

**385 Broadway**  
**Rezoning and Land Use Code Change**  
**2<sup>nd</sup> Reading of Ordinances**

**City Council    December 1, 2015**

# Staff Presentation Overview

- Intent of the Public Hearing
- Quasi Judicial Public Hearing Procedures
- Background of Site Use
  - Medical Office Use
  - 2008 Land Use Change
- Public Notification
- Site Context and Access
- Rezoning Request
- Land Use Code Rezoning Criteria
- Staff Analysis
- Intent of the Land Use Code Change
- Staff and Planning Board Recommendations

# Public Hearing Intent

- Consideration of Rezoning Ordinance for the property located at 385 Broadway
- Consideration of an Ordinance to amend the Land Use Code for properties with split zoning

## Quasi-Judicial Public Hearing Procedures

1. Role of the council is to act as judges of the rezoning
2. All speaking to item are sworn in.
3. Council members note any *ex parte* contacts.
4. Staff presentation; Council may ask questions of staff.
5. Applicant presentation; Council may ask questions of applicant.
6. Public hearing opened for public comments; Council may ask questions of the public.
7. Applicant rebuttal.
8. Public hearing closed; Council discussion.
9. A motion requires an affirmative vote of at least 5 members to pass.
10. A record of the hearing is kept by staff.

