



**TO:** Denver Planning Board  
**FROM:** Brandon Shaver, Senior City Planner  
**DATE:** November 27, 2019  
**RE:** Official Zoning Map Amendment Application #2019I-00017  
4338 Lipan Street  
Rezoning from U-RH-2.5 to U-RX-3

### Staff Report and Recommendation

Based on the criteria for review in the Denver Zoning Code, Staff recommends approval for Application #2019I-00017.

### Request for Rezoning

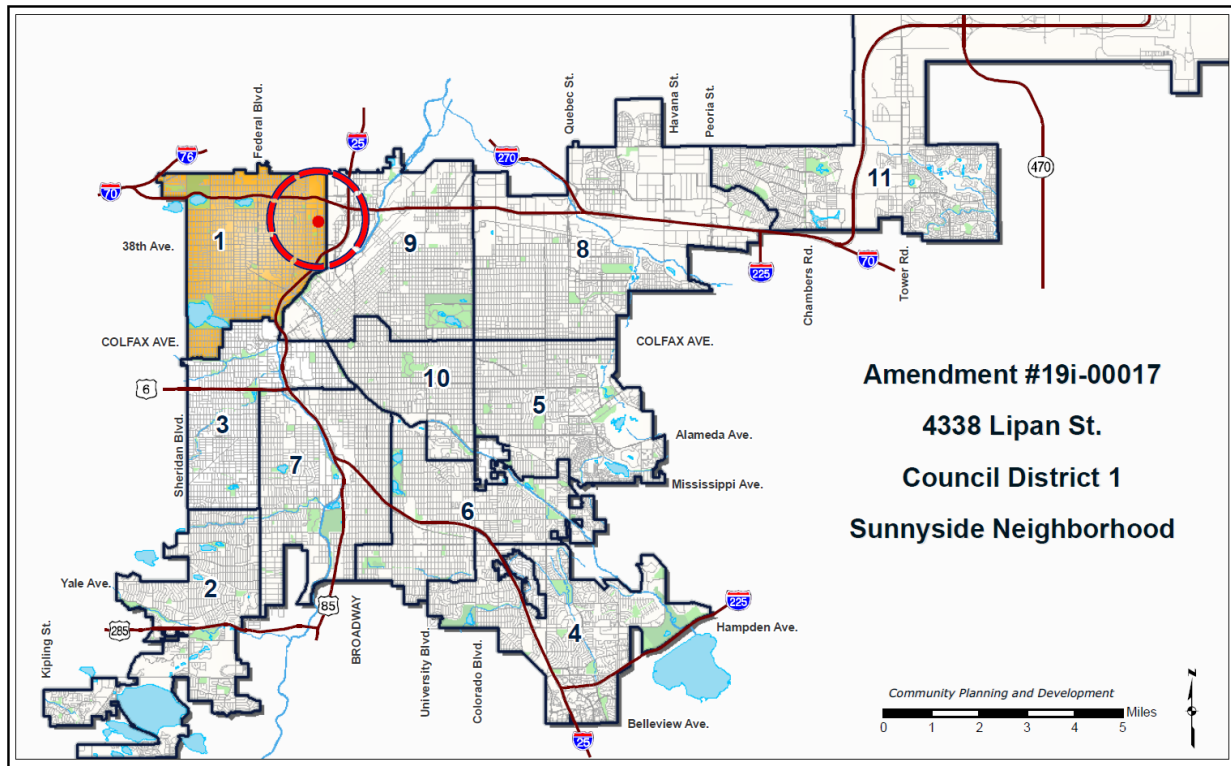
Address: 4338 Lipan Street  
Neighborhood/Council District: Sunnyside / Council District 1  
RNOs: Inter-Neighborhood Cooperation (INC), Sunnyside United Neighbors, Inc. (SUNI), Northeast Denver Friends and Neighbors (NEDFANS)  
Area of Property: 18,959 square feet or 0.435 acres  
Current Zoning: U-RH-2.5  
Proposed Zoning: U-RX-3  
Property Owner(s): 4338 Lipan St LLC  
Owner Representative: Billy Wang

