



**TO:** Denver Planning Board  
**FROM:** Francisca Penafiel, Senior City Planner  
**DATE:** November 30, 2022  
**RE:** Official Zoning Map Amendment Application #2022I-00066

### Staff Report and Recommendation

Based on the criteria for review in the Denver Zoning Code (DZC), Staff recommends approval for Application #2022I-00066.

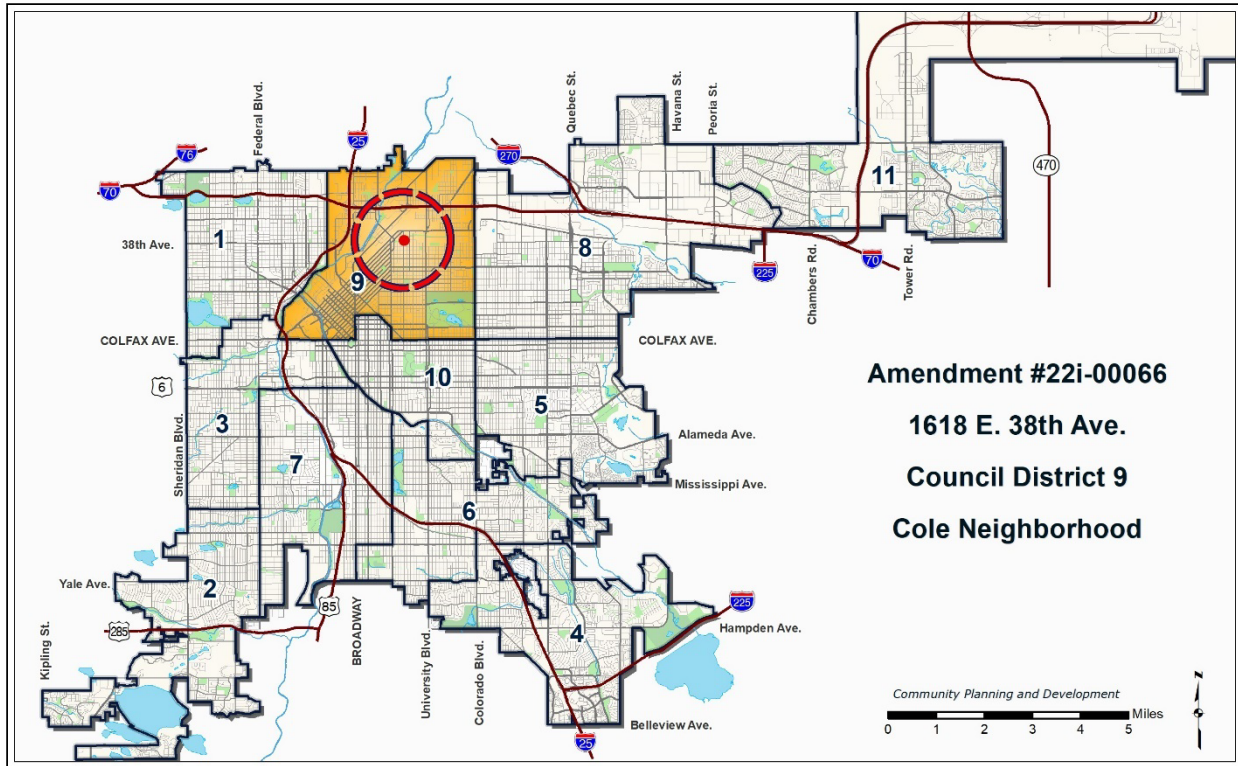
### Request for Rezoning

Address:	1618 East 38 <sup>th</sup> Avenue
Neighborhood/Council District:	Cole / Council District 9
RNOs:	Cole Neighborhood Association, United Community Action Network (UCAN), Inter-Neighborhood Cooperation (INC), Opportunity Corridor Coalition of United Residents, Reclaim the Eastside, United Northeast Denver Residents, Unite North Metro Denver, East Denver Residents Council, Strong Denver.
Area of Property:	6,063 square feet or 0.14 acres
Current Zoning:	PUD 17 (Former Chapter 59)
Proposed Zoning:	U-MX-2x
Property Owner(s):	1618 E 38 <sup>th</sup> Ave LLC
Owner Representative:	Ryan Goold

