

**CITY OF BOULDER**  
**PLANNING BOARD AGENDA ITEM**  
**MEETING DATE: May 5, 2016**

**AGENDA TITLE:**

Public hearing and Planning Board recommendation on a request to annex a 1.37 acre property located at 96 Arapahoe Ave. with initial zoning of Residential – Medium 3 (RM-3), consistent with the Boulder Valley Comprehensive Plan (BVCP) land use designation of Medium Density Residential. The proposal includes a request that the City correct errors in BVCP mapping affecting the property. Reviewed under case no. LUR2014-00068.

Applicant: Jonathon Warner  
Property Owner: 96 Arapahoe Avenue LLC

**REQUESTING DEPARTMENT:**

Community Planning & Sustainability  
David Driskell, Executive Director  
Susan Richstone, Deputy Director  
Charles Ferro, Land Use Review Manager  
Elaine McLaughlin, Senior Planner

**OBJECTIVES:**

1. Hear staff and applicant presentations
2. Hold public hearing
3. Planning Board discussion
4. Planning Board recommendations to City Council on the proposed Annexation and Initial Zoning.
5. Planning Board action on proposed corrections to BVCP mapping.

**SUMMARY:**

Proposal: Annexation and Initial Zoning of an approximately 1.37 acre property. No specific development plan has been submitted for Site Review consideration. Correction of errors in BVCP Area Map and Land Use Map affecting the property are also under consideration.

Project Name: Nuzum Gardens  
Location: 96 Arapahoe Ave.  
Size of Tract: 1.37 acres (59,801 square feet)  
Zoning: Proposed: RM-3  
Comprehensive Plan: Medium Density Residential

**KEY ISSUES**

1. Does Planning Board approve of the proposed BVCP map corrections?
2. Does Planning Board find that the proposed annexation meets BVCP policies, and in particular those related to community benefit and does the board support the proposed annexation?
3. Does Planning Board support the proposed initial zoning of RM-3 (Residential Medium - 3)?

## I. INTRODUCTION

### PROJECT DESCRIPTION:

The applicant is requesting annexation of the 1.37 acre property into the City of Boulder with RM-3, Residential Medium - 3 zoning. This request is similar to the Concept Plan presented to the Planning Board and City Council in late 2014 and early 2015, respectively, but the annexation application does not include a concurrent Site Review application with an associated site development plan. While no Site Review is under consideration, the applicant has provided a written statement that indicates intent to construct total of nine dwelling units in a by-right manner, of which 42.9 percent (or three units) would be permanently affordable units. Site Review is required when the site is greater than two acres or is capable of holding 20 or more residential units. Links to the Concept Plan review minutes are provided for the [Feb. 5 2015 Planning Board](#) and the [May 19, 2015 City Council Call-Up](#).

### BACKGROUND:

Per land use code section 9-2-14(b), B.R.C., 1981, the minimum size for a voluntary Site Review process is that, “five or more units are permitted on the property.” Because density in the RM-3 zoning is based upon the requirement for 3,500 square feet of open space per dwelling unit, up to 10 units would be permitted on the property in the area below the Blue Line. Therefore, a Site Review may be pursued for the site, however, the applicant is requesting consideration of the Annexation only at this time, without an application for Site Review.

## II. PROJECT DESCRIPTION SUMMARY

The applicant requests to annex the entire 1.37 acre property with an initial zoning of RM-3. The Boulder Valley Comprehensive Plan policy 1.24(d) requires that applicants demonstrate a “special opportunity or benefit” in annexation, as follows:

*d) 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 considerations, 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.*

In that regard, the applicant has offered the following community benefits (refer to [Attachment C](#), written statement):

- Provision of 42.9 percent of the units as permanently affordable (or three of the nine units proposed by applicant in written statement)
- Preservation of a long lived oak tree on the property
- Preservation of the historic buildings through “covenants” and the demolition permit process in lieu of landmark application and keeping open the historic Anderson Ditch in lieu of landmarking
- Removal of on-site septic system (note this is required for development within the City)
- Dedication of a “scenic easement” for the area of the property above the Blue Line

The level of community benefit was discussed with the applicant over the course of the past year and since the Concept Plan reviews of late 2014 and early 2015. However, the benefits currently offered were found to not rise to the level of impacts generated and staff has since reasserted benefits originally considered by the applicant. Those acceptable community benefits were written into a draft annexation agreement ([Attachment D](#)) which the applicant currently has to consider and include the following:

- Provision of 50 percent of the units as permanently affordable with a split between low and moderate income affordability (with a codified rounding rule that is equivalent to five of the nine units); of the units three would be affordable to middle income residents and two of the units would be affordable to low income residents (the definitions of these are defined within Key Issue number 2.
- Market Rate units on the property will be restricted in size to 2,200 square feet including the floor area of the garage.
- Preservation of a long lived oak tree on the property
- Application to landmark the existing duplex and barn along with that portion of the Anderson Ditch head gates that front onto the property.
- Dedication in fee to the City of Boulder Department of Open Space and Mountain Parks (OSMP) for the area of the property above the Blue Line

An analysis of the community benefits is provided in Key Issue 2.

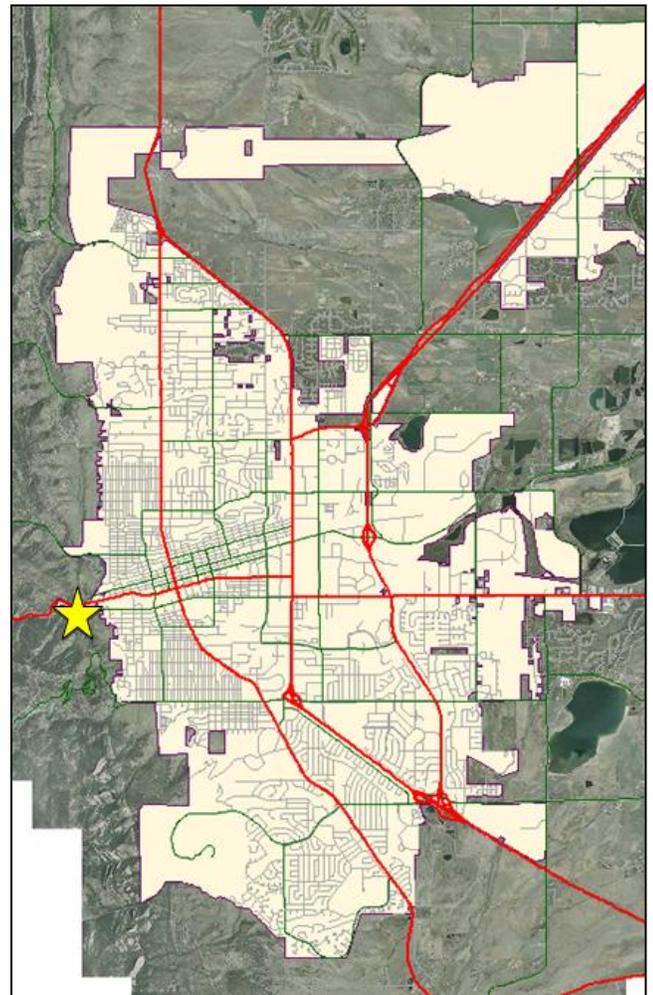
### III. EXISTING SITE AND SURROUNDS

As shown in Figures 1 and 2, the 1.37 acres site is located at the western periphery of the city limits, both at the northern base of Flagstaff Mountain and in an area that demarks transition into the Boulder Canyon. As such, the upper reaches on the south side of the property have steeper slopes, and development on the property has created a series of terraces.

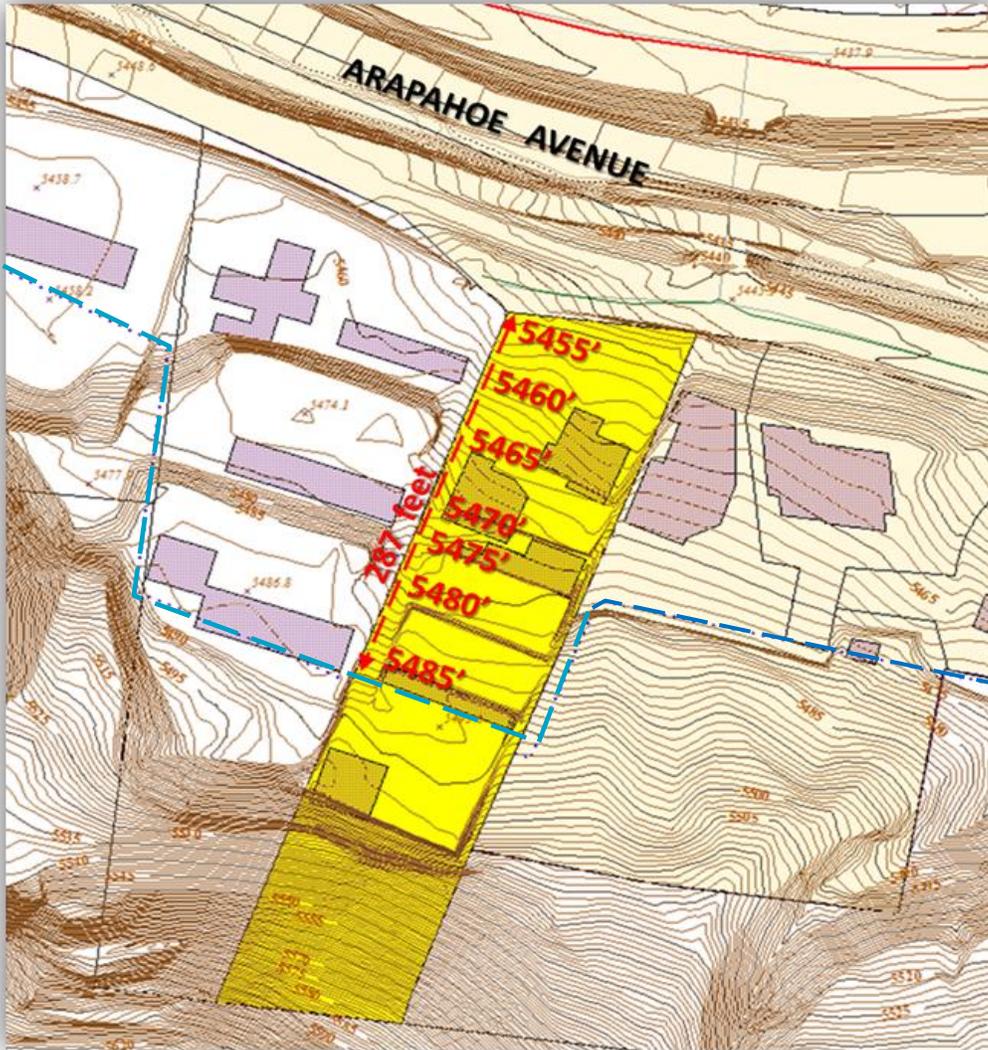
The upper portion of the site that is located above the Blue Line transitions from terraced topography to extremely steep slopes: some at a 1 to 1 slope. Figure 3 illustrates the topography of the site. Further above the Blue Line, the site is densely forested with various conifer tree species predominately ponderosa pine with some Douglas fir.



**Figure 2: Site at the northern base of Flagstaff Mountain**



**Figure 1: Site Location on Western Periphery**



**Figure 3: Varied Site Topography with Terracing Evident**

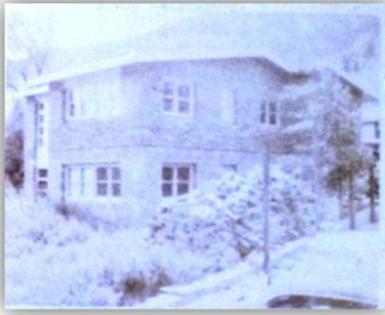
At the base of the property, aligning Arapahoe Avenue is the Anderson Ditch (shown in Figure 3), one of the oldest ditches in the City that was used to help develop the City in the late 1800s.

The site was originally developed in the 1940s and 1950s by Wayne Nuzum who operated a nursery and landscaping business at the property for over 50 years and who is considered one of Boulder's most premier gardeners.

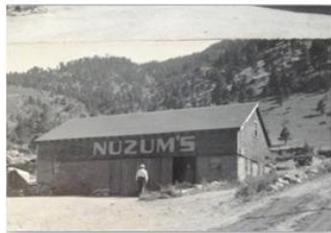
The property includes a one- and one-half story residence built by the Nuzum's as a residence in the 1950s along with a large warehouse/barn used for Nuzum's nursery constructed in the mid to late 1940s with an addition in 1956. The south wall of the barn is built into the hillside terrace. There is also an out building on the upper terrace of the site that is an corrugated metal shed. The house and the barn are shown below in Figures 5 and 6.



**Figure 4: Anderson Ditch in front of property**



**Figures 5a, b, c: Existing House historic images and today**



**Figures 6a,b,c,d: Existing Barn (historic images and today)**

**Surrounding Context.** Located directly west of the site is the roughly 3.2 acre Silver Saddle Motel property at 90 West Arapahoe Ave. The motel was built in the mid 1940s with nine log cabin style motel units. An application for annexation was also received by the property owner to redevelop the Silver Saddle Motel property.



**Figures 7a thru 7d  
Adjacent Silver Saddle Motel (historic to present day)**

To the east of the property is Canyonside Office Park, located at 100 Arapahoe. During the September 2013 Flood, the easternmost portion of the property was destroyed by a mud flow as shown in Figure 8a and 8b. There are two remaining office buildings on the site that remain functional today.



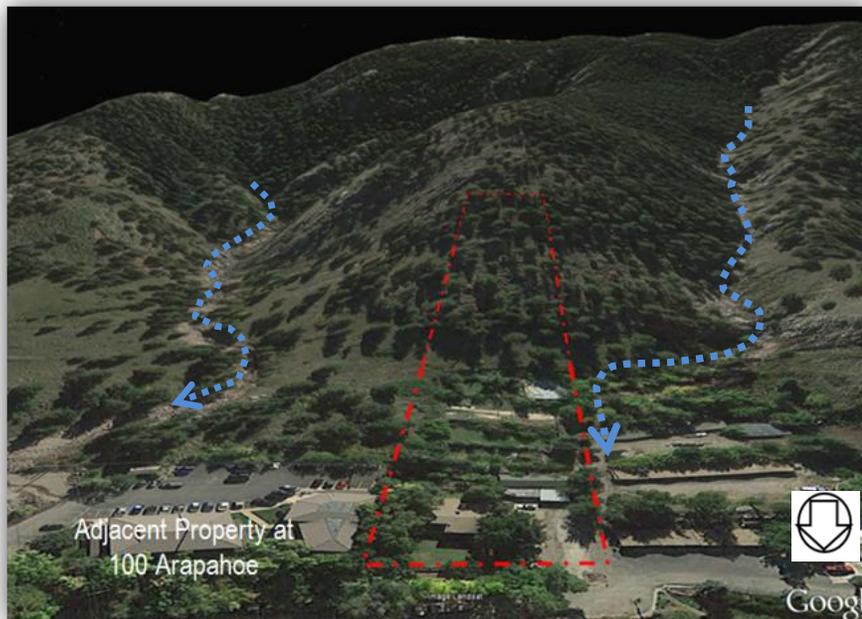
**Figures 8a and 8b:**

**Aerial of Adjacent Property and Photo of Building destroyed in 2013 Flood Event**

As can be seen in the Google Earth image of Figure 9, the 100 Arapahoe Ave. property that suffered destruction in the flooding is at the base of a distinct drainage basin that is incised into the hillside. Similarly, the property at 90 Arapahoe has a distinct drainage swale that is also incised into the hillside.

According to the property owners of 90 Arapahoe, the flood flows in 2013, passed down the hillside and flowed onto the existing road on that property that is lower in elevation than the existing site that was not impacted by flooding during the 2013 flood event.

Further east, at 210 Arapahoe is a 13-unit, medium density condominium development, Park Gables, annexed in 2006 and built in 2007. The density of the site is similar to the density proposed for the project site. Refer to Figures 12a and 12 b that illustrate the development from Arapahoe Avenue as well as in an aerial photo.



**Figure 9:**  
*Google Earth Image showing site in relation to adjacent drainage swales*

Approximately 35 percent of the site is located above the Blue Line which is a development boundary line created through a city charter amendment approved by voters in 1959. The Blue Line defines a specific topographic contour above which extension of the water utility is not permitted. As is apparent in the figure ground plane map shown in Figure 10, the Blue Line is continuous throughout most of the western portion of the city. However, in the area where the site is located, the contour wasn't well established, possibly due to grading that had occurred on the site prior to the charter amendment. In the area adjacent to the site, a 1981 amendment was approved that provided a specific legal description that was mapped for that portion. Shown in Figure 11 is the legal mapped description of the Blue Line within the property.

The Blue Line is defined per the City's Charter, Article VIII: Franchises and Public Utilities, Section 128A, "The City of Boulder shall not supply water for domestic, commercial, or industrial uses to land lying on the westward side of the following described line, except as specifically stated herein."

