



**TO:** Land Use, Transportation, and Infrastructure Committee  
**FROM:** Francisca Peñafiel, Associate City Planner  
**DATE:** September 9, 2021  
**RE:** Official Zoning Map Amendment Application #2020I-00144

### Staff Report and Recommendation

Based on the criteria for review in the Denver Zoning Code, Staff recommends **approval** for Application #2020I-00144.

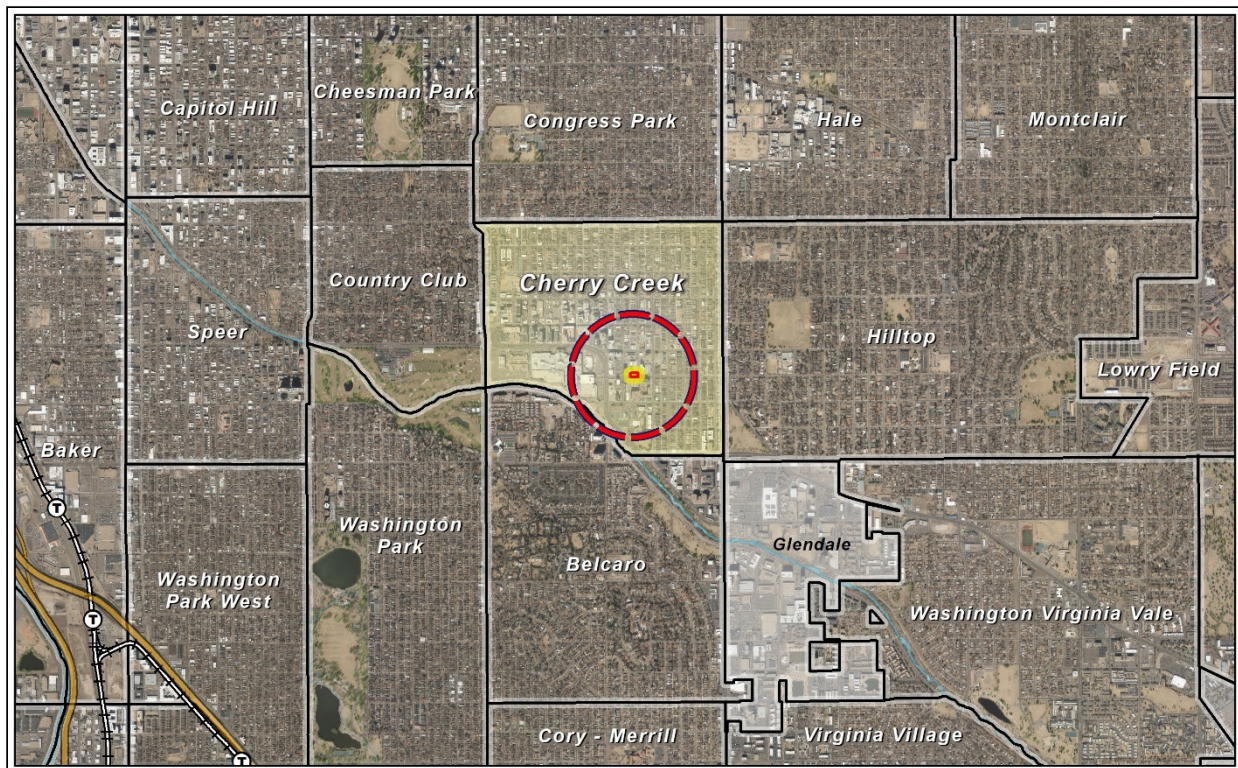
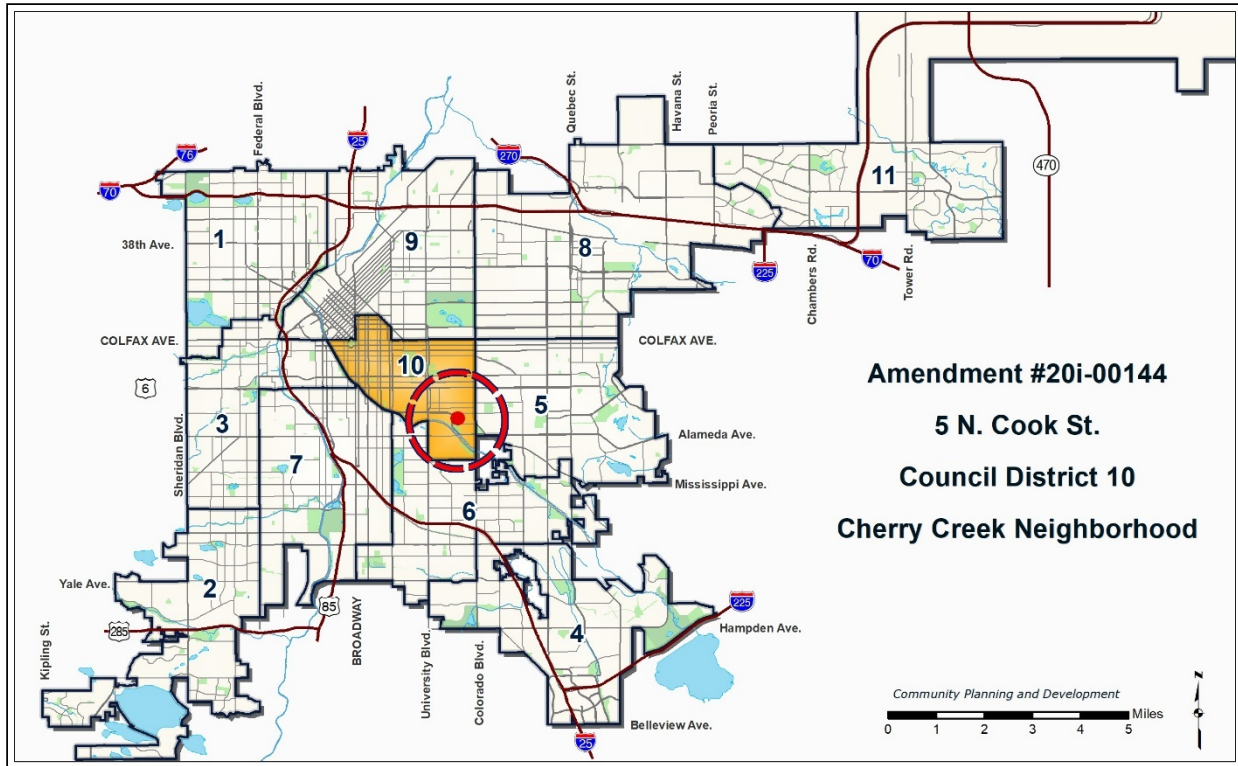
### Request for Rezoning

