



TO: Denver Planning Board
FROM: Ella Stueve, Senior City Planner
DATE: April 10, 2019
RE: Official Zoning Map Amendment Application #2018I-00059

Staff Report and Recommendation

Based on the criteria for review in the Denver Zoning Code, Staff recommends approval for Application #2018I-00059.

Request for Rezoning

Address:	7698 Jewell Avenue, 1901 S. Ulster Street
Neighborhood/Council District:	Indian Creek Neighborhood / Council District 6
RNOs:	Indian Creek Neighborhood Organization, Inter-Neighborhood Cooperation
Area of Property:	+/- 575,900 square feet or 13.22 acres
Current Zoning:	S-SU-D; OS-C
Proposed Zoning:	OS-C; OS-B with waiver
Property Owner(s):	Denver Water
Owner Representative:	Maddie Spinner

Summary of Rezoning Request

- The proposed rezoning is in Council District 6 within the Indian Creek statistical neighborhood. The site is located along the eastern bank of Cherry Creek south of Jewell Avenue and north of East Iliff Avenue.
- The proposed rezoning is a portion of the 35 acres owned by Denver Water in this location, which contains multiple wells, including one that is still operable. Denver Water plans to convey 7 acres to Arapahoe County and 19 acres to Denver Parks and Recreation as part of the Cherry Creek Corridor Improvements project. This project, led by the Urban Drainage Flood Control District in collaboration with the City and County of Denver, Arapahoe County, Southeast Metro Stormwater Authority, and Denver Water, aims to restore a one-mile reach of the Cherry Creek corridor between South Quebec Street and East Iliff Avenue. The project will address severe erosion and degraded vegetation. In addition to enhancing stream function and the ecological health of the corridor, the project will also provide open space for passive and active recreation, including a trail with local pedestrian connections from adjacent communities.¹
- Of the 19 acres to be obtained by Denver Parks and Recreation, 4.6 acres are currently S-SU-D. Denver Water and Denver Parks and Recreation are applying to rezone the S-SU-D portion to OS-C to facilitate the Cherry Creek Corridor Improvements project.

¹ Cherry Creek Restoration Project webpage on the Urban Drainage and Flood Control District website:
<https://udfcd.org/cherry-creek-restoration-project/>

- Denver Water intends to retain the remaining 8.6 acres, which contains the active well, for ongoing utility purposes. The applicant is requesting to rezone to OS-B with a waiver to align with the current utility operations and to enable future operational needs. The waiver modifies the use limitations for utilities to add specific water utility uses.
- The Open Space Conservation District (OS-C) is intended to allow for conservation of open space and natural areas. The Open Space Recreation District (OS-B) is intended to protect and promote open space and parks not otherwise owned, operated or leased by the City. The district allows more building coverage and a larger variety of active recreational facilities than in the OS-C district. Further details of the zone districts can be found in Article 3 and Article 9 of the Denver Zoning Code (DZC).

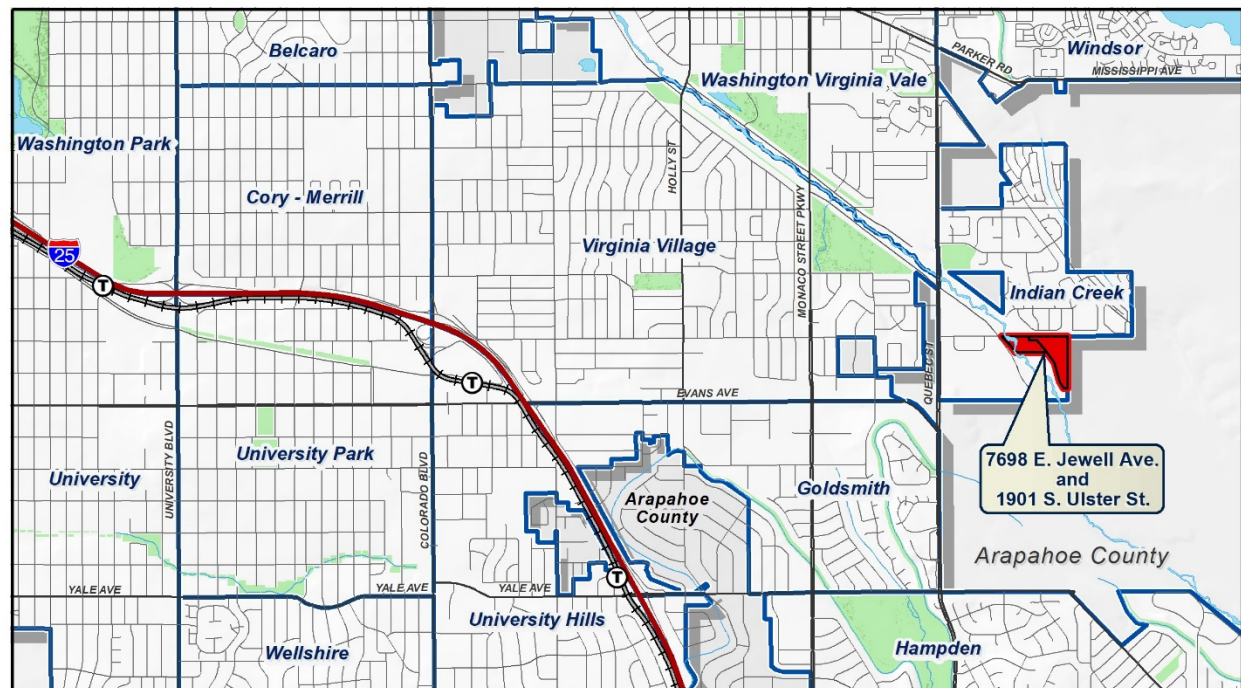
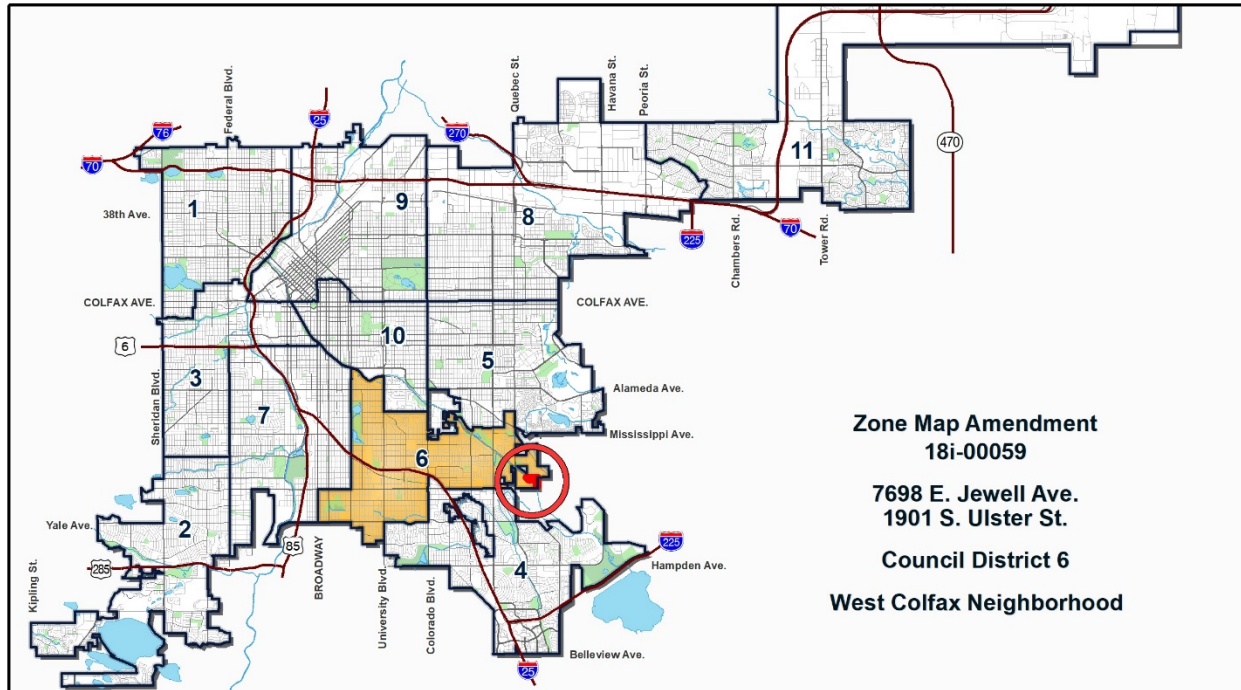
Waiver