# Site History and Background

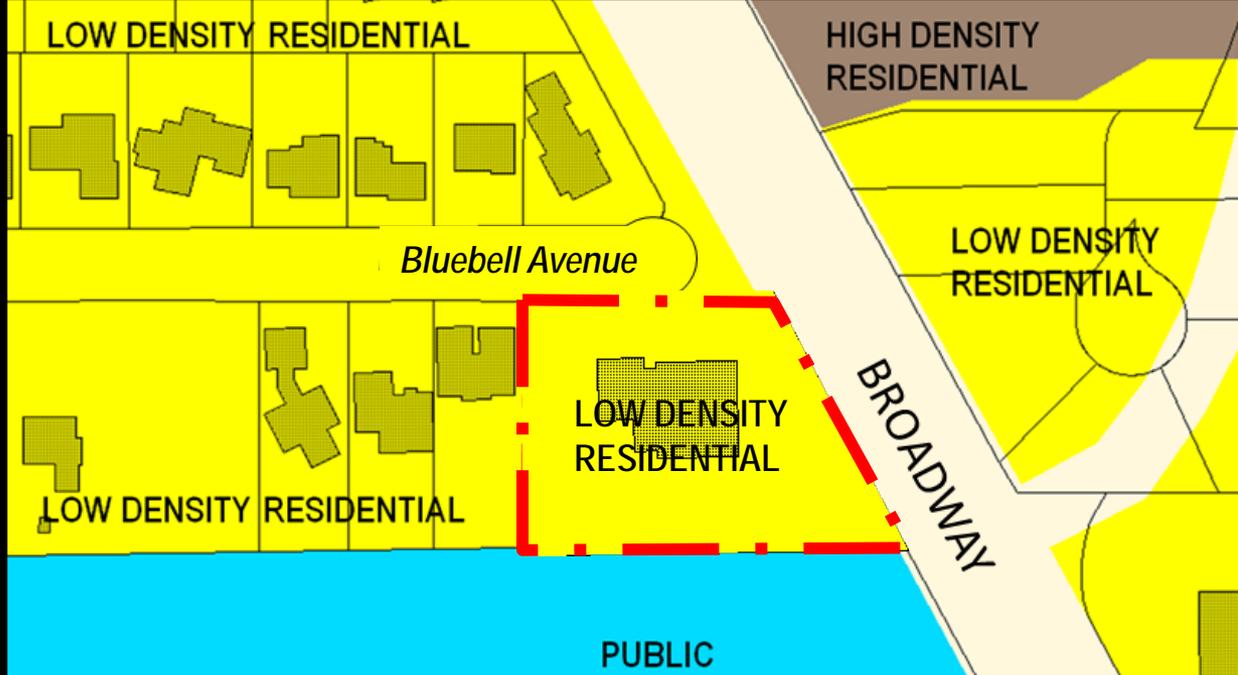


**NIST**

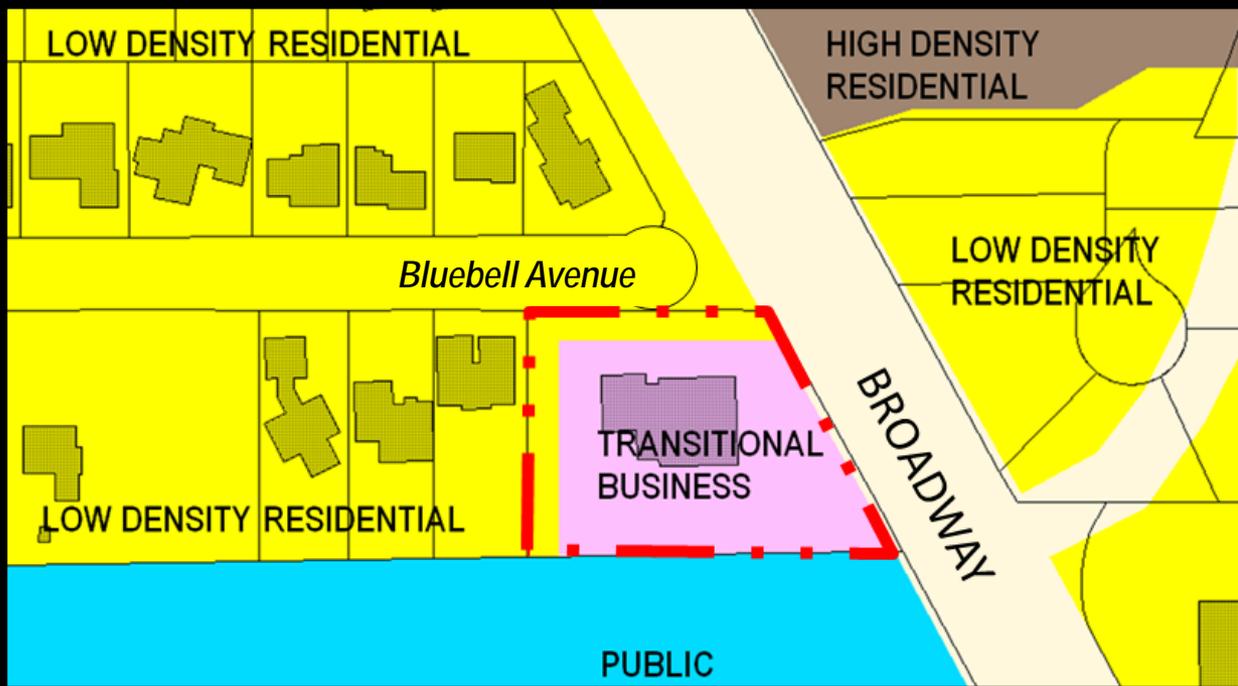
**385 Broadway**

**Multi-Use Path**

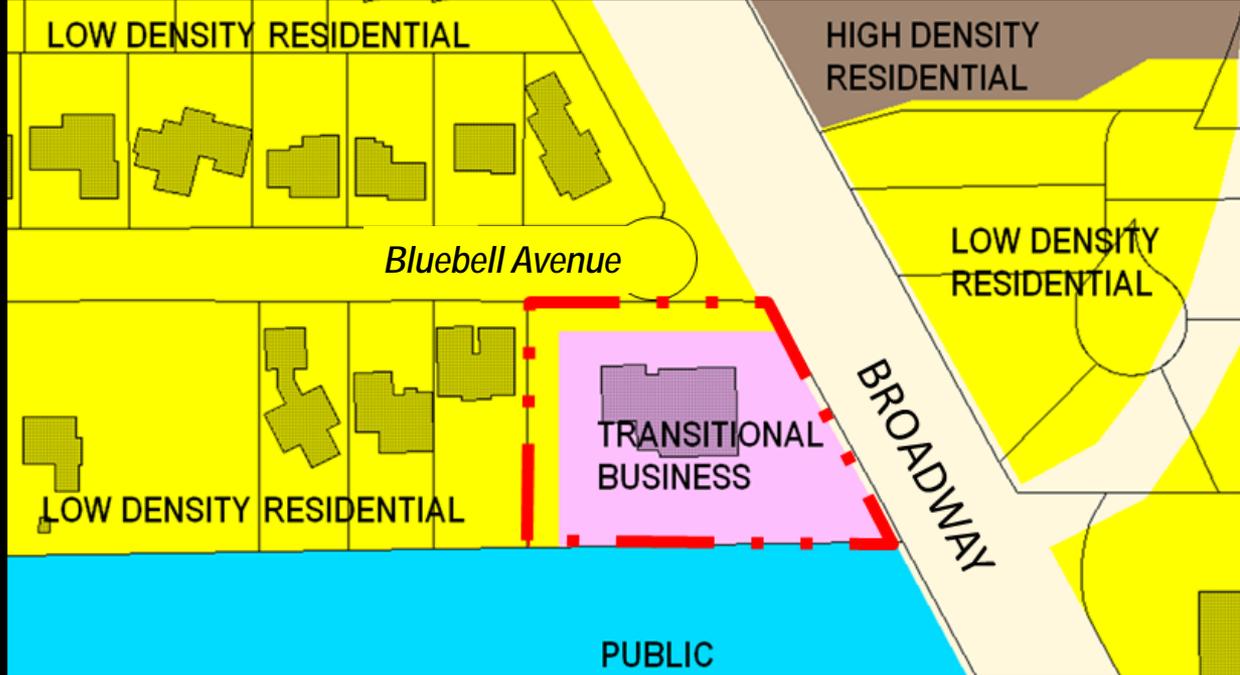
**PRE-2008  
BVCP  
LAND USE**



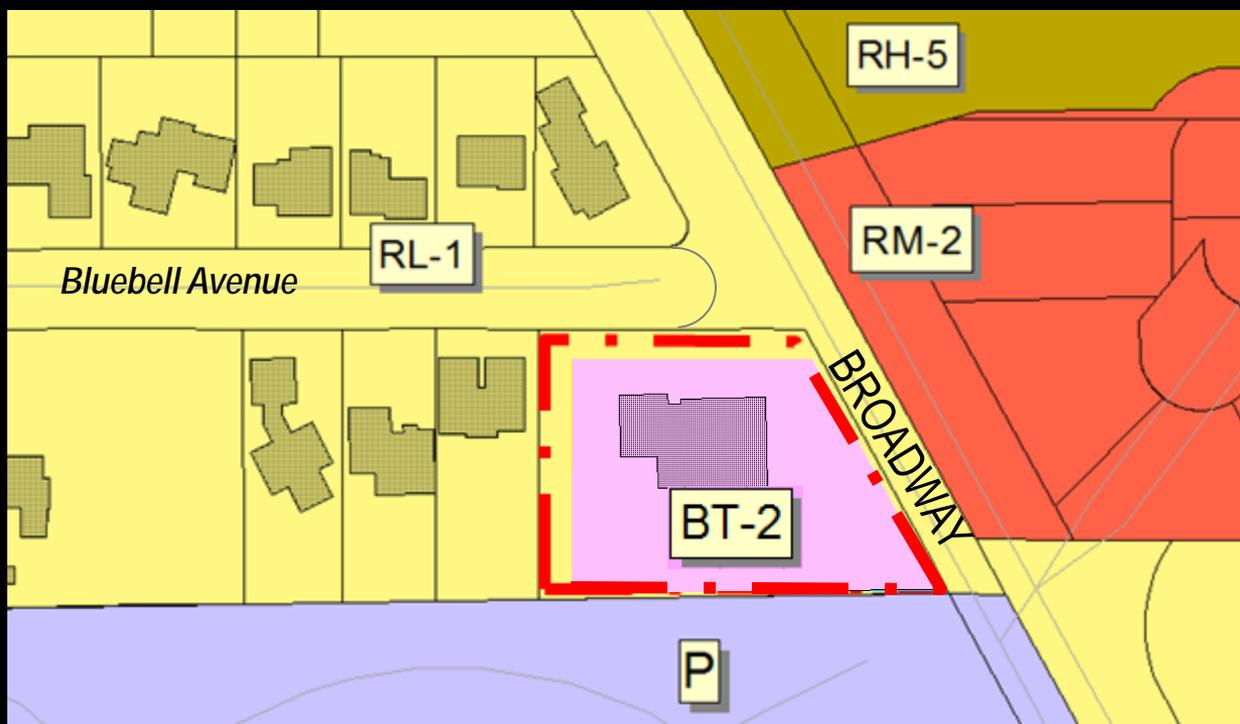
**2008 BVCP  
LAND USE  
CHANGE**



**CURRENT  
BVCP  
LAND USE**



**REQUESTED  
REZONING  
TO BT-2**

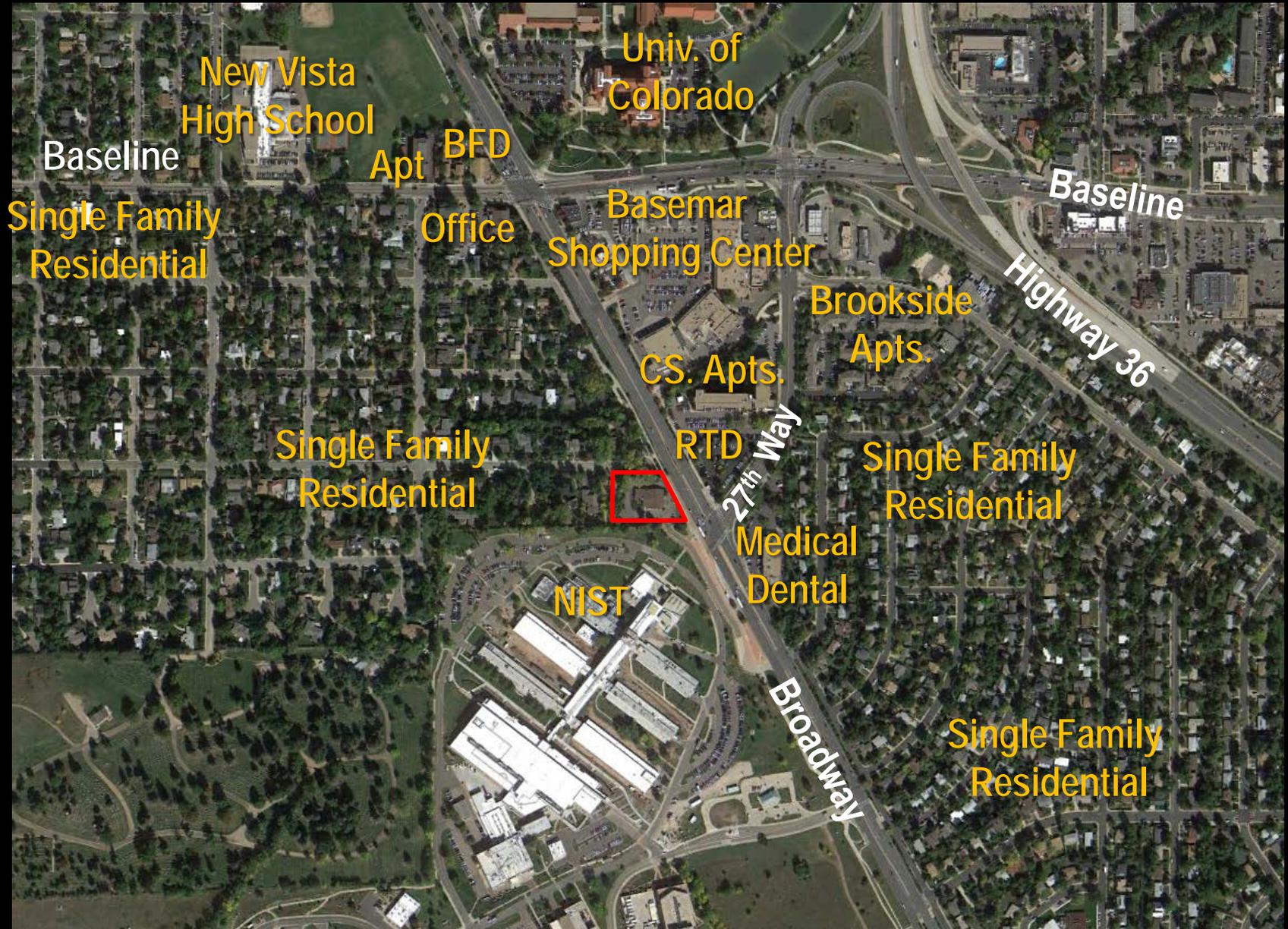


# Public Notification

- Mailed notice of application on May 21, 2015
