



201 W. Colfax Ave., Dept. 205
Denver, CO 80202
p: 720.865.2915
f: 720.865.3052
www.denvergov.org/CPD

TO: Denver Land Use Transportation and Infrastructure Committee
FROM: Rob Haigh, Senior City Planner
DATE: November 14, 2023
RE: Official Zoning Map Amendment Application #2023I-00033

Staff Report and Recommendation

Based on the criteria for review in the Denver Zoning Code, Staff recommends **approval** for Application #2023I-00033

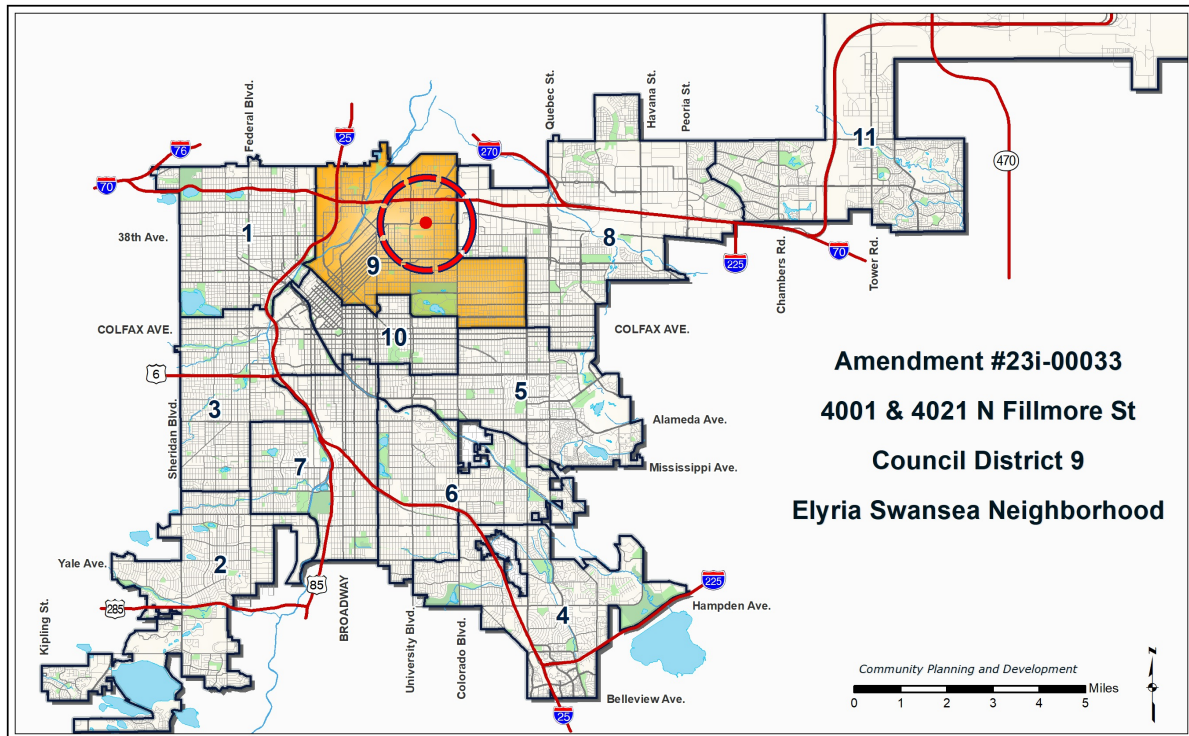
Request for Rezoning

Address:	4001 & 4021 North Fillmore Street
Neighborhood/Council District:	Elyria Swansea / Council District 9
RNOs:	Inter-Neighborhood Cooperation (INC), Reclaim the Eastside, Elyria and Swansea Neighborhood Association, Opportunity Corridor Coalition of United Residents, Denver North Business Association, Unite North Metro Denver, Strong Denver, United Community Action Network, Clayton United, East Denver Residents Council
Area of Property:	10,244 square feet or 0.24 acres
Current Zoning:	E-SU-B & PUD 140
Proposed Zoning:	U-MS-3
Property Owner(s):	4001 QOZ Property LLC
Owner Representative:	Nick Young

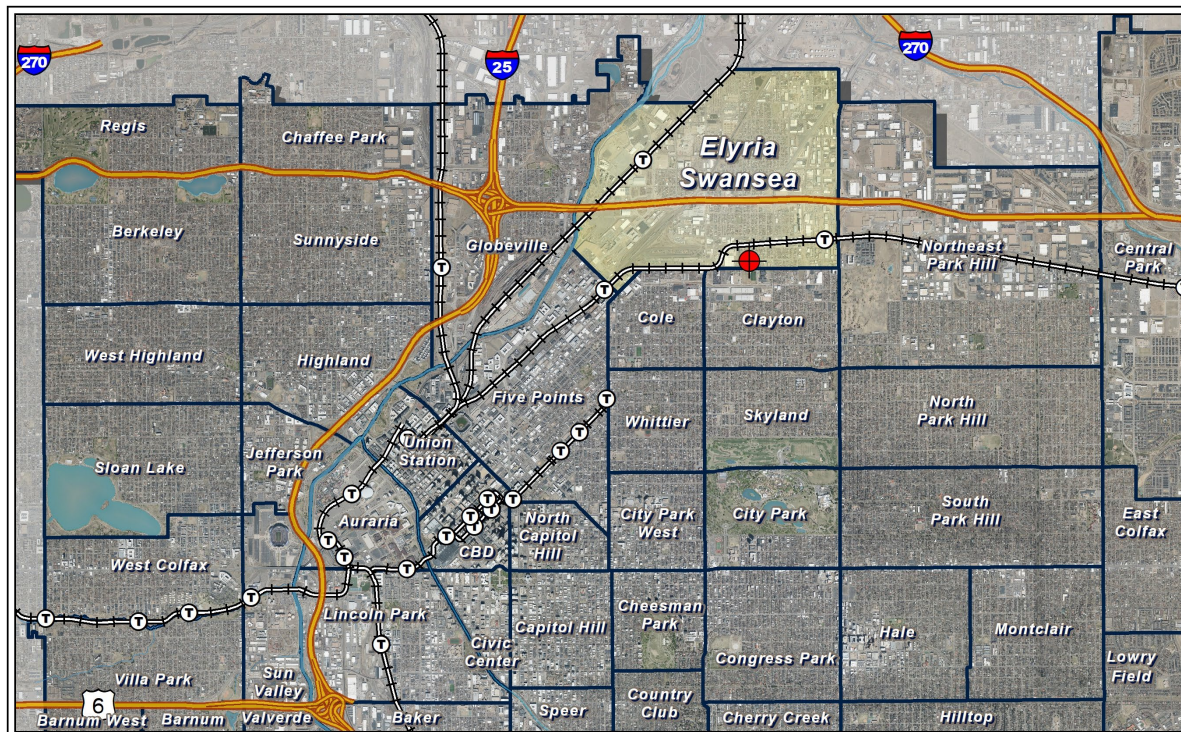
Summary of Rezoning Request

- The subject properties are located within the Elyria Swansea statistical neighborhood at the intersection of East 40th Avenue and North Fillmore Street. The southern parcel is vacant and the northern parcel includes a single-story, single-unit dwelling built in 1904 and a detached garage.
- The property owner with Nick Young as their representative, is proposing to rezone the property to allow for redevelopment of these two parcels in a Main Street zone district.
- The proposed U-MS-3 (Urbane, Main Strreet, up to 3 stories) zone district allows for the Town House and shopfront primary building forms, and drive thru services and restaurants are allowed subject to geographic limitations. The maximum height of the allowed primary building forms ranges from 38 to 45 feet. Further details of the zone districts can be found in Article 5 of the Denver Zoning Code (DZC).