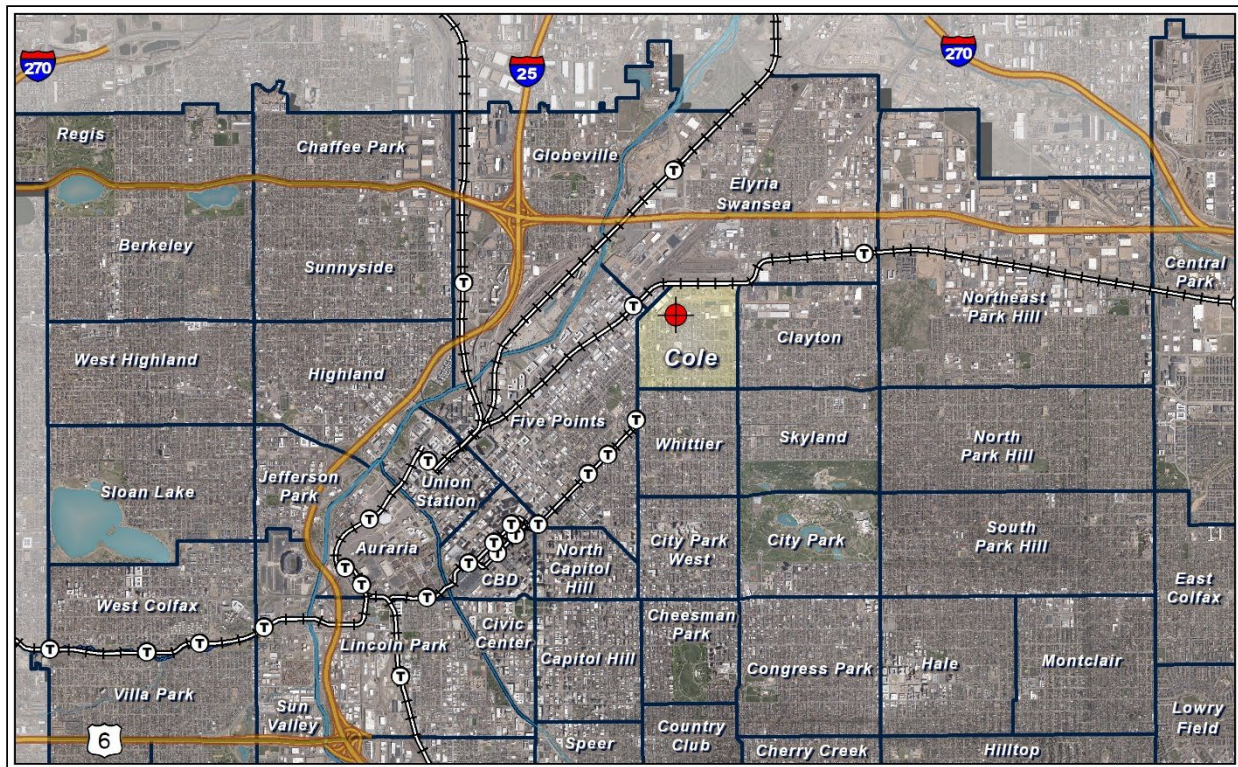
### Summary of Rezoning Request

- The subject property is in the Cole neighborhood, at the southeast intersection of East 38<sup>th</sup> Avenue and North Franklin Street.
- The property is occupied by a one-story building, built in 1888 as a church. In 1979, the property was rezoned from R-2 to PUD 17 to allow for a pottery studio with limited retail sale of work crafted on the premises, fine drafts gallery and limited pottery instruction. PUD 17 was specifically tailored for the existing building and use.
- Concurrent with the rezoning, the applicant is pursuing historic landmark structure designation for the existing structure, which means there will be significant protections in place to preserve the existing structure.
- The applicant is requesting the rezoning to facilitate the redevelopment of the property that is consistent with the recommendations in the adopted plans.
- The U-MX-2x (**U**rban, **M**ixed Use, **2** story maximum height) zone district is designed for small sites embedded within neighborhoods and is limited to low intensity uses. It is intended to provide safe, active, and pedestrian-scaled, diverse areas in established residential neighborhoods. The “x” indicates that allowed uses and building forms are more limited than in the U-MX-2 zone district. Further details of the zone districts can be found in Article 5 of the Denver Zoning Code (DZC).

### City Location



### Neighborhood Location





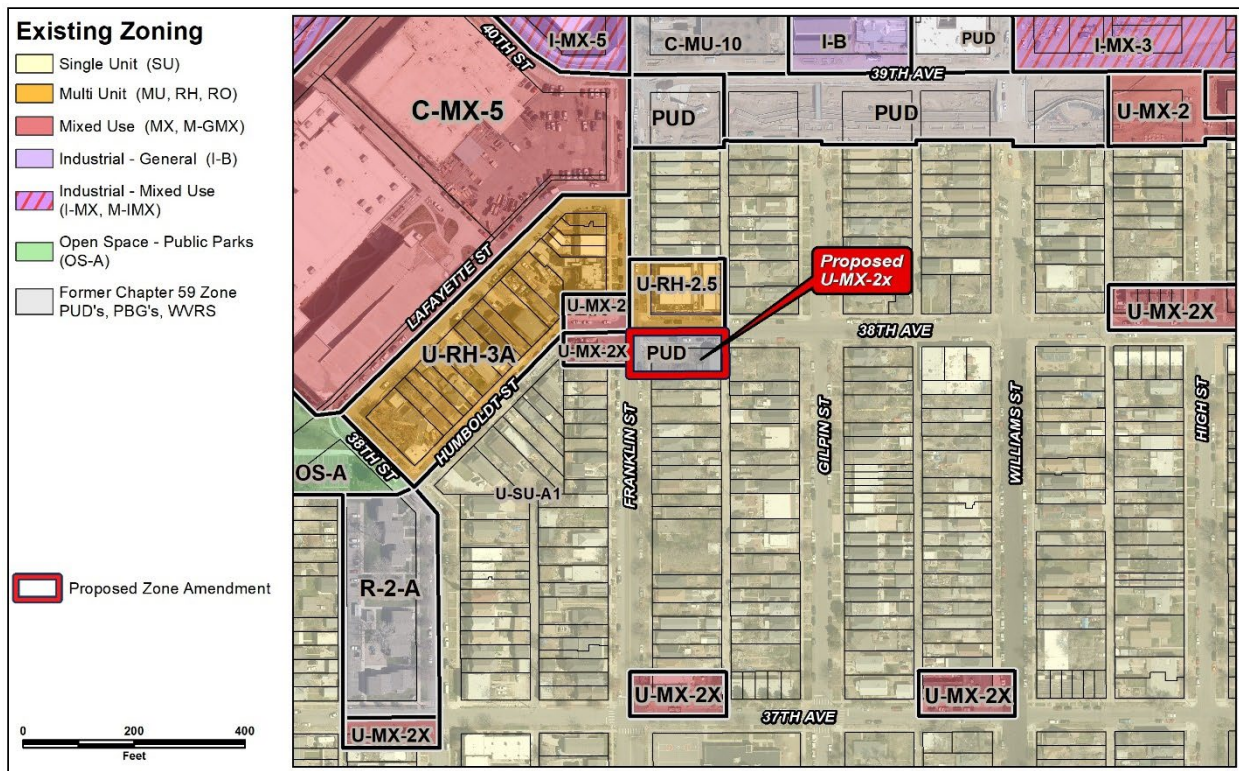
### 1. Existing Context

The property is in the Cole neighborhood at the southeast corner of East 38th Avenue and North Franklin Street. This area has a mix of single and multi-unit residential uses with mixed use and industrial uses to the north and northwest of the site. Wyatt Academy is one block south from the subject site and is one of the elementary schools that serves the neighborhood. St. Charles Recreation Center is two block west, and the Cole-Clayton Greenway is one block north of the subject site. Transit access includes the Regional Transportation District (RTD) 34 bus route along Bruce Randolph Avenue, RTD 44 bus route on Walnut and Marion Streets, RTD 12 bus route on Downing Street, and the RTD 24 bus route along North York Street. Additionally, the 38<sup>th</sup> and Blake Commuter Rail Station is located approximately 0.3 mile to the west of the subject site.

