

RESOLUTION 2023-009

A resolution approving Boulder County Land Use Docket DC-22-0002: Proposed Land Use Code Text Amendments to 4-516.K Accessory Solar Energy System

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 the regulations 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. On April 26, 2022, the Board requested Boulder County Community Planning and Permitting staff pursue a text amendment to the Code regarding accessory ground-mounted solar energy systems. The present Docket, DC-22-0002 (the “Docket”), is intended to facilitate development of onsite solar energy systems and utilize the Site Plan Review Waiver process only for those systems that could have unanticipated impacts and where a site-specific evaluation is necessary to evaluate those impacts. The proposed text amendments to Article 4-516.K and related sections of Article 4-802 of the Code (the “Proposed Amendments”) are set forth in the Boulder County Community Planning & Permitting Department’s memorandum and recommendation dated January 5, 2023, with its attachments (the “Staff Recommendation”).

E. The Accessory Solar Energy System use was added to the Code in 2009. Since the most recent 2018 Code update, all ground-mounted accessory systems require Site Plan Review Waiver approval if they meet the parameters defined in the Code.

F. The Proposed Amendments define a set of parameters that will eliminate the need for a Site Plan Review Waiver prior to issuance of a building permit for low impact ground-mounted solar systems and therefore facilitate the installation of these systems. Site Plan Review Waiver will continue to be required for those projects that do not fit within the established parameters so that unique circumstances may be considered on a case-by-case basis.

G. The Boulder County Planning Commission (the “Planning Commission”) held a duly noticed public hearing on the Proposed Amendments on October 19, 2022. The Planning Commission recommended approval of the Proposed Amendments and certified the Docket for action to the Board.

H. On January 5, 2023, the Board held a duly noticed hybrid (Online Zoom Webinar and In-Person) public hearing on the Docket (the “Public Hearing”) and considered the Staff Recommendation, documents, and testimony presented by county Community Planning & Permitting Department staff. No members of the public spoke at the Public Hearing.

I. 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 January 5, 2023.
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.

[Signature Page to Follow]

A motion to approve the Proposed Amendments, was made at the Public Hearing by Commissioner Claire Levy, seconded by Commissioner Matt Jones, and passed by a 3-0 vote.

This Resolution adopts the approval of Docket DC-22-0002: Proposed Land Use Code Text Amendment to 4-516.K Accessory Solar Energy System in substantially the same form and subject to the same terms and conditions as voted by the Board at the Public Hearing. Due to the expiration of his term of office as Commissioner on January 10, 2023, Matt Jones is not a signatory to this Resolution. The Resolution is approved by the signatories below as the current sitting Board.

ADOPTED as a final decision of the Board on this 31st day of January, 2023.

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

Claire Levy

Claire Levy, Chair

Ashley Stolzmann

Ashley Stolzmann, Vice Chair

Marta Loachamin

Marta Loachamin, Commissioner

ATTEST:

Cecilia Lacey

Clerk to the Board

Exhibit A

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DC-22-0002: Proposed Land Use Code Text Amendment to 4-516.K Accessory Solar Energy System –

Text amendments to the Boulder County Land Use Code Article 4-516.K Accessory Solar Energy System creating a prescriptive path for accessory ground mounted systems to be permitted by the issuance of a building permit and other changes to the Code necessary to integrate the text amendment.

4-802.C.7 Applicability and Scope of the Site Plan Review Process for Development

C. Site Plan Review may be waived for the following circumstances if the Community Planning & Permitting Director determines that there is no potential for any significant conflict with the criteria listed in Article 4-806 of this Code:

7. A principal Ground-Mounted Solar Energy System that is less than 0.5 acre or an Accessory Solar Energy System that does not satisfy the additional provisions described in Article 4-516.K.5.e.

4-516.K Accessory Solar Energy System

1. Definition: Building-mounted, Ground-Mounted, and Parking Canopy Solar Energy Systems designed primarily for serving on-site needs of a Principal Use.
2. Districts Permitted: By right in all districts. Site Plan Review is not required for ground-mounted systems that meet the provisions outlined in (e). When required, Site Plan Review may be waived by the Director for systems with a disturbed area less than 0.5 acres per 4-802.
3. Parking Requirements: None
4. Loading Requirements: None
5. Additional Provisions:
 - a. Ground-Mounted Solar Energy Systems are structures that must meet applicable setbacks for the zoning district except as provided in section 5.b., below.
 - b. If necessary for the efficacy of the system, accessory ground-mounted systems may be located within minimum lot line setbacks and within any applicable major road supplemental setback without the need for a variance, provided that the solar energy system is located not less than 5 feet from lot lines and not less than 15 feet from all roads.
 - c. Accessory ground-mounted systems may not exceed 15 feet in height, except to accommodate site specific needs and as approved through review. In no case shall a system exceed 25 feet in height.
 - d. Accessory Solar Energy Systems must meet all applicable Additional Provisions for solar energy, including building-mounted, ground-mounted, or parking canopy systems contained in 4-514.
 - e. Ground-Mounted Solar Energy Systems do not require Site Plan Review if the Director determines all of the following parameters are met:
 - i. The height of the system is no more than 10 feet;
 - ii. The system complies with applicable zoning setbacks;

- iii. The panels of the system are located within 100 feet of the use the system is accessory to (e.g., Single Family Dwelling, agricultural facility) as measured from the furthest extent of the panel(s) to the closest point of the structure or facility that the system is providing power to;
- iv. The cumulative panel area of the system(s) is no more than 750 square feet. The length times the width of the panel array will be used to determine panel area.
- f. Prior to final inspection, all areas of exposed or disturbed soil must be revegetated or stabilized by other means sufficient to prevent the establishment of noxious weeds, soil erosion and protect stormwater quality.
- g. Ground-mounted systems shall remain subject to explicit limitations that were imposed on a property through a prior County land use approval or conservation easement.