



**TO:** Denver City Council  
**FROM:** Scott Robinson, Senior City Planner  
**DATE:** March 7, 2019  
**RE:** Official Zoning Map Amendment Application #2018I-00075

## Staff Report and Recommendation

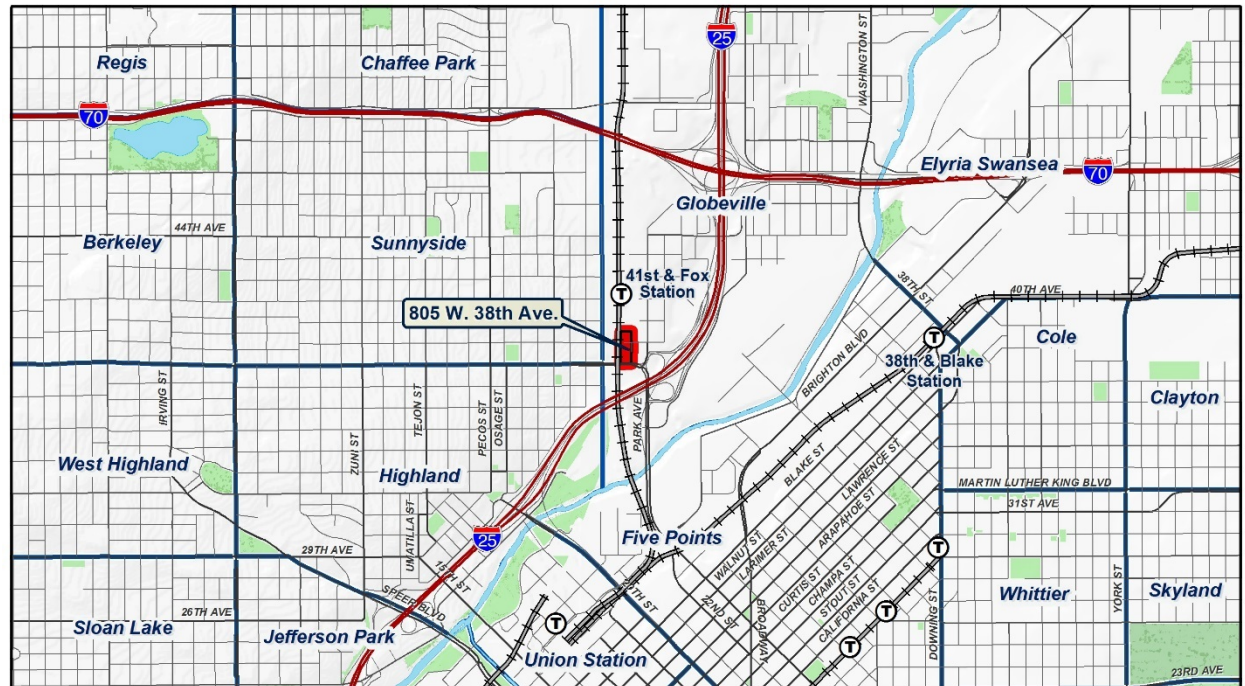
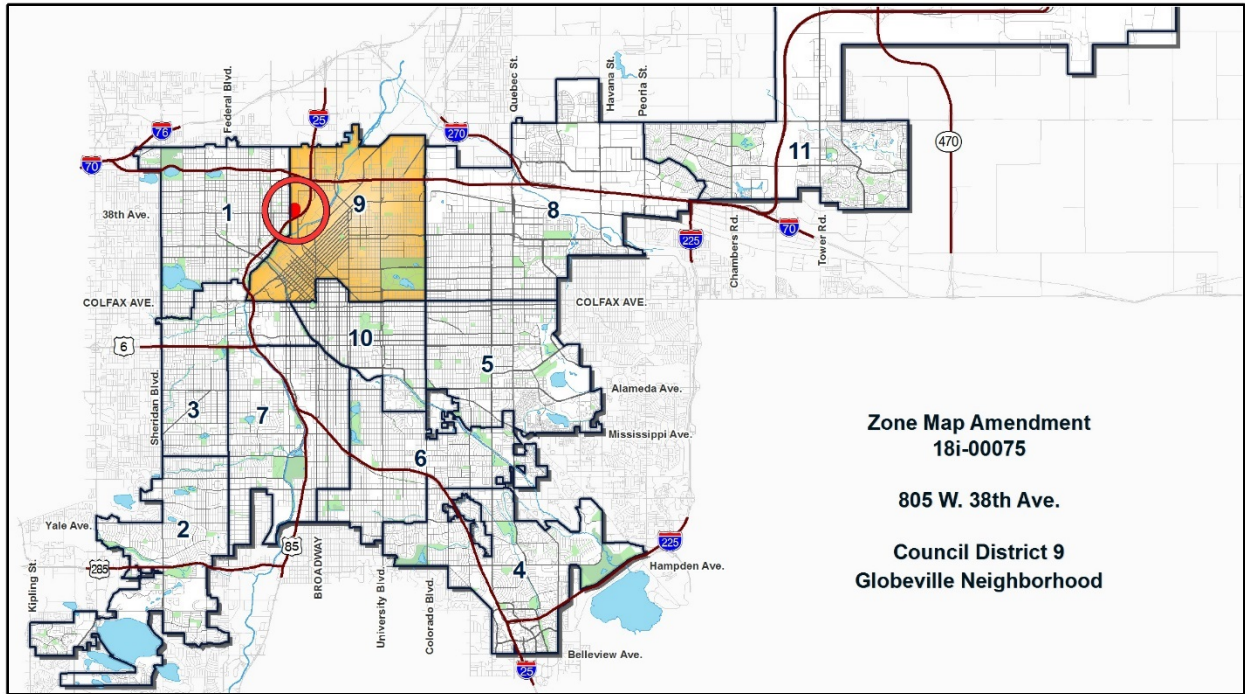
Based on the criteria for review in the Denver Zoning Code, Staff recommends **approval** for Application #2018I-00075.

