



TO: Denver City Council
FROM: Jason Morrison, AICP, Senior City Planner
DATE: September 8th, 2022
RE: Official Zoning Map Amendment Application #2021I-00222

Staff Report and Recommendation

Based on the criteria for review in the Denver Zoning Code, Staff recommends approval of Application #2021I-00222 by Denver City Council.

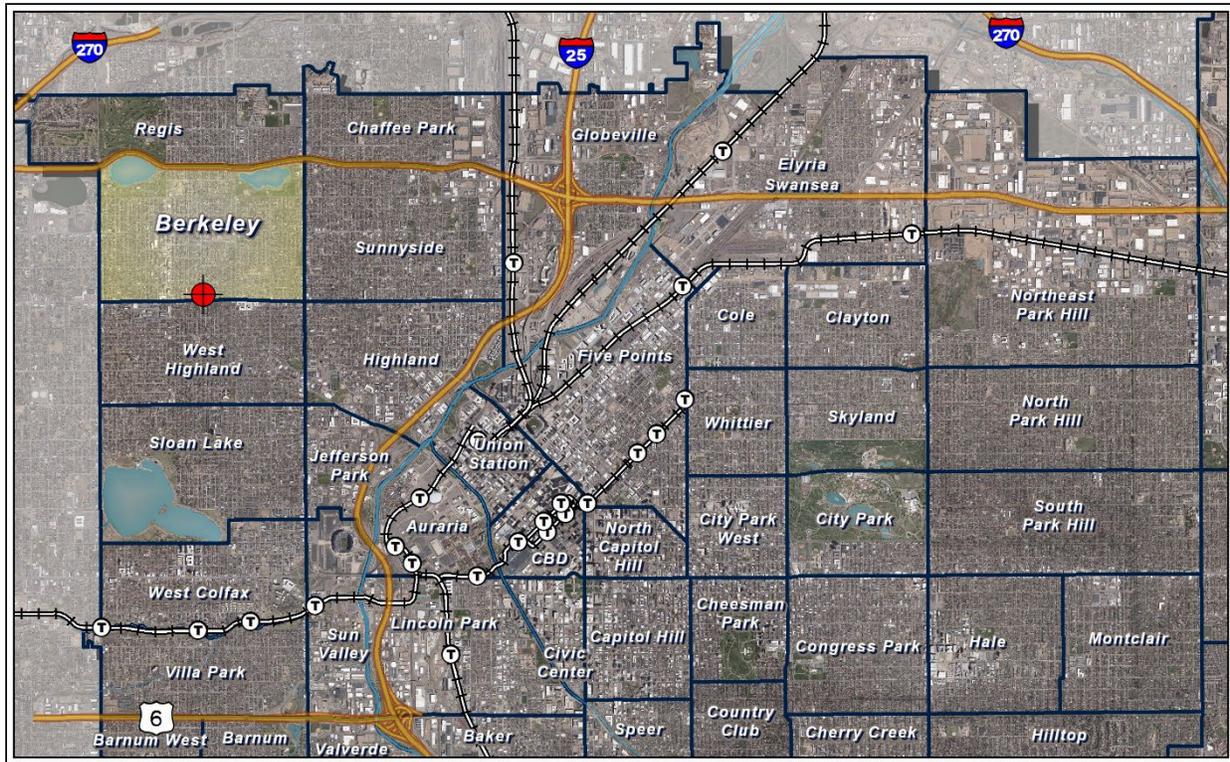
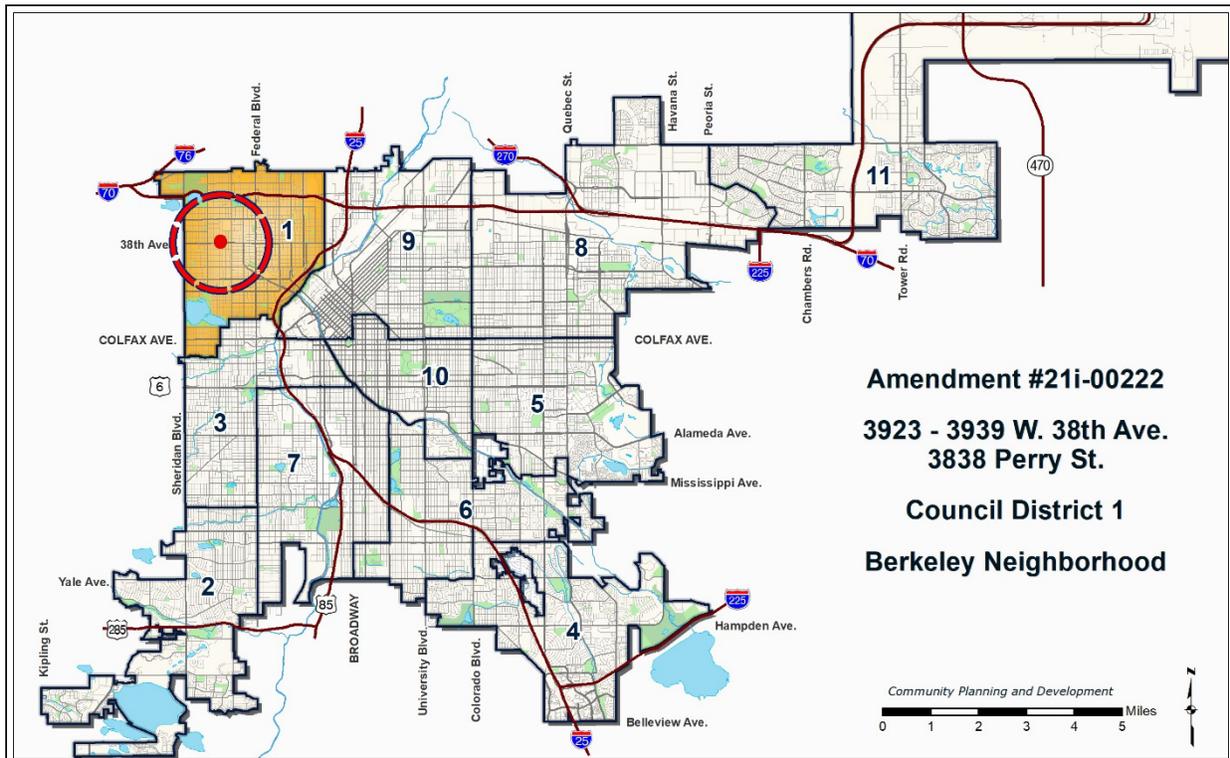
Request for Rezoning