- Mailed notice of Planning Board on Aug. 14, 2015
- Mailed notice of the City Council hearings on Nov. 3, 2015
- Staff received emailed letters from neighbors along with petitions signed by neighbors with concerns that included:

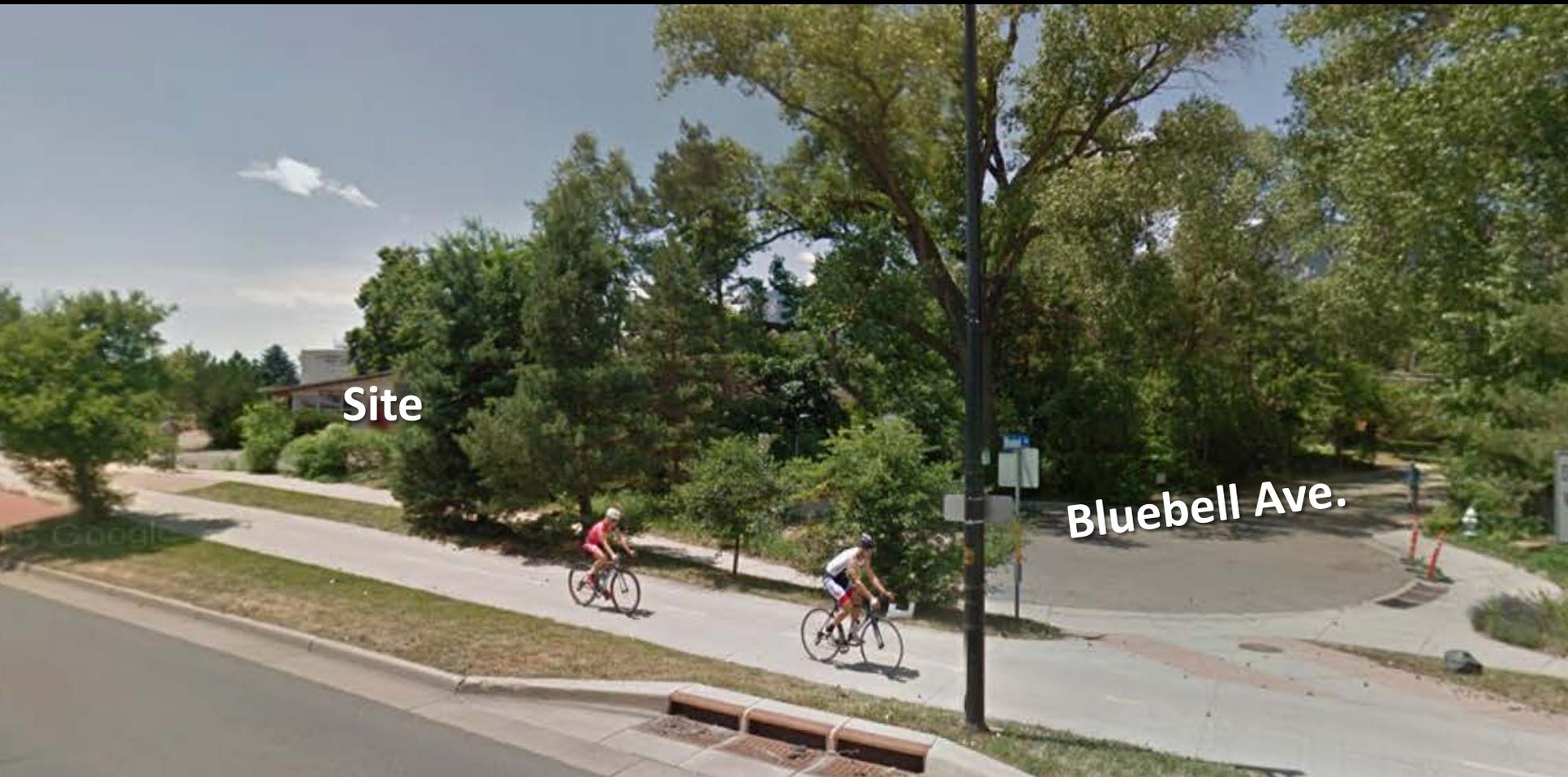
Access, parking, noise, buffer, construction staging, pedestrian access, fire and life safety access, solar access, height and change of ownership changed the intent for the property

