



TO: Denver City Council
FROM: Courtney Levingston, AICP, Senior City Planner
DATE: April 4, 2019
RE: Official Zoning Map Amendment Application #2018I-00072

Staff Report and Recommendation

Based on the criteria for review in the Denver Zoning Code, Staff recommends **approval** of Application 2018I-00072

Request for Rezoning

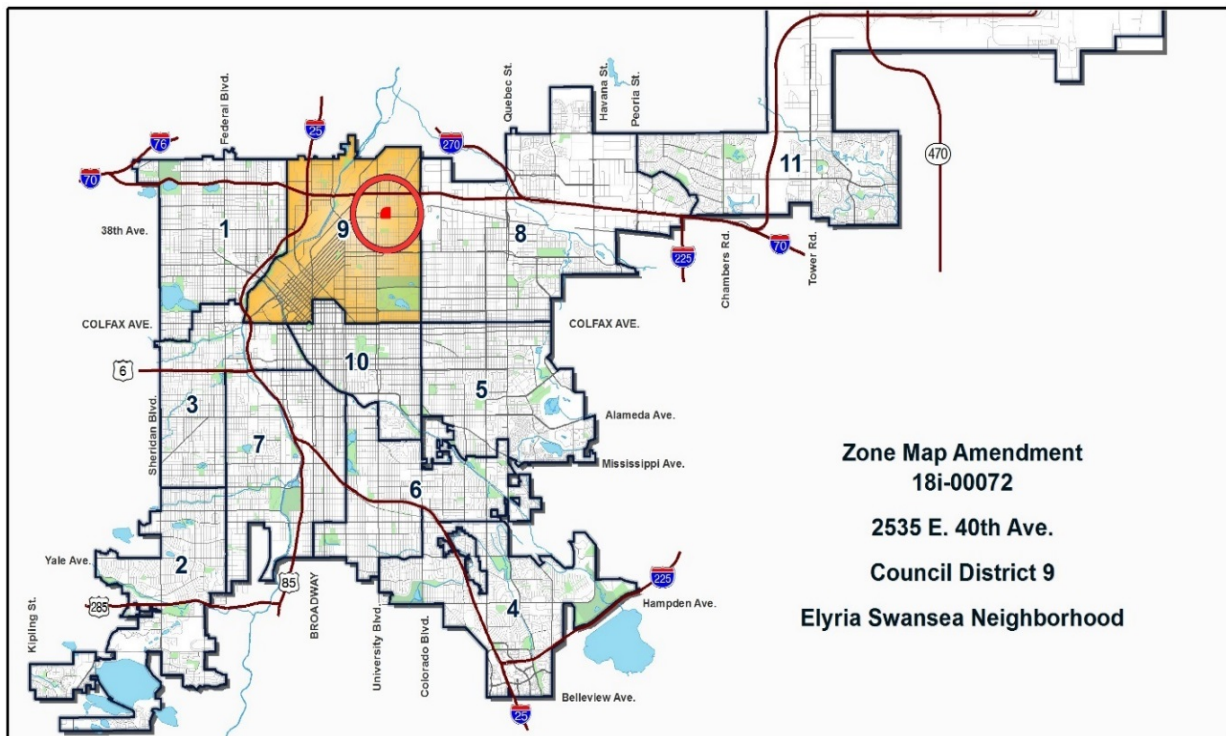
Address: 2535 E. 40th Avenue
Neighborhood/Council District: Elyria Swansea/Council District 9
RNOs: Inter-Neighborhood Cooperation (INC), UCAN, The Points Historical Redevelopment Corp, Clayton United, Cross Community Coalition, Elyria and Swansea Neighborhood Association, Elyria Swansea/Globeville Business Association, Opportunity Corridor Coalition of United Residents, Denver Arts and Culture Initiative, Unite North Metro Denver

Area of Property: 14.02 acres (610,560 square feet)
Current Zoning: I-A UO-2, I-A
Proposed Zoning: I-MX-3
Property Owner(s): ISELO 40th Avenue, LLC.
2635 Walnut Street, Denver, CO 80205
Owner Representative: Bruce O'Donnell, Starboard Realty Group

Summary of Rezoning Request

- The subject property is in the Elyria Swansea statistical neighborhood, on the north side of 40th Avenue, west of Clayton Street.
- The rezoning area is comprised of one parcel, approximately 14.02 acres in size and is primarily zoned I-A, UO-2 with a smaller eastern portion zoned I-A.
- The parcel currently has one large (235,611 square foot) building that was formerly occupied by AT&T as a network control center. Currently, a ballet studio operates out of this location.
- Although a rezoning request does not approve a site-specific development, if the proposed map amendment is approved, the applicant intends to adaptively reuse a significant portion of this existing building and associated infrastructure for a mixed-use redevelopment with a performing arts space for a non-profit ballet. The adaptive re-use includes modification of the existing building to break it into multiple structures with the northern structure being adaptively re-used to house a performing arts space, multi-family affordable units, and commercial/office space.

- The property owners are requesting a rezoning from I-A UO-2 and I-A to I-MX-3 to allow for the redevelopment of the site consistent with the vision for the Elyria Swansea Neighborhood Plan area.
- The applicant is requesting the removal of the Billboard Use Overlay, UO-2, on the portion of the property where it is currently applied. No billboards exist on site.
- The requested zone district, I-MX-3, is defined as **I**ndustrial Context, **M**ixed-Use, **3**-story maximum height. I-MX-3 accommodates the townhouse, industrial and general building forms and is intended to provide a transition between industrial and mixed-use areas. Additional details of the zone district can be found in Division 9.1 of the Denver Zoning Code (DZC).





Existing Context



The subject property is located on the north side of 40th Avenue, with Clayton Street to the east and rail facilities to the north and west. The existing building was first constructed in 1973 and has had two major

additions over time for a total of 235,611 square feet. The structure ranges in height from 1 to 2 stories. The building covers about 40% of the site with the balance used for parking, other vehicular use areas and hardscape with some perimeter landscaping.

