

Barge, Abe M. - CPD PS Citywide Planning

From: Planning Services - CPD
Sent: Tuesday, November 28, 2017 9:16 AM
To: Barge, Abe M. - CPD PS Citywide Planning; Webb, Andrew - CPD PS Citywide Planning
Subject: FW: Cole Neighborhood Association comments on RiNo/38th and Blake Overlays

From: Cole Neighborhood Association CNA [mailto:cna.denver@gmail.com]
Sent: Monday, November 27, 2017 5:20 PM
To: Planning Services - CPD <PlanningServices@denvergov.org>
Cc: board@coledenver.com
Subject: Cole Neighborhood Association comments on RiNo/38th and Blake Overlays

Hello,

Please see below for the Cole Neighborhood Association's comments on the RiNo/38th and Blake Overlays.

The Cole Neighborhood Association was heavily involved in the public comment process regarding the RiNo/38th and Blake Overlays. We applaud the creative solutions which have resulted and we believe they will help create affordable housing, community amenities, and aesthetically pleasing architecture. That said, during the public comment process, we raised concerns about the [38th Street](#) underpass between Brighton Boulevard and Walnut Street and those concerns remain today. That underpass is a vital piece of infrastructure for Cole connectivity and it is already experiencing significant challenges with current traffic volume. Obviously, approving a zoning overlay in the area which allows for increased density will only further exacerbate this issue. Therefore, we only recommend approving the overlay if it includes a concrete plan to address the 38th underpass congestion.

Thanks,

Cole Neighborhood Association

Barge, Abe M. - CPD PS Citywide Planning

United Community Action
Network (UCAN) RNO Letter

Subject: FW: City Council, Dist. 9 Request - FW: Official Map Amendment Land Use, Transportation and Infrastructure Public Meeting Notification #2017I-00122 38th and Blake Station Area Underlying Zone District Rezoning/Application of Overlay Districts

From: Yahoo [mailto:armandopayan80@yahoo.com]

Sent: Saturday, December 23, 2017 9:52 AM

To: Montoya, Chy - City Council District 9 <Chy.Montoya@denvergov.org>

Cc: Barge, Abe M. - CPD PS Citywide Planning <Abe.Barge@denvergov.org>; phil@coloradolegal.com

Subject: Re: City Council, Dist. 9 Request - FW: Official Map Amendment Land Use, Transportation and Infrastructure Public Meeting Notification #2017I-00122 38th and Blake Station Area Underlying Zone District Rezoning/Application of Overlay Districts

This email will serve as a letter of support and I am out of the country. Our board members have been informed and are very supportive of zoning overlay and the positive impact this has our community.

Sent from my iPhone



12/29/2017

RiNo Art District

2901 Blake Street STE 165
Denver, Colorado 80205

Council President Albus Brooks and Members of Denver City Council

City and County Building
1437 Bannock St.
Denver, CO 80202

Dear Council President Brooks and Members of Denver City Council:

I am writing to you today, on behalf of the entire RiNo Art District organization, to express our support for the 38th and Blake Station Area Underlying Zone District Rezoning and Application of Overlay Districts, and ask that you support this proposed rezoning package.

RiNo has been a leader alongside Councilman Albus Brooks and our surrounding neighborhoods in exploring an increase in density around the 38th and Blake Street commuter rail station. Our focus has been on creating a path to allow development to happen in a way that does not harm our neighborhood fabric, but rather contributes to it, providing affordable housing and commercial space and creating a more design-friendly, walkable and accessible district.

We feel the process to come to this point has been well thought-out, inclusive and transparent and has helped to educate stakeholders on both the impacts and opportunities associated with increasing density while giving them a voice in shaping the outcomes based upon what is most critical to each of us.

The preferred approach, which you are being asked to support, provides a vision for the 38th and Blake Street area that includes higher density as well as a vibrant, walkable and economically diverse transit-oriented development (TOD) station area. We believe the increased density, which pushes beyond the height limits set by previous plans, will provide a number of community benefits for RiNo and surrounding areas, including but not limited to:

- Density that is appropriate for a TOD area and that will accommodate the growth of both Denver and our district
- Higher quality building design that supports taller buildings while ensuring it is at a scale that is comfortable for pedestrians, improving the overall public realm experience
- Supporting uses and design features that encourage walking and bicycling over use of the automobile
- Ground level active uses that can support the continued growth of creative and community serving uses as well as retail and restaurant spaces to serve the neighborhood
- Mass reduction of buildings that provide for increased light and air even as density increases

2901 Blake Street • Suite 165 • Denver, Colorado 80205 • 720.507.4776 • rinoartdistrict.org

artwork by @rather_severe w/rum tum

- Minimizing parking visibility and impacts

Additionally, RiNo has strongly advocated for the integration of on-site affordability within the station area, requiring that increased density for developers translates into a requirement that developers accommodate affordable housing and commercial opportunities for the growing workforce and creative community that is needed city-wide but also within our quickly changing district. We believe that the growth of a diverse and mixed-income district is critical and that putting these affordable uses near the station area is particularly important because it also will ideally have the added effect of reducing reliability on automobile travel.

