

DOCKET DC-22-0003: PROPOSED TEXT AMENDMENTS TO ARTICLE 19-500 (MARSHALL FIRE 2021) AND ARTICLE 4 - Text amendments to the Boulder County Land Use Code to provide an allowance for an Accessory Dwelling to be built as part of Marshall Fire recovery and other changes to the Code necessary to integrate the text amendment.

#### Article 4-516 Accessory Dwelling

1. Definition: A dwelling unit which is accessory to a permitted Principal Use and which is limited to the following, allowed purposes:

d. Disaster Recovery Unit as permitted under Article 19.

#### Article 19-500 MARSHALL FIRE 2021

On December 30, 2021 Boulder County and the communities of Louisville and Superior experienced a tragic disaster from high winds and wildfire. Boulder County declared a local disaster emergency pursuant to § 24-33.5-709, C.R.S., as amended, in response to the Marshall Fire (the "Fire"), which caused severe damage and loss of life and property in Boulder County.

The following code provisions provide for an efficient rebuilding and recovery process. These regulations provide flexibility by extending time frames for rebuilding following the Fire. The regulations also allow flexibility in structures' location, size, and height while considering potential impacts on neighbors and the environment. In addition, the requirements set forth in these code amendments reduce risk from future wildland and urban fires to help build a more resilient community.

The provisions in this Article pertain to structures destroyed or damaged by the Marshall Fire and wind event and any necessary land restoration efforts resulting from the Fire.

#### A. Structure Deconstruction/Site Clean Up

1. A Deconstruction/Site Clean-Up Permit is required for each property where a structure(s) was destroyed by the fire. This permit is required to be closed out prior to issuance of a building permit for new construction, eligible structures, and temporary structures.
  - a. The deconstruction recycling requirements of the Boulder County Building Code, commonly known as "Boulder County BuildSmart," shall not apply to the Deconstruction/Site Clean-Up Permit.
  - b. A Deconstruction/Site Clean-Up Permit must be applied for by June 30, 2022 unless an extension is granted by the Director for good cause. Extensions shall not be longer than 30 days.
  - c. Deconstruction/Site Clean-Up Permits must be closed out by September 30, 2022 unless an extension is granted by the Director for good cause. Extensions shall not be longer than 30 days.
  - d. Site condition requirements include:
    - i. IF REBUILDING IMMEDIATELY: If a property owner intends to build on the property within 180 days of the Deconstruction/Site Clean-Up Permit final inspection date, a temporary construction fence shall be installed around the perimeter of the disturbed area and erosion and sediment control measures must be in place until construction begins.
      1. If a complete building permit application for a new structure(s) has not been submitted within 180 days of the deconstruction/site clean-up final inspection and close-out date, the Not Rebuilding Immediately requirements below must be implemented.
        - a. A one-time extension of the 180-day timeframe allowing a property owner to maintain temporary construction fencing and erosion and sediment control measures (versus re-grading and stabilizing the site) following clean-

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up completion may be granted for good cause by the Director for up to 90 days.