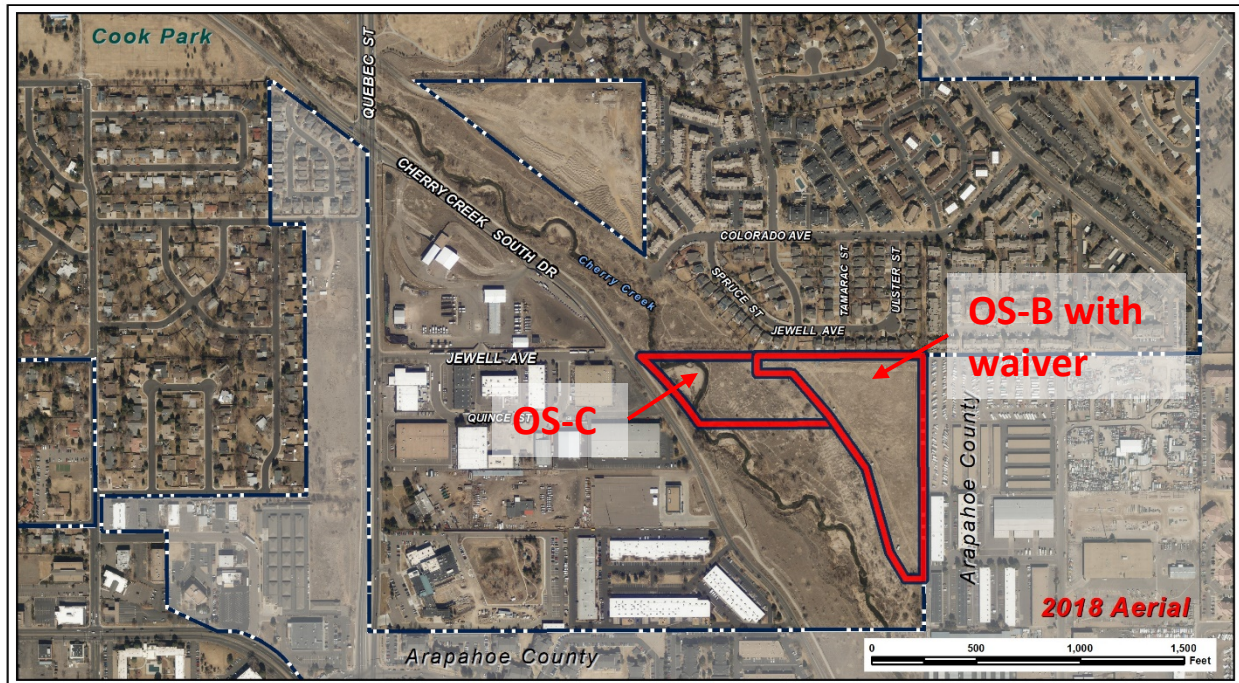
Section 12.4.10.6 of the DZC enables official map amendment applicants to request a waiver of certain rights or obligations under the proposed zone district. This application includes a request for one waiver, as detailed in the attached application and summarized below:

The use limitations for utility uses in OS-B allow a water reservoir and a water filtration plant. The proposed waiver would also allow the following additional uses:

- Water galleries, wells and pumping stations for water supply or recharge
- Water utility operations, including but not limited to offices, storage of materials and waste, storage of heavy equipment and the parking/storage of commercial vehicles, including incidental minor repair and maintenance services conducted on such equipment/vehicles, where such offices, materials and waste, equipment and vehicles are commonly associated with water utility operations.

The waiver retains the current OS-B requirement for Special Exception Review for utility uses, and it includes spacing required from Residential Zone Districts for enclosed uses (200 feet) and unenclosed uses (500 feet). These spacing requirements may be reduced or eliminated through the Special Exception Review process if the Board of Adjustment is satisfied that any potential adverse impacts can and will be adequately mitigated. This combination of listed spacing requirements with the possibility for the Board of Adjustment to reduce or eliminate them provides protection to the adjacent residential neighbors against negative impacts while providing Denver Water flexibility to respond to future water utility needs.