### Summary of Rezoning Request

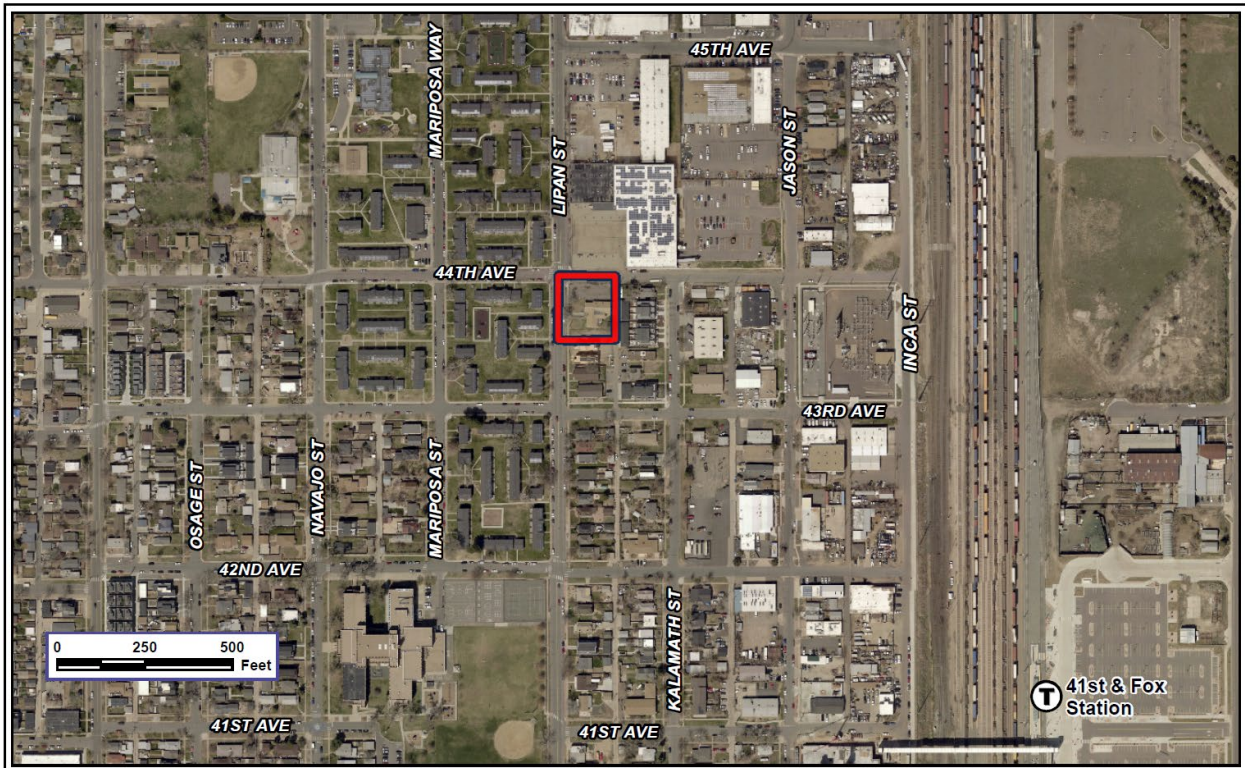
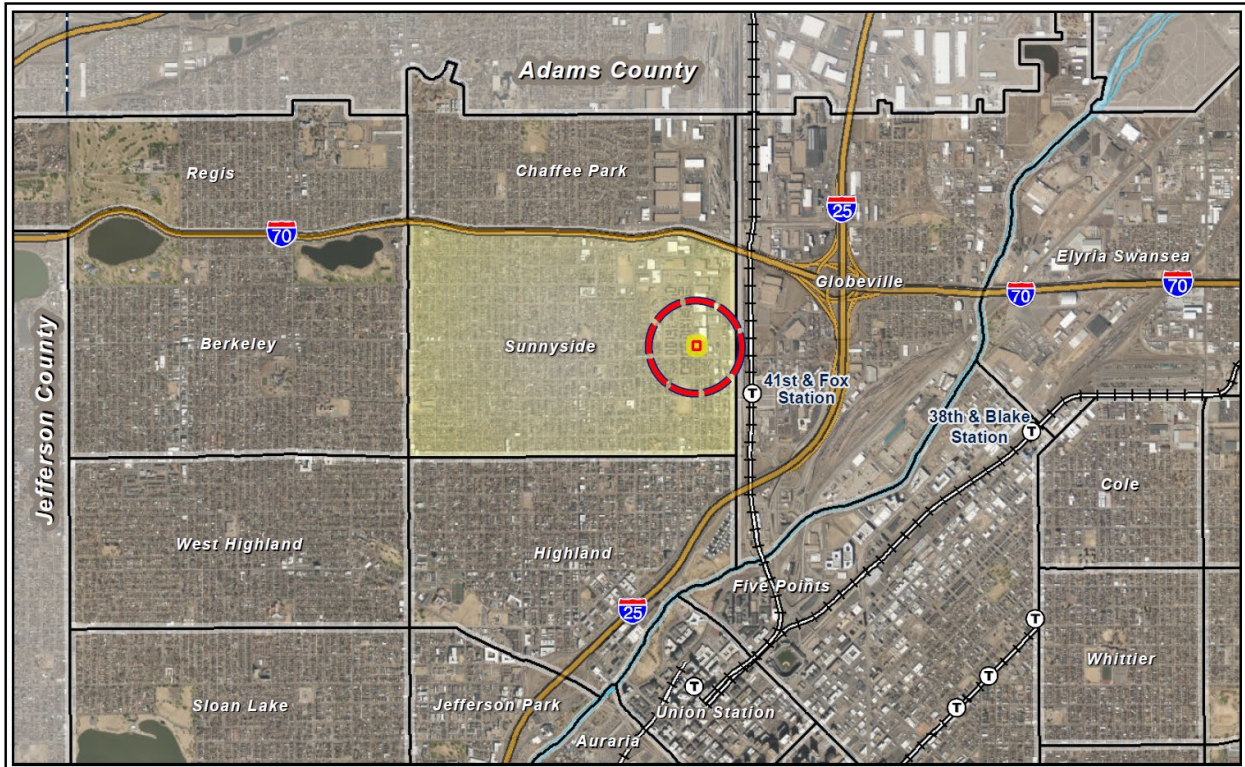
- The property is in the Sunnyside statistical neighborhood at the southeast corner of Lipan Street and West 44<sup>th</sup> Avenue.
- The property, owned by 4338 Lipan St LLC, is occupied by one building which formerly housed a church.
- The applicant is requesting this rezoning to enable redevelopment with a neighborhood-serving commercial use.
- The proposed zone district, U-RX-3, can be summarized as follows (see map below illustrating proposed zone district):
  - The U-RX-3 zone district stands for **U**rban, **R**esidential **M**ixed Use, with a maximum height of **3** stories. The U-RX zone districts are residential mixed-use zone districts that are primarily intended to accommodate residential uses. Commercial uses are secondary to the primary residential use of the district and provide neighborhood-scaled shops and offices for residents to conveniently access goods and services within walking distance. Building in a residential mixed-use district can have commercial uses, but upper stories are reserved exclusively for housing or lodging accommodation uses.

- Further details of the requested zone district(s) can be found in the proposed zone district section of the staff report (below) and in Article 5 of the Denver Zoning Code (DZC).