Address:	3923 & 3929 W. 38 th Avenue and 3838 N. Perry Street
Neighborhood/Council District:	Berkeley Neighborhood / Council District 1
RNOs:	West 38th Ave Neighborhood Association, West Highland Neighborhood Association, Unite North Metro Denver, Berkeley Regis United Neighbors, Inc., Inter-Neighborhood Cooperation
Area of Property:	34,925 square feet or 0.80 acres
Current Zoning:	PUD 456
Proposed Zoning:	U-MS-3
Property Owner(s):	Bolton Lampert Business Property LLC., Lampert Business Properties LLC.
Owner Representative:	Phil Workman (The Pachner Company)

Summary of Rezoning Request

- The subject site consists of three parcels which contain two commercial structures. The property owners are proposing to rezone the property to facilitate redevelopment.
- The current zoning on the subject site is PUD 456 which was created in 1998 and is a custom zone district based on Former Chapter 59. PUD 456 allows for retail sales and the installation and storage of automobile accessories. A maximum building height of two stories (25 feet) applies to the site and minimum setbacks, allowed encroachments, and allowed uses conform to the B-2 and R-2 zone districts (Former Chapter 59).
- The proposed U-MS-3 Zone District (**U**rbain, **M**ain **S**treet, **3** stories) is intended to “promote safe, active, and pedestrian-scaled commercial streets through building forms that clearly define and activate the public street edge.” The U-MS-3 Zone District applies primarily to collector and arterial street corridors or may be embedded within a commercial shopping center or mixed-use area, where a building scale of 1 to 3 stories is desired. The Zone District allows for construction of the Town House and Shopfront primary building forms, and drive thru services and restaurants are allowed subject to geographic limitations. The maximum height of the allowed primary building forms ranges from 38 to 45 feet. Further details of the zone districts can be found in Article 5 of the Denver Zoning Code (DZC).

Existing Context





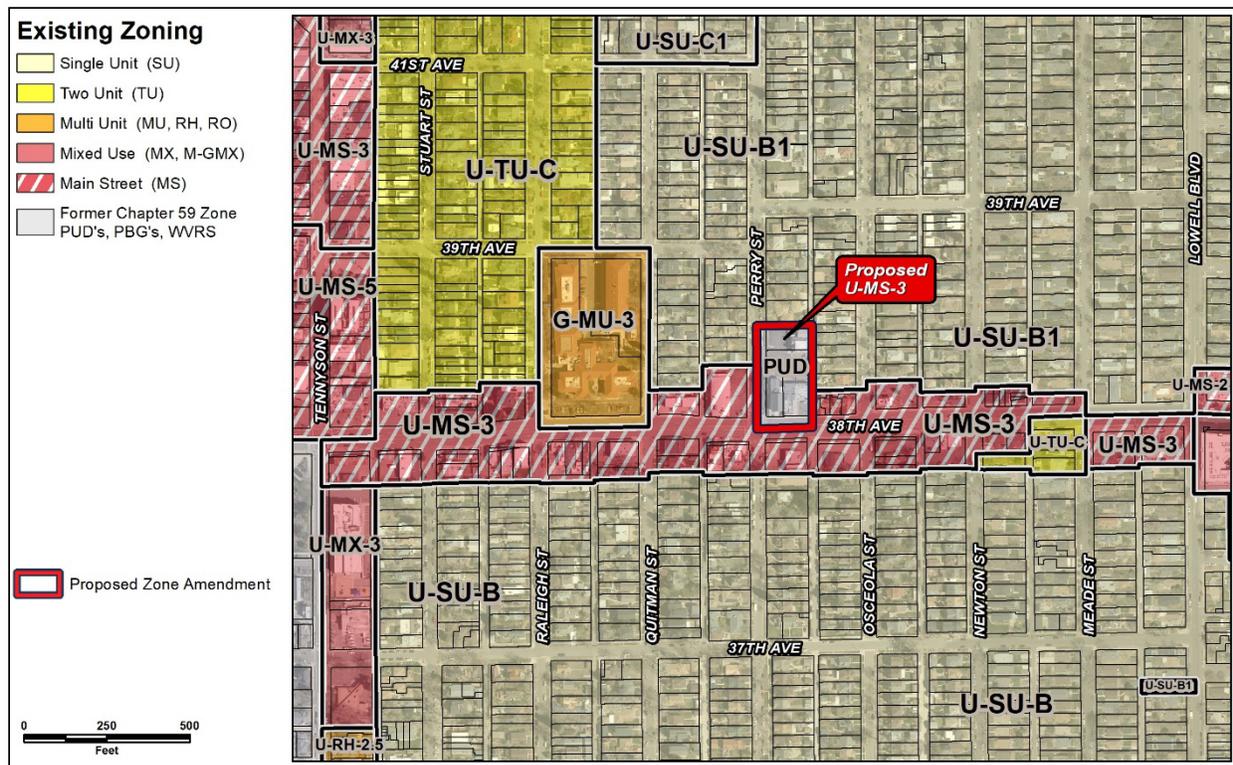
The site is located in the Berkeley statistical neighborhood at the northeast corner of N. Perry Street and W. 38th Avenue. The area is generally characterized as a mix of residential uses, with a concentration of commercial and retail uses along W. 38th Avenue and N. Tennyson Street (located less than ¼ mile to the west). Edison Elementary School is located two blocks to the south of the subject site and Skinner Middle School is located approximately ¼ mile to the northeast. Additionally, Mount Saint Vincent (which provides mental health treatment and foster care services for children and families) is located two blocks to the north. The subject site is also served by César Chavez Park ¼ mile to the northwest and the Regional Transportation District (RTD) 38 bus route along W. 38th Avenue.