Address: 5 Cook Street  
Neighborhood/Council District: Cherry Creek / Council District 10, Chris Hinds  
RNOs: Inter-Neighborhood Cooperation (INC), Green Cherry Creek, Cherry Creek east Association  
Area of Property: 6,262 square feet or 0.14 acres  
Current Zoning: PUD 20 (Former Chapter 59)  
Proposed Zoning: C-MX-8  
Property Owner(s): True Mind Property LLC  
Owner Representative: Canyon Law

### Summary of Rezoning Request

- The property is in the Cherry Creek statistical neighborhood at the southeast corner of North Cook Street and East Ellsworth Street.
- The property, owned by True Mind Property LLC, is currently occupied by a 2-story structure, built in 1971 as a single-family residence and later in 1979 modified into a business use (Center for Traditional Chinese Medicine).
- The site is currently zoned PUD 20, which is a custom zone district from Former Chapter 59, specifically tailored for the existing building and use. Additional details of PUD 20 can be found within the attached document.
- The applicant is requesting to rezone the property to match the existing zoning directly to the north, and their tentative plan is to build a mixed-use building with ground floor retail and residential units above.
- The proposed zone district C-MX-8, can be summarized as follows (see map below illustrating proposed zone district):
  - The C-MX-8 zone district stands for Urban **C**enter, **M**ixed Use, with a maximum height of **8** stories. The C-MX zone districts are mixed-use zone districts that allow a wide range of residential and commercial uses with minimum build-to and increased transparency requirements intended to promote active pedestrian areas on public streets. The C-MX-8 zone district allows up to 8 stories and 75 feet in building height.
  - Further details of the requested zone district can be found in the proposed zone district section of the staff report (below), and in Article 7 of the Denver Zoning Code (DZC).

### Existing Context



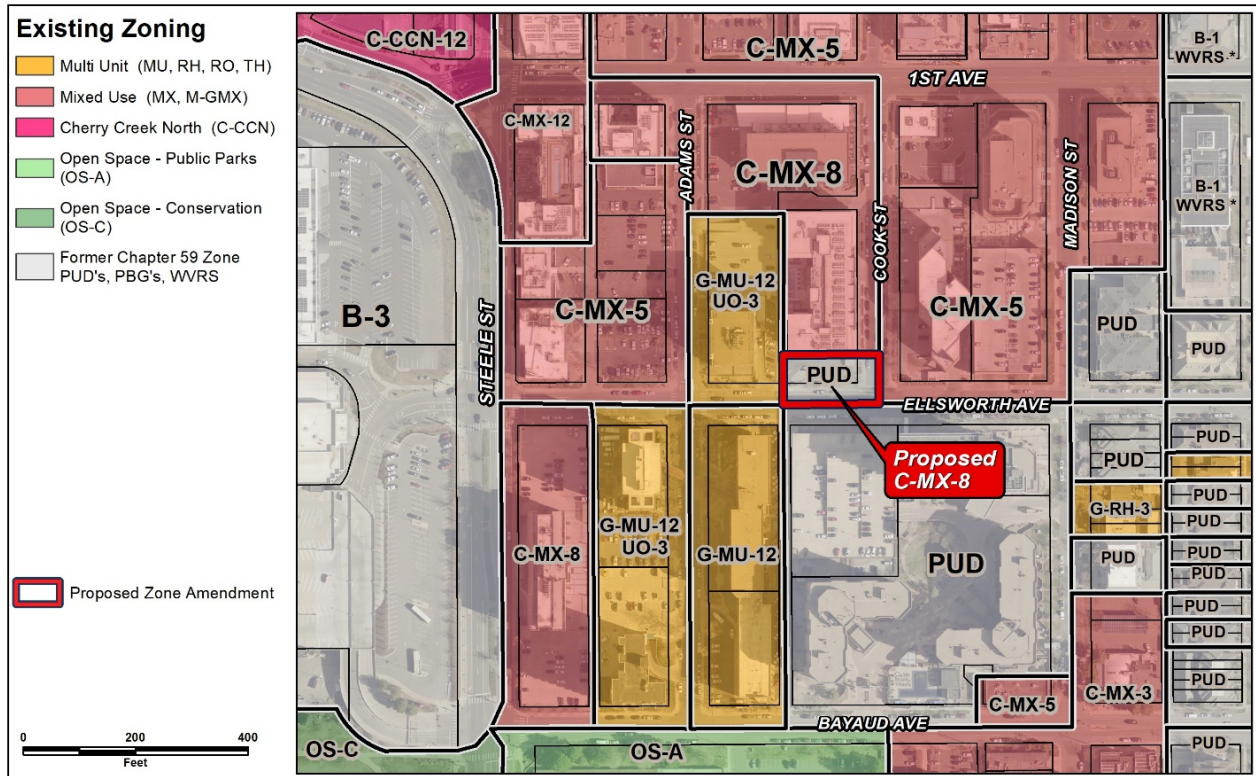


The subject property is located in the Cherry Creek neighborhood, at the corner of Cook Street and Ellsworth Ave. The area is primarily composed of multi-unit residential and office buildings, with some commercial/retail along 1<sup>st</sup> Avenue and the Cherry Creek Shopping Center located a block and a half to the west on Steele Street. The subject site is 1 block north of Pulaski Park. Additionally, the popular Cherry Creek Trail is within 3 blocks of the site. The subject site is also within ¼ mile of Colorado Boulevard to the east, which provides high-capacity RTD transit service to the immediate area. The applicant is requesting the C-MX-8 zone district which is an extension of the pattern of existing C-MX zone district found throughout the surrounding blocks and is consistent with the zoning pattern of adjacent properties to the north and east.

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	PUD 20	Office	2-story structure with covered surface parking lot	Generally regular grid of streets interrupted to the south by Cherry Creek Drive. Block sizes and shapes are generally consistent and rectangular. Pedestrian-oriented building frontages predominate.
North	C-MX-8	Multi-unit residential	8-story structure with underground garage and pedestrian access	
South	PUD 183	Parking	4-story parking structure and high rise multi-unit residential structures ranging from 7 to 14 stories	
East	C-MX-5	Office & Mixed-use	10-story structure with surface parking	
West	G-MU-12, UO-3	Multi-unit residential	16-story structure	

### 1. Existing Zoning



The existing zoning is PUD 20, which is a Former Chapter 59 custom zone district established in 1979. PUD 20 allowed the existing residence to be maintained and modified for business use, and also provided for the construction of a commercial addition at the west end of the site. It states a gross land area of 6,250 sq. ft. and a maximum building height of 35'.