# 385 Broadway Site Context



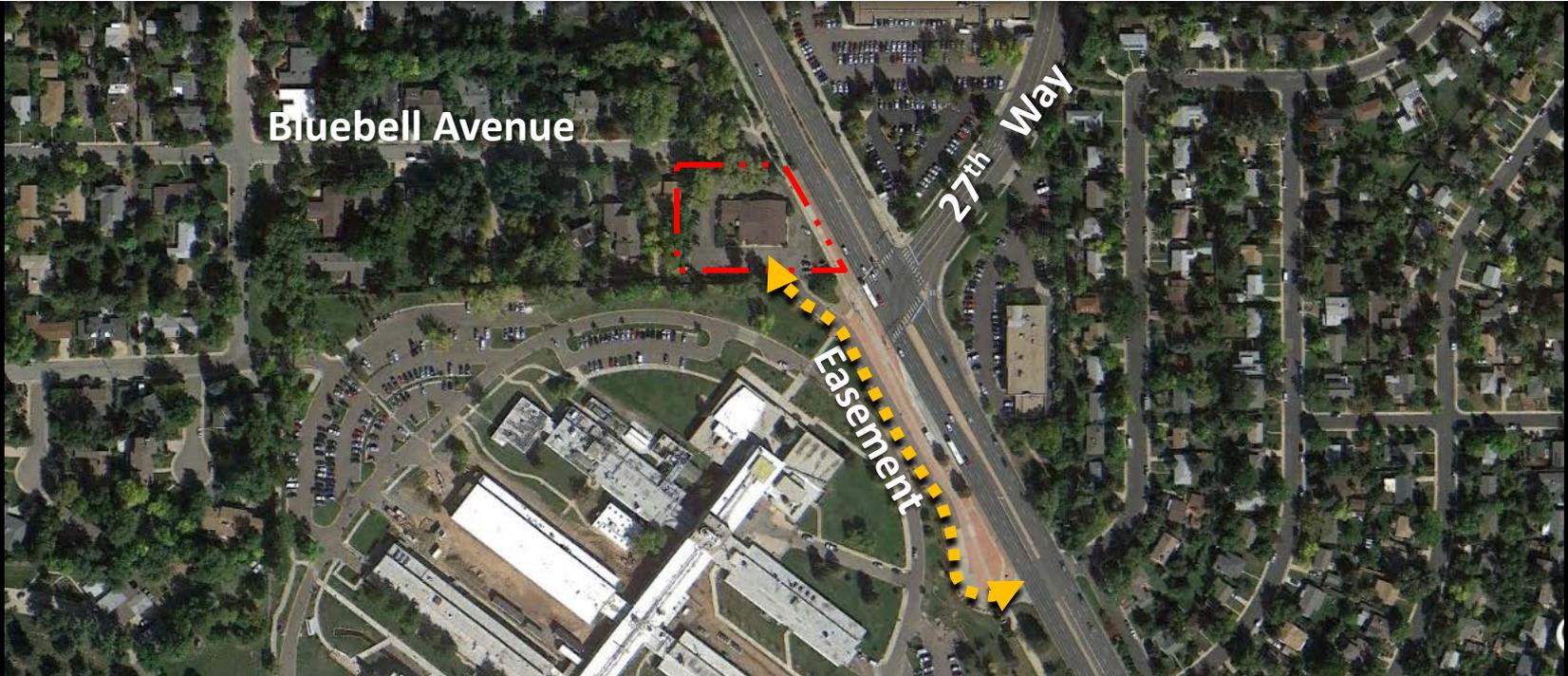
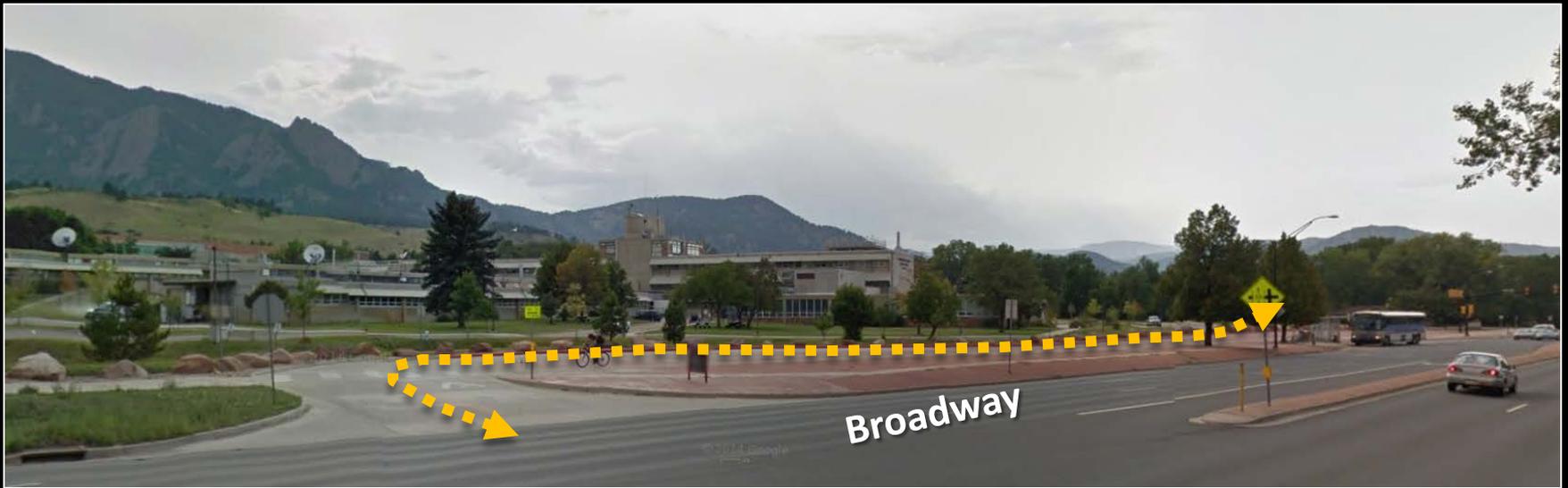
# 385 Broadway Site Context





Site

Bluebell Ave.





