

RESOLUTION 2021-29

A resolution approving Boulder County Community Planning & Permitting Docket DC-20-0004: Article 19 Cal-Wood Fire – Land Use Code Text Amendments

Recitals

A. The Board of County Commissioners of Boulder County (the “Board”) is authorized to amend the text of the County's Zoning Regulations according to the procedures in Article 16 of the Boulder County Land Use Code and C.R.S. § 30-28-112, -116 and -133.

B. Under other statutory authority, the Board is empowered to adopt regulations related to the control of land use, including but not limited to Article 65.1 of Title 24 (Areas and Activities of State Interest); Articles 67 and 68 of Title 24 (Planned Unit Developments and Vested Rights); Article 20 of Title 29 (Local Land Use Enabling Act); Articles 11 and 15 of Title 30 (County Powers and Police Power); Article 1 of Title 32 (Special District Control); and Article 2 of Title 43 (County Highways), C.R.S.

C. By Resolution 94-185, adopted October 18, 1994, the Board approved a unified Boulder County Land Use Code (the “Code”), which the Board has amended on subsequent occasions.

D. The Cal-Wood Fire (the “Fire”) began on Saturday, October 17, 2020, and rapidly increased in size, continuing into the following days to eventually impact over 10,000 acres in Boulder County. The Fire, which was the largest in Boulder County history, caused severe damage to United States Forest Service and County Open Space lands, as well as the loss of private property primarily in Geer Canyon and the Mountain Ridge and Foothills Ranch Subdivisions. Twenty residences were destroyed in the two subdivisions, seventeen in Mountain Ridge and three in Foothills Ranch. Article 19 of the Code, which sets forth procedures following disasters, has been utilized for previous disasters to allow the County to create a tailored response to specific incidents.

E. In the present docket, DC-20-0004 (the “Docket”), authorized by the Board at a public meeting on January 5, 2021, Boulder County Community Planning & Permitting staff proposed text amendments to the Code (the “Proposed Amendments”) to provide a tailored response to the Fire, as set forth in the Boulder County Community Planning & Permitting Department’s memorandum and recommendation dated February 25, 2021, with its attachments (the “Staff Recommendation”).

F. As outlined in **Exhibit A**, the Proposed Amendments will provide a streamlined process for property owners to rebuild, focusing on the inherent site-specific hazards in the area and

hazards that have resulted from the Fire. Existing Code provisions (Site Plan Review – Article 4-800) for rebuilding a structure that has been damaged or destroyed by causes outside the control of the property owner require owners who commence rebuilding within one year of the event and who rebuild the original location, floor area, and height that existed before the disaster to do so without Site Plan Review, which is the planning review process typically required for new dwellings prior to issuance of a building permit. If a different structure or location is desired, then Site Plan Review would be required to review and approve it and mitigate its impacts. The Proposed Amendments will substitute for Site Plan Review and provide a streamlined process, provide flexibility and an extended timeframe for rebuilding, as well as address the hazards that exist after a wildfire, the preexisting geologic hazards in the area, and other safety concerns that are important to address in this area. The flexibility to build a home different from that which existed prior to the Fire will also result in better construction as it will incorporate the energy efficiency requirements of BuildSmart.

G. Knowing residents may want to make changes to the homes they previously had, the Proposed Amendments will provide owners with the flexibility to rebuild somewhat different and improved structures, subject to a County building permit review, if they apply to do so within an extended two-year period (which can be increased to three years with Director approval) and meet the other requirements of the Proposed Amendments. The Proposed Amendments are designed to accommodate this flexibility while still implementing the County’s essential land use principles intended to retain the unique, scenic, and rural character of the County’s mountainous area as well as address hazards and safety issues.

H. The Proposed Amendments will be incorporated into the Code as Article 19-400 and are specific to the Cal-Wood Fire. As with previous sections of Article 19, Article 19-400 is organized in the chronological sequence anticipated for a rebuilding effort, starting with the demolition/deconstruction of Fire-damaged or destroyed structures followed by provisions for applying for building permits to restore residential use on the property.

