MEMORANDUM

TO: Planning Board
FROM: Sloane Walbert, Case Manager
DATE: May 1, 2015
SUBJECT: **Call-Up Item**: NONCONFORMING USE REVIEW (LUR2015-00017): Request for an expansion to a nonconforming use to remodel the kitchen facilities at the Alpha Chi Omega house located at 1162 12th Street, including mechanical equipment and screening located on the building rooftop and associated ductwork within the rear yard setback. The project site is zoned Residential - High 5 (RH-5). The call-up period expires on **May 15, 2015.**

Attached is the disposition of approval of a Nonconforming Use Review to allow the addition of mechanical equipment and screening on the building rooftop and associated ductwork on the outside of the building within the rear yard setback at 1162 12th Street (see **Attachment A**). The existing sorority use is considered a nonconforming use (which is typical of many properties on University Hill) because it exceeds the maximum permitted density in the RH-5 zone district, does not satisfy the minimum off street parking requirements and does not meet the useable open space required per dwelling unit. Pursuant to section 9-10-3(c)(2), B.R.C. 1981, an expansion of a nonconforming use is required to be evaluated through the Nonconforming Use Review process in section 9-2-15, B.R.C. 1981. All mechanical equipment and screening meets city code and will be painted to match as closely as possible the color and texture of the building to minimize any adverse aesthetic impact. The proposal includes the addition of one street tree on 12th Street, a 14-foot long cedar landscape wall to screen the parking area and two Cora style bicycle racks. Refer to **Attachment B** for analysis of the Use Review Criteria.

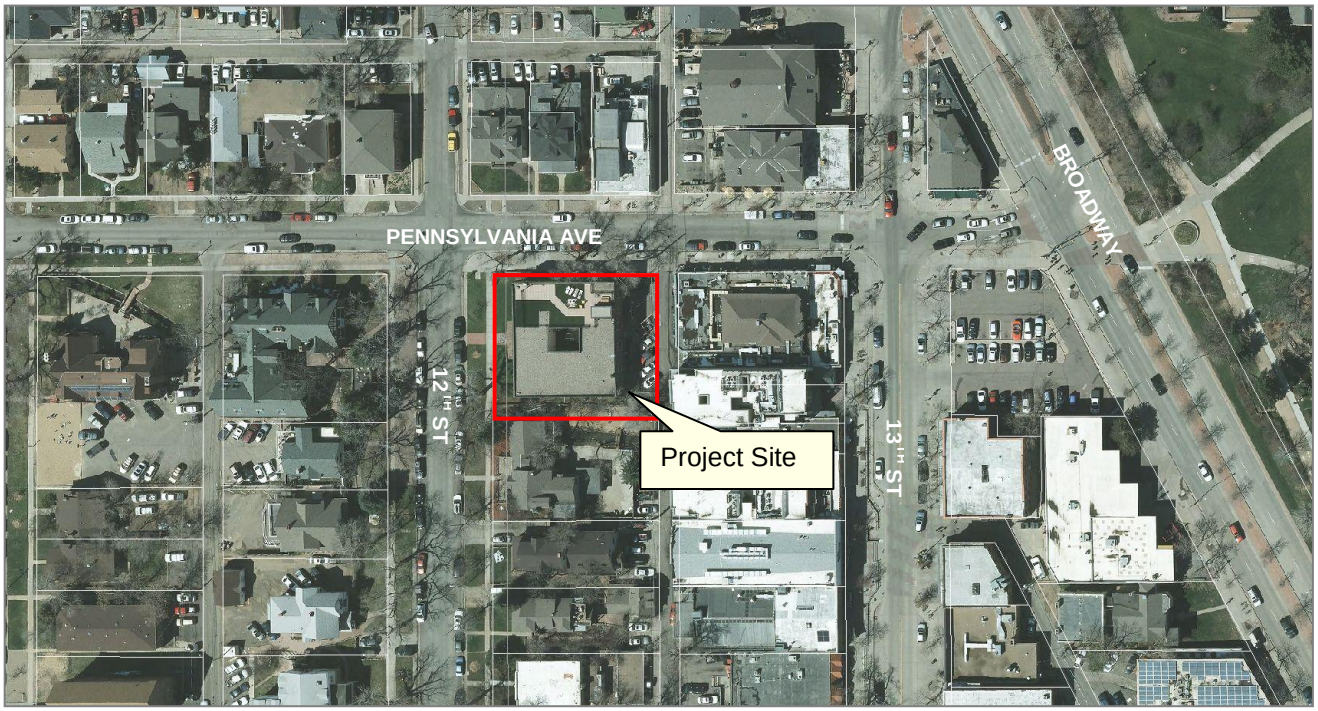


Figure 1: Vicinity Map

Address: 1162 12th St

Background. The subject property is a roughly 12,500 square foot lot located in the University Hill neighborhood on the southeast corner of Pennsylvania Avenue and 12th Street. The property is located two blocks from Broadway and the University of Colorado campus. The project site is also located immediately adjacent to the University Hill General Improvement District (UHGID) and University Hill Business District, the boundary of which is located along the shared alley to the east. UHGID provides shared parking and maintenance for the district. Refer to *Figure 1* above for a Vicinity Map.