27th Way

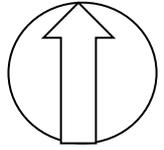
Broadway

385  
Broadway

# ANALYSIS OF PROPOSED REZONING

# Requested Rezoning

-  EXTENT OF PROPERTY TO BE REZONED
-  EXISTING SIDEWALK & UTILITY EASEMENT
-  EXISTING UTILITY EASEMENT



## Land Use Code Section 9-2-18(e)

“The city's zoning is the result of a detailed and comprehensive appraisal of the city's present and future land use allocation needs. In order to establish and maintain sound, stable, and desirable development within the city, rezoning of land is to be discouraged and allowed only under the limited circumstances herein described. **Therefore, the city council shall grant a rezoning application only if the proposed rezoning is consistent with the policies and goals of the Boulder Valley Comprehensive Plan, and...**”

# Rezoning Criteria

The applicant demonstrates by clear and convincing evidence that the proposed rezoning is necessary to come into compliance with the Boulder Valley Comprehensive Plan map;

The existing zoning of the land was the result of a clerical error;

The existing zoning of the land was based on a mistake of fact;

The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, including but not limited to, steep slopes, floodplain, unstable soils, and inadequate drainage;

The land or its surrounding environs has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area or to recognize the changed character of the area; or

The proposed rezoning is necessary in order to provide land for a community need that was not anticipated at the time of adoption of the Boulder Valley Comprehensive Plan.

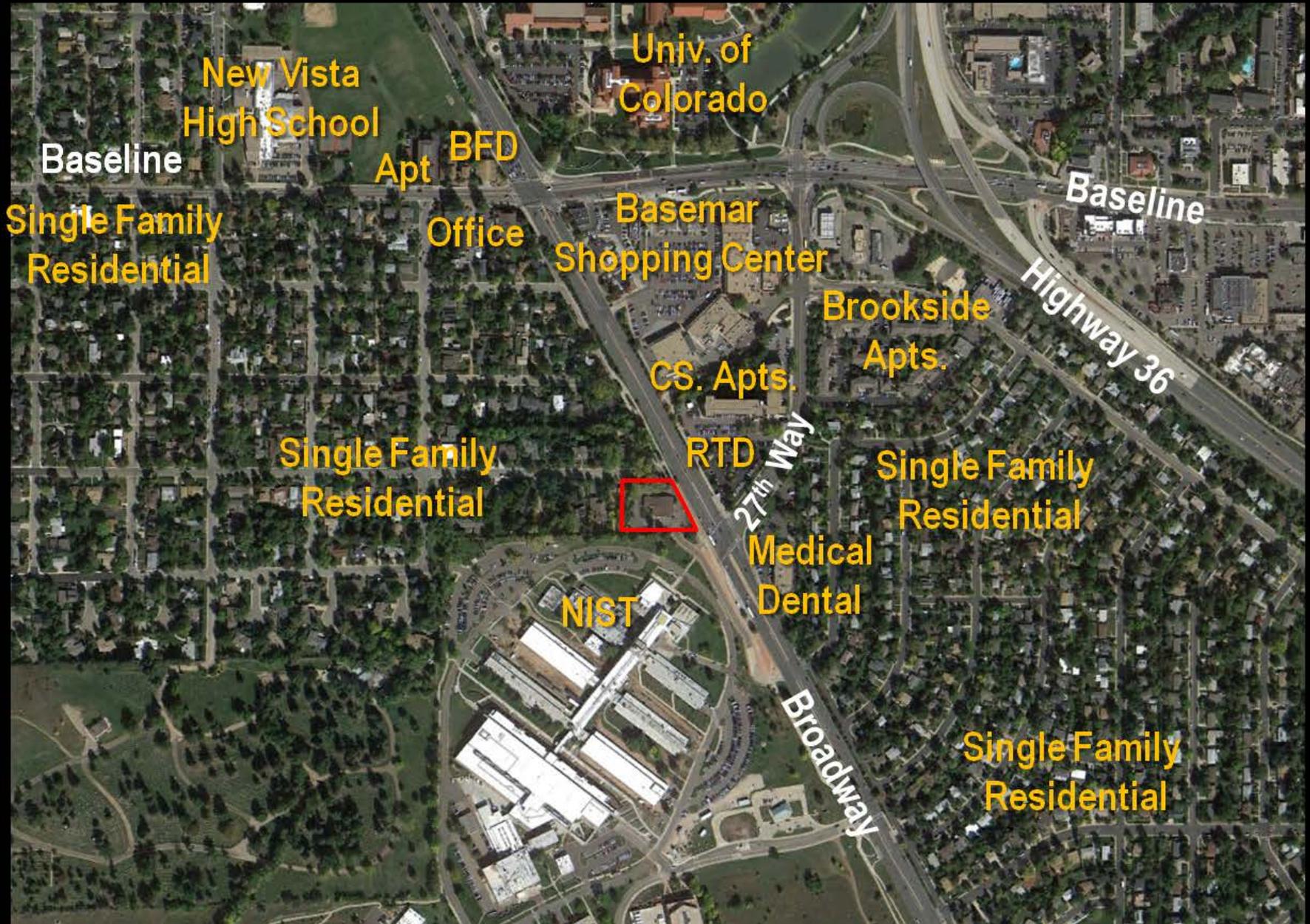
## STAFF ANALYSIS BVCP Goals:

*“the proposed rezoning is consistent with the policies and goals of the Boulder Valley Comprehensive Plan”*

### **BVCP Policy 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.*

# 385 Broadway Site Context





## STAFF ANALYSIS Policies:

*“the proposed rezoning is consistent with the policies and goals of the Boulder Valley Comprehensive Plan”*

### **BVCP Policy 2.14 Mix of Complementary Land Uses.**

*The city and county will strongly encourage, consistent with other land use policies a variety of land uses in new developments. In existing neighborhoods, a mix of land use types, housing sizes and lot sizes may be possible if properly mitigated and respectful of neighborhood character. Where ever land uses are mixed, careful design will be required to ensure compatibility, accessibility and appropriate transitions between land uses that vary in intensity and scale.*

# Proposed Land Use Code Change:

Amend portions of the land use code (section 9-9-2) related to development of lots located in more than one zoning district, of which one is a low density residential district.

# Ordinance

- Implement BVCP policies 2.13 and 2.14
- Implements a land use buffer to ensure reasonable compatibility
- Through requirement of a large setback of 25 feet (or greater if a larger setback applies to either of the involved zoning districts)
  - for structures,
  - parking areas, and
  - other site improvements that cross zoning district lines.
- Modifications available only if:
  - development meets lower intensity district
    - use, form and bulk, and
    - intensity standards
  - through a site review process

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- Modifications available only if:
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    - use, form and bulk, and
    - intensity standards
  - through a site review process

## 2.13 Protection of Residential Neighborhoods Adjacent to Non-residential Zones

**The city and county will take appropriate actions to ensure that the character and livability of established residential neighborhoods will not be undermined by spill-over impacts from adjacent regional or community business zones or by incremental expansion of business activities into residential areas. The city and county will protect residential neighborhoods from intrusion of non-residential uses by protecting edges and regulating the impacts of these uses on neighborhoods.**

## 2.15 Compatibility of Adjacent Land Uses

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

## Staff Recommendation:

1. Approve rezoning ordinance consistent with section 9-2-18(e), B.R.C. 1981 and BVCP land use designation
2. Approve the Land Use Code change to implement BVCP policies and establish a buffer between uses.