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 17	Single unit residential	1.5 story church	Generally regular grid of streets. Block sizes and shapes are consistent and rectangular with alleys. Garages are rear, side and front loaded with On-Street vehicle parking. One block west of the subject site on North Humboldt Street the grid transitions to the original angular street grid.
North	U-RH-2.5	Multi-unit residential	2.5 story row houses	
South	U-SU-A1	Single unit residential	1 story brick house with surface parking on the alley, behind the church	
East	U-SU-A1	Single unit residential	1 story brick house in double lot with detached garage in the alley	
West	U-MX-2x	Industrial/Vacant church	2 story brick structure	

## 1. Existing Zoning

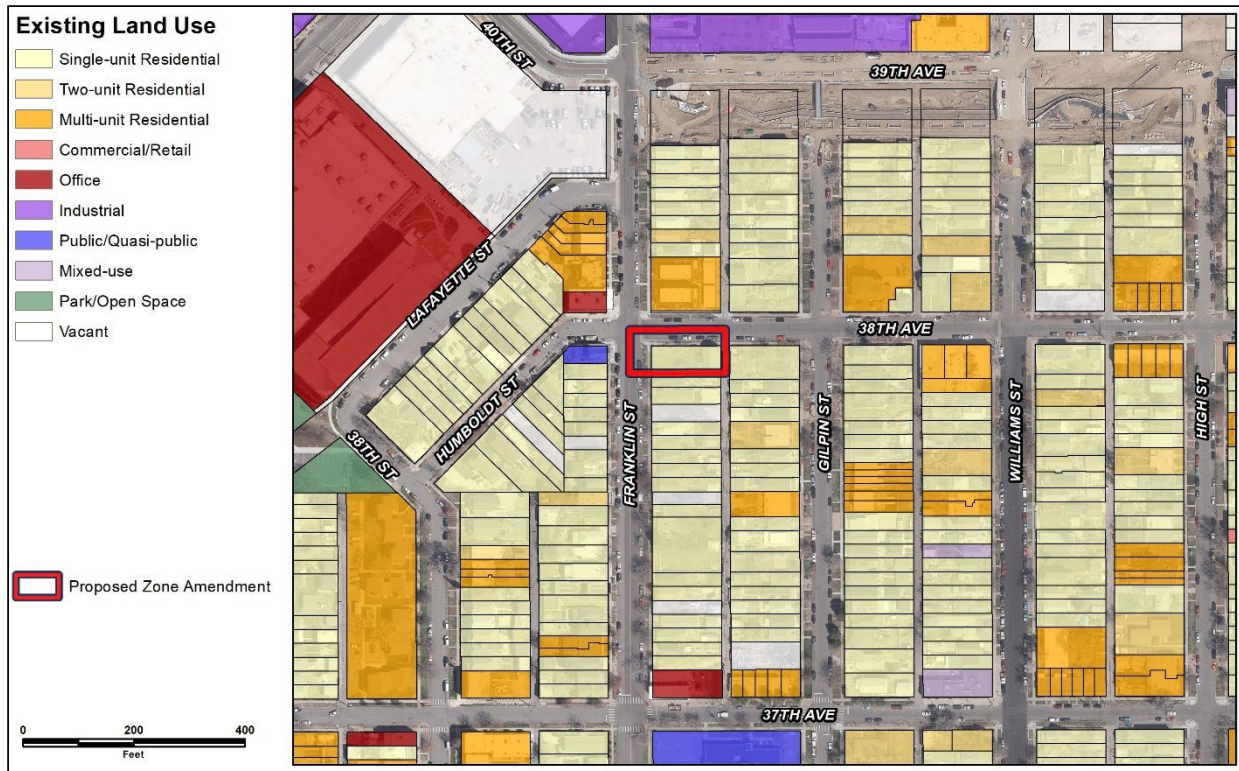


The subject site is zoned PUD 17, which is a Former Chapter 59 PUD zone district. The PUD is highly customized for the existing building and current user that has been in place since the PUD approval in 1979. Specifically, PUD 17 sets forth:

- Allowed uses: Artisan's studio, limited retail sale of work crafted on the premises, fine crafts gallery, and limited instruction. Plus uses by right in the R-2 zone district.
- Size of the proposed district: 6,060 square feet.
  - Open Space: 4,610 square feet.
  - Building: 1,450 square feet.
- Two off-street parking spaces.
- Height of main building: 30 feet.  
Height of kiln room: 12 feet.  
Height of kiln chimney: 20 feet.
- The existing structure abuts the front line of the zone lot, the rear line of the zone lot and the east side (alley) of the zone lot. The addition will be set back no less than 80 feet from the west side of the zone lot.
- Building covers approximately 1450 square feet, or 24% of land area.
- The PUD describes in detail the existing landscape and existing structure.

Except for the U-MX-2x to the west and northwest, the surrounding properties are zoned U-RH-2.5, or U-SU-A1 which are protected districts. If the subject property is rezoned to U-MX-2x, it will be subject to all protected district standards including additional setbacks and use limitations. For protected district standards see DZC page 5.3-23 for setbacks in the General building form and see applicable use limitations (Sections 11.4.8, 11.5.8.3, 11.10.12.1, etc.).

## 2. Existing Land Use Map



## 3. Existing Building Form and Scale



Subject property highlighted looking south-southwest (image from Zillow.com)

*All images from Google Maps Street View.*



Subject property looking southeast from the intersection of East 38<sup>th</sup> Avenue and North Franklin Street



North – Properties directly north to the subject site, across from East 38<sup>th</sup> Avenue.



Northwest – Property at the northwest intersection of East 38<sup>th</sup> Avenue and North Franklin Street.



West – Properties to the west of the subject site, across North Franklin Street.