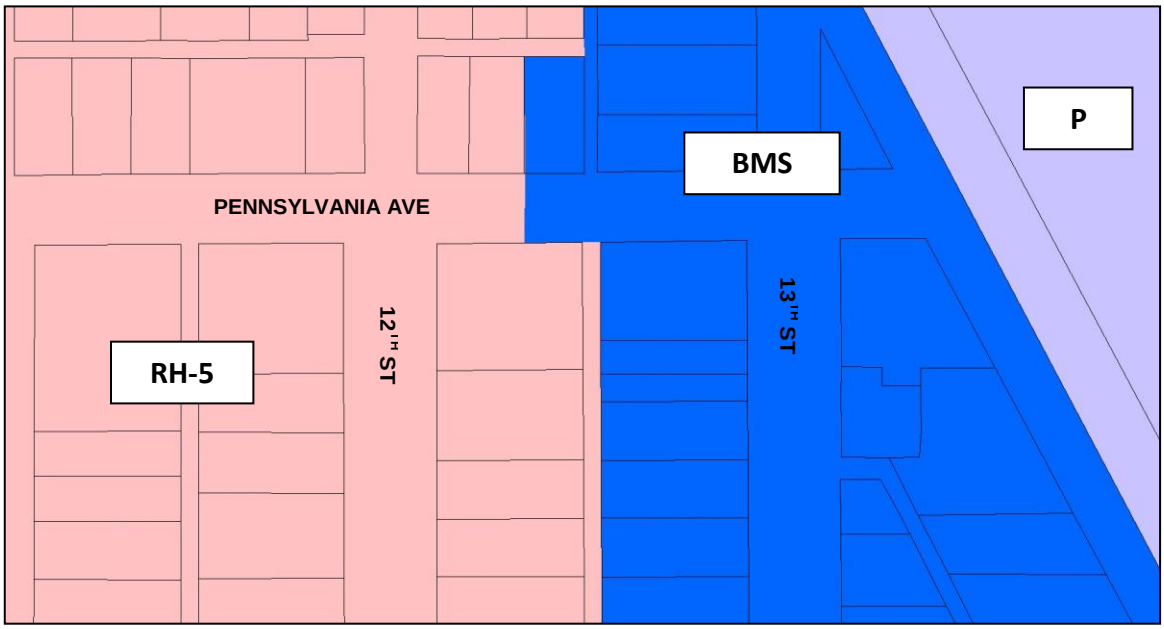


Figure 2: Zoning Map

The project site is located in the Residential - High 5 (RH-5) zone district, which 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"* (section 9-5-2(c)(1)(F), B.R.C. 1981). The majority of the surrounding properties are also zoned RH-5, with the exception of those properties that are adjacent to the east, located across the alley shared with the project site, which are zoned Business Main Street (BMS) (see *Figure 2*). There are a variety of both nonresidential and residential uses in the vicinity, including high density residential, mostly in the form of student rentals, restaurant and retail uses.

Based on city permit records, the building was originally constructed in 1962 as a boarding house that was comprised of 50 rooms on three floors (basement, first and second floors). Zoning inspection records dating back to the 1970's indicate occupancies ranging from 46 occupants to 90 occupants, which is consistent with the most recent records on file. In 1980, the Alpha Chi Omega sorority purchased the property and remains the current property owner. Today, the sorority is comprised of 69 occupants, however given past zoning records the maximum occupancy remains at 90.

Figure 3: Alpha Chi Omega Sorority

As noted above, the existing sorority use is considered a nonconforming use (which is typical of properties on University Hill) because it exceeds the maximum permitted density in the RH-5 zone district (27.2 dwelling units/acre) at 74 dwelling units/acre; does not satisfy the minimum off street parking requirements (46 spaces required, 7 provided); and does not meet the useable open space required per dwelling unit (13,800 square feet required, roughly 6,000 square feet provided). The existing building is also nonstandard because it does not meet the side yard setback adjacent to a street (7 feet where 12.5 feet is required) and the interior side yard setback (6 feet where 10 feet is required). In addition, the building does not meet the required front yard setback of 25 feet at 23 feet. However, more than fifty percent of the principal buildings on the same block face do not meet the required front yard setback and the building is not considered nonstandard based on setback averaging of the closest two buildings on the same block face.

In 1995 a Use Review was approved to construct a 515 square foot assembly room addition to accommodate group meeting facilities, including dining and a chapter meeting room (case no. UR-94-16). Subsequently, a Site Review for Height Modification and Nonconforming Use Review was approved in 2012 for a 731 square foot rooftop deck (LUR2012-00032). The approval included the installation of a railing that was in excess of the maximum permitted height (35 feet).