- ii. IF NOT REBUILDING IMMEDIATELY: If a complete building permit application for a new structure(s) will not be submitted within 180 days of the deconstruction/close-out permit final inspection date, any excavated area(s) must be backfilled and the site returned to its natural grade, areas of disturbed soil must be seeded and stabilized, and erosion and sediment control must be in place until vegetation is at least 70% established.
2. Other requirements, including but not limited to permits related to hazardous material removal and water quality administered by the Colorado Department of Public Health and Environment, may be required.
- B. Temporary Structures on Fire-Affected Properties
1. Temporary structures require a building permit and shall comply with zoning setback requirements, unless the Director determines that existing site conditions make such location impractical or unnecessary.
  2. Temporary Housing Units
    - a. Temporary housing is intended to house those whose residence was destroyed by the Fire on a short-term basis while preparing for or rebuilding the new residence. Temporary housing units shall only be occupied by the property owner and the owner's family.
    - b. Only one temporary housing unit shall be permitted per property, unless the owner can demonstrate that an additional unit is necessary.
    - c. The final status (i.e. removal, decommissioning, etc.) of the structure used for temporary housing must be approved prior to the issuance of the building permit for the temporary housing unit and the structure must be removed or converted to the approved final condition upon final inspection of the permanent dwelling unit.
      - i. Structures that remain on site will count towards the total Residential Floor Area on the property.
      - ii. Only one permanent dwelling unit is allowed to remain on the property unless an accessory dwelling unit is approved. If the property was Nonconforming because of multiple permanent dwellings, it may be rebuilt to the same level of Nonconformity.
      - iii. Once a building permit to rebuild a permanent dwelling unit has been issued, the temporary housing unit may remain while a valid County building permit for work on the permanent dwelling unit is in effect. Within two weeks of County issuance of a certificate of occupancy for the permanent dwelling unit, the temporary housing unit must either be removed from the property along with the site of its location being fully restored, or must be converted to a legal, permanent accessory structure.
    - d. The use of a Recreational Vehicle (RV) or other temporary dwelling on a chassis with wheels is allowed provided:
      - i. Electrical service is provided and a building permit for Temporary Electrical service is issued;
      - ii. An on-site connection to the potable water supply is provided;

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- iii. A method for the safe disposal of effluent is approved of by Boulder County Public Health;
- iv. The use of an RV or other temporary dwelling on a chassis with wheels as a temporary housing unit shall be limited to two years from adoption of this amendment. This timeframe may be extended by the Director for up to 180 days if a building permit application for a permanent dwelling unit has been issued; and
- v. Recreational Vehicles or other temporary dwellings on a chassis with wheels must be safe for temporary occupancy. They must be licensed and operable, installed according to manufacturer's specifications and adhere to applicable County safety requirements such as being properly secured/tied down.

3. Temporary Accessory Structures

- a. A temporary accessory structure may be located on an affected property to assist with rebuilding on, or cleanup of, the property, provided a building permit is issued for the structure if required.
- b. Temporary accessory structures may not exceed 500 sq. ft.
- c. Temporary accessory structures are allowed for up to 5 years from the adoption of this Code or must otherwise be permitted as a permanent structure. Structures that remain on site will count towards the total Residential Floor Area on the property.

C. Fire-Damaged/Destroyed Structures Eligible for Expedited Rebuilding

- 1. Any legal structure(s) or Floor Area (residential or non-residential) that was damaged or destroyed by the Fire, may be rebuilt or repaired if approved through the process set forth below. Construction within the defined parameters is exempt from Land Use Code site plan review approval (Article 4-800) and special use review approval (Article 4-600). Development Credit acquisition exemptions and requirements (Article 4-1300) apply.
- 2. Eligible Structures and Legally Existing Floor Area include:
  - a. Structures and Floor Area erected according to a valid County building permit.
  - b. Structures and Floor Area erected without a valid County building permit, if the owner can demonstrate that the structure or Floor Area preexisted the effective date of building permit requirements in the County (January 27, 1966 for Subdivided Land, and December 22, 1975 for Unsubdivided Land), or was exempt from applicable building permit requirements. This information can be obtained through County Assessor's records, photographs, maps, and surveys, property damage assessment or other documentation deemed acceptable by the Director.
  - c. Nonconforming Structures and Structures containing Nonconforming uses. Nonconforming structures and uses are those that do not conform to the zoning district regulations (such as setbacks) in which the nonconforming structure or use is located as a result of the adoption or amendment of this Code.
  - d. Accessory structures, such as outbuildings, may be built prior to the construction of the anticipated principal use (i.e., the permanent dwelling unit).
  - e. A ground-mounted Accessory Solar Energy System that otherwise requires a site plan review waiver under this Code associated with an eligible structure, provided the Director

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determines that the proposed location of the system will not have a significant adverse visual impact on neighboring private and public property.

