

RESOLUTION 2024-077

A Resolution Repealing and Reenacting Resolution 98-164 Related to the Establishment, Powers, and Procedures of the Boulder County Board of Review, Pursuant to Sections 30-28-206 – 30-28-207, C.R.S., and Section 113 of the Boulder County Building Code, As Amended

Recitals

A. Pursuant to Resolutions 77-69, 83-9, and 98-164, the Board of County Commissioners (“BOCC”) established, and specified the jurisdiction of and procedural rules governing, the Boulder County Board of Review (“BOR”), as authorized under Sections 30-28-206 - 30-28-107, C.R.S.

B. The BOCC also has specified certain powers of and substantive limitations in the BOR in Section 113 of the Boulder County Building Code (“the Building Code”) as amended.

C. The BOR is necessary to promote and enhance the public health, safety and welfare of the citizens of unincorporated Boulder County.

D. The BOCC wishes to enact this Resolution to supplement the procedural rules of the BOR consistent with the BOR’s statutory authority and the jurisdiction which the Board has provided for the BOR in the Building Code.

E. The BOR will review and formally adopt the procedural rules set forth in this Resolution in a public meeting following the Resolution’s adoption.

F. As part of the adoption of this Resolution, the BOCC wishes to repeal Resolution 98-164 contemporaneously with the adoption of this Resolution.

Therefore, the Board resolves that the composition, jurisdiction, and procedural rules of the BOR shall be as follows:

I. MEMBERSHIP, APPOINTMENTS, AND TERMS

- a. The BOR shall consist of 3 (three) regular members, who shall be appointed by and in the discretion of the BOCC. In appointing regular members, the BOCC should give preference to individuals serving as associate members on the BOR.
- b. All BOR members shall be experienced in building construction. To the extent possible, the BOCC should appoint BOR members that are Colorado-licensed architects, Colorado-licensed mechanical engineers, Colorado-licensed civil engineers, engineering geologists, or general contractors.

- c. All members shall be residents of Boulder County or work in a construction field related business based out of Boulder County
- d. Each member's term shall be three years and until a member's respective successor has been appointed.
- e. The terms of office of all BOR members shall be arranged by making appointments so that the term of at least one member expires each calendar year.
- f. The BOCC may appoint two associate members of the BOR, who shall also be experienced in building construction. In the event that any regular BOR member is temporarily unable to act owing to absence from the County, illness, interest in a case before the BOR, and any other cause, the Secretary to the BOR may arrange for an associate member to take the regular member's place during such temporary disability. Associate members shall not be elected to chair or co-chair the BOR, and shall not act as regular members except when called upon to substitute for a regular member under the terms of this paragraph. However, associate members may participate in an advisory capacity to the BOR when the Board is considering matters of a quasi-legislative (as opposed to quasi-judicial) nature.
- g. In the event that a member dies or resigns prior to the expiration of that member's term, the BOCC shall appoint a new member to fill that member's unexpired term. The BOCC shall fill vacancies for such unexpired terms in the same manner as in the case of original appointments.
- h. The BOCC may remove any member, whether regular or associate, for cause, following written charges and a public hearing of which the member has prior notice and at which the member has the opportunity to be heard. Cause may include, but shall not be limited to, a member's absence from three regular meetings in one calendar year.
- i. All members, whether regular or associate, shall serve without pay, except that members are entitled to receive reimbursement for actual expenses incurred as part of their BOR duties.

II. OFFICERS AND COMMITTEES

- a. The BOR shall elect a Chair and a Vice Chair from among its regular members, whose terms shall be for one (1) year. The Chair, or in the Chair's absence the Vice Chair, shall be responsible for conducting all meetings of the BOR. The BOR may create other offices as it deems necessary or appropriate to the conduct of its authorized functions.
- b. The Boulder County Chief Building Official shall act as Secretary to the BOR. As Secretary, the Building Official shall be responsible for providing the appropriate

technical staff to assist the BOR, and for maintaining all records of BOR proceedings. The Building Official shall serve in this capacity by operation of this Resolution, and need not be appointed by separate action of the BOR for this purpose.

III. BOR JURISDICTION

- a.** The BOR shall have the duties and jurisdiction to act as set forth in Section 113 of the Building Code, including its referenced Sections 104.10 and 104.11, which is attached to and incorporated into this Resolution as Exhibit A.