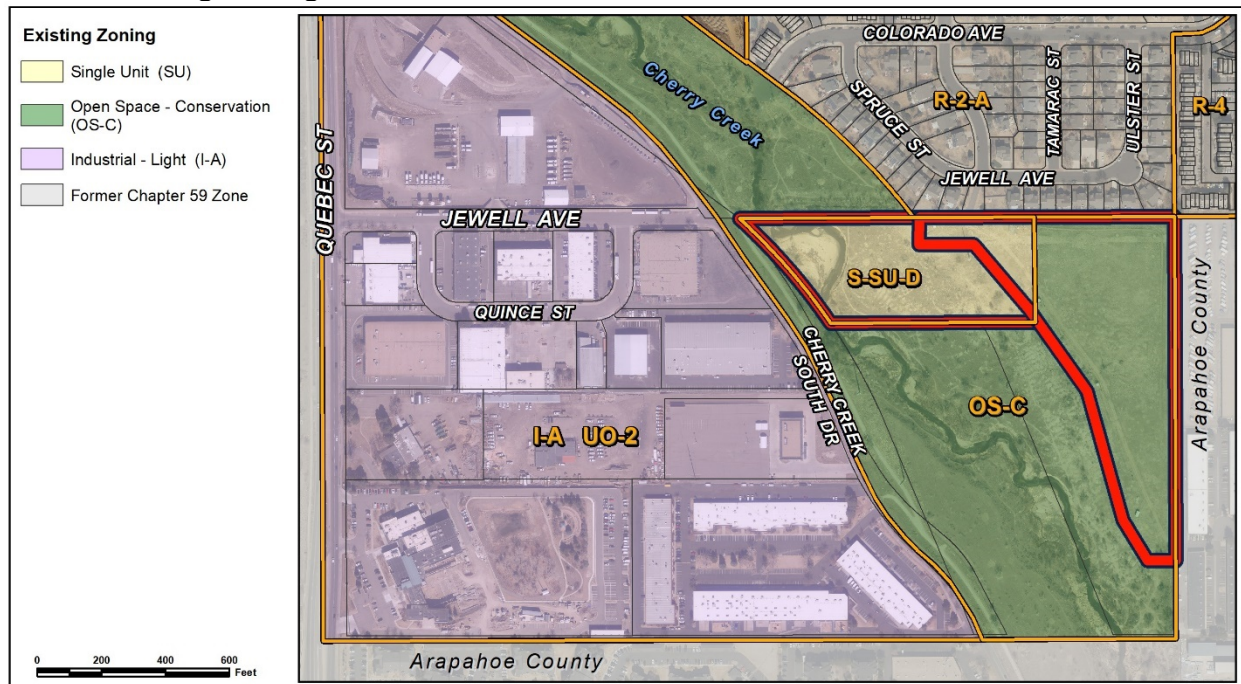
Existing Context

The surrounding neighborhood is a mix of low-density residential and industrial uses, both within Denver as well as directly east of the site in Arapahoe County. City of Chennai Park and Cook Park are approximately half a mile to the northwest. The 83D bus stops on S. Quebec Way at E. Colorado Avenue approximately a quarter mile to the 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	S-SU-D, OS-C	Water utility, vacant	None	Generally an irregular pattern of block shapes with curvilinear streets within a modified grid with no alleys
North	R-2-A and OS-C	Single-unit residential, Cherry Creek	2-story residential buildings with large setbacks	
South	OS-C	Vacant	None	
East	I-1 Light Industrial (Arapahoe County zoning)	Industrial	Single-story storage and warehouse buildings	
West	OS-C, I-A UO-2	Vacant, Industrial	Single-story industrial buildings	

1. Existing Zoning



The existing zoning on the northwest portion of the subject property is S-SU-D, which is a single unit district in the Suburban Neighborhood context. It allows suburban houses with a minimum zone lot area of 6,000 square feet. Lots are typically 50 feet wide. The Suburban House is the only allowed primary building form. Allowed accessory building forms are the detached garage and other detached accessory structures building forms. The maximum allowed height for primary structures is 30 to 35 feet, and setback requirements are 5 feet for the sides and 12 to 20 feet for the rear. Primary street setbacks are block sensitive, depending on the setbacks of nearby structures. There is no minimum parking requirement for single-unit residential uses. For additional details of the zone district, see DZC Article 3.

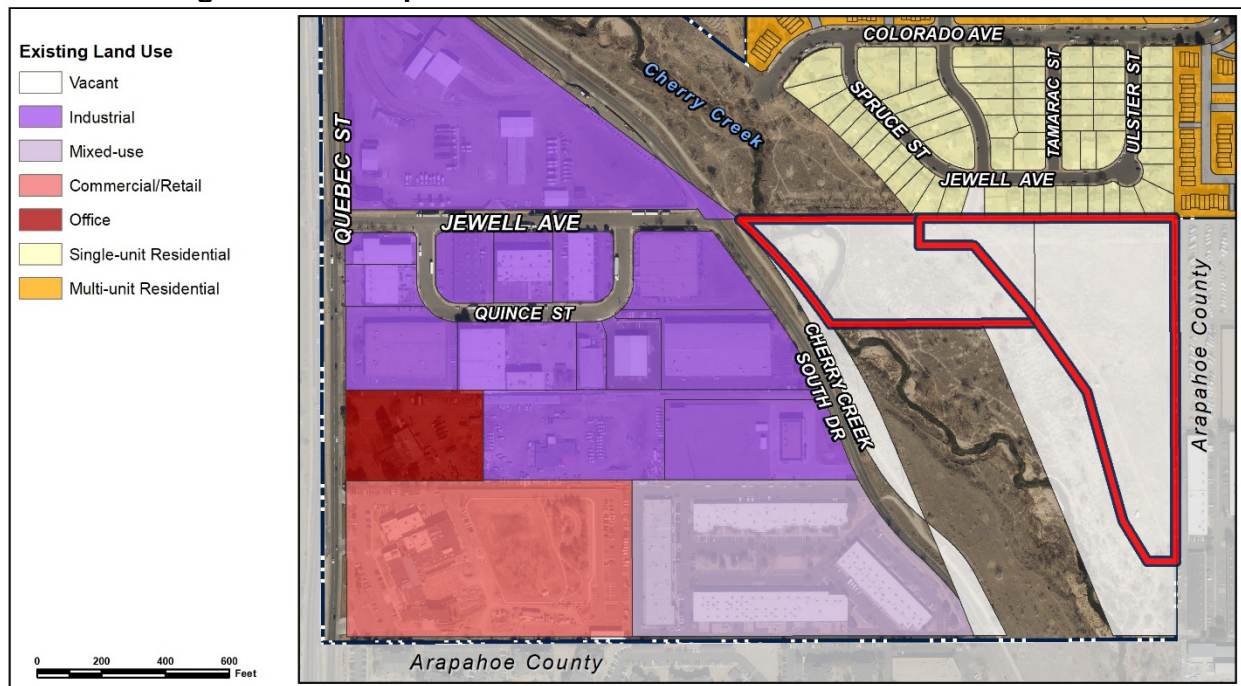
The rest of the subject property is OS-C, which allows for conservation of open space and natural areas, regardless of ownership. OS-C is not intended for development, though limited passive recreation is allowed. Building in OS-C are limited to three stories and 40 feet with 20-foot Primary Street, Side Street, Side interior, and Rear setbacks.