Finally, the rezoning and overlays provide for critical investments and improvements to the entire RiNo district which will support the station area as well as connectivity to it. This includes putting a focus on the South Platte River and the creation of an active and vibrant riverfront experience with buildings and pedestrian amenities. The additional improvements to the public realm which we feel are essential to achieve a walkable TOD area with less automobile use include:

- Converting Downing and Marion to 2-Way streets
- Addressing the 38th & Blake Underpass
- Adding bike lanes and facilities
- Completing pedestrian / bike connections between parks and the river

We look forward to working alongside the City of Denver to implement the proposed rezoning and overlays, and we hope you will support this process too.

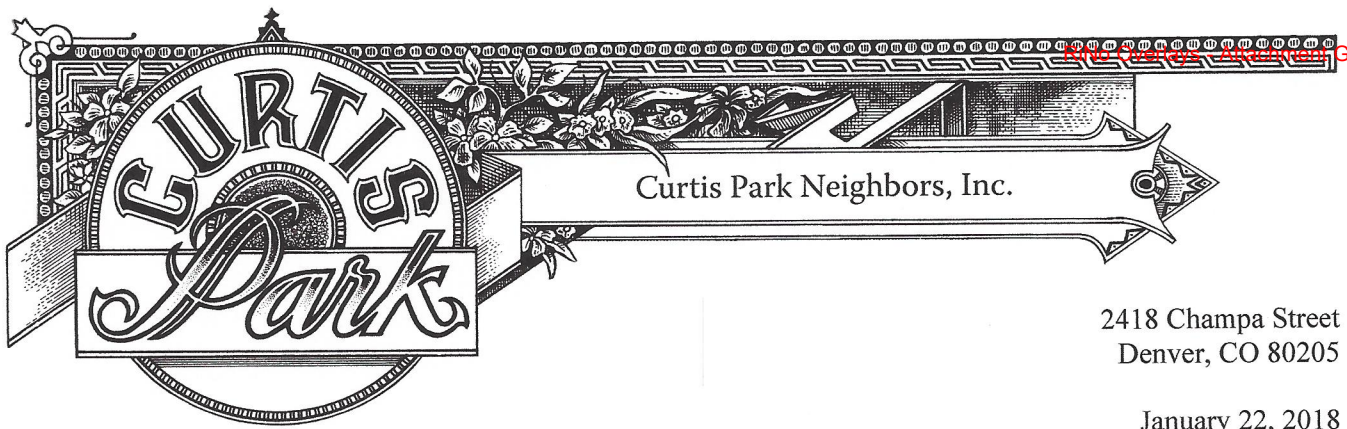
Regards,



Jamie Licko
President, RiNo Art District

CC:

Andrew Feinstein, RiNo Art District Co-Chair (also RiNo Business Improvement District)
Chandler Romeo, RiNo Art District Co-Chair
Justin Croft, RiNo Business Improvement District Chair (also RiNo Art District)
Anne Hayes, RiNo General Improvement District Chair (also RiNo Art District)



2418 Champa Street
Denver, CO 80205

January 22, 2018

Denver City Council,

Curtis Park Neighbors supports the rezoning and incentive zoning framework for the 38th and Blake Station Area.

In 2016, Curtis Park Neighbors joined neighbors in Cole, RiNo, and UCAN Metro Denver in conveying our support for the 38th and Blake Station Area Height Amendments, which was the result of a full community process for refining the vision for development at this important station area.

Those discussions, and the plan amendment that reflects them, called for potentially taller building heights around the 38th/Blake Station, but only once a design overlay was in force that captured the community's design standards refinements, and only in exchange for a much greater affordable component assured in the station area for projects taking advantage of the greater heights. The plan amendments included maps illustrating the base height and the greater heights available to qualifying projects.

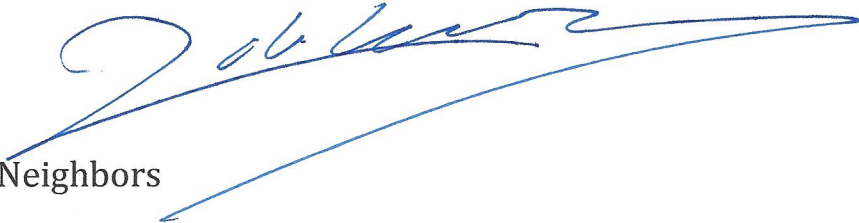
Today, after over a year of work, a zoning and regulatory approach is ready to implement what the community called for. A design overlay paired with an entirely-new "incentive overlay" approach, jointly achieve the goals that found so much community consensus in 2016, and **we encourage Council's support for the package of changes.**

We also seek your support for improvements at the 38th Street underpass, particularly in light of the additional development supported at this active and growing station area. The Cole neighborhood's 2016 letter of support for the plan amendments was conditional on the City actively pursuing improvements to this challenged pinch-point, and understandably so. While a redesign of the underpass was not far along enough in design to qualify for selection in last year's General Obligation Bond program, the project nevertheless is of increasing urgency as more



residents and businesses come to this important Transit Oriented Development site, just one stop from Union Station.

