

RESOLUTION 2024-044

A resolution conditionally approving Boulder County Community Planning & Permitting Docket LU-24-0004: Tuck ADU and Agricultural Structures

Recitals

A. Lucy and Adrian Tuck (the “Applicants”) applied to Boulder County for Limited Impact Special Use Review under Articles 4-601 and 4-516 of the Boulder County Land Use Code (the “Code”) to relocate and replace an existing nonconforming Agricultural Worker Accessory Dwelling Unit (“ADU”) with a new one. The Applicants also applied for Site Plan Review under Article 4-800 of the Code to construct 1,306 square feet of new agricultural structures and a 400-square-foot carport on an approximately 45-acre parcel.

B. The subject property is located at 7705 N. 95th Street, located west of N. 95th Street approximately 0.15 miles south of its intersection with Oxford Road, in Section 29, Township 2 North, Range 69 W, in an Agricultural zoning district in unincorporated Boulder County.

C. Although the proposal was tied to the parcel identified as 7705 N. 95th Street (Parcel No. 131529000025), a second adjacent parcel at 0 N. 95th Street (Parcel No. 131529000023) held under the same ownership is also included in the application materials as it is intended to host part of the proposed agricultural use.

D. Both parcels are encumbered by a county-held conservation easement that restricts most physical construction to a building envelope located in the northeastern corner of the 7705 N. 95th Street parcel. All proposed structures will be located within the building envelope area.

E. The Boulder County Assessor’s record identifies approximately 7,000 square feet of residential floor area on the subject property, including a primary residence and ADU. It is unclear if the primary residence identified in the Assessor’s record is the one that previously existed on the property before its deconstruction in 2022, or the new residence that was approved via SPR-21-0106, permitted under BP-22-1458, and was actively under construction at the time of the staff site visit for the subject proposal. The Applicants intend to replace the existing ADU with a new one as part of this proposal. The existing ADU’s floor area is noted as residential in the Assessor’s record, but if approved, the new ADU will be calculated as agricultural floor area per the Code. The proposed carport will be closely clustered with and is intended for use by the occupants of the new ADU, but its floor area will be exempted from the calculated residential floor area per the Code.

F. The Assessor’s record also identifies approximately 12,900 square feet of existing agricultural structures on the subject property, including two large agricultural barns, a smaller historic barn, and a small loafing shed. The Applicants proposed to supplement these structures

with two additional agricultural buildings, namely a greenhouse and a farm stand totaling approximately 1,386 square feet of new agricultural floor area.

G. Historic aerial photography indicates that the subject property has hosted agricultural uses since at least 1977.

H. The Boulder County Comprehensive Plan indicates that the entirety of the subject property is located within Agricultural Lands of both National and Statewide Importance.

I. Because of the existing and planned expansion of agricultural uses on the subject property, the Applicants assert that they need the assistance of an additional household on-site and the construction of several new structures.

J. The above-described request was processed and reviewed as Boulder County Community Planning & Permitting Docket LU-24-0004 (the “Docket”), as further described in the memorandum and written recommendation to the Board of County Commissioners (the “Board”) by Boulder County Community Planning & Permitting Department planning staff dated June 4, 2024, together with its attachments (the “Staff Recommendation”). The Staff Recommendation found that the Docket could meet the criteria for approval with recommended conditions, and therefore, recommended that the Board conditionally approve the Docket.

K. At a public hearing on the Docket held on June 4, 2024 (the “Public Hearing”), as further reflected in the official record of the Public Hearing, the Board considered the Staff Recommendation, as well as documents and testimony presented by County Community Planning & Permitting Department planning staff. The Board also heard testimony from the Applicants and their agent, Jim Kadlecsek. One member of the public spoke at the Public Hearing.

L. Based on the Public Hearing, the Board finds that the Docket meets the criteria for Limited Impact Special Use approval for an Agricultural Worker ADU as set forth in Articles 4-601.A and 4-516.H.6 of the Code, subject to the conditions stated below.

M. The Board further finds that the Docket meets the criteria in Article 4-806 of the Code for Site Plan Review approval for the proposed agricultural structures, subject to the conditions stated below.

N. Therefore, the Docket can be approved, subject to the conditions stated below.

Therefore, the Board resolves:

Docket LU-24-0004 is approved on the basis and terms set forth in this Resolution, above, and subject to the following conditions:

1. The development is subject to the requirements of the Boulder County Building Safety and Inspection Services Team and adopted County Building Codes, as outlined in the referral comments, including, but not limited to, required fire suppression, ignition resistant materials and defensible space, and the BuildSmart energy efficiency and sustainability requirements.

2. A deconstruction permit is required for the removal of the existing ADU. The deconstruction permit must be completed and closed before a Certificate of Occupancy can be issued for the new ADU.

3. The property owner shall submit an annual report to the Community Planning & Permitting Department indicating that the inhabitant of the ADU continues to live on-site and that the unit continues to be occupied in accordance with the Docket.

4. The accessory dwelling shall only be used as an Agricultural Worker Unit. Any changes to this use shall be considered a substantial modification of this approval and will require that the unit be decommissioned.

5. Prior to issuance of a building permit for the Agricultural Worker Unit, the Applicant shall record with the Boulder County Clerk and Recorder a signed affidavit recognizing the conditions of approval for the Docket.

6. The ADU shall be limited to a maximum of 1,755 square feet, with a maximum of 455 square feet of attached covered porch area.

7. At building permit for any approved structure, the Applicants shall submit plans that demonstrate proposed driveways that are compliant with the Boulder County Multimodal Transportation Standards (“MMTS”).

Prior to issuance of a Certificate of Occupancy or at final inspection, the Community Planning & Permitting Department must verify that the new access or driveway has been constructed to comply with the MMTS.