Notable land uses in the area include Bruce Randolph High School to the southeast and Union Pacific’s intermodal freight transfer facility (or TOFC - Trailer On Flat Car) site at the northwest corner of York Street and 41st Avenue. In terms of bus routes, the site is served by route 24 along E. 40th Avenue and route 44 along Josephine Street, approximately a half block 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	I-A UO-2, I-A	Industrial (vacant)	1 brick warehouse-style building ranging from 1 to 2 stories in height, 30’ setback from E. 40 th Avenue.	Irregular blocks and discontinuous street pattern due to large parcels and rail rights-of-way. Vehicular parking is generally provided via large, on-site lots.
North	I-A UO-2	Rail facilities; industrial beyond	Railroad tracks; 1 story small industrial buildings beyond	
South	I-B UO-2	Industrial	1-story brick office building, large (100’) setback	To the east is a limited orthogonal grid with alley access serving the residential to the east. For the residential area, block sizes are regular with alley access. Vehicular parking is provided on site with additional on-street parking.
East	E-SU-B; PUD 140	Single unit residential; retail/commercial	1- and 2-story single-unit residential dwellings, many with detached garages; 1-story small brick commercial building	
West	I-B UO-2	Industrial storage and rail facilities	No structures, RTD A-Line tracks	

1. General Development Plan (GDP)

The site is not currently subject to a GDP. The intent of a GDP is to “provide an opportunity to identify issues and the development’s relationship with significant public infrastructure improvements” (DZC 12.4.12.1) Before an official map amendment application, the Department of Community Planning and Development (CPD) must determine whether a GDP is mandatory, according to DZC Section 12.4.10.4. Preparation is mandatory when “(1) the specific circumstances warrant a coordinated master framework plan to guide future development; and (2) land use, development, and infrastructure issues related to future development cannot be adequately resolved through other regulatory processes, such as subdivision or site development plan review” (DZC 12.4.12.2.A) The code identifies several “relevant

factors” of a proposed project as examples that should be taken into consideration when determining whether a GDP should be mandatory. These include:

1. Adopted Plan Recommendation

“A citywide land use, or small area plan, adopted by City Council as a supplement to the Comprehensive Plan, recommends preparation of a GDP for all or portions of the plan area.”

2. Large-Scale Development

“The GDP area either: (a) is more than 10 acres, (b) is anticipated to be developed in phases; or (c) is owned by more than one person or entity.”

3. Infrastructure Network or System Improvements

“Future development in the GDP area anticipates any of the following infrastructure improvements:

- a. Establishing, extending, expanding, or otherwise changing the arterial or collector street grid; or
- b. Establishing, extending, expanding, or otherwise changing an existing regional storm water system; or
- c. Establishing, extending, expanding, or otherwise changing publicly accessible park and open space.”

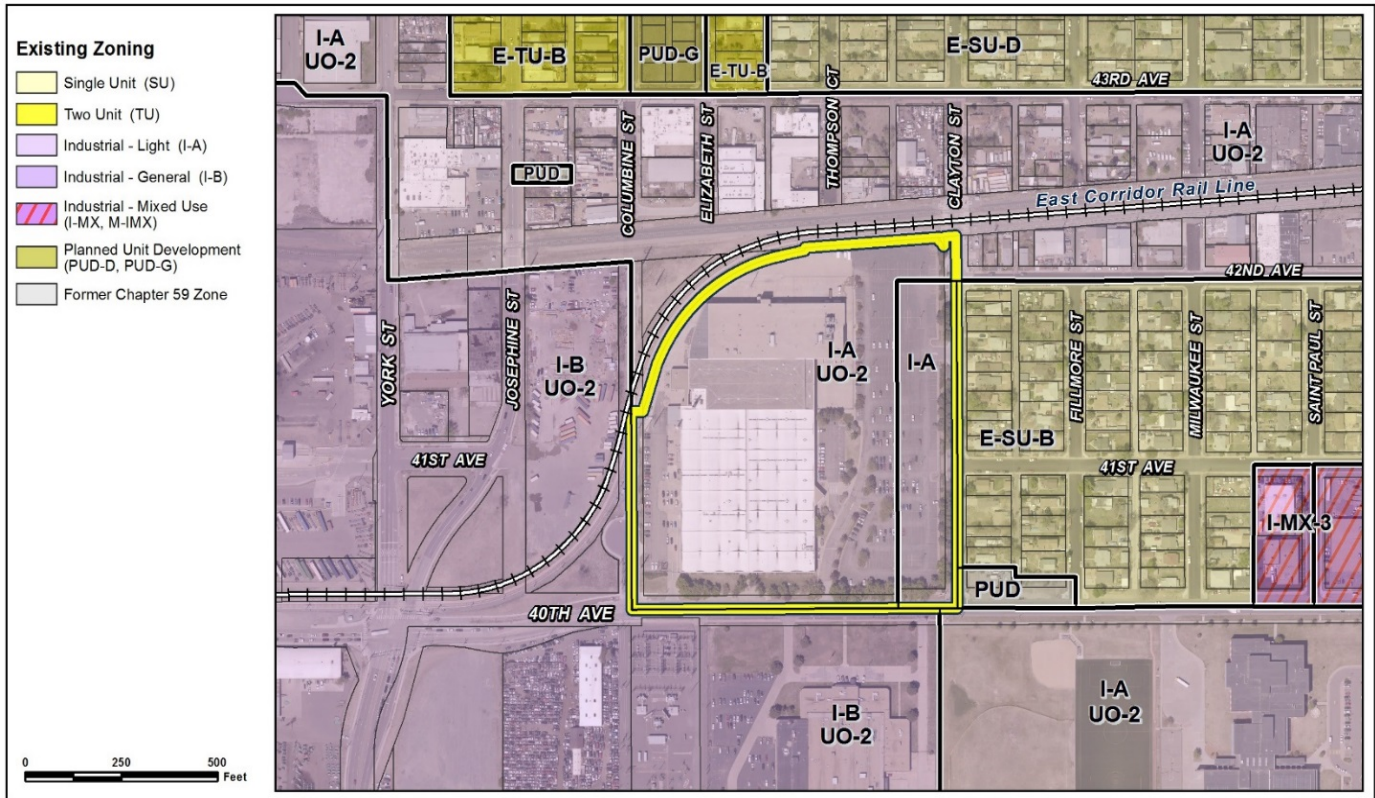
4. Development Adjacent to Major River or Trail Corridors

“Development within 100 feet from the Cherry Creek corridor or the South Platte River corridor, where publicly-accessible open space, pedestrian connections, or bike connections to such corridors is anticipated” (DZC 12.4.12.2).