By vote of the Curtis Park Neighbors Board of Directors,



John Hayden
President, Curtis Park Neighbors

(continued on next page *(if needed)*)

2/6/2018

RiNo Art District

2901 Blake Street STE 165
Denver, Colorado 80205

Council President Albus Brooks

City and County of Denver
1437 Bannock Street
Denver, CO 80302

Dear Council President Brooks,

Members of the Executive Committee of the RiNo Art District have recently been in conversations with Jon Dwight who is developing a mixed-use project at 34th and Walnut. It is our understanding that he is in the midst of discussions with the City and County of Denver regarding the incentive overlay slated to go to Denver City Council on Monday, February 12. Here is our understanding of Mr. Dwight's situation:

- The housing component of the project Mr. Dwight is planning is 100% for-sale
- Per the proposed incentive overlay, Mr. Dwight would be required to build eight (8) for sale affordable units at 80% AMI (median income to qualify = \$47,000)
- Mr. Dwight is challenging how the incentive overlay works with for-sale product because of the higher cost of development of for-sale product. Mr. Dwight's suggestion/offer to the City and County of Denver is to create an agreement with Medici/Urban Land Conservancy (ULC) to build his required affordable units in their planned development at 38th and Blake, as opposed to him building it within his project. Mr. Dwight would pay Medici/ULC to build seven (7) additional affordable units in their development, doubling the number of affordable units in the Medici/ULC development from seven (7) to fourteen (14), all built at 30% AMI (median income to qualify for 30% AMI = \$17,650)
- The City and County of Denver is currently telling Mr. Dwight this is not possible. Their reasoning is that because he's doing for sale product, he must do affordable for-sale product as part of the incentive overlay, not trade out for affordable rental products

The RiNo Art District Executive Committee would like to respectfully ask that the City of Denver reconsider this position. It is our belief that having a total of fourteen (14) affordable rental units at 30% AMI right at the 38th and Blake Commuter Rail Station is as powerful if not more powerful than having eight (8) for-sale units at 80% AMI a few blocks from the station.

During the development of the rezoning and overlay process the last two-plus years, members of the RiNo Art District Executive Committee requested that the City explore excluding for-sale units from the incentive overlay, specifically to incentivize developers to

build them. It is our feeling that doing so may actually create more for-sale product in the RiNo Art District. For-sale developers face significant hurdles to get a project built within our current legislative and economic situation, and we want to do what we can to support the development of for sale units. Moreover, a cash infusion into an affordable project enables that project to offer additional varying levels of AMI – something we need to preserve the socioeconomic diversity of RiNo.

Our executive committee debated this matter thoroughly and acknowledge there is no perfect solution. We recognize fully that home ownership is the path to stability in our City - that If we have all rentals and no affordable for-sale units, we will continue to have rental churn and less stability and economic diversity in RiNo. But we also acknowledge the need for lower AMI units is great and difficult to provide even in purely affordable projects for sale or for rent. The benefit of providing seven more 30% AMI units to the neighborhood is significant, and can provide new housing opportunities to artists and the influx of workers needed to support our growing hotel, restaurant and beverage-production economy.

We have come to the conclusion, as a group, that supporting Mr. Dwight’s request – and potentially future requests like it – will actually increase ownership, otherwise he and others will be incentivized to build apartments as well. To that end, beyond this specific project, we would like the City and County of Denver to reconsider the big picture goals of the incentive overlay and look at the impacts and opportunities associated it as it relates to both for sale and for rent products and the ability for developers to collaborate to deliver a diversity of housing.

We urge you to consider our collective input on this matter as part of Council’s deliberations on February 12th. Thank you for your consideration.

Regards,

RiNo Art District Executive Committee

Jamie Licko, President

Andrew Feinstein, RiNo Art District Co-Chair

Chandler Romeo, RiNo Art District Co-Chair

Justin Croft, RiNo BID Chair, RiNo Art District Board Member

Anne Hayes, RiNo GID Chair, RiNo Art District Board Member

CC: Councilwoman Robin Kniech, At-Large
Councilwoman Deborah Ortega, At-Large
Alan Salazar, Chief of Staff
Brad Buchanan, Executive Director, Denver Community Planning and Development
Abe Barge, Principal City Planner, Denver Community Planning and Development
Andrew Webb, Senior City Planner, Denver Community Planning and Development
Jon Dwight

To: Councilman Albus Brooks, District 9
Abe Barge, Community Planning and Development
Laura Brudzynski, Office of Economic Development

From: Charles Street Partners
Tributary Real Estate

Date: June 30, 2017

Re: Land owner comments re: 38th & Blake affordable housing and design overlay districts

Charles Street Partners and Tributary Real Estate have been involved in the planning process and stakeholder outreach for the 38th and Blake station area since before the height amendment process began in November 2015. From attending the first and all subsequent meetings on the height amendments, to proactive outreach to City Council and CPD, to attending a series of stakeholder meetings on the overlay districts (latest meeting, April 10, 2017), we have and will continue to be an active participant in all discussions due to the large amount of land we own and have under contract.

Based on the April 10 stakeholder meeting, we understood the City was preparing to engage financial feasibility consultants to test the draft concepts of the affordable housing and design overlay districts. Based on May 31 email correspondence, we understood the City is running behind schedule on engaging the feasibility consultant(s) and as such, the overall process is also running behind.

As the City proceeds to analyze the available options, we wanted to provide in writing some of the comments we have shared throughout the process, so that the City can consider them as it moves forward with the analysis, drafting and feasibility testing of the proposed overlay districts. These comments are based on the most recent proposal discussed at the April 10 stakeholder meeting.

Affordable overlay:

1. Implement a square footage calculation on the "build option" that results in "X" gross square feet (SF) of affordable (not a specific number of units). Developer may elect to fill up "X" gross SF with any combination of units, provided that "X" gross SF is affordable.