I. The Boulder County Planning Commission (the “Planning Commission”) held a duly noticed online public hearing on the Proposed Amendments on February 17, 2021. The Planning Commission recommended approval of the Proposed Amendments as presented and certified the Docket for action to the Board.

J. On February 25, 2021, the Board held a duly noticed online public hearing on the Docket (the “Public Hearing”) and considered the Staff Recommendation, documents and testimony presented by County Community Planning & Permitting Department staff. Two members of the public spoke at the Public Hearing.

K. Based on the information presented at the Public Hearing, the Board finds that the

Proposed Amendments included in **Exhibit A** meet the criteria for text amendments contained in Article 16-100.B of the Code, in that the existing text is in need of amendment; the Proposed Amendments are not contrary to the intent and purpose of the Code; and the Proposed Amendments are in accordance with the Boulder County Comprehensive Plan.

Therefore, the Board resolves:

1. The Proposed Amendments in **Exhibit A** are approved, effective as of February 25, 2021.

2. Under §30-28-125, C.R.S., the Board authorizes the Clerk to the Board to transmit this Resolution, with its **Exhibit A**, to the County Clerk and Recorder for filing and appropriate indexing. This transmittal should state recording Reference **No. 2735571**, the recording of the Boulder County Land Use Code on November 4, 2005, which this transmittal amends.

A motion to approve the Docket was made by Commissioner Marta Loachamin, seconded by Commissioner Claire Levy, and passed by a 3-0 vote.

ADOPTED as a final decision of the Board on this 30th day of March 2021.

**BOARD OF COUNTY COMMISSIONERS
OF BOULDER COUNTY:**

Matt Jones

Matt Jones, Chair

Marta Loachamin

Marta Loachamin, Vice Chair

Claire Levy

Claire Levy, Commissioner

ATTEST:

Cecilia Lacey

Clerk to the Board

Exhibit A

DOCKET DC-20-0004: PROPOSED TEXT AMENDMENTS TO ARTICLE 19, PROCEDURES FOLLOWING DISASTERS, TO ADD ARTICLE 19-400 (CALWOOD FIRE 2020) – Text amendments to the Boulder County Land Use Code to add a new Article 19-400 establishing an interim permitting procedure for rebuilding structures destroyed by the October 2020, Cal-Wood Fire.

Article 19 • Procedures Following Disasters

Purpose:

(Amend PURPOSE statement, as follows):

Boulder County is vulnerable to natural and human caused disasters that can damage property and cause injury or death, including wildfires, flood, hailstorms, rockslides, blizzards, high winds, and tornadoes. Boulder County’s Land Use Code contains provisions for rebuilding structures damaged or destroyed by means outside the control of the property owner; however, specific disaster events may warrant modified permitting and approval procedures to allow property owners to rebuild in a timely, safe, and responsible manner while also encouraging reasonable improvements in redevelopment consistent with current regulations and the Comprehensive Plan.

In addition, to respond appropriately in a disaster emergency, extraordinary actions must be taken quickly and efficiently. Some actions must occur faster than previously established permit processing timelines allow. Some actions require uses not normally allowed in certain zones, or not allowed without discretionary review, or not allowed without certain public process.

This Article addresses disaster emergency response in two ways. First, Section 19-100 grants temporary authority to certain county staff, upon the declaration of a local, state, or federal disaster emergency affecting Boulder County. The following, sections include regulations tied to specific disasters.

Article 19-400 CAL-WOOD FIRE 2020

On October 17, 2020, Boulder County declared a local disaster emergency pursuant to § 24-33.5-709, C.R.S., as amended, in response to the Cal-Wood Fire (the “Fire”), which caused severe damage and loss of property in Boulder County, in particular to the Mountain Ridge and Foothills Ranch subdivisions west of Foothills Highway. The provisions in this Article pertain to structures damaged or destroyed and land restoration efforts from the Cal-Wood Fire with particular emphasis in the Mountain Ridge and Foothills Ranch subdivisions.