The current PUD specifies the land coverage as:

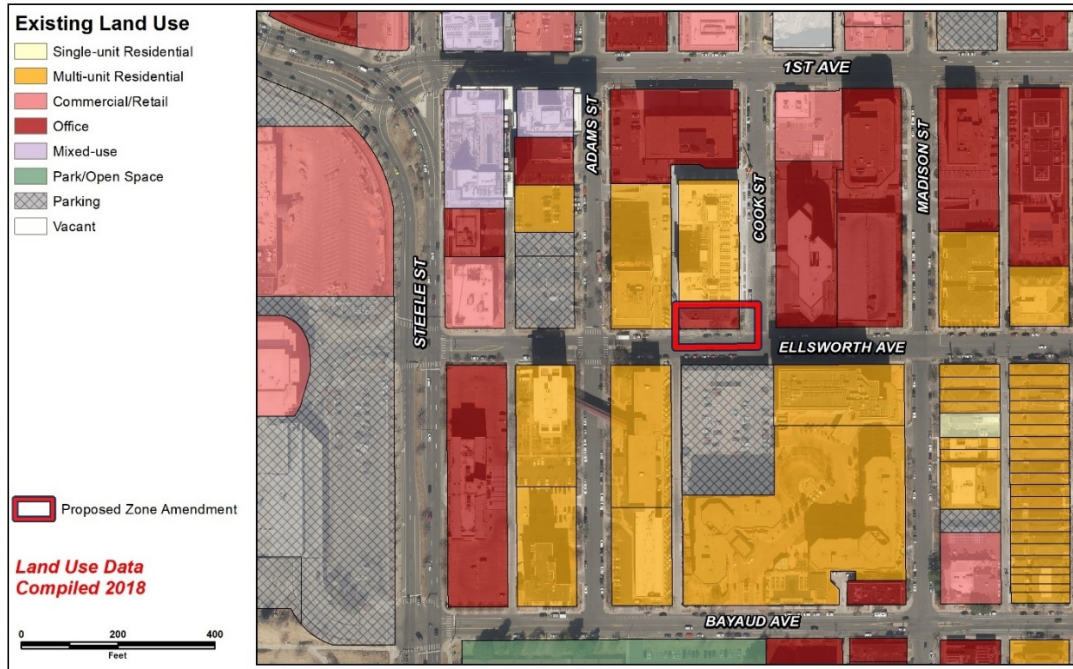
Existing Residence	1,314 sq. ft.
Addition to Existing Residence	687 sq. ft.
New Office Construction	2,317 sq. ft.
Courtyard	350 sq. ft.
Paved Parking	3000 sq. ft.
Parking	10 cars

It also states that the business use is limited to those allowable under B-1 zone district regulations of Former Chapter 59 of the revised Municipal Code of the City and County of Denver. The B-1 zone district allows for uses such as residential use, banking and financial services, office, retail, fire station, museums, police station, church, childcare center, postal facility, library and parking of vehicles.

## 2. View Plane

The subject site is within the *Cranmer Park View Plane*. The intent of this view plane is to preserve the view of the Rocky Mountains (west of the subject site) from Cranmer Park (east of the subject site). No part of any structure within the view plane may exceed an elevation of 5,434 feet above mean sea level. Therefore, the subject site is subject to a maximum height restriction of roughly 150 feet. However, the proposed zone district of C-MX-8 has a lower maximum height of 110 feet for primary structures.

## 3. Existing Land Use Map



## 4. Existing Building Form and Scale (All images are from Google Street View)



Aerial view, subject property highlighted, looking northwest



Subject site facing east on Cook Street



Subject site facing north, on Ellsworth Ave.



Subject site, facing west, on Ellsworth Ave.



View from the site, looking south (across the street on Ellsworth Ave.)

### **Proposed Zoning**

The requested C-MX-8 zone district is “intended to promote safe, active, and pedestrian-scaled, diverse areas through the use of building forms that clearly define and activate the public street edge” (Section 7.2.2.1). The district allows a variety of residential, civic, commercial, and industrial uses. The maximum height is 8 stories or 110 feet with allowable encroachments. The minimum Primary Street setback is 0’, except for the Town House building form which has a 10’ minimum Primary Street setback. Surface parking is not allowed between the building and the Primary and Side Streets. Multi-unit dwellings require 0.75 parking spaces per unit. While there is no minimum rear setback for most building forms in the C-MX-8 zone district, the developers has agreed to several approaches to mitigate impacts on existing multi-unit development immediately to the north of the subject site. See Mediation Summary below. For additional details regarding building form standards in the C-MX-8 zone district, see DZC Section 7.3.3.

### **Proposed Affordable Housing Agreement**

Concurrent with the rezoning, the applicant has entered into a voluntary affordable housing agreement with HOST. The terms of the agreement are that 10% of all residential units will be dedicated as Income Restricted Units for 60 years. Of those Income Restricted Units, 75% shall serve households earning up to 80% AMI and 25% shall serve households earning up to 80% AMI. Based on current design, the site could accommodate up to 36 units thus resulting in 3 or 4 income restricted units.

### **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 comments

**Denver Public Schools:** Approved – No response

**Department of Public Health and Environment:** Approved – No comments

**Denver Parks and Recreation:** Approved – No response

**Department of Transportation and Infrastructure – R.O.W. - City Surveyor:** Approved – No comments

**Development Services – Transportation:** Approved – No response

**Development Services – Wastewater:** Approved – See comments below

DS Wastewater approves the subject zoning change. The applicant should note that redevelopment of this site may require additional engineering including preparation of drainage reports, construction documents, and erosion control plans. Redevelopment may require construction of water quality and detention basins, public and private sanitary and storm sewer mains, and other storm or sanitary sewer improvements. Redevelopment may also require other items such as conveyance of utility, construction, and maintenance easements. The extent of the required design, improvements and



easements will be determined during the redevelopment process. Please note that no commitment for any new sewer service will be given prior to issuance of an approved SUDP from Development Services.

**Development Services – Project Coordination:** Approve – No response

**Development Services – Fire Prevention:** 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:	<b>12/14/20</b>
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:	<b>08/04/21</b>
Planning Board Public Hearing: (Unanimously recommended for approval)	<b>09/01/21</b>
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:	<b>08/31/21</b>
Land Use, Transportation and Infrastructure Committee of the City Council meeting:	<b>09/14/21</b>
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:	<b>10/04/21</b>
City Council Public Hearing:	<b>10/25/21</b>

**Public Outreach and Input**

- **Registered Neighborhood Organizations (RNOs)**

The Cherry Creek East Association (CCEA) sent out a survey to the Cherry Creek East constituents, who then voted in favor of the rezoning contingent on the execution of the good neighbor agreement negotiated with the applicant. Informed by the survey, the CCEA RNO Board voted to support the rezoning.