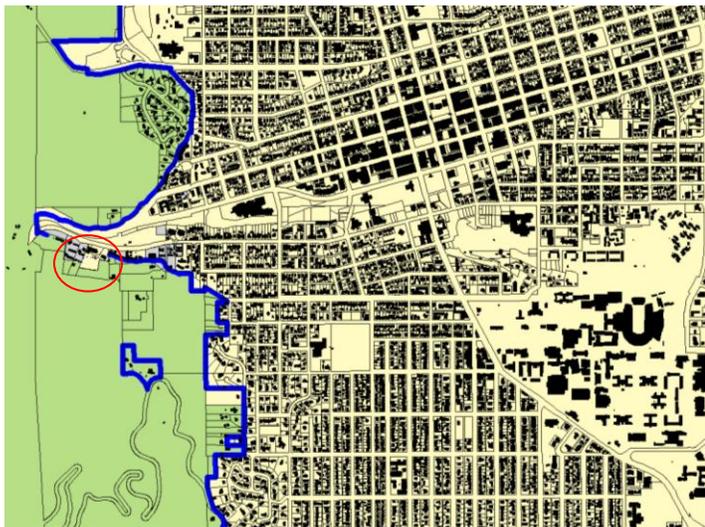


Figure 10:

Portion of the Blue Line on west side of the City of Boulder

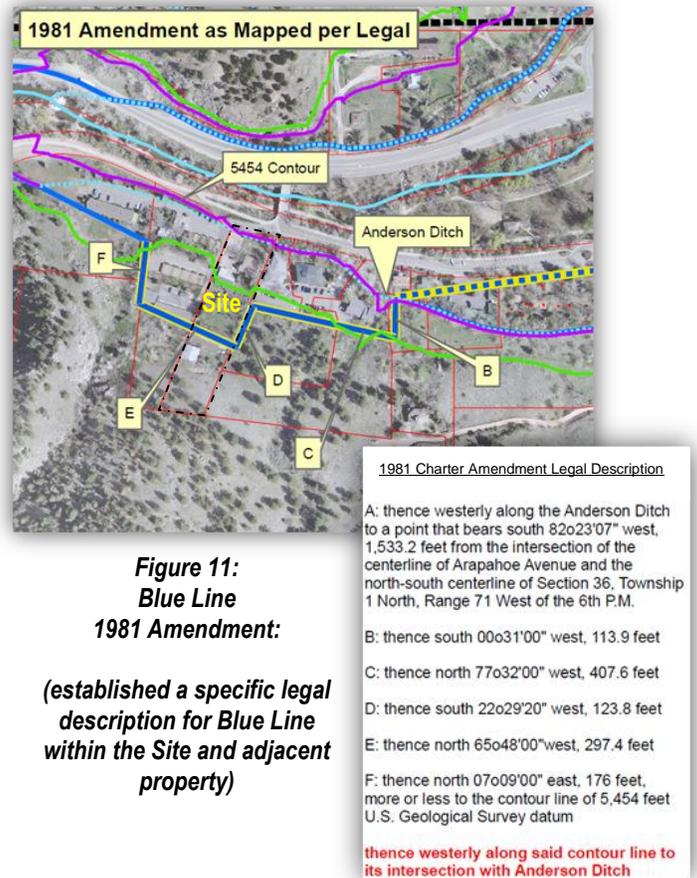


Figure 11:  
Blue Line

1981 Amendment:

(established a specific legal description for Blue Line within the Site and adjacent property)

The portion of the site that is above the Blue Line is also designated under the Boulder Valley Comprehensive Plan as, "Planning Area III Rural Preservation" shown in Figure 12 and as described on page 27 of the BVCP,

a) The Area III-Rural Preservation Area is that portion of Area III where rural land uses and character will be preserved through existing and new rural land use preservation techniques and no new urban development will be allowed during the planning period. Rural land uses to be preserved to the greatest possible extent include: rural town sites (Eldorado Springs, Marshall and Valmont); existing county rural residential subdivisions (primarily along Eldorado Springs Drive, on Davidson Mesa west of Louisville, adjacent to Gunbarrel, and in proximity to Boulder Reservoir); city and county acquired open space and parkland; sensitive environmental areas and hazard areas that are unsuitable for urban development; significant agricultural lands; and lands that are unsuitable for urban development because of a high cost of extending urban services or scattered locations, which are not conducive to maintaining a compact community.

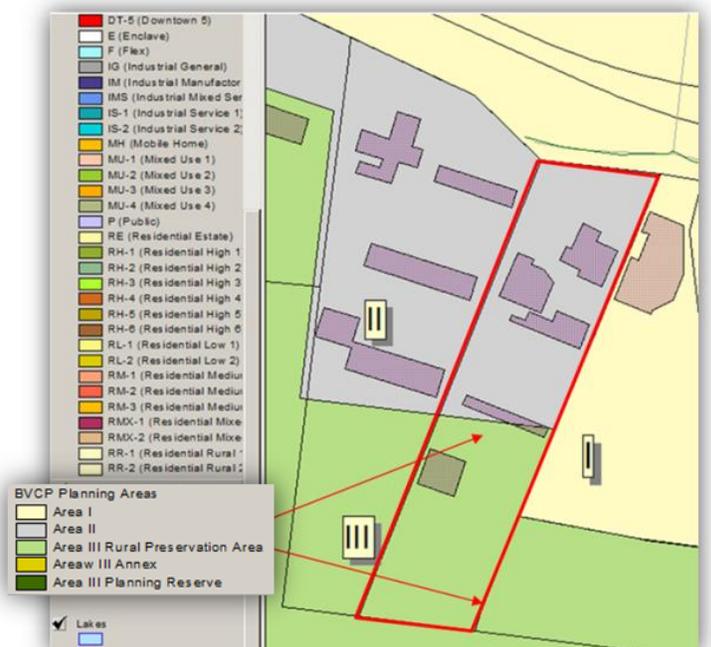
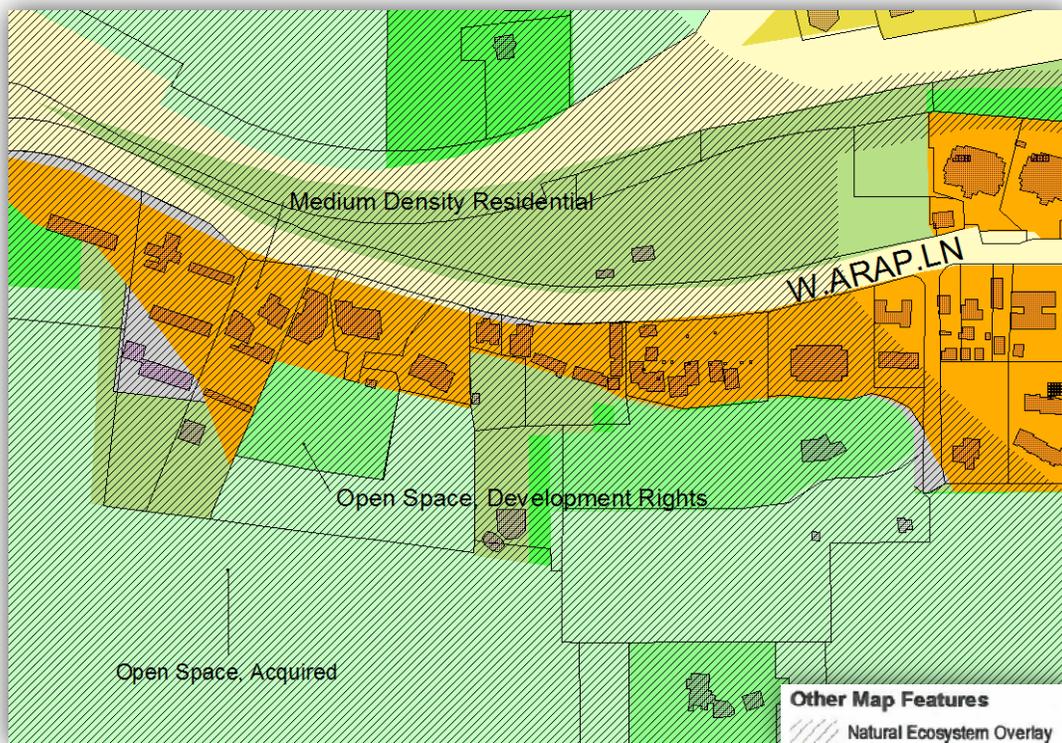


Figure 12: BVCP Planning Areas

Because the intent of the Area III Rural Preserve is to preserve areas such as undevelopable steep slope and the intent of the Blue Line is to limit extension of water utility above the Blue Line, density is not intended for that part of the site. Therefore, density calculations must be limited to only the area below the Blue Line. As shown below, the Boulder Valley Comprehensive Plan (BVCP) land use map (Figure 13) identifies the property along West Arapahoe Avenue that includes the property and that to the east and west, for Medium Density Residential, which is defined as having six to 14 dwelling units per acre.

Also noted as a part of the BVCP for this area of Boulder is that the site is encompassed in an area known as a “Natural Ecosystem Overlay” defined on 68 of the BVCP as follows:

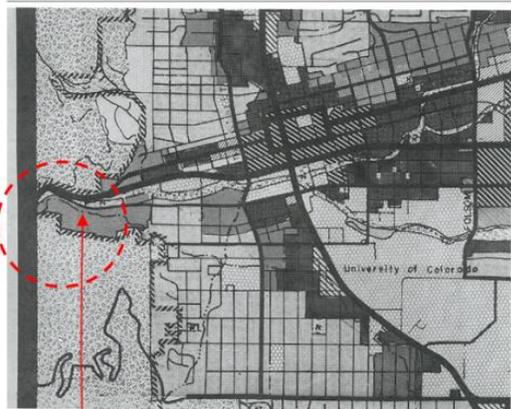
*In order to encourage environmental preservation, a Natural Ecosystem overlay is applied over Comprehensive Plan Land Use Designations throughout the Boulder Valley Planning Area. Natural ecosystems are defined as areas that support native plants and animals or possess important ecological, biological or geological values that represent the rich natural history of the Boulder Valley. The Natural Ecosystems overlay also identifies connections and buffers that are important for sustaining biological diversity and viable habitats for native species, for protecting the ecological health of certain natural systems, and to buffer potential impacts from adjacent land uses. A Natural Ecosystems overlay will not necessarily preclude development or human use of a particular area or supersede any other land use designation but will serve to identify certain 2010 Boulder Valley Comprehensive Plan environmental issues in the area. The overlay will serve to guide the city and the county in decisions about public acquisition, purchase of development rights or conservation easements, promotion of private land conservation practices, density transfers, rezonings, development review, annexations and initial zonings, rezonings, service area boundary changes, and subcommunity and departmental master planning. A description of the criteria used to identify lands suitable for a Natural Ecosystems designation can be found in the environmental resources element of the plan on the web at: [www.bouldervalleycomplan.net](http://www.bouldervalleycomplan.net).*



**Figure 13:  
BVCP Land Use Map also illustrating  
Natural Ecosystem Overlay Areas**

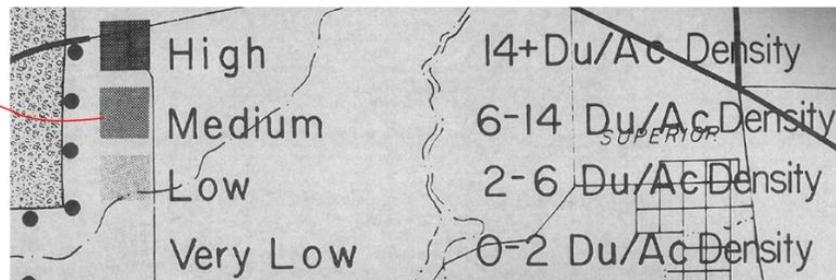
**Key Issue 1. Does Planning Board agree with the map reconciliation changes through annexation?**

During the review of the annexation, it became evident that there are mapping errors on two of the comprehensive plan maps (the Planning Area II to III boundary; and the Land Use Map in comparison to the Blue Line) in that they didn't appear to follow previous mapping. As can be noted from the Land Use Map in Figure 13, there are slight skews between the land use layer colors and the actual ownership boundaries.



	CITY COUNCIL	CITY PLANNING BOARD	BOULDER COUNTY PLANNING COMMISSION	BOULDER BOARD OF COUNTY COMMISSIONERS
APPROVED 1977	JUNE 14	JUNE 23	JULY 13	AUG. 15
AMENDED 1978	MAY 16	APRIL 27	MAY 24	JUNE 12
AMENDED 1979/1979	NOV. 21	OCT. 12	MAY 23	JUNE 18
AMENDED 1980	MAY 6	APRIL 3	MAY 28	MAY 29 JULY 24
AMENDED 1980/1981	JAN. 2	DEC. 11	JAN. 28/APRIL 22	FEB. 23/MAY 18
AMENDED 1982	AUG. 17	JULY 22	JUNE 9/SEPT. 22	JULY 13/NOV 15
AMENDED 1983	JULY 19	JUNE 9	AUG. 24	OCT. 4

Similarly, staff's review of an earlier version of the BVCP Land Use Map from 1984 illustrated alignment of the Blue Line (shown in Figure 14 as a cross-hatch pattern) with the boundary of the Medium Density Residential land use.



Staff concluded that these errors, noted on the site, were likely due to transfer from hard copy maps (that utilized manual graphic techniques such as "Zipatone" plastic film) from earlier days of mapping to the current digitized maps.

**Figure 14:**  
**1984 BVCP Land Use Map**

What is evident is that there is a mis-alignment between the adopted Blue Line and the Medium Density Land Use and in turn, the Planning Area II boundary. The mapping provided on the following page in Figures 15a through 15d illustrate the existing errors with proposed reconciliation. Figure 15a illustrates the existing Planning Area II/III boundary; Figure 15b illustrates the adopted Blue Line through the site; Figure 15c illustrates the misalignment and discrepancy between the Planning Area II/III boundary and the Blue Line and Figure 15d illustrates the recommended reconciliation of the mapping for these lines. In essence, the Blue Line establishes the definitive line above which no development is assumed from this it would be consistent for the Planning Area III boundary to align with the Blue Line rather than slightly skewed to it.

Figures 16a through 16c provide the existing Land Use Map error with a proposed reconciliation of that map. Figure 16a illustrates the current Land Use Map that has the "Medium Density" Land Use shown to "cut" diagonally across the property Figure 16b illustrates how the existing Medium Density Land Use does not coincide with either the Blue Line or Planning Area boundaries; and Figure 16c provides a reconciliation of the Land Use Map.

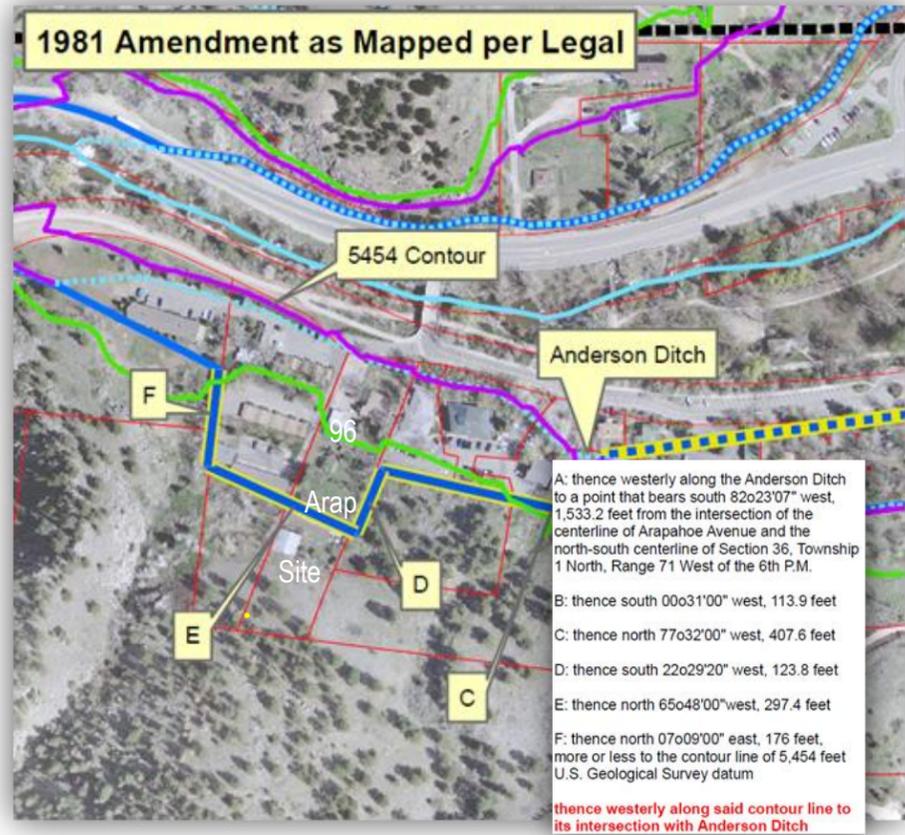
The correction of the Area II/Area III boundary and the Land Use Map designation boundary on the property can be approved as part of the annexation process. Procedurally, the BVCP addresses "Errors" on page 65 as follows,

*"If a discrepancy is found to exist within the Boulder Valley Comprehensive Plan that is clearly a drafting error or a clerical mistake, either the city or the county, after a referral request to the other agency, may correct such error."*

The correction of these errors would require approval of by the Planning Board and City Council. Staff referred the error and the above analysis to Boulder County who indicated support for the proposed mapping error corrections. Note that it is evident that the non-annexed property to the west, at 90 Arapahoe Avenue, also has mapping errors. Reconciliation of those mapping errors will be considered at the time of first and second reading of that annexation ordinance.



**Figure 15a**  
BVCP Planning Areas

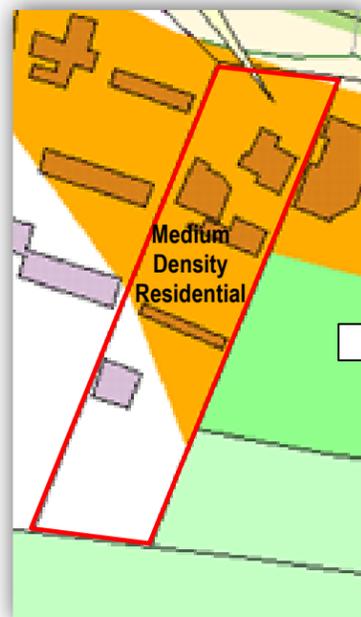


**Figure 15b:**  
Blue Line: 1981 Charter Amendment Legal Description



**Figure 15c:**  
Combined Map  
Illustrating Inconsistency

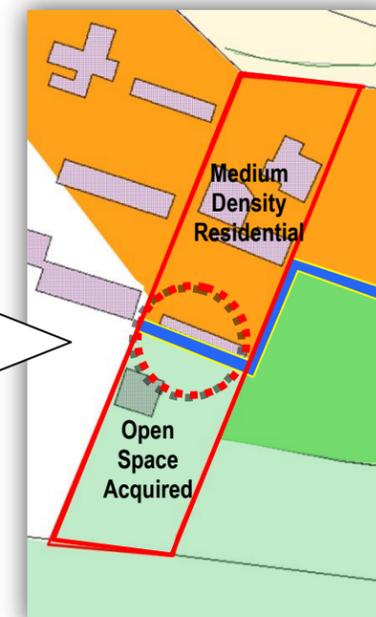
**Figure 15d:**  
Reconciled Map through Annexation  
Planning Area II/III Boundary Consistent with Blue Line



**Figure 16a:**  
Existing BVCP Land Use Map



**Figure 16b:**  
Combined Map (BVCP Land Use/Blue Line/ Planning Area)  
Illustrating Inconsistency



**Figure 16c:**  
Reconciled BVCP Land Use Map  
Through Annexation

## Key Issue 2. Is the proposed Annexation consistent with the BVCP Planning Area, Land Use & Policies?

Staff found that the site is eligible for annexation in that a majority of the site is located within Planning Area II, defined in the BVCP on page 13 as follows, “Area II is the area now under county jurisdiction, where annexation to the city can be considered consistent with policies 1.16 Adapting to Limits on Physical Expansion, 1.18 Growth Requirements, & 1.24 Annexation.” For reference, the policy analysis for annexation is provided in [Attachment A](#). Staff recommends that the correction of the BVCP errors presented in Key Issue 1 occur coincident with the proposed annexation. A separate motion is required by both the Planning Board and City Council to approve the correction of these errors.