South – Properties to the south of the subject site, on North Franklin Street.



East – Property to the east of the subject site, on East 38<sup>th</sup> Avenue (across the alley)

#### 4. Landmark Status

Under a separate Landmark Designation application, the applicant is proposing to locally designate the existing 134-year-old structure on the subject site as a Landmark Structure. This will ensure the historical, architectural, geographical, and cultural importance of this structure will be protected through City review of building modifications.

#### Proposed Zoning

The **U-MX-2x**, **U**rban, **M**ixed-use, **2**-story district is a mixed-use zone district in the urban context. It applies to small sites served primarily by local streets embedded within an existing or proposed neighborhood. These are typically one or two parcels and are limited to low scale building forms and low intensity uses. In the U-MX-2x zone district the Town House, General and Shopfront building forms are allowed primary building forms. Maximum height allowed is two stories or 30 feet. Further details of the zone district can be found in Article 5 of the Denver Zoning Code.

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

Design Standards	Existing PUD 17	Proposed U-MX-2x
Primary Building Forms Allowed	N/A	Town House, General and Shopfront
Height in Stories / Feet (max.)	30'	All forms: 2 stories / 30'
Primary Street Build-To Percentages (min.)	N/A	Town House, General:70% Shopfront: 75%
Primary Street Build-To Ranges (min./max.)	N/A	Town House: 10'/15' General: 0'/15' Shopfront: 0'/5' Residential Only Buildings: 0'/10'
Primary Street Setbacks (min.)	N/A	Town House: 10' General: 0' Shopfront: 0'
Building Coverages (max)	24%	N/A
Primary Street Transparency (min.)	N/A	Town House: 40% General: 40% Shopfront: 60%, residential only buildings: 40%



## **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.

**Denver Fire Department:** Approved – No comments.

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

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

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

Project Coordinator does not take exception with rezoning Application.

However, Concept Plan re-submittal is required to address Concept Plan review comments re: 2021PM0000700.

U-MX-2x Zone District, Town House Building Form: Should a proposed rezoning be approved, any new development will be required to demonstrate compliance with all applicable Building Form siting requirements. As illustrated with Zoning Review Comments, this site is abutting and adjacent to Protected Zone Districts. Development Plan will be required to demonstrate compliance with all applicable siting setbacks outlined re: Building Form Table. Additionally, Applicant Team is encouraged to review DZC Section 5.3.5.2 as Rooftop and/or Second Story Decks are limited in the rear 35% of the zone lot when adjacent to a Protected District. Applicant Team is also encouraged to review Compliant Structure requirements re: DZC Section 12.6 pertaining to if / how existing Church is to be adaptively re-used on site.

Please review Concept Plan Consolidated Comments (including Zoning Review Comments) for additional development review information and next steps.

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

DES 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. Please be aware that this property is in an area of known localized flooding, based on City stormwater modeling. The proposed project may require an analysis of its effect on this flooding and demonstrate to cause no more harm than previous to other properties as a result of development of the project. 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.

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

The Site is located within the boundaries of the delisted Operable Unit 1 (OU 1) of the Vasquez Boulevard/I-70 Superfund site which is associated with elevated levels of metals in soil. Under oversight by the U.S. Environmental Protection Agency (EPA), contaminated soils in residential yards were excavated and disposed off-site where necessary, and institutional controls were implemented for the remaining few residential properties where access was not granted. EQ records indicate the parcel addressed as 1618 E 38th Avenue was sampled by the EPA and it was determined no remediation was required because levels of arsenic and lead were below levels of health concern. Please contact a representative of EPA Region 8 if you wish more information on the sampling or cleanup activities (e.g., 303 312-6601).

**Department of Transportation & Infrastructure – City Surveyor:** Approved – See comments below.

Revised legal description matches legal contained in most recent vesting instrument. Preference would be to remove Parcel # as this is an Assessor's descriptor and not included in the legal description.

## 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:	05/16/2022
Applicant was allowed additional time to proceed while pursuing landmark designation concurrent with rezoning	05/16/2022-11/22/2022
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:	11/22/2022
Planning Board Hearing:	12/07/2022
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:	12/20/2022 (tentative)
Land Use, Transportation and Infrastructure Committee of the City Council:	01/03/2023 (tentative)
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:	01/23/2022 (tentative)
City Council Public Hearing:	02/13/2023 (tentative)

- **Registered Neighborhood Organizations (RNOs)**
  - Staff received one letter of support from the Cole Neighborhood Association.
- **Other Public Comment**
  - No other comment letters have been received.

## **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)*
- *Elyria and 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.

##### ***Strong and Authentic Neighborhoods Vision Element***

The proposed rezoning would enable adaptive reuse of the existing structure at a location where services and infrastructure are already in place. The site is within 0.3 mile of the 38<sup>th</sup> and Blake commuter rail station, and within ¼ mile of transit routes along East Bruce Randolph Avenue, East 40<sup>th</sup> Avenue, Downing Street and North York Street. The proposed U-MX-2x zoning would allow for a broad variety of neighborhood-appropriate uses including housing, services, some limited retail, and employment near transit, and it 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).