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

	Applicable Primary Building Forms	
	Suburban House	OS-B and OS-C Primary Building Form
Existing District: S-SU-D	X	
Existing District/Proposed District: OS-C		X
Proposed District: OS-B with Waiver		X

"X" signifies an allowed building form

2. Existing Land Use Map



3. Existing Building Form and Scale



Subject site viewed from Cherry Creek South Drive across Cherry Creek facing east



Subject site access (far left) from Jewell Avenue and single-unit residential buildings viewed from S Trenton Street north of Jewell Avenue looking southwest (*images from Google Maps*)



Industrial properties viewed from Jewell Avenue at Cherry Creek South Drive facing southwest



Industrial properties viewed from Valentia Street facing west (in Arapahoe County)



Residential development viewed from Cherry Creek South Drive at Trenton Way facing southwest

Summary of City Agency Referral Comments

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

Assessor: Approved – No Response

Asset Management: Approved – No Response

Denver Public Schools: Approved – No Response

Department of Environmental Health: Approved – See Comments

Denver Department of Public Health and Environment (DDPHE) is aware of potential environmental concerns on Parcel A and Parcel B. Fill material up to 13 feet thickness likely exists on portions of the Parcels. The fill material consists of building demolition and road construction debris, some of which contains suspect asbestos containing materials (ACMs). DDPHE concurs with the rezoning, but future use should, without proper controls, avoid disturbing areas where ACM is likely to be encountered; at least six-inches of top soil should cover exposed debris and a materials management plan should be developed and implemented for future activities on Parcels A and B.

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.

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 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 -- ROW - City Surveyor: Approved -- No Comments

Development Services - Transportation: Approved -- No Comments

Development Services -- 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, floodplain permits, 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 – See Comments
 Approve Rezoning Only – Will require additional information at Site Plan Review.

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:	12/18/18
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:	4/1/19
Planning Board Public Hearing	4/17/2019
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:	TBD
Land Use, Transportation and Infrastructure Committee of the City Council moved the bill forward (tentative):	5/7/2019
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:	TBD
City Council Public Hearing (tentative):	6/17/2019

- Denver Water held two public meetings, reached out to the two RNOs and two homeowner associations, attended a Concha Townhome Association meeting, and mailed letters to 450

nearby residences and businesses. In this process, the applicant identified one neighborhood concern that the property being conveyed to Denver Parks and Recreation remain open space and not be sold for other development. This is consistent with the proposed OS-C for this portion of the property. More information on the public outreach is available in Attachment 3.

- **Registered Neighborhood Organizations (RNOs)**

As of the date of this staff report, no comments have been received from RNOs.

- **Other Public Comment**

As of the date of this staff report, two letters were received expressing support for the application as it facilitates the larger Cherry Creek Corridor Improvement project. The full text of these public comments are included as an attachment to the application.

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 if the rezoning is approved prior to the anticipated adoption of the Denverright plans (April 22, 2019):

- *Denver Comprehensive Plan 2000*
- *Blueprint Denver (2002)*

If the proposed map amendment is approved by City Council after the adoption of the Denverright plans (anticipated April 22, 2019), the following plans would apply instead:

- *Denver Comprehensive Plan 2040*
- *Blueprint Denver (2019)*

The following plan will apply to this property both before and after April 22, 2019:

- *Cherry Creek Greenway Master Plan (2000)*

Denver Comprehensive Plan 2000

The proposed rezoning is consistent with many *Denver Comprehensive Plan 2000* strategies, including:

- Environmental Sustainability Strategy 2-C – *Conserve water and improve water quality by supporting and enhancing the Denver Water Board's policies established in Water for Tomorrow: An Integrated Resource Plan, [including to] provide water and water services in an*

environmentally sensible manner, and support citizens' desires for a vital natural urban environment and abundant outdoor recreation.

- Environmental Sustainability Strategy 2-F – *Conserve land by protecting natural corridors, wetlands and floodplains from the encroachment of development.*
- Environmental Sustainability Strategy 4-C – *Respect, conserve and expand wildlife habitat, watersheds, open space and other natural resources when planning, designing and building new projects.*
- Environmental Sustainability Strategy 5-E – *Cooperate with neighboring jurisdictions to develop shared open space and outdoor recreation amenities.*
- Legacy Strategy 9-C: *Protect and expand the network of parkways and trails connecting Denver's parks to the regional system.*
- Legacy Strategy 10-B: *Identify areas to be maintained in a natural state as "breathing room" for residents and habitat for urban wildlife, such as the South Platte River and Cherry Creek corridors and others.*
- Legacy Strategy 11-C: *Encourage metro-wide cooperation to further develop regional trail systems, bicycle and pedestrian amenities, and transit access to parks, recreation and open space.*
- Neighborhood Economic Activity Strategy 5-A: *Make neighborhoods clean and safe, and provide park, recreational and cultural amenities nearby.*
- Metropolitan Cooperation Strategy 1-C: *Seek out and be more receptive to opportunities for cooperation with other jurisdictions on issues that can only be addressed regionally, such as mobility; air quality; water conservation, quality and supply.*
- Metropolitan Cooperation Strategy 5-A: *Increase access to parks and open space through coordinated multijurisdictional planning and physical connections.*
- Metropolitan Cooperation Strategy 5-B: *Actively participate in water issues that affect the metropolitan area.*

The proposed map amendment will encourage conservation of the land adjacent to Cherry Creek for water quality and recreation uses, and it will also enable ongoing use of the historic gallery wells for potential future water supply needs. The OS-C zone district and the OS-B zone district with this waiver allow these specific uses. Therefore, the proposed rezoning is consistent with these plan recommendations.

Denver Comprehensive Plan 2040

Although Comprehensive Plan 2040 is not yet adopted, it is anticipated to be considered by City Council by the time this map amendment would be at City Council for public hearing and would be relevant to this request. As such, this staff report provides an analysis of the most current public draft of the plan. The proposed rezoning is consistent with many of the draft *Denver Comprehensive Plan 2040* strategies, including:

- Environmentally Resilient Goal 3, Strategy B- *Support Denver Water's Integrated Resource Plan, including strategies to reduce water use, ensure use of metering or submetering in multi-tenant buildings, increase water recycling and efficiency and promote alternative water sources (p.52).*