Council District



Statistical Neighborhood



Aerial View



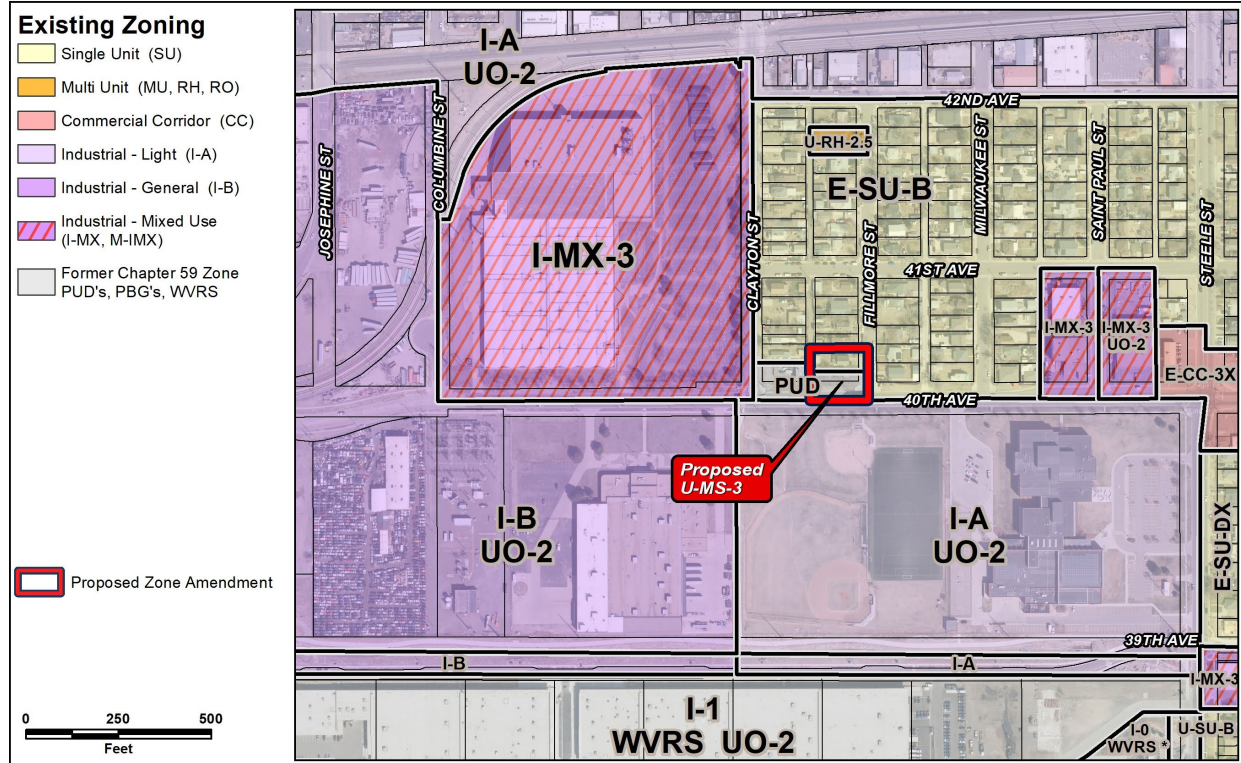
The subject properties are located within the Elyria Swansea statistical neighborhood, at the northwest intersection East 40th Avenue and North Fillmore Street. The area immediately surrounding the subject properties and areas to the north and east makes up a primarily single-unit residential neighborhood. There are industrial and mixed-use developments to the west of the subject property and along the rail line. Bruce Randolph School and the associated playing fields are immediately to the south. The subject site is just over one-half mile from the 40th and Colorado commuter rail station and is also served by RTD bus route 44 along the Josephine/York couplet five blocks to the west.

The following table summarizes the existing context proximate to the subject site:

	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
Site	E-SU-B/ PUD 140	Single-unit Residential	1-story house with a detached garage/vacant	Block sizes and shapes are consistent and rectangular and shaped by a grid street pattern. A mixture of attached and detached sidewalks exists.
North	E-SU-B	Single-unit Residential	1.5-story house with a detached garage	
East	E-SU-B	Two-unit Residential	1-story house with a detached garage	
South	I-A, UO-2	Public/ Institutional	Bruce Randolph School and ball fields	

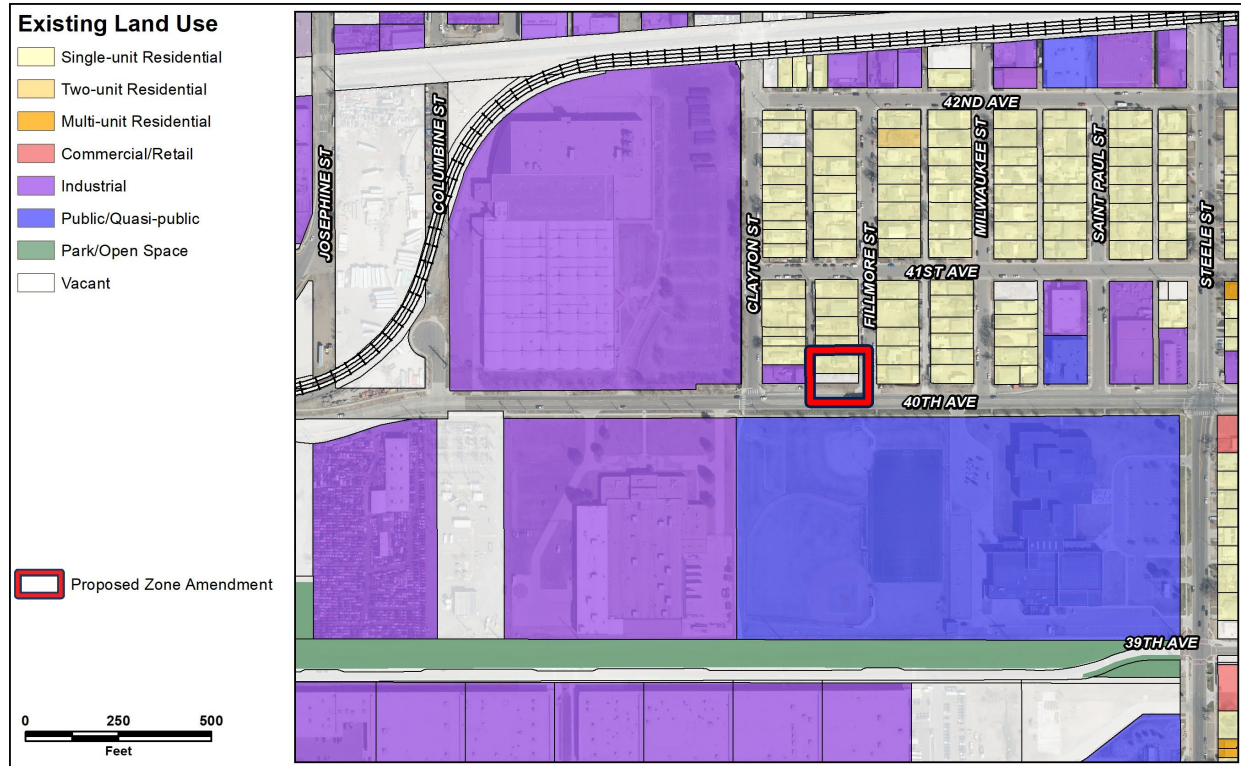
	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
West	E-SU-B/ PUD 140	Single-unit Residential/ Industrial	1-story house with a detached garage/ Glass art studio	Driveways with front-loaded garages are present and alleys exist on most blocks.

Existing Zoning



The existing zoning on the northern parcel property is E-SU-B and the southern parcel is zoned PUD 140. The E-SU-B zone district is a single-unit zone district in the Urban Edge neighborhood context allowing the urban house primary building form with a minimum zone lot area of 4,500 square feet and minimum zone lot width of 35 feet. The southern parcel is zoned PUD 140, which is a Planned Unit Development based in Former Chapter 59 of the DRMC. This PUD extends to the parcel to the west across the alley and allows for a “neighborhood service grocery store” use. This use has never been formally established or no longer exists on the subject property. The subject property is surrounded primarily by E-SU-B zoning on the east, north, and west, with light industrial zoning to the south across East 40th Avenue and Industrial mixed use zoning to the west across North Clayton Street.