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

	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
Site	PUD 456	Commercial/Retail & Industrial	Two, one-story commercial structures and associated parking with medium to large setbacks	Generally regular grid of streets where block sizes and shapes are generally consistent and rectangular.
North	U-SU-B1	Multi-Unit Residential	One-story residential structure with medium setback	
South	U-MS-3	Commercial	One-story commercial structure and associated parking lot with large setbacks	Rear-loaded garages with alleys.

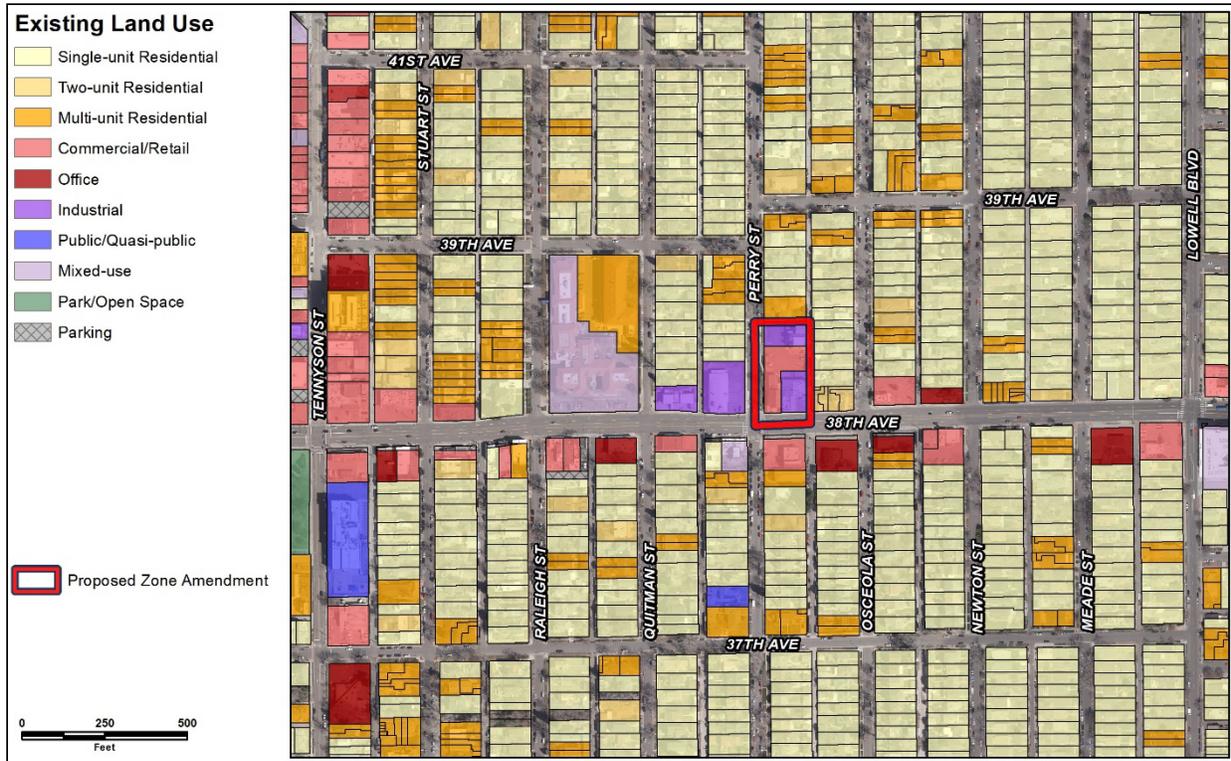
	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
West	U-SU-B1, U-MS-3	Single-Unit Residential, Industrial	One-story residential structure with medium setback, and one-story commercial structure with associated parking	
East	U-SU-B1, U-MS-3	Single-Unit Residential, Multi-Unit Residential	Two single-story duplex structures with minimal setbacks off W. 38 th Avenue, and single-story houses with medium setbacks along Osceola.	