##### ***Environmentally Resilient Vision Element***

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

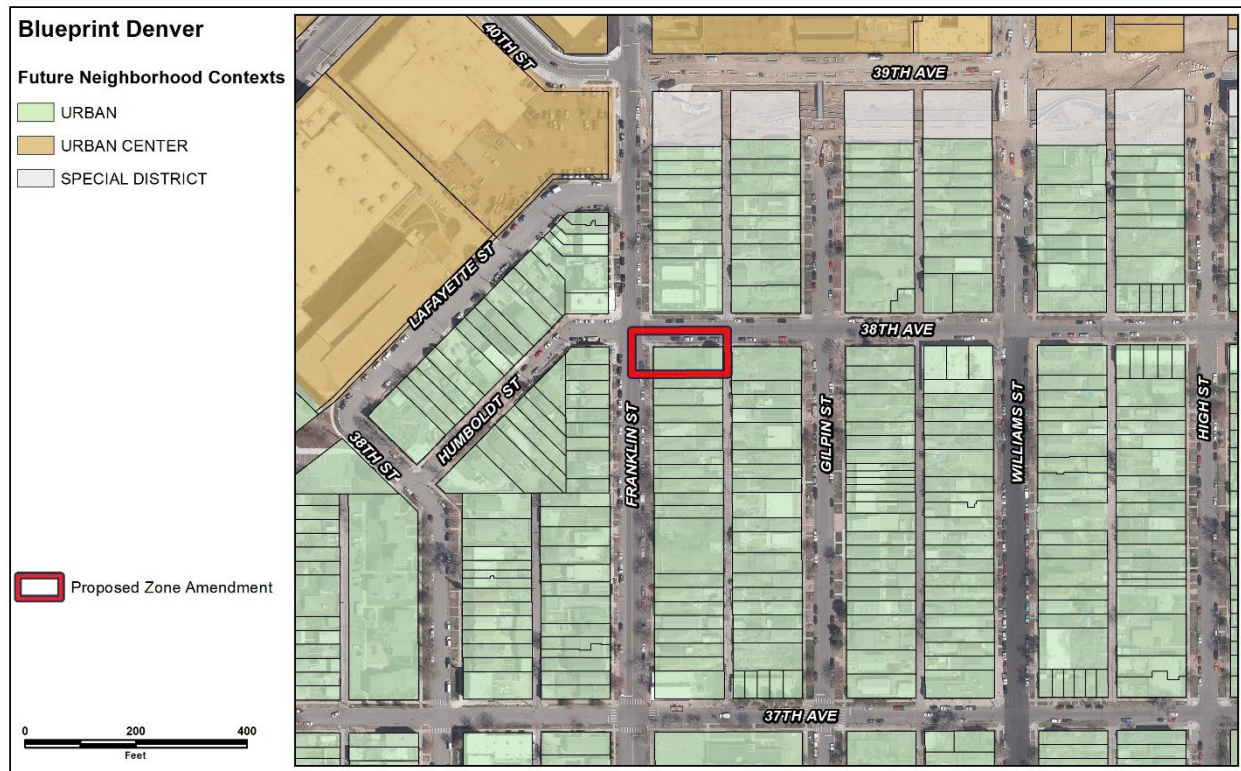
- Environmentally Resilient Goal 8, Strategy A – Promote infill development where infrastructure and services are already in place (p. 54).
- Environmentally Resilient Goal 8, Strategy B – Encourage mixed-use communities where residents can live, work and play in their own neighborhoods (p. 54).
- Environmentally 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 adaptive reuse of a structure at an infill location where services and infrastructure are already in place. The requested U-MX-2x zone district broadens the variety of uses allowing residents to live, work and play in an area well served by transportation mobility options. Therefore, the rezoning is consistent with *Denver Comprehensive Plan 2040* recommendations.

### **Blueprint Denver**

*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 the Residential Low future place within the Urban Context and provides guidance from the future growth strategy for the city.

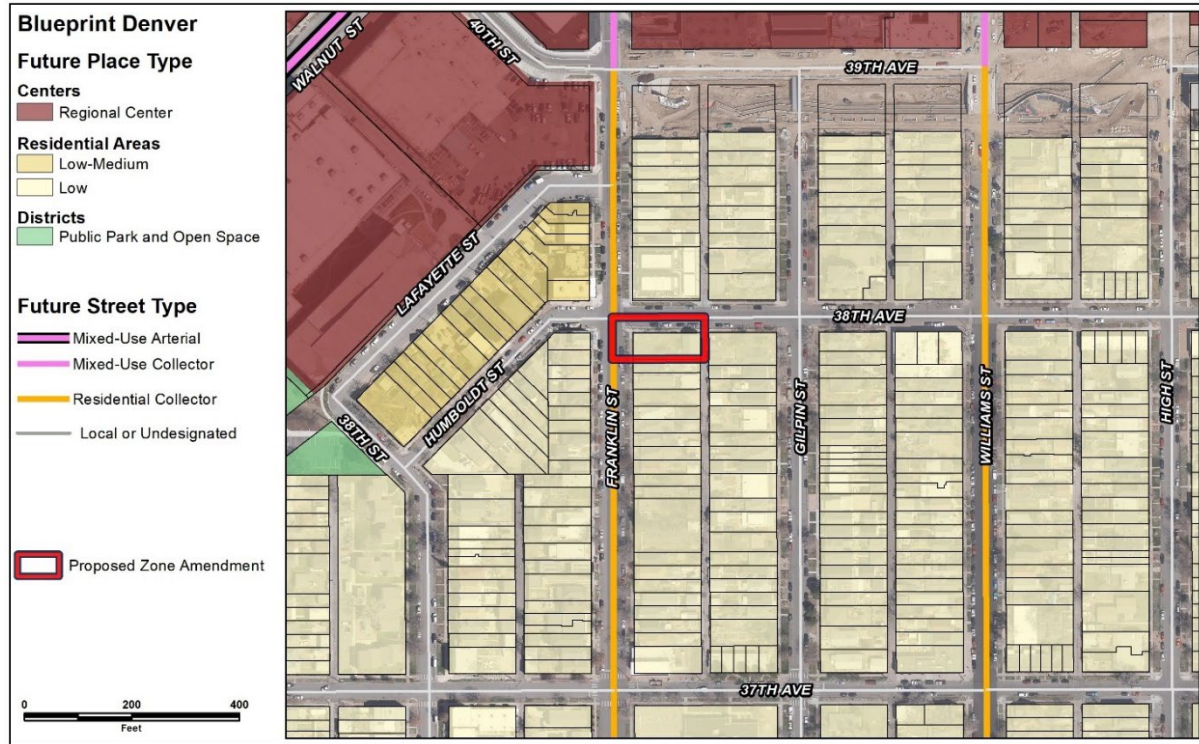
### **Blueprint Denver Future Neighborhood Context**



In *Blueprint Denver*, future neighborhood contexts are used to help understand differences in things like land use and built form and mobility options at a higher scale, between neighborhoods. Small area plans provide more certain guidance on topics including building heights (p. 66). The subject property is within the Urban neighborhood context. The land use and built form in the Urban neighborhood context is described as “Small multi-unit residential and mixed-use areas typically embedded in 1-unit and 2-unit residential areas” (p. 136).