Although this is a large site, the adaptive re-use and modification of existing buildings and infrastructure do not necessitate a GDP process and coordination of the infill can be achieved through separate Development Services processes such as a Concept Master Plan and Site Development Plan. The proposed redevelopment is not anticipated to require changes to the arterial/collector street grid or regional stormwater systems, and local stormwater improvements will be made in association with Site Development Plan review. The property is not located near any major open space trails or corridors, and there are no adopted plans recommending the preparation of a GDP for the site.

Considering these factors, and more specifically due to the adaptive re-use of the existing building, site and associated infrastructure, it was determined that circumstances here do not warrant an additional general development plan. Any remaining issues can be addressed with existing regulatory processes such as a Concept Master Plan and Site Development Plan. CPD has determined that a GDP is not mandatory for this site.

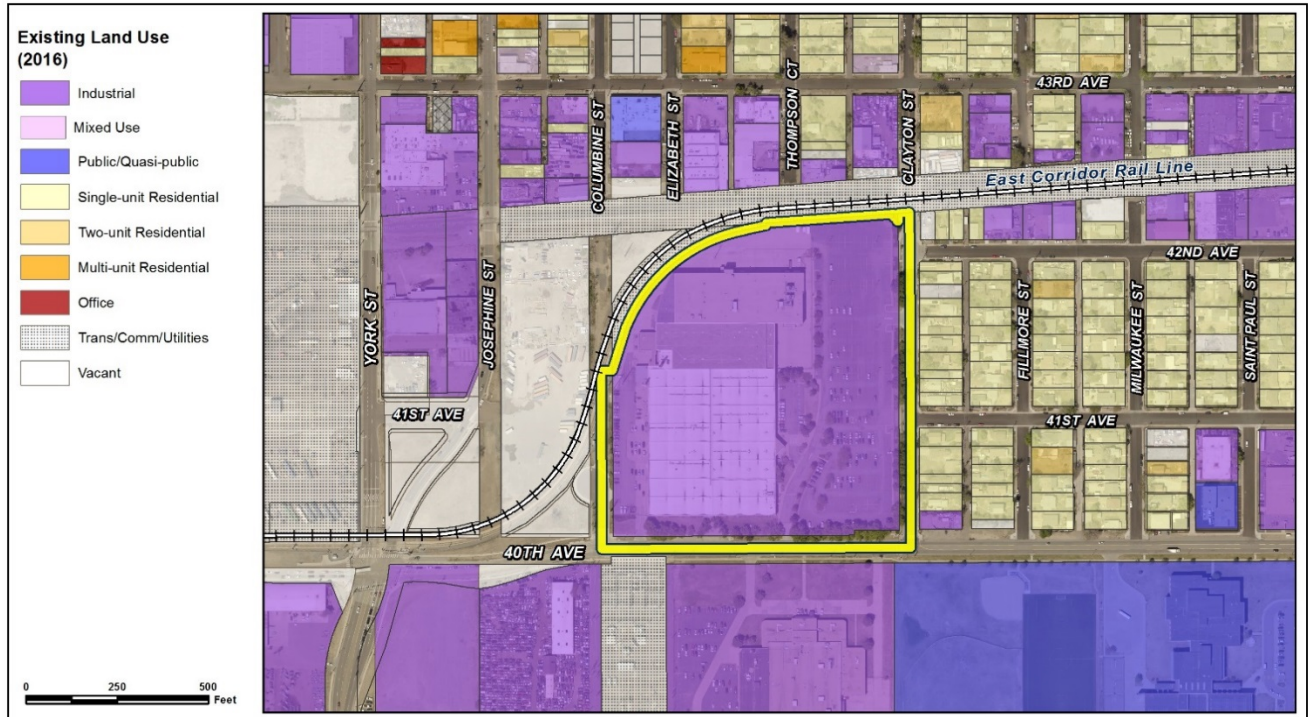
2. Existing Zoning



The site is currently zoned I-A UO-2 and I-A. I-A is a light industrial zone district in the Industrial Context. It allows office, business, and light industrial uses. Residential uses are only permitted where an existing residential structure existed prior to July 1, 2004. The General and Industrial building forms are allowed in the I-A zone district and building mass is regulated by a maximum floor area ratio of 2.0. No maximum building height is specified for the zone district except for when a site is within 175 feet of a protected district, in which case the maximum permitted building height is 75 feet. There are no build-to requirements, transparency requirements, or street level activation standards in the I-A zone district. Surface parking is permitted between the building and primary and side streets. Please see DZC Division 9.1. for additional details.

The UO-2 Billboard Use Overlay allows for “outdoor general advertising device” signs (i.e. billboards) within the applicable area. Additional standards and limitations regarding minimum separation and distance requirements also apply. There are currently no billboards on the subject site, and the applicant is proposing to eliminate the UO-2 overlay on the property. Please see DZC Section 9.4.4.7 for additional details.