## Planning Board:

- Voted unanimously (7-0): finding that the applicant failed to demonstrate that application no. LUR2015-00047 meets the requirements of the Boulder Revised Code
- Recommended that City Council deny the application and adopt the Sept. 17, 2015 Planning Board staff memorandum and its Attachment A as findings of fact and conclusions of law.

a. **CONSISTENCY WITH GOALS AND POLICIES OF THE BOULDER VALLEY COMPREHENSIVE PLAN**

The Boulder Valley Comprehensive Plan has many policies related to neighborhood compatibility and the creation and protection of unique physical elements of neighborhood character and identity and livability, the Planning Board finds that the following Comprehensive Plan policies and goals are relevant to this application:

***1.29 Channeling Development to Areas with Adequate Infrastructure***

In order to protect and use past investments in capital improvements, new development and redevelopment will be located in areas where adequate public services and facilities presently exist or are planned to be provided under the city's Capital Improvements Program.

***2.09 Neighborhoods as Building Blocks***

The city and county will foster the role of neighborhoods to establish community character, provide services needed on a day-to-day basis, foster community interaction, and plan for urban design and amenities. All neighborhoods, whether residential areas, business districts, or mixed land use areas, should offer unique physical elements of neighborhood character and identity, such as distinctive development patterns or architecture; historic or cultural resources; amenities such as views, open space, creeks, irrigation ditches, and varied topography; and distinctive community facilities and business areas.

***2.10 Preservation and Support for Residential Neighborhoods***

The city will work with neighborhoods to protect and enhance neighborhood character and livability and preserve the relative affordability of existing housing stock. The city will seek appropriate building scale and compatible character in new development or redevelopment, appropriately sized and sensitively designed streets and desired public facilities and mixed commercial uses. The city will also encourage neighborhood schools and safe routes to school.

### ***2.13 Protection of Residential Neighborhoods Adjacent to Non-residential Zones***

The city and county will take appropriate actions to ensure that the character and livability of established residential neighborhoods will not be undermined by spill-over impacts from adjacent regional or community business zones or by incremental expansion of business activities into residential areas. The city and county will protect residential neighborhoods from intrusion of non-residential uses by protecting edges and regulating the impacts of these uses on neighborhoods.

### ***2.14 Mix of Complementary Land Uses***

The city and county will strongly encourage, consistent with other land use policies, a variety of land uses in new developments. In existing neighborhoods, a mix of land use types, housing sizes and lot sizes may be possible if properly mitigated and respectful of neighborhood character. Wherever land uses are mixed, careful design will be required to ensure compatibility, accessibility and appropriate transitions between land uses that vary in intensity and scale.

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

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

### ***2.30 Sensitive Infill and Redevelopment***

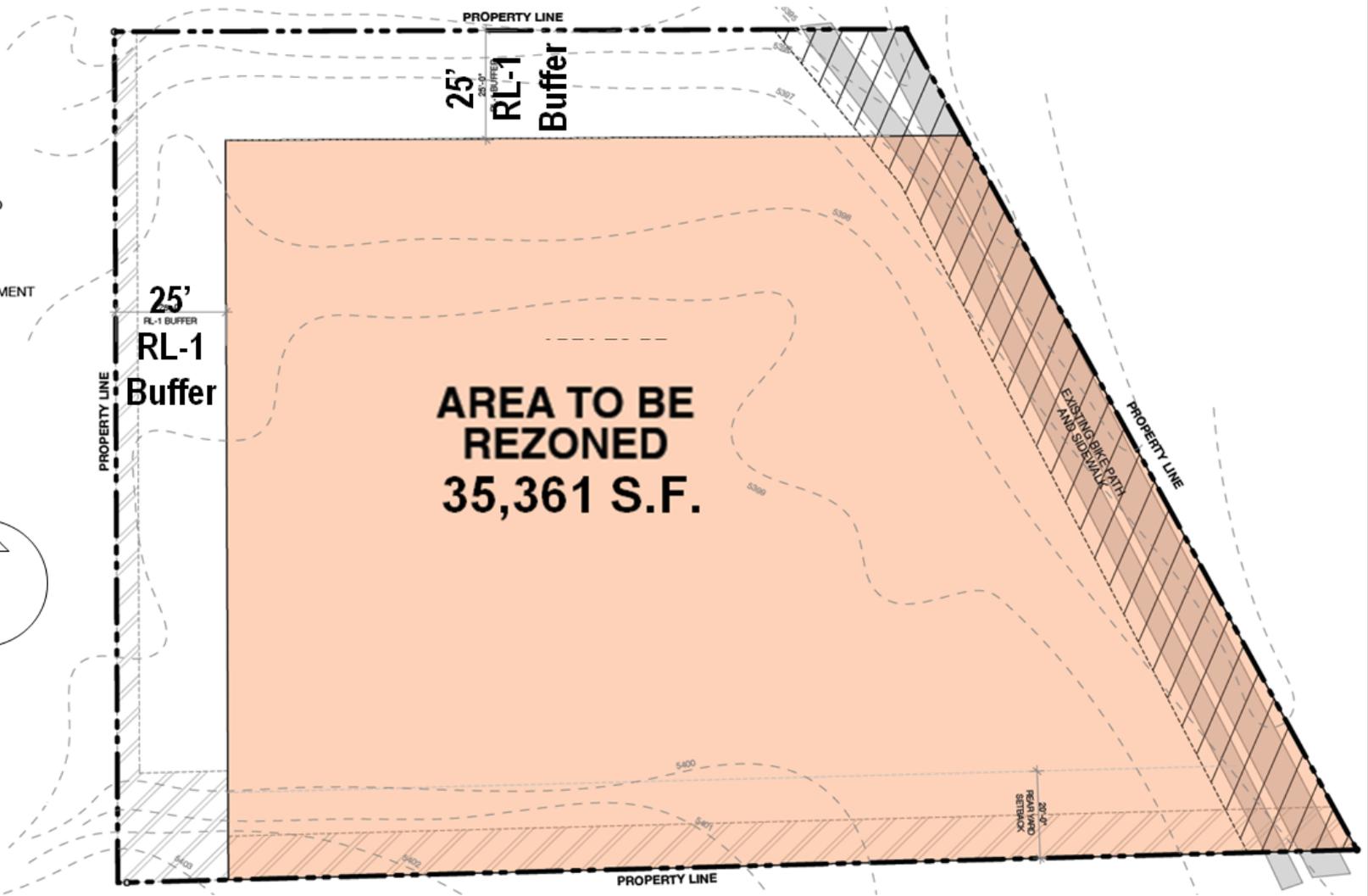
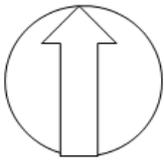
With little vacant land remaining in the city, most new development will occur through redevelopment. The city will gear subcommunity and area planning and other efforts toward defining the acceptable amount of infill and redevelopment and standards and performance measures for design quality to avoid or adequately mitigate negative impacts and enhance the benefits of infill and redevelopment to the community and individual neighborhoods. The city will also develop tools, such as neighborhood design guidelines, to promote sensitive infill and redevelopment.