The proposed U-MX-2x zone district is part of the Denver Zoning Code Urban Neighborhood Context that 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,” and “to enhance the convenience, ease and enjoyment of transit, walking, shopping and public gathering within and around the city’s neighborhoods.” (DZC Section 5.2.3.1)

### **Blueprint Denver Future Places**



The future places map shows which place description(s) should be used to evaluate the appropriateness of the proposed zone district (p. 66). The subject property is mapped as Residential Low in the Future Places Map. The Residential Low classification includes land uses and built forms that are “Predominantly one-and two-unit, though many areas are mostly one-unit. Includes Accessory Dwelling Units. In some contexts, some higher-intensity residential uses may be mixed throughout. Neighborhood-serving retail may be found in some key locations” (p. 148) and where “limited mixed-use can occur along arterial and collector streets, as well as where commercial uses have been already established. Vacant institutional uses on corners or select sites may be appropriate locations to introduce additional residential intensity...Buildings are generally up to 2.5 stories in height” (p. 230).

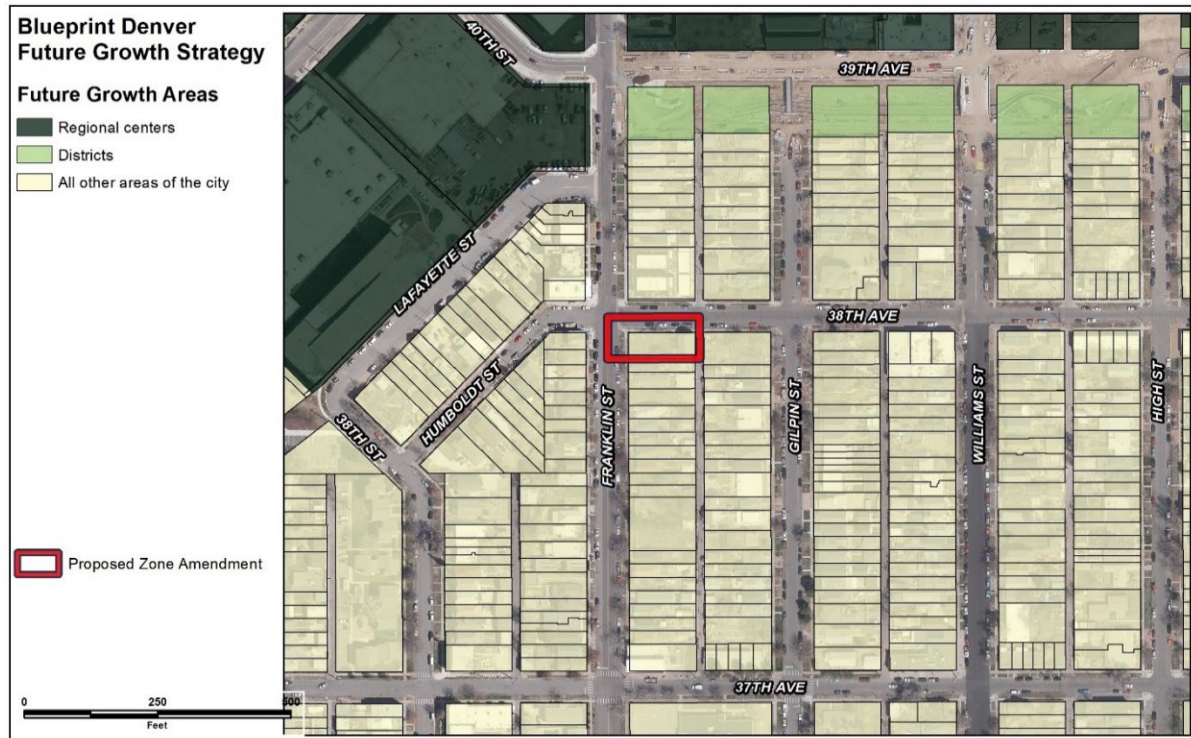
The proposed rezoning is consistent with the future places map because the subject site has historically been nonresidential and mixed use, is embedded in a 1-unit and 2-unit residential area, and is located along a collector street. The proposed U-MX-2x zone district is a mixed-use zone district that is calibrated for neighborhood-serving retail; and the proposed U-MX-2x zone district has a maximum 2-story building height.

### **Street Types**

In *Blueprint Denver*, street types work in concert with the future place to evaluate the appropriateness of the intensity of the adjacent development (p. 67). Blueprint Denver classifies 38<sup>th</sup> Avenue as an Undesignated Local Street. Local streets “are designed for the highest degree of property access and the lowest amount of through movement” (p. 154). North Franklin Street is a Residential Collector. Collectors “Collector streets are in between a local street and an arterial street; they collect movement from local streets and convey it to arterial street” (p. 154).

The proposed rezoning to U-MX-2x is consistent with the Blueprint Denver Undesignated Local and Residential Collector street classifications because U-MX-2x is intended for embedded commercial areas primarily served by local streets. 38<sup>th</sup> Avenue is an Undesignated Local, and Franklin Street is a Residential Collector, supporting a zone district that allows low-scale commercial uses.

### **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 "All other areas of the city, which are anticipated to see around 20% of new housing growth and 10% of new employment growth by 2040" (p. 51). The proposed map amendment to U-MX-2x is consistent with this map because will enable compatible adaptive reuse of the existing structure for this location to support continued viability of the existing building.