## Request for Rezoning

Address:	805 W. 38 <sup>th</sup> Avenue
Neighborhood/Council District:	Globeville / Council District 9
RNOs:	UCAN; Globeville Civic Association #2; Globeville Civic Partners; North Highlands Neighbors Association; Elyria Swansea/ Globeville Businesses Association; Globeville K.A.R.E.S.; Inter-Neighborhood Cooperation (INC)
Area of Property:	2.7 acres
Current Zoning:	I-B UO-2
Proposed Zoning:	C-MX-20 UO-2
Property Owner(s):	Wagner Equipment CO
Owner Representative:	Jeanne Shaffer, Groundwork Entitlement

## Summary of Rezoning Request

- The subject property is in the 41<sup>st</sup> and Fox station area. Specifically, it is located along 38<sup>th</sup> Avenue and bordered by Galapago Street to the East, and the BNSF/RTD train tracks to the West.
- The property is currently occupied by Wagner Equipment CO which utilizes the site for the rental and storage of heavy duty construction equipment and vehicles.
- The applicant is requesting the rezoning to better align with the City & County of Denver's long-term plans for the 41<sup>st</sup> & Fox station area and position the property for potential redevelopment.
- The **C-MX-20** (Urban **C**enter, **M**ixed Use, **20** story) zone district allows a wide range of commercial, civic/institutional, and residential primary uses in the General, Shopfront, and Town House building forms. Drive Thru building forms would not be allowed at the subject location because it is less than ¼-mile from the 41<sup>st</sup> and Fox transit station. Further details of the zone districts can be found in Article 7 of the Denver Zoning Code (DZC).
- The applicant's request includes maintaining the Billboard Use Overlay, UO-2, on the property.







### Existing Context

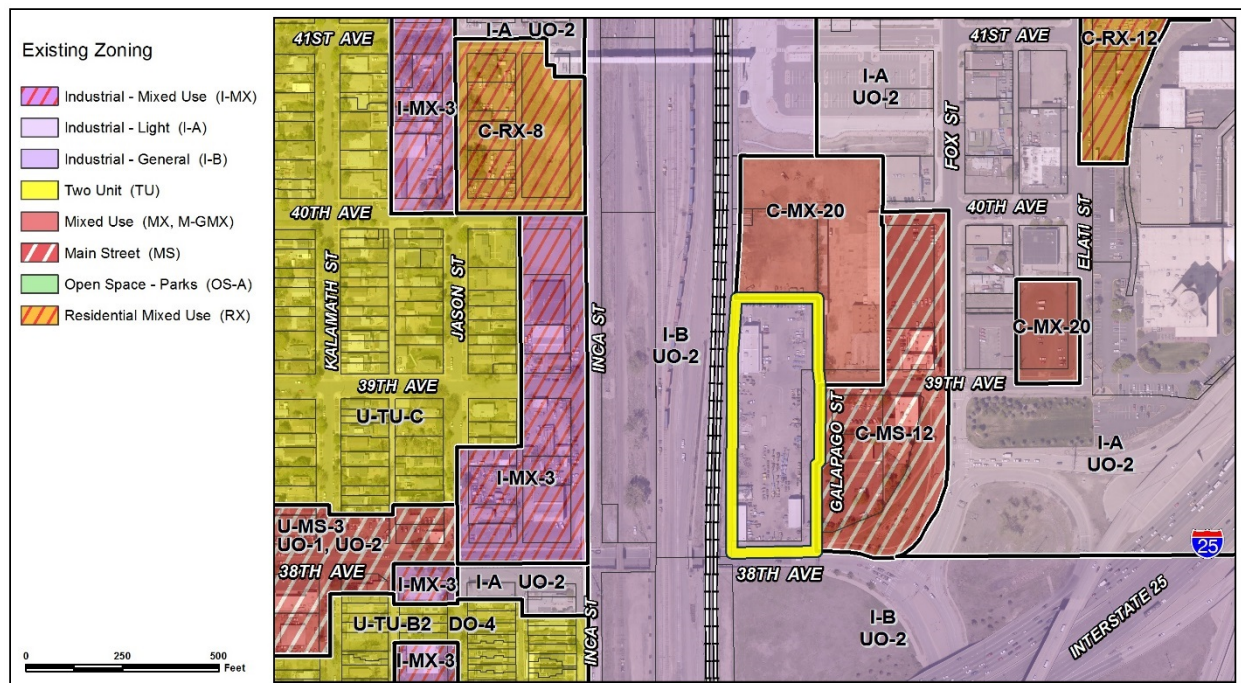
The subject property is in the Globeville neighborhood, just northwest of the Fox St./38<sup>th</sup> Ave./Park Ave./I-25 interchange. It is part of an approximately 164-acre portion of the Globeville neighborhood that is separated from other parts of Globeville and other nearby neighborhoods by Interstates 25 and 70 to the north, east and south, and rail facilities (BNSF and RTD) to the west. Recent rezonings suggest this area is transitioning from an industrial context to an urban center neighborhood context consistent with the Station Area Plan vision, adopted in 2009. The site can be accessed by vehicles via 38<sup>th</sup> Avenue and Fox Street or West 44<sup>th</sup> Avenue to the east. In addition, a recently-constructed bridge provides bicycle and pedestrian access to the Sunnyside neighborhood with a multi-use path along Inca Street connecting into the South Platte River Trail. The subject property is located about 800 feet from the 41st and Fox station which will be served by the G Line.