8. The development is subject to the requirements of the Boulder County Public Health Department, as outlined in the referral comments, including, but not limited to, removal of the existing Onsite Wastewater Treatment System (“OWTS”) tied to the existing ADU, and installation, inspection, and approval of the new OWTS prior to the issuance of a Certificate of Occupancy for the new ADU.

9. The sizes of the proposed accessory structures are approved as listed below:

- a. Agricultural Worker ADU – maximum 1,755 square feet of enclosed floor area and maximum 455 square feet of covered porch.

- b. Carport – maximum 400 square feet, measured from the dripline of the structure.
- c. Farm Stand – approximately 306 square feet.
- d. Greenhouse – approximately 1,080 square feet.

10. At building permit, the plans must include revised elevations showing that the carport is unenclosed on at least two sides.

11. At building permit, the Applicant shall submit a SWQP or a SWQP Exception Form. The SWQP or SWQP Exception Form must be issued prior to any work beginning on this project.

Prior to any grading or site disturbance, appropriate perimeter control measures such as sediment control logs shall be installed downslope and parallel to contours for all disturbed areas including staging areas. The location and types of perimeter control shall be shown on site plans submitted for building permit approval.

12. The locations shown on the submitted site plan dated January 30, 2024, are approved as proposed.

13. The heights of the proposed accessory structures are approved as listed below:

- a. Agricultural Worker ADU – approximately 24 feet above existing grade.
- b. Carport – approximately 12 feet above existing grade.
- c. Farm Stand – approximately 12 feet above existing grade.
- d. Greenhouse – approximately 18 feet above existing grade.

14. The submitted elevations included with the application materials are approved as proposed, with the exception of the carport.

15. When artificial lights are being used in the greenhouses, a light deprivation system using opaque curtains is required to block the lights from the greenhouses and must remain operational in perpetuity. To mitigate visual impacts and maintain the rural character of the area, the light-blocking system must completely prevent light from escaping the structure interior.

At building permit submittal, plans for the greenhouse must include a light deprivation system that will block light from within the greenhouse to be approved by staff.

At the final inspection, the full installation of the approved light deprivation must be installed, and the installation must be inspected by the Community Planning & Permitting Department.

16. The following exterior color and material choices are approved as proposed in the sample sheet included with the application materials:

- a. New ADU – tan and cream stone and stucco siding, grey standing-seam metal roofing.
- b. Carport – natural color hardie-board siding and matte charcoal gray standing-seam metal roofing.
- c. Farm Stand – medium gray asphalt shingle or painted metal roofing, white fiber cement board siding and trim.
- d. Greenhouse – transparent polycarbonate and white metal siding and roofing.

Prior to issuance of a Certificate of Occupancy or at the time of final inspection, the Community Planning & Permitting Department must inspect and verify that the approved color samples are used on each of the new structures.

17. Prior to issuance of building permits, the Applicants shall submit to the Community Planning & Permitting Department for review and approval a lighting plan that includes the placement of all exterior lighting fixtures and cut sheets for each fixture.

Down lighting is required, and all bulbs must be fully shielded to prevent light emissions above a horizontal plane drawn from the bottom of the fixture. All exterior light fixtures must conform to Articles 7-1600 and 18-162.A of the Code.

Prior to the final inspection or issuance of a Certificate of Occupancy, the Community Planning & Permitting Department must inspect and approve the full installation of the approved lighting plan.

18. Prior to the issuance of any building permits, the Applicants shall submit a revised earthwork fact sheet for Community Planning & Permitting staff approval. The amended fact sheet must include calculations for all foundational and non-foundational earthwork to be performed during construction of the proposed accessory structures and any access roads.

19. Prior to issuance of building and grading permits, the Applicants shall submit to the Community Planning & Permitting Department for review and approval a plan depicting the routing of all utility services. The utility routing plan shall be included as part of the building plan set required at the time of permit application. To minimize disturbances to the site, all utility service lines shall be routed underground (*see* Article 7-1200 of the Code) and should be located in areas already disturbed or proposed to be disturbed (e.g., along the driveway).

At the time of building inspections, the Community Planning & Permitting Department must inspect and confirm full installation of the utilities per the approved plan.

20. At building or grading permit submittal, the Applicants shall submit a Revegetation Plan for approval. This plan should include native grass species to be used, an explanation of how topsoils will be stockpiled, mapped delineation of all disturbance areas (including deconstructed

structure locations, construction staging areas, driveway, utility lines, and septic system), locations of all erosion control measures, and matting requirements, if necessary.

Prior to issuance of a Certificate of Occupancy, the Community Planning & Permitting Department must inspect and approve the full installation of the approved Revegetation Plan. If weather is not conducive to seeding or if adequate revegetation efforts have not occurred and vegetation is not adequately established at the time of final inspection request, an irrevocable letter of credit or monies deposited into a County Treasurer account will be required to assure the success of revegetation. The Applicants should consider the following well in advance of the revegetation inspection:

- a. Whether applying for a Certificate of Occupancy, final inspection, or the return of funds held in escrow for completion of revegetation, some level of germination and growth of grass seed is required.
- b. Steeper slopes and dryer soil require greater attention to establish a level of germination adequate to obtain revegetation approval.
- c. Areas of disturbance found at inspection not included on the Revegetation Plan are still subject to reseeding and matting.
- d. Incomplete revegetation is the leading cause for delays in obtaining a Certificate of Occupancy.

21. The Applicants shall be subject to the terms, conditions, and commitments of record and in the file for Docket LU-24-0004: Tuck ADU and Agricultural Structures.

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

[Signature Page to Follow]

ADOPTED as a final decision of the Board on this _____ day of July 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, Chair

Marta Loachamin, Vice Chair

Claire Levy, Commissioner

ATTEST:

Clerk to the Board