### **Blueprint Denver Strategies**

The following additional *Blueprint Denver* policies are applicable to the rezoning request:

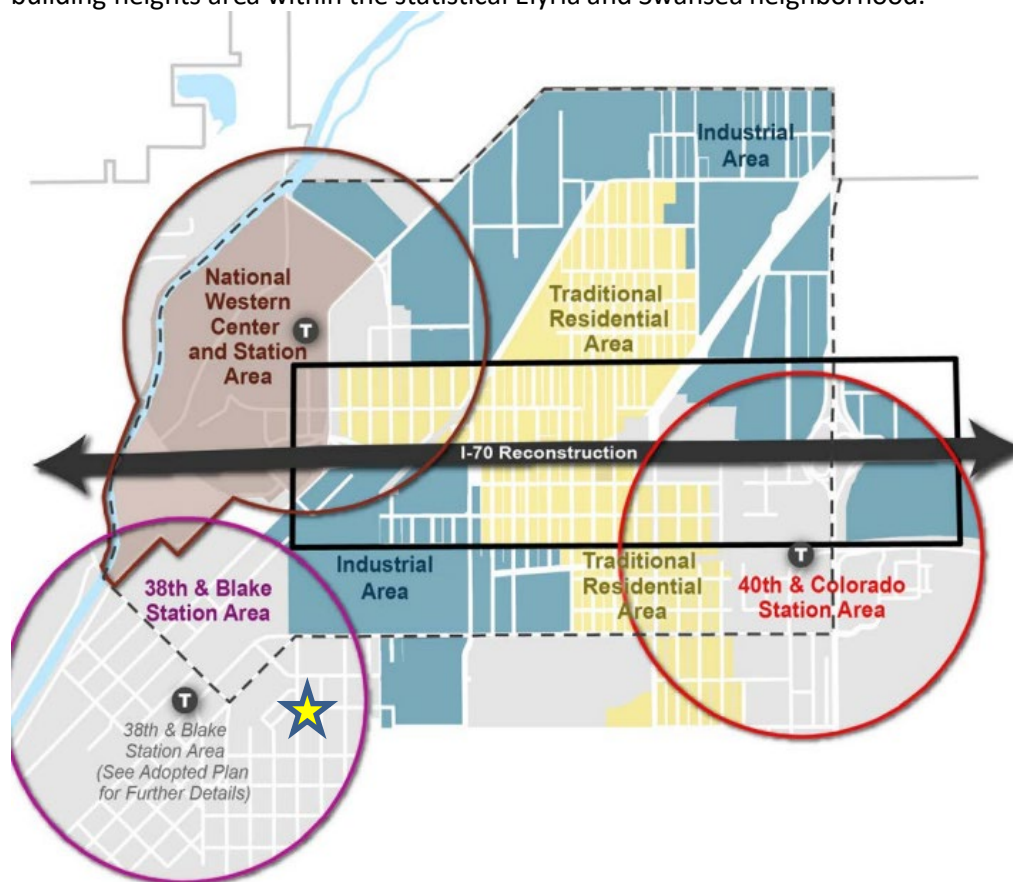
- Land Use and Built Form: General Policy 3, Strategy A - "Rezone properties from the Former Chapter 59 zoning code so that the entire city is covered by the DZC, including continuing to incentivize owners to come out of the old code" (p. 73).
- Land Use and Built Form: Design Quality & Preservation Policy 3, Strategy K - "Identify important mixed-use historic structures and encourage their continued use or adaptive reuse" (p. 102).

The proposed rezoning is also consistent with *Blueprint Denver* policies because it would eliminate a Former Chapter 59 zone district and bring the site into the Denver Zoning Code.

The proposed rezoning is also consistent with *Blueprint Denver* policies because it would facilitate adaptive reuse of an important historic mixed-use structure by allowing additional compatible uses.

### ***Elyria and Swansea Neighborhoods Plan***

The Elyria and Swansea Neighborhoods Plan was adopted by City Council in June 2015 and while the subject site is technically outside of the neighborhood plan boundary, the study area for the plan includes additional acreage lying beyond the statistical boundaries of the Elyria and Swansea within a half a mile radius of the 38<sup>th</sup> and Blake station. The plan reinforces recommendations from the adopted 38<sup>th</sup> and Blake Station Area plan (2009) while updating recommendations related to land use and building heights area within the statistical Elyria and Swansea neighborhood.



Although the site is located within ½ mile of the 38<sup>th</sup> and Blake Station, the site is located outside of the planning boundary of the 2009 38<sup>th</sup> and Blake Station Area Plan, which does not cover the entire ½-mile radius.

The proposed rezoning is consistent with many concepts and strategies found in the Elyria and Swansea Neighborhoods Plan. Key relevant components of the Plan are described below.