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

	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
Site	I-B UO-2	Industrial	3 industrial buildings, 1-2 stories in height, mixed depth of setbacks from 38 <sup>th</sup> Avenue and Galapago Street	A limited orthogonal grid extends along Fox Street from 38 <sup>th</sup> Ave. to 44 <sup>th</sup> Ave. The grid is limited by the rail

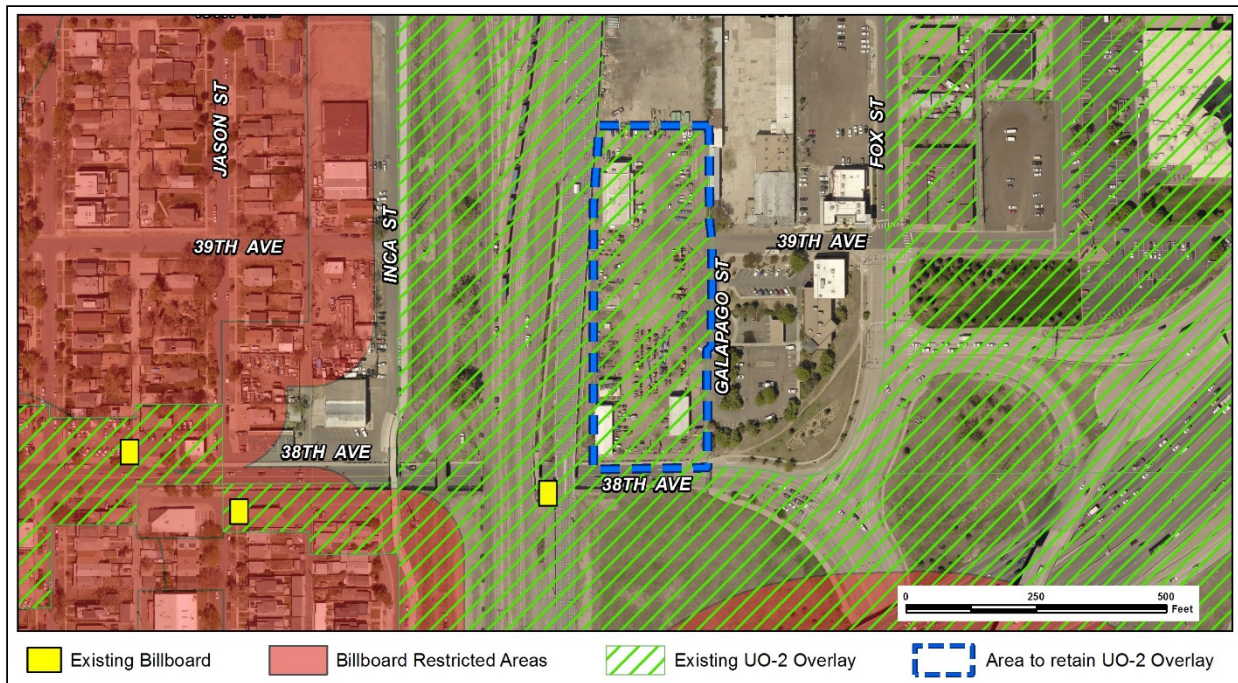
	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
North	C-MX-20	Vacant	N/A	corridor to the west, I-25 to the south and east, and by large industrial sites and I-70 to the north. The area has limited access from other neighborhoods, including 44 <sup>th</sup> Ave. from the southeast portion of Globeville, 38 <sup>th</sup> Ave. from the Sunnyside neighborhood (west), and Fox Street to Park Avenue that provides direct access to downtown.
South	I-B UO-2	Right-of-way	Undeveloped land south of 38 <sup>th</sup> Avenue for the I-25 Interchange flyover	
East	C-MX-20 / C-MS-12	Industrial, Commercial/Retail, Parking	Mix of industrial and commercial buildings; 1-2 stories; supportive parking for adjacent uses. Varied setbacks from Fox Street and Galapago Street.	
West	I-B UO-2	Rail right-of-way	N/A	