## Existing Context







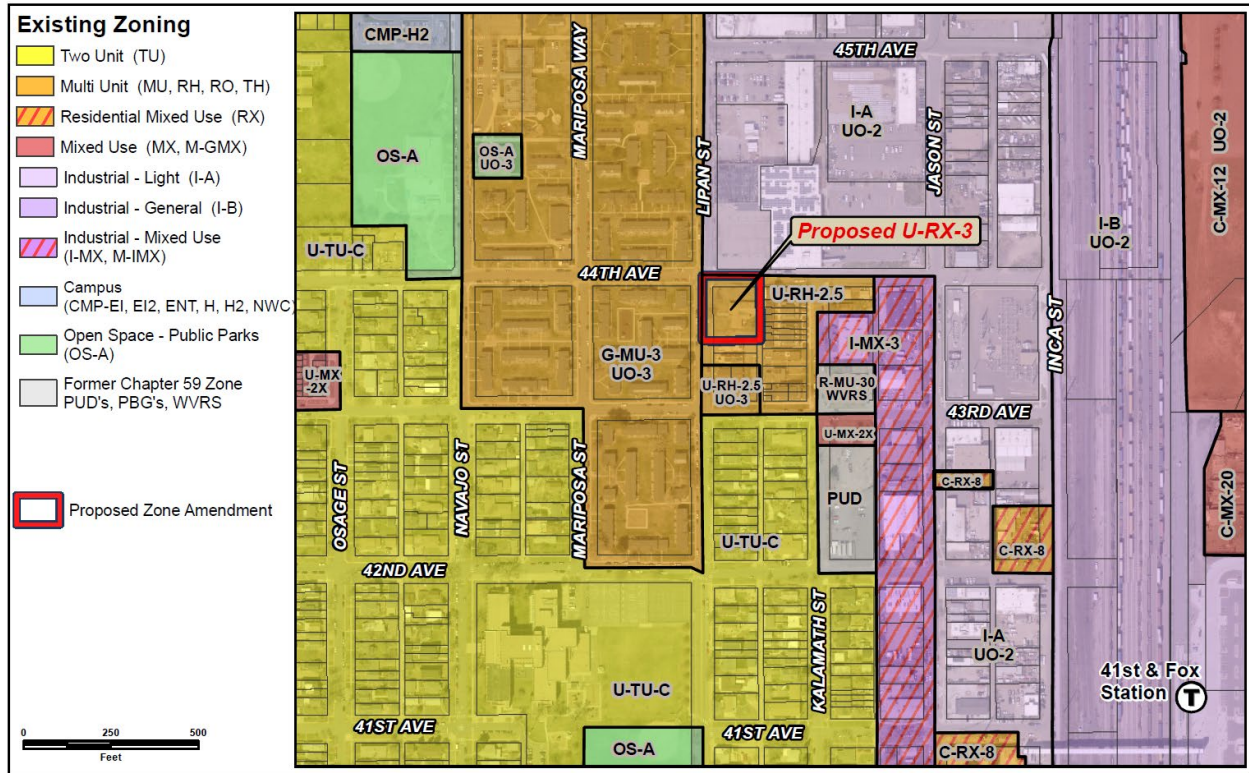
The subject property is located within the Sunnyside Neighborhood, just outside the ¼ mile walkshed of the 41<sup>st</sup> and Fox commuter rail station. Significant public investment, private reinvestment and the opening of the transit station in 2019 suggest this area is continuing to become more urban in nature. The subject site has approximately 150 feet of frontage along Lipan Street and 125 feet of frontage along West 44<sup>th</sup> Avenue. It is located four blocks west of the railroad tracks, immediately south of the industrial area and two blocks north of Ciancio Park. In addition to being within walking distance of the commuter rail station, the subject property is served by RTD bus routes 19 and 52 along Lipan Street.

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	U-RH-2.5	Public/Quasi-public	1-story structure built as a church in 1964	Generally regular grid of streets, cut off by the railroad tracks to the east; alleys run north-south through rectangular blocks; pedestrian access to the 41 <sup>st</sup> and Fox station is provided by a bridge at 41 <sup>st</sup> Ave and Inca St; many industrial uses have vehicular access from both the street and the alley.
North	I-A, UO-2	Industrial	1-story warehouse with garages facing subject property, 0' setbacks	
South	U-RH-2.5	Vacant	Two vacant lots totaling 9,000 square feet	
East	U-RH-2.5	Single-unit and multi-unit residential	Two single-unit homes closest to W 44 <sup>th</sup> Ave and rowhomes to the south	
West	G-MU-3, UO-3	Multi-unit residential	2-story walk-up apartment buildings arranged in a garden court layout	