**BVCP Land Use.** The Boulder Valley Comprehensive Plan (BVCP) land use designation for the property is Medium Density Residential, which is defined as having six to 14 dwelling units per acre. The requested initial zoning of RM-3 permits up to 12.4 dwelling units per acre. The RM-3 zoning establishes density based on a minimum lot area per dwelling unit of 3,500 square feet. With no density available on the south upper reaches of the site above the Blue Line, the developable area is just 37,818 square feet (or about just under an acre) permitting the nine units the applicant intends to develop on the site and well within the Medium Density Residential land use designation.

The maps in Figures 17a, 17b, and 17c provide a comparison of the regulatory framework for the site: 17a is the BVCP land use map; 17b are nearby annexations over time, and 17c the city’s zoning map for properties that have been annexed. As can be noted, the BVCP identifies a portion of the site for Medium Density Residential and the adjacent property has the same designation along with “Open Space Development Rights.” The properties to the north and east were annexed in the 1980s with an initial zoning of RM-3 while the property located at 210 Arapahoe Ave. that was constructed at a medium density, was annexed in the 2000s with an RM-2 zoning designation. The applicant is proposing RM-3 consistent both with the BVCP Land Use Designation as well as adjacent property to the east. The proposed RM-3 zoning intent is defined in the Land Use Code section 9-5-2, B.R.C. 1981 as follows,

*“Medium density residential areas primarily used for small-lot residential development, including without limitation, duplexes, triplexes, or townhouses, where each unit generally has direct access at ground level.*”

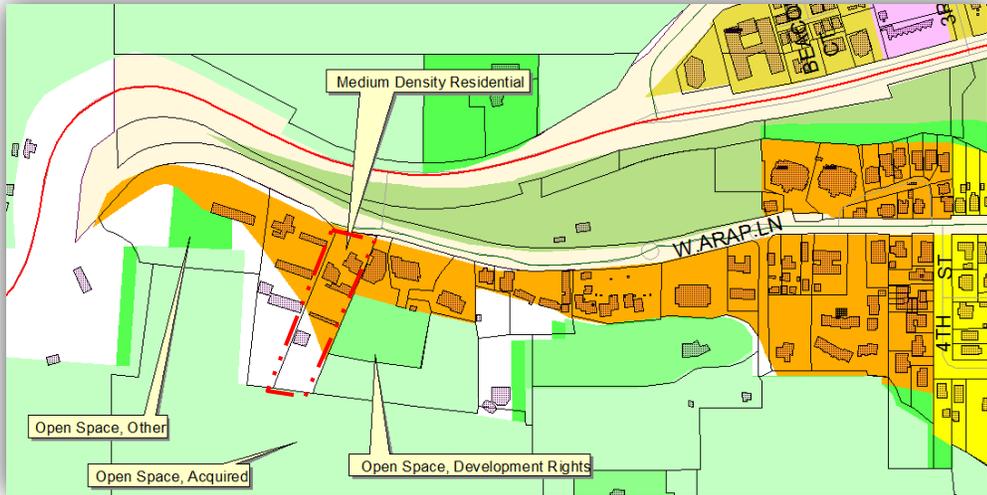
Upon annexation, the applicant indicated that the intent is to construct nine residential units which would meet the intent of the Medium Density Residential Land Use designation, along with the definition of RM-3 zoning.

**Consistency with BVCP Policies for Annexation.** The annexation of property into the City of Boulder with an initial zoning of residential would be consistent with two specific policies: 1.19 Jobs:Housing Balance and 2.03 Compact Land Use Pattern. However, the annexation as proposed by the applicant was not found to be consistent with the BVCP Annexation Policy related to the provision of community benefit (BVCP Policy 1.24d) as follows:

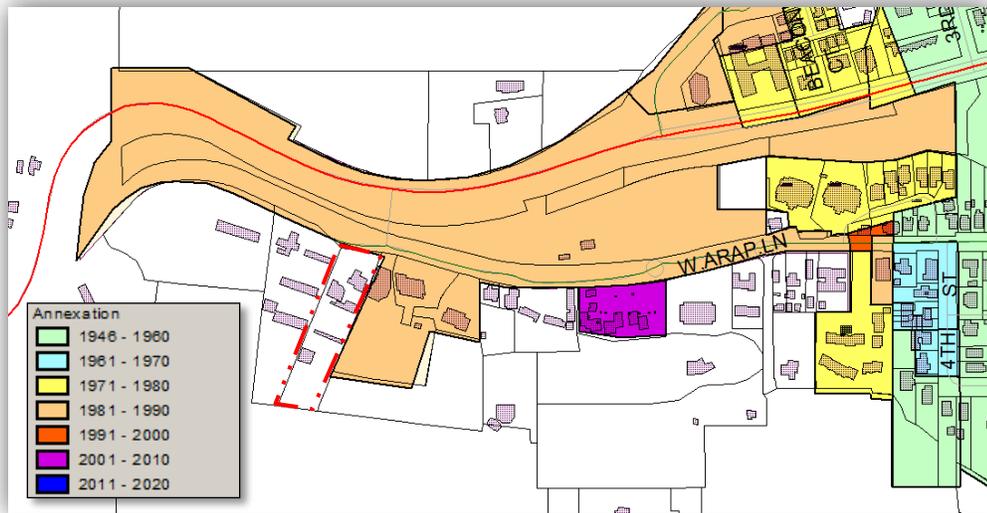
***“In order to reduce the negative impacts of new development in the Boulder Valley, the city will annex Area II land with significant development or redevelopment potential only if the annexation provides a special opportunity or benefit to the city. For annexation considerations, emphasis will be 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.”***

**Figures 17, 17b and 17c**  
**Context of BVCP Land Use, Annexations over Time and Zoning**

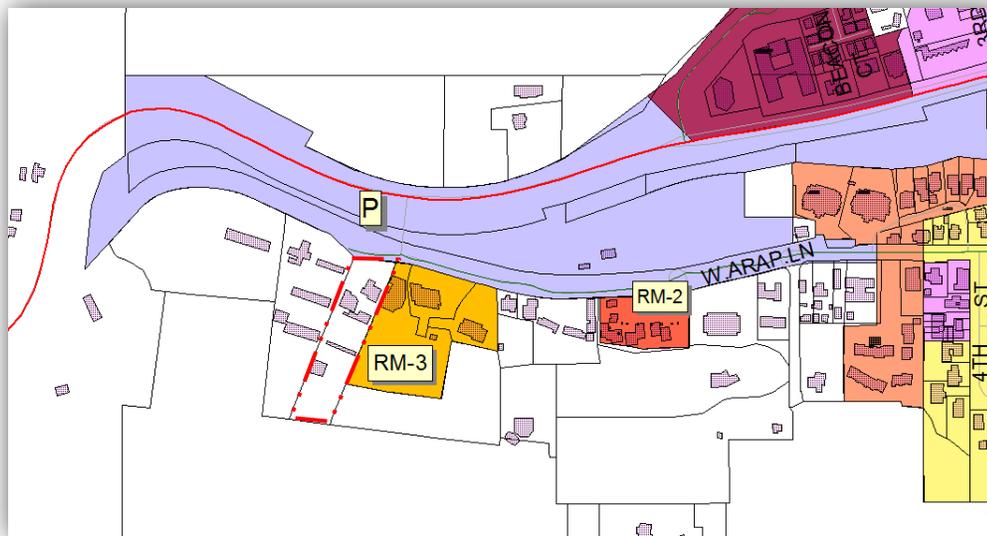
**Figure 17a**  
**Land Use**



**Figure 17b**  
**Annexations**



**Figure 17c**  
**Zoning**



The applicant's written statement provided in [Attachment C](#) indicates an alternative means to preserve the historic buildings on the site. Rather than seeking individual landmark status for both the existing barn and the existing house as previously proposed, the applicant has indicated preservation would be through covenants and application for demolition. Further, there is no proposal by the applicant to landmark the Anderson Ditch headwall or the original stone retaining walls on the property, as was discussed at Concept Plan. The applicant indicated the benefit of preserving the existing long lived oak on the property. Further, the applicant is proposing 42.9 percent of the proposed residential units (or three of the nine units) would be provided as permanently affordable rather than 50 percent that staff recommends. The applicant proposes that the area of the site above the Blue Line (and within Planning Area III Rural Preserve) would be a Scenic Easement, with the flat (terraced) portion of that area used by the residents as an open space amenity. It is staff's recommendation that the area above the Blue Line be dedicated in fee to the City of Boulder's Open Space and Mountain Parks consistent with the property immediately adjacent to the east, as further discussed in Key Issue 2.

Comments from the Concept Plan review from both Planning Board and City Council included recommendations that the applicant look to a greater number of permanently affordable units on the site and that the market rate residential units be smaller than was proposed at Concept Plan. For this reason, staff recommends a size restriction for market rate units with the building footprint not exceeding 1,200 square feet including the garage space. Net zero energy efficiency was also discussed at Concept Plan review for which a condition of annexation was added by staff in the draft agreement.

It is important to note that the terms of annexation are negotiated and the outcomes vary on a case-by-case basis. While staff and the applicant have discussed the terms of the community benefit over the course of a number of months, the applicant has requested the application proposal be heard under the terms that they are currently proposing (refer to [Attachment C, Written Statement](#)). Because many of the terms put forth by the applicant varied significantly from previous terms from Concept Plan, the city's response was to forward an annexation agreement with terms that could meet BVCP Policy 1.24 (cited above under Key Issue 2). In an email sent to staff dated April 25, 2016, the applicant confirmed that they received the draft Annexation Agreement and states, "we decline to sign it in its current form." The Draft Annexation Agreement includes, but is not limited to, the following terms:

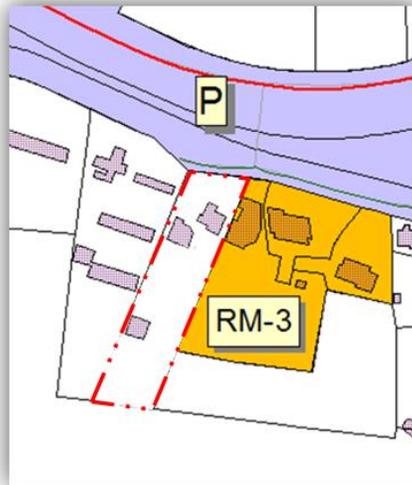
- *Site Review application prior to building permit or subdivision*
- *Pay Plant Investment Fees for existing development*
- *Conveyance to the City of Anderson Ditch shares*
- *Fee simple dedication of area above Blue Line to the city's OSMP for preservation and management*
- *For that portion of the property that currently lies within Planning Area III, Rural Preservation of the Boulder Valley Comprehensive Plan, no development shall occur within that land area and that same land area shall not be considered to determine the development potential of the Property under Title 9, "Land Use Code," B.R.C. 1981.*
- *Net zero energy efficiency for the development*
- *Application for landmarking of the existing house, barn, retaining walls and Anderson Ditch head gate and walls.*
- *Market unit size restriction, no unit greater than 2,200 sq. ft. of floor area including in attached garages.*
- *Affordable housing requirement:*
  - *50% of all units shall be permanently affordable (PAs)*
  - *50% of all permanently affordable units (PAs) shall be affordable to middle income households (households earning the Federal Housing and Urban Development ("HUD") low income limit plus twenty-five percent and qualifying household incomes shall be set at HUD plus thirty-five percent.*
  - *50% of all permanently affordable units (Pas) shall be affordable to low/moderate income households; currently low moderate prices are set at the federal Housing and Urban Development (HUD) low income limit for Boulder and qualifying household incomes are set at HUD plus ten percent (HUD + 10%)*
  - *All affordable units shall have no fewer than two bedrooms*
  - *Each affordable unit shall include a useable yard or deck no smaller than 200 square feet*
  - *The floor area of each two bedroom unit excluding garages shall be 1,200 square feet plus/minus fifty percent*
  - *The permanently affordable units shall have parking accommodations and garages of similar size and design as the market units on the property.*
  - *PAs constructed concurrent with market and integrated throughout.*

**Key Issue 2. Is the proposed annexation consistent with the initial zoning of RM-3 zoning?**

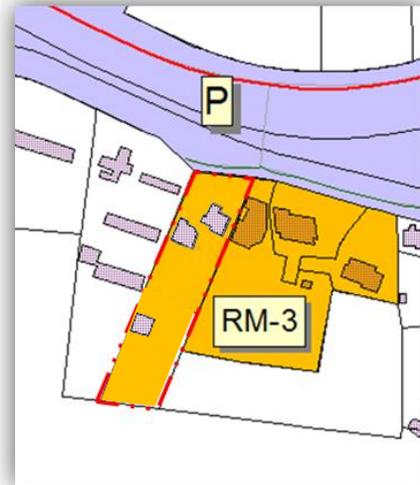
The proposed initial zoning of Residential Medium – 3 (RM-3) is considered consistent with the BVCP Land Use Designation of Medium Density Residential and with the limit of urbanization as defined by the Blue Line. This relationship can be seen below in Figure 18a through 18c. The RM-3 zoning permits up to 12.4 dwelling units per acre. There's also a minimum lot area per dwelling unit of 3,500 square feet. Because the upper reaches of the site are above the Blue Line and within Planning Area III Rural Preserve that area of the site has to be deducted from the overall developable area. In addition, those areas also coincide with very steep, undevelopable slopes. As a result, the net developable area on the site, from which density can be calculated is 37,818 square feet (or about just under an acre). The applicant has indicated in the written statement the intent to pursue nine units. This would be consistent with RM-3 zoning, and the adjacent existing medium density land use and RM-3 zoning to the east. There is a requirement within the annexation agreement that the density of the property be calculated only based upon the area below the Blue Line.



**Figure 18a**  
BVCP Land Use  
and Blue Line  
Location



**Figure 18b**  
Existing Zoning



**Figure 18c**  
PROPOSED Zoning

**Consistency of the Initial Zoning with the BVCP Goals/Policies.** Per the Land Use Code section 9,-2-17 “Zoning of Annexed Land,” B.R.C. 1981, initial zoning “shall be consistent with the goals and land use designations of the Boulder Valley Comprehensive Plan.” The following is a consistency analysis with the planned initial zoning of RM-3 to several specific BVCP policies:

**2.03 Compact Development Pattern**

*The city and county will, by implementing the Boulder Valley Comprehensive Plan, 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 in order to prevent urban sprawl and create a compact community.*

The initial zoning of RM-3 would be consistent with the Medium Density Residential Land use and with these designations the city anticipates urban development as part of the compact development pattern for this part of the city.

**2.04 Open Space Preservation**

*The city and county will permanently preserve lands with open space values by purchasing or accepting donations of fee simple interests, conservation easements or development rights and other measures as appropriate and financially feasible. Open space values include use of land for urban shaping and preservation of natural areas, environmental and cultural*

*resources, critical ecosystems, water resources, agricultural land, scenic vistas and land for passive recreational use.*

The initial zoning of RM-3 is planned only within the area of the property that is below the Blue Line and within Planning Area III. Through the terms of annexation as proposed by the city, the area above the Blue Line and Planning Area III- Rural Preserve would meet this policy by ensuring preservation of that land in perpetuity. However, the applicant has not agreed to dedicate land above the Blue Line in fee.

### **2.16 Mixed Use and Higher Density Development**

*The city will encourage well-designed mixed use and higher density development that incorporates a substantial amount of affordable housing in appropriate locations, including in some commercial centers and industrial areas and in proximity to multimodal corridors and transit centers.*

The RM-3 zoning is a comparatively higher density zoning. While this initial zoning is consistent with the BVCP land use where density of up to 14 dwelling units per acre are anticipated; on a property within ¼ to ½ mile walking distance of several bus transit lines (including: the N, the Climb, and the 205), there is not a “substantial amount of affordable housing” planned as a part of the terms of annexation by the applicant.

### **2.33 Environmentally Sensitive Urban Design**

*For capital improvements and private development, the city and county will strive to ensure that buildings, streets, utilities and other infrastructure are located and designed to protect natural systems, minimize energy use, urban heat island effects and air and water pollution, and support clean energy generation.*

Located outside of the area designated as Planning Area III Rural Preservation, the area of the site planned for RM-3 zoning will ensure preservation of rural land use and a defined line for urban development. This will further ensure that the buildings, streets, utilities and other infrastructure are located on the site to protect natural systems, as the policy requires. According to page 27 of the BVCP, the intent of the Planning Area III Rural Preservation designation is “*where rural land uses and character will be preserved through existing and new rural land use preservation techniques and no new urban development will be allowed during the planning period.*” However, this policy consistency applies only to the initial zoning of RM-3 in the planned location on the site, as the applicant indicated preference to instead utilize a portion of the area above the Blue Line for private open space use for the residents of the property.