3. Proposed construction that is outside the scope of the defined parameters outlined in Section 19-500.F may be undertaken if approved under the applicable provisions of the other articles of this Code, such as Site Plan Review.
- D. Access Requirements to Construct Eligible Structures and Floor Area
1. If the previous access point is being reused, demonstration of legal access is not required. If the access point is being relocated, demonstration of legal access is required. Modifications to pre-existing driveways should meet Multimodal Transportation Standards.
- E. Timeframe for Eligible Structures (Including Nonconforming Structures and Structures Containing Nonconforming Uses)
1. A property owner must submit a complete building permit application to build an eligible structure or Floor Area to the Community Planning & Permitting Department within 5 years after the adoption of this Code. A one-time extension of up to one year may be granted by the Director if good cause is demonstrated.
  2. Work under a valid building permit must continue within the timelines provided for under the Boulder County Building Code.
- F. Allowances and Requirements for Eligible Structures and Floor Area
1. Eligible structure(s) may be issued a building permit upon the Director determining the following parameters are met:
    - a. Size. Floor Area may be built in the following manner.
      - i. Rebuild Legally Existing Floor Area
        1. Legally Existing Floor Area as of December 30, 2021 and Floor Area approved under a Site Plan Review may be built.
      - ii. Increase in size
        1. An increase in Floor Area is permitted provided it does not exceed the lesser of either:
          - a. the size presumed to be compatible with the defined neighborhood (~~125% median Residential Floor Area as defined in 4-806.A.2.a~~) on December 30, 2021, or
          - b. an additional 1,000 square feet (including both residential and non-residential Floor Area).
      - iii. When new construction results in Residential Floor Area over 6,000 square feet and exceeds the Residential Floor Area that legally existed on the property as of December 30, 2021, Development Credits must be purchased for any Residential Floor Area that exceeds what was legally existing as of December 30, 2021, pursuant to Article 4-1300 of this Code.
    - b. Location. Structures must be located in the same general location as the previously existing structure.

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- i. Reuse of the footprint (area of the foundation of the previously existing structure) is required. Structures with a footprint of less than 1,500 sq. ft. shall reuse at least 30% of the footprint, structures with a footprint of 1,500 to 2,500 sq. ft. shall reuse at least 40% of the footprint and structures with a footprint over 2,500 sq. ft. shall reuse at least 50% of the footprint.
    1. A location change that does not fall within these parameters may be reviewed through the Site Plan Review Waiver process for the limited purpose of evaluating the location shift and its impacts. The Director's written determination under this limited Site Plan Review Waiver process may be directly appealed to the Board of County Commissioners.
  - ii. Nonconforming Structures and Structures containing Nonconforming Uses may be permitted to relocate to a larger degree when the relocation will result in a higher degree of conformity. Setbacks for Nonconforming Structures and Structures containing Nonconforming Uses from an irrigation ditch shall be 20 feet from the centerline of the ditch, provided the development does not conflict with the easement(s) for the ditch.
  - iii. Floor Area that was distributed amongst multiple structures may be redistributed so long as redistributed Floor Area does not change use classification.
- c. Height. Allowable increases in height include:
- i. On an eligible structure that was previously one story, the height of the replacement structure may be increased up to a maximum total height of 20 feet from existing grade.
  - ii. Height may also be increased up to the maximum height allowable in the zoning district if the new second level on a structure that was previously one-story does not exceed 800 sq. ft., or if a previously-existing second story is expanded by a maximum of 500 sq. ft.
  - iii. Impacts on neighboring views should be considered, and the stories above (particularly if in a shifted footprint) shall be stepped back or broken up to mitigate the visual impacts from the massing.
- d. Earthwork. Non-foundational earthwork of up to 500 cubic yards associated with modifications to the driveway or structure relocation is permitted.
- e. Previous approvals. Rebuilding under this section shall remain subject to explicit limitations that were imposed on a property through a prior County land use approval or conservation easement.

## 2. Disaster Recovery Unit

- a. A single Accessory Dwelling may be constructed when the principal single family dwelling was destroyed by the Fire according to Boulder County's damage assessment records. The Director may also consider an Accessory Dwelling allowance on properties with a damaged principal single family dwelling according to Boulder County's damage assessment records. In making this determination, the Director will consider whether the effects of the damage were similar to those presented by homes that were destroyed.
- b. Requirements:
  - i. The Accessory Dwelling is limited to 900 sq. ft.