- **Other Public Comment**

Staff received 4 letters of opposition from the public. The first 3 letters were received in January 2021, before the applicant voluntarily postponed his public hearing to allow for more community outreach. One of the letters refers to the potential for this project to ruin their views, and negatively affect their building and reduce the value of their property. The other 3 letters of opposition were sent by the same community member and they mostly expresses concerns with the proposed setbacks, the lack of onsite parking or service loading area for the project.

### **Mediation Summary**

Councilman Hinds referred the applicant, the CCEA RNO, and the neighbors to free mediation services performed by a third-party, neutral facilitator. All parties participated in good faith to work towards a Good Neighbor Agreement intended to mitigate the neighbors' concerns over this rezoning and proposed development.

Over the past 14 months, the applicant has conducted outreach and engagement with the Cherry Creek East Association (CCEA), Capitol Hill United Neighborhoods (CHUN) and immediate neighbors at The Griffis and Mountain Shadows. The city received copies of the draft Good Neighbor Agreement/Memorandum of Understanding (MOU) between the applicant and CCEA.

Per the draft Good Neighbor Agreement (or MOU), the developer has made several commitments to CCEA, including:

- To abide by the Cherry Creek East Commercial Overlay Plan (CCECOP).
- To not exceed 7 stories in building height.
- To explore possible installation of a green roof.
- To comply with the setbacks requirements set per the pending Cherry Creek East Commercial Overlay Plan: Ground floor setback of five feet from primary/side streets, and eight feet beginning at either the 3rd or 4th stories extending at least 70% of the zone lot street frontage.
- To take specific steps to minimize impact on the Griffis (just to the north of the subject site at 55 Cook St.), such as offset windows and the possibility of a green wall.
- To consider the effect on existing buildings and pedestrian experience in the architectural design of the project.
- To have the delivery trucks access the property between 7:00 AM and 9:00 PM, not to block the alley for more than 15 minutes.
- To ensure owners that City's required parking ratio is achieved through parking agreements with neighbors.
- To ensure owners that construction has reasonably minimal impact on neighbors.

"The applicants met with the RNO and other stakeholders 11 times between June 2020 and May 2021 to introduce the project and develop the Good Neighbor Agreement. Details and dates of all meetings are in the Mediation Summary, attached to this staff report

## **Criteria for Review / Staff Evaluation**

The criteria for review of this rezoning application are found in DZC, Sections 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**

1. Justifying Circumstances
2. 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)*
- *Cherry Creek Area Plan (2012)*

### ***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 mixed-use development, including an increase in allowed housing density, while also enabling additional housing units close to services and amenities, some of which would be restricted to residents earning less than the Area Median Income. It is therefore consistent with the following strategies in the Equitable, Affordable and Inclusive vision element:

- Equitable, Accessible and Inclusive Goal 1 – *Ensure all Denver residents have safe, convenient and affordable access to basic services and a variety of amenities (p. 28).*
- Equitable, Affordable and Inclusive Goal 1, Strategy A – *Increase development of housing units close to transit and mixed-use developments (p. 28).*
- 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).*
- Equitable, Affordable and Inclusive Goal 3, Strategy B – *Use land use regulations to enable and encourage the private development of affordable, missing middle and mixed-income housing, especially where close to transit (p. 28).*

The proposed rezoning would enable mixed-use infill development at a location where services and infrastructure are already in place. The proposed C-MX-8 zoning designation would allow for a broader variety of uses including housing, retail, and services 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 D – *Encourage quality infill development that is consistent with the surrounding neighborhoods and offers opportunities for increased amenities* (p. 34).
- Strong and Authentic Neighborhoods Goal 2, Strategy D – *Use urban design to contribute to economic viability, public health, safety, environmental well-being, neighborhood culture and quality of life* (p. 34).

As Denver continues to grow and becomes denser, it is imperative that we shift how we plan around our mobility system. Therefore, the proposed rezoning allowing for a mix of uses near high-capacity transit is consistent with strategies in the Connected, Safe and Accessible Places vision element:

- Connected, Safe and Accessible Places Goal 8 – *Strengthen multimodal connections in mixed-use centers and focus growth near transit* (p. 42).
- Connected, Safe and Accessible Places Goal 8, Strategy B – *Promote transit-oriented development and encourage higher density development, including affordable housing, near transit to support ridership* (p. 42).

Similarly, the land use pattern detailed in the previous paragraph is also consistent with the following strategies in the Environmentally Resilient vision element:

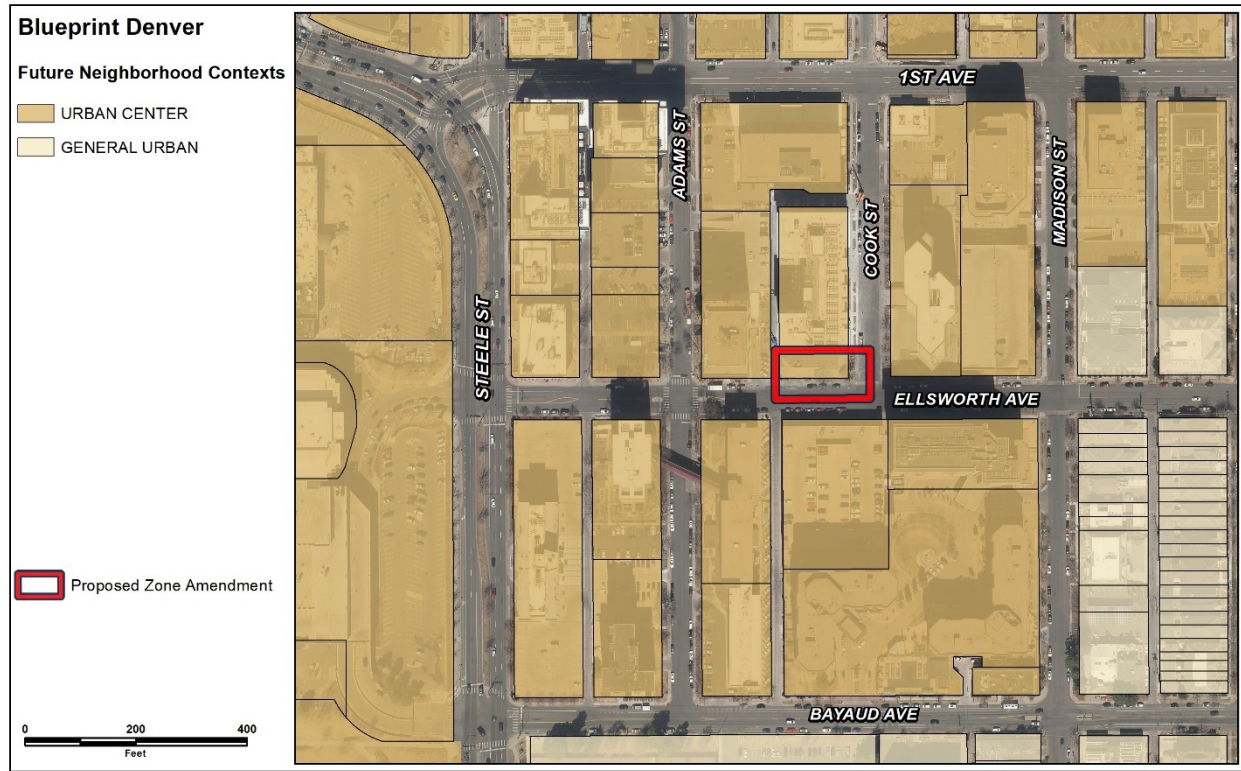
- Environmentally Resilient Goal 8, Strategy A - *Promote infill development where infrastructure and services are already in place* (p. 54).
- Environmentally Resilient Goal 8, Strategy B - *Encourage mixed-use communities where residents can live, work and play in their own neighborhoods* (p. 54).
- Environmentally Resilient Goal 8, Strategy C – *Focus growth by transit stations and along high and medium-capacity transit corridors* (p. 54).

The requested map amendment will enable mixed-use development at an infill location where infrastructure is already in place. The requested zone district broadens the variety of uses allowing residents to live, work and play in the area. Therefore, the rezoning is consistent with *Denver Comprehensive Plan 2040* recommendations.

### **Blueprint Denver (2019)**

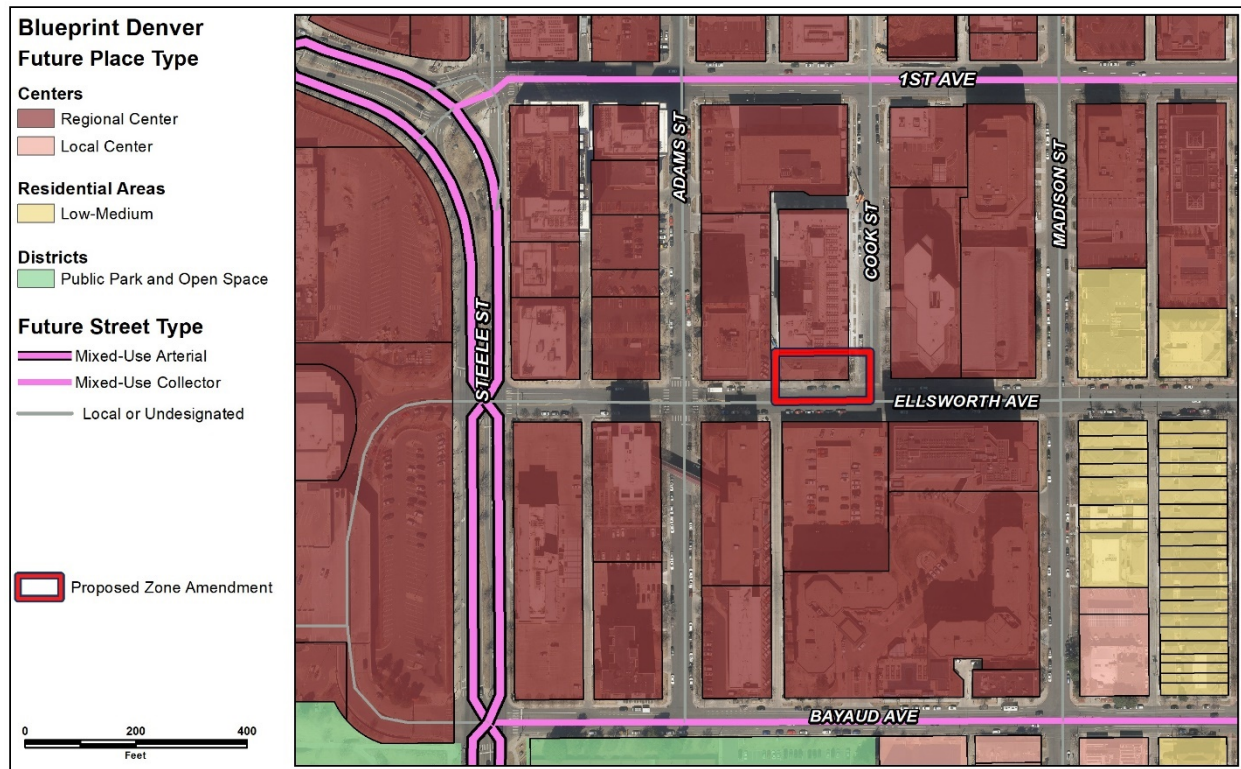
*Blueprint Denver* was adopted in 2019 as a supplement to *Comprehensive Plan 2040* and establishes an integrated framework for the city's land use and transportation decisions. *Blueprint Denver* identifies the subject property as part of a Regional Center future place within the Urban Center Context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

### **Blueprint Denver Future Neighborhood Context**



In *Blueprint Denver*, future neighborhood contexts are used to help understand differences in land use and built form and mobility options at a higher scale, between neighborhoods. The subject property is within the Urban Center Context. *Blueprint* states, "This context contains high intensity residential and significant employment areas. Development typically contains a substantial mix of uses, with good street activation and connectivity" (p. 252). The proposed C-MX-8 zone district is part of the Urban Center context and is "intended to promote safe, active, and pedestrian-scaled diverse areas through the use of building forms that clearly activate the public street edge" and "the Mixed-Use districts are focused on creating mixed, diverse neighborhoods" (DZC 7.2.2.1). Since the proposed district allows a mix of uses and allowable building forms that contribute to street activation, the proposed rezoning to an Urban Center context is appropriate and consistent with the plan.

**Blueprint Denver Future Places**



*Blueprint Denver* describes a Regional Center in the Urban Center context as “providing a mix of office, commercial and residential uses. A wide customer draw both of local residents and from other parts of the city” (p. 256). Buildings are typically larger in scale and orient to the street with a strong degree of urbanism and continuous street frontages. Additionally, “heights can be generally up to 12 stories in the taller areas and should transition gradually within the center’s footprint to the surrounding residential areas” (p. 256).