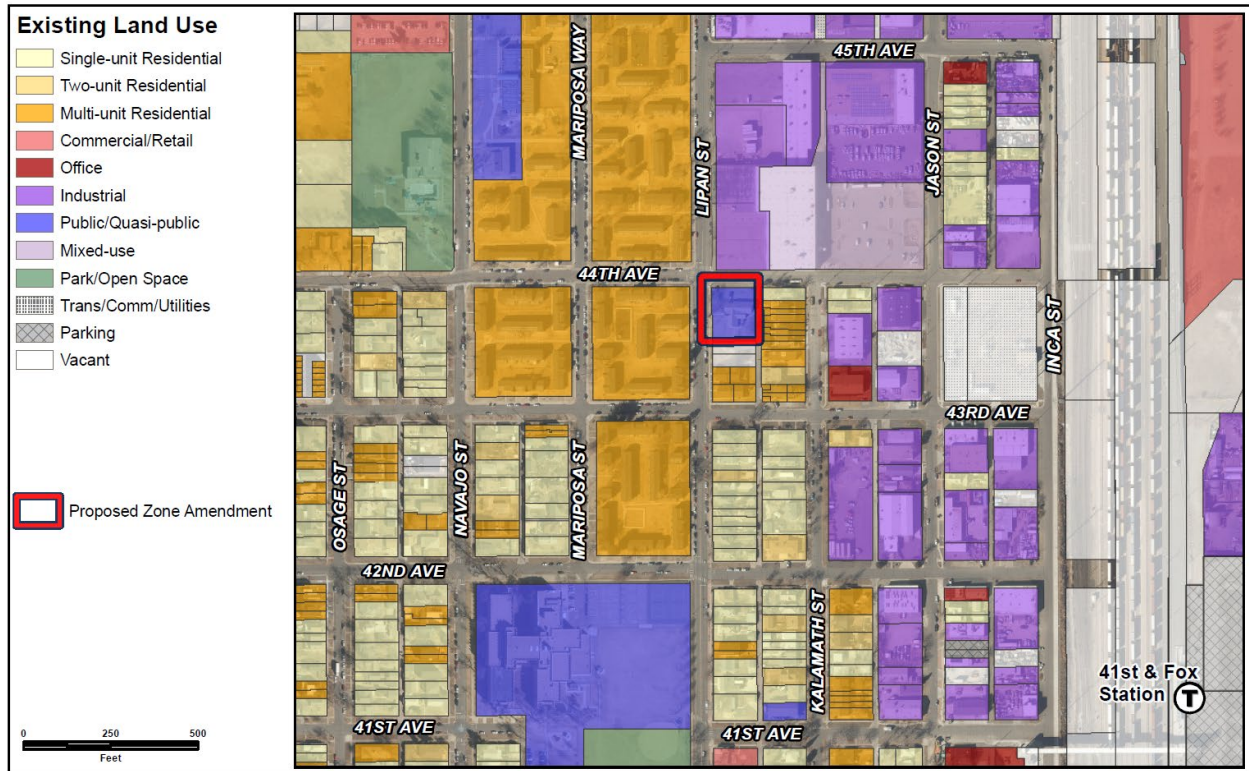


### 1. Existing Zoning

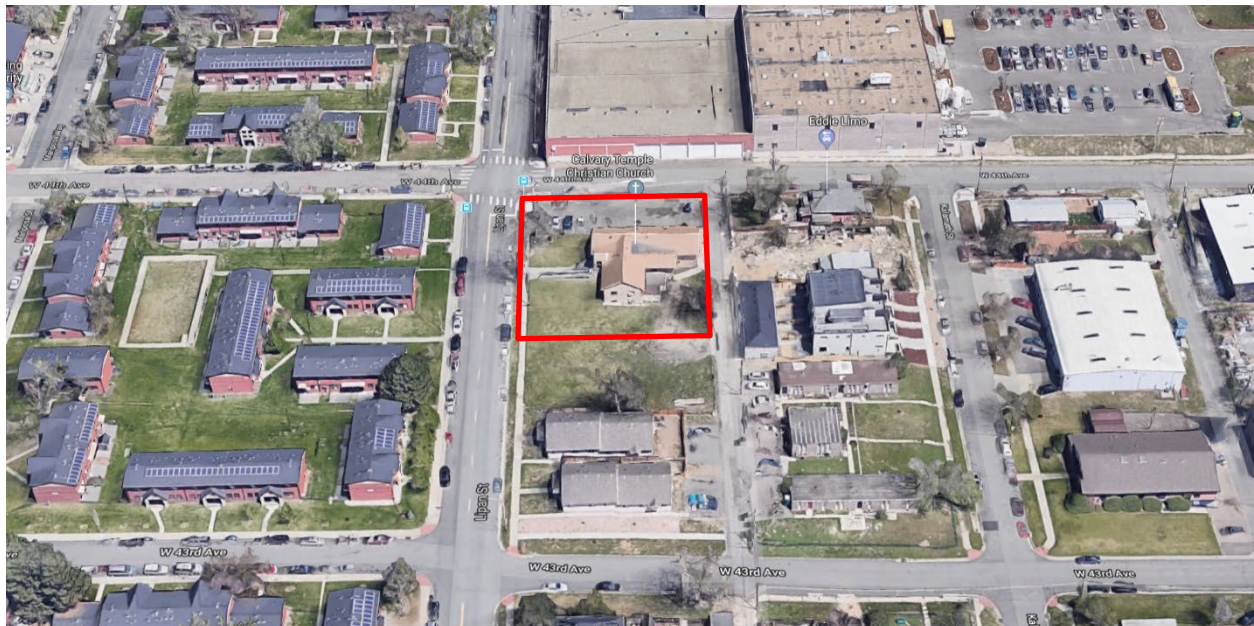


The existing zoning on the subject property is U-RH-2.5 which stands for Urban Rowhouse, up to 2.5 stories in height. The U-RH-2.5 zone district allows residential structures in a variety of building forms up to two-and a-half stories and 35 feet tall. Structures are generally required to have 20-foot primary street setbacks and five-foot side interior and side street setbacks. Allowed uses are mostly limited to civic uses and single unit, two unit, and multi-unit dwellings with one parking space required per unit. For additional details of the zone district, see DZC Article 5. The I-A, UO-2 district to the north of the subject site allows light industrial uses and limits heights to 75 feet within 175 feet of a Protected District (unlimited height is permitted in other areas). It also allows billboards via the Use Overlay-2. The G-MU-3, UO-3 district to the west allows for residential uses in the form of single, two unit, and multi-unit dwellings and group living uses, and limited nonresidential uses in historic structures, up to three stories and 35 feet in height.

## 2. Existing Land Use Map



## 3. Existing Building Form and Scale



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

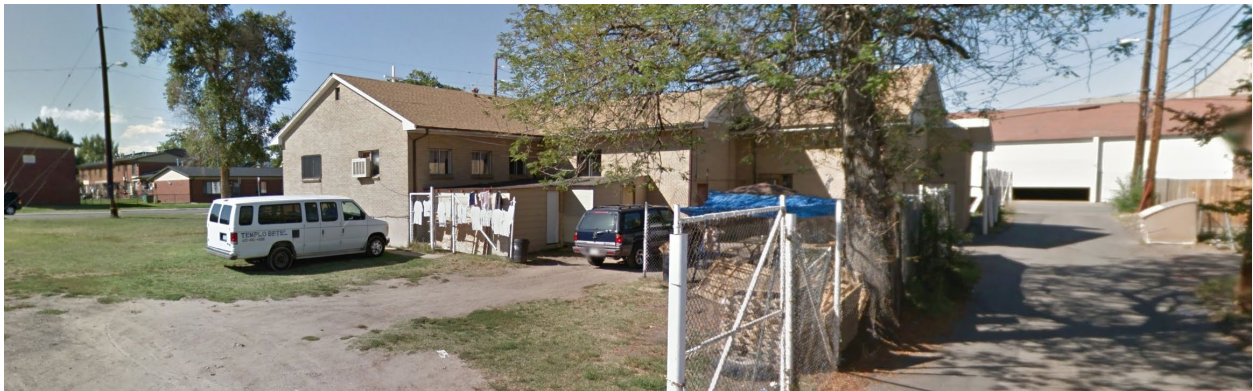




**Site - from Lipan Street** (Source: Google Maps)



**Site - from West 44<sup>th</sup> Avenue** (Source: Google Maps)



**Site - from alley** (Source: Google Maps)





**North** – from Lipan Street (Source: Google Maps)



**East** – from Kalamath Street (Source: Google Maps)



**South** – from Lipan Street (Source: Google Maps)





**West** – from Lipan Street (Source: Google Maps)

### Proposed Zoning

The requested U-RX-3 zone district has a maximum height in feet of 45'. The minimum primary street front setback is 0', except for the town house building form which has a 10' minimum primary street setback. A variety of mixed residential and neighborhood-serving commercial uses are allowed on the ground story, but commercial uses other than lodging are prohibited from being located on upper floors. For additional details of the requested zone district, see DZC Article 5.

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

Design Standards	U-RH-2.5 (Existing)	U-RX-3 (Proposed)
Primary Building Forms Allowed	Urban House; Duplex; Tandem House; Row House	Town House; Shopfront
Stories/Heights (max)	3/35'	3/45'
Primary Build-To Percentages (min)	N/A	70%
Primary Build-To Ranges	N/A	0' to 15'***
Minimum Zone Lot Size/Width	50'**	N/A
Primary Setbacks (min)	20'	0' to 10'***
Building Coverages	N/A	N/A

\*\*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 comments

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

**Department of Public Health and Environment:** Approved – See comments

DDPHE concurs with the rezoning and has no information to suggest that existing environmental conditions would impact the proposed rezoning.

General Notes: Most of Colorado is high risk for radon, a naturally occurring radioactive gas. Due to concern for potential radon gas intrusion into buildings, DDPHE suggests installation of a radon mitigation system in structures planned for human occupation or frequent use. It may be more cost effective to install a radon system during new construction rather than after construction is complete. If renovating or demolishing existing structures, there may be a concern of disturbing regulated materials that contain asbestos or lead-based paint. Materials containing asbestos or lead-based paint should be managed in accordance with applicable federal, state and local regulations.

