



TO: Denver City Council
FROM: Elizabeth Weigle, AICP, Senior City Planner
DATE: July 19, 2018
RE: Official Zoning Map Amendment Application #2017I-00090

Staff Report and Recommendation

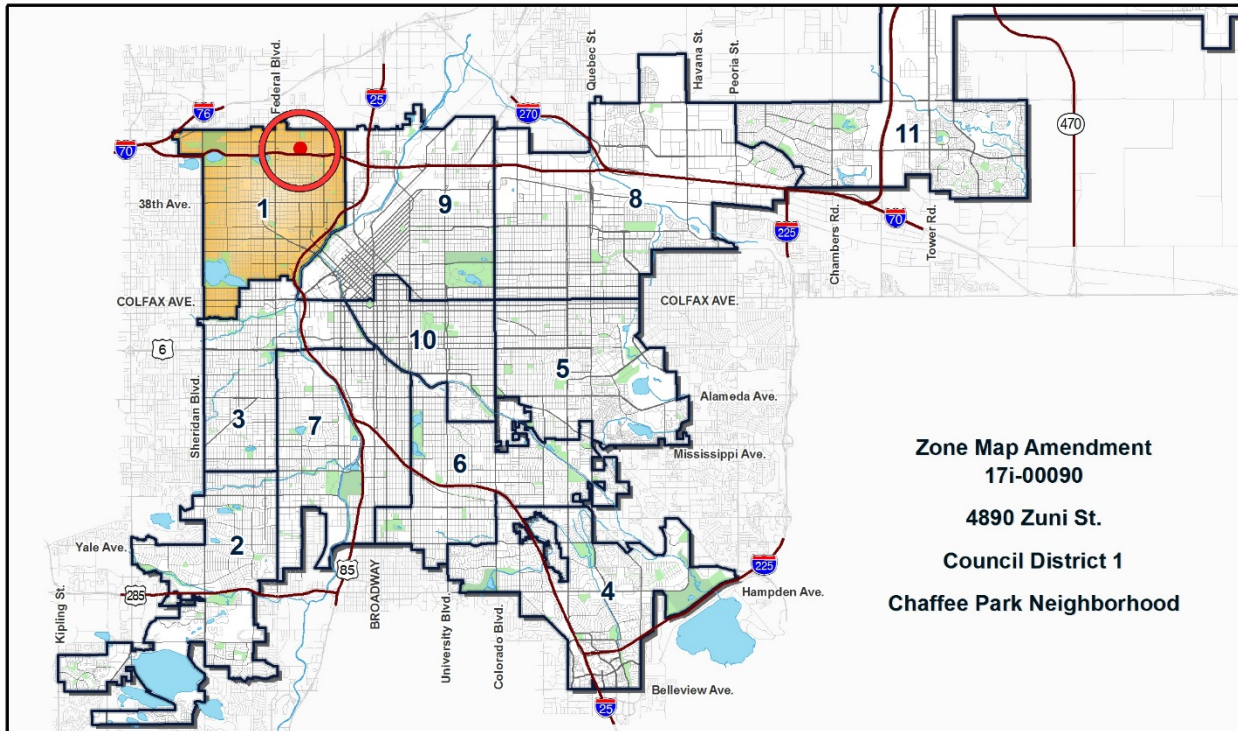
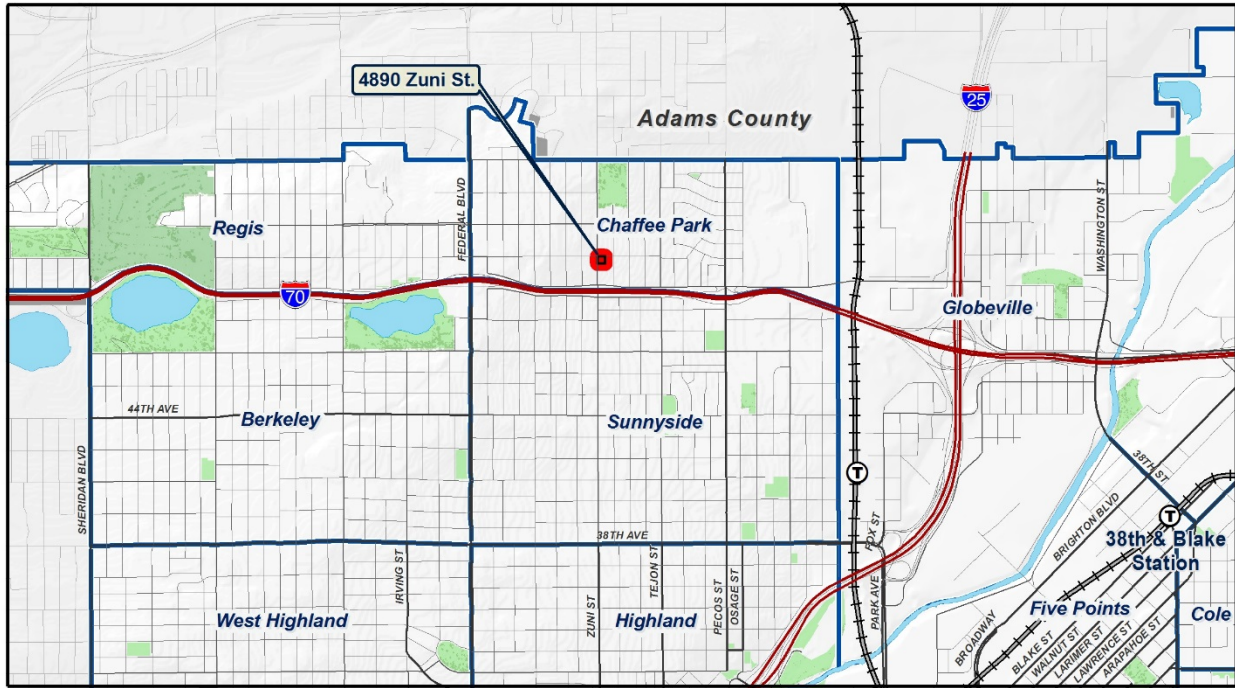
Based on the criteria for review in the Denver Zoning Code, Staff recommends **approval** for Application #2017I-00090.