### 1. Existing Zoning



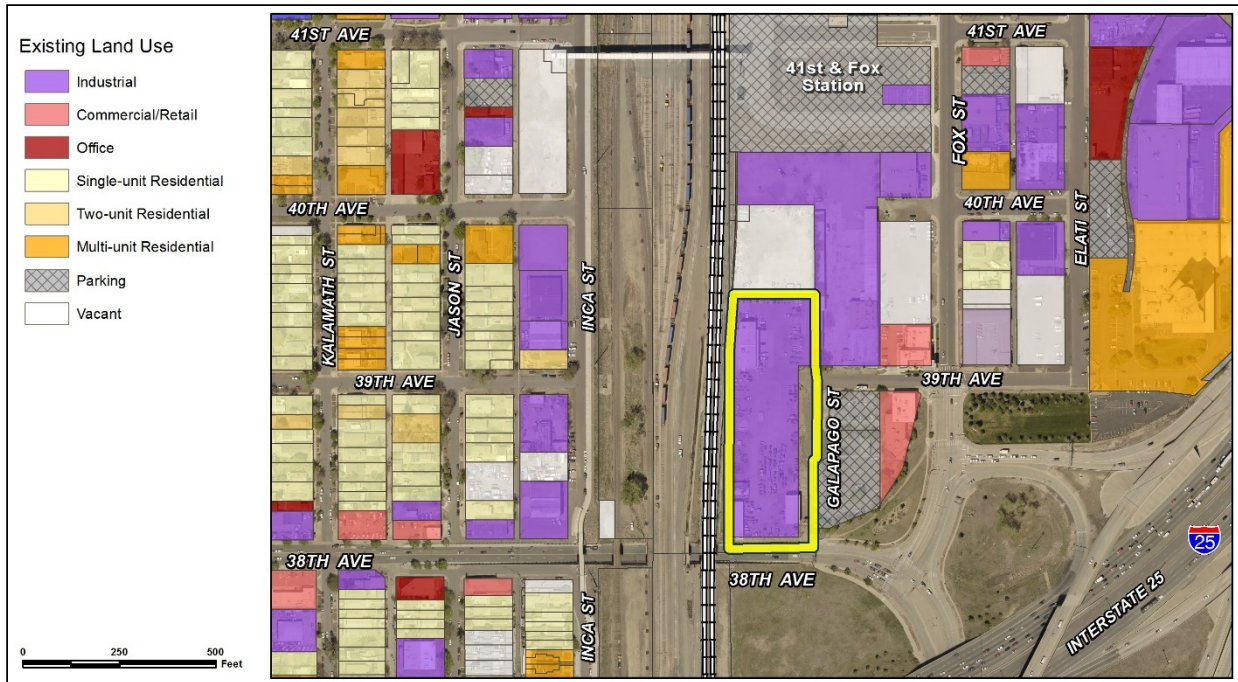


The existing zoning on the subject property is I-B UO-2. I-B is a general industrial zone district in the Industrial Context. It allows office, business, and intensive industrial uses. Residential uses are only permitted where an existing residential structure existed prior to July 1, 2004. The General and Industrial building forms are allowed in the I-B zone district and building mass is regulated by a maximum Floor Area Ratio of 2.0. No maximum building height is specified for the zone district except for when a site is within 175 feet of a Protected District, in which case the maximum permitted building height is 75 feet. There are no build-to requirements, transparency requirements, or street level activation standards in the I-B zone district. Surface parking is permitted between the building and primary and side streets. See DZC Division 9.1.



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

## 2. Existing Land Use Map





### 3. Existing Building Form and Scale



Site – from 38<sup>th</sup> Ave.



North – from 39<sup>th</sup> Ave.



East – from Galapago St.



South – from 38<sup>th</sup> Ave.  
Source: Google Maps



West – from Inca St.

## Summary of City Agency Referral Comments

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

**Assessor:** Approved – No Response

**Asset Management:** Approved – No Comments

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

**Department of Public Health and Environment:** Approved – See Comments Below:

- Notes. Denver Department of Public Health & Environment (DDPHE) concurs with the rezoning but recommends that surface and subsurface soil at the site be evaluated to confirm its suitability for future planned uses. DDPHE has information to indicate that past petroleum releases occurred at locations to the east, northeast and north of the site and the site and surrounding area have historically been utilized for industrial uses. For example, the former Texaco Bulk Plant occupied the adjacent location to the north (currently addressed as 689 West 39th Avenue and 700 West 40th Avenue) where the Colorado Department of Public Health and Environment (CDPHE) issued in June 2008 an environmental covenant for that site that prohibited all uses, except for industrial. This environmental covenant was revised in February of 2016; the current environmental covenant (HMC0V00049) removed the restriction on “industrial uses only”, but continues to prohibit the use of groundwater at 689 West 39th Ave and 700 West 40th Avenue. Additionally, the site is within Operable Unit 1 of the VB-170 Superfund Site where elevated levels of metals in soil may exist.
- General Notes: Most of Colorado is high risk for radon, a naturally occurring radioactive gas. Due to concern for potential radon gas intrusion into buildings, DEH suggests installation of a radon mitigation system in structures planned for human occupation or frequent use. It may be more cost effective to install a radon system during new construction rather than after construction is complete.
- Denver’s Noise Ordinance (Chapter 36–Noise Control, Denver Revised Municipal Code) identifies allowable levels of noise. Properties undergoing Re-Zoning may change the acoustic environment, but must maintain compliance with the Noise Ordinance. Compliance with the Noise Ordinance is based on the status of the receptor property (for example, adjacent Residential receptors), and not the status of the noise-generating property. Violations of the Noise Ordinance commonly result from, but are not limited to, the operation or improper placement of HV/AC units, generators, and loading docks. Construction noise is exempted from the Noise Ordinance during the following hours, 7am–9pm (Mon–Fri) and 8am–5pm (Sat & Sun). Variances for nighttime work are allowed, but the variance approval process requires 2 to 3 months. For variance requests or questions related to the Noise Ordinance, please contact Paul Riedesel, Denver Environmental Health (720-865-5410).
- Scope & Limitations: DEH performed a limited search for information known to DEH regarding environmental conditions at the subject site. This review was not intended to conform to ASTM standard practice for Phase I site assessments, nor was it designed to identify all potential environmental conditions. In addition, the review was not intended to assess environmental conditions for any potential right-of-way or easement conveyance process. The City and County of Denver provides no representations or warranties regarding the accuracy, reliability, or completeness of the information provided.