The Denver Air Pollution Control Ordinance (Chapter 4- Denver Revised Municipal Code) specifies that contractors shall take reasonable measures to prevent particulate matter from becoming airborne and to prevent the visible discharge of fugitive particulate emissions beyond the property on which the emissions originate. The measures taken must be effective in the control of fugitive particulate emissions at all times on the site, including periods of inactivity such as evenings, weekends, and holidays.

Denver's Noise Ordinance (Chapter 36–Noise Control, Denver Revised Municipal Code) identifies allowable levels of noise. Properties undergoing Re-Zoning may change the acoustic environment but must maintain compliance with the Noise Ordinance. Compliance with the Noise Ordinance is based on the status of the receptor property (for example, adjacent Residential receptors), and not the status of the noise-generating property. Violations of the Noise Ordinance commonly result from, but are not limited to, the operation or improper placement of HV/AC units, generators, and loading docks. Construction noise is exempted from the Noise Ordinance during the following hours, 7am–9pm (Mon–Fri) and 8am–5pm (Sat & Sun). Variances for nighttime work are allowed, but the variance approval process requires 2 to 3 months. For variance requests or questions related to the Noise Ordinance, please contact Paul Riedesel, Denver Environmental Health (720-865-5410).

Scope & Limitations: DEH performed a limited search for information known to DDPHE regarding environmental conditions at the subject site. This review was not intended to conform to ASTM standard practice for Phase I site assessments, nor was it designed to identify all potential environmental conditions. In addition, the review was not intended to assess environmental conditions for any potential right-of-way or easement conveyance process. The City and County of Denver provides no representations or warranties regarding the accuracy, reliability, or completeness of the information provided.

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



**Public Works – R.O.W. - City Surveyor:** Approved – Legal description accepted

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

**Development Services – Wastewater:** Approved – No comments

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

**Development Services – Fire Prevention:** Approved – No response

**Public Review Process**

	<b>Date</b>
CPD informational notice of receipt of the rezoning application to all affected members of City Council, registered neighborhood organizations, and property owners:	<b>6/20/19</b>
Applicant submitted revised application	<b>10/2/19</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>11/19/19</b>
Planning Board Public Hearing	<b>12/4/19</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>TBD</b>
Land Use, Transportation and Infrastructure Committee of the City Council moved the bill forward:	<b>TBD</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>TBD</b>
City Council Public Hearing (tentative):	<b>2/3/19</b>

## 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)*
- *41<sup>st</sup> & Fox Station Area Plan (2009)*
- *Sunnyside Neighborhood Plan (1992)*

### ***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, including:

The proposed rezoning would allow for mixed-use development, including an increase in allowed housing density, near the new 41<sup>st</sup> and Fox station for the RTD G and B Lines, which provide high-quality transit service to downtown Denver, Westminster, Arvada, and Wheat Ridge. 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 2 Strategy A - *Create a greater mix of housing options in every neighborhood for all individuals and families (p. 28).*

The proposed rezoning would enable mixed-use infill development at a location where services and infrastructure, including the 41<sup>st</sup> and Fox station, are already in place. The proposed U-RX-3 zoning would allow for a broader variety of uses including housing, retail services, and employment at an intensity consistent with the desire for urban, walkable, mixed-use neighborhoods around transit, and is therefore consistent with the following strategies in the Strong and Authentic Neighborhoods vision element:



- 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 1, Strategy A – *Build a network of well connected, vibrant, mixed-use centers and corridors* (p. 34).

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

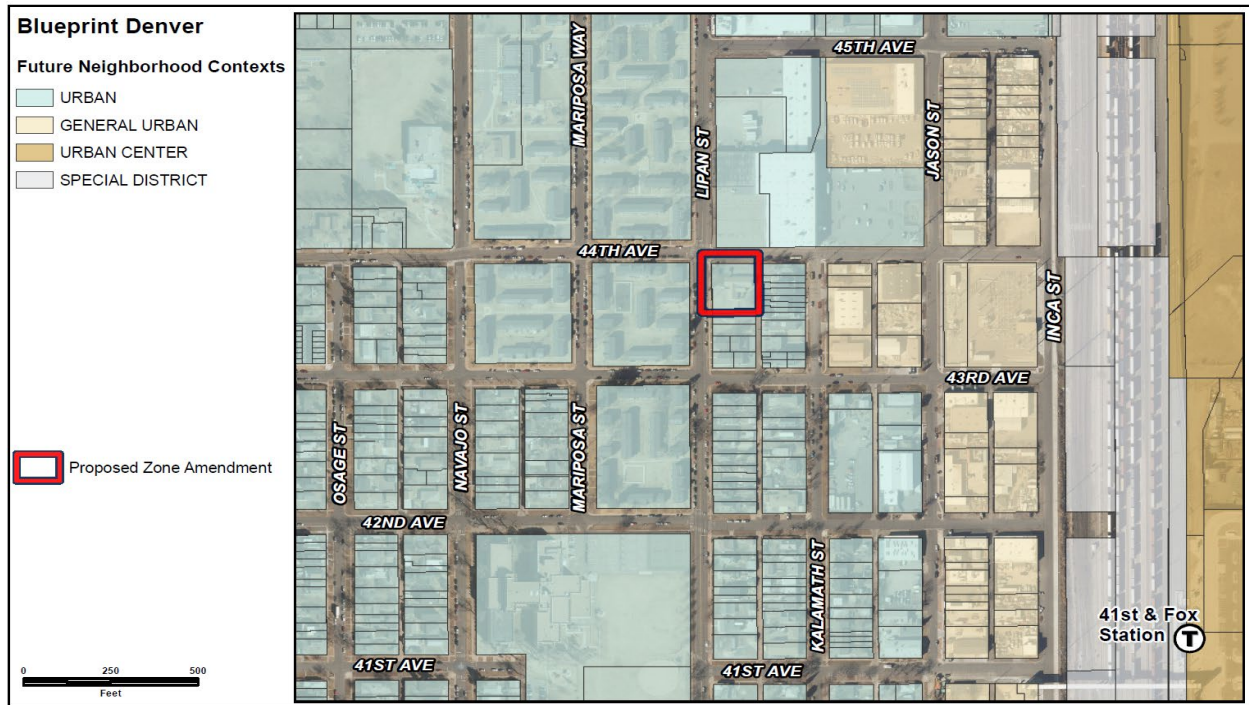
- Environmentally Resilient Goal 8, Strategy A- *Promote infill development where infrastructure and services are already in place* (p. 54).
- Environmentally Resilient Goal 8, Strategy B- *Encourage mixed-use communities where residents can live, work and play in their own neighborhoods* (p. 54).

The requested map amendment will enable mixed-use development at an infill location where infrastructure is already in place. The requested U-RX-3 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 Low-Medium Residential Area place within the Urban Neighborhood Context and provides guidance from the future growth strategy for the city.

