



**TO:** Denver City Council  
**FROM:** Scott Robinson, Senior City Planner  
**DATE:** June 6, 2019  
**RE:** Official Zoning Map Amendment Application #2018I-00120

### **Staff Report and Recommendation**

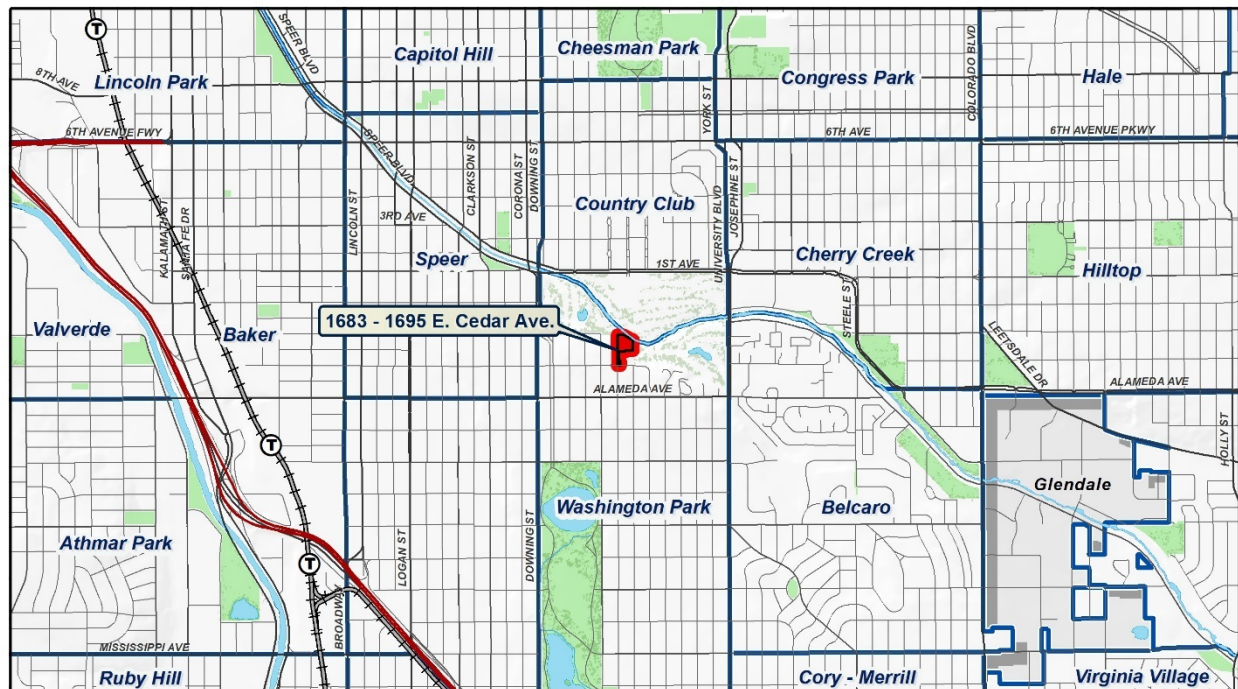
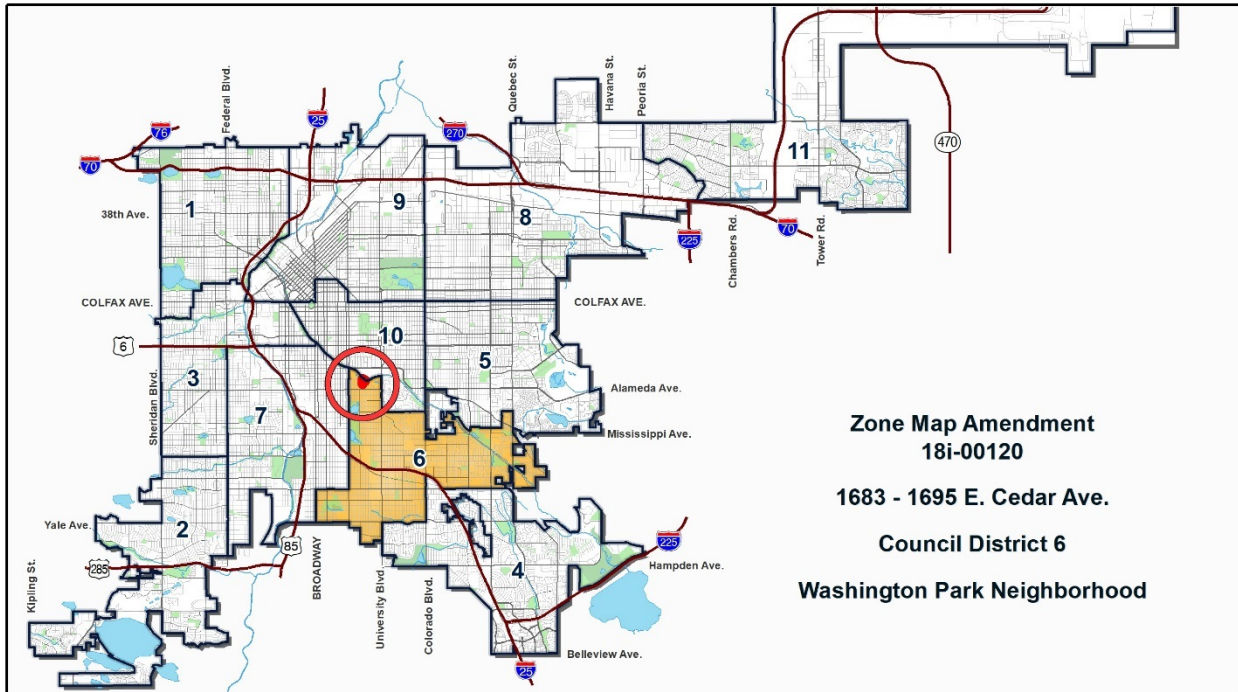
Based on the criteria for review in the Denver Zoning Code, Staff recommends approval for Application #2018I-00120.