Figure 4: Service Alley

Project Proposal. The applicant is requesting approval of a Nonconforming Use Review for new mechanical equipment and ductwork on the exterior of the building in association with the remodel of outdated kitchen facilities (refer to **Attachment C**). Existing ductwork from the kitchen, as seen in *Figure 5* below, would be replaced. The proposed renovation of the existing kitchen would require compliance with mechanical code requirements for commercial kitchens, including a fire suppression system and Type 1 hood over the stove/cooking area. This equipment, in turn, requires a hood exhaust fan and makeup air unit to be placed on the rooftop and associated ducting. Due to the age of the building and the construction type, it would be difficult, disruptive and cost prohibitive to place the ductwork internal to the structure. The kitchen is located on the east side of the building on the main floor. The applicant proposes placing the ductwork on the rear elevation, adjacent to the alley.

In order to mitigate visual impacts the applicant proposes screening the exhaust fan and makeup air unit on the roof with a perforated metal panel screen, painted to match the existing brick wall color (refer to **Attachment C**). The rooftop equipment and screening will not cause the building to exceed the height limitations since the appurtenances meet the requirements of section 9-7-7, "Building Height, Appurtenances," B.R.C. 1981. The ductwork is proposed to be located in the rear yard setback because the existing building is located less than 6 inches from the required building setback. Due to flow requirements in the mechanical code the ducts will project 3 feet from the wall of the building.

Initially, the applicant proposed a decorative metal shroud to screen the ductwork running from the kitchen to the rooftop equipment. However, the equipment will be visible from Pennsylvania Street and staff found that the shroud structure would actually increase the size of the equipment and draw attention to the mechanical ductwork, rather than reducing the visual impacts. In response, the applicant has proposed that the ductwork be painted to match as closely as possible the color of the brick façade (see *Figure 6* below).

Figure 5: Existing Ductwork

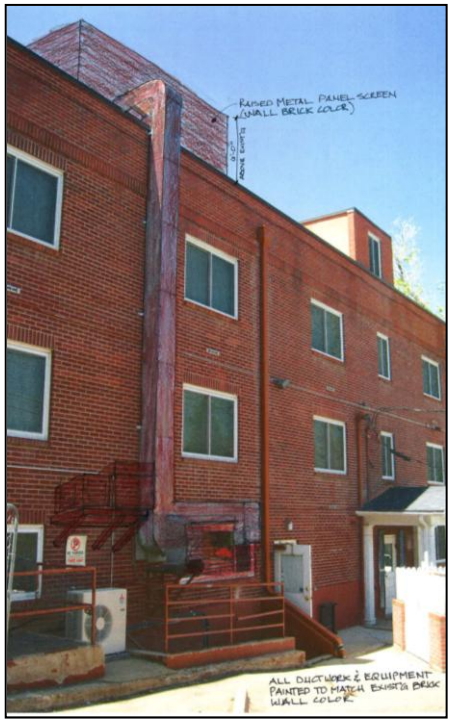


Figure 6: Proposed Equipment

In order to meet the criteria for modifications to nonconforming uses, the development proposal also includes several site improvements to improve the physical appearance of the site (refer to **Attachment C** for the applicant's proposed plans). The following is included in the proposal:

- The addition of one small flowing street tree on 12th Street;
- A 2.5 foot tall cedar landscape wall 14 feet in length, which will screen the existing parking area in the alley from Pennsylvania Avenue;
- Two Cora style bicycle racks in the existing bike storage area and picnic area.

Review Process. As noted above, the project site is considered a nonconforming use with respect to density, parking and open space. The development proposal is considered an expansion of a nonconforming use as defined in chapter 9-16, "Definitions," B.R.C. 1981, because the proposal increases visual impacts:

> *"Expansion of nonconforming use" means any change or modification to a nonconforming use that constitutes:*
>
> *(1) An increase in the occupancy, floor area, required parking, traffic generation, outdoor storage, or visual, noise, or air pollution;*
>
> *(2) Any change in the operational characteristics which may increase the impacts or create adverse impacts to the surrounding area including, without limitation, the hours of operation, noise, or the number of employees;*
>
> *(3) The addition of bedrooms to a dwelling unit, except a single-family detached dwelling unit; or*
>
> *(4) The addition of one or more dwelling units."*

Pursuant section 9-10-3(c)(2), "Standards for Changes to Nonstandard Buildings, Structures and Lots, and Nonconforming Uses," B.R.C. 1981, applications for Nonconforming Use Review are reviewed for consistency with the criteria set forth in subsection 9-2-15(e) and (f), B.R.C. 1981. Generally, the Nonconforming Use Review criteria are focused on minimizing adverse impacts to surrounding properties, maintaining consistency surrounding uses as well as area character, and improving the appearance of the property and decreasing the level of nonconformity of the site.

Analysis. The proposal was found to be consistent with the Use Review criteria pursuant to subsections 9-2-15(e) "*Criteria for Review*" and (f) *"Additional Criteria for Modifications to Nonconforming Uses,"* B.R.C. 1981. Refer to **Attachment B** for the complete criteria analysis.

Public Comment. Required public notice was given in the form of written notification mailed to all property owners within 600 feet of the subject property and a sign posted on the property for at least 10 days. All notice requirements of section 9-4-3, "*Public Notice Requirements*," B.R.C. 1981 have been met. The proposal was also forwarded to the University Hill neighborhood association for comment. Staff received no public comments.