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

**Public Works – ROW - City Surveyor:** Approved – No Comments

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

**Public Works – 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

**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:	9/27/2018
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:	12/24/2018
Planning Board voted 8-1 to recommend approval:	1/9/2019
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:	1/14/2019

Land Use, Transportation and Infrastructure Committee of the City Council review:	1/29/2019
Property legally posted for a period of 21 days and CPD written notice of the City Council public hearing sent to all affected members of City Council and registered neighborhood organizations:	2/14/2019
City Council Public Hearing:	3/11/2019

- **Registered Neighborhood Organizations (RNOs)**
  - To date, no comment letters have been received from Registered Neighborhood Organizations.
- **Other Public Comment**
  - To date, 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 apply to this property:

- Denver Comprehensive Plan 2000
- Blueprint Denver (2002)
- 41<sup>st</sup> and Fox Station Area Plan (2009)
- Globeville Neighborhood Plan (2014)

#### Denver Comprehensive Plan 2000

The proposal is consistent with many Denver Comprehensive Plan strategies, including:

- Environmental Sustainability Strategy 2-F – *Conserve land by: promoting infill development within Denver at sites where services and infrastructure are already in place; designing mixed-use communities and reducing sprawl, so that residents can live, work and play within their own neighborhoods; creating more density at transit nodes.* (p. 39)



- Environmental Sustainability Strategy 4-A – *Promote the development of sustainable communities and centers of activity where shopping, jobs, recreation and schools are accessible by multiple forms of transportation, providing opportunities for people to live where they work.* (p. 41)
- Land Use Strategy 3-B – *Encourage quality infill development that is consistent with the character of the surrounding neighborhood; that offers opportunities for increased density and more amenities; and that broadens the variety of compatible uses.* (p. 60)
- Land Use Strategy 4-A – *Encourage mixed-use, transit-oriented development that makes effective use of existing transportation infrastructure, supports transit stations, increases transit patronage, reduces impact on the environment, and encourages vibrant urban centers and neighborhoods.* (p. 60)
- Mobility Strategy 4-E – *Continue to promote mixed-use development, which enables people to live near work, retail and services.* (p. 78)
- Denver’s Legacies Strategy 3-A – *Identify areas in which increased density and new uses are desirable and can be accommodated.* (p. 99)

The proposed map amendment would allow for mixed-use infill development near the new 41<sup>st</sup> and Fox station for the RTD G Line, which will provide high-quality transit service to downtown Denver, Arvada, and Wheat Ridge. The new transit station provides an opportunity to transform the area around it into a dense, mixed-use neighborhood. The proposed C-MX-20 UO-2 zoning would allow a range of appropriate uses at an intensity consistent with the desire for dense, walkable, mixed-use neighborhoods around transit expressed in Comprehensive Plan 2000.