Existing Land Use Map



Existing Building Form and Scale



Site - Aerial view, looking northwest (Source: Google Maps)



Site - from North Fillmore Street (Source: Google Maps)



Properties to the north – from North Fillmore Street (Source: Google Maps)



Properties to the east – *from North Fillmore Street* (Source: Google Maps)



Properties to the south – *from North Fillmore Street* (Source: Google Maps)



West – *from North Clayton Street* (Source: Google Maps)

Proposed Zoning

U-MS-3 Zone District

The requested U-MS-3 zone district intends of to “promote safe, active, and pedestrian-scaled commercial streets through building forms that clearly define and activate the public street edge.” Additionally, the Main Street district standards are intended to ensure new development contributes positively to established residential neighborhoods and character, improving the transition between commercial development and adjacent residential neighborhoods. The zone district allows for construction of the Town House and shopfront primary building forms, and drive thru services and restaurants are allowed unless the zone lot is within ¼ mile of the outer boundary of a rail transit station platform. The subject properties are more than ½ mile from the rail transit platform, and all available building forms would be allowed. These building forms are typically applied linearly along entire block faces of commercial, industrial, main, mixed-use and residential arterial streets. Multi-unit residential uses are typically located along local streets, residential and mixed-use arterials, and main streets. For additional details of the requested zone district, see Article 5 of the Denver Zoning Code.

The primary building forms allowed in the existing zone district and the proposed zone district are summarized below.

Design Standards	E-SU-B (Existing)	U-MS-3 (proposed)
Primary Building Forms Allowed	Urban House	Town House, Shopfront, Drive Thru Restaurant, Drive Through Services
Height in Stories / Feet, Front 65% of Zone Lot	2.5 stories / 35 feet	3 stories / 45 feet**
Height in Stories / Feet, Rear 35% of Zone Lot	1 story / 19 feet	3 stories / 45 feet**
Zone Lot Size (min.)	4,500 sf	N/A
Zone Lot Width (min.)	35 feet	N/A
Primary Street Build-To Percentages (min)	N/A	50-75%**
Primary Street Build-To Ranges	N/A	0' to 15'**
Primary Street Block Sensitive Setback Required / If not	Yes / 20 feet	No / 0 feet
Side Street Setback (min.)	7.5 feet	0 feet
Side Interior Setback (min.)	10 feet	10 feet *
Rear Setback, Alley / No Alley	12 feet / 20 feet	12 feet / 20 feet
Building Coverage per Zone Lot including all accessory structures (max.), not including exceptions	37.5%	N/A
Upper Story Setback Above 27' adjacent to Protected District: Rear, alley/Rear, no alley and Side Interior (min)	N/A	15 feet / 25 feet
Transparency: Primary Street	N/A	60%, Residential Only Buildings: 40%
Transparency: Side Street	N/A	25%

*When Adjacent to a Protected District (the surrounding E-SU-B zoning is a protected district)

** Standard varies between building forms

Summary of City Agency Referral Comments

As part of the DZC review process, the rezoning application is referred to potentially affected city agencies and departments for comment. A summary of agency referral responses follows:

Assessor: Approved – No Response

Asset Management: Approved – No Response

Denver Public Schools: Approved – No Response

Department of Public Health and Environment: Approve Rezoning Only – Will require additional information at Site Plan Review.

Denver Department of Public Health & Environment - Division of Environmental Quality (EQ) does not guarantee approval of any proposed development project at this site by providing a response to this Official Map Amendment Referral Agency Review Request. Future development is subject to existing land use controls and other environmental requirements in accordance with applicable local, state, and federal environmental regulations and statutes. EQ recommends the Property Owner conduct an environmental site assessment to determine the potential presence, nature, and extent of possible contamination on the site and to identify specific cleanup needs associated with future development. EQ may have additional information about localized potential environmental concerns at the site. However, providing such information about a specific site is beyond the scope of these zoning application comments.

Denver Parks and Recreation: Approved – No Comments

Public Works – R.O.W.- City Surveyor: Approved – No Comments

Development Services – Project Coordination: Approve Rezoning Only – Will require additional information at Site Plan Review

- 1) The site proposed for rezoning is currently undergoing a Site Development Plan review process. The SDP approval for the proposed design is dependent on the rezoning being approved.
- 2) If the rezoning is not approved, the SDP proposal will need to be modified.
- 3) The SDP, and any related applications, must be approved before building permits and construction can begin.
- 4) The remaining portion of the PUD (2717 E. 40th) will continue to remain tied to PUD 140 and is subject to enforcement under the zoning regulations of PUD 140 until the zoning is changed on that specific parcel.

Development Services - Fire Protection: Approved – No Response

Development Services – Transportation: Approved – No Response

Development Services- Wastewater: Approved – No Comments

Public Review Process

	Date
CPD informational notice of receipt of the rezoning application to all affected members of City Council, registered neighborhood organizations, and property owners:	7/7/23
Property legally posted for a period of 15 days and CPD written notice of the Planning Board public hearing sent to all affected members of City Council, registered neighborhood organizations, and property owners:	9/5/23
Planning Board Public Hearing: Unanimous Recommendation of Approval	11/1/23
CPD written notice of the Land Use, Transportation and Infrastructure Committee meeting sent to all affected members of City Council and registered neighborhood organizations, at least ten working days before the meeting:	11/2/23
Land Use, Transportation and Infrastructure Committee of the City Council meeting:	11/14/23
Property legally posted for a period of 21 days and CPD notice of the City Council public hearing sent to all affected members of City Council and registered neighborhood organizations (tentative):	12/11/23
City Council Public Hearing (tentative):	1/2/24

Public Outreach and Input

- **Registered Neighborhood Organizations (RNOs)**
 As of the date of this report, staff has not received written comment from an RNO pertaining to this application.
- **Other Public Comment**
 As of the date of this report, staff has not received written public comments pertaining to this application.

Criteria for Review / Staff Evaluation

The criteria for review of this rezoning application are found in DZC Section 12.4.10.7 and 12.4.10.8, as follows:

DZC Section 12.4.10.7

1. Consistency with Adopted Plans
2. Uniformity of District Regulations and Restrictions
3. Public Health, Safety and General Welfare

DZC Section 12.4.10.8

4. Justifying Circumstances
5. Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements

1. Consistency with Adopted Plans

The following adopted plans currently apply to this property:

- *Denver Comprehensive Plan 2040*
- *Blueprint Denver (2019)*
- *Elyria & Swansea Neighborhoods Plan (2015)*

Denver Comprehensive Plan 2040

The proposed rezoning is consistent with many of the adopted *Denver Comprehensive Plan 2040* strategies, which are organized by vision element.

The proposed rezoning would allow for additional housing units and a mix of uses within an established neighborhood, consistent with the following strategies in the Equitable, Affordable and Inclusive vision element:

- Equitable, Affordable and Inclusive Goal 2, Strategy A - *Create a greater mix of housing options in every neighborhood for all individuals and families* (p. 28).

Similarly, the proposed U-MS-3 zoning would allow for a broader variety of uses including housing, retail services, and employment at an intensity consistent with the desire for walkable, mixed-use neighborhoods along certain corridors. Further, the application of main street zoning contributes to the city's aspirational network of well-connected mixed-use corridors and is therefore consistent with the following strategies in the **Strong and Authentic Neighborhoods** vision element:

- Strong and Authentic Neighborhoods Goal 1, Strategy A – *Build a network of well connected, vibrant, mixed-use centers and corridors* (p. 34).
- Strong and Authentic Neighborhoods Goal 1, Strategy B – *Ensure neighborhoods offer a mix of housing types and services for a diverse population* (p. 34).
- Strong and Authentic Neighborhoods Goal 1, Strategy D – *Encourage quality infill development that is consistent with the surrounding neighborhoods and offers opportunities for increased amenities* (p. 34).

The land use pattern detailed in the previous paragraph is also consistent with the following strategies in the **Environmentally Resilient** vision element. This site is an infill location where infrastructure is already in place allowing residents to live, work and play in the area. The proposal focuses any future growth that results from this rezoning close to transit. Compact infill development near transportation options and existing infrastructure assists in improving public health indicators while reducing water usage.

- Environmentally Resilient Goal 8, Strategy A – *Promote infill development where infrastructure and services are already in place* (p. 54).
- Environmentally Resilient Goal 8, Strategy B – *Encourage mixed-use communities where residents can live, work, and play in their own neighborhoods* (p. 54).