### **3.03 Natural Ecosystems**

*The city and county will protect and restore significant native ecosystems on public and private lands through land use planning, development review, conservation easements, acquisition and public land management practices. The protection and enhancement of biological diversity and habitat for federal endangered and threatened species and state, county and local species of concern will be emphasized. Degraded habitat may be restored and selected extirpated species may be reintroduced as a means of enhancing native flora and fauna in the Boulder Valley.*

*And*

### **3.04 Ecosystem Connections and Buffers**

*The city and county recognize the importance of preserving large areas of unfragmented habitat in supporting the biodiversity of its natural lands and viable habitat for native species. The city and county will work together to preserve, enhance, restore and maintain undeveloped lands critical for providing ecosystem connections and buffers for joining significant ecosystems.*

The initial zoning of RM-3 for the area of the site as identified in Figure 17c, below the Blue Line and outside of the area identified as Area III Rural Preservation, would be consistent with these policies *only* if the annexation terms to dedicate in fee the land above the Blue Line were agreed to by the applicant. This will ensure contiguous Open Space lands to ensure ecosystem connectivity.

The site also is encompassed within an area mapped as a “Natural Ecosystem Overlay” as noted on page 68 of the BVCP

*“In order to encourage environmental preservation, a Natural Ecosystem overlay is applied over Comprehensive Plan Land Use Designations throughout the Boulder Valley Planning Area. Natural ecosystems are defined as areas that support native plants and animals or possess important ecological, biological or geological values that represent the rich natural history of the Boulder Valley. The Natural Ecosystems overlay also identifies connections and buffers that are important for sustaining biological diversity and viable habitats for native species, for protecting the ecological health of certain natural systems, and to buffer potential impacts from adjacent land uses. A Natural Ecosystems overlay will not necessarily preclude development or human use of a particular area or supersede any other land use designation but will serve to identify certain 2010 Boulder Valley Comprehensive Plan environmental issues in the area. The overlay will serve to guide the city and the county in decisions about public acquisition, purchase of development rights or conservation easements, promotion of private land conservation practices, density transfers, rezonings, development review, annexations and initial zonings, rezonings, service area boundary changes, and subcommunity and departmental master planning. A description of the criteria used to identify lands suitable for a Natural Ecosystems designation can be found in the environmental resources element of the plan on the web at: [www.bouldervalleycompplan.net](http://www.bouldervalleycompplan.net).”*

Given the location of the site within the Natural Ecosystem Overlay, any development would occur below the Blue Line and outside of Planning Area III Rural Preserve. Dedication of land above the Blue Line to OSMP will help to establish opportunity for greater ecosystem connectivity and less fragmentation of habitat.

### **2.31 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 planned RM-3 density will permit a variety of residential densities of up to 12.4 dwelling units per acre. The density that is planned is consistent with this policy however, the terms of the annexation offered by the applicant would not encourage a significant range of types, sizes or prices particularly given the limited scope of affordability offered by the applicant.

### **7.01 Local Solutions to Affordable Housing**

*The city and county will employ local regulations, policies, and programs to meet the housing needs of their low and moderate income households and workforce. Appropriate federal, state and local programs and resources will be used locally and in collaboration with other jurisdictions. The city recognizes that affordable housing provides a significant community benefit and will continually monitor and evaluate its policies, programs and regulations to further the city's affordable housing goals.*

And

### **7.02 Permanently Affordable Housing**

*The city will increase the proportion of permanently affordable housing units to an overall goal of at least ten percent of the total existing housing stock through regulations, financial subsidies and other means. City resources will also be directed toward maintaining existing permanently affordable housing units and securing replacements for lost low and very low income units.*

While the planned RM-3 density permits up to 12.4 dwelling units per acre, the only means for establishing permanently affordable housing on the site is through annexation. While the applicant is proposing 42.9 percent permanently affordable housing as a community benefit for the site (equivalent to three of the planned nine units on the site per the applicant's written statement), the policy and practice for the past several years has been that 40 to 60 percent of the new residential development would be permanently affordable to low and middle income households,

usually split evenly between the two income groups. This percentage is determined based on the other community benefits offered by the applicant at the time of annexation. Because the community benefit that was offered by the applicant beyond the three permanently affordable residential units (along with preservation of the Oak tree and preservation of the historic buildings only through covenants and the demolition permit process, the terms of the annexation would not meet this policy.

**PUBLIC COMMENT AND PROCESS:**

Required public notice was given in the form of written notification mailed to all property owners within 600 feet of the subject site and a sign posted on the property for at least 10 days. All notice requirements of section 9-4-3, B.R.C. 1981 have been met. There were no comments received on the application.

**STAFF RECOMMENDATION:**

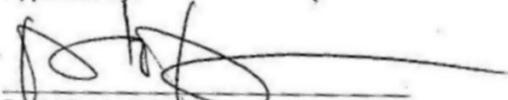
Based on the analysis within this memorandum, staff recommends that Planning Board recommend denial of the annexation and initial zoning. Further, staff recommends that the board only consider annexation when a detailed site development plan (i.e., Site Review application) is submitted in conjunction with annexation; and when the applicant provides a written statement that delineates Community Benefits in alignment with city policies. If the board is to consider future annexation of the property, staff requests that the board provide staff and the applicant with guidance on the conditions of annexation as proposed by staff to the applicant in the Draft Annexation Agreement, [Attachment D](#).

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

*Motion to recommend to City Council denial of the proposed annexation with initial zoning of Residential – Medium 3 (RM-3) pertaining to request No. LUR2014-00068, incorporating this staff memorandum as findings of fact.*

*Motion to approve the proposed corrections to the Planning Area II/II boundary line and the Medium Density Residential Land Use line errors, to ensure the boundary lines coincide with the alignment of the adopted Blue Line in this location.*

Approved By:



David Driskell, Executive Director  
Department of Community Planning and Sustainability

**ATTACHMENT:**

- A: Consistency with Annexation Review Criteria and BVCP Annexation Policies**
- B: Annexation Map**
- C: Applicant's Written Statement**
- D: Draft Annexation Agreement**

**ATTACHMENT A: Review Criteria  
Consistency with State Annexation Law (31-12-101 et seq., C.R.S.) and  
City of Boulder Policy 1.24 for Annexations**

<b>Meets Criteria</b>	<b>Specific Criteria: State Annexation Law</b>
<u>Yes</u>	<p>(1) <b>Minimum Required Contiguity: At least one-sixth of the perimeter of the area to be annexed shall be contiguous to the city limits.</b> <i>The property has 1/6<sup>th</sup> contiguity to the city limits on the north and east perimeter of the site.</i></p>
<u>Yes</u>	<p>(2) <b>Annexation by Petition: A petition must be presented by more than half of the landowners owning more than fifty percent of the area to be annexed. For enclaves and municipally owned property, the City may take the initiative without petition.</b> <i>A petition was provided and signed by 100% of the landowners owning the area to be annexed.</i></p>
<u>n/a</u>	<p>(3) <b>Annexation by Election: Under certain conditions, an election may be held by the property owners and registered electors within the area to be annexed.</b> <i>Not applicable</i></p>

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<b>Meets Criteria</b>	<b>Specific Criteria:</b>
<u>No</u>	<p><b><u>BVCP Policy 1.16 Adapting to Limits on Physical Expansion</u></b> 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.</p> <p><i>Given the limited expansion potential of the city, and based on comments made in the Concept Plan review hearings, efforts must be made to improve the quality of life within the defined physical boundaries through provision of a greater percentage of permanently affordable housing on the site. Similarly, the preservation of the area above the Blue Line would be best achieved through dedication in fee of the property to Open Space and Mountain Parks (OSMP) to achieve greater habitat preservation and consistent with the area above the Blue Line on the adjacent property located directly east of the site. With a number of historic resources on the property (two buildings; the historic Anderson Ditch; and existing rock retaining walls) assurances of preservation of these resources must be made through application for landmarks status. Given that the applicant's proposal to annex with three units of affordable housing, without assurances of preservation of historic resources through the landmarks preservation process, and no offer for dedication of land above the Blue Line, the annexation proposal does not meet this BVCP annexation policy.</i></p>
<u>No</u>	<p><b><u>BVCP Policy 1.18 Growth Requirements</u></b> The overall effect of urban growth must add significant value to the community improving quality of life. The city will require development and redevelopment as a whole to provide significant community benefits, achieve sustainability goals for urban form, and to maintain or improve environmental quality as a precondition for further housing and community growth.</p> <p><i>To be consistent with this policy, the annexation must provide "significant community benefits." In this case, the applicant is providing less than fifty percent permanently affordable units, is not proposing to landmark the historic resources on the site, and is not proposing dedication of the land above the Blue Line to Open Space and Mountain Parks, the annexation does not meet this BVCP policy.</i></p>
<u>No</u>	<p><b><u>BVCP Policy 1.19 Jobs:Housing Balance</u></b> 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 industrial uses to residential uses in appropriate locations, improving regional transportation alternatives and mitigating the impacts of traffic congestion.</p> <p><i>The proposed initial zoning of Residential – Medium 3 that could yield nine residential units would provide new housing close to transit and downtown Boulder. However, the lack of a higher percentage of permanently affordable residential units on the site would likely not contribute to "work force" housing that is part of the Jobs:Housing imbalance.</i></p>

**Meets Criteria**

**Specific Criteria: City of Boulder Policy 1.24 for Annexations**

Yes

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

*The site will be required to pay appropriate fees and install utility line infrastructure commensurate with annexation.*

**b) The city will actively pursue annexation of county enclaves, Area II properties along the western boundary, and other fully 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.**

*The parcel would be considered of high priority to annex since it is an Area II property along the western boundary.*

N/A

**c) 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 property is not considered substantially developed because the additional development potential under an initial zoning of RM-3 through annexation.*

No

**d) 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 considerations, 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 applicant's written statement does not indicate intent to seek individual landmark status for both the existing barn and the existing house, the Anderson Ditch headwall or the original stone retaining walls on the property. Rather, the applicant indicated that the historic buildings would be preserved through covenants and the demolition review process. Further, the applicant indicated that no more than three units would be provided as permanently affordable; and the area above the Blue Line will not be offered in fee, deeded to City's Open Space and Mountain Parks, as desired by the city, but rather would be offered as a Scenic Easement. In addition, the applicant requests that a portion of the Scenic Easement area above the Blue Line be used by the residents as an open space amenity. The applicant indicated interest in preserving the long lived oak. Therefore, staff cannot make findings that the applicant meets this Annexation Policy.*

N/A

**e) Annexation of substantially developed properties that allows 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. The property is not considered to be substantially developed as the initial zoning would permit seven more residential units than are permitted today.*

No

**f) 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 majority of the property is within Area II of the Boulder Valley Planning Area; the area within Planning Area III Rural Preservation within the property can be annexed if it is land dedicated in fee as acquired open space. However, that is not what the applicant is currently offering as a term for community benefit.

**g) 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.**

*Not Applicable, the property is not publicly owned.*

**h) 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, the city, the 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.*

**Meets Criteria**

**Specific Criteria: City of Boulder Land Use Code section 9-2-17 policy for zoning of annexed land**

Yes

**(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.**

*The planned initial zoning of RM-3 (Residential Medium 3) is consistent with the Medium Density Residential land use designation of the Boulder Valley Comprehensive Plan.*

Yes

**(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.**

*A public notice was sent per section 9-4-3, B.R.C. 1981 indicating proposed zoning of the land.*

Yes

**(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.**

*Appropriate sequencing will occur at the time the ordinance is prepared.*

Yes

**(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.**

*Relevant upon annexation.*

Yes

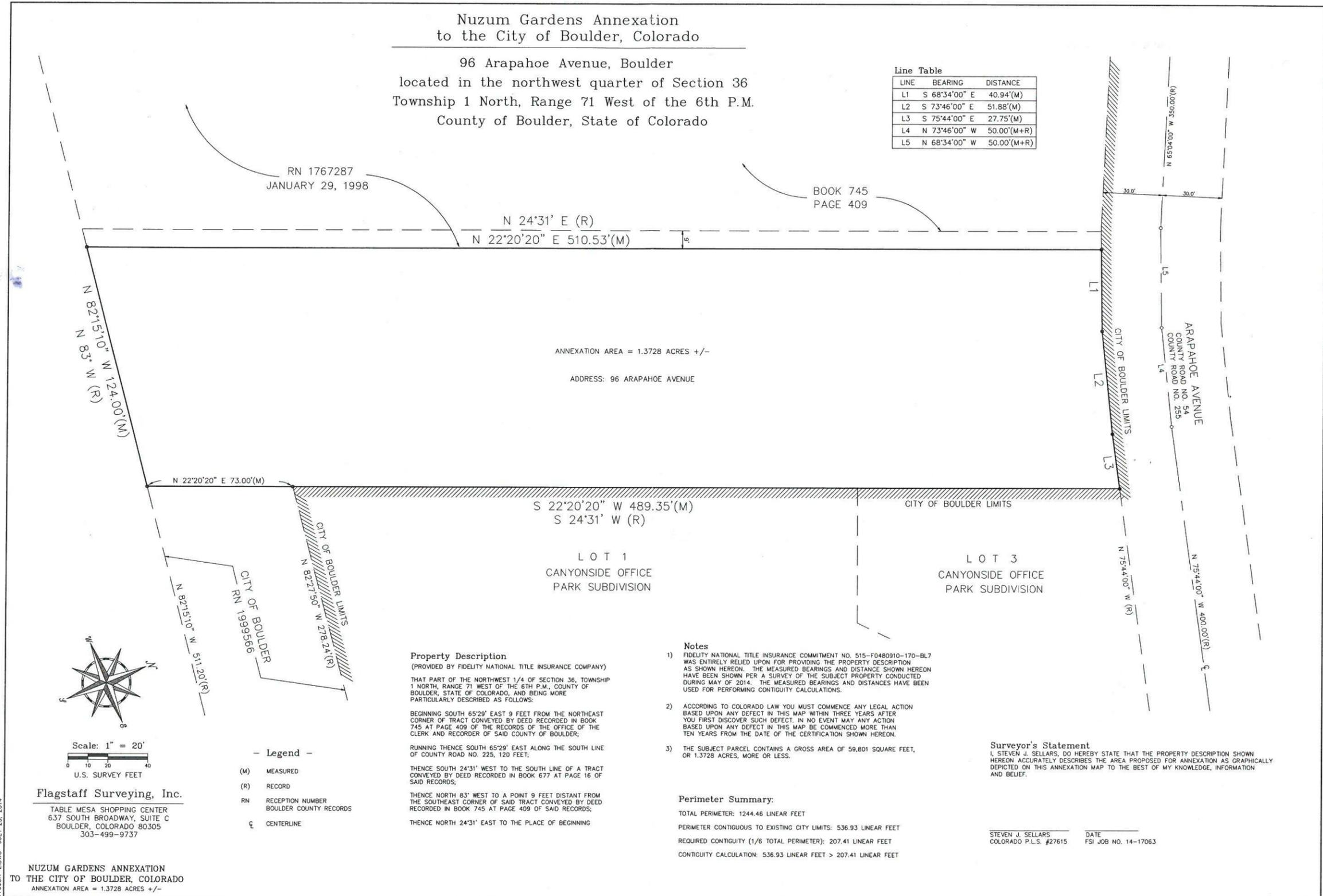
**(e) Nonconformance: A lot annexed and zoned that does not meet the minimum lot area or open space per dwelling unit requirements of [section 9-7-1](#), "Schedule of Form and Bulk Standards," B.R.C. 1981, may be used notwithstanding such requirements in accordance with this code or any ordinance of the city, if such lot was a buildable lot under Boulder County jurisdiction prior to annexation.**

*The lot to be annexed will not be considered non-conforming upon annexation and initial zoning.*

Yes

**(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 3.10, 3.15, and 3.16 of the Boulder Valley Comprehensive Plan.**

*Approximately 0.1 acres of land on the property is contained in slopes that exceed 15 percent. The remaining lower area of the site is approximately 12 percent with some areas terraced to be somewhat flatter.*



# **NUZUM GARDENS**

Application for Annexation / Initial Zoning

96 Arapahoe Avenue  
12/07/2015



# Application for Annexation / Initial Zoning 96 Arapahoe Avenue 12/07/2015

Written Statement for Resubmittal of Annexation / Initial Zoning  
Date: 12/07/2015

## SUMMARY

The Landowner is petitioning the City of Boulder to annex 96 Arapahoe and to grant vested rights in the form of RM-3 Zoning.

Once the terms of the annexation agreement are finalized, it is the intent of the Landowner to redevelop the property with residential dwelling units.

Per the Boulder Revised Code (BRC), Section 9-2-10, the Annexation request is in compliance with State Statutes<sup>1</sup> and the Boulder Valley Comprehensive Plan (BVCP)<sup>2</sup>.

- The property sits on the western boundary of the City and has been designated Area II, which is a property that the BVCP has identified as one that it will actively pursue for annexation<sup>3</sup>.
- Costs to the City to provide services to the property are nominal, as the property is currently served by City water and sewer, roadway and bike paths currently border the property.
- The Landowner believes that the community benefits outlined here-in are commensurate with the impacts that future residential redevelopment would bring<sup>4</sup>.
- Per the BVCP<sup>5</sup>, "Area II is anticipated to become part of the city within the planning period."

## PROPERTY DESCRIPTION

The existing Property is 59,801 sf (1.37 acres) and contains a residential duplex, a barn (once a retail plant nursery store) and a large equipment shed. The previous Use was a commercial nursery and residential property, and the property has been developed to a point approximately 80' above the Blue Line.

The site is approximately 120' wide and 500' long and is oriented up the north slope of a hill at the entrance of Boulder Canyon. The bottom 2/3 of the Property has an average slope of 12% and consists of a series of stone terraces. The top 1/3 of the Property is much steeper and is effectively separated

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<sup>1</sup> Meets requirements of Colorado Revised State Statute, Section 31-12-101

<sup>2</sup> 2010 BVCP, Policy 1.24 Annexation

<sup>3</sup> 2010 BVCP, Policy 1.24 Annexation (b) – "The city will actively pursue annexation of county enclaves, Area II properties along the western boundary, and other fully developed Area II properties."