1. Existing Zoning



The subject site is currently zoned PUD 456 which was established in 1998 and is a custom zone district from Former Chapter 59. The PUD allows for retail sales and the installation and storage of automobile accessories. A maximum building height of two stories (25 feet) applies to the site, and minimum setbacks, allowed encroachments, and allowed uses conform to the B-2 and R-2 zone districts (Former Chapter 59). Building coverage can't exceed 32.4% under the current zoning. Additional information on PUD 456 can be found attached to this staff report.

2. Existing Land Use Map



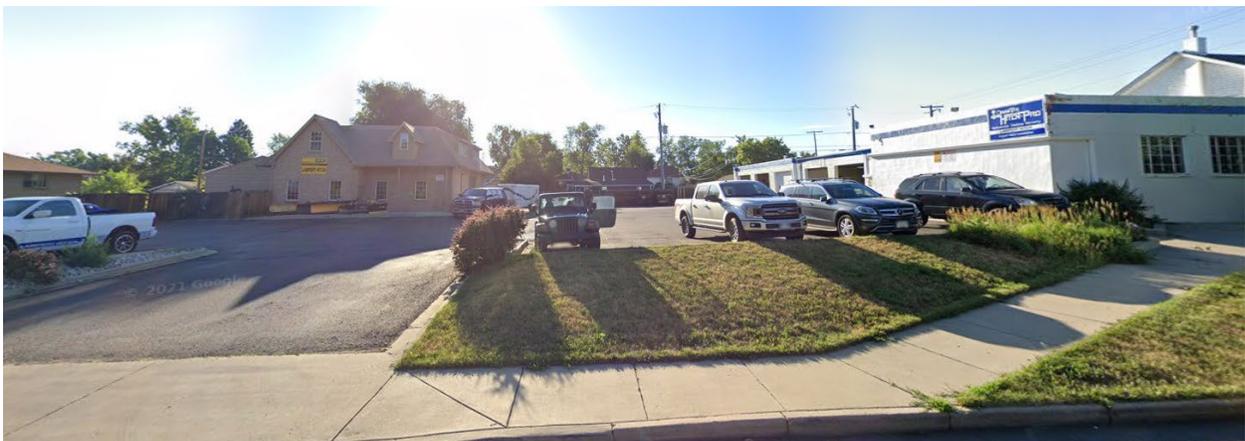
The existing land use on the subject site is a mix of Commercial/Retail and Industrial. Surrounding land use includes Multi-unit residential, Two-unit residential, Office, Commercial Retail and Industrial.

3. Existing Building Form and Scale

All images are from Google Street View.



Subject site facing north from W. 38th Avenue



Subject site facing east from N. Perry Street



Multi-unit residential (one-story) property north of the subject site, facing east from N. Perry Street



Commercial building (one-story) south of the subject site, facing south from W. 38th Avenue



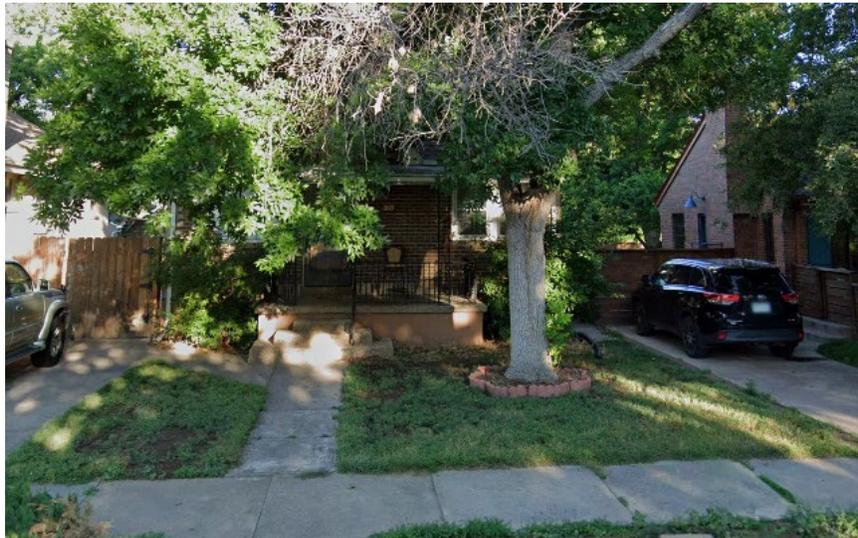
Residential duplex (one-story) east of the subject site, facing north from W. 38th Avenue



Single-unit residential (one-story) east of the subject site, facing west from N. Osceola Street



Industrial building (one-story) west of the subject site, facing west from N. Perry Street