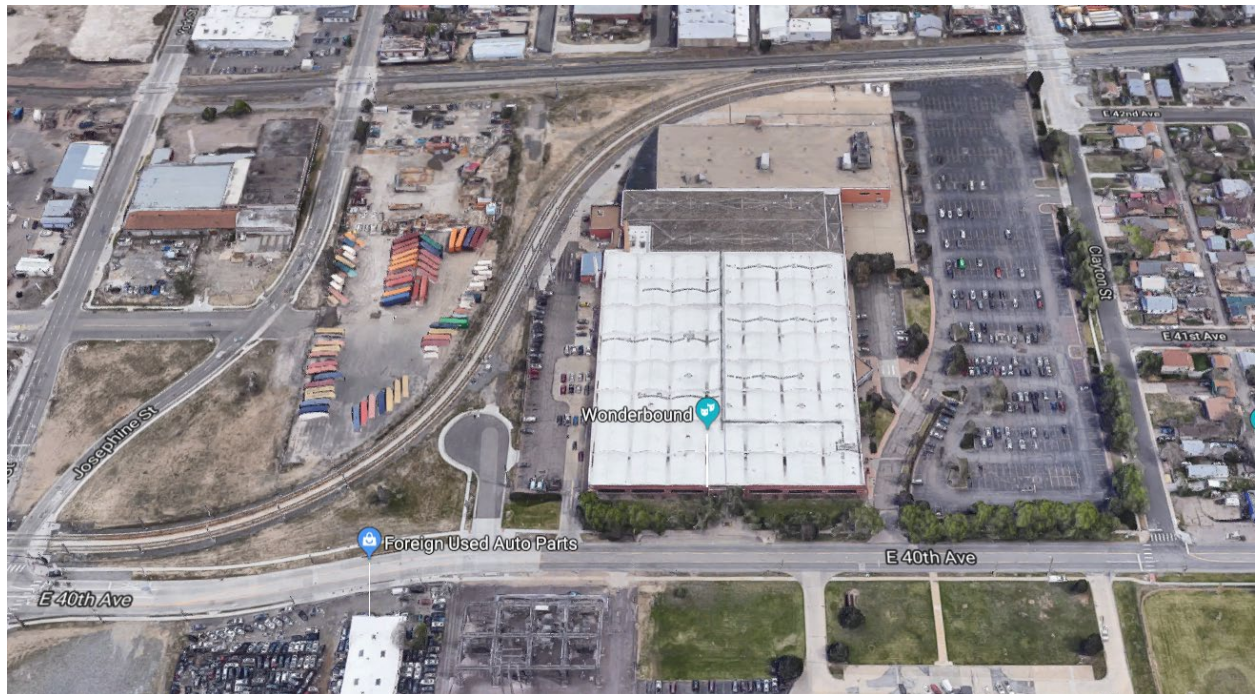
3. Existing Land Use Map



Assessor data from 2016 shows the existing land use as industrial, however more recently the site has been used more commercially as a dance studio and office space for the non-profit Wonderland Ballet. Surrounding land uses include a pocket of primarily single unit residential to the east, a high school to the southeast and a mix of industrial, vacant and transportation/utility parcels to the south and west.

4. Existing Building Form and Scale

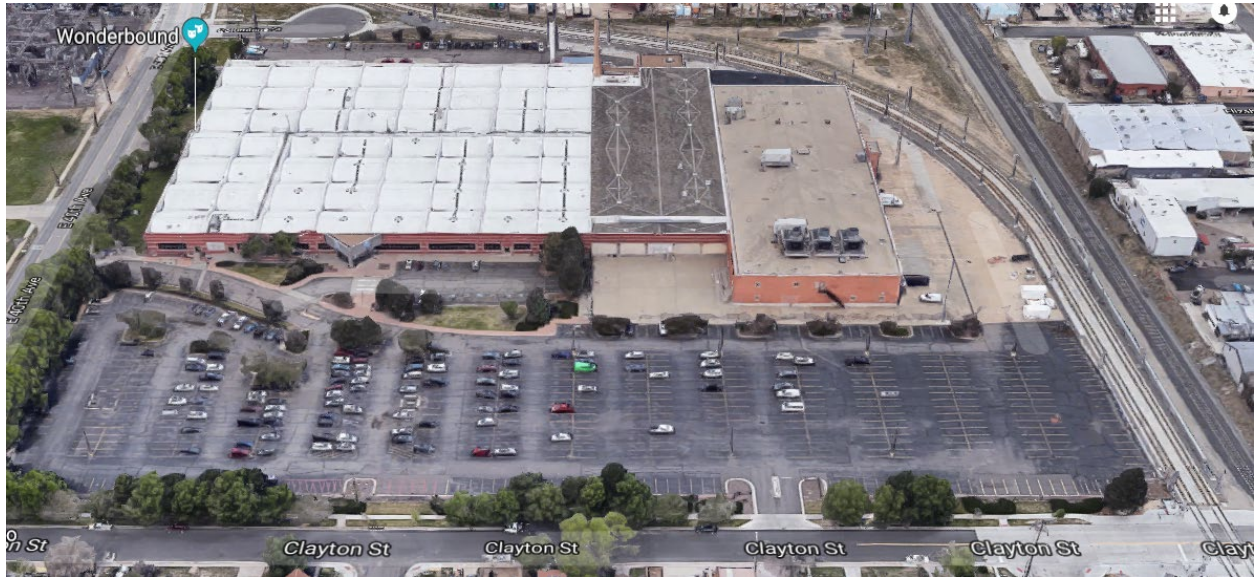
The existing building form and scale of the subject site and adjacent properties are shown in the following images. (Source: Google Maps)



45-degree aerial view of subject site, looking north



Subject property, looking northwest



Subject Site – looking west from Clayton Street.



Subject Site – looking south from rail tracks.



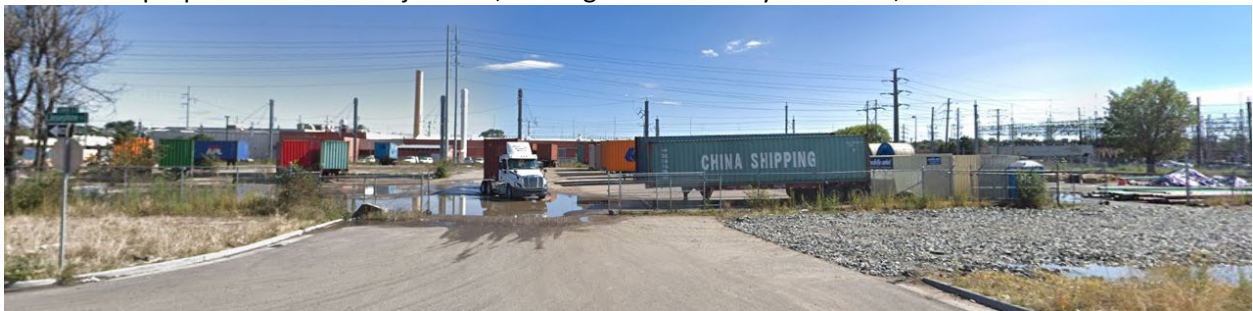
Subject Site – view from Josephine looking east



View of property to the south of subject site, looking south from E. 40th Avenue



Residential properties east of subject site, looking east from Clayton Street, north of E. 41st Avenue.



Industrial property directly west of subject site. View from Josephine Street looking east.

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

Real Estate: Approved – No Comments

Denver Public Schools: Approved – No Response

Environmental Health: Approved – See Comments Below

DDPHE concurs with this rezoning; however, there may be existing environmental concerns associated with the site. The site is located within Operable Unit 1 of the Vasquez Boulevard/I-70 Superfund site

which is associated with elevated levels of metals in soil. Additionally, soil and groundwater may be impacted from nearby historical leaking underground storage tanks and possible buried historical urban fill. DDPHE suggests evaluation of the site to confirm its suitability for the proposed use.