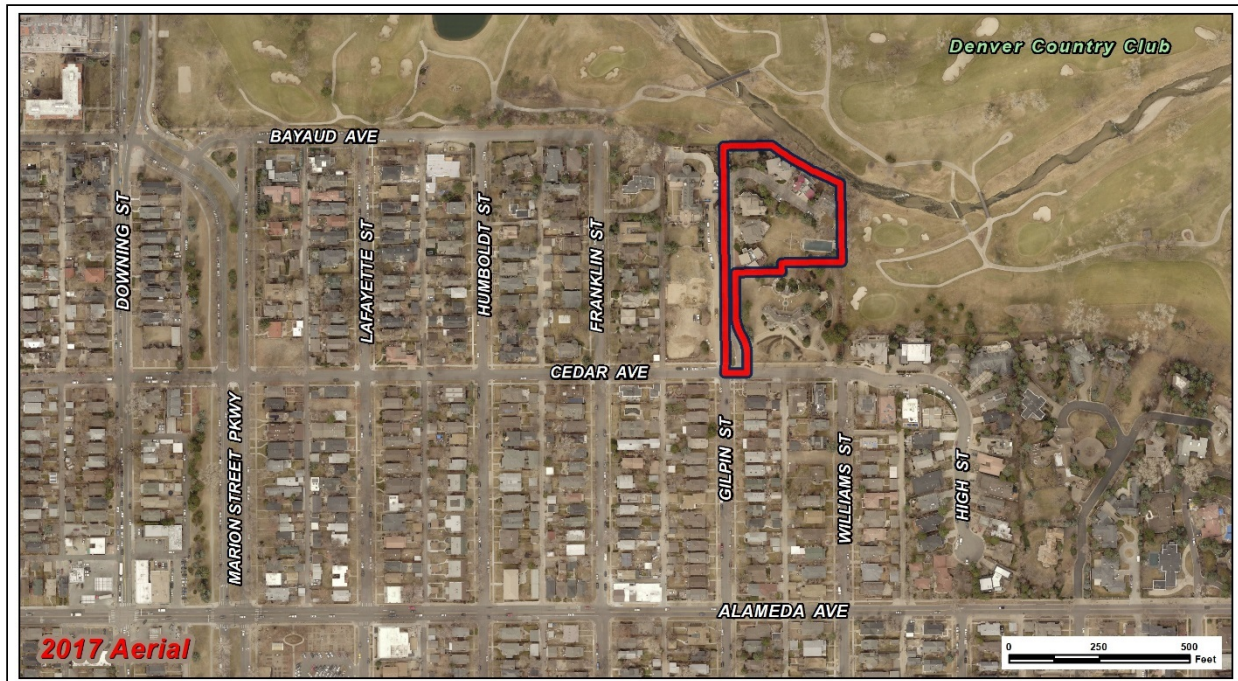
### **Request for Rezoning**

Address: 1683, 1685, 1687, 1691, 1693, 1695, & 1699 Cedar Ave.  
Neighborhood/Council District: Washington Park / Council District 6  
RNOs: Washington Park East Neighborhood Association; Inter-Neighborhood Cooperation (INC)  
Area of Property: 2.45 acres  
Current Zoning: PUD-G #5  
Proposed Zoning: PUD-G #22  
Property Owner(s): Multiple, see application  
Owner Representative: Philipp Stephanus, 1691 Cedar Ave.

### **Summary of Rezoning Request**

- The subject property is located in the Washington Park neighborhood, just south of the Denver Country Club.
- The site currently has six single-unit homes and common space, including a pool.
- The applicant is requesting the rezoning to allow for expansion of the existing homes beyond the 2,000 square foot footprint and 6,000 square foot floor area limit per structure.
- The applicant is requesting a Planned Unit Development (PUD) based on the S-SU-D zone district, with variations that address the site's unique site configuration as a flag lot with minimal frontage on a public right-of-way.





### Existing Context

The subject property is in the Washington Park neighborhood, just south of the Denver Country Club. The property consists of six houses served by a private drive which is accessible from Cedar Avenue. The properties frontage on Cedar Avenue is only about sixty feet wide, but the property widens to over 300 feet wide about 300 feet north of Cedar Avenue. The private drive is the only access to the houses, as the property abuts the Denver Country Club to the north and east. Steele Elementary School is about ¼-mile to the southwest and Washington Park is about ½-mile to the south. There is RTD bus service on Alameda Avenue one block south of Cedar Avenue. The Cherry Creek trail runs along the north and east sides of the Denver Country Club, and the Cherry Creek Shopping Center is about ½-mile as the crow flies to the northeast.