IV. MEETINGS AND VOTES

- a.** All meetings and hearings of the BOR, except duly convened executive sessions, shall be open to the public.
- b.** Meetings of the BOR shall be held at the call of the Chair (or in the Chair's absence the Vice Chair) or the Secretary. Regular meetings of the BOR normally will be held at the offices of the County Community Planning and Permitting Department on an as needed basis and beginning at 3:30 p.m. The Chair or the Secretary may alter the start time of a meeting, as necessary or appropriate to the BOR's agenda.
- c.** The Secretary shall provide at least 7-days' prior notice of any of the BOR's meetings, published in a newspaper of general circulation in the County and posted on the County website for parties in interest. The Secretary shall coordinate with the Clerk to the BOCC to make sure that public notice of BOR meetings is posted or provided in compliance with the Colorado Open Meetings Law.
- d.** Two (2) members of the BOR shall constitute a quorum for official action. All official actions of the BOR shall be taken by vote, with a majority of those members present needed to approve a vote. In the absence of a quorum, a lesser number of BOR members may adjourn any meeting to a later date and time, provided that at the meeting to be adjourned an announcement of the date and time of the rescheduled meeting is posted or otherwise provided to any parties in interest, and the rescheduled meeting is otherwise noticed in accordance with this Section III.
- e.** Upon the affirmative vote of the quorum present (which shall mean the vote of two members if either 2 or 3 members are present), the BOR may hold an executive session at a regular or special meeting, for the sole purpose of considering any of the matters set forth in 24-6-402(4) of the Open Meetings Law, as amended. The Chair shall announce the general topic of the executive session prior to convening the session. No adoption of any proposed policy, position,

resolution, rule, regulation, or formal action shall occur at any executive session which is not open to the public.

- f. The BOR, through its Secretary, shall keep a record of its proceedings, examinations, and other official actions, which record shall be open to inspection by the public during regular County office hours. The BOR shall keep minutes of its proceedings showing the vote of each member upon each questions (or, if absent or failing to vote, indicating such fact), which minutes may be kept in the form of the official recording of the BOR's meeting.
- g. The Secretary shall place all requests for approval or other official action by the BOR and all matters scheduled for public discussion by or the information of the BOR, on an agenda, which the Secretary shall make available to members of the BOR, members of the public, and any known parties in interest, in advance of the respective meeting. The Chair (or in the Chair's absence the Vice Chair) shall have the discretion to alter the order of the BOR's consideration or hearing of any of the items listed on an agenda for any particular meeting, unless otherwise directed by a majority of the BOR members present. In addition, the BOR, by majority vote, shall have the right to amend the agenda to add, delete, or table or continue any matter, provided that no such action shall be contrary to the procedural requirements of the Colorado Open Meetings Law and shall be consistent with any due process rights of any party in interest to the matter.

V. HEARING PROCEDURES

- a. The hearing procedures set forth in this Section V. are guidelines which can be expected to generally govern quasi-judicial hearings before the BOR. Such hearings include hearings to consider appeals, requests for interpretations, and requests for approvals of alternate materials and methods of construction or modifications, all as set forth in Section 113 of the Building Code (see Exhibit A). The Chair (or in the Chair's absence the Vice Chair) shall have the discretion to enforce or alter the following procedures, as necessary to ensure that BOR meetings and hearings are conducted in an efficient manner while observing principles of fundamental fairness with respect to all interested parties. However, in no event shall the Chair have the discretion to alter the fee specified in Subsection B., immediately below.
- b. An application fee of \$200.00, to offset publication and administrative costs, shall accompany each request for a hearing on any of the matters referenced in Section V.a., above. No part of this fee shall be refundable.
- c. The procedures governing BOR meetings, as set forth in Section IV., above, shall also apply to quasi-judicial hearings. In addition, the Secretary shall schedule a BOR hearing on a request, if timely filed, to be held no earlier than 15 days and no later than 45 days after the filing of a complete request (or as soon as possible thereafter given the availability of a BOR quorum for the hearing). Section 113.2

of the Building Code requires appeals to the BOR to be made in writing, to be directed to the Secretary of the BOR, to state the basis for the appeal, and to be made within 14 days after the date of grant or refusal of the building permit or decision being appealed from. (See Section 113.2 of the Building Code in Exhibit A, attached).