This is an important way to promote some flexibility, while also ensuring an equitable degree of affordability. For example, a developer could elect to provide a greater net number of affordable units, with smaller square footages, or fewer units, but with larger square footages that could accommodate families near the light rail station, which we understand to be a priority goal for the City.

2. In order to meet requirements related to "community serving businesses," consider language to grandfather or provide credit in cases where a developer/owner has recently sold off sites to qualifying community serving businesses within the station area prior to the overlay district becoming effective.

With no prior knowledge of this requirement, our ownership group recently sold off two sites at lower than market rates to qualifying grocery and community bank uses in the station area at 3757 Brighton Blvd (Natural Grocers) and 3655 Brighton Blvd (Collegiate Peaks Bank). We helped deliver

these two uses to be a good steward for the neighborhood and to provide exactly what the City and community were looking for from a community serving business standpoint. This is a new requirement that the City has never required previously. This is also not an easy requirement to deliver due to a host of complexities in the commercial/leasing world.

As such, we strongly encourage CPD/OED to consider flexibility and grandfathering in cases where an owner/developer has provided such qualifying uses in the recent past. The Community Benefits Agreement (CBA) mentioned in the City's draft text provides a framework for how this could be accommodated.

3. The mandate of the build option for even base story heights is a new requirement and mandate. Effectively, by requiring build only, even for base heights, and eliminating the option to pay a fee-in-lieu, developers and property owners within the new overlay district are at a disadvantage and are being treated differently from every other property owner in the City under the recently adopted affordable housing ordinance.

While we recognize that the City's goal with this proposal is to ensure that actual units get built, by imposing this requirement even on base heights, the City is taking away a right that property owners otherwise have. This raises a variety of legal issues, which could ultimately hamper the ability of the City to realize its goals in this area.

Given the fundamental premise of value capture articulated by the City, is appropriate to apply heightened standards to the additional density made available by the overlay structure, but it is not appropriate to apply heightened standards to base densities that already exist by right under the current zoning scheme.

Design overlay:

4. Eliminate or consider alternative compliance options for the wrap requirement for structured parking and active ground floor uses for non-Brighton Blvd addresses. Again, we understand that the City's goal with this requirement is to create pedestrian friendly spaces, and a walkable neighborhood. However, given the wide variety of lot sizes and shapes in the station area, and the even wider variety of both existing and proposed architecture and construction methods, it is possible to create interactive spaces using a variety of techniques. Strict adherence to this requirement is not likely to produce the desired effect, and could simply dampen investment, limit creativity, and reduce new construction in this area.

Feasibility testing:

5. As the City commences feasibility testing of the affordable and design overlays and their requirements, we suggest the City and their consultant work with and solicit feedback owners and developers to ensure that these new requirements are practical and achievable and we don't create unintended consequences. We have a full underwriting team with on the ground knowledge of land, use and market conditions and infrastructure costs. Understanding how these projects are analyzed and underwritten for financial feasibility, and how they are financed, could help the City understand the potential impacts of various alternatives, and the likelihood that they will produce the desired result. As several property owners commented in the April 10 meeting, if the additional density available under the overlay is too costly to projects' bottom lines, the entire area will simply be developed with base densities which will not achieve the City's overall goals.

Thank you for your continued work with our ownership team and the ownership teams from other stakeholder in this area. While we all want to create the best place and neighborhood, we also need to be careful not to unnecessarily limit market desirability lest these new requirements result in the opposite of the desired outcomes.

REVOLUTION3600

brighton boulevard

6950 South Potomac St, Suite 100
Centennial, CO 80112

November 17, 2017

Abe Barge, Principal City Planner
Community Planning and Development
City and County of Denver
201 W. Colfax Ave
Denver, CO 80202

Re: Comments on Denver Zoning Code Text Amendment #2, Public Review Draft 10/20/17

Dear Abe;

Thank you for your time on November 2. Below are our comments on the 10/20/17 Public Review Draft subsequent to that meeting. All section references are within 9.4.5.11.

- F.1.c indicates the City's intent to push for vehicle access to the alley except when infeasible, and acknowledges that the City is working on the language to support this. Per our meeting, we understand that Public Works will have broad discretion on this item. Specifically as it relates to our proposed project @ 3695 Wynkoop (which includes a 500 space parking garage) as indicated by Luke Korpi at our SDP Concept meeting on 9/28/17, pushing this many cars into the alley at the end of the work day qualifies as infeasible and access to/from Wynkoop is approved.
- It is possible for specific property owners to opt-out of the rezone, but not of the overlay. That said, the overlay does not apply to certain existing zones (eg I-B), and so would have no implications on these properties until/unless they were eventually rezoned to an affected zoning designation.
- Parts of sections F & G address Build-To & Activation requirements. As it stands, new development must build-to at least 70% of the Zone Lot Width. It is not permissible to build a 60' wide building on a 100' wide zone lot. Neither is it permissible to extend an existing 40' wide building on a 100' wide zone lot to 60'. We suggested that this is a troubling requirement. Although today's economic and development climate makes it likely that property owners will want to build at least 70% of the width of their property, this will not always be the case. This requirement may lead to requests to divide parcels to allow for smaller development.
- We clarified that the intent of the overlay is that at least 70% of the zone lot width must be "activated" within the build-to zone, and at least 70% of the required activation must be approved non-residential use. An open parking garage entry, if built-to, counts as activation.
- We clarified that the intent of the overlay is that at least 50% of the "Street Facing Building Façade" must be "transparent". Transparency is measured in linear feet, not square feet. An open parking garage entry, and an open-sided parking garage at grade count as transparent.
- We confirmed that if a parking structure does not meet the height thresholds noted in E.4 & F.2.b, then no screening of any kind is required for above grade parking.