A. Structure Deconstruction/Demolition Permitting

1. A deconstruction/demolition permit for the removal of damaged or destroyed structures must be obtained from the Building Division when at least one non-foundation wall of over six feet in height remains after the Fire. The deconstruction recycling requirements of the Building Code Section commonly known as “Boulder County BuildSmart” shall not apply to deconstruction permits. However, owners are encouraged to recycle building materials and contents where safe and practicable.
 - a. Foundations may remain in place for one year after initial deconstruction of the standing walls (or 18 months from the date of the Fire) provided that the property owner installs safety fencing around the perimeter of the foundation and places mulch in disturbed areas sufficient to control erosion.
 - b. The property owner must obtain a deconstruction permit for and remove the foundation and restore the foundation area within one year after initial deconstruction. The Director may approve extensions of this one-year period if the property owner demonstrates sufficient progress towards rebuilding.
2. Other applicable permitting requirements, including but not limited to permits related to asbestos removal administered by the Colorado Department of Public Health and Environment, may be required in addition to a deconstruction permit from the Building Division.

B. Qualifications for Eligible Structures

1. An eligible structure is exempt from Land Use Code site plan review approval (Article 4-800), special use review approval (Article 4-600), and compliance with residential floor area Development Credit acquisition requirements (Article 4-1300). As required by the Building Code, a structure requires building permit. The following structures are eligible structures:
 - a. A legally existing structure damaged or destroyed by the Fire. Legally existing structures include structures erected according to a valid County building permit.
 - b. Accessory structures proposed as part of the rebuilding and reestablishment of a principal residential use damaged or destroyed by the Fire.
 - c. A ground-mounted Accessory Solar Energy System that otherwise requires a site plan review waiver under this Code associated with principal structure damaged by the Fire, provided the Director determines that the proposed location of the system is will not have a significant adverse visual impact on neighboring private and public property.

C. Access Requirements to Construct Eligible Structures

1. Prior to issuance of a building permit to construct an eligible structure, demonstration of legal access to the structure is not required. However, applicants must make improvements to bring existing accesses into compliance with the Boulder County

Multimodal Transportation Standards to the greatest extent possible. Relocation of an access may occur provided the new access point is in compliance with the Boulder County Multimodal Transportation Standards and if a site-specific geologic hazard investigation performed by an appropriate licensed professional sufficiently demonstrates that the existing geologic hazards have been mitigated.

2. Safety improvements to shared subdivision roads may be required subject to evaluation of the roads by the County Engineer and in consultation with the Homeowners Associations and Fire District.

D. Timeframe for Eligible Structures

1. A property owner must submit a building permit to build an eligible structure to the Community Planning & Permitting Department by February 25, 2023. The Director may extend this period for up to one additional year for good cause shown.
2. Work under a valid building permit may continue within the timelines provided for under the Boulder County Building Code.

E. Standards and Requirements for Eligible Structures

Before issuance of building permit for an eligible structure, the Director must determine the eligible structure meets the following conditions and requirements:

1. The Residential Floor Area of eligible structure(s) must not exceed the lesser of either the Neighborhood Size Presumption (7,556 sq. ft in Mountain Ridge, and 7,911 in Foothills Ranch), or 1,000 square feet above the size of the original damaged or destroyed structure;
2. Changes from the original structure, including changes to the roofline, orientation, the reduction in the number of stories, and other modifications, may be permitted when rebuilding a destroyed structure.
 - a. Due to the visible nature of the area and the increased visibility of the area following the Fire, the visual impacts of development must be mitigated. Mitigation of visual impacts may be achieved through the following measures, but other means may also be considered on a site-by-site basis:
 - i. The use of non-reflective natural exterior materials in medium to dark earth tone colors to blend with the environment. Property owners must submit exterior color and material samples for review and approval by Community Planning and Permitting.
 - ii. The careful placement of windows and glazing and use of appropriate types of glass, i.e., non-reflective glass, to reduce reflectivity of the structure and nighttime glow from interior lights in order to protect views from public lands and rights-of-way.
 - iii. Exterior Lighting generally should be limited to one light per exterior entrance however, additional lighting may be considered if there is a demonstrated need. Fixtures must be fully shielded and downlit and the

property owner must submit an exterior lighting plan that includes locations of exterior fixtures and cut sheets for fixtures for review and approval by Community Planning and Permitting.