Single-unit residential (one-story) west of the subject site, facing west from N. Perry Street

Proposed Zoning

The requested U-MS-3 Zone District is found in the Urban neighborhood context and the intent of the district is to “promote safe, active, and pedestrian-scaled commercial streets through building forms that clearly define and activate the public street edge.” Additionally, the Main Street district standards are intended to ensure new development contributes positively to established residential neighborhoods and character, improving the transition between commercial development and adjacent residential neighborhoods. The Zone District allows for construction of the Town House and Shopfront primary building forms, and drive thru services and restaurants are allowed unless the zone lot is within ¼ mile of the outer boundary of a rail transit station platform. These building forms are typically applied linearly along entire block faces of commercial, industrial, main, mixed-use and residential arterial streets. Multi-unit residential uses are typically located along local streets, residential and mixed-use arterials, and main streets. For additional details of the requested zone district, see Article 5 of the Denver Zoning Code.

The primary building forms allowed in the existing zone district and the proposed zone district are summarized here:

Design Standards	Existing PUD 456	Proposed E-MX-2X
Primary Building Forms Allowed	Two commercial structures	Town House, Drive Thru Services, Drive Thru Restaurant, Shopfront
Height in Stories / Feet (max)	2 stories / 25 feet	3 stories / 38-45 feet*+
Primary Street Build-To Percentages (min)	N/A	50-75%*
Primary Street Build-To Range (min)	N/A	0' to 15'*
Minimum Zone Lot Size/Width	N/A	N/A
Primary Street Setbacks (min)	0' to 67'	0' to 10'*
Building Coverages (max)	32.4%	N/A

*Standards vary by building form

+ The district allows incentive heights up to 4 stories and 55 feet with the provision of enhanced affordable housing. Per the proposed affordable housing plan, the site will be eligible to utilize incentive height.

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: No Comments – Approved

Asset Management: No Comments - Approved

Denver Office of the City Attorney: No Comments – Approved

Denver Public Schools: No Response – Approved

Department of Public Health and Environment: No Comments - Approved

Denver Parks and Recreation: No Comments - Approved

Public Works – R.O.W.- City Surveyor: No Comments – Approved

Development Services – Project Coordination: No Response - Approved

Development Services - Fire Protection: No Response – Approved

Development Services – Transportation: No Response – Approved

Development Services- Wastewater: No Response – Approved

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:	4/4/2022
Property legally posted for a period of 15 days and CPD written notice of the Planning Board public hearing sent to all affected members of City Council, registered neighborhood organizations, and property owners:	6/21/2022
Planning Board public hearing approval	7/6/2022
CPD written notice of the Land Use, Transportation and Infrastructure Committee meeting sent to all affected members of City Council and registered neighborhood organizations, at least ten working days before the meeting:	7/5/2022
Land Use, Transportation, and Infrastructure Committee of the City Council:	7/19/2022
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:	8/22/2022
City Council Public Hearing:	9/12/2022

- **Registered Neighborhood Organizations (RNOs):** At the time of this staff report, staff has received one letter from the Berkeley Regis United Neighbors (BRUN). BRUN submitted a position statement citing concerns about the proposed rezoning of part of the northernmost part of the property along Perry St. and potential impacts to an active irrigation ditch abutting the property.
 - **Good Neighbor Agreement** - The applicant and BRUN have entered into an agreement committing the applicant to better building design elements (including maximum height) and landscape buffers for any new development. Additionally, the applicant commits to not using the Drive-Thru building form and will adhere to BRUN’s Active Centers and Corridors Planning and Design Guidelines. The irrigation ditch will remain.
- **Other Public Comment:** At the time of this staff report, staff has received nine letters of support for this rezoning application and those letters are attached to this staff report.

Criteria for Review / Staff Evaluation

The criteria for review of this rezoning application are found in DZC, Sections 12.4.10.7 and 12.4.10.8, as follows:

DZC Section 12.4.10.7

1. Consistency with Adopted Plans
2. Uniformity of District Regulations and Restrictions
3. Public Health, Safety and General Welfare

DZC Section 12.4.10.8

1. Justifying Circumstances
2. Consistency with Neighborhood Context Description, Zone District Purpose and Intent Statements

1. Consistency with Adopted Plans

The following adopted plans currently apply to this property:

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

Denver Comprehensive Plan 2040

The proposed rezoning is consistent with many of the adopted *Denver Comprehensive Plan 2040* strategies, which are organized by vision element.