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, DEH 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.

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 DEH 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.

Parks and Recreation: Approved – No Response

Public Works – R.O.W.- City Surveyor: Approve Rezoning Only – Will require additional information at Site Plan Review. Provided legal description appears to describe the area to be rezoned

Development Services – Transportation: Approved – See Comments

DES Transportation approves the subject zoning change. The applicant should note that redevelopment of this site may require additional engineering, ROW dedication to the City, access changes, traffic studies and/or right of way improvements. The extent of the required design and improvements will be determined once this property begins the redevelopment process. The results of any traffic studies may require the construction of off-site mitigation or may limit the proposed density of the project.

Public Works – Wastewater: Approved – See Comments

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: Approved – No Response

Development Services – Fire Prevention: Approved – No Response

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:	10/15/2018
Property legally posted for a period of at least 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:	1/18/2019
Planning Board Public Hearing unanimously (9-0) to recommend approval:	2/6/2019
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:	2/11/2019
Land Use, Transportation and Infrastructure Committee of the City Council moved the bill forward:	2/26/2019
Property legally posted for a period of 21 days and CPD written notice of the City Council public hearing sent to all affected members of City Council and registered neighborhood organizations:	3/19/2019
City Council First Reading	3/11/2019
City Council Public Hearing:	4/8/2019

- **Registered Neighborhood Organizations (RNOs)**
 - The RNOs identified on page 1 of this report were notified of this application. Clayton United RNO reviewed the application and voted on February 12, 2019 to support the rezoning. The form they submitted is attached.

- Cross Community Coalition indicated on February 26, 2019 that they are opposed to the rezoning. At that time, they requested additional time to obtain community input.
- Elyria and Swansea Neighborhood Association have indicated their support of Globeville Elyria Swansea Coalition organizing for Health and Housing Justice’s letter.
- **Public Comment**
 - Since the application was submitted in October 2018, staff has received 28 letters or emails related to this rezoning application.
 - 8 letters in support were provided by various residents in the immediate surrounding area. The letters generally noted that the requested I-MX-3 is a better fit than the existing light industrial zoning and is consistent with the Elyria Swansea Neighborhood Plan.
 - Globeville Elyria-Swansea Coalition Organizing for Health and Housing Justice (GES Coalition) provided a letter on 3/31/19 requesting that I-MX-3 be approved with conditions. The conditions requested were a community benefits agreement, a traffic analysis, and a public process with an “anti-displacement action plan”. If these conditions are not possible, then they do not support the rezoning.
 - 10 emails opposing the rezoning/supporting conditioning the rezoning as proposed by GES Coalition were provided by community organizations (8) and community members(2). The organizations include are:
 - Focus Points Family Resource Center
 - Clinica Tepeyac
 - Groundwork Denver
 - GroHaus
 - Project Voyce (2)
 - Cross Community Coalition
 - Elyria and Swansea Neighborhood Association
- **Applicant Outreach to Stakeholders**
 - The applicant has provided documentation of their public outreach efforts. Please see attachment 3 for additional detail of their efforts.
 - The applicant held a community meeting related to the rezoning on March 18, 2019. Comments and questions centered around affordable housing details, affordable commercial space, and displacement issues.

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 plans apply to this property:

- *Denver Comprehensive Plan 2000*
- *Blueprint Denver: A Land Use and Transportation Plan (2002)*
- *Elyria & Swansea Neighborhoods Plan (2015)*

Denver Comprehensive Plan 2000

The proposed rezoning of this property is consistent with many *Denver Comprehensive Plan 2000* objectives, strategies, and recommendations, including:

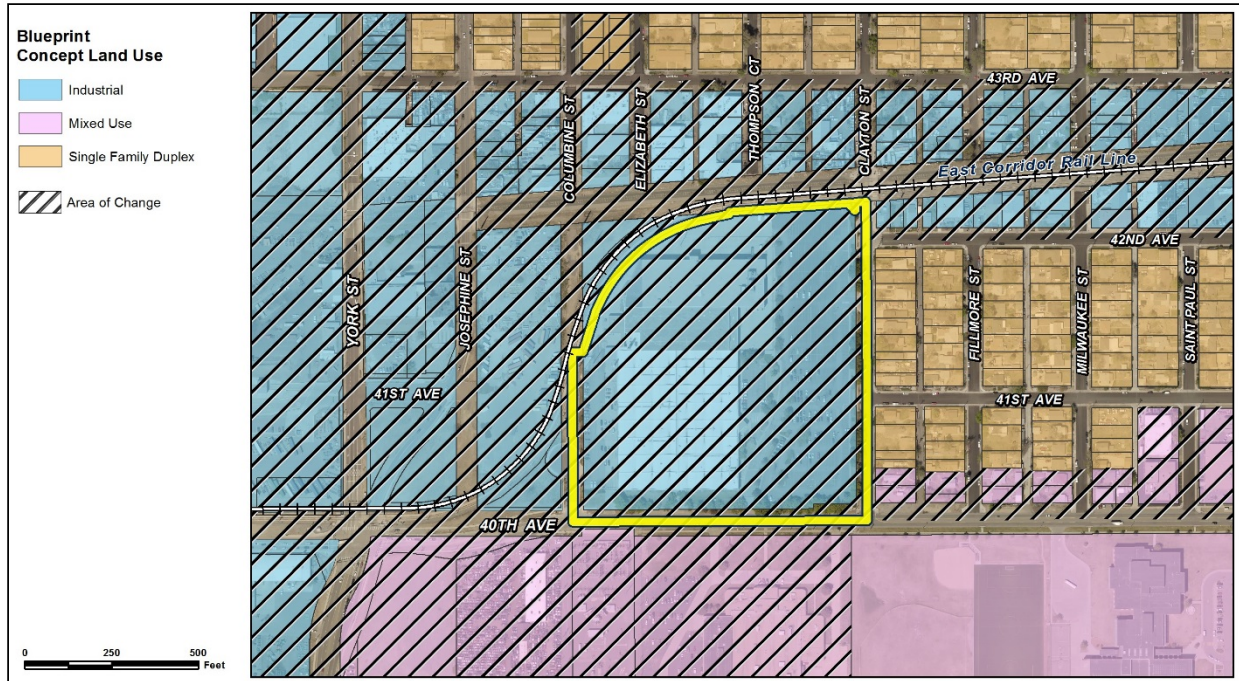
- *Land Use Strategy 3-B: Encourage quality infill development that is consistent with the character of the surrounding neighborhood; that offers opportunities for increased density and more amenities; and that broadens the variety of compatible uses. (p 60)*
- *Environmental Sustainability Strategy 2-F: Conserve land by promoting infill development within Denver at sites where services and infrastructure are already in place, creating more density near transit, and designing mixed use communities and reducing sprawl, so that residents can live, work and play within their own neighborhoods (p 39).*
- *Environmental Sustainability Strategy 4-A: Promote the development of sustainable communities and centers of activity where shopping, jobs, recreation, and schools are accessible by multiple forms of transportation, providing opportunities for people to live where they work (p 41).*
- *Mobility Strategy 4-E: Continue to promote mixed-use development, which enables people to live near work, retail, and services. (p 78)*
- *Legacies Strategy 3-A: Identify areas in which increased density and new uses are desirable and can be accommodated. (p 99)*
- *Neighborhoods Strategy 1-F: Modify land-use regulations to ensure flexibility to accommodate changing demographics and lifestyles. Allow, and in some places encourage, a diverse mix of housing types and affordable units, essential services, recreation, business and employment, home-based businesses, schools, transportation, and open space networks (p 150).*