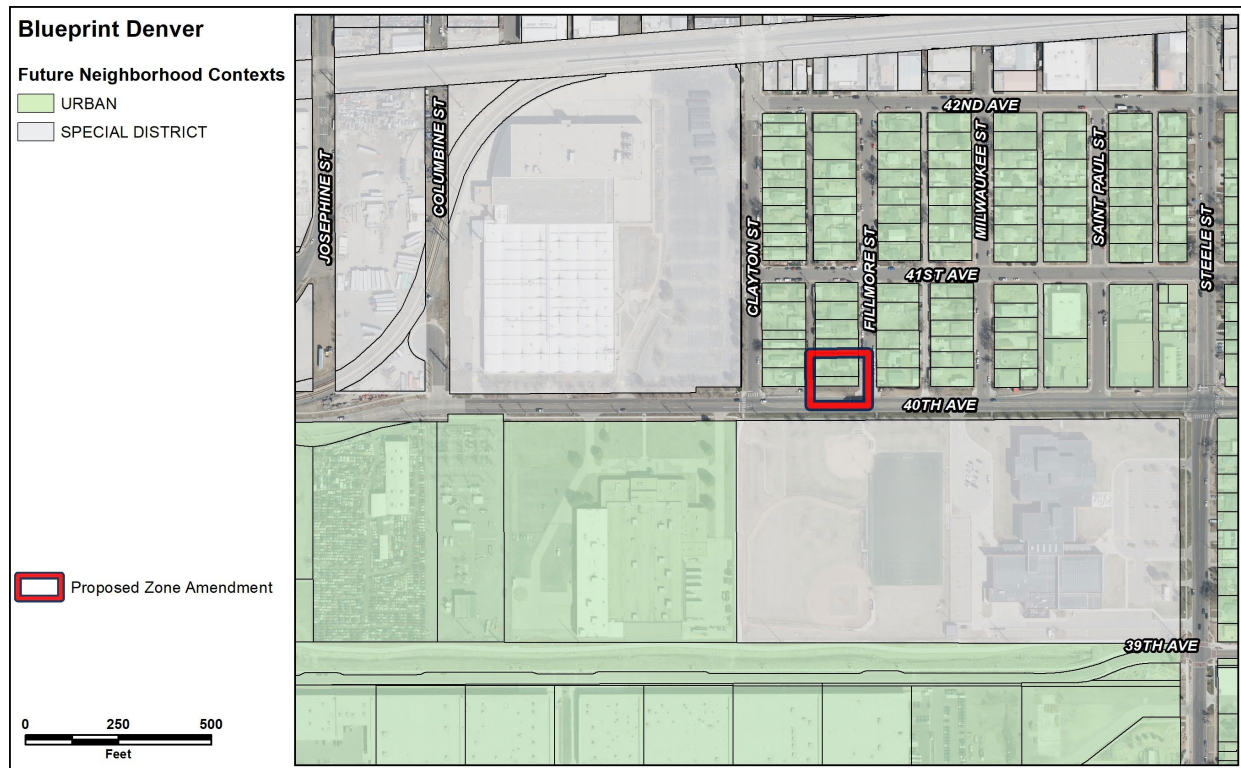
Rezoning to facilitate redevelopment of this site advances the strategies of *Comprehensive Plan 2040*. The requested map amendment would allow for a broader variety of uses including housing, retail

services, and employment at an intensity consistent with the desire for walkable, mixed-use neighborhoods expressed in Comprehensive Plan 2040.

Blueprint Denver (2019)

Blueprint Denver was adopted in 2019 as a supplement to *Comprehensive Plan 2040* and establishes an integrated framework for the city's land use and transportation decisions. *Blueprint Denver* identifies the subject property as part of a Local Corridor future place within the Urban Neighborhood Context and provides guidance from the future growth strategy for the city.

Blueprint Denver Future Neighborhood Context

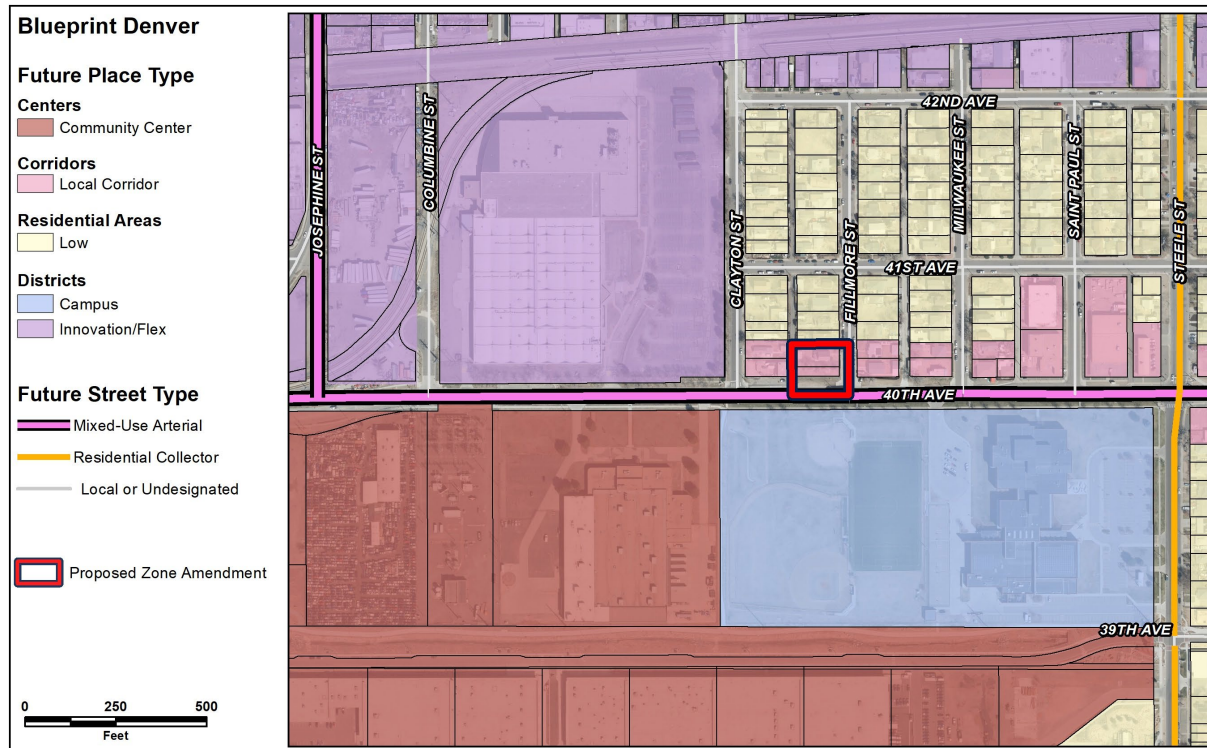


The subject property is shown on the context map as an Urban Neighborhood Context, the description of which is used to guide appropriate zone districts. *"Small multi-unit residential and low-intensity mixed-use buildings are typically embedded in single-unit and two-unit residential areas. Block patterns are a regular grid with consistent alley access. Where they occur, multi-unit buildings are low scale. Mixed-use buildings are sited in a pedestrian-friendly manner near the street"* (p. 222).

The proposed U-MS-3 Zone District is within the Urban Neighborhood Context and is intended *"to promote safe, active, and pedestrian-scaled commercial street through building forms that clearly define and activate the public street edge"* and *"should be applied where a higher degree of walkability and pedestrian activity is desired than required along a Corridor, Mixed Use, or Residential Mixed Use zone district"* (DZC Section 5.2.5.1). The U-MS-3 zone district is consistent with Blueprint Denver's future

neighborhood context of Urban because it will promote an urban, mixed-use built-to environment that will be compatible with the existing residential area.