The proposed rezoning would allow for mixed-use development (including residential uses) within an established neighborhood, consistent with the following strategies in the **Equitable, Affordable, and Inclusive** vision element:

- Equitable, Affordable and Inclusive Goal 2, Strategy A - *Create a greater mix of housing options in every neighborhood for all individuals and families (p. 28).*

Similarly, the proposed U-MS-3 zoning would allow for a broader variety of uses including housing, retail services, and employment at an intensity consistent with the desire for dense, walkable, mixed-use neighborhoods along major corridors. Further, the application of main-street zoning contributes to the city's aspirational network of well-connected mixed-use corridors and is therefore consistent with the following strategies in the **Strong and Authentic Neighborhoods** vision element:

- Strong and Authentic Neighborhoods Goal 1, Strategy A – *Build a network of well connected, vibrant, mixed-use centers and corridors (p. 34).*
- Strong and Authentic Neighborhoods Goal 1, Strategy B – *Ensure neighborhoods offer a mix of housing types and services for a diverse population (p. 34).*
- Strong and Authentic Neighborhoods Goal 1, Strategy D – *Encourage quality infill development that is consistent with the surrounding neighborhoods and offers opportunities for increased amenities (p. 34).*

The land use pattern detailed in the previous paragraph is also consistent with the following strategies in the **Environmentally Resilient** vision element. This site is an infill location where infrastructure is already in place allowing residents to live, work and play in the area. The proposal focuses any future growth that results from this rezoning close to transit. Compact infill development near transportation options and existing infrastructure assists in improving public health indicators while reducing water usage.

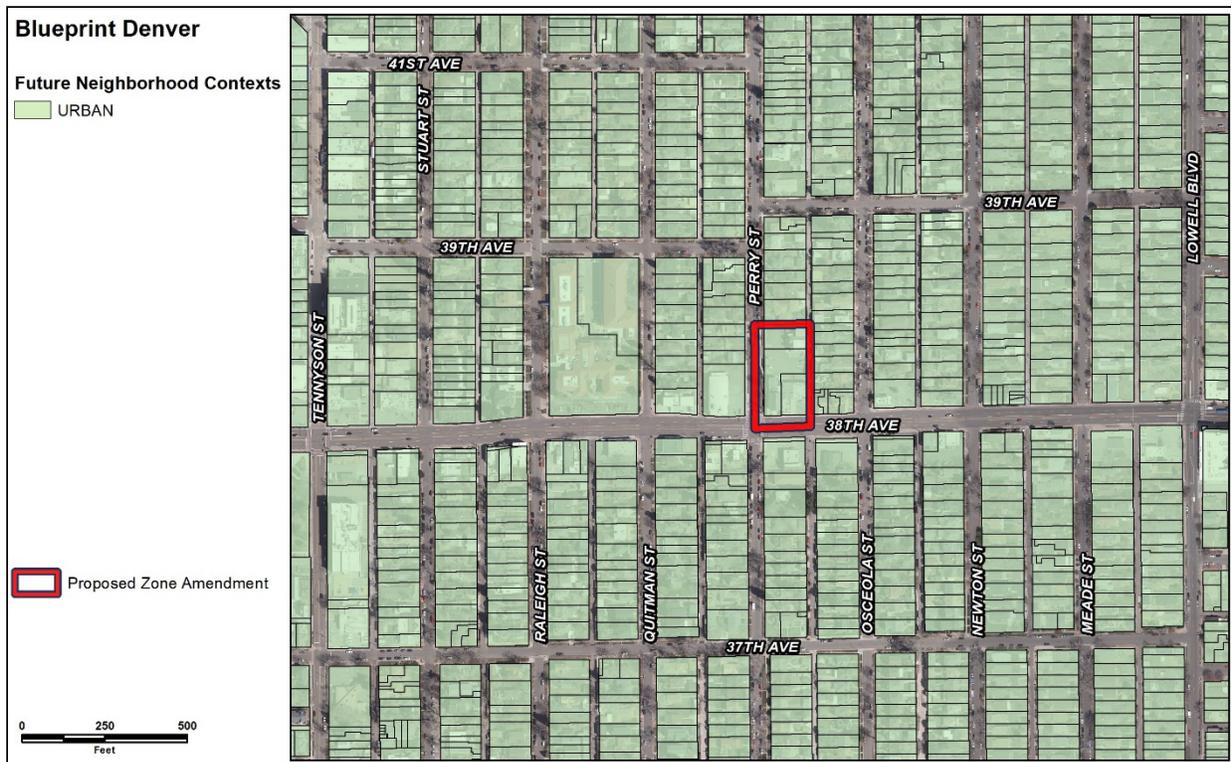
- Environmentally Resilient Goal 8, Strategy A – *Promote infill development where infrastructure and services are already in place (p. 54).*
- Environmentally Resilient Goal 8, Strategy B – *Encourage mixed-use communities where residents can live, work, and play in their own neighborhoods (p. 54).*

Rezoning to facilitate redevelopment of this site advances the Environmentally Resilient strategies of *Comprehensive Plan 2040*. The requested map amendment would allow for a broader variety of uses including housing, retail services, and employment at an intensity consistent with the desire for dense, walkable, mixed-use neighborhoods expressed in *Comprehensive Plan 2040*.

Blueprint Denver

Blueprint Denver was adopted in 2019 as a supplement to *Comprehensive Plan 2040* and establishes an integrated framework for the city's land use and transportation decisions. *Blueprint Denver* identifies the subject property as a Local Corridor within the Urban Neighborhood Context and provides guidance from the future growth strategy for the city.