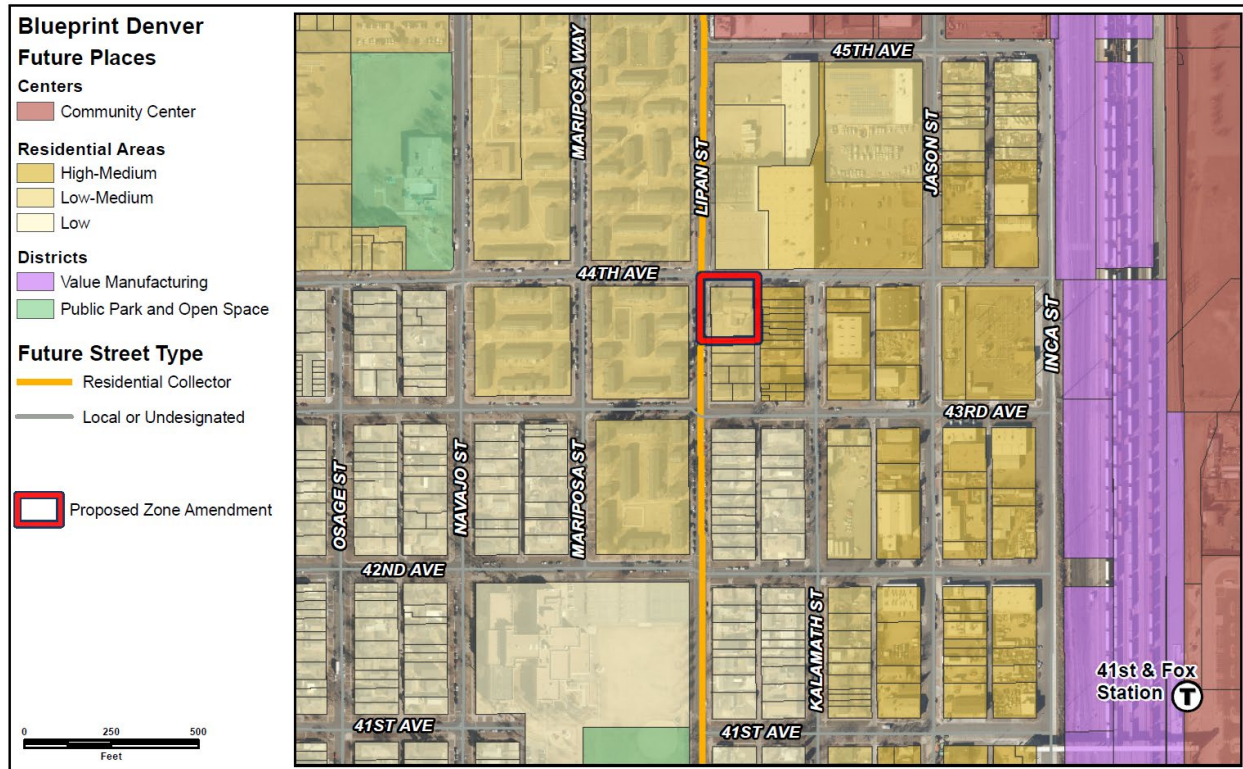
***Blueprint Denver Future Neighborhood Context***



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 neighborhood context. The context map and description help guide appropriate zone districts (p. 66). The Urban neighborhood context is described as containing “small multi-unit residential and low-intensity mixed-use buildings typically embedded in single-unit and two-unit residential areas” (p. 222). The proposed U-RX-3 zone district is part of the Urban context and is intended to promote safe, active and pedestrian-scaled, diverse areas through the use of building forms that clearly define and activate the public realm. Since the proposed district is primarily intended to accommodate residential uses with neighborhood-scaled shops and offices, the proposed rezoning to an Urban context is appropriate and consistent with the plan.



**Blueprint Denver Future Places**

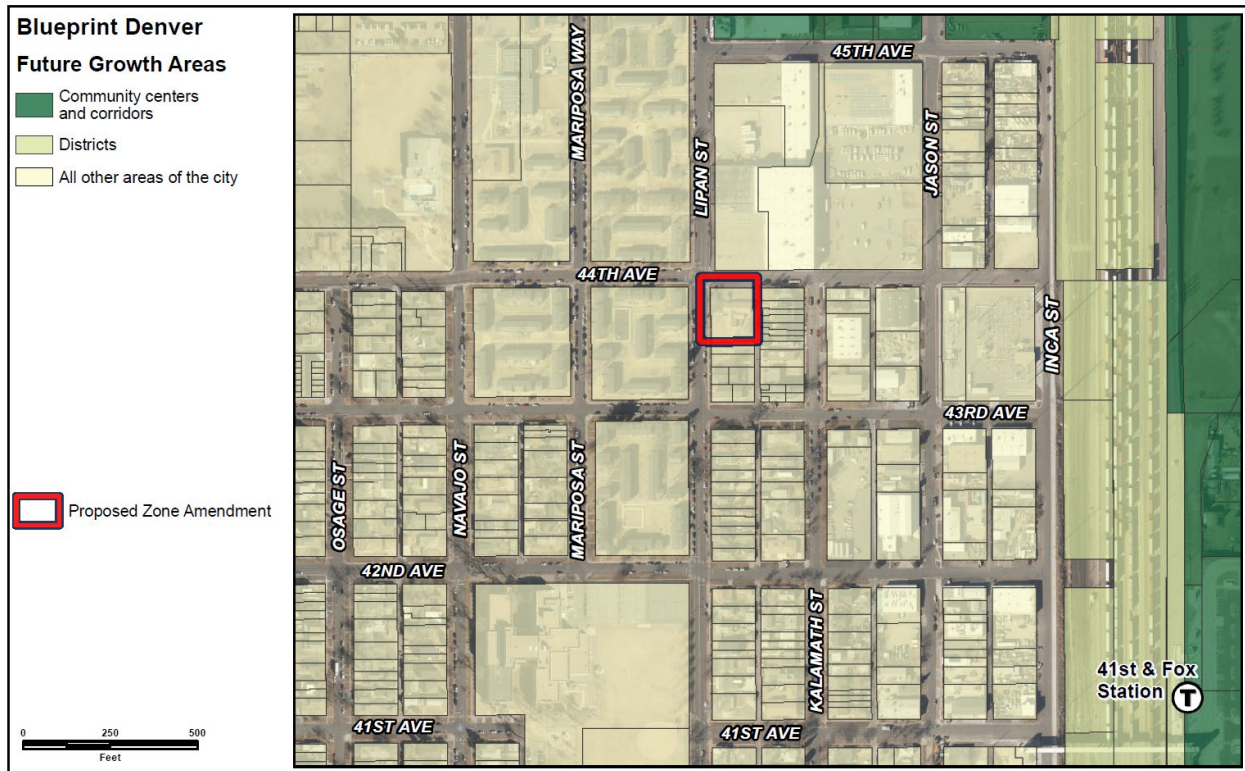


The Future Places map designates the subject property as a Low-Medium Residential Area. Blueprint Denver describes the aspirational characteristics of Low-Medium Residential Areas in the Urban context as having a “mix of low to mid-scale residential options. Limited mixed-use along some arterial and collector streets and at intersections” (p. 232). Consistent with this guidance, the proposed U-RX-3 zone district provides for a variety of residential options and allows for limited commercial uses.