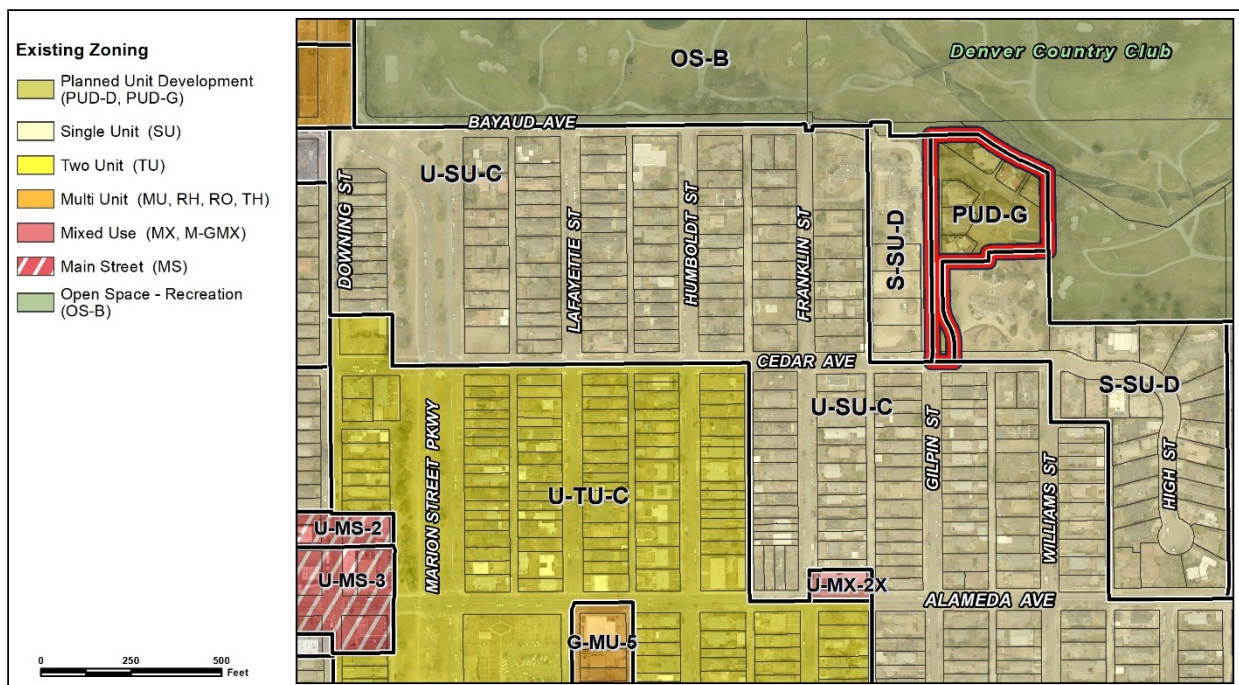
The following table summarizes the existing context proximate to the subject site:

	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
Site	PUD-G #5	Six single-unit houses, common area, pool	6 large 2-3 story single-unit houses	South of Cedar Ave. and to the west is generally a regular grid of streets with
North	OS-B	Denver Country Club golf course	N/A	



	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
South	S-SU-D, U-SU-C	Single-unit residential	Immediately south, north of Cedar Ave., is a very large, 3-story house. South of Cedar Ave. are moderately-sized 1-2 story houses	consistent block sizes and alley access; North of Cedar Ave. and to the east the street grid is interrupted by the Denver Country Club and the streets follow a more disconnected, curvilinear, suburban pattern with driveways and garages accessed from the street.
East	OS-B, S-SU-D	Single-unit residential, Denver Country Club	The very large house described above and the golf course	
West	S-SU-D	Single-unit residential	Large 2-3 story houses	

### 1. Existing Zoning



PUD-G #5 was adopted in 2013 and is based on the S-SU-D zone district. Before the 2010 citywide rezoning, the property was zoned R-1 and was the subject of a planned building group (PBG) that allowed up to seven single-unit structures on the zone lot. The PBG also included a limit to the footprint of each structure of 2,000 square feet, and a limit to the floor area of each

structure of 6,000 square feet. As part of the 2010 citywide rezoning, the city intended to not rezone properties which were subject to PBGs. However, this property was mistakenly rezoned to S-SU-D. This caused the property to be non-conforming, as the S-SU-D zone district does not allow multiple primary structures on a single zone lot.