# Planning Board Conclusion

The possible uses in the BT-2 zoning district and their impacts on this established quiet neighborhood in a unique location that does not allow for any through traffic to the south or west or east is not consistent with the development pattern of this neighborhood and its established character and identity. The potential noise and visual impacts as well as potential traffic impacts through this neighborhood of some of the allowed uses in the BT-2 zoning district would undermine the livability and character of this established neighborhood

Questions?

-  EXTENT OF PROPERTY TO BE REZONED
-  EXISTING SIDEWALK & UTILITY EASEMENT
-  EXISTING UTILITY EASEMENT



**Maximum density under BT-2: 17,680 sf**



DEED OF EASEMENT

The Director of the National Institute of Standards and Technology (NIST), acting for and in behalf of the United States of America, hereinafter referred to as the "Government", under and by virtue of the authority contained in 40 United States Code 319, having determined that it will not be adverse to the interests of the United States, does hereby grant and convey, without covenant or warranty of any kind and subject to the conditions hereinafter stated, unto Bruce Alan Tenenbaum, the owner of 385 South Broadway, Boulder, Colorado, hereinafter referred to as the "Grantee", his successors and assignees, an easement and right-of-way for vehicular ingress and egress, together with all rights and privileges as are necessary or incidental to the reasonable and proper use of such easement, said easement being described as follows:

Over and across that portion of the existing roadway which most directly routes vehicular traffic between the intersection of Broadway and 27th Way and Grantee's property, which is located in the Northeast quarter of the Southeast quarter of the Northeast quarter of Section 6, Township 1 South, Range 70 West of the 6th P.M., Boulder County, Colorado as is reasonably necessary to allow for ingress and egress to the following described property:

Lots 26, 27 and 28, South Oak Park, City of Boulder, County of Boulder, State of Colorado, also known and numbered as 385 South Broadway, Boulder, Colorado.

Said easement shall be appurtenant to and for the use and benefit of Lots 26, 27 and 28, South Oak Park, City of Boulder, County of Boulder, State of Colorado.

The easement is granted subject to the following conditions and provisions:

1. That the Government reserves unto itself rights for all purposes across, over, or under the said easement and right-of-way, provided that (a) such rights are exercised in a manner which will not create undue interference with the use by the Grantee of said facilities, and, (b) any construction by the Government in connection with the rights so reserved shall be at the expense of the Government
2. That the Government reserves the right to change the location of the roadway over which this easement is granted, provided that such change does not substantially alter or affect Grantee's access as it exists as of the date of this Deed of Easement, and provided that the construction of the new roadway does not substantially affect Grantee's access during construction. If the location of the existing roadway is changed, the location of the easement granted herein shall be deemed to be changed to the new location of the roadway.
3. That existing improvements on Government property will be maintained, reconstructed, repaired, and replaced by the Government. Any new facilities such as additional curb cuts, collateral paving, etc. required by the Grantee for its sole enjoyment shall be installed, maintained, reconstructed, repaired, and replaced by the Grantee, within the easement area without cost or expense to the Government, under the general supervision and subject to the prior written approval of the Chief, Technical Services Division, hereinafter referred to as the "Coordinator." The Grantee shall replace, repair, restore, or relocate any property of the Government affected or damaged directly or indirectly by the construction, reconstruction, installation, operation, maintenance, and replacement of said facilities, all to the satisfaction of the Coordinator.

4. That the Grantee will indemnify and save the Government harmless from any liability or responsibility of any nature whatsoever arising directly or indirectly from the privileges herein granted.
5. That within a reasonable time after termination or forfeiture of this grant, the Grantee shall, at its expense, if so requested by the Coordinator, remove from the said easement and right-of-way hereinbefore described, all structures, installations, and appurtenances thereto belonging to Grantee and restore that portion of easement used exclusively by the Grantee to the same or as good condition as that which existed prior to the exercise of its rights hereunder, all to the satisfaction of the Coordinator.
6. That all right, title, interest, and estate hereby granted shall cease and terminate effective as of the date of written notice from the Government to the Grantee, its successors or assignees, that there has been (a) an unreasonable failure to comply with the terms and conditions of the grant, or, (b) a nonuse of the easement for a consecutive two-year period for the purpose for which granted, or, (c) an abandonment of the easement.
7. That, should the Government at any time determine that continued maintenance and operation of the easement, or any portion thereof, as then located, constitutes an undue interference with any of the Government's activities, Grantee agrees to negotiate in good faith with the Government to eliminate such interference.

UNITED STATES OF AMERICA  
Acting by and through the Director of the NIST

Aarti Prabhakar

Date 4-6-95

STATE OF MARYLAND  
COUNTY OF MONTGOMERY

ON THIS day of Apr 6, 1995, before me a Notary Public in and for said State of Maryland, personally appeared Aarti Prabhakar to me well known and known by me to be Aarti Prabhakar, whose name is subscribed to the within instrument and acknowledged that he executed the same as a voluntary act and deed of the United States of America, within the scope of his lawful authority

Kenneth S. Williams  
Notary public  
State of Maryland

My commission expires June 1, 1995

\*Aarti Prabhakar  
Director, National Institute of  
Standards and Technology

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**AMENDMENT NUMBER 1**  
to the  
**DEED OF EASEMENT**

This Amendment refers to the Deed of Easement of April 6, 1995 granted by the National Institute of Standards and Technology (NIST) to Bruce Alan Tenenbaum (Grantee) for lots 26, 27 and 28, South Oak Park, City of Boulder, County of Boulder, Colorado, located at 385 South Broadway, Boulder, Colorado, and commonly known as the "Oak Park Medical Center."

Pursuant to section 2 of the Deed of Easement, NIST has elected to change the location of the roadway over which the easement was granted, commencing in February 2006. A temporary access way will be constructed prior to the completion of the permanent access road, which will provide full access pursuant to the Easement. The temporary access way will be maintained by NIST until the permanent access road is completed.