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- ii. The Floor Area shall be considered Residential Floor Area and shall fit within the size allowance provided in F.1.a above.
  - iii. Primary Dwelling Short-Term Rentals, Secondary Short-Term Rentals, and Vacation Rentals are not permitted in an Accessory Dwelling. On properties with an Accessory Dwelling the principal dwelling is not eligible for use as a Vacation Rental or Secondary Short Term Rental.
  - iv. The Accessory Dwelling shall use the same access point and driveway as the Principal Residence.
  - v. Parking Requirements: At least one off-street parking space must be provided.
  - vi. Adequate water service must be demonstrated at the time of building permit submittal. If the property receives water service from a public water source, a letter from the Water District stating that it approves of two dwellings on the parcel must be provided. If the property is served by a well, a letter from the Colorado Division of Water Resources that states that the existing well permit can accommodate a second dwelling unit must be provided.
  - vii. Adequate sanitary sewer service must be demonstrated at the time of building permit submittal. If the property receives sanitary sewer service from a public source, a letter from the Sanitation District stating that it approves of two dwellings on the parcel must be provided. If the property is served by an onsite wastewater system, a septic permit for a system that can accommodate a second dwelling unit must be provided.
  - viii. The principal single family dwelling and the Accessory Dwelling shall remain in common ownership. Accessory Dwellings shall not result in the creation of additional building lots nor result in the change of the property to Condominium Ownership.
  - ix. In instances where the Accessory Dwelling is constructed prior to the principal dwelling, a complete building permit application for the principal dwelling must be submitted by March 29, 2027. After this date, the Accessory Dwelling will be considered the principal dwelling and use on the property. A one-time extension of up to one year may be granted by the Director if good cause is demonstrated.
  - x. Accessory Dwellings shall remain subject to explicit limitations that were imposed on a property through a prior County land use approval or conservation easement.
- c. Special Provisions by Accessory Dwelling Building Type
- i. Detached
    1. Definition: A standalone Accessory Dwelling separate from the principal single family dwelling or other accessory structures.
    2. Height Limit: 20 feet.
    3. Location: If the structure is located more than 50 feet from the footprint of the single family dwelling destroyed by the Fire, as measured from the two closest points of the Accessory Dwelling and the footprint, Site Plan Review Waiver

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shall be required for a Detached Accessory Dwelling for the limited purpose of reviewing the structure's location and its impacts.

- a. The Director's written determination under this limited Site Plan Review Waiver process may be directly appealed to the Board of County Commissioners.
  - ii. Attached to Accessory Structure
    1. Definition: An Accessory Dwelling sharing either a wall or floor with a detached accessory structure (i.e. detached garage).
    2. Location: Rebuilding of a detached accessory structure that includes an Accessory Dwelling shall comply with the location requirements of section F.1.b above.
    3. If a new structure is located more than 50 feet from the footprint of the single family dwelling destroyed by the Fire, as measured from the two closest points of the Accessory Dwelling and the footprint, Site Plan Review Waiver shall be required for the new Structure for the limited purpose of reviewing the structure's location and its impacts.
      - a. The Director's written determination under this limited Site Plan Review Waiver process may be directly appealed to the Board of County Commissioners.
  - iii. Attached to the Principal Structure
    1. Definition: An Accessory Dwelling designed as part of the principal single family dwelling and sharing either a wall or a floor with the rest of the structure.
    2. Location: Rebuilding of a principal structure that includes an Accessory Dwelling shall comply with the requirements of section F.1.b above.
  - iv. Conversion of Existing Floor Area
    1. An Accessory Dwelling may be developed by converting legally existing floor area on a parcel into a Dwelling Unit.
      - a. Conversion may occur without a Land Use review process.
      - b. In order to allow the reasonable reuse of an existing structure, the Director may grant an exception to the size limitation if good cause is demonstrated.
3. Redevelopment must mitigate the risk of wildfire both to the subject property and neighboring properties in the surrounding area by incorporating the list of Boulder County Building Code wildfire provisions set forth in Appendix A. Appendix A is applicable until amendments to the Boulder County Building Code wildfire provisions become effective.
  4. The property owner must submit a traffic management and construction staging plan to provide awareness related to construction activities in the neighborhood. The plan shall provide details of construction phasing, the location of a construction materials storage area, parking and loading areas, worksite access point, trash receptacles and dumpsters, construction trailer, construction fencing, and other details associated with the construction activities.