### **Blueprint Denver**

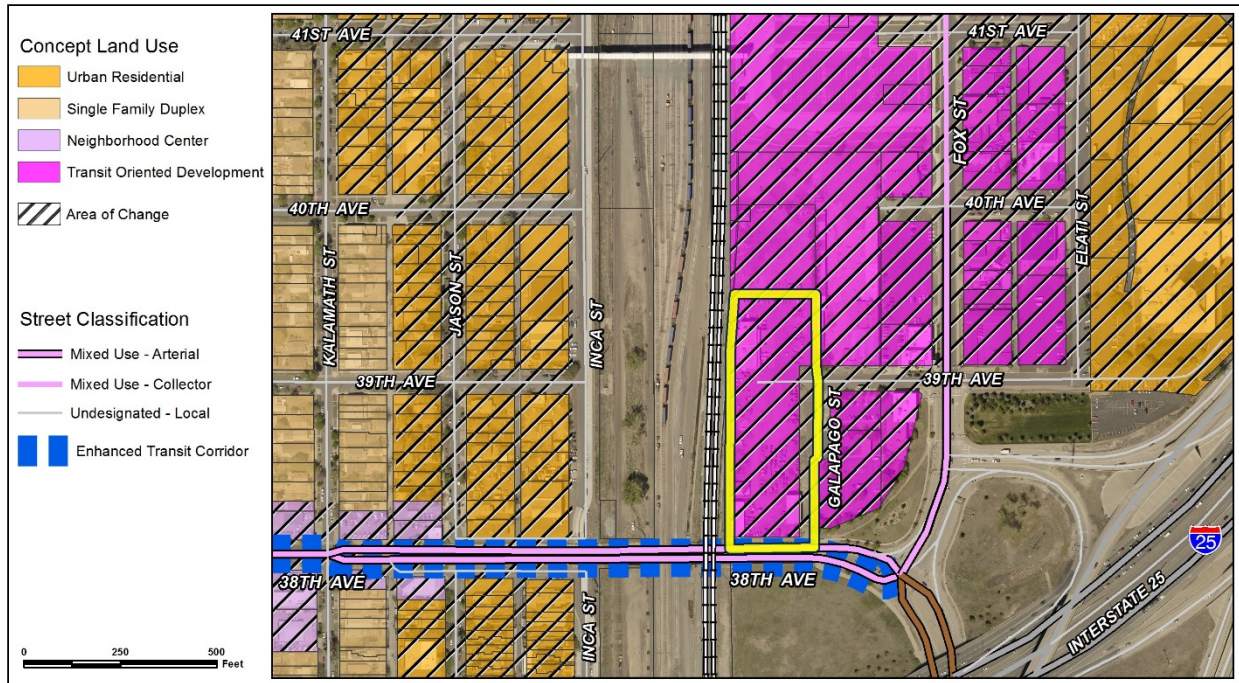
According to the 2002 Plan Map adopted in Blueprint Denver, this site has a concept land use of Transit Oriented Development and is located in an Area of Change.

### **Future Land Use**

Transit Oriented Development areas “offer an alternative to traditional development patterns by providing housing, services, and employment opportunities for a diverse population in a configuration that facilitates pedestrian and transit access” (p. 44). Common attributes of Transit Oriented Developments include “a balanced mix of uses (residential, retail, office, entertainment, public facilities and others); compact mid- to high-density development;” and “attractive, multi-story buildings facing the station and adjacent streets” (p. 44). The proposed C-MX-20 UO-2 zone district would allow a wide range of residential, commercial, and institutional uses at a high density. The zone districts in the Urban Center context also include build-to and transparency requirements to ensure buildings appropriately address the street, consistent with the plan recommendations.

### **Area of Change / Area of Stability**

As noted, the site is in an Area of Change. In general, “The goal for Areas of Change is to channel growth where it will be beneficial and can best improve access to jobs, housing and services with fewer and shorter auto trips” (p. 127). The proposed C-MX-20 UO-2 zoning would allow additional development near a transit station, supporting jobs, housing, and services with less reliance on automobiles, consistent with the goals of Blueprint Denver.



**Street Classifications**

The site is served by Galapago Street and 39<sup>th</sup> Avenue, which are classified by Blueprint Denver as Undesignated Local streets. The plan describes local streets as “influenced less by traffic volumes and tailored more to providing local access. Mobility on local streets is typically incidental and involves relatively short trips at lower speeds to and from other streets” (p. 51). The site is adjacent to 38<sup>th</sup> Avenue, which is classified as a Mixed-Use Arterial, but it does not have direct access to it. According to the plan, “Mixed-use streets are located in high-intensity mixed-use commercial, retail and residential areas with substantial pedestrian activity” (p. 57). The plan describes Arterial streets as being “designed to provide a high degree of mobility and generally serve longer vehicle trips to, from, and within urban areas. Denver’s arterial system interconnects major urban elements such as the central business district, employment centers, large urban and suburban commercial centers and residential neighborhoods.” (p. 51).

The proposed C-MX-20 UO-2 zoning would allow intense mixed-use development that would be appropriate for mixed-use arterial streets, but under certain circumstances, would not be appropriate for Local streets. However, the subject property is near the 41<sup>st</sup> and Fox transit station which will soon serve the area with high-capacity transit. In addition, the site is one block from Fox Street, which is an arterial and connects to 38<sup>th</sup> Avenue and Park Avenue, also both major arterials, and Interstate 25. While connectivity to the citywide street network is limited, the city is taking steps to limit the traffic generated in the area around the 41<sup>st</sup> and Fox station and to improve transportation connections into and out of the area. These include the recent adoption of CPD and Public Works rules and regulations which require transportation demand management plans and manage vehicle trip capacity in this area. The local streets adjacent to the subject site will connect the property to the broader multimodal transportation network, consistent with the



recommendations of the plan. The proposed C-MX-20 UO-2 zoning is consistent with the concept land use, area of change, and street type recommendations of Blueprint Denver.

#### **41<sup>st</sup> and Fox Station Area Plan**

The 41<sup>st</sup> and Fox Station Area Plan was adopted by City Council in 2009 and applies to the subject property. The plan focuses on the long-term redevelopment of the area east of the railroad tracks “to create a complete, transit-friendly neighborhood” (p. viii).