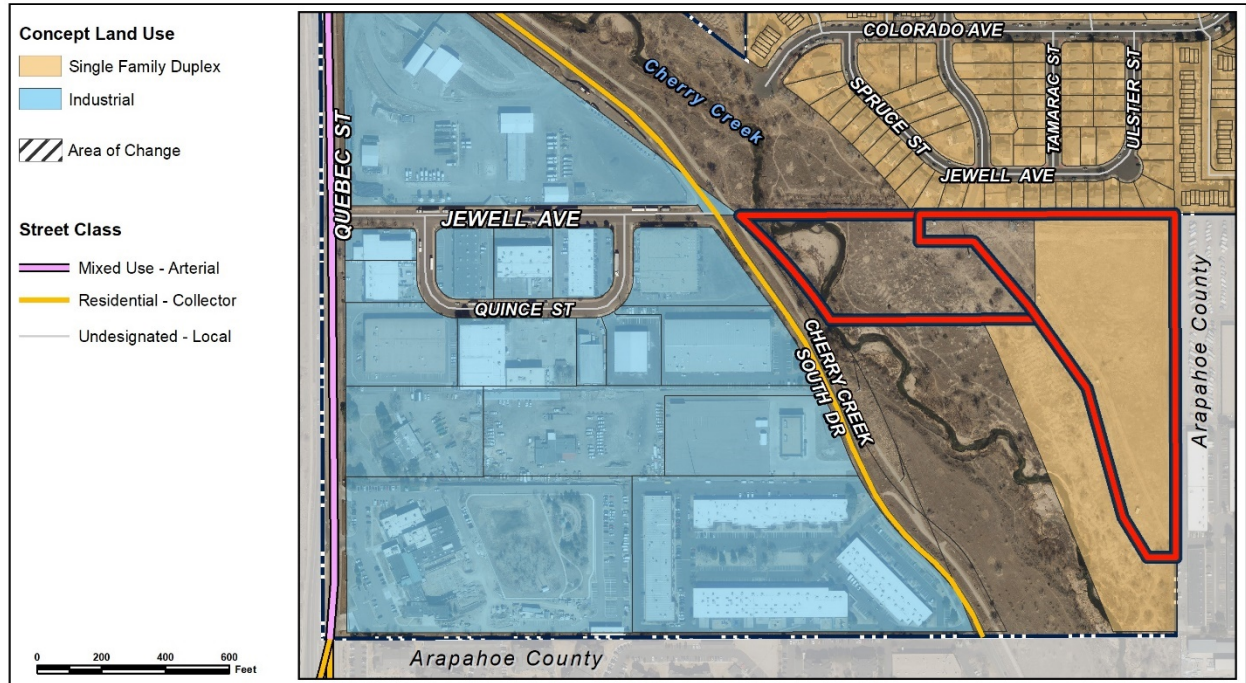
- Environmentally Resilient Goal 4, Strategy E- *Prepare a multi-disciplinary water plan that identifies high-need areas, uses innovative best practices and prioritizes both green and gray infrastructure to treat and manage stormwater runoff* (p.53).
- Environmentally Resilient Goal 4, Strategy B- *Restore and enhance waterways so they serve as community amenities* (p.53).
- Environmentally Resilient Goal 4, Strategy C- *Improve and protect all of Denver's waterways so they are swimmable and fishable and promote life and safety* (p.53).
- Environmentally Resilient Goal 6, Strategy A- *Recognize parks, public space, trees and plants as vital elements of green infrastructure and ensure that the provision of these elements keeps pace with Denver's growth* (p.54).
- Environmentally Resilient Goal 6, Strategy B- *Connect parks, open spaces, trails, river corridors, parkways and street trees into an integrated green infrastructure network* (p.54).
- Environmentally Resilient Goal 11, Strategy A- *Coordinate emergency planning with regional partners and the state to reduce the impact of emergencies on Denver's residents, businesses and environment* (p.54).
- Connected, Safe and Accessible Places Goal 4, Strategy A – *Ensure focused transportation investments – on streets as well as neighborhood trails – in areas with populations more dependent on walking, rolling and transit* (p. 41).
- Healthy and Active Goal 1, Strategy A – *Recognize parks, recreation and the urban forest as vital components of a complete community* (p. 58).

The proposed OS-C zone district will enable recommended restoration and recreational use of Cherry Creek and the adjacent land. It will also enable improvement to the Cherry Creek trail as a multi-modal transportation connection with natural green infrastructure. The proposed OS-B zone district with this waiver enables ongoing water utility uses as well as additional water utility operations (including housing crew and equipment for scheduled and emergency dispatching) in the future on a site that has a long history of water utility uses. Therefore, the rezoning is consistent with Denver *Comprehensive Plan 2040* recommendations.

Blueprint Denver (2002)

According to the 2002 Plan Map adopted in Blueprint Denver, the majority of this site has a concept land use of Single Family Duplex and is located in an Area of Stability. The portion of the site that is currently zoned S-SU-D does not have a mapped land use concept.

Future Land Use



Single Family Duplex areas are “are moderately dense areas that are primarily residential but with some complementary, small-scale commercial uses. However, the employment base is minor compared to the housing base” (p. 42). The Open Space zone districts can be “embedded in a neighborhood” (DZC, 9.3.1). The OS-C zone district is intended to allow for conservation of open space and natural areas, which appropriate for a residential neighborhood, and particularly adjacent to and including Cherry Creek. Additionally, this portion of the subject site that does not have a mapped land use concept is consistent with the remainder of the Cherry Creek corridor, which is also unmapped and is zoned in the OS-C zone district. The OS-B zone district is intended to protect and promote open space, and the waiver detailed in this rezoning application includes specific language to mitigate impacts to the adjacent residential properties. Therefore, while the Single Family Duplex areas are primarily residential, the proposed OS-B with a waiver and OS-C are compatible embedded uses.

Area of Stability

In general, Areas of Stability are “primarily the stable residential neighborhoods and their associated commercial areas, where limited change is expected during the next 20 years. The goal for the Areas of Stability is to identify and maintain the character of an area while accommodating some new development and redevelopment” (p. 120). Additionally, Blueprint notes that “it may be appropriate to change the zoning in Areas of Stability to create a better match between existing land uses and the zoning” (p. 75).

The requested zone districts reflect the current and historic use of the subject site while also enabling the desired compatible future uses. The rezoning application is consistent with the Blueprint Denver Area of Stability recommendations.

Street Classifications

The subject site does not have any direct street frontage. There is an access point from 7890 Jewell Avenue, passing from the intersection of Trenton Street and Jewell Avenue between two single unit residential lots. Jewell Avenue is an Undesignated Local street at this location. Local streets “are influenced less by traffic volumes and are tailored more to providing local access. Mobility on local streets is typically incidental and involves relatively short trips at lower speeds” (p. 51). The western edge of the site is located across Cherry Creek from Cherry Creek South Drive, which is a Residential Collector. Collectors “provide a greater balance between mobility and land access” (p. 51). The property’s functional access is from East Pacific Place in Arapahoe County. The proposed rezoning is consistent with the surrounding street types because the OS-C section will not require direct vehicle access as it will enable a connection to the larger trail system, and access to the operations enabled by the OS-B with a waiver will be from Arapahoe County and confirmed through the Special Exception Review process when a change in use is proposed.