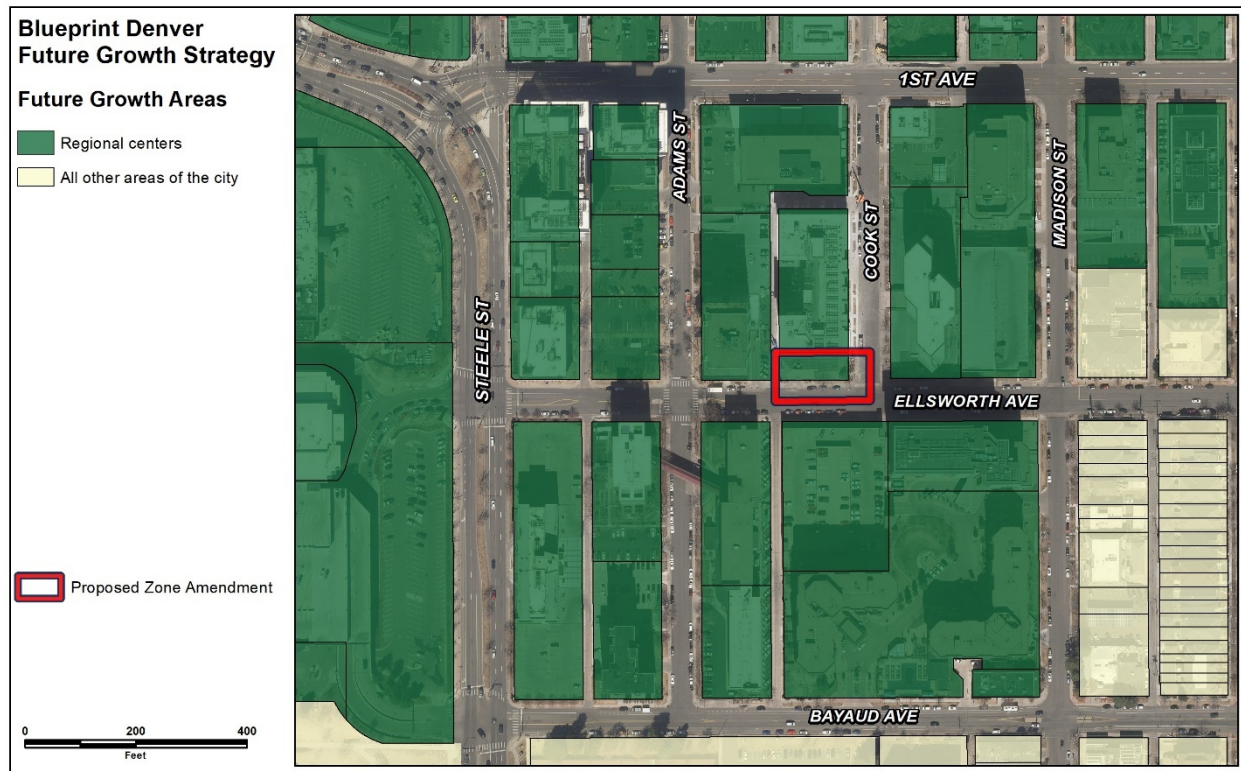
The proposed C-MX-8 zone district allows for a variety of commercial and residential uses in a pedestrian-oriented pattern with an active street level. Therefore, the requested C-MX-8 is appropriate and consistent with the future place plan direction.

**Street Types**

*Blueprint Denver* classifies Cook Street and Ellsworth Avenue as local streets. Local streets “are designed for the highest degree of property access” (p. 154) and “can vary in their land uses and are found in all neighborhood contexts. They are most often characterized by residential uses” (p. 160).

The proposed C-MX-8 zone district is intended for areas served primarily by arterial streets (DZC Section 7.2.2.2.C). While Cook Street and Ellsworth Avenue are designated as local streets, the subject property is located only one block south from 1<sup>st</sup> Avenue, a mixed-use collector, and one and a half blocks east from Steele Street, a Mixed-use arterial. Staff believes the requested zone district is appropriate considering the surrounding street type designations.

## **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 located within the “Regional centers” growth area, these areas are anticipated to see around 30% of new housing growth and 50% of new employment growth by 2040 (p. 51). The proposed map amendment to C-MX-8 is consistent with the “Community centers and corridors” growth area in that it will allow a broad range of job opportunities and housing types and direct more intense and appropriate growth to this area than the existing zoning allows.

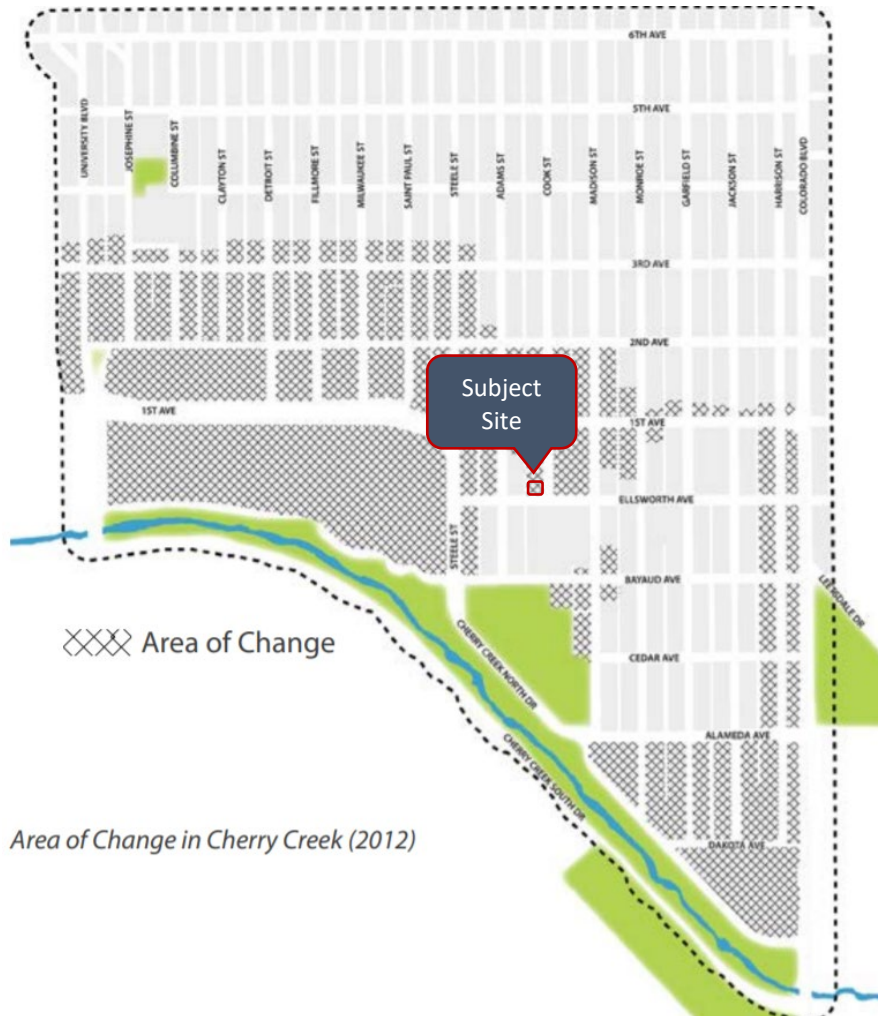
### **Additional Applicable Strategies**