<sup>4</sup> As required per BVCP, Policy 1.25 Annexation (e)

<sup>5</sup> 2010 BVCP, Policy 1.24 Annexation (g)

from the lower portion of the site by a cut in the hillside. Boulder Open Space borders 15% of the property on the south and south-east.

The property occupies a unique location nestled at the base of the foothills and within walking distance to both downtown and some of Boulder's most popular parks, hiking trails, rock climbing and water sports.

### **COMMUNITY BENEFIT**

Per BVCP, Policy 1.24(e) – *“Annexation of substantially developed properties that allows for some additional residential units or commercial square footage will be required to demonstrate community benefit commensurate with their impacts.” ....*

Per BVCP, Policy 1.24(d) – *“For annexation considerations, 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, environmental preservation, or other amenities determined by the city to be a special opportunity or benefit.”*

The terms of the Annexation Agreement would include the following community benefit (refer to Appendix A for more detail):

**AFFORDABLE HOUSING** – Any future residential development that would add more dwelling units to the property would include a permanently affordable housing component. This component would be 42.9% of the new dwelling units added to the property. The Affordable units will be constructed concurrent with the Market rate units, be located roughly in the middle of the redevelopment and would be an average of 1,150sf comprised of the following minimum requirements:

Affordable 1 – 2-bed/2-bath, attached duplex (1,015 sf +/-)

Affordable 2 – 2-bed/2-bath, attached duplex (1,015 sf +/-)

Affordable 3 – 3-bed/2 bath, 1-car garage and bike storage, single-family (1,420 sf +/-)

**ENVIRONMENTAL GOALS OF THE CITY** of carbon reduction would be reflected in any future redevelopment by requiring new construction to implement sustainable building strategies above and beyond those required by the City's Green Point program.

In addition, the location on Boulder Creek multi-use path, proximity to downtown and access to public transportation lends itself to the walkable and bike friendly transportation goals of the City. New residential on this side of town would provide housing that wouldn't overlap the predominant rush hour traffic patterns.

**PRESERVATION OF THE EXISTING HOUSE AND BARN.** Landmarks Staff has identified two structures as being desirable for preservation. The historical integrity of the house and barn would be protected by covenants and by City requirements that require review demo proposed for structures over 50 years old.

In addition, Anderson Ditch is open for most of its length through the property, and it is agreed that the ditch will remain open and its historic character maintained where visible.

**PRESERVATION OF THE OAK.** The existing oak identified by Staff would be preserved and any future redevelopment of the property would require that a certified arborist be involved in order to protect the health of the tree.

**PUBLIC HEALTH AND SAFETY** will be improved by eliminating the use of the old septic tank next to the ditch and tying into the City sewer system.

Any future redevelopment would require remediation of the cut adjacent to the shed through stabilization and retaining strategies, and would require replacement of the existing access bridge over the ditch.

Any future redevelopment would benefit the City through the fees assessed for new dwelling units, which could be applied to other parts of the City's system since there is not the need for the City to extend or enlarge any City services to the property.

**SCENIC EASEMENT** of the upper 14.6% of the property would ensure that its natural state is maintained where it is most visible from Settler's Park. The line of the scenic easement will be defined by the extension of the City of Boulder Open Space property-line located on the south-east end of 96 Arapahoe.

# Appendix A

## Community Benefit

### AFFORDABLE HOUSING

*Any future residential development* that would add more dwelling units to the property would include a permanently affordable housing component. This component would be 42.9% of the new dwelling units added to the property. (2) of the units would be priced for low/moderate income levels and (1) of the units would be priced for middle income. The average size of the units would be 1,150 sf<sup>6</sup>. It is anticipated that the permanently affordable units would conform to the minimum specifications outlined below:

#### AFFORDABLE HOUSING UNITS

Unit #	Apx. Size	Bedrooms	Bathrooms	Building Type	Notes
1	1015 sf	2	2	duplex	Re-purposed Barn structure
2	1015 sf	2	2	duplex	Re-purposed barn structure
3	1,420 sf	3	2	single-family	New construction

All of the units would have views of Settler's Rock and be located in one of the most desirable locations in the City. There are very few new affordable units constructed west of Broadway near downtown, so it is anticipated that the units will be highly desirable.

In discussions with the Inclusionary Housing Program (IHP) Manager, it was indicated that prior Annexations the City required that 40%-60% of new development to be designated as permanently affordable and that the affordable units should be constructed concurrently with the redevelopment of the property. It was indicated that the appropriate percentage of permanently affordable units would be determined when weighed against the other Community Benefits proposed by the project and through consideration of the redevelopment plan. The current version of the redevelopment plan is **dated 12/07/2015**.

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<sup>6</sup> Area does not include garage area

The percentage of affordable housing and the sizes/locations proposed are appropriate for the following reasons:

- 1) The percentage of Affordable units being proposed is consistent with prior annexations that have occurred over the past 15 years. The only annexation that required a higher percentage offered no other community benefits (1000 Rosewood).

**PRIOR ANNEXATIONS (past 15 years)**

Property	Year	Affordable Component Required
Cherryvale Commons	2014	40% of dwelling units constructed shall be Affordable (50/50 Low-Mod/Medium Income).
2156 Tamarack	2013	2x Cash-in-lieu allowed if new dwelling units were to be constructed
2475 Topaz	2012	Existing single-family home was credited as existing dwelling unit. No affordable component required as condition of annexation.
1000 Rosewood	2011	50% of the (18) dwelling units to be Affordable (HUD Low + 10%) Property had no dwelling units prior to development.
3015 Kalmia Ave	2011	42.1% of the (57) dwelling units to be Affordable (24.5% Low/Mod & 17.5% Middle).
201 Arapahoe Park Gables	2005	37.5 % Affordable approved. (5) existing structures (not even dwelling units) credited as existing dwelling units.

- 2) The percentage of Affordable units provided is based on the number of *new* dwelling units proposed. All other annexations have given credit to existing dwelling units and based the permanently affordable housing requirement on only the new dwelling units added to the property. The basis for this comes from the BVCP, which states that...["Annexation of substantially developed properties that allows for some additional residential units or commercial square footage will be required to demonstrate community benefit commensurate with their impacts."](#) As existing development does not trigger an 'impact', the community benefit consideration should be, and historically has been, based on a development.
- 3) It is proposed that the duplex units (Affordable 1 & 2) meet Low/Moderate income levels and the single-family (Affordable 3) meet Medium level income. That would represent a percentage of the total project of 28.6% Low/Mod and 14.3% for Medium income levels, which is a higher percentage than previous annexations have provided<sup>7</sup>.
- 4) The sizes of the permanently affordable units are on the larger side or exceed the areas identified in the Inclusionary Housing pricing chart.
  - a. The 1,015 sf, 2-bedroom duplex units (low/mod) are housed in the relocated and refurbished barn structure. They have dedicated parking spots that are proposed as being open. Bike racks would be provided for residents and guests. There are unobstructed views of Settler's Rock from the upper floor.
  - b. The 1,420 sf, 3-bedroom unit (medium income) has a 1-car garage and room for bike storage, and the architecture will be consistent with the style of the new construction. Views from the main floor extend over the existing home to Settler's Rock.
- 5) The units are located in the middle of the project to address previously voiced concerns from IHP. The proposed layout ensures that the Affordable units are not perceived to be in a less desirable location. In order to make the project viable, the upper lots, which are the higher-value lots need to be dedicated to the Market rate dwelling units. Our preference is to locate

<sup>7</sup> With the exception of 1000 Rosewood

the Affordable 3 unit at the entrance to the property because it would be a more appropriate scale for the entrance of the redevelopment, but as a compromise, the units are located in the middle of the lot, and enjoy exceptional views.

- 6) The barn has been identified by Landmarks Staff as a building that they would like to preserve, and it is sized ideally for (2) 2-bedroom dwelling units. Staff has agreed that the building can shift to the west and still retain largely the same historic relationship to the existing house. The desire to keep the barn in the same general location as it currently sits is why the Affordable duplex is located where it is.
- 7) The 3-bedroom affordable unit will be constructed as an Energy Star Certified Home.
- 8) IHP has previously supported a permanently affordable percentage of 42.9%<sup>8</sup> of new dwelling units in their Land Use Review and Comments dated 12/19/2014. IHP did however request the units be repositioned on the site and that the size/# of bedrooms for the units be modified<sup>9</sup>. The modification suggested by IHP was for a total of (7) bedrooms and an average unit size of 1,150sf. Our current preliminary redevelopment plan (dated 12/07/2015) provides for (7) bedrooms and average unit size of 1,150 sf.

As an alternative to the proposed permanently Affordable housing units, the Landowner would be willing to pay 2x cash-in-lieu for one or more of the required Affordable dwelling units. This would be similar to the annexation agreement for 2156 Tamarack in 2013. A recent article in the Daily Camera indicated that affordable housing developers can leverage \$4-\$6 for every dollar contributed to the program<sup>10</sup>. The City should be able to get more permanently affordable dwelling units out of a cash-in-lieu payment than it would if the affordable housing was constructed on-site.<sup>11</sup> There is nothing in the BVCP that requires affordable housing to be constructed on annexed properties and the allowance for cash-in-lieu has been previously exercised on 2156 Tamarack.

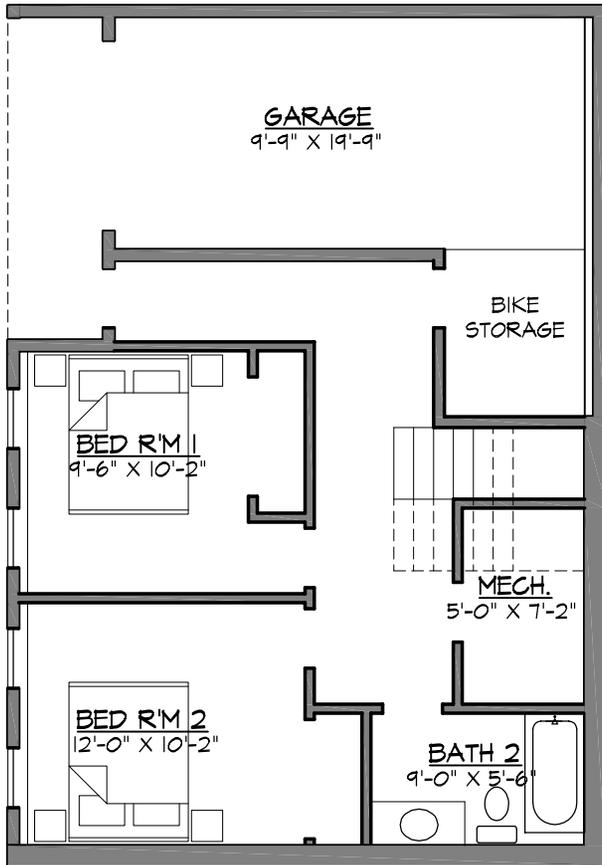
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<sup>8</sup> See Land Use Review and Comments from Case #LUR2014-00100 dated 12/19/2014, pages 2-3 comment #4 from Michelle Allen.

<sup>9</sup> See Land Use Review and Comments from Case #LUR2014-00100 dated 12/19/2014, pages 2-3 comment #5 from Michelle Allen.

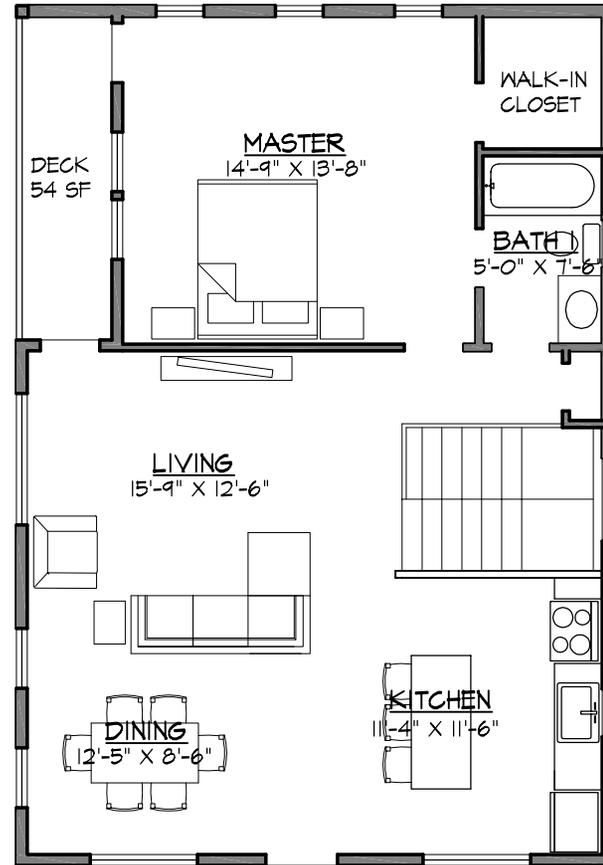
<sup>10</sup> Betsey Martens from Boulder Housing Partners quoted in a Daily Camera article; 'Boulder: Is Affordable Housing Working?', by Erica Meltzer, dated 12/13/14

<sup>11</sup> Assuming cash-in-lieu payment for 1 DU of \$359,942, the leveraged amount for affordable housing off-site would be approximately \$1.8M, or enough for (8) 2-bedroom units



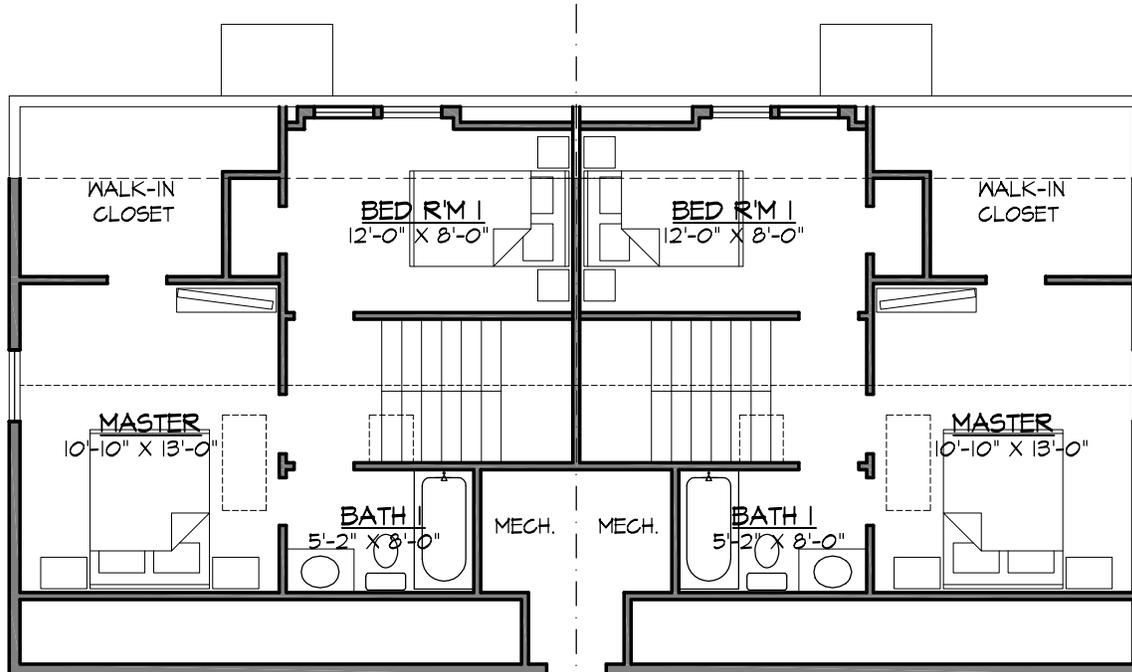
FLOOR AREA: 1,427 SF  
 GARAGE AREA: 261 SF  
 DECK: 54 SF

**B** AFFORDABLE 3 - LOWER FLOOR PLAN  
 1/8" = 1'-0"



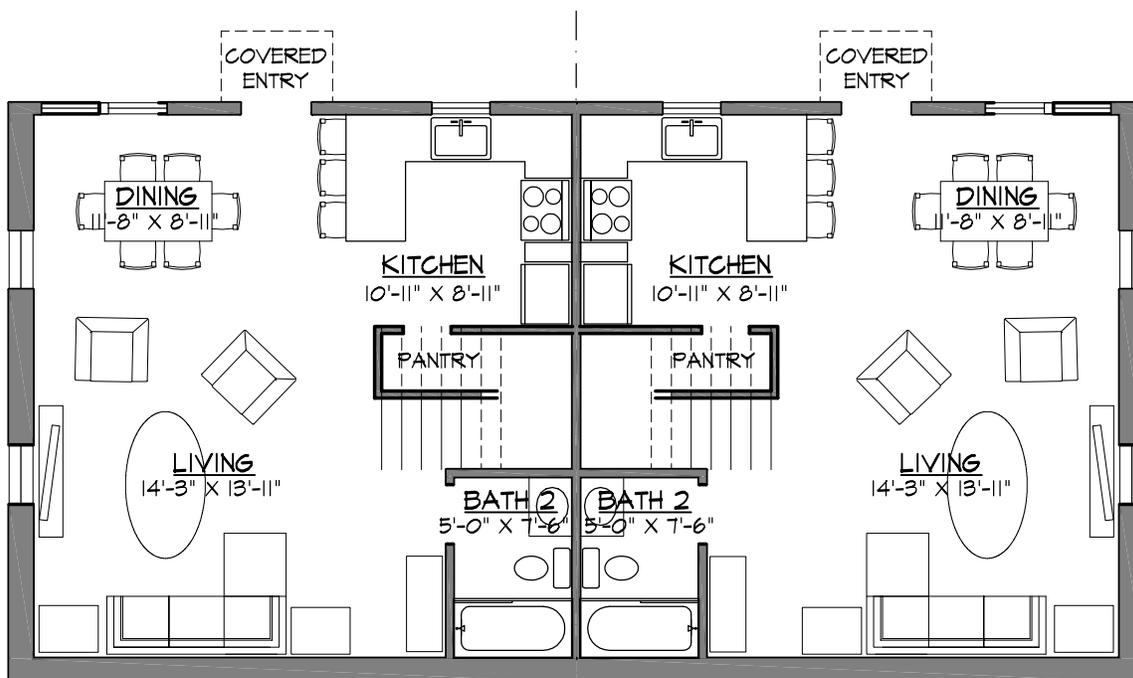
COVERED  
 ENTRY

**A** AFFORDABLE 3 - UPPER FLOOR PLAN  
 1/8" = 1'-0"



**B** AFFORDABLE 1 - UPPER FLOOR PLAN  
1/8" = 1'-0"

**A** AFFORDABLE 2 - UPPER FLOOR PLAN  
1/8" = 1'-0"



FLOOR AREA: 1,015 SF

**D** AFFORDABLE 1 - LOWER FLOOR PLAN  
1/8" = 1'-0"

**C** AFFORDABLE 2 - LOWER FLOOR PLAN  
1/8" = 1'-0"

## ENVIRONMENTAL GOALS OF THE CITY

*Any future redevelopment* of the property would incorporate sustainable building strategies that will produce some of the most energy efficient and ‘green’ housing in the City. As more ‘green’ housing is introduced to the real estate market in Boulder, the more the market will demand energy efficient and healthy homes. Any development of new residential units would provide the following:

- 1) Greenhouse Gas Reduction Report - Builder will deliver a report to the City in the form of an energy analysis that exhibits the reduction of greenhouses gasses that our buildings achieve when compared against both a typical new home and a building that complies with Boulder’s Green Point Requirements.
- 2) Passive Solar – Each new dwelling unit will be designed using energy modeling to identify the ideal orientation of window openings. Window glazing will be selected, specific to its placement, with optimal solar reflectance ratings.
- 3) Solar PV – The project will incorporate Solar PV systems to offset a minimum 60% of the anticipated residential energy needs of the project<sup>12</sup>.
- 4) Electric Vehicle (EV) Charging Stations – All garages will be provided with EV charging capability.
- 5) Energy Efficient Building Design – All new dwelling units to be Energy Star Certified Homes. The Certification includes benchmarks for HVAC design, moisture barriers, Indoor Air Quality (IAQ) and an independent inspection regime. The Energy Star web site claims that Certified homes reduce greenhouse gases by 3,700 lbs per year and uses 30% less energy than a typical new home.
- 6) Advanced Storm Water Management – utilization of rain gardens, permeable paving at parking areas and bio-swales to reduce peak runoff rates.
- 7) Reuse of Existing Structures – The existing house, barn and shed will be retained and rehabilitated. The adaptation of existing structures reduces the need to extract fresh resources and keeps the existing building materials out of local landfills.
- 8) Walkable Communities – In addition to the environmental and health benefits of residents being able to walk/bike to nearby public and commercial amenities, this area of the City would benefit from full-time residents utilizing the Boulder Creek Path. All garages will have space for a minimum of 3 bikes.

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<sup>12</sup> Assume an average 6 KW system, which produces 9,168 kWh on average per year and requires 548 sf of area for 20% efficient panels or 731 sf for 15% efficient panels. The average household usage for Colorado is 687 kWh per month, or 8,244 kWh/year. An energy model will determine the anticipated energy use of the homes, but for a conservative preliminary estimate for the needs of the residential component, it was assumed that each residence will use 1.5x the average Colorado household. With use of LEDs and Energy Star appliances, it is anticipated that the actual usage will be lower, but the encouragement of EV could raise the usage higher. Residential usage will be estimated without inclusion of EV.

## PRESERVATION OF THE EXISTING HOUSE AND BARN

*Upon annexation of the property*, protective covenants would be placed on two of the existing structures. Landmarks Staff has determined that both the existing residence and the barn (excluding the red addition) are desirable of preservation. Refer to Appendix B for photos of the existing buildings. The Owner has agreed to retain both structures. Because the two structures are more than 50 years old, it is felt that there is sufficient protection of the buildings once the property is annexed into the City<sup>13</sup>, however the annexation agreement could contain language requiring review if future remodeling is requested.

The Landowner requests that the following be allowed as conditions for placing protective covenants on the two buildings:

- 1) That the limit of oversight be restricted to the exterior envelope of the structure(s) and not extend to the rest of the property.
- 2) That the barn will be relocated and a new foundation constructed with the stone veneer matching the existing eastern wall. The existing foundation is made primarily of cmu blocks that are beginning to exhibit signs of failure. Landmarks Staff was most interested in the stone veneer that is on approximately ¼ of the existing lower east wall of the barn, so this veneer would be placed on the lower walls around the new foundation in the repositioned location.
- 3) The red addition on the front of the barn would be demolished, but the original wood construction of the upper floor of the barn would be preserved and rehabilitated.
- 4) There is a painted 'sign' on the front of the barn which was identified as a distinctive feature by Staff. The 'sign' is painted on the shingles that are likely original to the barn construction and need, or will need, to be replaced. When the original shingles are replaced, the 'sign' would be lost, although it could be replicated.
- 5) The existing residence would be allowed to have a new entry/connection to a new garage that would be designed in an appropriate manner to leave the existing character of the home intact.
- 6) There would also be the ability to alter the home further. The alterations could be reviewed by Landmarks Staff to ensure that the character of the existing structure is maintained.
- 7) The house would be converted back to its original use as a single-family home.

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<sup>13</sup> If the structure is more than 50 years old, then Landmarks Board approval is required for partial structure demolition.

## PRESERVATION OF THE OAK

*Any future redevelopment* of the property would require that a certified arborist be retained to:

- 1) Provide a written plan reflecting best practices in order to protect the health of the tree.
- 2) Observe implementation of the plan and verify in writing that that plan was adhered to.

Care of the existing mature oak will be coordinated with our arborist. See Appendix B for letter from arborist indicating that the existing tree shows signs of insect damage and that approximately half of the root system is covered with concrete paving, which is blocking moisture and air from getting to the roots. Given the existing condition of the tree, it is not a guarantee that the tree will survive whether or not redevelopment occurs.

It is anticipated that redevelopment of the property would include removing the concrete paving that covers 40%-50% of the root structure and that the roots of the tree would be aerated to improve its health. Where new construction occurs under the crown, piers would be used to limit the root disturbance. Overall, the continued health of the tree should be more viable when soils are exposed and the roots are aerated versus keeping the current conditions in place.

## PUBLIC HEALTH AND SAFETY

*Upon annexation* [within 360 days of adoption of the annexation ordinance] the existing residence will abandon the existing septic tank and connect to the City sewer. The existing duplex and barn are served by a Type 1 Septic Tank Based System that is assumed to have been installed when the residence was constructed 60 years ago. The system is located just uphill from the Anderson Ditch. It is preferable that the existing system be removed and the property to be connected to the City sewer, which is in the street adjacent to the property.

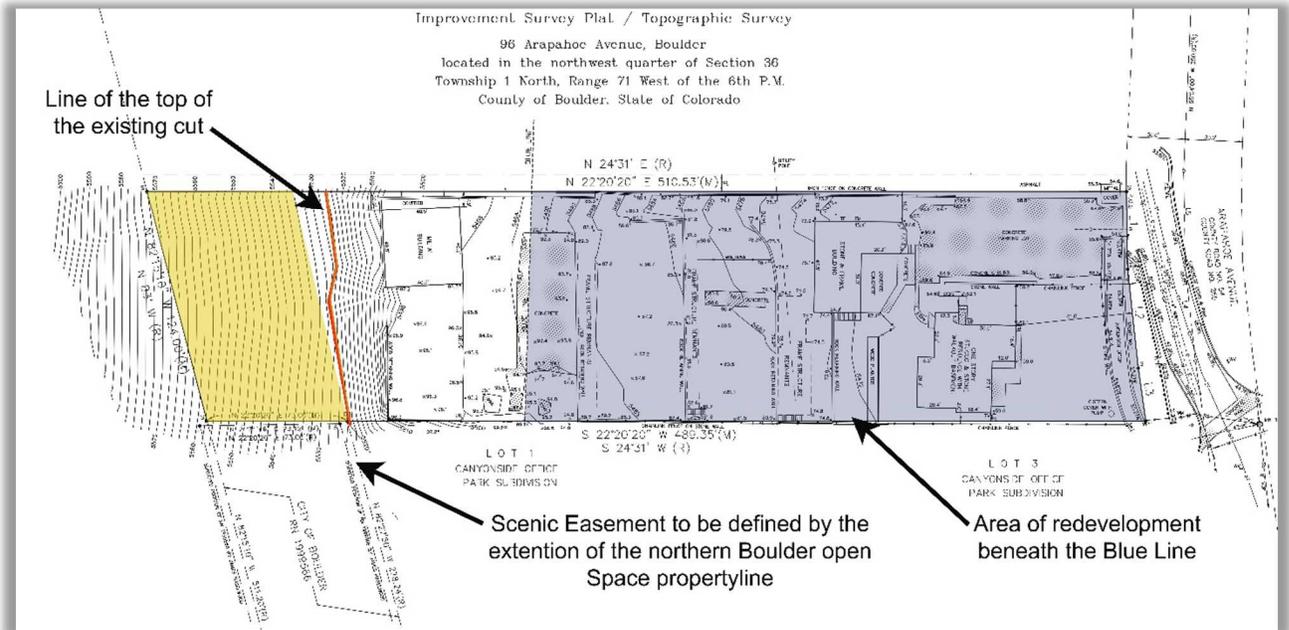
*Any future redevelopment* of the property would include remediation of the existing cut in the hillside above the Blue Line. The cut is mainly unsupported and is at a 1:1 slope along much of its length. While the hillside remained intact during the 2013 flood, it is still desirable that remediation occur. Retaining walls and fill from the excavation during redevelopment would be positioned to ensure the stability of the hillside. Also, the cut is visible from Settler's Park and appears as a scar on the landscape. It would be visually more appealing if the slope was remediated and landscaped. The redevelopment would terrace the cut with stones from the existing terraces on the lower part of the property and would place landscaping that transitioned from the redevelopment to native vegetation up the hillside. Landscaping would be irrigated utilizing the property's water rights, as has been historically practiced.

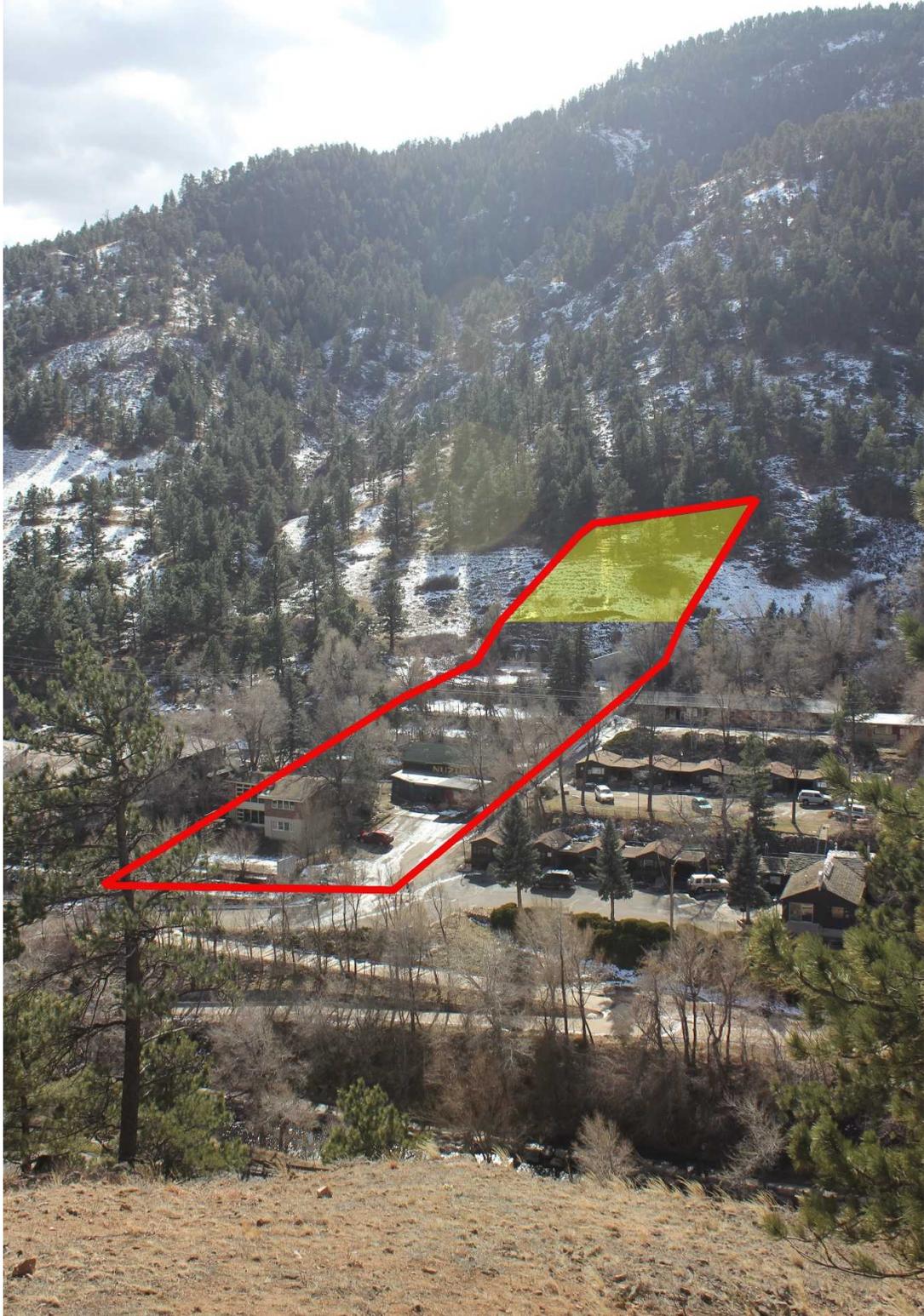
*Any future redevelopment* of the property would include fees (impact, plant investment, etc.) that could be directed to public infrastructure in other parts of the City, as the site already has utilities and roadways serving it. Impact fees paid through the redevelopment would go toward city services that are already being used by the residents of the property. Also, emergency services of the City are more readily available to respond than County services, which will increase protection of the residents and surrounding properties.

*Any future redevelopment* of the property would include replacing the existing concrete slab that gives access to the property over the ditch. The existing access would be replaced with a new box culvert designed to meet the load ratings required by emergency vehicle access.

## SCENIC EASEMENT

Upon annexation a Scenic Easement would be filed with the County Clerk for the upper 14.6% of the property. The Scenic Easement would begin roughly at the top of the existing cut on the eastern property line and would extend in the same bearing as the adjacent Boulder Open Space north property line. The Scenic Easement would ensure that the most visible part of the property (from Settler's Park) would be left in its natural state.





Yellow area indicates approximate area of proposed Scenic Easement

Appendix B  
Consultant Letters  
Regarding Feasibility

7 January 2015

City of Boulder  
1739 Broadway, Third Floor  
P.O. Box 791  
Boulder, CO 80306

RE: 96 Arapahoe Ave  
Proposed Annexation  
Civil Engineering Feasibility Analysis

SG: B1093

To Whom It May Concern,

On behalf of Creative West Architects, The Sanitas Group has performed a schematic level feasibility review of the 96 Arapahoe Ave property for civil engineering related constraints related to proposed redevelopment of the site. At this time, Creative West is pursuing annexation of the property into the City of Boulder and this letter is intended to provide civil engineering support addressing the feasibility of future redevelopment and the ability of the site to be served by City of Boulder facilities.

Currently, the property lies within Boulder County and is developed with a single family residence as well as two barn type structures that were related to a former nursery operation on the property. The site is accessed from an extension of Arapahoe Ave that also serves the Silver Saddle Motel property immediately to the west. The scope of this letter is intended to address three primary civil engineering topics; **Utilities, Storm Drainage, and Access**. This analysis is based on current site conditions as well as the schematic site plan prepared by Creative West Architects. This review is not intended to be a detailed construction level design analysis at this time, but rather a review of the feasibility to redevelop the project site in a manner intended by the client.

**Utilities:**

Currently the property is served by the City of Boulder for water service with an existing service line extending from Arapahoe Ave under the Anderson ditch to the existing residence at the northeast corner. Additionally, an existing 6" CIP water main extends west along Arapahoe Ave along the property frontage in order to serve the Silver Saddle Motel to the west. An 8" water main extends from Canyon Blvd south across the bridge to Arapahoe Ave and ties into the 6" CIP line. The proposed site can be served adequately by this system, with the existing 6" CIP line along the property frontage to be upgraded to an 8" water main that would be extended into the site to provide adequate domestic water service and fire protection requirements. The proposed 8" water main extension into the site will follow the new access drive and provide a new fire hydrant within the site.

The property is currently not connected to the City of Boulder Sanitary sewer system, but rather is served by an existing leech field located in the northeast corner of the site. An existing 8" sanitary sewer main is located in Arapahoe Ave at the northeast corner of the property north of the Anderson Ditch. In order to serve the proposed redevelopment of the property, a new 8" sewer

main would to be extended west along Arapahoe Ave and then up into the site along the proposed access drive. Due to the elevation change in the area and low elevation of the existing sanitary sewer, there should be no issue with extending sewer to the site and being able to go under the Anderson Ditch with the required clearances. The existing leech field will be removed in accordance with public health requirements.

Electrical service is currently provided by an overhead power line running from east to west across the property at approximately mid-lot. This line currently serves the site as well as properties to the west. Based on the location of the line we anticipate a relocation as part of redevelopment. Relocation will most likely involve burying the lines underground as they cross the site. New transformers shall be installed to serve the new development as needed.

Gas service is currently provided to the property by an existing gas main located in Arapahoe Ave to the north of the property. Redevelopment of the property would be served by this gas main. At this time, the owner is currently discussing a possible shared dry utility easement on the western boundary with the adjacent property owner in order to provide a shared utility corridor that would benefit both properties.