Conclusion. Staff finds that the proposed project meets the relevant criteria of section 9-2-15, "Use Review," B.R.C. 1981 (refer to **Attachment B**).

The proposal was **approved** by Planning and Development Services staff on **May 1, 2015** and the decision may be called up before Planning Board on or before **May 15, 2015**. There is one Planning Board hearing scheduled during the required 14-day call-up period on **May 7, 2015.** Questions about the project or decision should be directed to the Case Manager, Sloane Walbert at (303) 441-4231 or at walberts@bouldercolorado.gov.

Attachments:

A. Disposition of Approval
B. Analysis of Use Review Criteria
C. Applicant's Proposed Plans

CITY OF BOULDER
Community Planning & Sustainability
1739 Broadway, Third Floor • P.O. Box 791, Boulder, CO 80306-0791
phone 303-441-1880 • fax 303-441-3241 • web www.bouldercolorado.gov

PROJECT NAME:	**1162 12TH STREET ROOFTOP MECHANICAL**
LOCATION:	**1162 12TH ST**
COOR:	**N02W06**
LEGAL DESCRIPTION:	**Lots 1, 2, 3 and the Northerly 15 feet of Lot 4, Block 5, University Terrace, City of Boulder, County of Boulder, State of Colorado**
APPLICANT:	**TOM CATTANY, MELTON DESIGN BUILD**
OWNER:	**NU CHAPTER HOUSE ASSOCIATION**
APPLICATION:	**Use Review, LUR2015-00017**
ZONING:	**Residential - High 5 (RH-5)**
CASE MANAGER:	**Sloane Walbert**

CITY OF BOULDER PLANNING DEPARTMENT
NOTICE OF DISPOSITION

You are hereby advised that the following action was taken by the Planning Department based on the standards and criteria of the Land Use Regulations as set forth in Chapter 9-2, B.R.C. 1981, as applied to the proposed development.

DECISION:	**Approved with conditions**
DESCRIPTION:	**NONCONFORMING USE REVIEW for remodel of kitchen facilities to include mechanical equipment and screening located on the building rooftop and associated ductwork on the outside of the building within the rear yard setback. All mechanical equipment and screening will be painted to match as closely as possible the color and texture of the building so as to minimize any adverse aesthetic impact. Site improvements include, without limitation, the addition of one (1) street tree on 12th Street, a 14-foot long cedar landscape wall to screen parking area and two (2) cora style bicycle racks.**
VESTED PROPERTY RIGHT:	**NO; the owner has waived the opportunity to create such right under Section 9-2-19, B.R.C. 1981.**

FOR CONDITIONS OF APPROVAL, SEE THE FOLLOWING PAGES OF THIS DISPOSITION.

Approved On: 5/1/15
Date

By: _____
David Driskell, Executive Director of Community Planning and Sustainability

This decision may be appealed to the Planning Board by filing an appeal letter with the Planning Department within two weeks of the decision date. If no such appeal is filed, the decision shall be deemed final fourteen days after the date above mentioned.

Appeal to Planning Board expires: 5/15/15

Final Approval Date: _____

Address: 1162 12TH ST

IN ORDER FOR A BUILDING PERMIT APPLICATION TO BE PROCESSED FOR THIS PROJECT, A SIGNED DEVELOPMENT AGREEMENT AND FINAL PLANS FOR CITY SIGNATURE MUST BE SUBMITTED TO THE PLANNING DEPARTMENT WITH DISPOSITION CONDITIONS AS APPROVED SHOWN ON THE FINAL PLANS, IF THE DEVELOPMENT AGREEMENT IS NOT SIGNED WITHIN NINETY (90) DAYS OF THE FINAL DECISION DATE, THE PLANNING DEPARTMENT APPROVAL AUTOMATICALLY EXPIRES.

Pursuant to Section 9-2-12 of the Land Use Regulations (Boulder Revised Code, 1981), the applicant must begin and substantially complete the approved development within three years from the date of final approval. Failure to "substantially complete" (as defined in Section 9-2-12) the development within three years shall cause this development approval to expire.

CONDITIONS OF APPROVAL

1. The Applicant shall ensure that the **development shall be in compliance with all plans prepared by the Applicant on April 6, 2015**, on file in the City of Boulder Planning Department, except to the extent that the development may be modified by the conditions of this approval.

2. The Applicant **shall not expand or modify the approved use**, except pursuant to subsection 9-2-15(h), B.R.C. 1981.

3. The Applicant shall **comply with all previous conditions** contained in any previous approvals, except to the extent that any previous conditions may be modified by this approval, including, but not limited to, the following: the Development Agreement recorded at Film No. 2096, Reception No. 1570251 on December 18, 1995 and the Development Agreement recorded at Reception No. 03265599 on November 7, 2012 in the Boulder County Clerk and Recorder's Office on November 7, 2012.