The proposed I-MX-3 zone district would enable mixed-use redevelopment at an infill location where infrastructure is already in place. The proposed map amendment would allow for the development of a mixed-use at an appropriate location, making it consistent with *Denver Comprehensive Plan 2000* strategies of increasing density and accommodating new uses near transit.

Blueprint Denver 2002

According to the Plan Map adopted in Blueprint Denver, this site has a concept land use of Industrial and is in an Area of Change.

Future Land Use



The Blueprint Denver Concept Land Use Map shows the subject property's concept land use as Industrial. Blueprint Denver notes that industrial areas "As manufacturing and shipment have become more sophisticated, the need for heavy industrial areas adjacent to rail has lessened. Some of these older areas have historic buildings that are suitable for conversion to office and residential, a notable trend in LoDo and the Ballpark District. Others have the potential to be more diverse employment areas" (p 40).

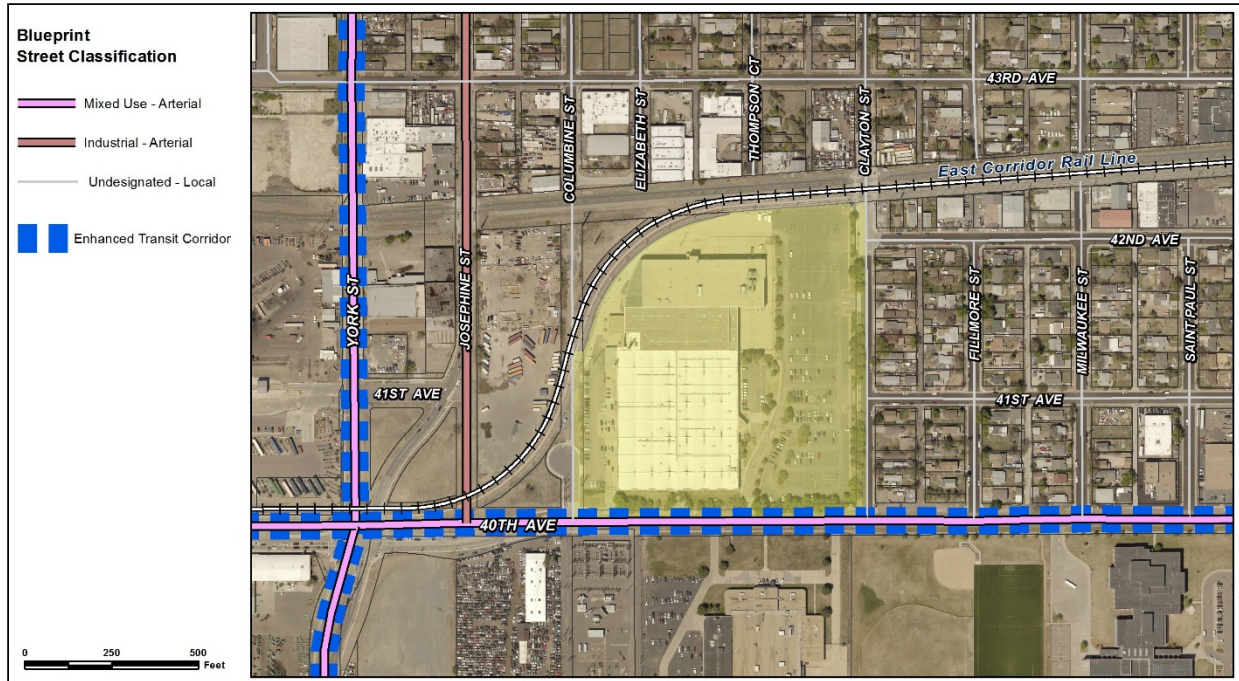
This proposed rezoning to I-MX-3 is consistent with Blueprint Denver's concept land use for this area, as it allows for the introduction of residential, office and commercial land uses to complement existing industrial uses. Additionally, it is noted that there is less of a need for additional heavy industrial areas adjacent to rail, so the proposed I-MX-3 district aligns with the plan for converting these areas to more commercial and residential uses, thus consistent with the plan.

Area of Change / Area of Stability

Blueprint Denver designates the subject site and much of the surrounding area as an Area of Change. In general, "The purpose of Areas of Change is to channel growth where it will be beneficial and can best improve access to jobs, housing, and services with fewer and shorter auto trips" (p. 127). Additionally, it is noted in Blueprint Denver that, "Areas of Change are parts of the City where new growth or redevelopment can best be accommodated because of transportation choices and opportunities for mixed-use development. Channeling growth to older industrial areas, districts close to downtown, major arterial corridors, historical trolley routes or existing and planned light rail stops will benefit the City as a

whole" (p. 19). The rezoning is consistent with Blueprint Denver goals as the proposed I-MX-3 zoning would allow for mixed-use infill redevelopment in an industrial area with access within a mile of transit stations, while allowing some additional housing, jobs and services.