- E.4 & I.2.b address volumetric mass reduction. The goal of the overlay is to address MASS, not SQUARE FOOTAGE, but the overlay is using square footage as a proxy for mass. As we discussed, the City will consider defining square footage, for the purposes of mass reduction, as enclosed or covered space. This is important because of projects like the one we have proposed at 3695 Wynkoop, which is a 5 story parking structure with no roof on the 5th level, giving it the equivalent volumetric mass impact of a 4 story office building. As a result, we agreed that the volumetric mass requirement would not apply to our proposed structure.
- From our conversation, we understand that City Staff supports rezoning 3695 Wynkoop to I-MX-5 rather than C-MX-5, and that this needs to be finalized with Councilman Brooks.
- Given that the volumetric mass reduction and incentive height linkage fees are tied to square footage on specific floors of the building, we discussed the need for the City to define where one floor stops and the next begins for sloped floors (as with the ramping in our proposed parking structure). We suggested using the existing City definition from 13.1.2.3.B that says if the floor above you is at least 12' above grade, then you are on the first floor. This would dictate that the second floor begins when the ramp gets 12' above grade, and subsequent floors would follow suit.
- I.2.a.iii.a places a requirement on the clear height from the finished floor to the 'ceiling' of the interior space along the street-facing street-level space. We made 3 suggestions.
 - It will be difficult for core/shell developers to prove compliance to this requirement. As a result, consider changing the requirement so that it measures to points within the structure, rather than to finishes.
 - Within these requirements, the City needs to provide guidance for compliance on sloped sites, where the street-level may have a stepped slab elevation but where the 2nd floor is flat all the way across the site.
 - Perhaps also create a set of requirements for review of tenant finish applications. Nationwide, and in Denver, most urban, street-facing, street-level, active retail has at least some area of finished ceiling that is lower than 14', and this is not inconsistent with the City's vision for the neighborhood. Examples are entry areas with lowered ceilings, feature bar areas along exterior walls, and soffits at cash registers. The City will need to determine a way to allow appropriate implementation of these types of features, perhaps on a % basis that can be lower than 14'

We welcome the opportunity to continue to engage in the City's process. Please let us know if we have mis-stated anything, and/or if we can provide additional information.

3600 BRIGHTON BLVD LLC

By 
Jerry Blocher
Director of Development



December 5, 2017

Attn: Mr. Brad Buchanan,
 Executive Director, City of Denver Planning Department
 201 W. Colfax Ave., Dept. 205
 Denver, CO 80202

Subject: 38th & Blake Height Amendment – Non-Residential Affordability Requirements

Dear Mr. Buchanan:

As the 38th & Blake commuter rail station area continues to develop and land values rapidly escalate, Urban Land Conservancy (ULC) supports, with some exceptions, the City of Denver’s proposed Zoning Overlay Incentive plan which seeks to address, in a limited manner, the gentrification and displacement that is occurring in the Five Points, Cole, Whitter, Globeville and Elyria Swansea communities. By offering an incentive for developers to maximize density in the station area with the requirement that 10% of the up-zoned building square-footage be dedicated to affordable residential or commercial space, the City is offering some long-term residents and local, small and non-profit businesses an opportunity to remain in their neighborhoods and participate in the area’s growing prosperity.

ULC staff has been actively engaged in the discussions regarding the proposed zoning amendment to increase the height, and thus density, in the corridor area surrounding the 38th & Blake Street RTD station. As a long-term stakeholder in the community with our Tramway Nonprofit Center in the Cole neighborhood, and more prominently, our 1.5-acre site at the Blake station, ULC has witnessed first-hand the social turmoil that has been created as a result of the redevelopment and “rebranding” of the neighborhood. Recent incidents of long-time residents protesting newer businesses that are socially insensitive to the existing fabric of the neighborhood are just a small example of the growing frustration being felt by individuals across the City as they experience the rising pressures of displacement.

ULC commends the City of Denver for the diligence and innovation that it has exhibited in creating a density bonus plan that dedicates 10% of the up-zoned building square-footage as permanently affordable residential space. While the affordability of residential units is very prescriptive and easily quantified in the zoning code amendment, the structure addressing the requirement for affordable commercial space is lacking to a point of essentially being unenforceable. We feel strongly that more detailed and quantifiable requirements should be placed on the development of affordable commercial space to match the existing requirements outlined for residential space. The wording of the current amendment even allows developers to park their funds in escrow, build no affordable commercial space

and collect those funds at a later date. While this might be a financial inconvenience for the developer, it does nothing to address the need for affordable commercial space for nonprofits and community-benefitting small businesses. The 38th & Blake station area has benefited greatly from the millions invested by the City and County of Denver and RTD for infrastructure improvements. With this large public investment, it is imperative to leverage these dollars to the greatest extent possible by ensuring they benefit area residents and businesses across the economic spectrum.