Primary goals for the station area are as follows (p. vii):

- Improve pedestrian connections to the station, between neighborhoods, and along major corridors
- Create opportunities to add more housing, jobs and services to the station area
- Incorporate plazas, parks and open space into redevelopment areas
- Capitalize on the station area’s proximity to Downtown and location on the Gold Line and Northwest Rail corridors
- Balance the needs of new development and existing uses

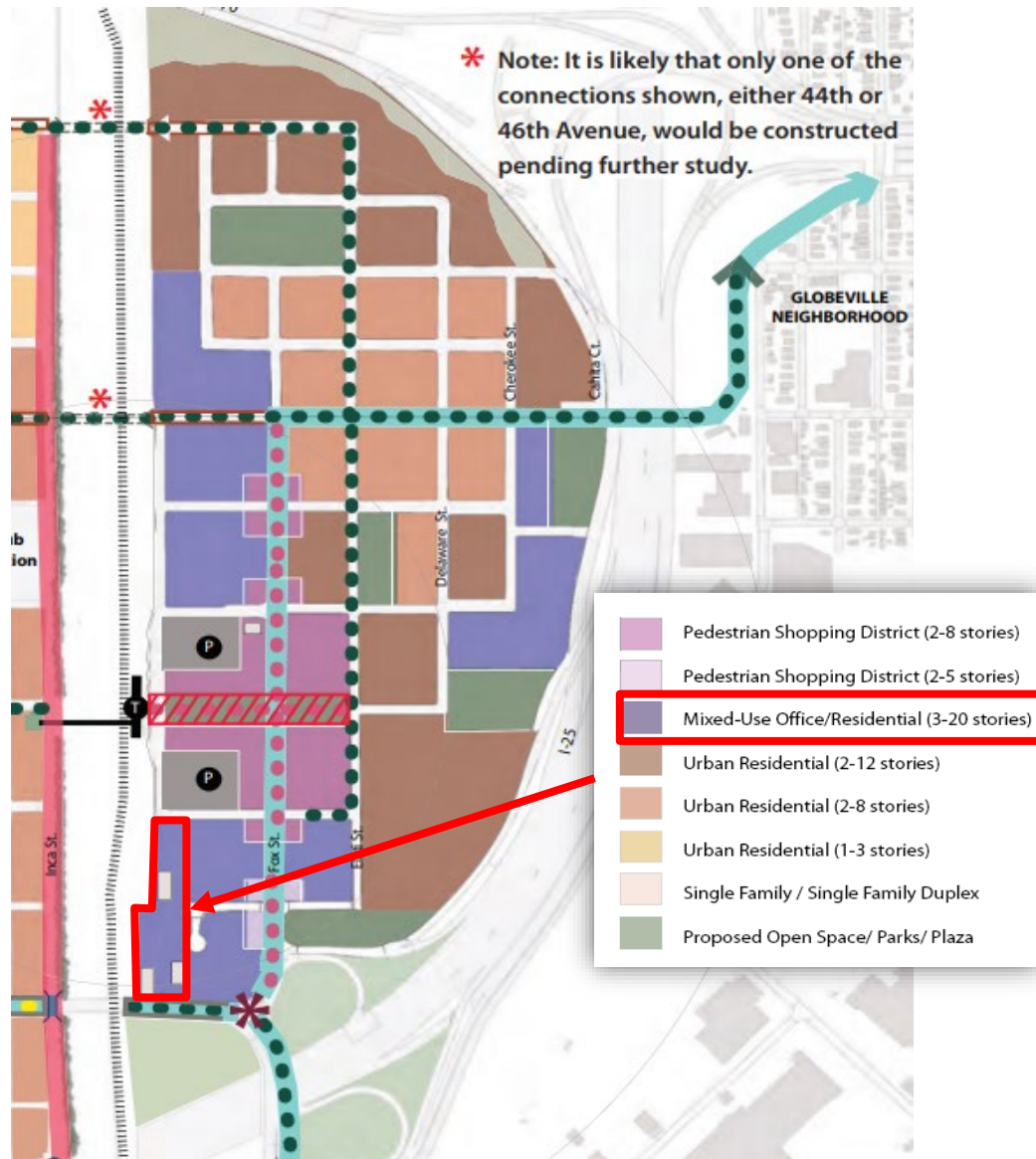
Key elements of the plan concept include the following (p. viii):

- Development of a high intensity activity node close to the station on the east side
- Capture views of Downtown and buffer the station area by locating taller structures along I-25 and I-70

The subject property is designated as Mixed-Use Office/Residential (3-20 stories) in the Land Use Plan. According to the plan, these areas are intended for “a sizeable employment base as well as housing and may include a wide variety of uses including hotels and lodging” (p. 15). The plan also states “because these mixed-use developments are within the transit oriented development area, form of the buildings and pedestrian orientation are very important” (p. 15).

The 41<sup>st</sup> and Fox Station Area Plan also includes urban design recommendations, including that “the ground floors of buildings in all areas should contain the following elements: prominent, street facing entries, extensive ground floor windows and frequent entrances, pedestrian scaled facades, awnings to protect pedestrians and mark entrances, and building entrances that meet the sidewalk” (p. 18). The plan also calls for buildings edges to be “brought to the sidewalk with minimal setbacks” (p. 18). The subject property has three existing structures the plan indicates are “historically significant,” which the plan recommends “should be incorporated into future redevelopment by drawing design inspiration from the area’s industrial character” (p. 18). The structures are not designated for landmark preservation.