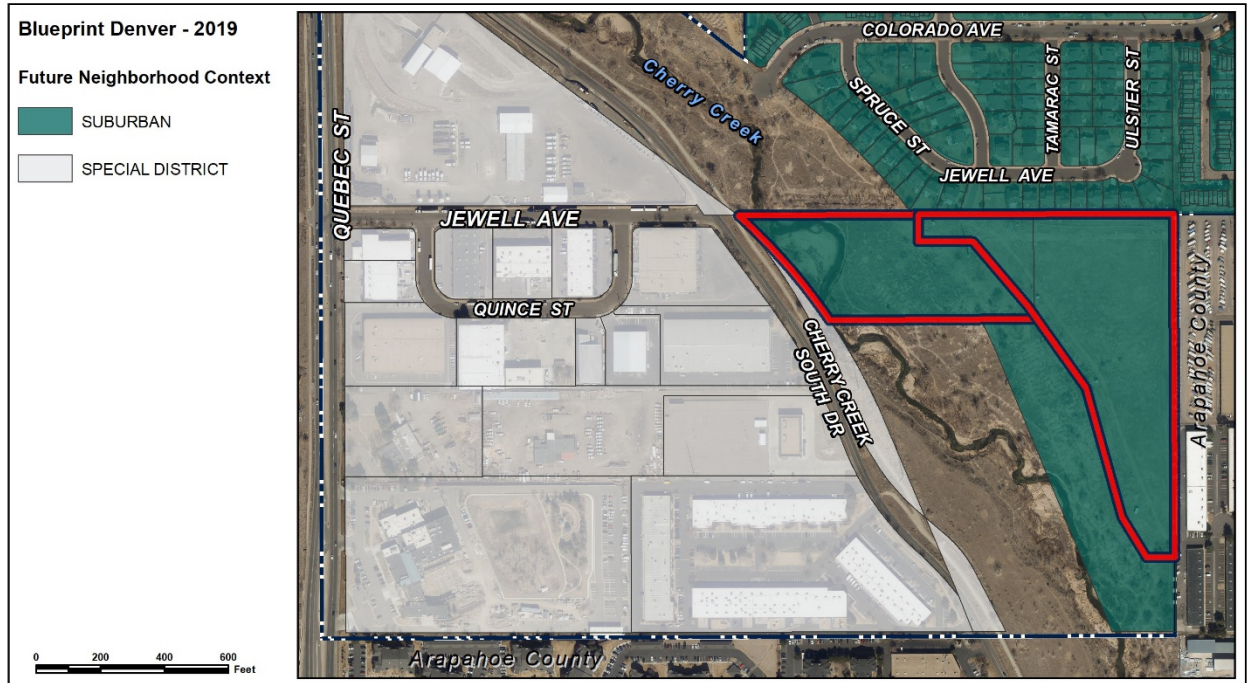
Waivers

According to *Blueprint Denver 2002*, “The unsatisfactory performance of the current regulations has led to the use of unique conditions and waivers applied to rezonings. These waivers and conditions, which are not organized in the zoning code, further complicate Denver’s zoning situation. In addition, these conditions are written to address the construction of buildings and are not crafted broadly enough to address the ongoing regulation of the land after construction is completed. They remain enforceable for decades after, regardless of their effectiveness and applicability. The result is that the regulatory system does not deliver effective land-use regulation, but its administration absorbs a large amount of resources. It is difficult to envision how Blueprint Denver will be implemented by simply adding another layer of regulation on top of the current code. In fact, if the reforms mentioned in this chapter are instituted, it may be appropriate to eliminate the practice of rezoning with conditions and waivers. (p. 82)” Waivers have not been eliminated but it is the position of CPD to limit their use to instances where they are necessary as a bridge to future reforms to zoning as suggested by this adopted plan language. In the instance of the subject rezoning application, CPD agrees that the zoning code should be changed to enable additional water utility uses, subject to neighborhood compatibility provisions, where appropriate in open space districts. Since zoning changes are needed, until such changes are made, the use of a waiver is appropriate in this circumstance.

Blueprint Denver (2019)

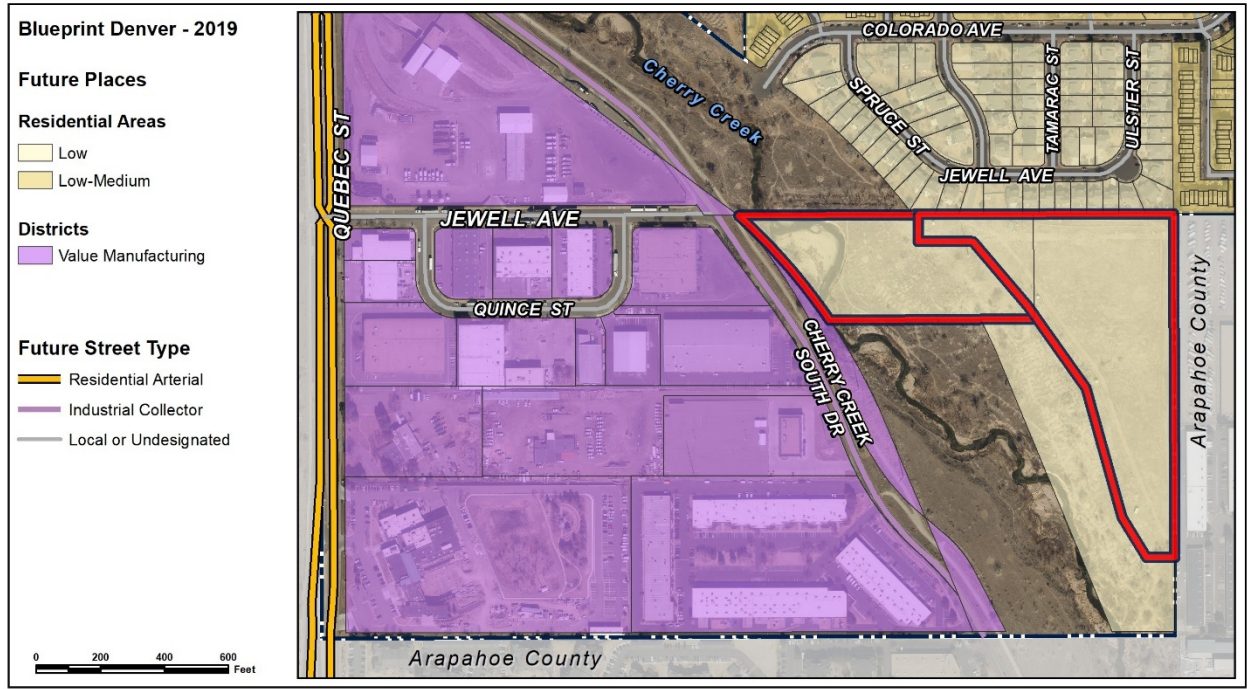
Although not yet adopted by City Council, *Blueprint Denver 2019* is anticipated to be adopted by City Council by the time this map amendment will be at council for public hearing, therefore it is relevant to this request. The proposed rezoning was reviewed for consistency with the March 13, 2019, public review draft of *Blueprint Denver* (2019). The draft *Blueprint Denver* identifies the subject property as part of a Low Residential place within the Suburban Neighborhood Context and provides guidance from the future growth strategy for the city.