ULC recommends a study be conducted across a number of commercial use-types to determine the rental rates reasonable affordability among these uses, and as an owner of affordable commercial space near the 38th & Blake and across the City, ULC would gladly participate in the survey. For example, at the Tramway Nonprofit Center, 4 blocks from the Blake Station our rents average \$10-\$14/sf, which is 25-50% below market rents. In return for commercial owners at 38th & Blake area providing 10% of their up-zoned commercial space at affordable rents, they would get property tax abatement for the dedicated affordable space.

We also recommend the development of a matchmaking function or database service between community members/businesses and developers administered by Radian|Placematters, or a similar type of organization that deals primarily with nonprofits and small businesses seeking commercial space to directly serve neighborhoods in need. Denver Shared Spaces (DSS), a program of Radian, works directly with the Denver Office of Economic Development to identify standard processes and outcomes to support the implementation of community-serving commercial real estate. For example, DSS is currently leading an effort to partner Early Childhood Education providers with developers who are planning or have under-utilized ground floor commercial space near rail stations in order to make child care drop-off and pick-up more convenient for working parents.

Based on our experiences at ULC, we believe there is a workable solution to incentivize commercial owners to include affordable rental space, and we are committed to working with the City to ensure that these spaces are realized. It is as important that there are equitable opportunities provided for businesses as there are affordable housing opportunities for residents. If the zoning code does not include prescriptive requirements for commercial space, the 38th and Blake Station area risks losing the authentic, vibrant, long-standing commercial diversity that has helped to make the area a thriving, mixed-use destination and center for creativity.

Regards,

Mark Marshall
Real Estate Director

Aaron Miripol
President & CEO

Cc: Councilman Albus Brooks, District 9
Abe Barge, Principal City Planner

OTTENJOHNSON

ROBINSON NEFF + RAGONETTI PC

December 5, 2017

THOMAS J. RAGONETTI
303 575 7509
TJR@OTTENJOHNSON.COM

VIA E-MAIL TO ABE.BARGE@DENVERGOV.ORG

Denver Planning Board
Attn: Abe Barge
Planning Services
Community Planning and Development
201 W. Colfax Avenue, Dept. 205
Denver, Colorado 80202

Re: Proposed Text Amendment #2 to create the River North Design Overlay (the “**Draft Design Overlay**”)

Dear Planning Board:

This firm represents Carmel Partners, LLC, a Colorado limited liability company (together with its affiliates, “**Carmel**”) with respect to certain land use matters related to the approximately four-acre parcel of real property located at 3301 Brighton Boulevard in the RiNo neighborhood (the “**Property**”). The Property fronts Brighton Boulevard on the southeast, Arkins Court on the northwest, and the proposed 33rd Street and Festival Way on the northeast and southeast sides, as generally depicted in the image at right.

Carmel has previously met with Abe Barge and Jeff Brasel regarding its proposed development of the Property as an approximately 500-unit multifamily residential complex with associated accessory uses, including a work-out facility and co-working space for residents (collectively, the “**Project**”). In its current design, the Project consists of three separate buildings that generally meet, and in many ways exceed, the applicable building and design standards set forth in the Denver Zoning Code, as well as the vast majority of the standards proposed by the Draft Design Overlay.

However, given the Property’s extensive street frontage, including 343 linear feet along Brighton Boulevard and approximately 727 linear feet along Arkins Court (collectively, the “**Primary Street Frontage**”), both of



Denver Planning Board
 December 5, 2017
 Page 2

which will be designated as “Primary Streets” for purposes of the Draft Design Overlay, Carmel does not believe it to be commercially feasible for the Project to meet the “Non-Residential Street Level Active Use” requirements set forth in the Draft Design Overlay. By way of example, the following chart illustrates the Street Level Active Use requirements as they would apply to the Property:

	Linear Frontage	Active Use Requirement	
		General	Non-Residential
Arkins Court	727 feet	509 feet	356 feet
Brighton Boulevard	343 feet	240 feet	168 feet
Total	1070 feet	749 feet	524 feet

In consideration of the foregoing, as well as its general review of the Draft Design Overlay, Carmel has the following comments on the Draft Design Overlay, all of which relate to the Non-Residential Street Level Active Use requirement:

1. Arkins Court (specifically between 31st and 33rd Streets) should not be classified as a Primary Street for purposes of meeting the Non-Residential Street Level Active Use requirement.

Carmel is very supportive of the Non-Residential Street Level Active Use requirement as it applies to Brighton Boulevard, which is an active, vibrant, multi-modal street well suited for the types of commercial uses that qualify as Non-Residential Street Level Active Uses. However, the same cannot be said for Arkins Court. The current plan for Arkins Court provides for a dead-end at the northwestern corner of the Property,¹ meaning that the only vehicular traffic traveling along this portion of Arkins Court will directly associated with the Project. The property directly southwest of the Property, which has been fully built-out with (according to the approved site development plan) approximately 274 residential dwelling units and *no commercial uses* that would meet the Non-Residential Street Level Active Use requirement, will not contribute any significant amount of traffic along the portion of Arkins Court abutting the Property.

Although the pedestrian and bicycle trail running along the South Platte River will provide certain additional bicycle and pedestrian traffic, such traffic is extremely seasonal. According to CDOT’s continuous traffic counters, bicycle traffic during the winter months averages approximately 10 percent of bicycle traffic measured during peak summer months.² This level of fluctuation in foot traffic does not create the type of active street front necessary to support commercial and retail uses, and with no other nearby or accessible commercial uses, the types of small scale commercial and retail uses envisioned as Non-Residential Street Level Active Uses cannot survive.