**Street Types**

Blueprint Denver classifies West 44<sup>th</sup> Avenue as a local or undesignated street and Lipan Street as a residential collector. “Streets within the Urban context usually have high degrees of pedestrian and bike activity. Utilizing on-street parking on residential or local street to access nearby businesses on main street and mixed-use streets can be expected” (p. 234). As the proposed zone district, U-RX-3, allows for a range of residential and limited commercial uses along a residential collector, the district is consistent with the future street types at this location.

## Growth Strategy



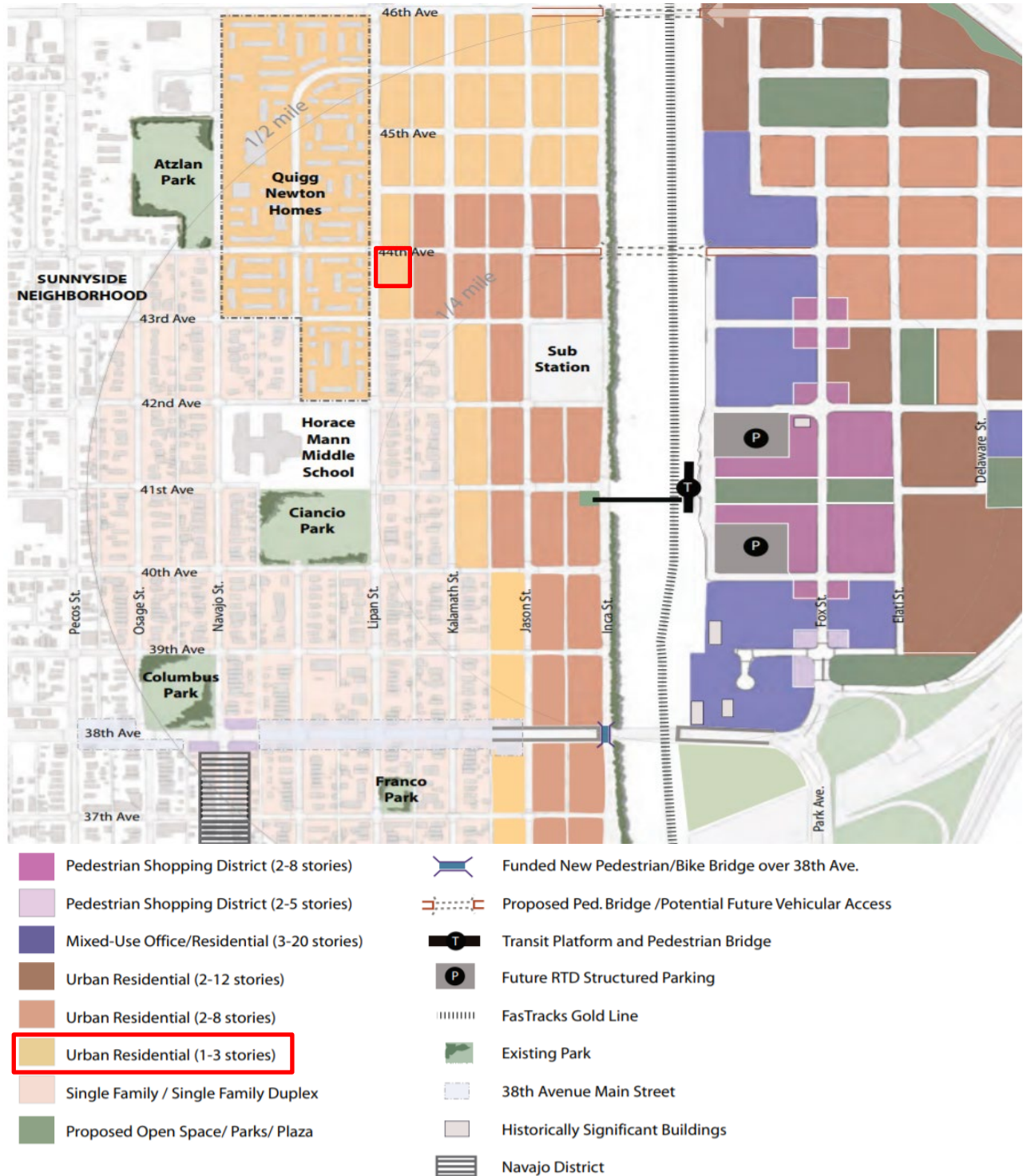
The subject property is located within a Low-Medium Residential area, which is classified as “*All other areas of the city*” in Blueprint Denver. These areas are projected to account for 10 percent of jobs and 20 percent of new households in the city by 2040. The proposed rezoning will provide additional housing units and offer the opportunity for additional jobs, which is an appropriate change given these growth goals. Access to jobs, housing, and services can improve in the residential mixed-use zone districts, and this site has access to multiple bus and rail transit lines. Therefore, this rezoning is consistent with the Blueprint Denver Future Growth Areas plan direction.