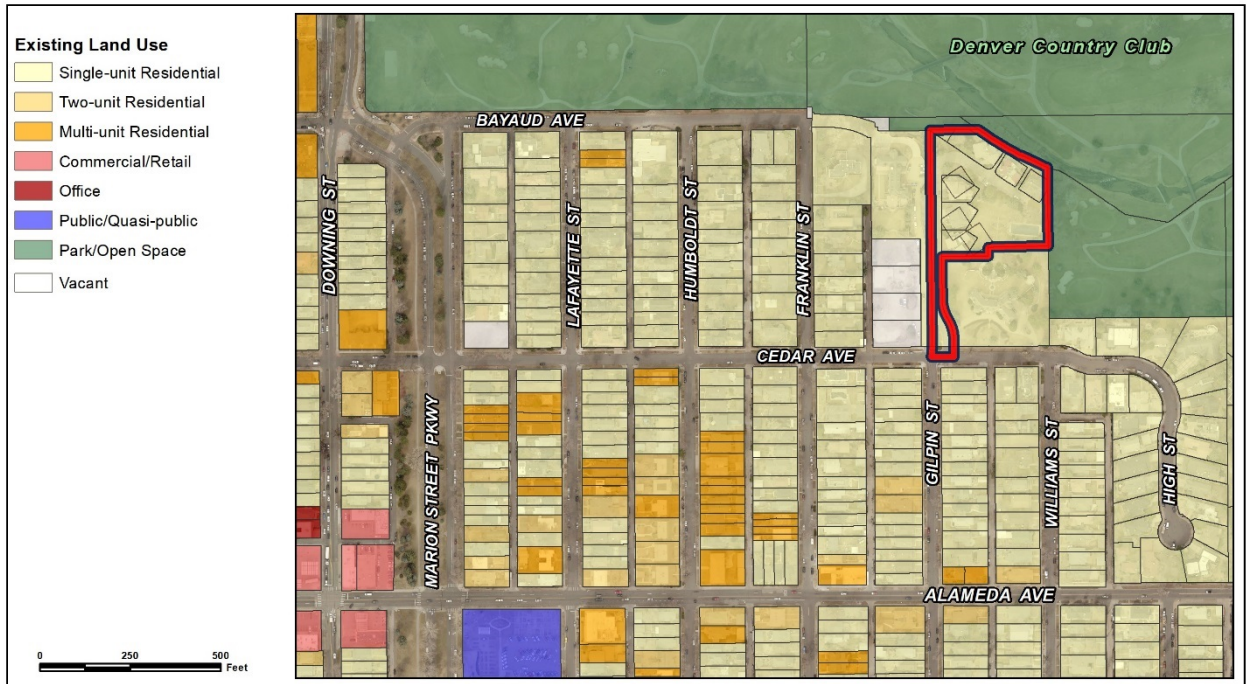
This oversight was discovered in 2012 and PUD-G #5 was created based on the S-SU-D zone district, but modified to allow up to seven single-unit dwellings on the zone lot. The footprint and floor area limits from the PBG, which are not found in the S-SU-D zone district, were also carried forward as part of PUD-G #5. The PUD also modified the maximum height, up to 36 feet, and changed how height is measured. It also set the front setback at 20 feet, reduced the side interior and rear setbacks to five feet, and introduced a requirement for 3,000 square feet of open space on the zone lot per dwelling unit. Other than these and a few other minor modifications, the standards of the S-SU-D zone district apply. The S-SU-D zone district allows the Suburban House building form, including bulk plane requirements, with uses limited to single-unit residential and some group living and civic, public, and institutional uses. There is no minimum parking requirement for single-unit uses. For additional details of the zone district, see the attached PUD-G #5 and DZC Section 3.2.2.

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

	<b>Applicable Building Forms</b>
	<b>Suburban House</b>
<b>Existing District: PUD-G #5</b>	<b>X</b>
<b>Proposed District: PUD-G #22</b>	<b>X</b>

“X” signifies an allowed building form and “O” signifies an allowed building form subject to geographic limitations.

## 2. Existing Land Use Map



## 3. Existing Building Form and Scale



Site – from the west





**Site entrance/South** – from Cedar Ave.



**South** – from Cedar Ave.



**East** – from Cedar Ave.

Source: Google Maps



**West** – from Cedar Ave.

### **Summary of PUD Request**

The applicant requests to rezone to PUD-G #22 per DZC Section 9.6.1. The purpose of a PUD district is to provide an alternative to conventional land use regulations, combining use, density, site plan, and building form considerations into a single process, and substituting procedural protections for the more prescriptive requirements in the Code. The PUD District is intended to respond to unique and extraordinary circumstances, where more flexible zoning than what is achievable through a standard zone district is desirable and multiple variances, waivers, and conditions can be avoided.

PUD-G #22 carries forward the requirements and regulations of PUD-G #5 with three substantive changes:

- The 2,000 square foot limit to building footprints and the 6,000 square foot limit to gross floor area per dwelling unit have been removed.
- The designations of front and rear zone lot lines have been clarified.
- The ability to amend the PUD by subarea, platted lots, or metes and bounds parcels has been added per DZC Section 9.6.1.4.

There have also been a few technical changes from PUD-G #5 to bring PUD-G #22 up to the city's current standards for PUDs, including adding language on rules of interpretation and vested rights. Otherwise, the modifications to the underlying S-SU-D zone district described above still apply, as do the standards of the S-SU-D zone district where they have not been modified.