Future Neighborhood Context



The Suburban Neighborhood Context “encompasses the most varied development in Denver’s neighborhoods” (p. 189). Areas within this context have a variety of residential intensities as well as commercial and mixed uses along corridors or centers, and “the intensity and scale of uses are dependent upon the surrounding character” (p. 190). Additionally, Suburban areas have “parks of various sizes, designated natural areas and open spaces” (p. 191). The Open Space zone districts can be “embedded in a neighborhood” (DZC, 9.3.1), including neighborhoods in the Suburban context. Therefore, the proposed rezoning to OS-C and OS-B with a waiver is appropriate and consistent with the plan context.

Future Places



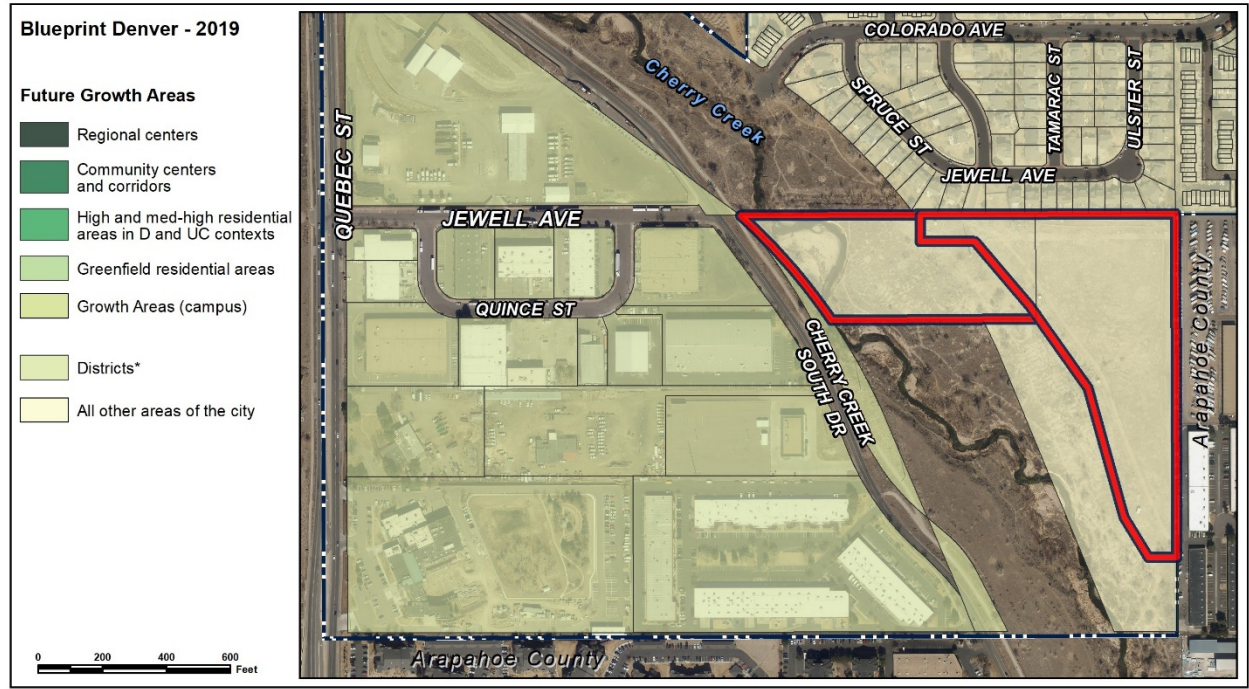
The Future Places map shows the subject property as Residential Low. *Blueprint Denver* notes that although Residential Areas in the Suburban Context “are predominantly residential, they are supported by a variety of compatible embedded uses needed for a complete neighborhood such as schools, parks and commercial/retail uses” (p. 198). Buildings, which are generally characterized by single-unit uses on larger lots, are “typically up to 2.5 stories in height” (p. 198). The proposed Open Space zone districts can be embedded in residential areas, and they have a maximum building height of three stories with 20-foot primary, side, side interior, and rear setbacks. Additionally, when *Blueprint Denver* describes the Complete Neighborhoods concept, it clarifies that “context-appropriate integration of utility infrastructure is also part of a complete neighborhood” (p. 130). The proposed heights and uses allowed by the proposed OS-C and OS-B with a waiver zone districts are appropriate and consistent with the plan future places.

Street Types

Blueprint Denver 2019 classifies Jewell Avenue as a Local or Undesignated street, which “are designed for the highest degree of property access and the lowest amount of through movement” (pg. 154). The property is across the creek from Cherry Creek S Drive, which is classified as an Industrial Collector, reflecting the industrial conditions to the west of the subject site. Collector streets “collect movement from local streets and convey it to arterial streets” (p. 154). The property’s functional access is from E Pacific Place in Arapahoe County. The proposed rezoning is consistent with the surrounding street types because the OS-C section will not require direct vehicle access as it will enable a connection to the larger trail system, and the

access to the operations enabled by the OS-B with a waiver will be from Arapahoe County and confirmed through the Special Exception Review process for any change in use.

Growth Strategy



Low residential areas are cumulatively anticipated to see approximately 10 percent of the city's new employment growth and 20 percent of new housing growth by 2040. The proposed map amendment is not providing additional housing or job opportunities (other than potential employment at a future Denver Water facility); rather it is responding to the growth in the immediate area and the region by providing the anticipated growth in demand for open space as well as water utility operations. Therefore, the proposed map amendment is consistent with this growth strategy.