Request for Rezoning

Address: 4890 Zuni Street
Neighborhood/Council District: Chaffee Park Neighborhood / Council District 1
RNOs: Inter-Neighborhood Cooperation (INC); Chaffee Park Registered Neighborhood Association; United North Side Neighborhood
Area of Property: 15,600 square feet or .36 acres
Current Zoning: E-SU-Dx
Proposed Zoning: E-MX-2x with waivers
Property Owner(s): Zuni 49 LLC
Owner Representative: Frederick Glick

Summary of Rezoning Request

- The subject property is located in the Chaffee Park neighborhood on Zuni Street at the intersection of West 49th Avenue.
- The subject property is currently occupied by a 1-story building, which was constructed in 1953 and occupied by a church until 2016. The building is currently vacant.
- The proposed rezoning will allow for the property owner to redevelop the property with commercial uses.
- The E-MX-2x (Urban Edge Neighborhood, Mixed Use, 2 story) zone district is intended to provide safe, active, and pedestrian-scaled, diverse areas in established residential neighborhoods. The “x” indicates that allowed uses and building forms are more limited than in the E-MX-2 zone district. Further details of the zone districts can be found in Article 4 of the Denver Zoning Code (DZC).
- The proposed zone district includes waivers to 1) remove minimum requirements for vehicle parking for non-residential uses; 2) increase minimum requirements for bicycle parking for non-residential uses; and 3) remove the requirement for a Zoning Permit with Special Exception Review (ZPSE) for Eating and Drinking Establishments.



Waivers

Section 12.4.10.6 of the Denver Zoning Code 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 three waivers, as outlined in the attached application. The waivers are as follows:

1. A waiver of the minimum required vehicle parking for non-residential primary uses (DZC Section 4.4.4);
2. A waiver to increase minimum required bicycle parking for primary uses classified as Commercial High, Commercial Medium, Public Use High and Public Use Medium parking categories. The intent of this waiver is to double the minimum required bicycle parking for non-residential primary uses (DZC Sections 4.4.4 and 10.4.9.2).
3. A waiver to remove the requirement of a Zoning Permit with Special Exception Review for the Eating and Drinking Establishments use (DZC Section 4.4.4). The intent of the waiver is to allow Eating and Drinking Establishments to be permitted without Special Exception Review by the Board of Adjustment, subject to applicable use limitations.

Existing Context

The site is located in the Chaffee Park neighborhood at the southeast intersection of Zuni Street and West 49th Avenue, one block north of Interstate 70, eight blocks east of Federal Boulevard, and approximately eight blocks west of Pecos Street. The area is predominantly characterized by single unit residential uses. Beach Court elementary is located one block west, and 51st and Zuni Park is located two blocks north. Transit access includes the 52 bus route on Zuni Street adjacent to the site and additional bus routes on Federal Boulevard and Pecos Street.