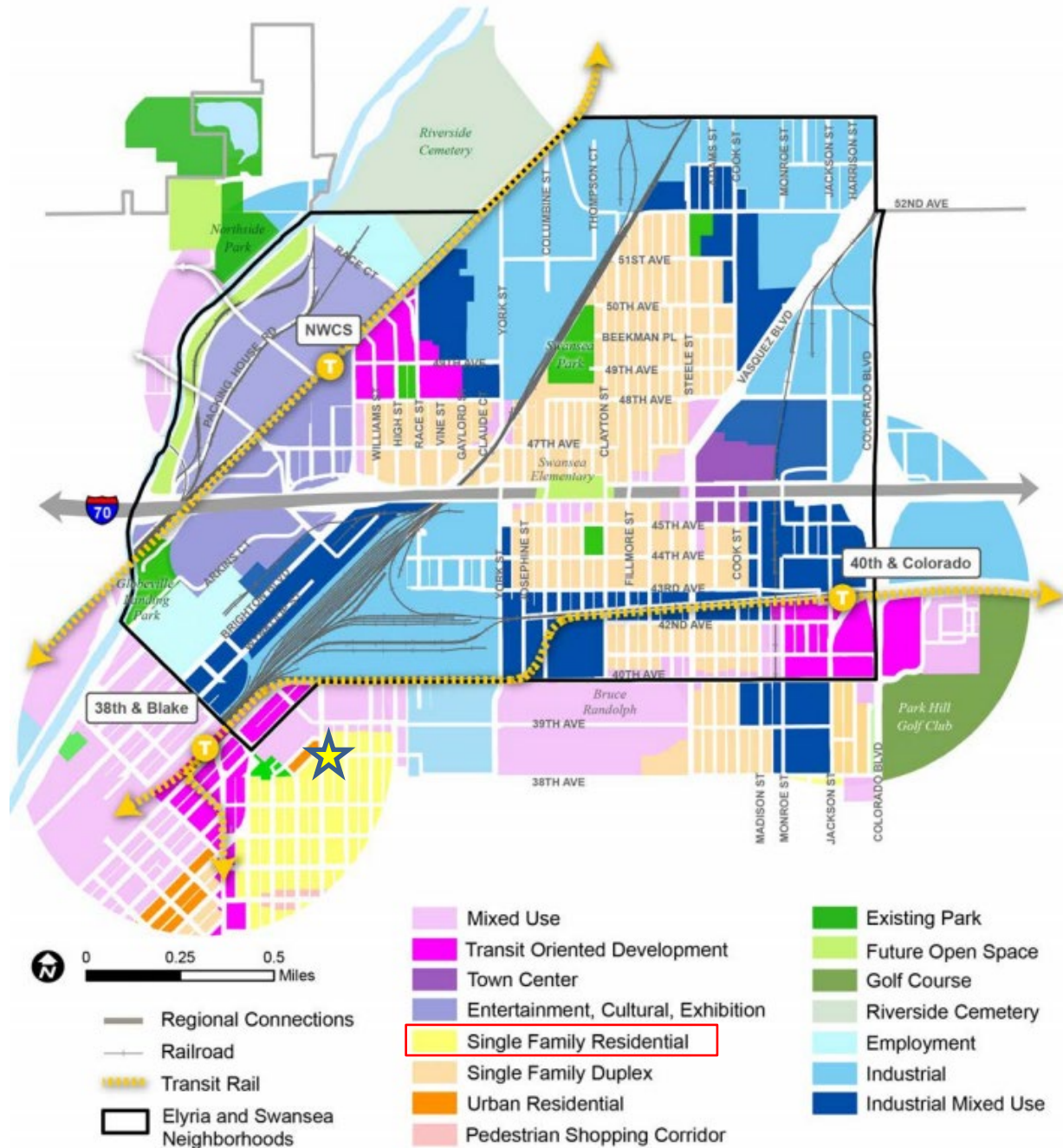
#### **A. Unique Issues and Opportunities**

Key Issues and Opportunities:

- “Historical Assets. Many structures and sites from the early days of Elyria and Swansea still exist today. Original homes and commercial structures contribute to the unique character of the neighborhoods. Elyria School is the only officially landmarked structure in Elyria and Swansea and Riverside Cemetery is the only district listed on the National Register. There is an opportunity to explore additional historic designations throughout the neighborhoods, especially with respect to the National Western Center.”



CONCEPT LAND USE MAP



The Concept Land Use Map identifies the subject site as Single Family Residential.

The following strategies apply under Recommendation 1: Establish a Balanced Land Use Strategy.

**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.”

**B.6 Build Transit Oriented Development:** “Encourage investment in higher density housing, services, and employment opportunities near rail stations to provide for a diverse population with safe and convenient pedestrian access to rail transit.”

The following strategy applies under Recommendation 5, Improve Access to Housing, Jobs, Services & Education:

**B.23 Increase access to housing.**

“- Work with property owners near transit stations to explore development options, and to identify funding sources to support income restricted residential development and, if necessary, environmental assessment and remediation.”

“- Identify vacant and distressed parcels, blocks and potential redevelopment sites with a priority to develop those sites for new residential housing.”

The proposed rezoning to U-MX-2x will facilitate mixed-use infill development in an underutilized site in close proximity to a commuter rail transit station. The proposed zone district would facilitate adaptive reuse of an important historic mixed-use structure by allowing additional compatible uses and allowing for the construction of new housing, which furthers goals for increasing access to housing and provide a diversity of housing types in the area. Given these factors, the proposed rezoning is consistent with the Elyria and Swansea Neighborhoods Plan.

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

The proposed rezoning to U-MX-2x 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-MX-2x.

**3. Public Health, Safety and General Welfare**

The proposed official map amendment furthers the public health, safety, and general welfare of the City primarily through the implementation of the City’s adopted plans and by allowing for redevelopment in a manner that will provide for the construction of additional neighborhood-serving residential and amenities, thereby providing residents more opportunities to live, work, and play within their neighborhood. The proposed rezoning would also facilitate housing density near a mix of uses and transit amenities.

**4. Justifying Circumstance**

The application identifies 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: ... c. That the City adopted the Denver Zoning Code and the property retained Former Chapter 59 zoning.” The zoning on the subject site is a Former Chapter 59 PUD. Rezoning from Former Chapter 59 zoning into the Denver Zoning Code is an appropriate justifying circumstance. Additionally, rezoning out of the existing PUD 17 will provide more flexibility to modify the site to accommodate changing conditions in the neighborhood as evidenced by recent redevelopment east and south of the subject site.

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

The requested U-MX-2x zone district is within the Urban Neighborhood Context. The neighborhood context generally consists of single-unit and two-unit residential uses with embedded small-scale multi-unit residential and commercial areas (DZC, Division 5.1).

The proposed rezoning is also consistent with the general purpose of mixed-use districts to promote safe, active, and pedestrian-scaled, diverse areas and enhance the convenience and ease of walking, shopping, and public gathering within and around the city's neighborhoods. The Mixed-Use districts are appropriate along corridors, embedded in neighborhoods and on large sites (DZC Section 5.2.3.1). The rezoning is consistent with the general purpose of the urban mixed use districts as this is an existing neighborhood site and will promote a pedestrian scaled area along 38<sup>th</sup> Avenue.

According to the zone district intent stated in the Denver Zoning Code, the U-MX-2x district "applies to small sites served primarily by local streets embedded within an existing or proposed neighborhood. These are typically one or two parcels and are limited to low scale building forms and low intensity uses" (DZC Section 5.2.3.2.B). The subject property is one parcel embedded in an existing neighborhood at the intersection of one local and one residential collector street. The proposed U-MX-2x zoning would allow low-scale buildings and uses consistent with the purpose and intent of the zone district.

### **Attachments**

1. Application
2. Current PUD 17
3. Public Comments