- iv. Existing topography may be used to minimize visual impacts, with structures following the contours, minimizing height and utilizing rooflines that step down the slope.
 - v. In the Mountain Ridge subdivision, per the subdivision approval, structures on Lots 13, 14, 15, 17 and 18 are required to be no more than one story at the high side, following the slope with roof lines.
3. The County Planning and Permitting Department must determine that the proposal for an eligible structure sufficiently mitigates the risk of debris flow, rockslide, and mudslide. An appropriate licensed professional must evaluate the site conditions and analyze the risks of an such an event. As part of the building permit application the property owner must provide a report that evaluates these hazards and provides mitigation recommendations. The report must be approved by Community Planning and Permitting and the hazard mitigation recommendations of the report shall be incorporated into the building permit.
 4. The building permit application for the rebuilding of any eligible structure must include a soils and foundation investigation performed by an appropriate licensed professional. The report must be approved by Community Planning and Permitting.
 5. Rebuilding must occur in the same location as the original structure and within the previously existing foundation footprint to the extent possible. Community Planning and Permitting may permit expansion beyond the previous footprint if a site-specific geologic hazard investigation performed by an appropriate licensed professional sufficiently demonstrates that the existing geologic hazard has been mitigated. The property owner must provide such an investigation report as part of the building permit application, and, if approved by Community Planning and Permitting, all recommendations of the report shall be incorporated into the building permit.
 6. Redevelopment must mitigate the risk of wildfire both to the subject property and to neighboring properties in the surrounding area. All redevelopment requires a Wildfire Partners Certificate to complete the defensible space requirements of the Building Code.
 7. Revegetation and erosion control on the property must occur in conjunction with reconstruction. The property owner must include a with the building permit application for review and approval by Community Planning and Permitting. The full installation of the approved plans must be inspected and approved prior to issuance of a certificate of occupancy for the residence.

F. Appeals related to Eligible Structures

1. If the Director finds that the building permit application cannot comply with the applicable standards or requirements, the Director shall deny the application. The

Director also may deny an application, or in the Director's discretion delay a decision on the application for further information, if the Director finds that insufficient information has been presented to allow a reasonable evaluation of the hazards associated with the proposed development, or to determine the effectiveness of hazard mitigation measures, or to evaluate compliance with other requirements set forth in this Section.

2. While the Director is not required to make a decision on a building permit application within a specified time, and may delay a decision on a reasonable basis as provided herein, the Director shall make a good-faith effort to process requests as soon as practicable after a complete application has been submitted.
3. The applicant may appeal the Director's final decision on a building permit application using the same process as set forth in Article 4-808 for appeals of Site Plan Review decisions.

G. Compliance with Other County Permitting Requirements

1. Any other County permitting requirement or related provision not specifically addressed in this Article 19-400, shall be presumed to apply, unless the Director determines that strict application is contrary to the intent and purposes of this Article. The Director may grant appropriate relief from the strict application, subject to reasonable mitigating measures.
2. Existing OWS systems may be used if they were not damaged in the Fire and if the restored residence or structure does not contain more bedrooms than preexisted the Fire. Owners should contact Boulder County Public Health for details on applicable OWS requirements. The building permit and any required OWS permit or approval may be reviewed concurrently.
3. In the event of a conflict between this Article 19-400 and any other code provision, this Article shall apply.

H. Enforcement

The County may enforce this Article 19-400 through the provisions of Section 17-300 of this Code. Nothing in this Article shall limit the County's existing enforcement authority under Articles 14 or 17 of this Code, the Building Code, or other applicable law.