Waivers

Blueprint Denver 2019 recommends that the use of site-specific, customized zoning tools including waivers should be limited "to unique and extraordinary circumstances. ... Custom zoning tools are most effective when a standard zone district does not exist to implement the adopted plans for an area" (p.73). In this instance, the unique and extraordinary circumstances are the historic water utility use of the site with several wells under the ownership of Denver Water for over a century. Additionally, no standard zone district would advance the plan objectives identified above to provide sufficient open space, ecological remediation, and utilities to meet the growing city's demands and be contextually appropriate in this particular location adjacent to residential and industrial uses and Cherry Creek. Therefore, in this specific instance, use of a waiver is appropriate and consistent with *Blueprint Denver 2019's* recommendations for site-specific, customized zoning.

Small Area Plan: Cherry Creek Greenway Master Plan

The Cherry Creek Greenway Master Plan was adopted by City Council in 2000, and it applies to the western portion of the subject property closest to Cherry Creek. The plan primarily focuses on the overall vision for the corridor and specific design options for its future. In general, in the context of undeveloped and vacant land, the objective is to “preserve/protect existing natural resources and creatively develop adjacent land to integrate and increase open space” (p. 35). Along the segment of the creek from Quebec Street to Iliff Avenue, the plan references the need to dedicate right-of-way to the Parks and Recreation Department, and it illustrates a restored natural area around the creek with natural screening between this restored area and adjacent industrial land uses (p. 65). Given this plan direction, the current S-SU-D zoning is inappropriate adjacent to and including the creek, and the proposed rezoning to Open Space zone districts is consistent with this plan direction. Additionally, the waiver includes language to mitigate impacts and respond to the adjacent residential and ecologically-sensitive areas, consistent with plan direction.

2. Uniformity of District Regulations and Restrictions

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

In this case, the OS-B zoning with a waiver is a unique zone district. The proposed rezoning will result in the uniform application of zone district building form, use and design regulations within the unique zone district.

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 implementation of the city’s adopted land use plans. The proposed rezoning to OS-C enables the Cherry Creek Improvements Project, which will increase the number of people who have access to the improvements. Specifically, being in closer proximity to a bicycle or pedestrian trail has been correlated with higher use of such a facility,² and having safe outdoor space for physical activity within a half mile of where people live or work is listed as an important aspect of a built environment that promotes health.³ Additionally, the proposed rezoning to OS-B with a waiver furthers the general welfare by enabling Denver Water to respond to growing water utility demand as Denver’s population grows. The waiver also includes language to mitigate negative impacts, thus protecting the public health, safety and general welfare of nearby residents as well as the broader community.

4. Justifying Circumstance

² Handy, S. L. 2004. *Critical Assessment of the Literature on the Relationship among Transportation, Land Use, and Physical Activity*. Washington, DC: Transportation Research Board and Institutes of Medicine Committee on Physical Activity, Health, Transportation, and Land Use.

³ *Health in the Development Review Process*, American Planning Association: https://planning-org-uploaded-media.s3.amazonaws.com/legacy_resources/nationalcenters/health/toolsforhealth/pdf/devreviewguidelines.pdf

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.”

This portion of the Cherry Creek corridor has experienced “severe erosion, resulting in 10 to 20-foot deep vertical banks, degraded vegetation, and risk for significant damages to the trail and adjacent roadway”⁴ due to high water velocity. Historical satellite images show dramatic erosion and reshaping of the creek bed in this portion of the creek since the current zoning was adopted in 2010. This physical change has lessened the already improbable development potential of the area currently in the S-SU-D zone district, which includes the unstable creek bank as well as the creek itself.

Denver’s population grew by approximately 63,000 residents, or 11 percent, between 2010 and 2016. In that same period, the Indian Creek neighborhood population increased by approximately 18 percent.⁵ Population growth is one of the challenges faced by Denver Water as it plans for meeting the region’s water demand in the future.⁶ As noted in this application, the subject site is an important resource for an integrated resource approach to long range planning.

Additionally, population growth and increased interest in recreation amenities has resulted in increased use of the Cherry Creek Trail. According to the rezoning application, the trail in this area “is increasingly frequented by pedestrians and bicyclists for both commuting and recreation” (p. 6). The existing trail is too narrow to accommodate the high use.⁷ The rezoning application also notes that with the increased popularity of this trail, trespassing has become a recurring issue on the portion of the site with the operable well, prompting a desire for Denver Water to formalize the site’s utility function to protect current and future operations.

The proposed rezoning to OS-C will facilitate the Cherry Creek Corridor Improvement project to respond to the changed physical and ecological conditions in the area. The proposed rezoning to OS-B with a waiver allows Denver Water to protect, formalize, and expand this site as an important water utility property and redirect those seeking open space to the improved creek area. Therefore, the proposed map amendment is justified to recognize the changed conditions of the area.

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

The requested OS-B and OS-C zone districts are within the Open Space Context, which “consists of all forms of public and private parks and open spaces. The context accommodates sites ranging from very active to completely passive, and from those embedded in a neighborhood to sites that are large enough to stand alone” (DZC, 9.3.1) Street, block, and access patterns can be widely varied, but priority is given to pedestrians and bicyclists. Buildings are typically low in scale and “are often located away

⁴ Cherry Creek Restoration Project webpage on the Urban Drainage and Flood Control District website: <https://udfcd.org/cherry-creek-restoration-project/>

⁵ United States Census Bureau via denvermetrodata.org

⁶ Denver Water website: <https://www.denverwater.org/>

⁷ Information board for the Cherry Creek Corridor Improvements public meeting on June 28, 2018

from view of the general public” (DZC, 9.3.1). The Open Space Context is intended to apply in a variety of contexts, including the suburban context of this neighborhood. Additionally, the proximity to Cherry Creek, the undeveloped nature of this site, and its location as a transition from industrial uses to the east and west to residential uses to the north reinforce the appropriateness of this context at this particular location. The proposed OS-C and OS-B with a waiver will be consistent with the surrounding neighborhood context and the code’s context description.

The Open Space Conservation District (OS-C) is intended “to allow for conservation of open space and natural areas, regardless of ownership, which are not intended for development. Limited passive recreation is allowed, and only limited structures incidental to and supportive of the conservation purpose of the zone district...are allowed” (DZC, 9.3.2.1.C). The Open Space Recreation District (OS-B) “is intended to protect and promote open space and parks not otherwise owned, operated or leased by the City, and generally intended for active or passive recreation use” (DZC, 9.3.2.1.B). While the waiver expands the use limitations to allow different kinds of water utility uses, the OS-B building form requirements will result in development that is consistent with purpose and intent of this zone district. Additionally, specific language around siting and impact mitigation will ensure that the water utility uses will remain compatible with the adjacent open space and residential uses. The proposed OS-C and OS-B with a waiver zone districts will be consistent with the purpose and intent.

Attachments

1. Application
2. Summary of applicant outreach