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5. Revegetation and erosion control are required on the property. The property owner must include a revegetation and erosion control plan with the building permit application for review and approval by the Community Planning & Permitting Department. The full installation of the approved plan must be inspected and approved prior to issuance of a certificate of occupancy for the permanent dwelling unit.
6. Nonconforming Structures and Structures Containing Nonconforming Uses. Alteration of Nonconforming Structures and Structures containing Nonconforming Uses are eligible for the allowances outlined in this Article provided the overall encroachment into the setbacks and/or height are not increased. Nonconforming Uses may be reestablished at the previous level of Nonconformity.

G. Appeals related to Eligible Structures and Floor Area

1. If the Director finds that the building permit application does not comply with the applicable standards or requirements, the application cannot be processed through this expedited review process and may require the applicable review process (such as Site Plan Review or Special Use Review). The Director may delay a decision on any application, if the Director finds that insufficient information has been presented to evaluate compliance with the parameters and 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 building permit 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 determinations.

H. Compliance with Other County Permitting Requirements

1. Any other County permitting requirement or related provision not specifically addressed in Article 19-500, 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. In the event of a conflict between this Article 19-500 and any other code provision, this Article shall apply.

I. Enforcement

The County may enforce Article 19-500 through the provisions set forth in Article 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 Boulder County Building Code, or other applicable law.



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#### 19-500 - Appendix A

R327.4 Restrictions in Wildfire Zone No. 2. Buildings constructed in Wildfire Zone 2 shall comply with this section.

R327.4.1 Roof covering. Roof covering materials installed in Wildfire Zone 2 shall be listed Class A roof covering materials or be constructed as a Class A roof assembly. For roof coverings where the profile allows a space between the roof covering and roof decking, the space at the eave ends shall be fire stopped to preclude entry of flames or embers, or have one layer of 72-pound (32.4 kfg) mineral-surfaced, non-perforated cap sheet complying with ASTM D 3909 installed over the combustible decking.

R327.4.1.1 Roof valleys. When provided, valley flashings shall be not less than 0.019 inch (No. 26 galvanized sheet gage) corrosion-resistant metal installed over a minimum 36-inch-wide underlayment consisting of one layer of 72-pound mineral-surfaced, non-perforated cap sheet complying with ASTM D 3909 running the full length of the valley.

R327.4.2 Gutters and downspouts. Gutters, downspouts, and gutter covering devices shall be constructed of noncombustible material. Gutters shall be provided with an approved means to prevent the accumulation of leaves, pine needles and debris in the gutter.

Exception: Buildings meeting one of the exceptions to Section R401.3 of this code may be constructed without gutters and downspouts.

R327.4.3 Spark arrestors. Chimneys serving fireplaces, barbecues, incinerators or decorative heating appliances in which solid or liquid fuel is used shall be protected with a spark arrester. Spark arresters shall be constructed of woven or welded wire screening of 12 USA standard gauge wire (0.1046 inch)(2.66 mm) having openings not exceeding ½ inch (12.7 mm). The net free area of the spark arrester shall not be less than four times the net free area of the outlet of the chimney.

R327.4.4 Fences, retaining walls and similar appurtenances. Fences, retaining walls or other appurtenances that connect to buildings must be constructed of *noncombustible materials* or *ignition-resistant materials* for a distance of 3 feet beyond the exterior walls.

R327.4.5 Protection of eaves. The leading edge of the roof at the fascia must be finished with a metal drip edge so that no wood sheathing is exposed.

Eaves, fascia, and soffits, covered decks or covered porch ceilings shall be protected on the enclosed underside by one of the following materials or methods:

1. *Noncombustible* materials.
2. *Ignition-resistant materials*.
3. Materials approved for a minimum of 1-hour fire-resistance-rated construction.
4. 2-inch-thick nominal dimension lumber.