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	E-SU-Dx	Vacant, formerly occupied by a church	1-story church building	Consists of a regular pattern of rectangular block shapes in an orthogonal grid. Alley access is available on most blocks. The street grid connectivity is interrupted by Interstate 70, with Zuni Street one of few streets in the immediate area that connects north-south under I-70.
North	E-SU-Dx	Single-unit residential;	1 and 2-story residences	
South	E-SU-Dx; U-SU-C 1 block south	Single-unit residential	1 and 2-story residences	
East	E-SU-Dx	Single unit residential	1 and 2-story residences	
West	E-SU-Dx	Single unit residential	1 and 2-story residences	

1. Existing Zoning



The subject site is currently zoned E-SU-Dx. E-SU-Dx is a single-unit residential district. The district allows both the suburban house and urban house primary building forms. Minimum lot width is 50 feet wide, and minimum lot area is 6,000 square feet.

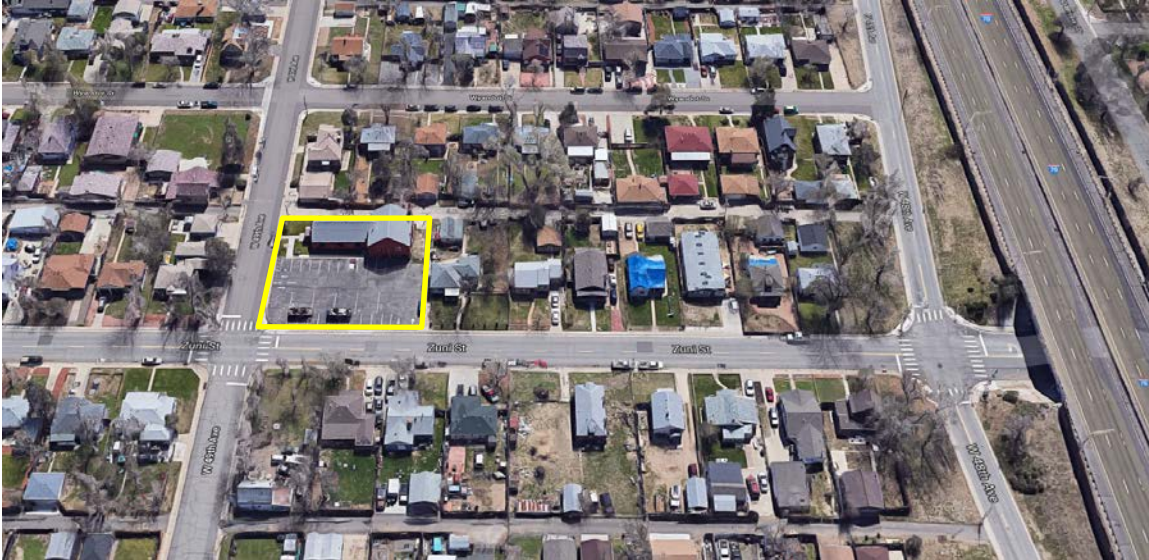
The surrounding properties are E-SU-Dx, which is a Protected District. If the subject property is rezoned to E-MX-2x with waivers, it will be subject to Protected District standards including additional setbacks and use limitations. For Protected District standards see DZC Section 4.3.3.3.K for setbacks in the General building form and use limitations in Article 11 (11.4.8, 11.5.8.3, 11.10.12.1, etc.). The proposed E-MX-2x with waivers zone district would not include the requirement for a Zoning Permit with Special Exception Review for an Eating and Drinking Establishment Use. The property will be subject to the ZPSE requirement for accessory Outdoor Eating and Serving Areas when located less than 50 feet from a Protected District.