The proposed rezoning is also consistent with the following strategies from *Blueprint Denver*:

- Land Use and Built Form – General Policy 2 – *Incentivize or require efficient development of land, especially in transit-rich areas* (p. 72).
- Land Use and Built Form – Housing Policy 6, Strategy A - *Incentivize affordable housing through zoning, especially in regional centers, community centers and community corridors adjacent to transit. This could include a process—informed by community input—to create citywide height bonuses in the zoning code, where additional height is allowed in exchange for income restricted units. Incentives for affordable housing are particularly important for areas that score high in Vulnerability to Displacement and score low in Housing Diversity* (p. 85).
- Land Use and Built Form – Housing Policy 8 – *Capture 80 percent of new housing growth in regional centers, community centers and corridors, high-intensity residential areas, greenfield residential areas, innovation flex districts and university campus districts* (p. 86).

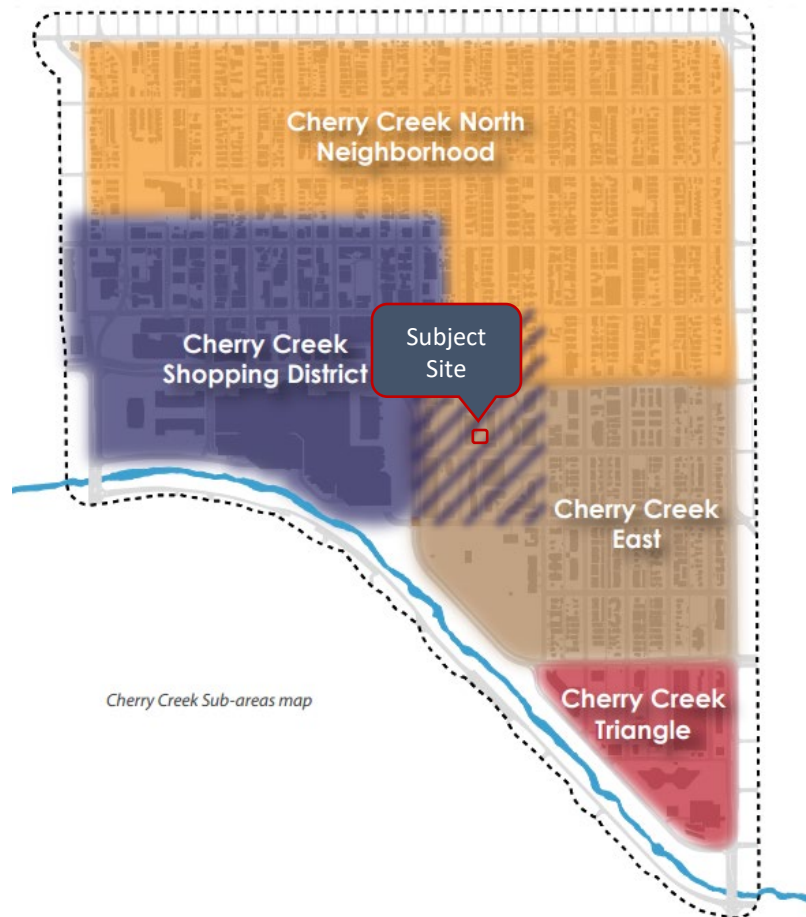
### **Cherry Creek Area Plan (2012)**

The Cherry Creek Area Plan (CCAP) was adopted by City Council in 2012 and applies to the subject property. As the plan was adopted prior to the 2019 *Blueprint Denver* update, the CCAP builds off of the previous growth management paradigm of “Areas of Change” and “Areas of Stability”, providing guidance on where growth should occur in Cherry Creek. The Plan organizes the neighborhood into sub-areas and provides recommendations for each of these smaller neighborhood areas. The subject property is located in the overlap of the Cherry Creek East and Cherry Creek Shopping District sub-areas.



The overarching framework recommendations guide growth to targeted areas of Cherry Creek. The subject site is located in an Area of Change. As previously mentioned, the Area of Change/Stability concepts have been replaced with a more nuanced approach in the recent Blueprint update, but the recommendations are still relevant in terms of the communities’ desire to target growth and change expressed in an adopted plan. Cherry Creek Area Plan notes that, “overall these areas [Areas of Change] benefit from new development, reinvestment and more intense use” (p. 29). Moreover, the plan recommends that the city “modify land use policy, zoning regulations and design guidelines to encourage appropriate reinvestment to assure that Areas of Change continue to mature in positive ways” (p. 29). The requested rezoning to C-MX-8 is such a change in zoning regulations and would enable reinvestment and development in the subject property as expressed in the plan.