Blueprint Denver Future Places



Within the Urban Neighborhood Context, the subject property is categorized as a Local Corridor future place with a land use and built form defined by *Blueprint Denver* as primarily providing “options for dining, entertainment and shopping” and “may also include some residential and employment uses” (p.228). In addition, in a Local Corridor, “buildings have a distinctly linear orientation along the street with very shallow setbacks. The scale is intimate with a focus on the pedestrian. The public realm is typically defined by lower-scale buildings with active frontages” while “heights are generally up to three stories” (p. 228)

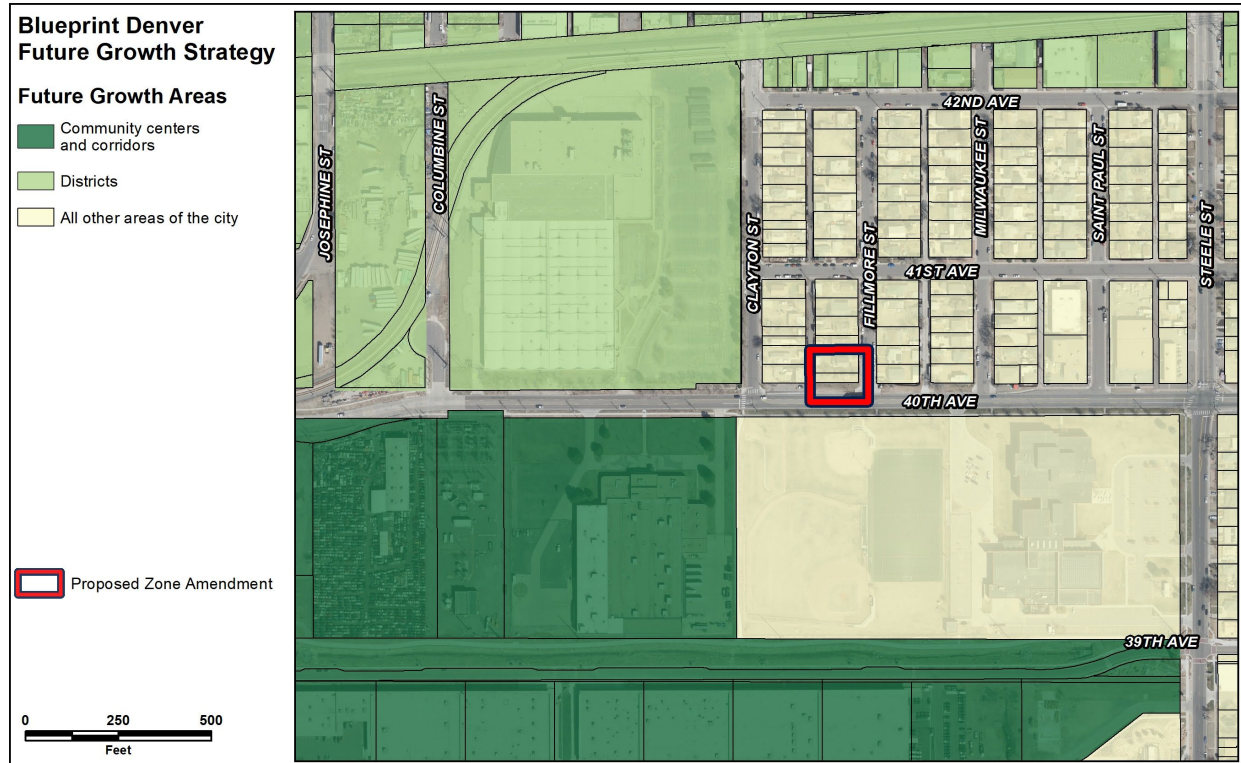
The proposed rezoning to U-MS-3 is appropriate and consistent with the Local Corridor designation as it allows for the mixed-use development of pedestrian-friendly building forms (up to three stories) that define and activate the public street edge.

Street Types

Blueprint Denver street types “work with future place designations to evaluate the appropriateness of the intensity of the adjacent development” (p. 67). *Blueprint Denver* classifies East 40th Avenue as a Mixed Use Arterial Street and North Fillmore Street as an undesignated local street. Mixed Use Arterial streets include a “Varied mix of uses including retail, office, residential and restaurants. Buildings are pedestrian-oriented, typically multi-story, usually with high building coverage with a shallow front setback. A street wall is present, but may vary” (p.159). Local streets “are designed for the highest degree of property access and the lowest amount of through movement” (p. 154).

The proposed U-MS-3 zone district is consistent with this plan direction for this location as the zone district allows for a mix of uses that will activate the street edge along the West 40th Avenue corridor.

Growth Strategy

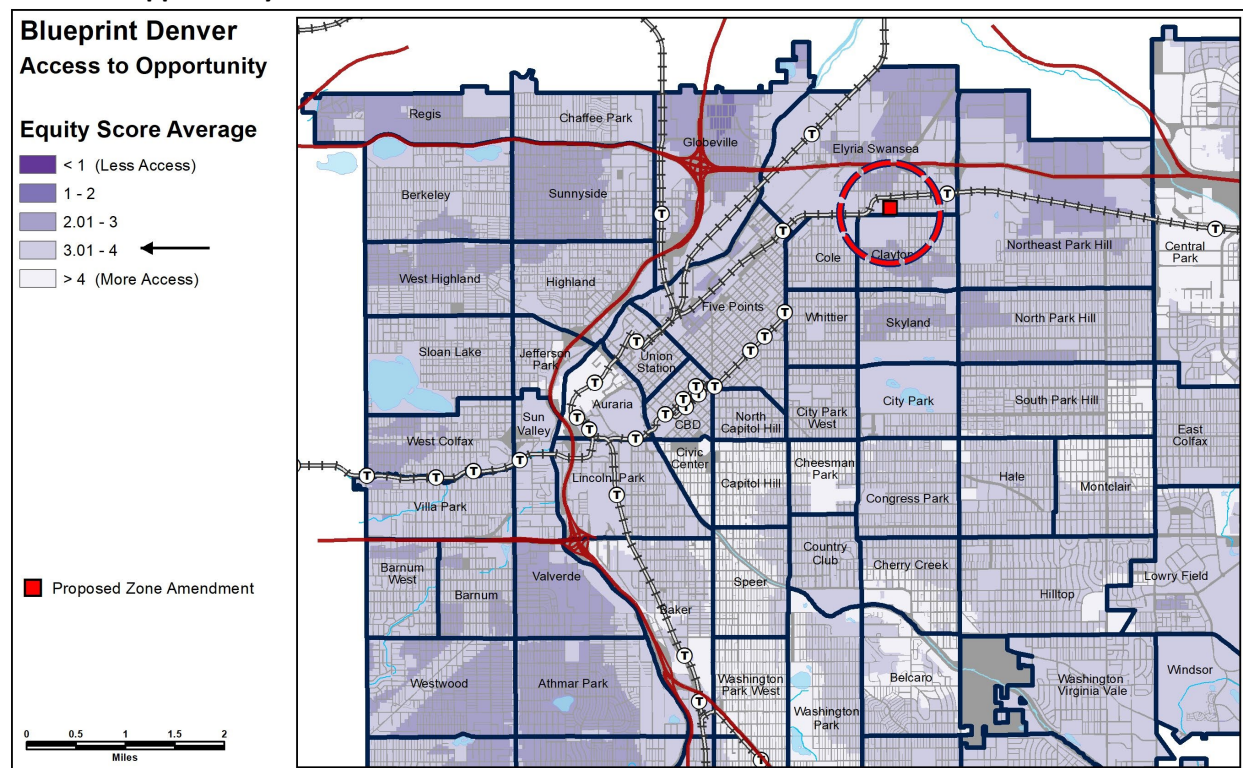


Blueprint Denver's growth strategy map is a version of the future places map, showing the aspiration for distributing future growth in Denver (p. 51). The subject property is part of the "All other areas of the city" growth area. These areas anticipate experiencing around 20 percent of new housing growth and 10 percent of new employment growth by 2040 (p. 51). This growth area contains "*mostly residential areas with embedded local centers and corridors (that) take a smaller amount of growth intended to strengthen the existing character of our neighborhoods*" (p. 49). The proposed U-MS-3 zone district is appropriate in this growth area as it will appropriately contribute to development intensity along the East 40th Avenue corridor and provide a transition to the single unit residential neighborhood to the north. Therefore, the proposed rezoning is consistent with the Blueprint Denver growth strategy.