The proposed C-MX-20 UO-2 zone district would allow a wide mix of uses including office, retail, residential, and lodging, in buildings up to 20 stories in height, consistent with the plan’s land use recommendations. The proposed zone district also includes significant build-to and transparency requirements, ensuring development would meet the design and pedestrian-friendliness recommendations of the plan. If and when demolition of the existing structures is proposed by the property owner or a developer, they will be subject to the demolition review process administered by the Landmark Preservation division.



The plan includes mobility infrastructure recommendations intended to ensure the area can accommodate the growth called for in the plan (p. 20). Some of these recommendations have been completed, such as the multi-use path connecting across 38<sup>th</sup> Avenue to the South Platte River Trail and the new pedestrian bridge over the railroad tracks at the station. Some recommendations have not been completed, such as the proposed new street connection across the railroad tracks at 44<sup>th</sup> Avenue or 46<sup>th</sup> Avenue. With the RTD G Line opening soon and the proposed Rules & Regulations relating to parking and trip capacity currently under development, the potential development from the proposed C-MX-20 UO-2 zone district would be adequately accommodated by the transportation system and the proposed map amendment is consistent with the 41<sup>st</sup> and Fox Station Area Plan.



### **Globeville Neighborhood Plan**

The Globeville Neighborhood Plan was adopted by City Council in 2014 and overlaps with the boundary of the 41<sup>st</sup> and Fox Station Area Plan on the subject site. The Globeville Neighborhood Plan reinforces the land use and building height recommendations established in the 41<sup>st</sup> and Fox Station Area Plan. It sets forth the following vision for this area of Globeville: “The 41st and Fox Station will develop over the coming decades into the focal point of a diverse, transit supportive, and environmentally sustainable urban center. Many new residents and businesses will be drawn to the convenient location close to downtown and near some of Denver’s most vibrant urban neighborhoods” (p. 15). The Globeville Plan specifies “that the concept land use and building height recommendations in this plan are intended to be fully consistent with the 41st and Fox Station Area Plan. Should any inconsistencies be found, please refer to the adopted Station Area Plan for the official Plan guidance” (p.34). In the “Strong” section of the Plan, the 41<sup>st</sup> and Fox Station area is identified as an opportunity site to “create a broad base of new jobs in diverse economic sectors by redeveloping opportunity sites throughout the neighborhood” (p. 44).

As described above the proposed C-MX-20 UO-2 zone district is consistent with the recommendations of the 41<sup>st</sup> and Fox Station Area Plan, which are reinforced in the Globeville Neighborhood Plan. The proposed rezoning would facilitate the redevelopment of the subject site and allow a wide mix of uses, strengthening the economy of the area consistent with the Globeville Neighborhood Plan recommendations.

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

The proposed rezoning to C-MX-20 UO-2 will result in the uniform application of zone district building form, use and design regulations.

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

The proposed official map amendment furthers the public health, safety, and general welfare of the City primarily through implementation of the city’s adopted land use plan. The proposed zone district enhances the pedestrian experience through improved building design standards including transparency, build-to, and street level active uses. The proposed rezoning would also facilitate the redevelopment of the property and investment in the neighborhood, enhancing the safety and welfare of the area and concentrating housing and services near transit. The traffic safety impacts of future development will be mitigated through strategies outlined above.

## **4. Justifying Circumstance**

The application identifies several changes 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.” The city adopted the Globeville Neighborhood Plan in 2014, after the current zoning was put in place in 2010, meeting subsection b of the criterion. In addition, there are changing conditions in the area, with the construction of the 41<sup>st</sup> and Fox Station, the improved pedestrian and bicycle connections, and new retail development at 39<sup>th</sup>

Avenue and Fox Street. These changing conditions, along with the recently adopted neighborhood plan, justify the rezoning to serve the public interest.

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

The proposed C-MX-20 UO-2 zone district is within the Urban Center Neighborhood Context. The neighborhood context generally consists of multi-unit residential and mixed-use commercial strips and commercial centers (DZC, Division 7.1). While the area around the subject property does not currently fit the description of the Urban Center context, the future intent for the area, as described in the plans mentioned above, is for a mixed-use center consistent with that neighborhood context description. The proposed zone district of C-MX-20 UO-2 would allow development consistent with that vision and is therefore appropriate.

According to the zone district intent stated in the Denver Zoning Code, the C-MX-20 district 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” (DZC Section 7.2.2.1.A) and for “areas or intersections served primarily by major arterial streets where a building scale of 3 to 20 stories is desired” (DZC Section 7.2.2.2.F). Though the subject property does not have direct access to an arterial street, it is served by arterials including Fox Street, one block to the east, which gives direct access to 38<sup>th</sup> Avenue and Park Avenue – both of which are major arterials – and Interstate 25. This meets the intent of the code that the zone district be applied to areas served primarily by major arterials. The proposed C-MX-20 zone district would facilitate the development of an active and diverse urban center, consistent with the purpose and intent of the zone district.

## **Attachments**

1. Application