¹ Plans and studies prepared in connection with the RiNo Promenade indicate that the linear walkway will be created from the Arkins Court right-of-way, which will result in the dead-end adjacent to the Property.

Source: <http://www.denvergov.org/content/denvergov/en/denver-parks-and-recreation/planning/river-vision.html>

² Comparing seasonal differences measured at the Platte River Trail (south of Clear Creek Trail) and the Cherry Creek Trail at Champa Street. Although the first location is less intense than the Property and the second is significantly more intense, the difference in bicycle traffic is approximately the same: (1) Platte River Trail: 25 winter cyclists / 300 summer cyclists = 8.3%; (2) Champa Street: 900 winter cyclists / 8,000 summer cyclists = 11.25%.

Source: https://www.codot.gov/programs/bikeped/documents/2016pedestriancounterreport_08-31-2017.pdf

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As such, we propose revising the Draft Design Overlay to exempt Arkins Court from the Non-Residential Street Level Active Use requirement, but would have no concerns with meeting the more general Street Level Active Use requirement for the entire build-to area along Arkins Court.

2. The list of Non-Residential Street Level Active Uses should be expanded to include other non-residential uses related to residential uses that provide the same level of street activation, but will be better supported by the market.

As noted above, Carmel does not anticipate finding commercial users suitable to meet the Non-Residential Street Level Active Use requirement to fill the required Non-Residential Street Level Active Use spaces along Arkins Court. Those uses are generally limited to retail, office, community (e.g., schools, day care centers, religious assembly, and parks), and limited industrial and agricultural uses that are, for the most part, not feasible in a 15-foot deep space. As such, these spaces are likely to remain vacant for a substantial period of time following completion of the Project. Such vacancies will not contribute to the active street facades envisioned by the Draft Design Overlay or its supporters, instead, they will make the vacancies, and potentially the housing units above them, more difficult to fill.

Instead of leaving vacant retail storefronts or other commercial spaces slated for unrealized users meeting the definition of Non-Residential Street Level Active Uses, Carmel would propose incorporating activating uses that will be used and enjoyed by residents of the Project to meet the Non-Residential Street Level Active Use requirement. Such uses should include live-work units with pedestrian entrances onto Arkins Court and building amenity spaces such as fitness centers, yoga rooms and shared-work spaces (i.e., accessory uses associated with primary residential uses). These types of uses with their street-facing facades and transparency to Arkins Court would provide the level of activation intended by the Draft Design Overlay without the likelihood of vacant commercial spaces created by the current Draft Design Overlay.

As an alternative to the change proposed above, this issue could be resolved by expanding the list of uses that meet the Non-Residential Street Level Active Use requirement for Arkins Court to include live-work units and building amenity spaces.

3. Large properties should have the ability to reallocate the required Non-Residential Street Level Active Uses at vibrant locations within the developments in order to attract higher-end, more stable tenants that will increase the commercial activity of the overall neighborhood.

According to the Draft Design Overlay, Non-Residential Street Level Active Uses must have a minimum depth of 15 feet, which means that the Property must include a minimum of 7,860 square feet (5,340 square feet along Arkins Court alone) of commercial uses qualifying as Non-Residential Street Level Active Uses. Notwithstanding the difficulties associated with this particular segment of Arkins Court noted above, only a very small percentage of the potential uses (both retail and others) that qualify as Non-Residential Street Level Active Uses would be able to function in a 15-foot deep space, and according to various reports provided by Carmel's retail consultant, even smaller retail users face significant challenges trying to accommodate such a narrow footprint. However, the Draft Design Overlay nevertheless requires that the square footage be spread across the

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Primary Street Frontage with no options to consolidate at high visibility, high traffic (vehicular and pedestrian) locations within the Property that may actually be able to accommodate retail and commercial users.

By allowing developers of larger lots to consolidate the required retail, even in part, the Draft Design Overlay would create opportunities for catalyzing retail and commercial development. For example, according to a recent article emphasizing the recent uptick in “smaller urban stores,” a typical Apple Store, the quintessential example of the trend, is approximately 6,000 square feet.³ Although an Apple Store may or may not be the type of development envisioned by the Draft Design Overlay, the size provides an example of the type of facility that might be achievable following concentration.

In addition to the potential to provide a catalyst for commercial and retail development, allowing developers of larger parcels subject to the Draft Design Overlay to concentrate the required square footage of Non-Residential Street Level Active Uses would provide opportunities to create unique and attractive destinations that support the neighborhood as a whole while responding to actual market demands and tenant needs (and avoid difficult-to-fill, and likely vacant 15-foot deep retail footprints).

As such, we propose adding an exception to the Non-Residential Street Level Active Use requirement that allows developers of larger parcels, e.g., three acres or greater (including multiple zone lots developed as a single site development plan), to consolidate the required square footage of Non-Residential Street Level Active Uses in more commercial and retail-supportive locations of the properties.

We appreciate your consideration of these issues, and respectfully request that you consider the foregoing comments in reviewing the Draft Design Overlay.