### **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 Public Health and Environment:** Approved – See comments below:

- Notes. Denver Department of Public Health and Environment (DDPHE) concurs with the rezoning and is not aware of historical environmental concerns on the Property.
- 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 – Surveyor:** Approved – No Comments

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

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

- DS Wastewater approves the subject zoning change. The applicant should note that redevelopment of this site may require additional engineering including preparation of drainage reports, construction documents, and erosion control plans. Redevelopment may require construction of water quality and detention basins, public and private sanitary and storm sewer mains, and other storm or sanitary sewer improvements. Redevelopment may also require other items such as conveyance of utility, construction, and maintenance easements. The extent of the required design, improvements and easements will be determined during the redevelopment process. Please note that no commitment for any new sewer service will be given prior to issuance of an approved SUDP from Development Services.

**Development Services-Project Coordination:** Approved – No Response

**Development Services-Fire Prevention:** Approved – No Response

**City Attorney’s Office:** Approved – No Response

**Public Review Process**

	<b>Date</b>
CPD informational notice of receipt of the rezoning application to all affected members of City Council, registered neighborhood organizations, and property owners:	12/11/2018
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:	3/29/2019

Planning Board unanimously recommended approval:	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:	4/16/2019
Land Use, Transportation and Infrastructure Committee of the City Council moved the bill forward:	4/30/2019
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:	5/20/2019
City Council Public Hearing:	6/10/2019

- Summary of Other Public Outreach and Input
  - **Registered Neighborhood Organizations (RNOs)**
    - The Washington Park East Neighborhood Association has provided a letter stating they do not object to the proposed rezoning because it will not change the original intent of the PUD and will allow it to align more closely with current zoning requirements.
  - **Other Public Comment**
    - As of the date of this staff report, no other public comments 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, 12.4.10.8 and 12.4.10.9, 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

**DZC Section 12.4.10.9**

1. The PUD District is consistent with the intent and purpose of such districts stated in Article 9, Division 9.6 (Planned Unit Development) of the Zoning Code;
2. The PUD District and the PUD District Plan comply with all applicable standards and criteria stated in Division 9.6;
3. The development proposed on the subject property is not feasible under any other zone districts, and would require an unreasonable number of variances or waivers and conditions;
4. The PUD District and the PUD District Plan establish permitted uses that are compatible with existing land uses adjacent to the subject property; and
5. The PUD District and the PUD District Plan establish permitted building forms that are compatible with adjacent existing building forms, or which are made compatible through appropriate transitions at the boundaries of the PUD District Plan (e.g., through decreases in building height; through significant distance or separation by rights-of-way, landscaping or similar features; or through innovative building design).

### **1. Consistency with Adopted Plans**

The following adopted plans currently apply to this property:

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

#### **Denver Comprehensive Plan 2040**

The proposed rezoning is consistent with many of the Denver Comprehensive Plan 2040 strategies, including:

- Equitable, Affordable, and Inclusive Goal 2 – *Build housing as a continuum to serve residents across a range of incomes, ages, and needs.*
- Strong and Authentic Neighborhoods Goal 2 – *Enhance Denver’s neighborhoods through high-quality urban design.*
- Strong and Authentic Neighborhoods Goal 3 – *Preserve the authenticity of Denver’s neighborhoods and celebrate our history, architecture, and culture.*

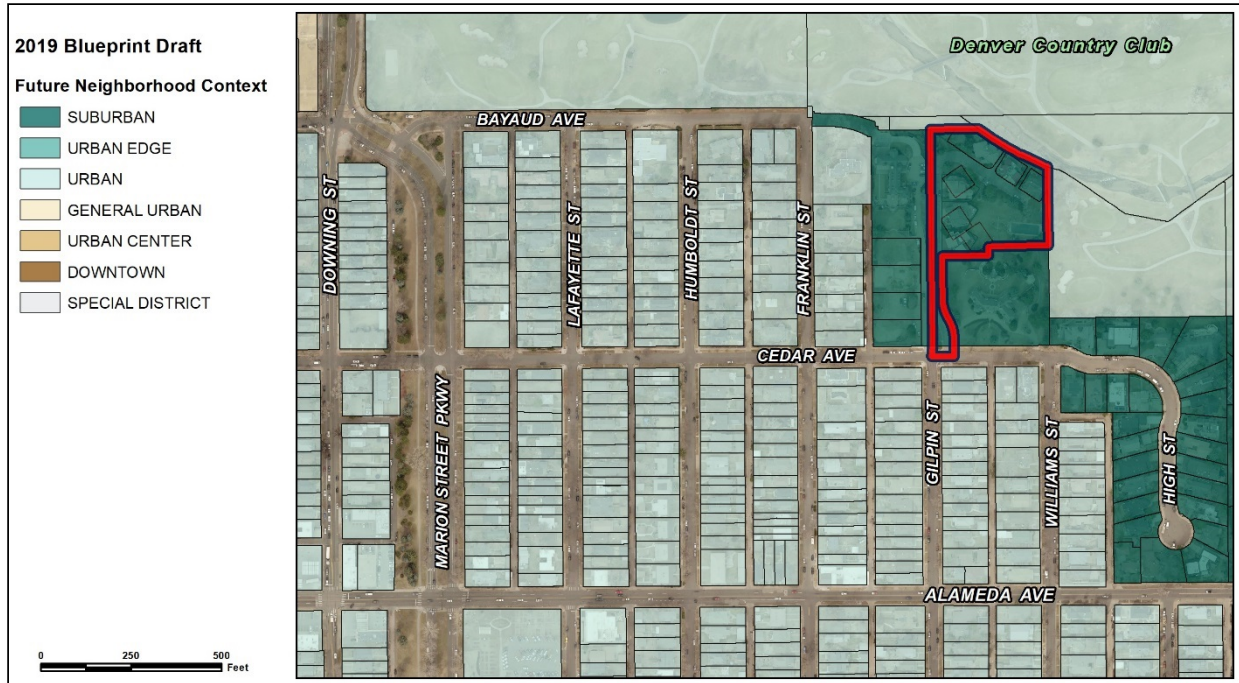
The proposed map amendment would allow the existing character of the development to be maintained, the houses of which form part of the continuum of housing in the neighborhood. The proposed PUD would also allow more appropriate design of houses in the development, contributing to the neighborhood’s established character. The rezoning is consistent with Denver Comprehensive Plan 2040 recommendations.