- d. The Secretary shall make a written analysis of and recommendation to the BOR on each hearing request, which the Secretary shall make available to the Applicant and the BOR at least seven (7) days prior to the hearing.
- e. The Chair, or in the Chair's absence the Vice Chair, may administer oaths and compel the attendance of witnesses at hearings.
- f. The following hearing procedures are not binding and shall be considered guidelines for the conduct of a fair hearing. Ordinarily, at the hearing, the Chair will open the hearing and call for a presentation by the Secretary, based on the Secretary's written analysis and recommendation and any additional relevant material received prior to the hearing. The Applicant next will be provided with an opportunity to respond and to present the Applicant's case. Following the Applicant, any interested members of the public shall be given an opportunity to speak. Thereafter, the BOR shall allow the Secretary and the Applicant an opportunity to respond. The BOR may ask questions of these witnesses at any time during their presentations. The BOR shall retain any evidence presented by the Applicant or any other person at the hearing as part of its official record of the hearing. Once all parties in interest have had an opportunity to testify, the Chair shall close the public hearing. At this time the BOR shall discuss the evidence and make a motion for a decision, which motion, if seconded, the BOR can further discuss. Any motion should reference the applicable criteria for making the subject decision and the evidence which addresses those criteria.
- g. The Secretary shall provide a written, dated, and signed notice of the BOR's decision to the Applicant no later than 30 days after the hearing date. The BOR's decision shall be final on the date shown on the face of the written notice.

VI. CONFLICTS OF INTEREST

- a. No member shall participate in or vote with respect to any quasi-judicial matter pending before the BOR, if that member has a financial, personal, or official interest in, or conflict with, the matter, of such nature that it prevents or may prevent that member from acting on the matter in an impartial manner. Any member having such an interest or conflict shall reveal such fact, to the extent possible, prior to any official BOR hearing of or action on the matter, and shall refrain from sitting and participating with the BOR in its consideration of and decision on such matter. Moreover, no such member shall testify before the BOR as a member of the public on any such matter, in order to avoid any appearance of undue influence on the other BOR members.

- b. No member shall participate in, or vote or attempt to influence the other members with respect to, any quasi-legislative matter scheduled for a decision or official recommendation before the BOR, if such action directly and substantially affects, to the member's economic benefit, a business or other undertaking in which the member either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent, unless the member, prior to acting in any manner on the matter, makes a written disclosure to the Secretary of State in accordance with 24-17-110, C.R.S., and states the fact and summary nature of the member's interest for the record at the time of the BOR meeting or hearing on the matter.

VII. REPEAL OF RESOLUTION 98-164

Resolution 98-164 is hereby repealed, effective with the adoption of this Resolution on the date specified below.

A motion to approve the repeal of Resolution 98-164 and to reenact the procedural rules of the BOR in this Resolution 24-077, to be adopted and effective as of the date of the Board of County Commissioners' action set forth herein, was made at the October 29, 2024 business meeting by Commissioner Loachamin, seconded by Commissioner Levy, and passed by a 3-0 vote of the Board.

[Signature Page to Follow]

ADOPTED as a final decision of the Board on this 29th day of October 2024.

The signatures below indicate approval of the text of the Resolution but are not necessarily reflective of the votes taken at the Public Hearing.

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

Ashley Stolzmann

Ashley Stolzmann, Chair

Marta Loachamin

Marta Loachamin, Vice Chair

Claire Levy

Claire Levy, Commissioner

ATTEST:

Matthew Ramos

Clerk to the Board

Exhibit A

to persons or property caused in whole or in part by defects or other conditions which may be subject to inspection or regulation under this code. Neither Boulder County, the Boulder County Board of County Commissioners, the Boulder County Land Use Department or any division thereof, the building official, or any other employee or authorized representative of Boulder County who is charged or connected with the enforcement of this code, shall be liable in damages for any act or omission in the course or context of the discharge of duties under this code or any provisions related to it, and nothing in this code or in its administration or enforcement shall be considered in any way to be a waiver by Boulder County or any of its officials or employees of the protection to which they are entitled under the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq., as amended. Any claim or suit brought against the building official or any other employee or authorized representative of Boulder County which is alleged to have arisen out of or as a result of any act or omission in the enforcement of any provision of this code, and which occurred within the scope of employment of such official, employee or representative, shall be defended by Boulder County until final termination of such proceedings, and any judgment resulting therefrom shall be assumed by Boulder County.

104.9 Approved materials and equipment. Materials, equipment and devices *approved* by the *building official* shall be constructed and installed in accordance with such approval.