ADMINISTRATIVE REVIEW
NOTICE OF DISPOSITION

DECISION:	**Approved**
DESCRIPTION:	**AMINISTRATIVE SETBACK VARIANCE to the rear yard setback to allow 22 feet where 25 feet is required, as permitted per the standards for Nonconforming Use Review in section 9-2-15(f)(6), B.R.C. 1981. Section of the Land Use Code to be modified: Section 9-7-1, "Schedule of Form and Bulk Standards," B.R.C. 1981.**

FINAL DECISION STANDARDS:
This approval is subject to the following standards. These standards must be met in order for the administrative review approval to be valid.

Approved as submitted. This application is approved per the criteria set forth in subsection 9-2-3(h), B.R.C. 1981. This approval does not constitute building permit approval. Building permit review and approval shall be required prior to the initiation of any construction.

This approval is limited to one 3-foot encroachment into the rear yard setback facing the alley for ductwork associated with new mechanical equipment on the rooftop.

Address: 1162 12TH ST

The Applicant shall be responsible for ensuring that all construction is compliant with plans prepared by the Applicant on April 6, 2015.

Approved By: S Walbert
Sloane Walbert, Planning Department

Address: 1162 12TH ST

Address: 1162 12th St

Overall, the project was found to be consistent with the criteria for Use Review set forth in subsections 9-2-15(e) and (f), B.R.C. 1981.

(e) "Criteria for Review": No use review application will be approved unless the approving agency finds all of the following:

✓ **(1) Consistency with Zoning and Non-Conformity:** The use is consistent with the purpose of the zoning district as set forth in section 9-5-2(c), "Zoning Districts Purposes," B.R.C. 1981, except in the case of a non-conforming use;

The project site is zoned RH-5. This zoning 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," section 9-5-2(c)(1)(F), B.R.C. 1981.

Although a sorority use is permitted by-right in the RH-5 zone district, the existing sorority use is nonconforming because it exceeds the maximum permitted density in the RH-5 zone district (27.2 dwelling units/acre) at 79 dwelling units/acre; does not satisfy the off street parking requirements (46 spaces required, 7 provided); and does not provide the required amount of useable open space per dwelling unit. Given the 23 units on site, a total of 13,800 square feet is required, which is more square footage than the actual lot itself (12,500 square feet).

✓ (2) Rationale: The use either:

N/A (A) Provides direct service or convenience to or reduces adverse impacts to the surrounding uses or neighborhood;

Not applicable. See notes below under criterion (D).

N/A (B) Provides a compatible transition between higher intensity and lower intensity uses;

Not applicable.

N/A (C) Is necessary to foster a specific city policy, as expressed in the Boulder Valley Comprehensive Plan, including, without limitation, historic preservation, moderate income housing, residential and non-residential mixed uses in appropriate locations, and group living arrangements for special populations; or

Not applicable.

✓ (D) Is an existing legal nonconforming use or a change thereto that is permitted under subsection (f) of this section;

The existing sorority use is a legal nonconforming use that was established in July 1980, with city records showing a maximum of 90 occupants on the site. Although the existing sorority use is permitted by-right in the RH-5 zone district, it is nonconforming as to density, parking and open space.

✓ (3) Compatibility: The location, size, design, and operating characteristics of the proposed development or change to an existing development are such that the use will be reasonably compatible with and have minimal negative impact on the use of nearby properties or for residential uses in industrial zoning districts, the proposed development reasonably mitigates the potential negative impacts from nearby properties;

The proposed mechanical equipment is compatible and consistent as this equipment is commonly associated with group residences with common kitchen areas. The project site is located at the southeast corner or Pennsylvania Avenue and 12th Street, less than one block from College Avenue and shares an alley with commercial uses. It is common for such ductwork to be located on the service side of buildings in high-density areas. In addition, the proposal will reasonably mitigate potential negative impacts to nearby properties by screening the mechanical equipment and painting new screening and ductwork to match as closely as possible the color and texture of the building.

✓ (4) Infrastructure: As compared to development permitted under section 9-6-1, "Schedule of Permitted Land Uses," B.R.C. 1981, in the zone, or as compared to the existing level of impact of a nonconforming use, the proposed development will not significantly adversely affect the infrastructure of the surrounding area, including, without limitation, water, wastewater, and storm drainage utilities and streets;

Not applicable; the infrastructure required to provide services to the site exist today. No additional infrastructure is required as a result of the proposal.

✓ (5) Character of Area: The use will not change the predominant character of the surrounding area;

Given the project site location at the southeast corner of 12th Street and Pennsylvania Avenue the character of the area is that of student oriented, high-density residential neighborhood. The intersection of 12th Street and Pennsylvania provides a transition from the nonresidential uses and University Hill Business District along College Avenue and the residential neighborhoods that extend to the west. As such, the proposed mechanical equipment will not affect the character of the area.