Street Classifications

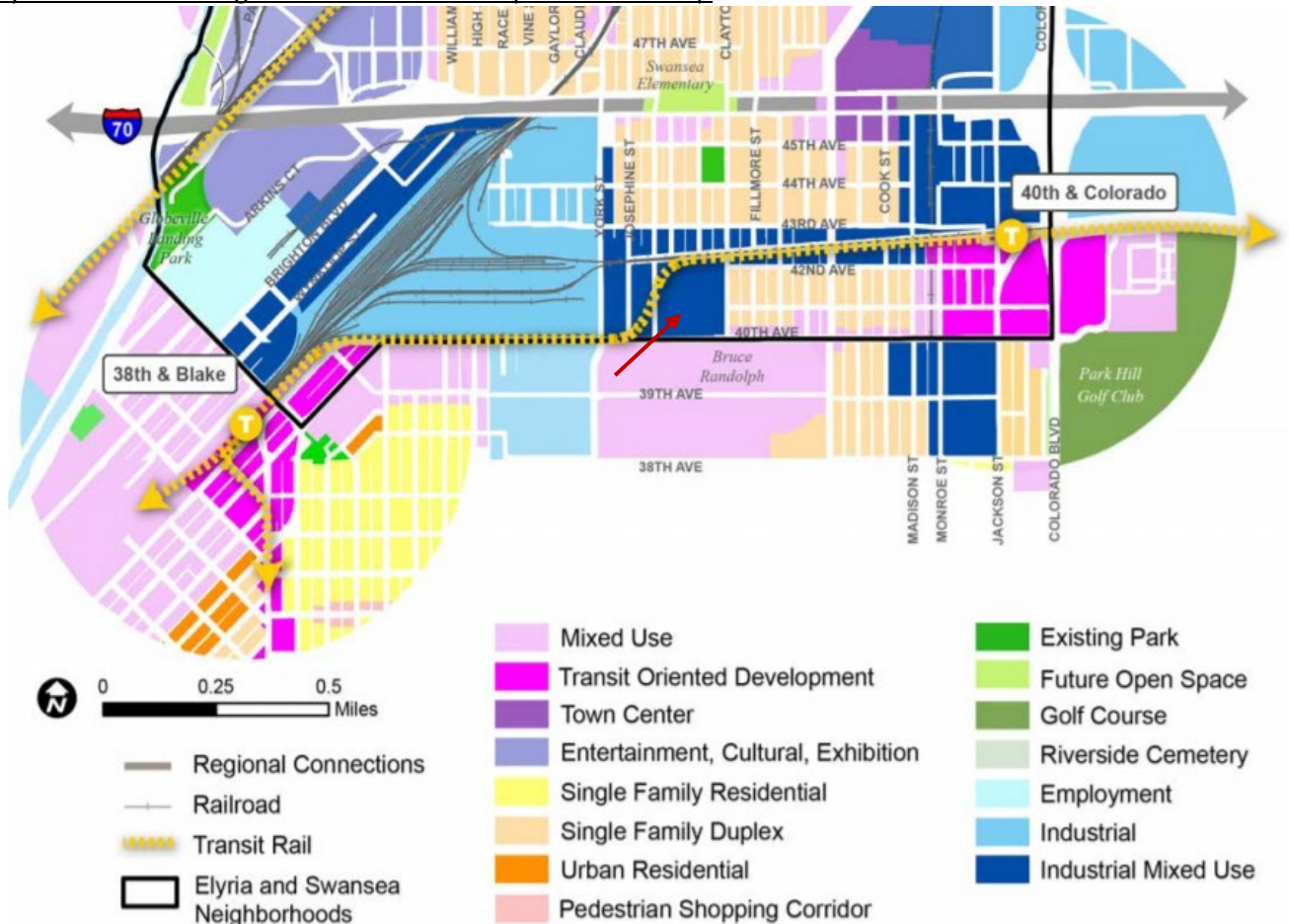


The site is located on the northwest corner of E. 40th Avenue and Clayton Street. Columbine Street is a cul-de-sac to the west. The site primarily is accessed from Clayton Street. Blueprint Denver 2002 designates E. 40th Avenue as a Mixed-Use Arterial and an Enhanced Transit Corridor, while Clayton and Columbine Streets as undesignated local streets. According to Blueprint 2002, Mixed-Use Arterials are “designed to provide a high degree of mobility and generally serve longer vehicle trips to, from, and within urban areas. Denver’s arterial system interconnects major urban elements such as the central business district, employment centers, large urban and suburban commercial centers and residential neighborhoods” (p 51). In addition, E. 40th Avenue is also identified as “mixed-use”. “Mixed-use streets are located in high-intensity mixed use commercial, retail and residential areas with substantial pedestrian activity” (p 57). The plan describes local streets (like Clayton Street) as “influenced less by traffic volumes and tailored more to providing local access. Mobility on local streets is typically incidental and involves relatively short trips at lower speeds to and from other streets” (p. 51). The I-MX-3 district “applies to industrially dominated areas served primarily by local or collector streets” (DZC 9.1.2.1.2). Because the site is served by a local street as well as a mixed-use street, the overall network serving this site is appropriate for the proposed I-MX-3 district and is consistent with plan recommendations.