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

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.

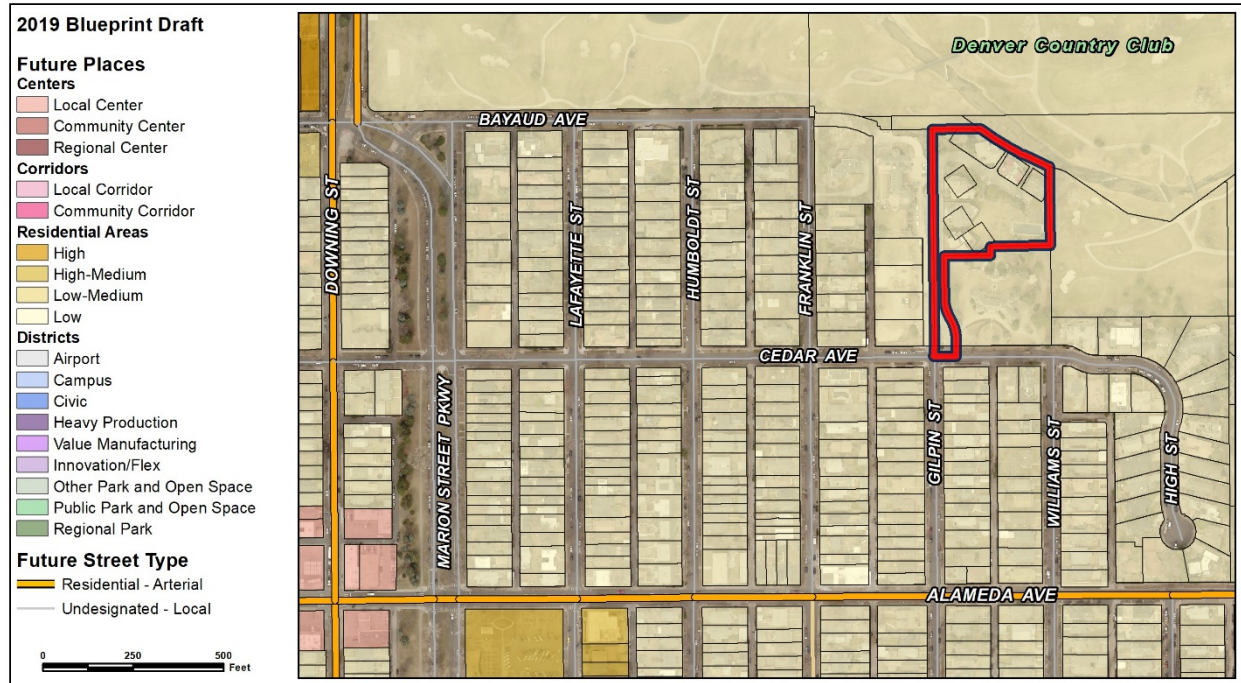


### Future Neighborhood Context



The subject property is within the Suburban Neighborhood Context. In the Suburban context “all intensities of residential development can be found, though generally they are separated from other types” and “block patterns are generally irregular with curvilinear streets and no alley access. The intensity and scale of uses are dependent upon the surrounding character” (p. 190). The proposed PUD is based on S-SU-D, which is within the Suburban context and is intended to “promote and protect residential neighborhoods within the character of the Suburban Neighborhood Context” (DZC 3.2.2.1). The proposed PUD would allow single-unit residential development at an intensity and scale compatible with the surrounding character, consistent with the Blueprint Denver description of the Suburban Neighborhood Context.