2. Existing Land Use Map



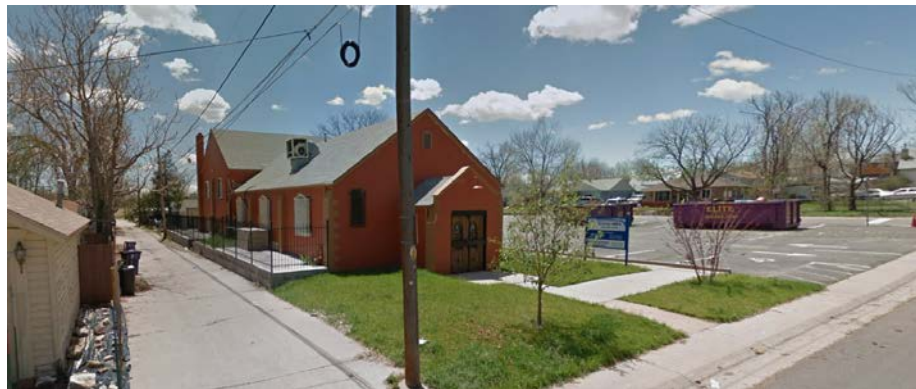
3. Existing Building Form and Scale

The existing building form and scale of the subject site and adjacent properties are shown in the following images. (Source: Google Maps)



Aerial view of subject property, looking East.

View of subject site on W. 49th Avenue, looking southwest



View of the subject site and adjacent property on Zuni Street, looking east



Properties to the west of the site across Zuni Street, looking west



Properties to the north of the site across W. 49th Avenue, looking north



Properties to the east of the site across the alley on Wyandot Street, looking west



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:

Public Works – City Surveyor: Approved – No comments.

Asset Management: Approved – No comments.

Public Health and Environment (DDPHE): Approved with comments.

- Notes. DDPHE is not aware of environmental concerns on the property and concurs with the rezoning request.
- 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.

Development Services, Wastewater: Approved with 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, 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.

Public Review Process

CPD informational notice of receipt of the rezoning application to all affected members of City Council and registered neighborhood organizations:	1/3/18
CPD informational notice of receipt of the revised rezoning application to all affected members of City Council and registered neighborhood organizations:	4/12/18
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 and registered neighborhood organizations:	4/30/18
Planning Board public hearing, voted unanimously to recommend approval:	5/16/18
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:	5/24/18
Land Use, Transportation and Infrastructure Committee of the City Council:	6/12/18
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:	7/2/18
City Council Public Hearing:	7/23/18

● **Registered Neighborhood Organizations**

- Chaffee Park Neighborhood Association, a registered neighborhood organization, submitted a position statement and a letter in support of the application, both of which are attached to this report. The letter states that the organization is in support of the E-MX-2x zone district and the proposed waivers. The letter expresses support of commercial uses, reducing vehicle parking in order to increase walkability and opportunities for other on-site amenities, and removing the ZPSE requirement to reduce burdens on small businesses. The letter also mentions that the organization is not in favor of the following: 1) A marijuana dispensary (this use is not permitted in the E-MX-

2x district); 2) a liquor store (this use is permitted in the E-MX-2x district with a Zoning Permit Review with Informational Notice); 3) hours of operation that extend later than 10 PM on weekdays or 11 PM on weekends (this is consistent with the use limitations in E-MX-2x when adjacent to a Protected District); and 4) Residential Uses (E-MX-2x does permit residential uses). The position statement notes that the organization is working with the applicant to create a Good Neighbor Agreement.

- **Planning Board**

- Planning Board voted unanimously to recommend approval of the proposed rezoning to E-MX-2x with waivers. There was deliberation regarding the appropriateness of the ZPSE waiver, with the Board voting to support the application as proposed given the strong neighborhood support and noting concerns about the effectiveness of the ZPSE requirement. One member specifically suggested that CPD evaluate the ZPSE requirement through a future text amendment.
- Four members of the public spoke in favor of the proposal. There were no speakers in opposition.

- **Other Public Comment**

- The applicant originally submitted an application in January 2018 for E-MX-2x with waivers that included removing the ZPSE requirement for Eating and Drinking Establishment uses as currently proposed. It also included a waiver that would allow for an exemption of vehicular parking requirements for ground floor retail in mixed use buildings (DZC Section 10.4.5.1.B), instead of the currently proposed waiver of all minimum vehicle parking requirements for non-residential uses. The waiver to increase bicycle parking requirements was not included. This original application was referred out and 24 written public comments were received in favor of the application. The comments generally described a desire for walkable, neighborhood-serving commercial uses. These comments are attached to this report.
- The applicant revised the proposed waivers and resubmitted the application in April 2018, which is the application attached to this report. After the revised application was submitted, 16 additional public comments were received. Fifteen (4 of which were the same commenters from the initial application) were in favor, and 1 was opposed. As with the original application, the comments in favor described a desire for walkable, neighborhood-serving commercial uses. The opposed comment expressed concerns about commercial impacts and pedestrian safety. All public comments are attached to this 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 apply to this property:

- Denver Comprehensive Plan 2000
- Blueprint Denver (2002)

Denver Comprehensive Plan 2000

The proposal is consistent with many Denver Comprehensive Plan objectives, strategies, and recommendations, except as outlined in the paragraph below, including:

- Environmental Sustainability Strategy 2-F – *Conserve land by promoting infill development with 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.* (p. 39)
- 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 3-D – *Identify and enhance existing focal points in neighborhoods, and encourage the development of such focal points where none exist.* (p. 60)
- Mobility Strategy 4-B – *Encourage the use of travel demand management (TDM) to improve the effectiveness of the transportation system and reduce trips by single-occupant vehicles.* (p. 78)
- Mobility Strategy 4-E – *Continue to promote mixed-use development, which enables people to live near work, retail and services.* (p. 78)
- Economic Activity Strategy 5-A – *Support development of neighborhood business centers that serve adjacent residential areas in existing neighborhoods and new neighborhoods within development areas.* (p. 136)

The proposed map amendment will enable walkable mixed-use development to serve an established residential neighborhood. The E-MX-2x with waivers zone district will broaden the variety of uses and enable people to live near retail and services. The proposed waivers for parking requirements further support the Comprehensive Plan’s recommendations that encourage TDM strategies.

Blueprint Denver

According to the Plan Map adopted in Blueprint Denver, this site has a concept land use of Single Family Residential and is located in an Area of Stability.

Future Land Use

Blueprint Denver describes Single Family Residential areas as those with “an employment base significantly smaller than the housing base” and with “single family homes as the predominant residential type.” Although the proposed E-MX-2x with waivers zone district will allow more than just residential uses, its limited application along a collector street on a site that was formerly an institutional use will maintain the predominantly single-family character of the area while providing a small employment base as envisioned in Blueprint Denver.



Area of Change / Area of Stability

The subject site is located in an Area of Stability. The goal for Areas of Stability is to maintain the character of an area while accommodating some new development and redevelopment at appropriate locations (p. 127). Blueprint Denver also states that land use regulations in Areas of Stability should aim to prevent or mitigate negative impacts from non-residential development, especially where adjacent to residential development (p. 123).

The proposed rezoning would support limited new development and redevelopment at a pre-existing neighborhood node and is consistent with the Blueprint Denver Area of Stability recommendation. The E-MX-2x with waivers district includes building form, setback, and use limitations that ensure that non-residential development is compatible with the surrounding residential neighborhood.

Street Classifications

In Blueprint Denver, Zuni Street is identified as a Residential Collector and West 49th Avenue is an undesignated local. Blueprint Denver states that local streets are “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). Collectors are designed to provide a greater balance between mobility and land access (p. 51). The Residential classification is used to identify streets that “emphasize walking, bicycling, and land access over mobility” (p. 55). The proposed E-MX-2x with waivers zone district is intended for areas served primarily by local streets. The proposed zone district, including the waivers for parking requirements that encourage non-vehicular trips, is consistent with the street classifications surrounding the property.

Waivers

Blueprint Denver provides the following policy guidance regarding the use of zoning conditions and waivers (p. 82):

“[W]aivers 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 [regarding a new zoning code] are instituted, it may be appropriate to eliminate the practice of rezoning with conditions and waivers.”

Consistent with Blueprint Denver, CPD policy supports the use of waivers in situations where the proposed waivers help to solve an issue that CPD is committed to address in an upcoming text amendment. In this case, CPD policy supports the proposed waivers as outlined below.

The waiver request to reduce minimum vehicle parking requirements and increase minimum bicycle parking requirements is consistent with CPD’s commitment to address two issues with future text amendments. First, CPD has committed to address and support the reuse of sites with former institutional uses (churches, schools, etc.) that are embedded within neighborhoods. The ultimate text amendment solutions are not yet identified, but reducing vehicle parking requirements is one potential strategy for supporting reuse of formerly institutional buildings and sites for neighborhood-serving uses. Second, CPD intends to develop text amendments that address the City’s mobility goals by incorporating transportation demand strategies that encourage a mode shift away from vehicle trips. The proposed waiver to reduce vehicle parking requirements and related increase in bicycle parking requirements is consistent with an initial step toward transportation demand management strategies that support pedestrian- and bicycle-friendly neighborhood destinations. While CPD has not yet identified the text amendment solution for transportation demand management, the Chaffee Park neighborhood, as represented by the Chaffee Park Neighborhood Organization and most of the public comments received, generally supports the proposed TDM strategy to discourage vehicle parking on this site. CPD finds that the proposed waivers to remove minimum vehicle parking requirements for non-residential uses and increase bicycle parking requirements for non-residential uses are consistent with the waiver policy because, although future changes are unknown, the applicant’s approach is rational, justified, and community-supported.