N/A (6) Conversion of Dwelling Units to Non-Residential Uses: There shall be a presumption against approving the conversion of dwelling units in the residential zoning districts set forth in subsection 9-5-2(c)(1)(a), B.R.C. 1981, to non-residential uses that are allowed pursuant to a use review, or through the change of one non-conforming use to another non-conforming use. The presumption against such a conversion may be overcome by a finding that the use to be approved serves another compelling social, human services, governmental, or recreational need in the community including, without limitation, a use for a day care center, park, religious assembly, social service use, benevolent organization use, art or craft studio space, museum, or an educational use.

Not applicable, the proposal does not include the conversion of dwelling units.

(f) "Additional Criteria for Modifications to Nonconforming Uses": No application for a change to a nonconforming use shall be granted unless all of the following criteria are met in addition to the criteria set forth above:

✓ (1) Reasonable Measures Required: The applicant has undertaken all reasonable measures to reduce or alleviate the effects of the nonconformity upon the surrounding area, including, without limitation, objectionable conditions, glare, adverse visual impacts, noise pollution, air emissions, vehicular traffic,

storage of equipment, materials, and refuse, and on-street parking, so that the change will not adversely affect the surrounding area.

The project site is located at the southeast corner of 12th Street and Pennsylvania Avenue, a highly traveled pedestrian corridor and shares an alley with adjacent commercial uses to the east. The surrounding uses are primarily high-density student housing to the west and the University Hill Business District to the east. It is common for such ductwork to be located on the service side of buildings in high-density areas. Due to the age of the structure and building construction type, running ducting through the building would require extensive structural analysis, testing, modifications, and rated shafts, which is cost prohibitive. The applicant has taken all reasonable measures to alleviate the effects of the nonconforming ductwork on the surrounding area.

✓ (2) Reduction in Nonconformity/Improvement of Appearance: The proposed change or expansion will either reduce the degree of nonconformity of the use or improve the physical appearance of the structure or the site without increasing the degree of nonconformity.

The proposed site improvements, including the addition of a street tree, a screen fence for the parking area and two bicycle racks, will improve the physical appearance of the property.

✓ (3) Compliance With This Title/Exceptions: The proposed change in use complies with all of the requirements of this title:

N/A (A) Except for a change of a nonconforming use to another nonconforming use; and

Not Applicable. The existing sorority use will remain.

✓ (B) Unless a variance to the setback requirements has been granted pursuant to section 9-2-3, "Variances and Interpretations," B.R.C. 1981, or the setback has been varied through the application of the requirements of section 9-2-14, "Site Review," B.R.C. 1981.

Staff has granted an administrative setback variance to the allow 22 feet where 25 feet is required, finding that the proposal meets the criteria set forth in subsection 9-2-3(h), B.R.C. 1981. This request is outside of the purview of Planning Board discretion. See criterion 6 below.

✓ (4) Cannot Reasonably Be Made Conforming: The existing building or lot cannot reasonably be utilized or made to conform to the requirements of chapter 9-6, "Use Standards," 9-7, "Form and Bulk Standards," 9-8, "Intensity Standards," or 9-9, "Development Standards," B.R.C. 1981.

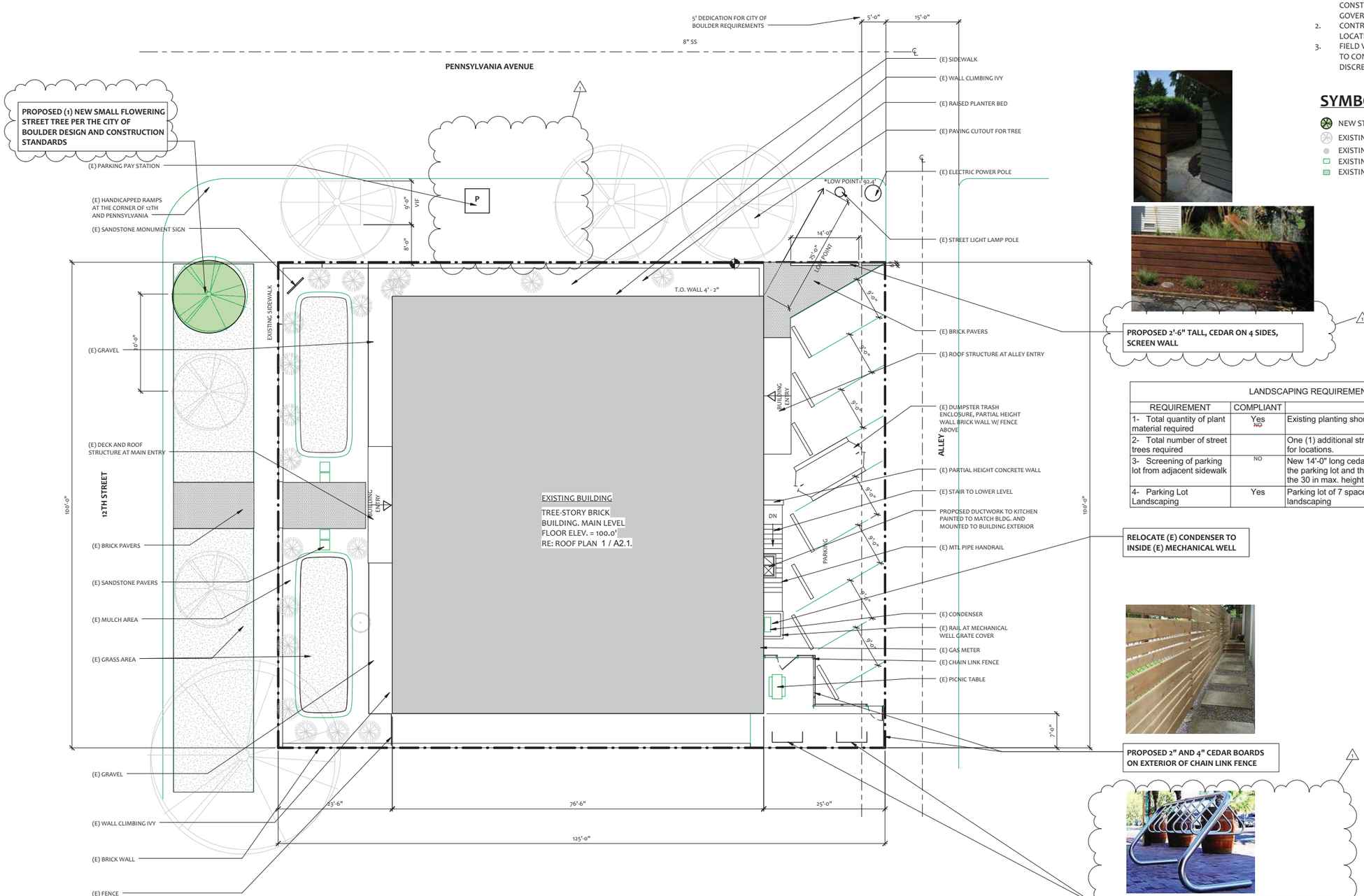
In order for the existing building to be made conforming, the sorority would have to significantly decrease occupancy of the site. Additionally, compliance with the current parking and open space requirements would be required. Compliance with the current development standards would necessitate the removal of a large portion of the existing building or complete redevelopment of the entire site.