Elyria & Swansea Neighborhoods Plan

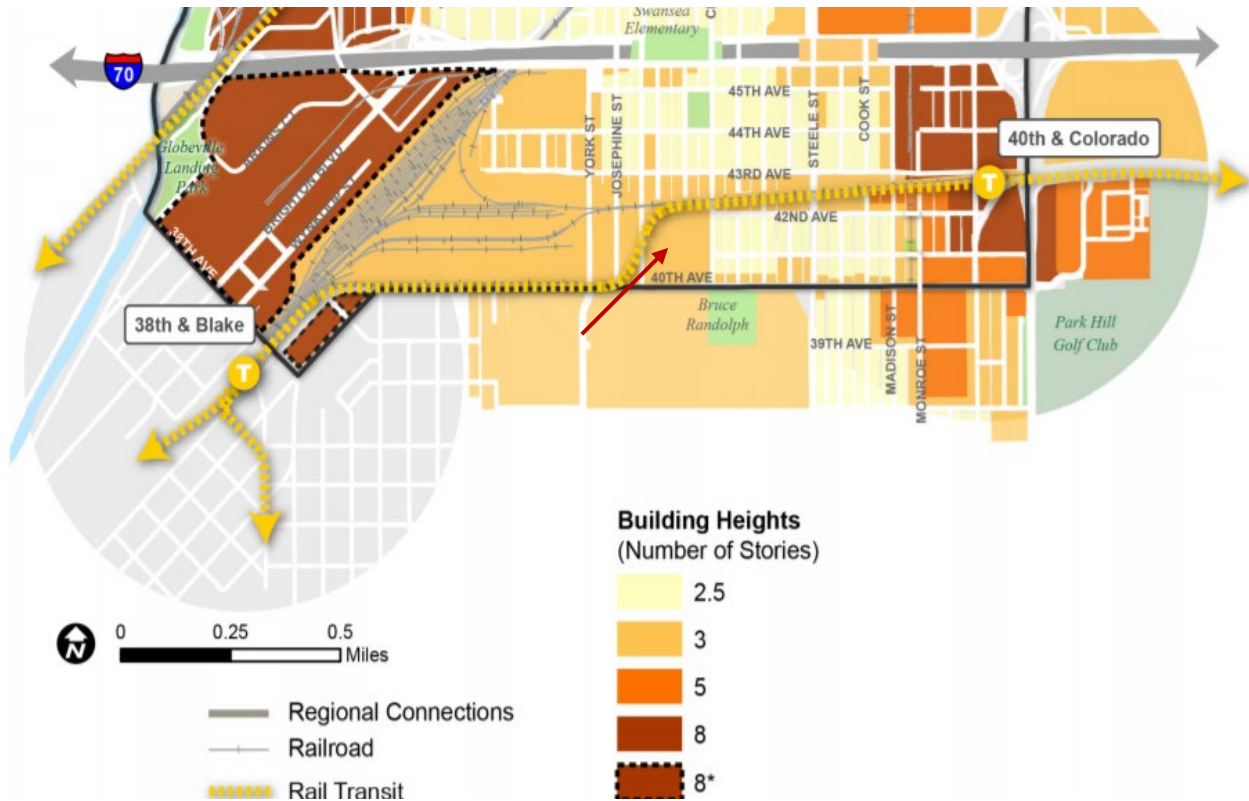
The Elyria and Swansea Neighborhoods Plan was adopted in May 2015 and established the vision, guiding principles and recommendations for the neighborhoods and station areas within the study area.

Elyria & Swansea Neighborhoods Plan Concept Land Use Map



The Plan identifies the subject site’s concept land use as Industrial Mixed Use. The plan describes Industrial Mixed Use as, “similar to Mixed Use and Employment uses, but with recognition that light industrial uses, such as light manufacturing and smaller warehouses are compatible with a variety of housing types...Land uses can be, but are not necessarily, mixed in each building, development, or block. Pedestrian access is of importance within the area, with residential and non-residential uses always within walking distance of one another” (p. 16). The proposed I-MX-3 district is consistent with the Plan’s development vision for the area by allowing a mix of compatible uses including residential and light industrial uses.

Future Maximum Building Heights Map



The Elyria & Swansea Neighborhoods Plan provides a maximum height recommendation of 3 stories for this site. The I-MX-3 proposed zone district has a maximum of 3 stories and therefore is consistent with the recommendations of the Plan (p. 31).

The plan also provides specific strategies for industrial areas. Applicable strategies include “Improve the relationship between industrial and adjacent residential uses by encouraging light industrial mixed-use infill development to serve as a buffer, or transition between existing residential areas and heavier industrial uses” (p. 94). The proposed I-MX-3 district will provide a transition between the industrial and rail facilities to the west and the residential area to the east, meeting the intent of the plan.

2. Uniformity of District Regulations and Restrictions

The proposed rezoning to I-MX-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 City by implementing the mixed-use industrial concept land use recommendations of Blueprint Denver 2002 and the Elyria and Swansea Neighborhoods Plan as described above. Encouraging the adaptive re-use and redevelopment of this vacant site will enable a mix of uses, creating job opportunities and housing within a mile of transit.

4. Justifying Circumstance

The application identifies several changes as the justifying circumstance under DZC 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.” The city adopted the Elyria & Swansea Neighborhoods Plan in 2015, after the current zoning was put in place in 2010, meeting subsection b of the criterion. In addition, there have been changing conditions in the area, with the construction of the 40th & Colorado and 38th & Blake Stations and opening of the University of Colorado A Line, as well as new investment in the area such as the nearby Eastside Human Services Center at 38th and Steele Street. These changing conditions, along with the recently adopted neighborhood plan, justify the rezoning to serve the public interest.

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

Neighborhood Context Description

The requested I-MX-3 zone district is within the Industrial Context. The context generally consists of areas of light industrial, heavy industrial and general industrial areas, as well as areas subject to transitions from industrial to mixed-use. The industrial context building forms are often tall single-story buildings that accommodate industrial uses and often include rail access (DZC, Section 9.1.1). As the subject site is in an area characterized by industrial uses, the proposed rezoning is consistent with the neighborhood context description.

Zone District Purpose and Intent

The Industrial Mixed-Use zone districts are “intended to develop in a pedestrian-oriented pattern, with buildings built up to the street and an active Street Level,” “serve as a transition between heavier industrial development and mixed-use areas” and “accommodate a variety of industrial, commercial, civic and residential uses” (DZC, Section 9.1.2). The proposed I-MX-3 district would provide a transition between the industrial uses to the west and the residential area to the east, as well as accommodate a variety of industrial, commercial, and residential uses and thus is consistent with the zone district purpose statement.

The intent of the I-MX-3 district is to be applied to “industrially-dominated areas served primarily by local or collector streets with a maximum building height of 3 stories” (DZC, Section 9.1.2.1.A.2). The requested rezoning is consistent with the intent of the Industrial Mixed-Use District because the area is primarily industrial and served by Clayton Street, which is a local street. The street classification serving the subject site and building heights are consistent with the proposed zone district purpose and intent.

Attachments

1. Application with legal description
2. Comment Letters (support and opposed)
3. Public comment letters submitted to council offices
4. Letters from Applicant illustrating compliance with Code and detailing their public outreach