**Future Places**



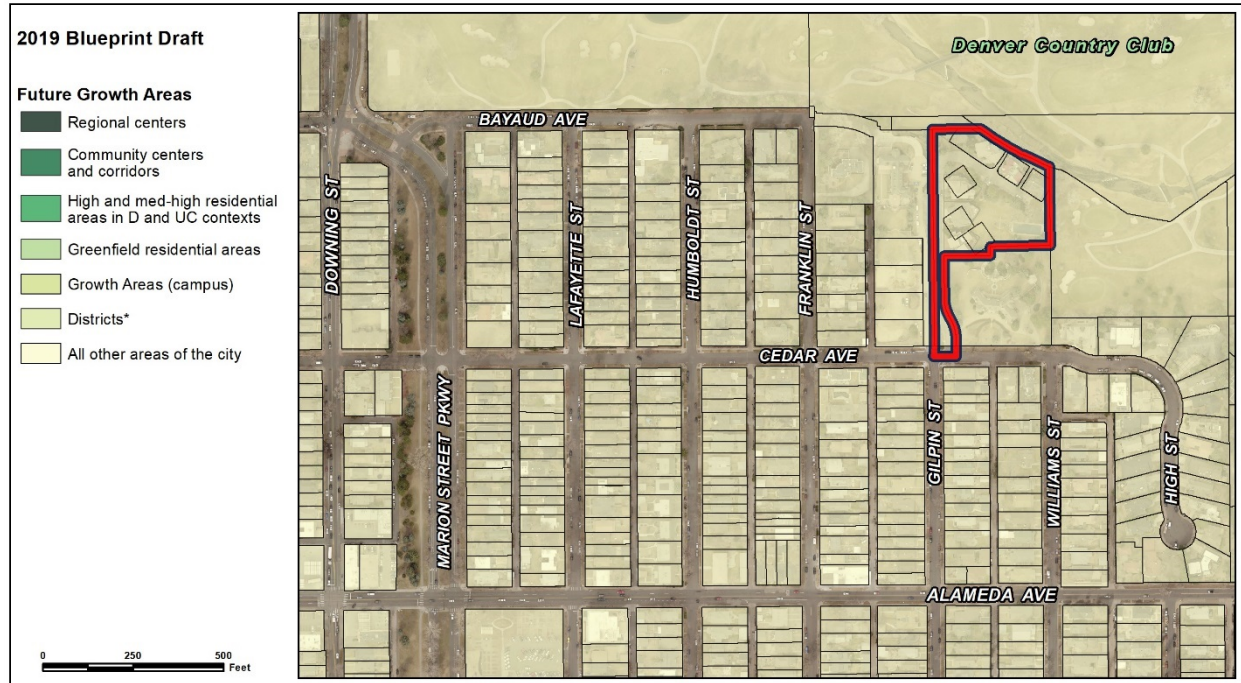
The Future Places map shows the subject property as Low Residential. Blueprint Denver describes the aspirational characteristics of Low Residential in the Suburban context as “generally characterized by single-unit uses on larger lots” while “there is a mix of attached and detached garage forms. Buildings are typically up to 2.5 stories in height” (p. 198). Further guidance is provided on pages 66-67 for how to use this height guidance to evaluate a rezoning request. Specifically, “There may be times when building heights taller than specified are appropriate... Factors to consider when applying Blueprint Denver building height guidance may include:... Surrounding context, including existing and planned building height” (p.66)

The proposed PUD based on S-SU-D would allow single-unit residential structures up to 36 feet tall. This is greater than the general guidance provided in the place description, but consistent with the heights of existing buildings in and around the subject property. The proposed PUD would allow single-unit houses on a large lot with appropriately-sized accessory structures, consistent with the Low Residential Place description of Blueprint Denver.

**Street Types**

Blueprint Denver classifies Cedar Avenue as an Undesignated Local. According to the plan, “Local streets can vary in their land uses and are found in all neighborhood contexts. They are most often characterized by residential uses” and “Local streets provide the lowest degree of through travel but the highest degree of property access” (p.160). The proposed PUD would allow residential uses along an Undesignated Local, consistent with the description in Blueprint Denver.

## Growth Strategy



The subject property is designated as Low Residential and mapped in “all other areas of the city” in the Blueprint Denver Growth Strategy, which are anticipated to see around 20% of new housing growth and 10% of new employment growth [citywide] by 2040 (p.51). This is “a smaller amount of growth intended to strengthen the existing character of our neighborhoods” (p. 49). The proposed PUD would allow low-scale residential development, which is appropriate in these areas intended to capture the anticipated residential growth. The proposed map amendment is consistent with the recommendations of Blueprint Denver.

### Custom Zoning

Blueprint Denver provides the following direction on how to limit the use of custom zoning including PUDs: “Limit the use of site-specific, customized zoning tools—such as Planned Unit Developments (PUDs) and waivers/conditions—to unique and extraordinary circumstances. The zoning code offers a wide variety of zone districts that cover the diverse contexts and places of Denver. Custom zoning tools are most effective when a standard zone district does not exist to implement the adopted plans for an area” (p. 73). More detail on the challenges of custom zoning is provided on page 73 of the plan. Due to the specific challenges of the site configuration and history of development, as further described in sections 6.A and 6.C below, there is no standard zone district that can address this site’s unique and extraordinary circumstances. Therefore, the use of a PUD is consistent with the recommendations of Blueprint Denver.

## 2. Uniformity of District Regulations and Restrictions

The proposed rezoning to PUD-G 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. It will allow the structures on the subject property to be maintained, expanded, or replaced in a manner consistent with the established character of the neighborhood.