Blueprint Denver Equity Concepts

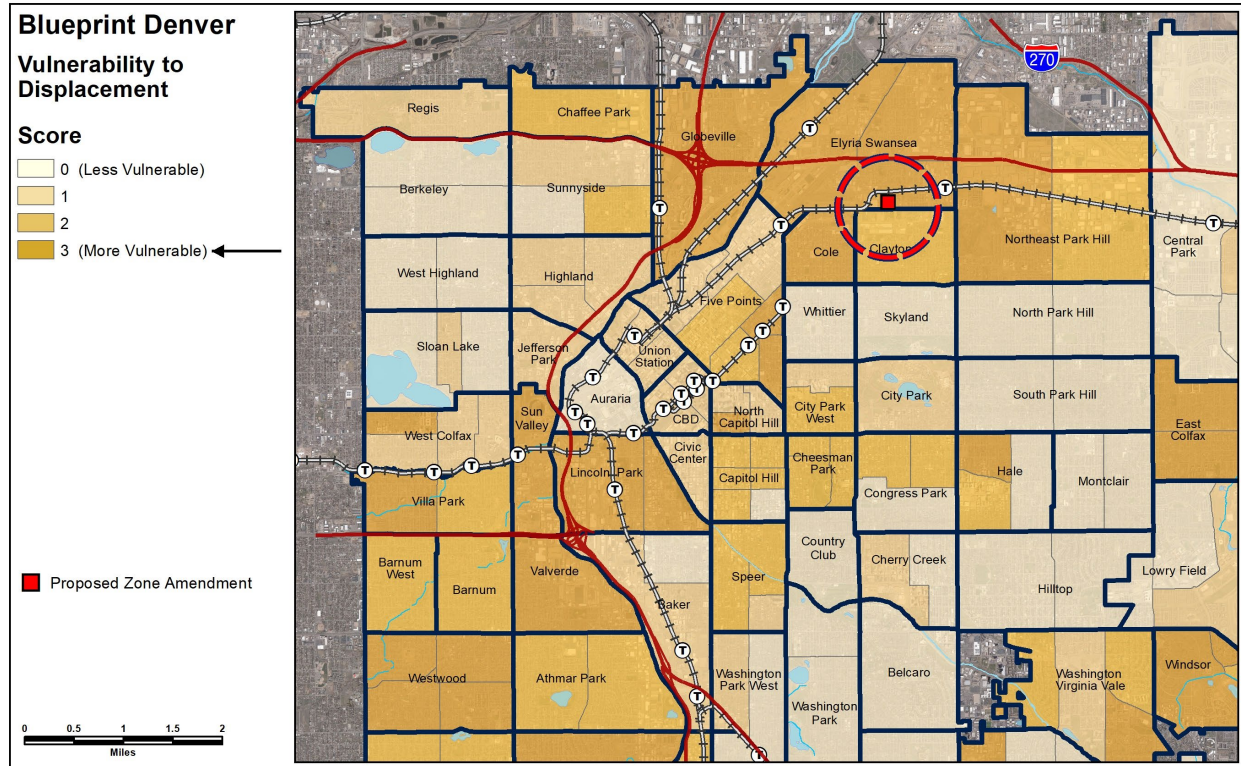
Blueprint Denver organizes recommendations around three equity concepts: improving access to opportunity; reducing vulnerability to displacement; and expanding housing and jobs diversity. While these concepts are consistently used to evaluate large area rezonings, CPD has expanded analysis of these concepts to also apply to rezonings in NEST neighborhoods. As the subject property is within the Elyria Swansea statistical neighborhood, an equity analysis is applicable to this rezoning application.

Access to Opportunity



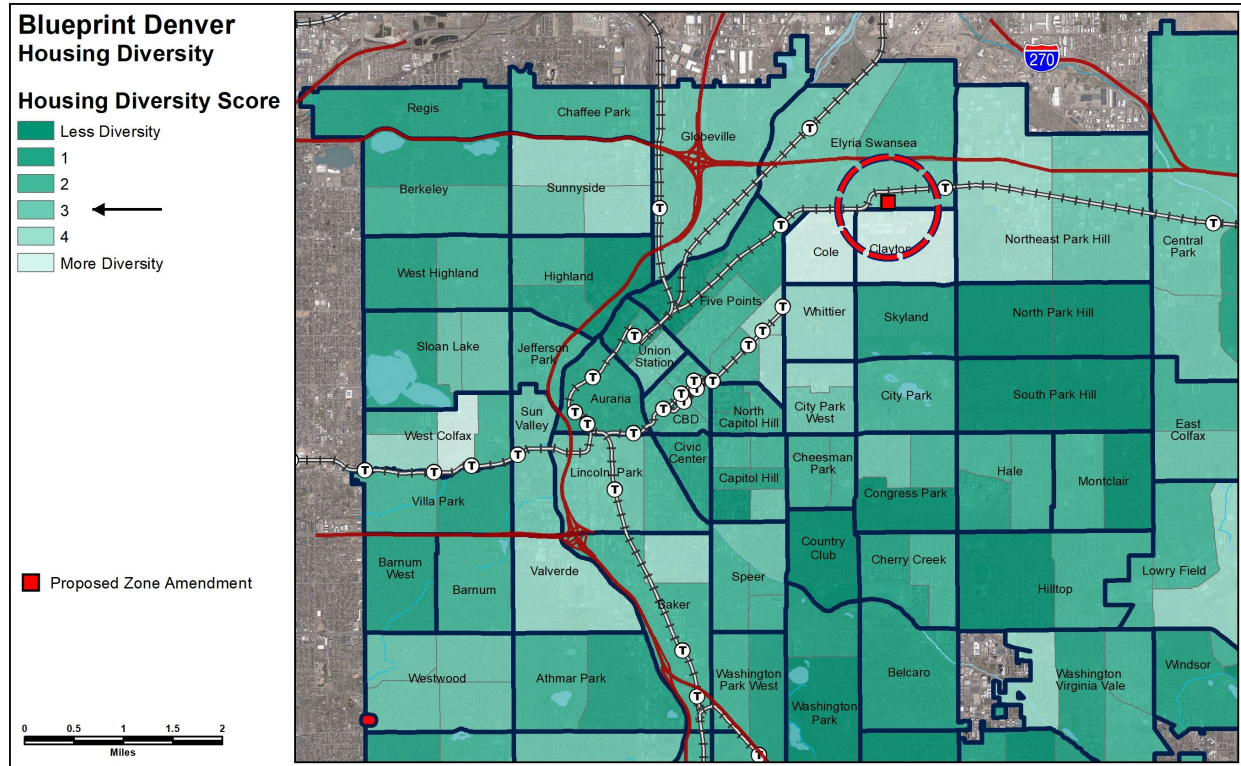
Elyria Swansea is indicated as an area with more access to opportunity, defined as access to basic goods, services and amenities to improve quality-of-life. This score is likely bolstered by the proximity of the light rail line and 40th & Colorado transit station. The proposed rezoning could potentially enable the development of additional residential density and a greater mix of uses on the subject property. This could result in an increase in the access to opportunity depending on the amenities developed on the property, or through an increase in residents that may increase the likelihood that more goods, services and amenities will locate in the commercial and mixed-use zoned areas of the neighborhood.