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5. 1-inch-thick nominal *fire-retardant-treated wood*.
6.  $\frac{3}{4}$ -inch-thick nominal *fire retardant-treated plywood* labeled for exterior use.
7. Any materials permitted by this code.

Exceptions:

1. Vinyl or plastic soffits, fascia or *trim* are not permitted.
2. Rafter tails or roof beam ends may be exposed if they are *heavy timber* having minimum dimensions not less than 6-inch nominal in width and not less than 8 inches nominal in depth.

R327.4.6 Exterior walls. Exterior walls of buildings or structures shall be constructed with one of the following methods:

1. *Noncombustible materials* approved for a minimum of 1-hour fire-resistance-rated construction on the exterior side.
2. Approved *noncombustible materials*.
3. *Heavy timber or log wall construction*.
4. *Fire-retardant-treated wood* labeled for exterior use on the exterior side.
5. *Ignition-resistant materials* on the exterior side.

Such material shall extend from the top of the foundation to the underside of the roof sheathing.

Exception: *Trim* is not required to meet the materials requirements for exterior walls.

R327.4.7 Unenclosed under floor protection. Buildings or structures shall have all underfloor areas enclosed to the ground with exterior walls in accordance with Section R327.4.6. For decks, see Section R327.4.8.

Exception: Complete enclosure may be omitted where the underside of all exposed floors and all exposed structural columns, beams, and supporting walls are protected as required for exterior 1-hour fire-resistance-rated construction or *heavy timber construction* or *fire-retardant-treated wood* labeled for exterior use.

R327.4.8 Decks, appendages, and projections. Decks and other unenclosed accessory structures attached to buildings shall be constructed of the following materials:

R327.4.8.1 Deck surface: *Non-combustible* material, approved wood thermoplastic composite lumber with an ASTM E84 flame- spread index no greater than 200, *ignition- resistant building materials* or any *approved Class A* roof assembly.

R327.4.8.2 Deck framing: Deck framing shall be constructed of one of the following:

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1. 1-hour fire resistance-rated construction
2. *Heavy timber* construction.
3. *Approved noncombustible materials*.
4. *Fire-retardant-treated wood* labeled for exterior use.
5. *Ignition-resistant building materials*.
6. Wood with a minimum nominal thickness of at least 2 inches for joists and 4 inches for beams and columns or posts.

R327.4.11 Vents. Attic ventilation openings, foundation or under-floor vents, or other ventilation openings in vertical exterior walls and vents through roofs shall not exceed 144 square inches each. Such vents shall be covered with noncombustible corrosion-resistant mesh with openings not to exceed 1/8 inches or shall be designed and *approved* to prevent flame or ember penetration into the structure. Gable end and dormer vents shall be located at least 15 feet from property lines and shall be designed and *approved* to prevent flame or ember penetration into the structure. Underfloor ventilation openings shall be located as close to grade as practical.

R327.4.12 Detached accessory structures. Detached accessory structures shall have exterior walls constructed in accordance with Section R327.4.6.

R327.4.12.1 Underfloor areas. Where the detached structure is located and constructed so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground with exterior wall construction in accordance with Section R327.4.6 or underfloor protection in accordance with Section R327.4.7.

Exception: The enclosure shall not be required where the underside of all exposed floors and all exposed structural columns, beams, and supporting walls are protected as required for exterior 1-hour fire-resistance-rated construction or *heavy timber construction* or *fire-retardant-treated wood* on the exterior side. The *fire-retardant-treated wood* shall be labeled for exterior use.

R327.4.13.1 Weed barrier and gravel or crushed rock. A weed barrier and gravel or crushed rock not less than ¾-inch in diameter applied at least 2 inches thick must be installed beneath decks, unenclosed floors, and around the perimeter of the building to extend at least 3 feet beyond the exterior walls and at least 2 feet beyond the driplines of decks, bay windows and other eaves and overhangs.

Exception: Noncombustible surfaces, such as poured concrete or asphalt, or other *approved noncombustible* materials, such as a weed barrier and brick, concrete or stone pavers, may satisfy this requirement.