Pursuant to section 3 of the Deed of Easement, the relocation, installation, and maintenance of the temporary access way and permanent access road on Government property will be at the cost of the Government (as that term is defined in the Easement). Reasonable access to the Oak Park Medical Center will be provided uninterrupted during the construction of the temporary access way and the permanent access road.

The permanent access road will be constructed per the attached drawing and open for use by October 2007, subject to the availability of funds.

The Government and the Grantee agree to the relocation of the easement according to the attached drawing.

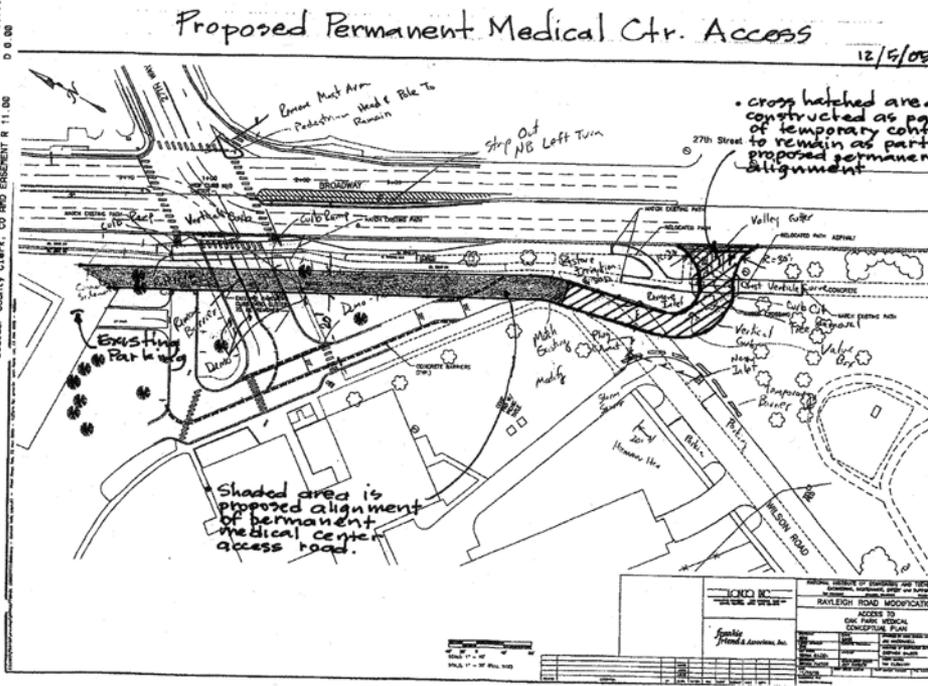
*Zelda Chapman Bailey*  
Zelda Chapman Bailey  
Director, NIST Boulder Laboratories

2-8-06  
date

*BA*  
Bruce Alan Tenenbaum  
Owner, Oak Park Medical Center

2-14-06  
date

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Boulder County Clerk, CO AMD EASEMENT R 11.00





# Nature of Occupancy: CU Students

Typical Mode of Transportation for Work Commute <sup>^</sup>	Faculty/ Staff	Students
Drive alone	38%	11%
Drive with at least one other person	10%	3%
More than one mode	7%	7%
Walk	5%	27%
Bike	4%	21%
Ride a bus or buses	13%	26%
Work at home	21%	2%
Other	2%	3%

74%

<sup>^</sup>Boulder Valley Transportation Survey: Comparison of Survey Results, National Research Center, Inc, April 2006

... and City of Boulder 2012 Transportation Report

PURPOSE:

Business - Transitional 1

Business - Transitional 2

"Transitional business areas which generally buffer a residential area from a major street and are primarily used for commercial and complementary residential uses, including without limitation, temporary lodging and office uses."

Land Use Code: section 9-5-2, B.R.C. 1981

BT-1 and BT-2	Non-Residential By-Right Uses:	Non-Residential Use Review Required:
Commercial	<ul style="list-style-type: none"> <li>•Art/craft studios</li> <li>•Personal Services</li> </ul>	<ul style="list-style-type: none"> <li>•All restaurants</li> <li>•All retail</li> <li>•Hotel and Motel</li> <li>•Veterinary Clinic</li> </ul>
Public/Quasi Public	<ul style="list-style-type: none"> <li>•Daycare</li> <li>•Schools</li> <li>•Utilities</li> <li>•Religious Assemblies</li> <li>•Adult Education Facility</li> </ul>	<ul style="list-style-type: none"> <li>•Mortuary</li> <li>•Non-Profit Membership Club</li> <li>•Vocational and Trade School</li> </ul>
Office	<ul style="list-style-type: none"> <li>•Data Processing</li> <li>•Medical or Dental</li> <li>•Technical</li> <li>•Professional</li> <li>•Administrative</li> </ul>	<ul style="list-style-type: none"> <li>•Financial Institution</li> </ul>

	Business - Transitional 1	Business - Transitional 2
<b>RES. USE</b>	Detached and Attached Dwelling Units, and Townhomes are by-right	SAME
<b>DENSITY/ INTENSITY</b>	1,200 SQUARE FEET OF OPEN SPACE PER DWELLING UNIT	1,600 SQUARE FEET MINIMUM LOT AREA PER DWELLING UNIT MAXIMUM 27.2 DWELLING UNITS PER ACRE
<b>MAXIMUM FLOOR AREA RATIO (FAR)</b>	NO MAXIMUM	0.5 FAR MAXIMUM
<b>PARKING</b>	1 FOR 1- OR 2-BEDROOM DU 1.5 FOR 3-BEDROOM DU 2 FOR A 3-BEDROOM DU 2 FOR A FOUR+ BEDROOM DU	SAME
<b>SITE REVIEW</b>	VOLUNTARY: 1 ACRE MIN. REQUIRED: 30,000 SQ. FEET	VOLUNTARY: NO MINIMUM REQUIRED: 30,000 MINIMUM

# Ordinance to Amend Land Use Code § 9-9-2, B.R.C. 1981

- Circumstances where it would apply:
  - New Development on Lots in Two or More Zoning Districts, and
  - Where one of the zoning districts is RE, RR or RL
- Development must meet greater of the two zoning district standards
  - Setback standards of the zoning district where the improvement is
  - Setback standards of the adjacent district, or
  - A 25-foot setback from the property line
- Requirements may be modified administratively if the development conforms to lower intensity zoning.
- Requirements may otherwise be modified through Site Review.

# Summary Process to Date

- 2008 council approved a request by the property owner to change the BVCP Land Use during midterm update
- Application for Rezoning submitted by property owner, May 2015
  - Request heard by Planning Board Aug. 28, 2015
  - Staff recommended Planning Board recommend approval to City Council
  - Planning Board did not agree with staff's recommendation
  - On Sept. 17, 2015, the Planning Board adopted findings for denial of the rezoning and unanimously recommended City Council deny the rezoning ordinance and the related ordinance for land use code changes.
- Introduction and First Reading of Ordinances were approved by City Council on Nov. 18, 2015