Vulnerability to Displacement



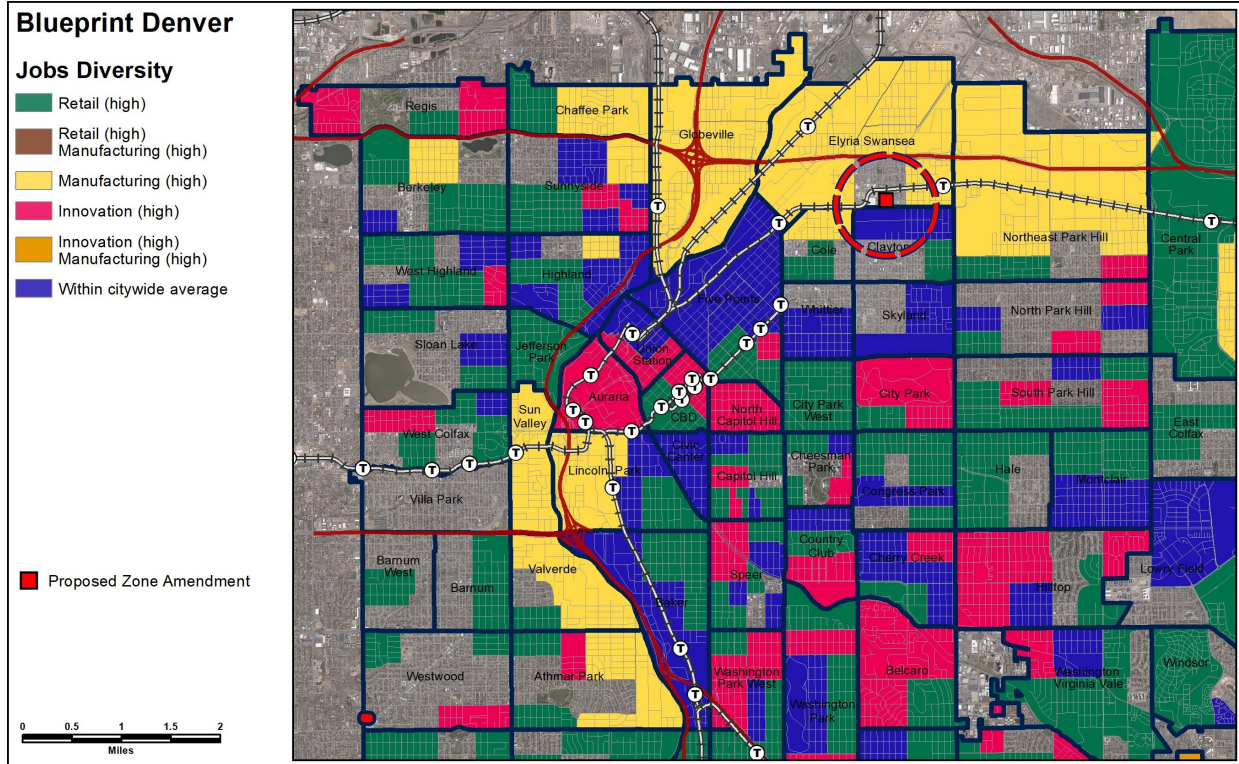
Elyria Swansea is indicated as an area with high vulnerability to displacement. The neighborhood has lower education rates, lower median household incomes and a lower percentage of owner-occupied units than the Denver average. The proposed rezoning would allow for a mixed use or multi-unit residential development. The addition of a greater diversity of housing types within this primarily single-unit residential area could potentially enable more residents to remain in the neighborhood. Due to the size of the property and potential project, it is likely that the property will be subject to Mandatory Affordable Housing requirements that could result in on-site affordable units.

Housing Diversity



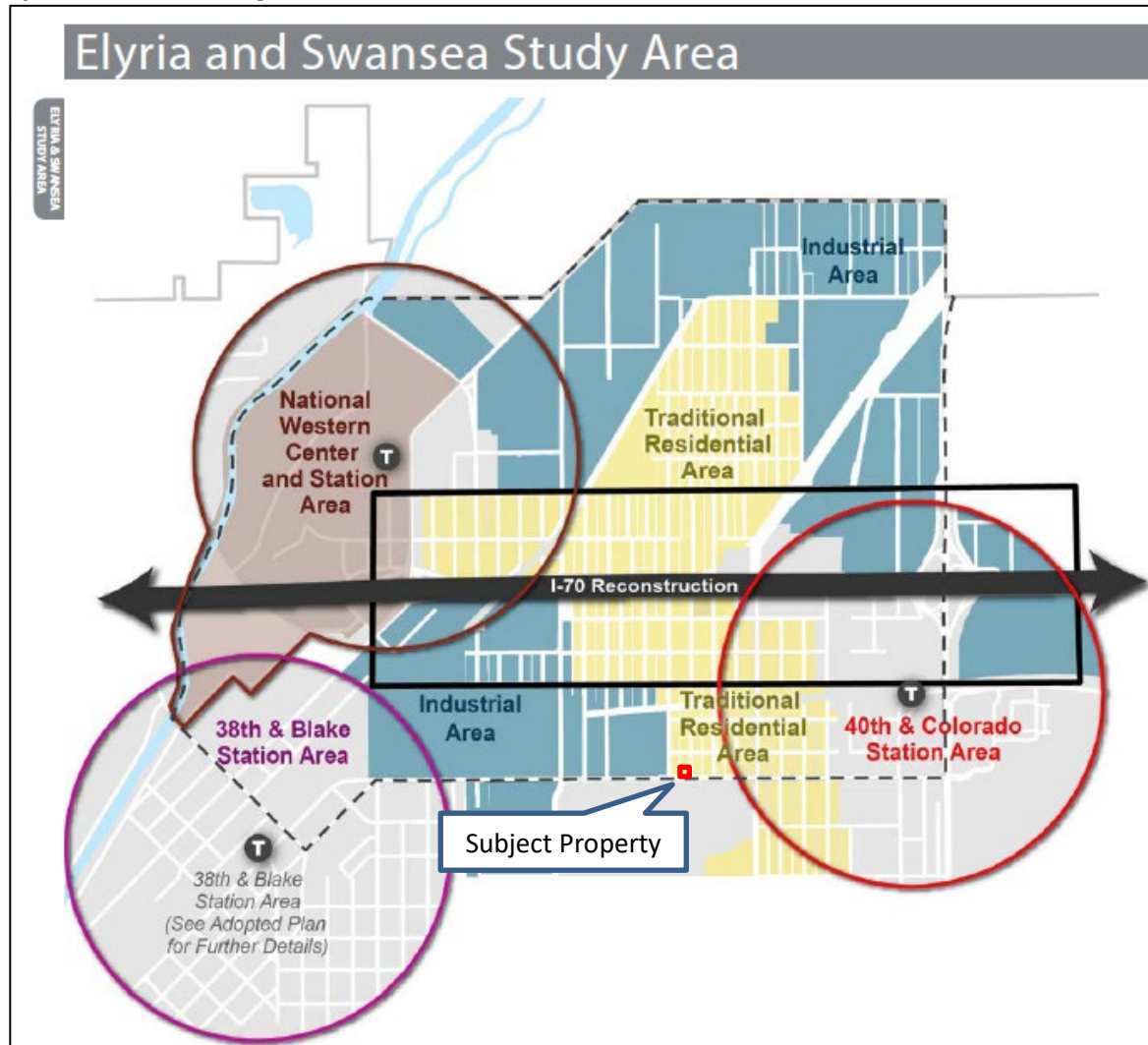
Elyria Swansea is indicated as an area with moderate housing diversity. The equity analysis response from the applicant indicates that the project will likely provide more dwelling units than what would typically be considered missing middle housing, and the majority of these units would be studio or 1-bedroom units. While this is all subject to change, the development could improve the diversity of housing cost by providing a higher concentration of smaller units at a lower cost than the surrounding single-unit residential dwellings.

Jobs Diversity



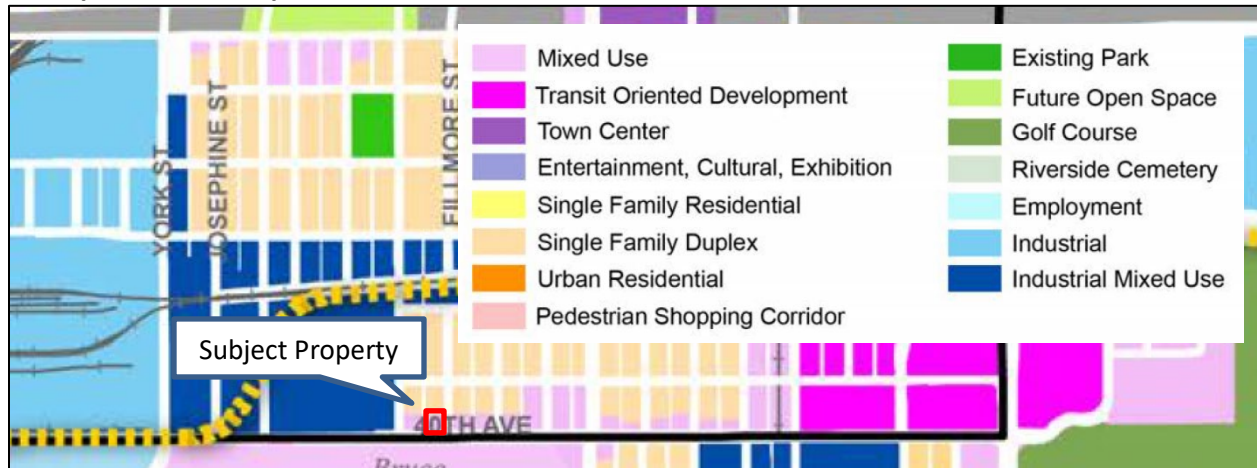
The subject property is located in an area where there are not enough jobs to complete a jobs diversity analysis.