**Storm Drainage:**

The Sanitas Group reviewed existing and proposed drainage conditions for the property to determine feasibility and any constraints related to redevelopment of the site. During the September 2013 flood event some of the properties in vicinity of 93 Arapahoe suffered damage from flows coming from Flagstaff Mountain to the south via various gullies and drainages. Damaged areas included properties immediately to the east and west of the site. Fortunately, the 96 Arapahoe property did not experience any serious damage or debris flows during that event. A review of tributary offsite conditions to the south shows the property lying below a minor ridge of Flagstaff Mountain. This ridge diverts flows away from the site. The resulting tributary area flowing into the south side of the site appears to be approximately 1.13 acres, with a 100-year runoff of 5.49 cfs based on a Rational Method analysis. The offsite runoff sheet flows into the site and is small enough that it can be adequately conveyed through a redevelopment of the site via standard methods. In addition to the immediate upstream flows, some flows from above the Silver Saddle Motel are currently directed along the western shared property line towards Arapahoe Ave. These flows will need to be addressed as part of any site design, but based on preliminary site design and grades these flows should be able to be conveyed past the reconstructed barn building and along the proposed drive lane in a historical manner without adverse impacts.

Regarding onsite conditions, the site encompasses 1.38 acres and drains from south to north towards Boulder Creek, which lies immediately north of Arapahoe Ave. Currently, the property is divided into two drainage basins. The northeast corner of the site currently sheets flows directly into the Anderson Ditch. The remainder of the property flows to the northwest, eventually flowing down the existing driveway and into Arapahoe Ave. Existing storm sewer located in Arapahoe Ave at the northeast corner of the site conveys flows directly to Boulder Creek. Based on a Rational Method analysis, the existing runoff conditions result in a 5-year flow of 2.22 cfs and a 100-year flow of 8.44 cfs.

The proposed drainage conditions analysis was based on the schematic site plan provided by Creative West Architects and is representative of anticipated site development. City of Boulder Criteria were utilized for a review of the proposed conditions runoff based on the Rational Method.

Resulting overall site runoff conditions without detention are 4.23 cfs for the 5-year storm and 11.51 cfs for the 100-year. As a result, we anticipate the project site to require stormwater detention in order to reduce flows to match existing conditions. Both the Modified FAA Method and a schematic level hydraulic routing analysis were run for the site to estimate the required detention volume needs associated with site redevelopment. As a result, we estimate the necessary detention requirements to be on the order of 350 C.F. for the 10-year event and 1,000 C.F. for the 100-year event. Alternately, due to the site location being adjacent to Boulder Creek with only public right of way between the project site and creek with no developed properties in between, it may be preferable to direct release flows to Boulder Creek without detention as is common practice.

The property will be required to provide water quality treatment in accordance with City of Boulder and Urban Drainage and Flood Control District requirements. Based on the anticipated redeveloped site impervious of 48.3% and 1.38 acre total site acreage, the required Water Quality Capture Volume (WQVC) for the property is approximately 1,220 C.F.

Based on the proposed site layout and grade constraints, we expect that the necessary water quality and detention requirements for the development will be met by being incorporated into structural planter systems located throughout the site as well as smaller surface ponding systems at the southern and northern ends of the site. The proposed site design incorporated numerous planters adjacent to the buildings as part of the landscape design and to address grades, etc. The planters are ideally placed to capture runoff from rooftops and provide detention as necessary. The proposed site plan provides approximately 1,780 square feet of planter and surface areas that can be used for meeting detention and water quality requirements. This should be adequate to meet the needs of the site and appropriately incorporate the systems into the site plan in an aesthetic manner.

The Anderson Ditch lies along the northern edge of the property between the proposed development and Arapahoe Ave. The ditch incorporates numerous stone retaining walls and is located above Arapahoe Ave at the northeast corner of the site. The ditch is currently an open channel across the site excluding the western end where the site access crosses over the ditch. The ditch is located within an existing pipe from the site access to the west across the Silver Saddle Motel property. Due to the elevation and layout of the Anderson Ditch, the ditch serves as a significant site constraint limiting the location of the site access as well as utility and drainage connections. The proposed redevelopment does not plan to change the ditch beyond replacement of the existing access crossing with a new box culvert meeting current standards.

**Access:**

The property is currently accessed by an existing drive lane entering the site from Arapahoe Ave at the northwest corner. The location and elevation of the Anderson Ditch dictate the location and elevation of the access point, and the proposed redevelopment plans to maintain the current access location. The existing access ditch crossing consists of a concrete slab sitting on the walls of the ditch. This will be replaced with a new concrete box culvert or similar meeting AASHTO H-20 minimum load rating as necessary for emergency vehicle access into the property.

A new 20-foot wide private drive lane is proposed to serve the project. Due to site grading constraints, this drive is proposed at a maximum grade of 8% after a 5% transition into the site from the right of way over the Anderson Ditch. The drive lane is planned to S-curve up into the site

to provide access to the units and reduce the steepness of the drive. As the drive will serve as an emergency access for the site, the lane is designed to meet the requirements of an AASHTO SU-30 turning movement with a minimum centerline turning radius of 38 feet. In August 2014, prior to the start of the feasibility analysis, the project team met with Mr. David Lowrey from the Boulder Fire Department at the site to review site conditions and obtain initial feedback on possible access solutions. As is common on hillside development sites, providing a template based International Fire Code turn-around or a full cul-de-sac style turn-around is not practical due to site constraints. Therefore a detailed vehicle turning analysis for the site access drive was completed based on the AASHTO SU-30 turning movement based on past project experience.

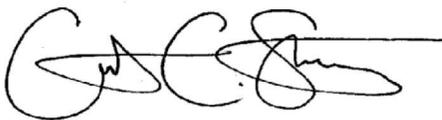
As a result of the detailed access analysis, the project proposes to use a Y-Style turn-around similar to what is utilized in Boulder County for emergency access, although the proposed movement shown is larger than the Boulder County requirements in order to meet the SU-30 movement requirements and provide additional clearance. An exhibit map (EX-1) showing the limits of the turn movements into the site and along the Y-Turn movement is provided with this letter for reference. The project team will work closely with City of Boulder Engineering and Fire Department staff to finalize the access design as necessary during the future detailed design phase for the project site. The site access will be covered by a 25-foot emergency access and utility easement as required.

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The above discussion is intended as a feasibility level summary of site conditions for 93 Arapahoe Ave and intends to address the ability of the site to be redeveloped in association with the application for Annexation of the property into the City of Boulder. Please see the Schematic Design Plans included with this submittal for additional details regarding the project site. If you have any questions or comments regarding the above, please feel free to contact me at 720.346.1656 or email me at [cstevens@thesanitasgroup.com](mailto:cstevens@thesanitasgroup.com).

Sincerely,

**The Sanitas Group, LLC**



**Curtis C. Stevens, P.E., CFM**  
Principal/Civil Engineer





December 2, 2015

Creative West Architects  
4400 Osage Drive  
Boulder, CO 80303

RE: 96 Arapahoe Avenue  
Trip Generation Letter  
Boulder, CO

McDowell Engineering has prepared a letter summarizing the anticipated project trip generation for the proposed residential infill development project located at 96 Arapahoe Avenue.

### Project Description

The proposed residential infill project is located on a 1.37 acre site at the west end of Arapahoe Avenue. The lot currently has a duplex, nursery barn, and equipment shed. The applicant is proposing to redevelop the site with five single family homes and four duplex units. Three of the units will qualify as affordable housing units.

The site will take access to Arapahoe Avenue from the current site access location on the northwest corner of the property. Residents will access the Boulder Creek Path via a sidewalk located directly across from the site access.

A map showing the general vicinity of the project is shown in **Figure 1 – Vicinity Map**. The current site plan is included in **Figure 2 – Site Plan**.

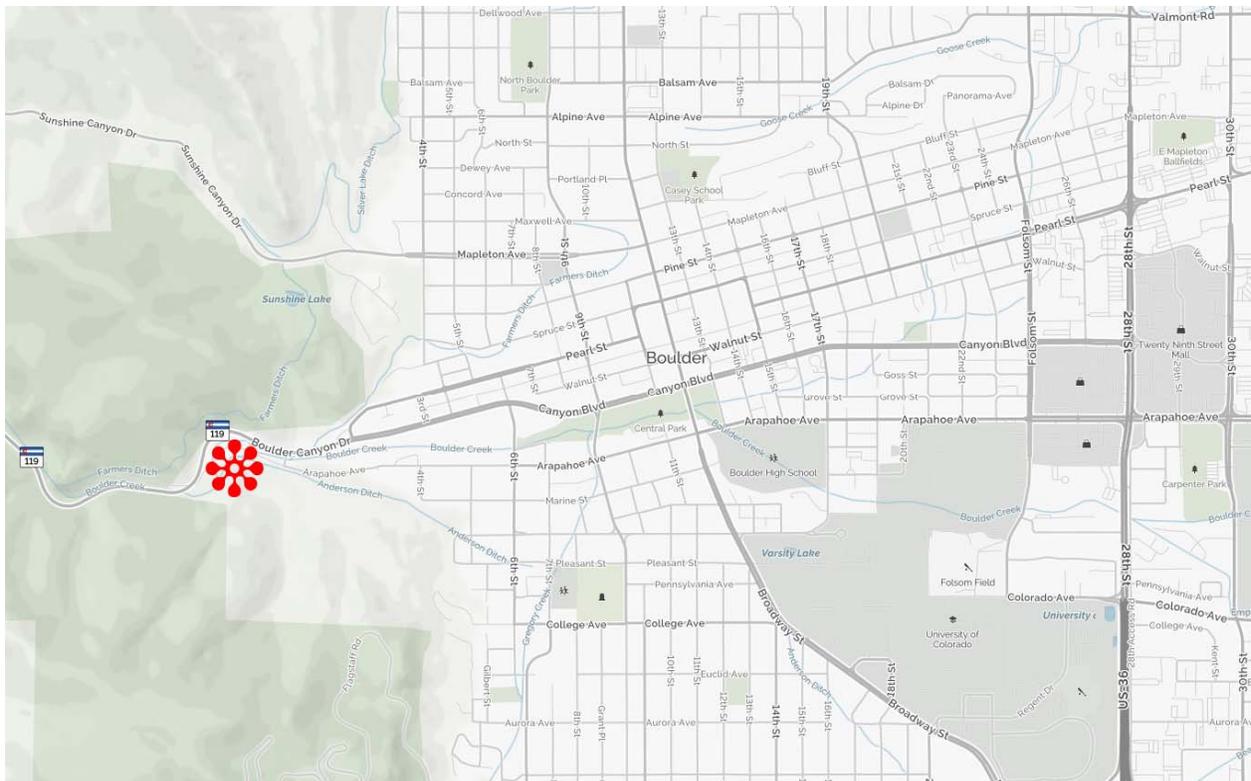
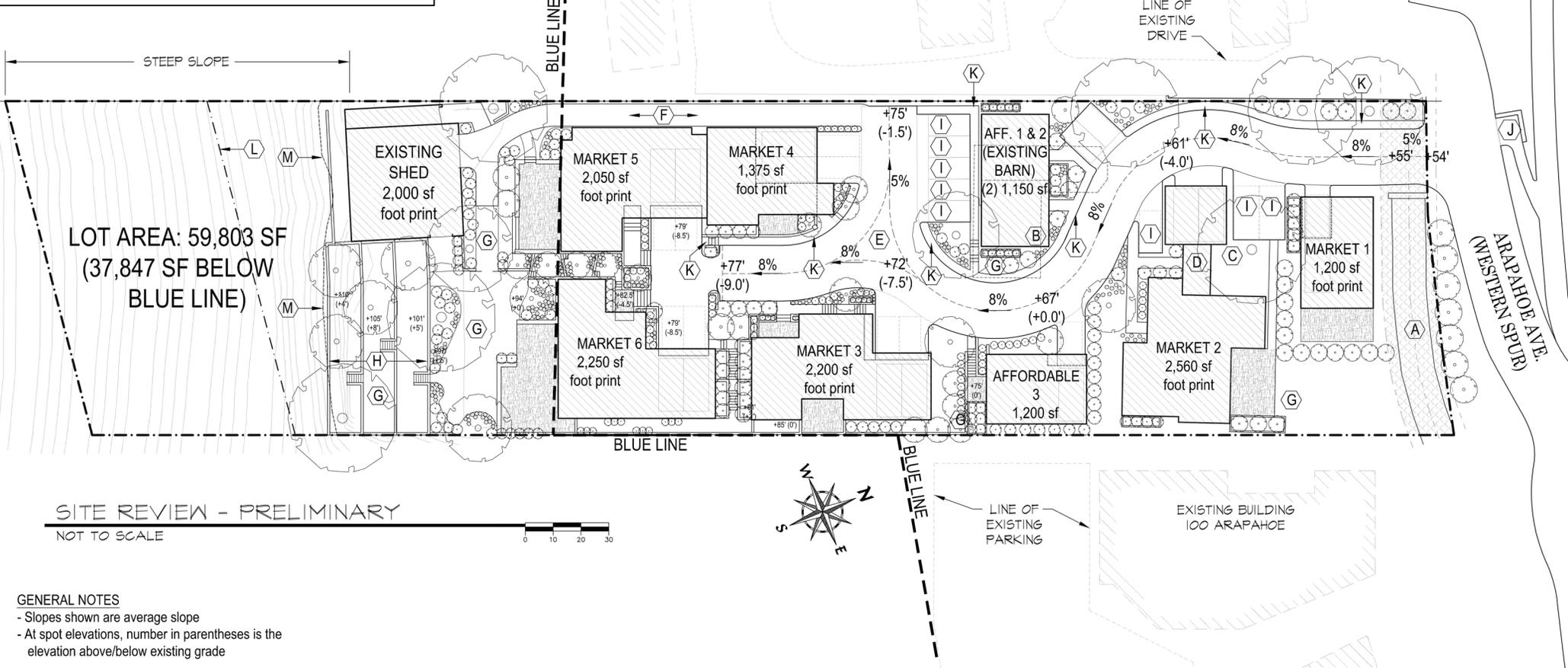


Figure 1: Vicinity Map

- NOTE KEY**
- A - Anderson Ditch 20' maintenance easement 10' from center-line
  - B - Relocate existing Barn for reuse
  - C - Preserve existing oak (mentioned in Annexation Feasibility response)
  - D - Connection between existing house and new garage
  - E - Fire Apparatus Turn-Around
  - F - Access for upper part of lot
  - G - Landscaped area
  - H - Reduce slope at cut w/retaining walls and fill from site
  - I - Visitor parking spaces (8)
  - J - Proposed pedestrian connection to multi-use path
  - K - 36" wide sidewalk
  - L - Create Scenic Easement above extension of adjacent Open Space parcel
  - M - Top of existing grade cut



LOT AREA: 59,803 SF  
(37,847 SF BELOW BLUE LINE)

SITE REVIEW - PRELIMINARY  
NOT TO SCALE

- GENERAL NOTES**
- Slopes shown are average slope
  - At spot elevations, number in parentheses is the elevation above/below existing grade

UNIT	DESCRIPTION	EXISTING	BUILDING FOOT PRINT
Market 1	Single Family - Convert Existing Duplex		apx. 1,200 sf
Market 2	Single Family - Detached Single Family	Y	apx. 2,600 sf (existing + accessory)
Market 3	Single Family - Detached or Duplex		apx. 2,200 sf
Market 4	Single Family - Detached or Duplex		apx. 1,400 sf
Market 5	Single Family - Detached or Duplex		apx. 2,050 sf
Market 6	Single Family - Detached or Duplex		apx. 2,250 sf
Affordable 1	Affordable Units - Convert Existing Barn	Y	apx. 1,200 sf (each unit 1/2 of duplex)
Affordable 2	Affordable Units - Convert Existing Barn	Y	apx. 1,200 sf (each unit 1/2 of duplex)
Affordable 3	Affordable Units - Convert Existing Barn		apx. 900 sf
Shed	Accessory - Repair Existing Equipment Shed	Y	apx. 2,000 sf
<b>TOTAL</b>	<b>9 Dwelling Units</b>		<b>15,800 sf Building Footprints</b>

# 96 ARAPAHOE ANNEXATION

## ANNEXATION SUBMITTAL

**PROPOSAL:** Annex 1.3728 acres as RM-3 Zoning  
(9) Dwelling Units - 42.9% of new Dwelling Units to be Affordable

**EXISTING:** Current Zoning: Transitional  
Current Use: Multi-Family (Duplex)  
Existing Buildings: (1) Duplex; (1) Nursery Barn; (1) Equipment Shed

**CWA**  
ARCHITECTS

4400 OSAGE DRIVE  
BOULDER CO 80303

t.720.936.6600  
f.866.941.8813

www.CreativeWestArchitects.com

## Travel Demand Management (TDM) Strategies

TDM effectiveness depends upon a variety of factors such as the distance to multimodal amenities and level of service of the available facilities.

96 Arapahoe has direct access to many local amenities that encourage alternative modes of transportation.

- **Secure Bike Storage:** The project will encourage the use of bicycle transportation by providing bicycle storage via garages and bike racks. Seven of the nine homes will have garages. Bicycle storage racks will be provided for the two duplex units that do not have a garage.
- **Boulder Creek Path:** The Boulder Creek Path is located opposite of the project site, on the north side of Arapahoe Avenue. The project's internal sidewalk directly aligns with the Boulder Creek Path's access. This path connects the Boulder Canyon to downtown Boulder and east Boulder. The Boulder Creek Path connects to the City's greater path network and numerous pedestrian and bicycle facilities. The multiuse path is maintained year-round.
- **Local/Regional Transit Service:** Three local/regional bus routes run on Canyon Boulevard, with a local/regional bus stop located 1,400 feet from the site. Three additional routes can be accessed from Arapahoe Avenue and 9<sup>th</sup> Street, located 3,000 feet east of the site.
- **Hiking Trails:** Two trailheads to local hiking trails are located within a very close proximity to the site. The Red Rocks/Settler's Park Trailhead is located 1,000 feet to the northeast and the Viewpoint Trailhead is located 1,500 feet east of the project site.
- **Park Access:** The Eben G. Fine Park is located between Arapahoe Avenue and Boulder Creek. This park contains portions of the Boulder Creek and Boulder Creek Path with a variety of recreational amenities, including a playground, open turf, a picnic shelter and additional picnic areas. A multi-use pedestrian bridge over Boulder Creek connects the park to the Red Rocks and Settler's Park.
- **Other Recreational Opportunities:** In addition to the hiking, biking, walking opportunities described above, the project location provides access to Boulder Creek and Boulder Canyon rock climbing.
- **Bike Share Access:** BCycle has a bike-share station with bicycles available at the Justice Center, which is located 2,500 feet east of the project site.