### **41<sup>st</sup> & Fox Station Area Plan (2009)**

The 41<sup>st</sup> & Fox Station Area Plan was adopted by City Council in 2009 and applies to the subject property. The plan sets forth a vision for the creation of a “diverse, transit supportive and environmentally sustainable urban center” (p. 9). In the land use concept map, the subject property is mapped as Urban Residential 1-3 stories. These areas are intended to create an improved edge for adjacent residences and the Quigg Newton Homes across Lipan Street from the subject property. The Urban Residential 1-3 stories designation calls for a range of housing types including single-unit, accessory dwelling units, duplexes, townhouses and small condominium and apartment buildings. The requested zone district, U-RX-3 allows for a wide range of housing types and provides an opportunity for neighborhood-serving commercial uses within walking distance of the transit station. Therefore, this



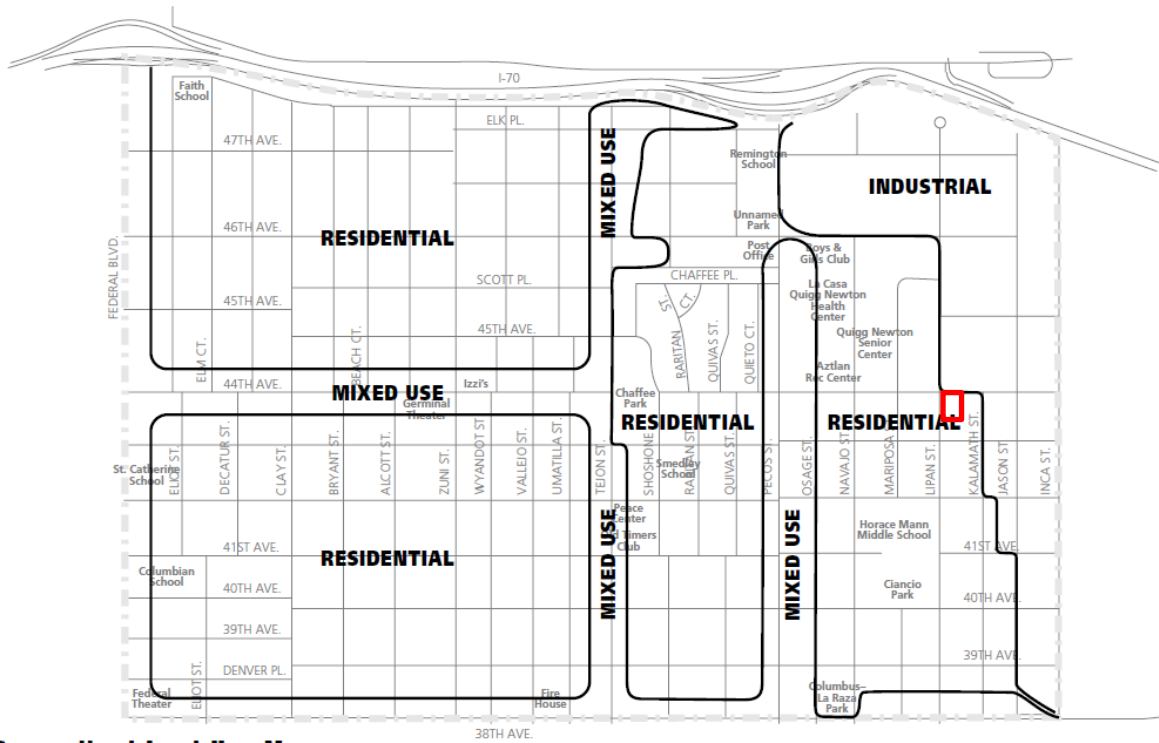
rezoning request is consistent with both the land use and building heights recommendations in the 41<sup>st</sup> & Fox Station Area Plan.





### **Sunnyside Neighborhood Plan (1992)**

The Sunnyside Neighborhood Plan was adopted in 1992 and applies to the subject property. The plan identifies the subject property as residential and states the need for buffers to separate industrial and residential areas. The plan further suggests that small scale shops and offices, particularly in commercial zones, would help maintain and stabilize the residential character of the neighborhood. At the time the plan was written, the subject property was zoned B-1 which allowed for limited office uses.



**Generalized Land Use Map**

Although the Sunnyside Neighborhood Plan is an adopted plan that continues to guide policy and development decisions within the neighborhood, the eastern portion of the plan area (including the subject site) has more recent guidance from the 41<sup>st</sup> & Fox Station Area Plan. The station area plan was adopted in 2009 in response to new opportunities presented by the commuter rail station. As a result, it provides slightly different land use recommendations than the older Sunnyside Neighborhood Plan, which pre-dates the conception of FasTracks by more than a decade. Still, the proposed zone district, U-RX-3, is consistent with this plan as it allows for a range of residential building forms and introduces the opportunity for limited neighborhood-serving commercial uses.

### **2. Uniformity of District Regulations and Restrictions**

The proposed rezoning to U-RX-3 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 of the through implementation of the city's adopted land use plan. The proposed rezoning would also facilitate increased housing density near transit and foster the creation of a walkable, urban area within walking distance to a rail transit station.

### **4. Justifying Circumstance**

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..."*

Recent physical changes within close proximity to the subject site include the opening of the 41<sup>st</sup> & Fox Station in 2019 and the addition of the multi-use path along Inca Street that connects the Sunnyside neighborhood to downtown. There are also several new, predominantly residential projects in the immediate area including townhomes across the alley from the subject property and the Zia development on Inca Street. Rezoning to a district that allows for ground-floor retail will be necessary to providing neighborhood-serving uses for new and existing residents in the area.

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

The requested U-RX-3 zone district is within the Urban Neighborhood Context, which is primarily characterized by single-unit and two-unit residential uses with embedded, small-scale, multi-unit residential uses and commercial areas. The street, block, and access patterns in this context provide a regular pattern of block shapes with a consistent presence of alleys (DZC Division 5.1). The current zone district, U-RH-2.5, is also within the Urban Neighborhood Context, as are the parcels to the south and to the east of the subject property. The proposed rezoning to U-RX-3 is consistent with the neighborhood context description.

Residential Mixed-Use Districts are "intended to promote safe, active, and pedestrian- scaled, diverse areas through the use of building forms that clearly define and activate the public realm. Residential Mixed-Use zone district standards are also intended to ensure new development contributes positively to established residential neighborhoods and character, and to improve the transition between commercial development and adjacent residential neighborhoods. Compared to the Mixed-Use districts, the Residential Mixed-Use districts are primarily intended to accommodate residential uses. Commercial uses are secondary to the primary residential use of the district, and they provide neighborhood-scaled shops and offices for residents to conveniently access goods and services within walking distance. Buildings in a Residential Mixed-Use district may have commercial uses, but upper stories are reserved exclusively for housing or lodging accommodation uses." (DZC Section 5.2.4.1). The proposed map amendment is consistent with the general purpose of Residential Mixed-Use zone districts as it would facilitate predominantly residential uses and convenient access to small-scale commercial uses as an

appropriate transition from larger scale residential and industrial uses to the west and north, respectively, to the lower-scale residential uses to the north and east.

The proposed U-RX-3 zone district is specifically intended for residentially-dominated areas served primarily by local or collector streets (DZC Section 5.2.4.2). The request is consistent with the specific intent of U-RX-3 with the adjacent collector (Lipan Street) and local street (West 44<sup>th</sup> Avenue) and the adjacent building heights and entitlements.

## **Attachments**

1. Application