✓ (5) No Increase in Floor Area over Ten Percent: The change or expansion will not result in a cumulative increase in floor area of more than ten percent of the existing floor area.

The proposal will not affect floor area.

✓ (6) Approving Authority May Grant Zoning Variances: The approving authority may grant the variances permitted by subsection 9-2-3(d), B.R.C. 1981, upon finding that the criteria set forth in subsection 9-2-3(h), B.R.C. 1981, have been met.

Staff has granted an administrative setback variance to the allow 22 feet where 25 feet is required, finding that the proposal meets the criteria set forth in subsection 9-2-3(h), B.R.C. 1981. This request is outside of the purview of Planning Board discretion.



SITE PLAN 1 / A1.0

1" = 10'-0"

SITE PLAN NOTES

1. ALL WORK TO BE DONE IN ACCORDANCE WITH CONSTRUCTION CRITERIA AND ALL LOCAL GOVERNING CODES.
2. CONTRACTOR TO VERIFY EXACT UTILITY LOCATIONS BEFORE TRENCHING.
3. FIELD VERIFY ALL EXISTING CONDITIONS PRIOR TO CONSTRUCTION - NOTIFY DESIGNER W/ ANY DISCREPANCIES PRIOR TO CONSTRUCTION.

SYMBOL LEGEND

- NEW STREET TREE
- EXISTING STREET TREE
- EXISTING LANDSCAPE SHRUBS
- EXISTING GRASS AREA
- EXISTING BRICK PAVERS

LANDSCAPING REQUIREMENTS

REQUIREMENT	COMPLIANT	PROPOSED
1- Total quantity of plant material required	Yes ~~NO~~	Existing planting should be adequate
2- Total number of street trees required		One (1) additional street tree proposed. See site plan for locations.
3- Screening of parking lot from adjacent sidewalk	NO	New 14'-0" long cedar landscape wall proposed between the parking lot and the adjacent sidewalk. Wall will meet the 30 in max. height requirements per BRC 9-9-14.
4- Parking Lot Landscaping	Yes	Parking lot of 7 spaces is not required to have landscaping

MELTON DESIGN - BUILD
3082 Sterling Circle
Boulder, CO 80301
TEL. 303.473.9542
FAX. 303.516.4008
www.meltondb.com