### **4. Justifying Circumstance**

The application identifies several changed or changing conditions as the Justifying Circumstance under DZC Section 12.4.10.8.A.4, "Since the date of the approval of the existing Zone District, there has been a change to such a degree that the proposed rezoning is in the public interest. Such a change may include: Changed or changing conditions in a particular area, or in the city generally...." As described in the application, there has been a trend of small, single-unit houses in the surrounding neighborhood being torn down and replaced by larger single-unit houses. As the character of the neighborhood changes, it is in the public interest for the zoning to allow the subject property to evolve as well. The current PUD-G #5 limits the size of the structures on the property so that they are not able to expand. The proposed change in the new PUD-G #22 – removing the building size and footprint limits, consistent with the underlying S-SU-D zone district – is justified by the changed and changing conditions in the surrounding area.

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

The proposed PUD is based upon the Suburban neighborhood context. This context generally consists of "single-unit and multi-unit residential, commercial strips and centers, and office parks. Single-unit residential consists typically of the Suburban House building form with street-facing garages" (DZC, Division 3.1). The proposed map amendment would allow single-unit houses in the Suburban House form, consistent with the Suburban context description. For further analysis of consistency with PUD zone district purpose and intent, see section 6.A of this staff report, below.

### **6. Additional review criteria for rezoning to PUD district**

- A. The PUD District is consistent with the intent and purpose of such districts stated in Article 9, Division 9.6 (Planned Unit Development) of the Zoning Code;
  - The PUD District is consistent with the intent and purpose of such districts stated in Article 9, Division 9.6 (Planned Unit Development) of the Zoning Code to respond to "Unique and extraordinary circumstances where more flexible zoning than what is achievable through a standard zone district is desirable and multiple variances, waivers, and conditions can be avoided."
    - Under DZC 9.6.1.1.B.3, one example of a unique and extraordinary circumstance is "where a development site is subject to an existing PUD and rezoning to a new PUD District will bring the site closer to conformance with current zoning regulations and adopted plans." The existing PUD-G #5 includes square footage limits on building footprint and floor area that are not found in the underlying S-

SU-D zone district. The proposed PUD-G #22 does not include those square footage limits, bringing the site closer to conformance with the S-SU-D zone district.

- While the proposed PUD-G #22 brings the site into closer conformance with the S-SU-D zone district, it would still require several variances or waivers to the standard zone district to accommodate the development, most notably the number of primary structures allowed on a zone lot or the zone lot width requirement along a named or numbered street if the zone lot were to be split, but also height and setbacks.
  - Section 9.6.1.1.C states “A PUD District is not intended as either a vehicle to develop a site inconsistent with the applicable neighborhood context and character, or solely as a vehicle to enhance a proposed development’s economic feasibility.” The proposed PUD would allow development on the subject property that is consistent with the Suburban Neighborhood context and that furthers the public health, safety, and general welfare of the city, as described above.
  - According to Section 9.6.1.1.D., “in return for the flexibility in site design a PUD District should provide significant public benefit not achievable through application of a standard zone district, including but not limited to diversification in the use of land; innovation in development; more efficient use of land and energy; exemplary pedestrian connections, amenities, and considerations; and development patterns compatible in character and design with nearby areas and with the goals and objectives of the Comprehensive Plan.” The PUD District and associated development agreement provides significant public benefit including:
    - The proposed PUD provides for a more efficient use of land by allowing up to seven dwelling units on a zone lot that would otherwise only accommodate one dwelling unit.
    - The proposed PUD provides for development patterns compatible in character and design with nearby areas by allowing for structures of a compatible scale with appropriate setbacks and open space requirements. The proposed PUD is compatible with the goals and objectives of the Comprehensive Plan as described above.
- B. The PUD District and the PUD District Plan comply with all applicable standards and criteria stated in Division 9.6;
- The proposed PUD District and PUD District Plan comply with the standards and criteria stated in Division 9.6, including those described above and the form and content standards in Section 9.6.1.3.
- C. The development proposed on the subject property is not feasible under any other zone districts, and would require an unreasonable number of variances or waivers and conditions;
- As described above, the site would require several variances or waivers to the standard S-SU-D zone district to accommodate the development, most notably the number of primary structures allowed on a zone lot or the zone lot width requirement along a named or numbered street if the zone lot were to be split, but also height and setbacks.

There is no other zone district which would accommodate the development without variances or waivers.

- D. The PUD District establishes permitted uses that are compatible with existing land uses adjacent to the subject property;
  - The PUD District proposes uses consistent with those allowed in S-SU-D. These uses are appropriate to apply to a site that is surrounded by open space and single-unit residential uses, including other properties zoned S-SU-D.
  
- E. The PUD District establishes permitted building forms that are compatible with adjacent existing building forms, or which are made compatible through appropriate transitions at the boundaries of the PUD District Plan.
  - The PUD District allows building heights and building forms that are compatible with the surrounding neighborhoods. The required setback and bulk plane restrictions ensure appropriate transitions to adjacent properties.

#### **Attachments**

1. Application
2. PUD-G #22
3. Copy of current PUD-G #5 zoning regulations
4. RNO comment letter