8-2, for a "floor area addition" in MU-2, "Floor area used as off-street parking and circulation that is above grade and provided entirely within the structure." Currently, that is the only way to add floor area above the 0.6 FAR in MU-2.

Inclusionary Housing

- a. Each new residential unit developed on the property is subject to 9-13 B.R.C., 1981, "Inclusionary Housing" which requires that all residential developments with 5 or more dwelling units contribute 25% of the total dwelling units as housing affordable to low/moderate and middle-income households. The means for satisfying the inclusionary requirement will be reviewed by staff concurrent with any land use review or for those projects not subject to any land use review, prior to application for a residential building permit.
- b. A Unit and Cash-in-lieu Calculator for estimating the Inclusionary Housing requirement for your development may be found on the city website at <https://bouldercolorado.gov/unit-cash-lieu-calculator>.
- c. For-sale developments may meet the inclusionary requirement by providing half of the required affordable units on-site. The other half may be met by providing comparable existing or newly built permanently affordable units off-site, land appropriate for affordable housing or by payment of a cash-in-lieu (CIL) contribution.
- d. Rental developments may satisfy the inclusionary requirement through the provision of on-site affordable rental units or comparable existing or newly built off-site permanently affordable rental or for-sale units, through the dedication of land appropriate for affordable housing or by payment of a cash-in-lieu contribution.
- e. Any required documents including the Determination of Inclusionary Housing Compliance form, a Covenant to secure the permanent affordability of the units, and an Agreement must be signed and if necessary, recorded prior to application for any residential building permit. Any applicable cash-in-lieu contribution must be made prior to receipt of a residential building permit.
- f. Please contact a housing planner as soon as possible in the development process to determine how best to meet the IH requirement.

North Boulder Subcommunity Plan (NBSP)

The project site is located within the boundaries of the NBSP which sets forth the official vision for the future of the North Boulder Subcommunity and is the basis for decisions regarding the long-term preservation and development of North Boulder. The NBSP provides specific actions to be carried out by the City, other public agencies, and the private sector related to future development. The NBSP was also the basis for re-zoning of a portion of North Boulder in 1997 and establishes a street and pedestrian/ bicycle network. The Plan was adopted by Planning Board and City Council in 1995. It was amended in 1996 and 1997 in relation to the Village Center boundaries and Crestview East and West annexation conditions.

Within the NBSP, the western portion of the site is designated as residential and the eastern portion along Broadway is designated as "Mixed Use Transition to Adjacent Residential." Page 15 of the NBSP defines the intent of Transition Areas generally as:

"The areas adjacent to the Main Street business area should contain a mix of uses in a lower scale of intensity than the uses along Broadway and Yarmouth They should provide a transition between the main street and the adjacent residential and industrial areas."

The NBSP also describes the desired characteristics of a "Mixed Use Transition to Adjacent Residential" area as a transition area

"with residential and office uses, neighborhood serving restaurants, and personal service uses in a pedestrian-oriented pattern with buildings located close to the street and parking in the rear...where people can live and work in close proximity, possibly in the same building."

As staff noted in the meeting, the inherent concept of mixed use buildings aligning Broadway with residential on the west side of the site would address many of the desired characteristics of the North Boulder Subcommunity Plan. The next step for the applicant team is Concept Plan review. Many of the challenges of the preliminary site plan as presented that include the inability for the plans to meet the zoning in terms of height and types of uses could be discussed in a Concept

Plan review. However, it is recommended that the applicant refine the plans to better convey the intent of the art space use and to also render preliminary massing diagrams that would be meet the required height standards.

Note: Comments provided by City staff are based on the information received at the time of the Pre-Application and do not constitute a formal review, an approval or conditions of approval for the application. Additional staff comments and project requirements will be provided to the applicant after review of a formal application submittal. All development applications are required to comply with all applicable City of Boulder codes and ordinances.