Blueprint Denver Future Neighborhood Context

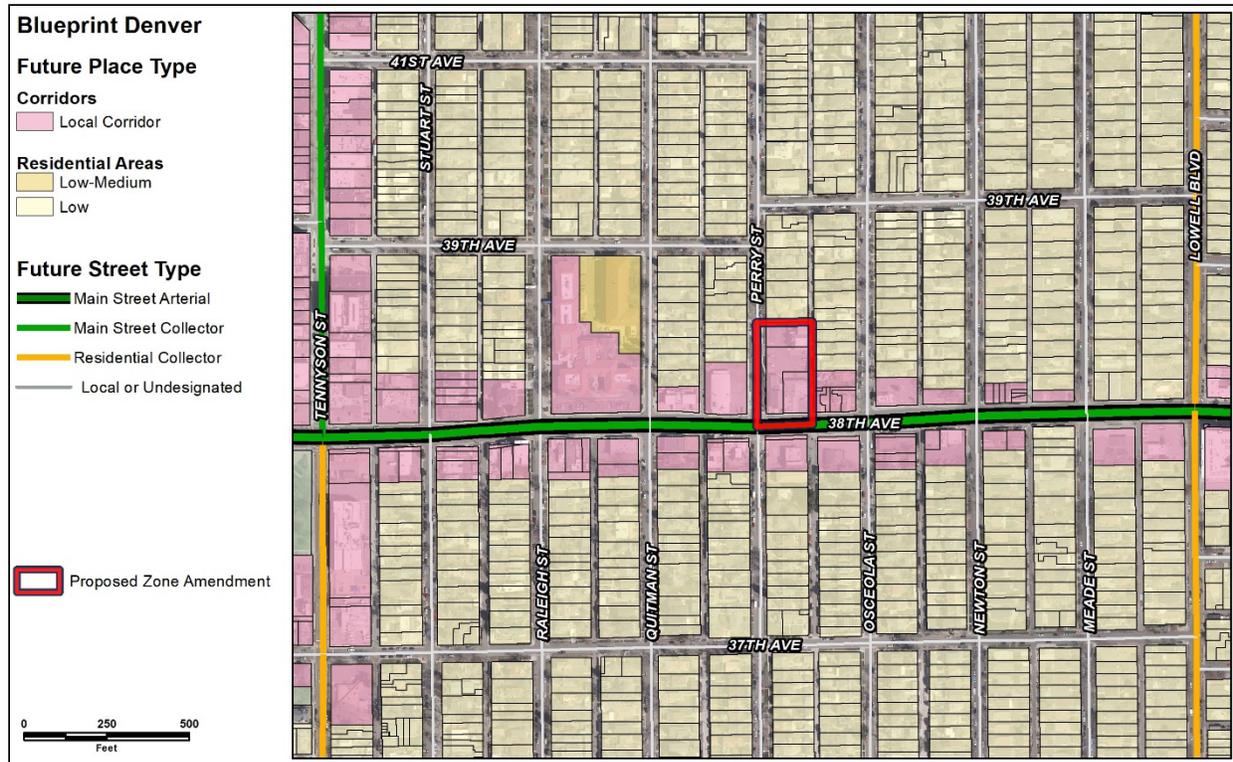


The subject site is shown on the context map as an Urban Neighborhood Context, the description of which is used to guide appropriate zone districts. (p. 66). *Blueprint Denver* describes the Urban Neighborhood Context as, “small multi-unit residential and low-intensity mixed-use buildings are typically embedded in single-unit and two-unit residential areas. Block patterns are a regular grid with consistent alley access. Where they occur, multi-unit buildings are low scale. Mixed-use buildings are sited in a pedestrian-friendly manner near the street” (p. 222)

The proposed U-MS-3 Zone District is within the Urban Neighborhood Context and is intended “to promote safe, active, and pedestrian-scaled commercial street through building forms that clearly

define and activate the public street edge” and “should be applied where a higher degree of walkability and pedestrian activity is desired than required along a Corridor, Mixed Use, or Residential Mixed Use zone district” (DZC Section 5.2.5.1). The U-MS-3 Zone District is consistent with Blueprint Denver’s future neighborhood context of Urban because it will promote an urban, mixed-use built-to environment that will be compatible with the existing residential area.

Blueprint Denver Future Places



Within the Urban Neighborhood Context, the subject property is categorized as a Local Corridor future place with a land use and built form defined by *Blueprint Denver* as primarily providing “options for dining, entertainment and shopping” and “may also include some residential and employment uses” (p.228). In addition, in a Local Corridor, “buildings have a distinctly linear orientation along the street with very shallow setbacks. The scale is intimate with a focus on the pedestrian. The public realm is typically defined by lower-scale buildings with active frontages” while “heights are generally up to three stories” (p. 228).

The proposed rezoning to U-MS-3 is appropriate and consistent with the Local Corridor designation as it allows for the mixed-use development of pedestrian-friendly building forms (up to three stories) that define and activate the public street edge.

Blueprint Denver Street Types

Blueprint Denver street types work with future place designations to evaluate the appropriateness of the intensity of the adjacent development (p. 67). *Blueprint Denver* classifies W. 38th Avenue as a Main Street Arterial and N. Perry Street as an undesignated local street. Main Street Arterial streets are “characterized by a mix of uses including retail, services and restaurants, as well as residential. Buildings are pedestrian-oriented, with little front setback, a continuous street wall, and high transparency” (p.158). Local streets “are designed for the highest degree of property access and the lowest amount of through movement” (p. 154).