This property is located within two Subareas of the Cherry Creek Area Plan:

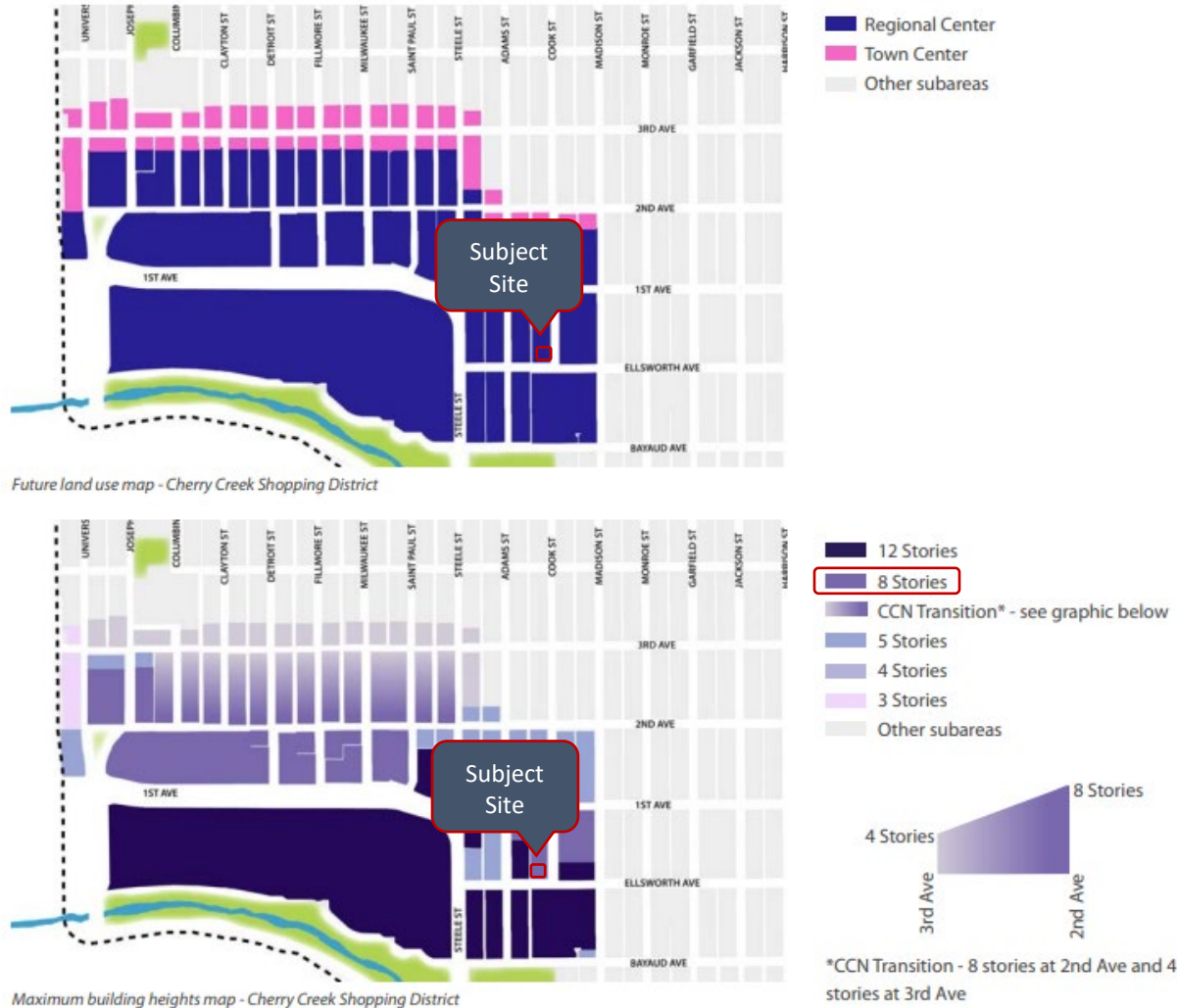
- Cherry Creek Shopping District - the region’s most vibrant upscale retail and mixed-use district.
- Cherry Creek East - a highly desirable moderate density residential neighborhood that also includes a high-density office and residential district on its western edge.

Some of the plan recommendations for both areas include:

- “More residential, hotel and office development in Shopping District and other nearby Areas of Change, such as Cherry Creek Triangle” (p. 59)
- “The long-term vision for the Shopping Center as stated in the 2000 Neighborhood plan and further refined in this plan includes greater density at the east and west ends, as well as a greater mix of uses that may include higher intensity mixed-use office, hotel and residential along with ground floor retail” (p. 60)
- “Continue to develop vacant and underutilized parcels with mid—and high—rise mixed-use buildings that complement Cherry Creek East and the Shopping District on. Quality development is encouraged through the existing zoning and design standards and guidelines” (p.60)

The proposed rezoning is consistent with all of these recommendations. Additionally, the future land use map for the Cherry Creek Shopping District designates the subject property as Regional center, with a

maximum building height of 8 stories. Therefore, the requested C-MX-8 is appropriate and consistent with the Cherry Creek Area Plan recommendations.



## 2. Uniformity of District Regulations and Restrictions

The proposed rezoning to C-MX-8 will result in the uniform application of zone district building form, use and design regulations.

## 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 plan. The proposed rezoning would also facilitate increased housing density near services and amenities along Ellsworth and foster the creation of a mixed-use, urban area within walking distance to RTD bus line. An increase in density and broadened

mix of uses can also provide better health outcomes through increased physical activity and lessen the need for driving as services and amenities can occur within walkable and bikeable distances.

#### **4. Justifying Circumstances**

The application identifies several changed or changing conditions as the justifying circumstance 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 change may include: (a.) Changed or changing conditions in a particular area, or in the city generally; or, (b.) a City adopted plan; or, (c.) that the City adopted the Denver Zoning Code and the property retained Former Chapter 59 zoning”*.

The adoption of the Denver Zoning Code in 2010 and the retention of a Former Chapter 59 zone district on the subject property, including custom zoning adhering the property to a 1979 site plan, is an appropriate justifying circumstance for the proposed rezoning.

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

As described in the Denver Zoning Code, the General Character of the Urban Center (C-) district will include “multi-unit residential and mixed-use commercial strips and commercial centers.” It is also described as follows: “Multi-unit residential uses are typically in multi-story mixed use building forms. Commercial buildings are typically Shopfront and General forms. Multi-unit residential uses are primarily located along residential collector, mixed-use arterial, and local streets. Commercial uses are primarily located along main and mixed-use arterial streets.”

The C-MX zone districts are “intended to promote safe, active and pedestrian-scaled, diverse areas through the use of building forms that clearly define and activate the street edge” (DZC Section 7.2.2.1.A). As these districts are also intended to enhance the ease of walking and transit, C-MX-8 is consistent and appropriate given the purpose of the district and the location in which it has been requested.

According to the zone district intent stated in the Denver Zoning Code, the C-MX-8 district “applies to areas or intersections served primarily by arterial streets where a building scale of 2 to 8 stories is desired” (DZC Section 7.2.2.2.C). While the site is served by a local street, it is only one block south from East 1<sup>st</sup> Avenue classified as a Mixed-use collector, and a block and a half east from South Steele Street classified as a Mixed-use arterial. Thus, the street classifications and desired building heights in this area are consistent with the zone district intent statement.

#### **Attachments**

1. Rezoning application
2. Outreach Summary + Good neighbor Agreement Draft + CCE RNO survey report
3. Comment Letters from the public