The impact of TDM on vehicular trip is cumulative. Transit service may decrease vehicular traffic by 1-15% depending on the quality of the available transit service.<sup>1</sup> This project could expect approximately a six percent reduction, given that the network provides an enhanced service in the project area. Biking and walking access can provided a 1-9% reduction based upon the quality and access provided by the entire path system's access to desired destinations.<sup>1</sup> The City of Boulder has excellent connectivity with the bicycle and pedestrian access. This project is located only step from the major spine of the system, the Boulder Creek Path. Combined with the site's planned secure parking, the full 9% reduction is anticipated. This totals an anticipated vehicular trip reduction of 15% given the features described above.

## Trip Generation

The total anticipated number of trips for the proposed site was estimated using the Institute of Transportation Engineers' *Trip Generation Manual*.<sup>2</sup> As can be seen in **Table 1**, the proposed residential project is expected to generate a total of 58 trips over the course of an average weekday, including a total of 5 trips during the evening peak hour.



The TDM factors accounted for a reduction of one trip per hour in both the morning and evening peak hours. This could be considered a conservative estimate given the location and connectivity of this project site.

The anticipated increase in vehicular traffic compared to the existing use for this site is 4vph with the additional residential buildout.

										PROJECT NUMBER: M1204			
										PREPARED BY: KJS			
										DATE: 2-Dec-15			
										REVISED:			
<b>Table 1 - Project Trip Generation</b>													
<b>96 Arapahoe</b>													
<b>Estimated Project-Generated Traffic<sup>1</sup></b>													
						Average Weekday		Morning Peak Hour		Evening Peak Hour			
								Inbound		Outbound			
ITE Code	Units	AM Peak Hour Rate	PM Peak Hour Rate	Avg. Weekday Rate	Trips (vpd)	% Trips	Trips	% Trips	Trips	% Trips	Trips	% Trips	Trips
<b>Existing Trip Generation <sup>1</sup></b>													
#230 Duplex Residential	2 dwelling units	0.33	0.43	5.00	10	28%	0	72%	0	65%	1	35%	0
Multimodal Trip Reduction	-15%				-1		0		0		0		0
Total Vehicular Trips from 96 Arapahoe					9		0		0		1		0
<b>Proposed Trip Generation <sup>1</sup></b>													
#210 Single Family Home	5 dwelling units	0.75	1.00	9.52	48	25%	1	75%	3	63%	3	37%	2
#230 Duplex Residential	4 dwelling units	0.33	0.43	5.00	20	28%	0	72%	1	65%	1	35%	1
Subtotal					68		1		4		4		2
Multimodal Trip Reduction	-15%				-10		0		-1		-1		0
Total Vehicular Trips from 96 Arapahoe					58		1		3		3		2

<sup>1</sup> Values obtained from *Trip Generation, 9th Edition*, Institute of Transportation Engineers, 2012.

### Internal Site Circulation Recommendations

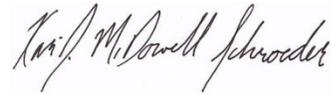
The site shall be configured to allow adequate access for all forms of traffic. It shall encourage bicycle and pedestrian activity. The current site plan shows a sidewalk located along the eastern edge of the internal driveway. With only 5vph anticipated during the peak traffic hours, this allocation is more than adequate to accommodate the proposed residential units. It could be expected that with such low traffic (5vph), some multimodal travel may occur in the shared driveway as well.

The sidewalk is aligned with the Boulder Creek Path's opposite access to Arapahoe Avenue, as recommended.

## Conclusions

Appropriate TDM strategies have been incorporated into the current site plan. The traffic projections for the proposed 96 Arapahoe residential infill project are anticipated to be negligible at 5vph.

Sincerely,  
McDowell Engineering



Kari McDowell Schroeder, PE, PTOE  
Traffic/Transportation Engineer

## References:

- <sup>1</sup> *TDM Impact on Commuters*. City of Boulder, 2015.
- <sup>2</sup> *Trip Generation Manual, 9<sup>th</sup> Edition*. Institute of Transportation Engineers, 2012.





**BLUE RIVER FORESTRY  
& Tree Care**  
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Boulder, CO 80308

T 720-256-9056  
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[blueriverforestry@comcast.net](mailto:blueriverforestry@comcast.net)

November 05, 2015

Good afternoon,

This letter is in reference to the property 96 Arapahoe Ave, Boulder, CO 80302. The Oak on the West of the property received a class 2 crown clean in October 2015. The arborist Dustin Brown, RM 2444A, feels the tree is in good to moderate health. He did note that the tree does currently have Kermes Scale. A good amount of the root structure of the Oak tree is under pavement that is currently on the property. His recommendation is that a construction safe zone be put in place to minimize damage to the root structure.

Thank you,  
Dustin R Brown

Letter Prepared by  
Brandy Brown  
Manager

Blue River Forestry & Tree Care

Appendix C  
Existing Buildings

# Pictures of Barn



**Pictures of Barn**



**Pictures of Main House**



**Pictures of Existing Oak**



**Pictures of Existing Cut and Area Above Blue Line #1**



# Pictures of Existing Cut and Area Above Blue Line #2



For Administrative Use Only  
Address: 96 Arapahoe Avenue  
Applicant: 96 Arapahoe Avenue LLC  
Approval No. LUR2014-00068

### ANNEXATION AGREEMENT

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Boulder, a Colorado home rule city, hereinafter referred to as "City," and 96 Arapahoe Avenue, LLC, a Colorado limited liability company, hereinafter referred to as "Applicant:"

WITNESSETH:

### RECITALS

WHEREAS, the Applicant is the owner of the real property generally described as 96 Arapahoe Avenue and more particularly described on Exhibit A, included by reference and hereby made a part of this Agreement (the "Property"); and

WHEREAS, 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 - Medium 3 (RM-3); and

WHEREAS, the City is interested in insuring 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.

### COVENANTS

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:

1. Requirements. The Applicant shall be required to do the following:
  - A. Prior to first reading of the annexation ordinance before City Council, the Applicant shall:
    - i. Provide an updated title commitment current within 30 days.

- ii. Pay a Storm Water and Flood Management Utility Plant Investment Fee of \$29,318.00, in accordance with Section 11-5-7, B.R.C. 1981, based upon an impervious area of 13,700 square feet.
  - iii. Pay the Housing Excise Tax of \$617.32, in accordance with Section 3-9-2, B.R.C. 1981, based upon a square footage of 2,684 square feet.
  - iv. Convey to the City, at no cost to the City, all of the shares of the Anderson Ditch associated with the Property by quitclaim deed and stock assignment.
  - v. Sign and file petitions for inclusion in the Northern Colorado Water Conservancy District – Boulder Municipal Sub-District and pay all applicable fees on land and improvements for inclusion in such districts.
  - vi. Convey to the City, at no cost to the City, by deed, the southern portion of the Property that is located above the Blue Line, substantially in the form attached as Exhibit B and subject to approval of the City Manager.
  - vii. At the time of applying for building permits including an addition or redevelopment of the existing residence, an automatic fire sprinkler system shall be installed within the residence.
- B. Prior to issuance of a certificate of occupancy for a new dwelling unit or new building on the Property, the Applicant shall construct or reconstruct and complete the following public improvements, meeting the City of Boulder Design and Construction Standards, and subject to review and acceptance by the City Manager:
- i. Construction of a five-foot wide detached sidewalk and landscape strip along the south side of Arapahoe Avenue and adjacent to the Property, and
  - ii. Reconstruction of the entire width of Arapahoe Avenue adjacent to the Property which shall include the following improvements:
    - a. Removal and replacement of the existing concrete curb-and-gutter on the north and the south side of Arapahoe Avenue.
    - b. Removal and replacement of the existing concrete cross-pan on Arapahoe Avenue.
    - c. Removal and replacement of six-inches of the existing pavement section of Arapahoe Avenue with six-inches of asphalt concrete.

- C. Prior to issuance of a building permit for a new dwelling unit on the Property, the Applicant shall dedicate to the City, at no cost to the City, the following easements, meeting the City of Boulder Design and Construction Standards, as part of Technical Document Review applications, the form and final location of which shall be subject to the approval of the City Manager:
    - i. A public access easement along the south side of Arapahoe Avenue to accommodate a detached five-foot wide sidewalk and a minimum eight-foot wide landscape strip between the back of the roadway curb to one-foot beyond the back of the sidewalk.
    - ii. An at least twenty-foot wide public access easement through the site to provide public and emergency access from Arapahoe Avenue through the site and to the property west of the site.
  - D. Prior to an application for a building permit on the Property, the Applicant shall submit an application to the City for and pursue in good faith a landmark designation for all or part of the Property which shall include the existing house, barn, retaining walls, and Anderson Ditch head gate and walls.
  - E. Prior to an application for a subdivision or a building permit for addition of floor area or construction of a new building on the Property, the Applicant shall submit an application for Site Review pursuant to the standards of Section 9-2-14, "Site Review," B.R.C. 1981, for the development of the Property. No proposal to modify a site plan approved for the Property under Section 9-2-14, B.R.C. 1981, shall be approved except consistent with the standards for modifications and amendments of approved site plans in Section 9-2-14, B.R.C. 1981.
  - F. Prior to issuance of a building permit, the Applicant shall provide plans as a part of the building permit application that demonstrate that the existing oak tree on the Property, identified within a tree inventory to be provided by the applicant, will be preserved both during and after construction and maintained for its natural life.
  - G. Prior to issuance of a building permit, the Applicant shall submit plans, subject to review and approval by the city manager, that demonstrate that the total amount of energy used by each principal building, excluding any electric vehicle use in the buildings, on an annual basis, based on the anticipated users of each building, is roughly equal to the amount of renewable energy created on site (Net Zero Energy Efficiency).
2. Affordable Housing. The parties agree that this Agreement is a voluntary agreement between the City and the Applicant that may limit prices on dwelling units on the Property to ensure that they are constructed and maintained as permanently affordable

for-sale housing. The Applicant agrees that fifty percent (50%) of any dwelling units on the Property, either new or rehabilitated, shall be permanently affordable and shall meet the requirements provided below as units that are owned by individual home owners. The permanently affordable units may not be provided as rentals. If any of the percent calculation results in a fraction the total number of required permanently affordable units shall be rounded up to the nearest whole number. Permanently affordable deed restricting covenants are required to secure the affordability of dwelling units. The covenant(s) shall be signed and recorded with the Boulder County Clerk and Recorder prior to application for any residential building permit. The City Manager shall have the authority to modify the requirements set forth in this Paragraph 2 provided that the specifically proposed development would provide an affordable housing benefit that is equivalent to the benefit described herein.

- A. Permanently Affordable For-sale Units. All permanent affordable units on the Property shall be for-sale units. Fifty percent (50%) of the affordable units shall be priced to be affordable to low or moderate income households and fifty percent (50%) shall be priced to be affordable to middle income households consistent with the following:
- i. Permanently Affordable - Low/moderate Income. The Applicant agrees to provide fifty percent (50%) of any permanently affordable units to be affordable for low/moderate income households. Low/moderate income prices shall be set consistent with the requirements of Chapter 9-13, “Inclusionary Housing,” B.R.C. 1981, as amended and applicable at the time of the deed restricting covenant is signed. Currently low moderate prices are set at the federal Housing and Urban Development (HUD) low income limit for Boulder and qualifying household incomes are set at HUD plus ten percent (HUD + 10%).
  - ii. Permanently Affordable – Middle Income. The Applicant agrees to provide fifty percent (50%) of any permanently affordable units to be affordable for middle income households. Middle income prices shall be set to be affordable to households earning the federal Housing and Urban Development (“HUD”) low income limit plus twenty-five percent (HUD +25%) and qualifying household incomes shall be set at HUD plus thirty-five percent (HUD + 35%).
  - iii. Final Unit Pricing. In addition to the income limits described above, affordable for-sale unit pricing shall be adjusted based on the unit’s size and number of bedrooms and bathrooms. Final unit pricing shall be determined and established when either an interim affordable covenant or a final affordable covenant is executed, whichever is first.

- iv. Rounding Rule. If the percent calculations in this section result in a fraction, the total number of units affordable to middle income households shall be rounded up to the nearest whole number and the total number of units affordable to low/moderate income households shall be rounded down to the nearest whole number.
  
- B. Consistency with Chapter 9-13, “Inclusionary Housing,” B.R.C. 1981 and related Administrative Regulations. The Applicant agrees that 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.
  
- C. Affordable Unit Characteristics.  
All affordable units shall be designed consistent with the following standards:
  - i. All affordable units shall have no fewer than two bedrooms;
  - ii. Each affordable unit shall include a usable yard or deck no smaller than 200 square feet;
  - iii. The floor area of each affordable unit excluding garages shall be no smaller than 900 with an average size of 1,200 square feet.
  
- D. Parking and Garage. The permanently affordable units shall have parking accommodations and garages of similar size and design as the market units on the Property.
  
- E. Concurrency. The permanently affordable units must be provided concurrently with the market units such that for each building permit issued for one market rate unit one building permit must have been issued for an affordable unit.
  
- F. Distribution. The affordable units may be provided on the north portion of the site however, no more than two affordable units shall be provided in the existing and rehabilitated house and shed.
  
- G. Site and Floor Plan Approval. Prior to signing the affordable covenant and no later than a building permit submittal for any permanently affordable units, the Applicant shall submit and obtain approval from the City Manager for documentation, including, but not limited to, a site plan showing the location of the affordable units, floor plans and finish specifications, demonstrating that the permanently affordable units meet the requirements of this Agreement and of Chapter 9-13, “Inclusionary Housing,” B.R.C. 1981, and are consistent with the City’s Livability Standards for Permanently Affordable Housing. No building

permit or affordable covenant for a permanently affordable unit shall be accepted until the location, size, type, fixtures, finishes and building design are accepted by the City Manager.

- H. Floor Area. The floor area requirements for permanently affordable units in this Section 2 shall be determined based on the definition of “floor area attached” or “floor area detached,” as applicable, of Section 9-16-1, “General Definitions, B.R.C. 1981, except that the calculation shall exclude 100% of the floor area in attached garages that are primarily used for personal storage or for the parking of automobiles for the occupants of the dwelling unit.
  - I. Agreement to Abide by Restrictions. The Applicant agrees to construct, restrict, and sell permanently affordable units as described and required by this Agreement. The Applicant agrees that no dwelling units shall be established unless the requirements of this paragraph have been met. The Applicant further agrees that the City may withhold any approval affecting the Property, including, without limitation, a building permit, administrative review, use review, site review, and subdivision, until the requirements of this paragraph have been satisfied.
  - J. Market Rate Unit Size. The Applicant agrees that no market rate unit on the Property shall have a floor area that exceeds 2,200 square feet including floor area in attached garages that are primarily used for personal storage or for the parking of automobiles for the occupants of the dwelling unit.
  - K. 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.
- 3. Zoning. The Property shall be annexed to the City with a “Medium Density Residential - 3” (RM-3) zoning classification, and except as set forth herein, shall be subject to all of the rights and restrictions associated with that zoning.
  - 4. Null and Void. This Agreement and any document executed pursuant hereto shall be null and void and of no consequence in the event that the Subject Property is not annexed to the City.
  - 5. Conveyance of Drainage. The Applicant shall convey drainage from the Property in a historic manner that does not materially and adversely affect abutting property owners.
  - 6. 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.

7. Breach. If the Applicant breaches this Agreement in any respect, the City may withhold approval of all building permits and other development applications required for the Property until the breaches have been cured. This remedy is in addition to all other remedies available to the City at law or equity or under this Agreement.
8. Dedications. The Applicants acknowledge that any dedications and public improvements required herein with this annexation are rationally related and reasonably proportionate to the projected impact of the development of the Property as set forth in this Agreement.
9. Original Instruments. Prior to the first reading of the annexation ordinance, the Applicants shall provide an original of this Agreement signed by Applicants, along with any instruments required in this Agreement. 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 Applicants. The Applicants agree that they 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.
10. 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.
11. Breach of Agreement. In the event the Applicant breaches or fails to perform any required action, or fails to pay any fee specified, under this Agreement or under any document that may also be required to be executed pursuant to 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 under any document that may also be required to be executed pursuant to this Agreement or fails to perform any affirmative obligation hereunder or under any document that may also be required to be executed pursuant to this Agreement, 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 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 they may have under Section 31-20-105, C.R.S., based on the

City's lack of an enabling ordinance authorizing collection of this specific debt, or acknowledges that the adoption of the annexation ordinance is such enabling ordinance.

12. Future Interests. This Agreement and the covenants set forth herein shall run with the land and be binding upon the Applicant, the Applicant's heirs, 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.
13. 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 of Boulder. 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 will have no effect.
14. Developable Area of the Property. A large part of the Property lies currently within Area III of the Boulder Valley Comprehensive Plan. No development shall occur in such areas and no such land area shall be considered to determine the development potential of the Property under Title 9, "Land Use Code," B.R.C. 1981. The Applicant agrees that construction of any new building or other structure shall occur on the portion of the Property located within Area II.
15. Blue Line. A large southern portion of the Property lies above the blue line as defined in Section 1-2-1, "Definitions," B.R.C. 1981 as "the line above which the City of Boulder shall not supply water for domestic, commercial or industrial uses, as described in section 128A of the charter of the City of Boulder." The Applicant agrees to abide by all City laws, including not supplying water for domestic, commercial or industrial uses above the blue line.

EXECUTED on the day and year first above written.



CITY OF BOULDER, COLORADO

By: \_\_\_\_\_  
Jane S. Brautigam, City Manager

Attest:

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

Approved as to form:

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

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

EXHIBIT

Exhibit A      Legal Description for Property