Sincerely,



Thomas J. Ragonetti
for the Firm

TJR

cc: Sally Vecchio (via e-mail to svecchio@carmelpartners.com)

1449152.3

³ Source: <http://www.nreionline.com/retail/big-box-giants-downsize-drive-productivity-smaller-urban-stores>

Barge, Abe M. - CPD PS Citywide Planning

Subject: FW: 38th and Blake Height Overlay Zone

From: Dick Farley [<mailto:dfarley@civitasinc.com>]

Sent: Wednesday, December 06, 2017 8:46 AM

To: Rezoning - CPD <Rezoning@denvergov.org>

Cc: dick@rf-urbandesign.com

Subject: 38th and Blake Height Overlay Zone

A bonus height for commercial projects should not be given for 'needed' retail uses such as grocery stores, drug stores, etc. Let the market decide that. Don't even list them as possible uses to be considered. Limit the uses that trigger bonus height to only affordable, subsidized maker/art studios, live/work/cooperative art studios and galleries, and art-related non-profits (not any old non-profits). The art studios and maker spaces are what have been gentrified out of the neighborhood. Those are the uses that have given the neighborhood its identity and cache. Entice them back in with the height / density bonus.

Thank you,
Dick Farley, RiNO resident and artist

From: [Barge, Abe M. - CPD PS Citywide Planning](#)
To: [Elisabeth Teater](#)
Cc: [Webb, Andrew - CPD PS Citywide Planning](#); [Brudzynski, Laura R. - OED BHS Administration](#)
Subject: Re: 38 & Blake
Date: Thursday, January 25, 2018 9:36:08 AM

Hi Elisabeth,

Thanks for the message. I've provided some information in response to your questions and feedback below. A key point is that residential projects using the incentive at 38th and Blake will have to build affordable housing units with no option to pay a fee.

- Yes - Developers would have to make significantly greater contributions toward affordable housing when building incentive height around the 38th and Blake Station than is required for construction elsewhere in the city.

- Affordable to households earning 80% of AMI: This is the threshold that was defined for 'build alternative units' (affordable units built instead of paying a fee) for the citywide affordable housing linkage fee that went into effect at the beginning of 2017 after a significant public process. The incentive system at 38th and Blake would use the same framework as the citywide system. Some additional information:
 - Market rate residential units in new construction are generally priced significantly above the threshold for affordability at 100% AMI (especially in central Denver), so units provided at 80% AMI are tend to be significantly subsidized.
 - Note that 40-50% of resources from the new citywide Affordable Housing Fund (the fund that collects linkage fees - see below) will be invested to serve people earning below 30% of AMI and those experiencing homelessness who are seeking to access or maintain rental housing.
 - I've copied Laura Brudzynksi at the Office of Economic Development in case she has additional background to provide on use of the 80% AMI threshold.

- Fees/fines vs. provision of affordable units: Here's a summary of the proposed requirements when building incentive height at 38th and Blake:
 - Residential or primarily residential buildings: When building market rate residential, developers would NOT have the option to pay fees as they do elsewhere in the city. They would be required to build affordable residential units in their project or nearby. The unit requirement would five times the citywide unit requirement for the taller portion of the building. This [summary document](#) includes examples. In other parts of the city, developers have the option to build units (with a much lower requirement) or pay a fee (they almost always pay the fee instead). Again, the fee would not be an option for residential buildings at 38th and Blake.
 - Commercial or primarily commercial buildings: Because it can be challenging to provide residential units as part of these projects, they have additional options:
 - Build affordable units (at five times the citywide requirement for floor area

- above the allowed base height)
 - Provide community-serving uses such as space for arts organizations or community non-profits (these projects would still have to pay the normal citywide fee for affordable housing)
 - Pay a fee (at five times the citywide fee for floor area above the allowed base height)

- Fees: Any fees paid would go into the Citywide Affordable Housing Fund and/or a similar Affordable Housing Incentive Fund.
 - The money contributed to these funds must be used to create and preserve affordable housing in Denver and can't be used for other programs.
 - This [draft plan](#) provides additional information on how the city plans to use fund resources (including the plan to invest 40-50% of fund resources to serve people earning below 30% of AMI and those experiencing homelessness who are seeking to access or maintain rental housing).

- Additional information:
 - Web page with info on [38th and Blake Zoning Overlays](#)
 - Web page with info on the [Citywide Affordable Housing Fee](#)
 - Web page with info on [affordable housing programs in general](#)

I hope the information above helps. Please let us know if you have additional questions or feedback. We appreciate your comments!

Regards,

-Abe

Abe Barge | Principal City Planner
Community Planning and Development | City and County of Denver
p: (720) 865-2924 | abe.barge@denvergov.org
DenverGov.org/CPD | @DenverCPD | Take our Survey

On Jan 23, 2018, at 8:01 PM, Elisabeth Teater <elisabeth.teater@gmail.com> wrote:

Hello,

I would like to address a concern that I have with the buildings going up at Blake & 38th.

I understand that developers will get incentives if they build affordable housing?

Why is "affordable" defined as 80% Ami? It is my desire that it would be defined at 50% Ami or less. Otherwise I do not think incentives should be offered. Also, I want to make it clear that I do not think that developers should have the option of paying a fine instead of building affordable units.

An additional question: if developers currently opt to pay a fine instead of offering affordable units, where does that money go?

Thanks!

Elisabeth Teater,
homeowner,
3328 Williams, Denver 80205