The proposed U-MS-3 zone district is consistent with this plan direction for this location as the zone district allows for a mix of uses that will activate the street edge along the W. 38th Avenue corridor.

Growth Strategy



Blueprint Denver's growth strategy map is a version of the future places map, showing the aspiration for distributing future growth in Denver (p. 51). The subject property is located within “All Other Areas of the City”, which are anticipated to see around 20% of new housing growth and 10% of new employment growth by 2040 (p. 51). The proposed U-MS-3 zone district is appropriate in this growth area as it adds the opportunity for both housing and employment growth. Therefore, the proposed rezoning is consistent with the *Blueprint Denver* growth strategy.

Strategies

Blueprint Denver provides recommendations related to properties that retained zoning from the Former Chapter 59 zoning code. Land Use & Built Form: General Policy 3, Strategy B, says, “Rezone properties from the Former Chapter 59 zoning code so that the entire city is covered by the DZC, including continuing to incentivize owners to come out of the old code” (p. 73). That same policy also speaks to custom zoning such as PUDs; Strategy B says, “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). Therefore, the proposed rezoning to come from custom zoning under Former Chapter 59 to a standard zone district such as U-MS-3 under the DZC is consistent with *Blueprint Denver*.

This rezoning request also furthers many of the general goals in *Blueprint Denver* via the following policies:

- Encouraging higher-density development in transit-rich areas (General Land Use & Built Form Policy 01)
- Diversifying housing options by exploring opportunities to integrate missing middle housing into low residential areas (Housing Land Use & Built Form Policy 02)

2. Uniformity of District Regulations and Restrictions

The proposed rezoning to U-MS-3 will result in the uniform application of zone district building form, use, and design regulations on this site as they are applied to any other sites zoned U-MS-3.

3. Public Health, Safety and General Welfare

The proposed official map amendment furthers the public health, safety, and general welfare of the City primarily through the implementation of the City’s adopted plans and by allowing for redevelopment in a manner that will provide for the construction of additional neighborhood-serving residential and amenities, thereby providing residents more opportunities to live, work, and play within their neighborhood. The proposed rezoning would also facilitate housing density near a mix of uses and transit amenities, which have been linked to increased physical activity,¹ decreased obesity,² and decreased driving.³

¹ Ewing, R., and R. Cervero. 2010. "Travel and the Built Environment: A Meta-Analysis." *Journal of the American Planning Association* 76 (3): 265-94

² Ewing, R., T. Schmid, R. Killingsworth, A. Zlot, and S. Raudenbush. 2003. "Relationship between Urban Sprawl and Physical Activity, Obesity, and Morbidity." *American Journal of Health Promotion* 18: 47-57.

³ Frumkin, Frank, and Jackson 2004; Fran et al. 2006; Ewing et al. 2008; Stone 2008.

4. Justifying Circumstance

The application identifies changed or changing conditions as the justifying circumstance under DZC Section 12.4.10.8.A.4., “Since the date of the approval of the existing Zone District, there has been a change to such a degree that the proposed rezoning is in the public interest. Such change may include: c. That the City adopted the Denver Zoning Code and the property retained Former Chapter 59 zoning.” The zoning on the subject site is a Former Chapter 59 PUD. Rezoning from Former Chapter 59 zoning into the Denver Zoning Code is an appropriate justifying circumstance. Additionally, rezoning out of the existing PUD 456 will provide more flexibility to modify the site to accommodate changing conditions in the neighborhood as evidenced by recent redevelopment near the site, including significant streetscape improvements along mixed-use corridors like N. Tennyson Street.

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

The requested U-MS-3 district is within the Urban Neighborhood Context, which is characterized by primarily single-unit and two-unit residential uses with small-scale commercial sometimes embedded with residential areas. More often commercial uses are located along mixed-use arterials or on main streets. Multi-unit residential uses are located along local streets, residential and mixed-use arterials, and main streets. Buildings are generally low to mid- scale, and residential buildings typically have consistent moderate to deep front setbacks. There typically is a regular pattern of block shapes surrounded by orthogonal streets within a grid (DZC 5.1). The subject site is in an area that reflects these characteristics. Therefore, the proposed rezoning to U-MS-3 is consistent with the neighborhood context description.

The general purpose of the Urban Main Street districts is to “promote safe, active and pedestrian-scaled commercial streets through building forms that clearly define and activate the public street edge, and that enhance the convenience, ease and enjoyment of transit, walking, shopping and public gathering.” The building form standards “are intended to promote an urban, mixed-use, built-to environment” where “buildings have a shallow front setback range, and the build-to requirements are high, and the maximum building coverage is significant” (DZC 5.2.5.1). The proposed U-MS-3 district would allow for compatible infill development fitting with the character of the surrounding mixed-use corridor. Therefore, it is consistent with the Urban Main Street District purpose statements.

The specific intent of the U-MS-3 district is the district “applies primarily to collector and arterial street corridors or may be embedded within a larger commercial shopping center or mixed-use area, where a building scale of 1 to 3 stories is desired” (DZC 5.2.5.2.D). The subject site is located on a Main Street Arterial street and therefore, the proposed map amendment is consistent with the U-MS-3 intent.

Attachments

1. Existing PUD
2. Application
3. RNO/Public Comment