NO.	REVISION DESCRIPTION	DATE
1	USE REVIEW COMMENTS	04/06/2015

ALPHA CHI OMEGA
1162 12TH STREET
BOULDER, CO 80302

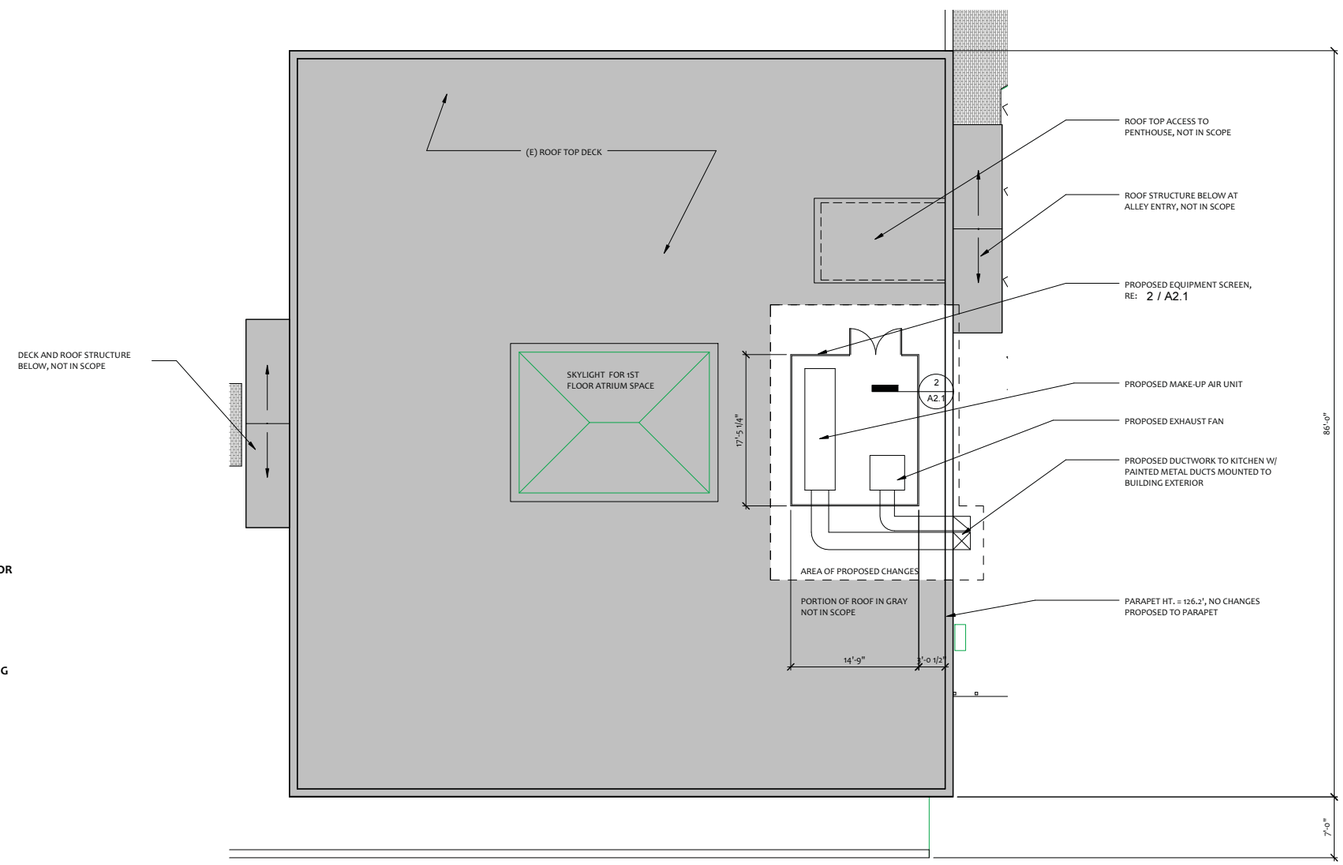
SCHEMATIC DESIGN

SITE PLAN

SHEET SIZE: 24X36

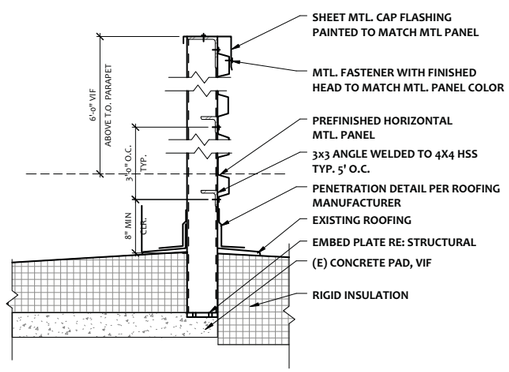
JOB NO:	12345
DATE:	04/06/15
DRAWN:	Author
CHECKED:	Checker

A1.0



ROOF PLAN 1 / A2.1

1/8" = 1'-0"



MECHANICAL SCREEN 2 / A2.1

1" = 1'-0"

MELTON
DESIGN - BUILD
3082 Sterling Circle
Boulder, CO 80301
TEL. 303.473.9542
FAX. 303.516.4008
www.meltondb.com

NO.	REVISION DESCRIPTION	DATE

ALPHA CHI OMEGA
1162 12TH STREET
BOULDER, CO 80302

SCHEMATIC DESIGN

ROOF PLAN

SHEET SIZE: 24X36

JOB NO:	12345
DATE:	04/06/15
DRAWN:	BA
CHECKED:	TC

A2.1

RAISED METAL PANEL SCREEN
(WALL BRICK COLOR)
6'-0"
ABOVE EXIST'G
NO PARKING
TOWED AWAY
ALL DUCTWORK & EQUIPMENT
PAINTED TO MATCH EXIST'G BRICK
WALL COLOR