Elyria & Swansea Neighborhoods Plan (2015)



This neighborhood plan was adopted by City Council in 2015 and applies to the subject properties. It designates the subject properties as being within Traditional Residential Area with a mixed use concept land use and a maximum building height of 3 stories. The subject property is also within an area of change and is an area directed for limited growth utilizing the guidance in the plan. The property is located within a mixed use concept land use area that extends along the East 40th Avenue Corridor. These mixed use areas are envisioned to have “both a sizable employment base as well as a variety of mid-to high-density housing options. Intensity is higher in mixed-use areas than in predominantly residential areas. Land uses can be, but are not necessarily, mixed in each building, development, or block” (p. 26).

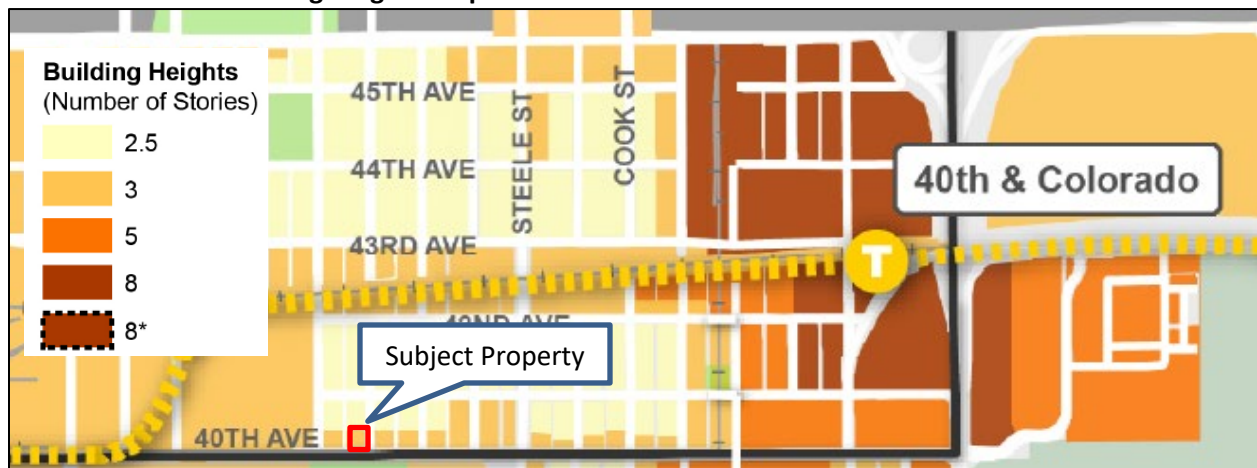
Concept Land Use Map



Areas of Change



Future Maximum Building Heights Map



The request is consistent with several Elyria and Swansea Neighborhoods Plan policies, including:

- **Establish a Balance Land Use Strategy Recommendations, B.3 Increase Housing Choices:** *Encourage investment in new housing to expand the total number of residences and to provide for a diversity of housing types to bring more people of all ages and income levels into the neighborhood (p. 29).*
- **Establish a Balance Land Use Strategy Recommendations, B.9 Encourage Building Forms that Activate Streets and Public Spaces (p.30)**
- **Improve Access to Housing, Jobs, Services & Education Recommendations, B.23 Increase Access to Housing:** *Provide a broad range of housing types by allowing for moderate increases in density and household economic stabilization by allowing options that supplement an existing single family home, including accessory dwelling units, duplexes and tandem houses (p. 46).*
- **Traditional Residential Areas: Reverse the trend of a declining population and expand housing throughout the neighborhood (p. 88).**
- **Traditional Residential Areas: E.1 Update the Neighborhood Context:** *as the Denver Zoning Code's Urban Neighborhood Context, as opposed to the currently mapped Urban Edge Context, better reflects the use of alley, limiting or prohibiting curb cuts for street access, and the continuation of detached sidewalks where possible (p 88).*
- **Traditional Residential Areas: E.2 Encourage Investment in Residential Areas of Stability:** *Explore opportunities to introduce building forms, consistent with the single-family duplex land designation, such as accessory dwelling units, duplex or tandem houses and rowhouses (p. 88). Increase the local supply of relatively affordable housing units in the neighborhood. A modest increase in housing density could add more people to the limited neighborhood population and support commercial retail and other desired services in the neighborhood (p. 89).*

The proposed U-MS-3 zone district would allow for the opportunity to introduce additional building forms, increasing the variety of uses and housing types in the neighborhood, consistent with the recommendations of the *Elyria Swansea Neighborhood Plan*. The maximum allowed height of 3 stories is consistent with the plan's height recommendations, and the Urban context complies with the plan's goal of shifting the area into Urban context zoning. The proposed rezoning would facilitate reinvestment in the neighborhood, increasing the supply of available housing and amenities, consistent with the policies and goals of the *Elyria & Swansea Neighborhoods Plan*.

2. Uniformity of District Regulations and Restrictions

The proposed rezoning to U-MS-3 will result in the uniform application of zone district building form, use, and design regulations on this site as they are applied to any other sites zoned U-MS-3.

3. Public Health, Safety and General Welfare

The proposed official map amendment furthers the public health, safety, and general welfare through implementation of the city's adopted land use plans. The proposed rezoning would also facilitate increased housing density near services and amenities and promote a walkable, urban neighborhood

within walking distance to public transit. By re-activating this property at the corner of 40th Avenue and Fillmore Street, this rezoning would help increase safety by fostering additional eyes and ears of neighbors that care about their home and neighborhood.

4. Justifying Circumstances

Changed or changing conditions in the area and city adopted plans serve as the Justifying Circumstances under DZC Section 12.4.10.8.A.4, “Since the date of the approval of the existing Zone District, there has been a change to such a degree that the proposed rezoning is in the public interest. Such a change may include: Changed or changing conditions in a particular area, or in the city generally; or, a city adopted plan....”

The Elyria Swansea neighborhood has seen significant change over the last few years including major construction projects like the National Western Complex, the 40th and Colorado transit station, and the Interstate 70 expansion. The I-70 project, in particular, has resulted in the loss of housing units in the neighborhood, justifying this rezoning to help add some of those units back to stabilize the neighborhood. In addition, the city adopted the *Elyria & Swansea Neighborhoods Plan* in 2015 and *Blueprint Denver* in 2019, both of which included new plan direction for the subject property to allow more types of housing and change the zoning context to Urban. The combination of changes in the neighborhood and new neighborhood plan direction justify the proposed rezoning with the map amendment to U-MS-3 being in the public interest.

5. Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements

The requested U-MS-3 district is within the Urban Neighborhood Context, which is characterized by primarily single-unit and two-unit residential uses with small-scale commercial sometimes embedded with residential areas. More often commercial uses are located along mixed-use arterials or on main streets. Multi-unit residential uses are located along local streets, residential and mixed-use arterials, and main streets. Buildings are generally low- to mid- scale, and residential buildings typically have consistent moderate to deep front setbacks. There typically is a regular pattern of block shapes surrounded by orthogonal streets within a grid (DZC 5.1). The subject site is in an area that reflects these characteristics. Therefore, the proposed rezoning to U-MS-3 is consistent with the neighborhood context description.

The general purpose of the Urban main street districts is to “promote safe, active and pedestrian-scaled commercial streets through building forms that clearly define and activate the public street edge, and that enhance the convenience, ease and enjoyment of transit, walking, shopping and public gathering.” The building form standards “are intended to promote an urban, mixed-use, built-to environment” where “buildings have a shallow front setback range, and the build-to requirements are high, and the maximum building coverage is significant” (DZC 5.2.5.1). The proposed U-MS-3 district would allow for compatible infill development fitting with the character of the surrounding mixed-use corridor. Therefore, it is consistent with the Urban Main Street District purpose statements.

The specific intent of the U-MS-3 district is the district “applies primarily to collector and arterial street corridors or may be embedded within a larger commercial shopping center or mixed-use area, where a building scale of 1 to 3 stories is desired” (DZC 5.2.5.2.D). The subject site is located on a Mixed Use Arterial street and therefore, the proposed map amendment is consistent with the U-MS-3 intent.

Attachments

1. Application