104.9.1 Used materials and equipment. The use of used materials that meet the requirements of this code for new materials is permitted. Used equipment and devices shall not be reused unless *approved* by the *building official*.

104.10 Modifications. Where there are practical difficulties involved in carrying out the provisions of this code, the *building official* shall have the authority to grant modifications for individual cases, upon application of the *owner* or the *owner's* authorized agent, provided that the *building official* shall first find that special individual reason makes the strict letter of this code impractical, the modification is in compliance with the intent and purpose of this code and that such modification does not lessen health, *accessibility*, life and fire safety or structural requirements. The details of action granting modifications shall be recorded and entered in the files of the department of building safety.

104.10.1 Flood hazard areas. The *building official* shall not grant modifications to any provision required in *flood hazard areas* as established by IBC Section 1612.3 or IRC Section R322 unless a determination has been made that:

1. A showing of good and sufficient cause that the unique characteristics of the size, configuration or topography of the site render the elevation standards of this code inappropriate.
2. A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable.
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.
4. A determination that the variance is the minimum necessary to afford relief, considering the flood hazard.
5. Submission to the applicant of written notice specifying the difference between the *design flood elevation* and the elevation to which the building is to be built, stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation, and stating that construction below the *design flood elevation* increases risks to life and property.

See also Section 102.2.1 of this chapter.

104.10.2 Performance code. The provisions of the *ICC Performance Code for Buildings and Facilities* may be used by the *building official* as a guide and a tool to evaluate proposals for modifications.

104.11 Alternative materials, design and methods of construction and equipment. The provisions of this code are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code, provided that any such alternative has been *approved*. An alternative material, design or method of construction shall be *approved* where the *building official* finds that the proposed design is satisfactory and complies with the intent of the provisions of this code, and that the material, method or work offered is, for the purpose intended, not less than the equivalent of that prescribed in this code in quality, strength, effectiveness, *fire resistance*, durability and safety. Where the alternative material, design or method of construction is not *approved*, the *building official* shall respond in writing, stating the reasons why the alternative was not *approved*.

104.11.1 Research reports. Supporting data,

where necessary to assist in the approval of materials or assemblies not specifically provided for in this code, shall consist of valid research reports from *approved* sources.

104.11.2 Tests. Whenever there is insufficient evidence of compliance with the provisions of this code, or evidence that a material or method does not conform to the requirements of this code, or in order to substantiate claims for alternative materials or methods, the *building official* shall have the authority to require tests as evidence of compliance to be made at no expense to the jurisdiction.

104.11.3 Performance code. The provisions of the ICC Performance Code for Buildings and Facilities may be used by the building official as a guide and a tool to evaluate proposals for alternative materials, design and methods of construction and equipment.

SECTION 105 PERMITS

105.1 Required. Any *owner* or owner's authorized agent who intends to construct, enlarge, alter, *repair*, move, demolish or change the occupancy of a building or structure, or to erect, install, enlarge, alter, *repair*, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by this code, or to cause any such work to be performed, shall first make application to the *building official* and obtain the required *permit*.

105.1.1 Annual permit. Instead of an individual *permit* for each *alteration* to an already *approved* electrical, gas, mechanical or plumbing installation, the *building official* is authorized to issue an annual *permit* upon application therefor to any person, firm or corporation regularly employing one or more qualified tradepersons in the building, structure or on the premises owned or operated by the applicant for the *permit*.

105.1.2 Annual permit records. The person to whom an annual *permit* is issued shall keep a detailed record of *alterations* made under such annual *permit*. The *building official* shall have access to such records at all times or such records shall be filed with the *building official* as designated.

105.2 Work exempt from permit. Exemptions from *permit* requirements of this code shall not be deemed to grant

authorization for any work to be done in any manner in violation of the provisions of this code or any other laws or ordinances of this jurisdiction. *Permits* shall not be required for the following:

Building:

1. One-story detached accessory structures used as a storage shed, playhouse for private use, greenhouse, chicken coop, agricultural loafing shed, or similar uses, provided:
 - a. the floor area of any structure does not exceed 120 square feet (11 m²), except agricultural loafing sheds, which may not exceed 200 square feet.
 - b. the structure height does not exceed 12 feet,
 - c. the structure does not have any utilities, and
 - d. the structure does not violate the conditions of any existing land use approval or conservation easement.
 - e. The number of allowed detached accessory structures which may be constructed without a building permit shall be determined by the size of the subject parcel:
 - i. One detached accessory structure may be constructed without a building permit on parcels 0.5 acres or less in size.
 - ii. Two detached accessory structures may be constructed without a building permit on parcels greater than 0.5 acre and less than ten acres.
 - iii. Three detached accessory structures may be constructed without a building permit on parcels 10 acres and larger.
2. Fences not over 6 feet (2134 mm) high.
3. Retaining walls that are not over 4 feet (1219 mm) in height measured from the bottom of the footing to the top of the wall, unless supporting a surcharge or impounding Class I, II or IIIA liquids.
4. Water tanks supported directly on grade if the capacity is not greater than 5,000 gallons (18 925 L) and the ratio of height to diameter or width is not greater than 2:1.
5. Sidewalks and driveways not more than 30 inches (762 mm) above adjacent grade, and not over any basement or *story* below and are not part of an *accessible route* and not subject to a grading permit.
6. Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work.
7. Temporary motion picture, television and theater

or power.

112.3 Authority to disconnect service utilities. The *building official* shall have the authority to authorize disconnection of utility service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 101.4 in case of emergency where necessary to eliminate an immediate hazard to life or property or where such utility connection has been made without the approval required by Section 112.1 or 112.2. The *building official* shall notify the serving utility, and wherever possible the *owner* and occupant of the building, structure or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the *owner* or occupant of the building, structure or service system shall be notified in writing, as soon as practical thereafter.

SECTION 113 BOARD OF REVIEW

113.1 General. In order to hear and decide appeals of orders, decisions or determinations made by the *building official* relative to the application and interpretation of this code, there shall be and is hereby created a board of review. The board of review shall be appointed by the applicable governing authority and shall hold office at its pleasure. The board shall adopt rules of procedure for conducting its business.

113.2 Appeals. Appeals to the Board of Review may be taken by a person aggrieved by his inability to obtain a building permit or by an officer or department, board, or bureau of the County affected by the grant or refusal of the building permit because of non-compliance with the Boulder County Building Code. Any person, officer or department, board or bureau may appeal to the Board of Review from the decision of any enforcement of the provisions of the Building Code. Such appeals must be made within fourteen (14) days from the date of grant or refusal of the building permit or administrative decision. Such appeals shall be in writing directed to the Secretary of the Board of Review and shall state the basis for appeal.

113.3 Interpretations, alternate materials and methods of construction and modifications. The Board of Review, in appropriate cases and subject to appropriate principles, standards, rules, conditions, and safeguards set forth in the building code may make interpretations of the terms of the building code in harmony with their general purpose and intent. The Board of Review may also approve of alternate materials or methods of construction or modifications provided the Board finds that the alternate material or method of construction or modification meets the standards found under Sections 104.10 and 104.11 of this code.

113.4 Limitations on authority. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, the provisions of this code do not fully apply or an equally good or better form of construction is proposed. The board shall have no authority relative to interpretation of the administrative provisions of this code and shall not have authority to waive requirements of this code.

113.5 Amendments to the code. The Board of Review is authorized to formulate suggested amendments to the Building Code for consideration of the Board of County Commissioners.

113.6 Additional authority. The Board of Review may adopt substantive rules and regulations based upon the provisions of the Building Code adopted by the Board of County Commissioners. In no case, however, shall these rules become effective unless the Board of Review thereon has conducted a public hearing. Notice of the hearing stating its time and place and where the text of the proposed substantive rules and regulations may be inspected shall be given in the same manner as provided in the initial adoption of the code.

113.7 Qualifications. The board of review shall consist of members who are qualified by experience and training to pass on matters pertaining to building construction and are not employees of the jurisdiction.

SECTION 114 VIOLATIONS

114.1 Unlawful acts. It shall be unlawful for any person, firm or corporation to erect, construct, alter, extend, *repair*, move, remove, demolish or occupy any building, structure or equipment regulated by this code, or cause same to be done, in conflict with or in violation of any of the provisions of this code.

114.2 Notice of violation. The *building official* is authorized to serve a notice of violation or order on the person responsible for the erection, construction, *alteration*, extension, *repair*, moving, removal, demolition or occupancy of a building or structure in violation of the provisions of this code, or in violation of a *permit* or certificate issued under the provisions of this code. Such order shall direct the discontinuance of the illegal action or condition and the abatement of the violation.

114.3 Prosecution of violation. If the notice of violation is not complied with promptly, the *building official* is authorized to request the legal counsel of the jurisdiction to