With regard to the waiver of the ZPSE requirement, CPD’s recommendation to Planning Board was approval of the application with the condition that the ZPSE waiver be removed from the application. At the time of initial application review, CPD had not committed to address the ZPSE requirement in an upcoming text amendment. As background, the ZPSE is required in E-MX-2x zone districts in order to establish an Eating and Drinking Establishments use, and it provides the Board of Adjustments (BOA) the ability to evaluate and mitigate impacts on adjacent properties or on the established character of the neighborhood context or zone district. The ZPSE approval is tied to the use, though it has typically been applied for with/by a tenant due to the nature of the BOA’s review (floor plans, hours of operation, etc.). A new ZPSE approval is not required for a change in tenant unless the use is expanded, the new tenant

would like to change the conditions tied to the previous ZPSE approval for the use, and/or the BOA placed a condition on the previous ZPSE approval stating that the approval is specific to a tenant. Recent conditions that the BOA has required include additional screening and lighting restrictions. It should be noted that several recent BOA ZPSE cases for Eating and Drinking Establishments have been reviewed concurrent with the review of accessory Outdoor Eating and Serving Areas within 50 feet of a Protected District. The proposed waivers do not include a removal of the ZPSE requirement for Outdoor Eating and Serving Areas.

The applicant and Planning Board raised concerns that the ZPSE requirement may place an undue burden on Eating and Drinking Establishments and, therefore, discourage such uses from locating in E-MX-2x districts. Given the direction provided by Planning Board and further staff consideration, CPD agrees that the ZPSE process should be evaluated to determine whether the requirement successfully furthers the City's policy goals of encouraging neighborhood-serving uses and mitigating negative impacts. As a result, this waiver is consistent with the direction provided by Blueprint Denver on waivers and conditions and with the department's waivers policy. While the result of the text amendment process is not known at this time, CPD supports the proposed waiver of the ZPSE requirement for this application given the demonstrated community support.

2. Uniformity of District Regulations and Restrictions

The proposed map amendment will result in the uniform application of the E-MX-2x zone district building form, use and design regulations, with the exception of the requested waivers. However, the proposed waivers are consistent CPD policy to use waivers in situations where the waiver helps to solve an issue that CPD is committed to resolve through a future text amendment, as described above.

3. Public Health, Safety and General Welfare

The proposed E-MX-2x district and parking waivers further public health, safety, and general welfare through implementation of the City's adopted land use plans and by allowing for redevelopment in a manner that will provide for the construction of neighborhood-serving amenities, thereby providing residents more opportunities to live, work, and play within their neighborhood.

4. Justifying Circumstances

This 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." The application identifies development of new residential units in the area, including townhomes and multi-unit housing at the Aria development on West 52nd Avenue, that would be served by walkable commercial development facilitated by the proposed rezoning. The application also identifies the closing of the church on the site in 2016 as a changed condition that would justify encouraging redevelopment of the site so that it provides neighborhood amenities consistent with the City's land use plans. These are appropriate justifying circumstances for the proposed rezoning.

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

The requested E-MX-2x with waivers zone district is within the Urban Edge Neighborhood Context. The neighborhood context generally consists of single-unit and two-unit residential uses, with small-scale multi-unit residential uses and commercial areas embedded in residential areas. The proposed rezoning to E-MX-2x with waivers is consistent with the neighborhood context description. The proposed rezoning is also consistent with the general purpose of mixed use districts to promote safe, active, and pedestrian-scaled, diverse areas and enhance the convenience and ease of walking, shopping, and public gathering within and around the city's neighborhoods.

According to the zone district intent in the Denver Zoning Code, the E-MX-2x district "applies to small sites served primarily by local streets embedded within an existing or proposed neighborhood. These are typically one or two parcels and are limited to low scale building forms and low intensity uses" (DZC Section 4.2.4.2). The street classifications, building forms, and intensity of uses are consistent with the zone district purpose and intent statements.

Attachments

1. Application
2. Chaffee Park Neighborhood Organization letter of support and position statement
3. Comments received on originally filed application
4. Comments received on revised application