



**TO:** Land Use, Transportation, and Infrastructure Committee of City Council  
**FROM:** Scott Robinson, Senior City Planner  
**DATE:** November 16, 2017  
**RE:** Official Zoning Map Amendment Application #2017I-00058

## Staff Report and Recommendation

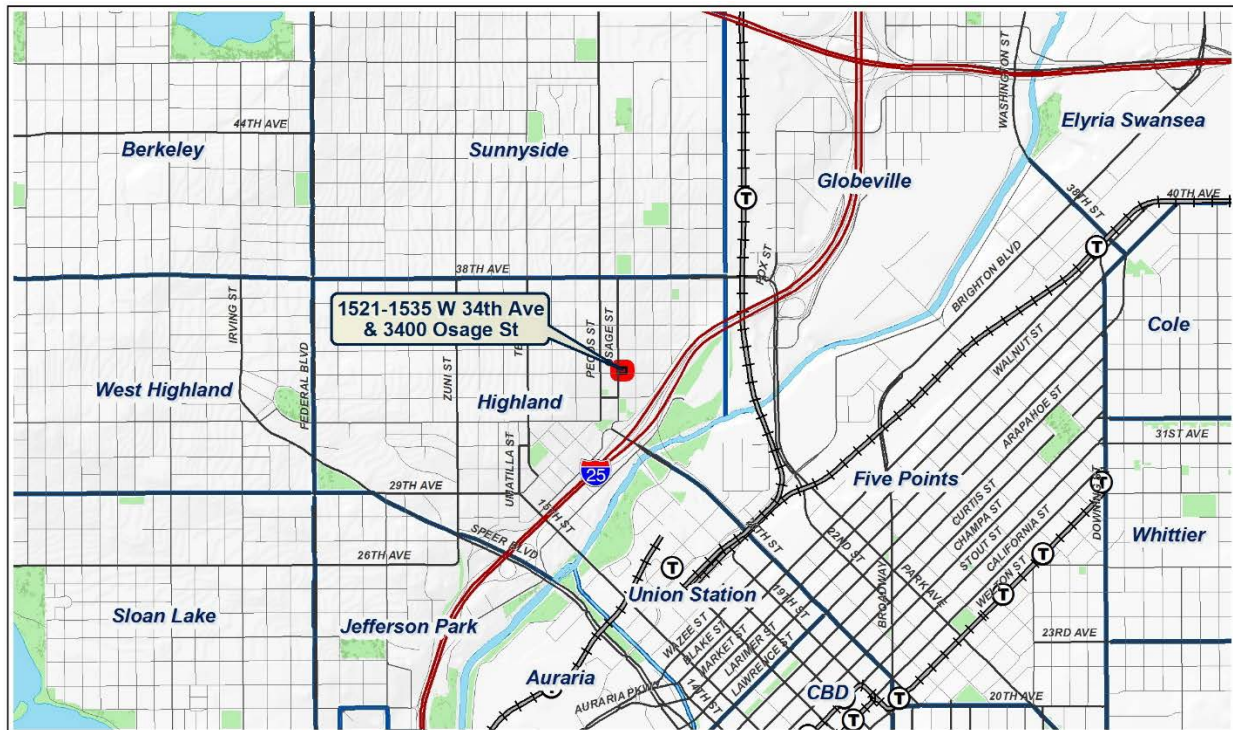
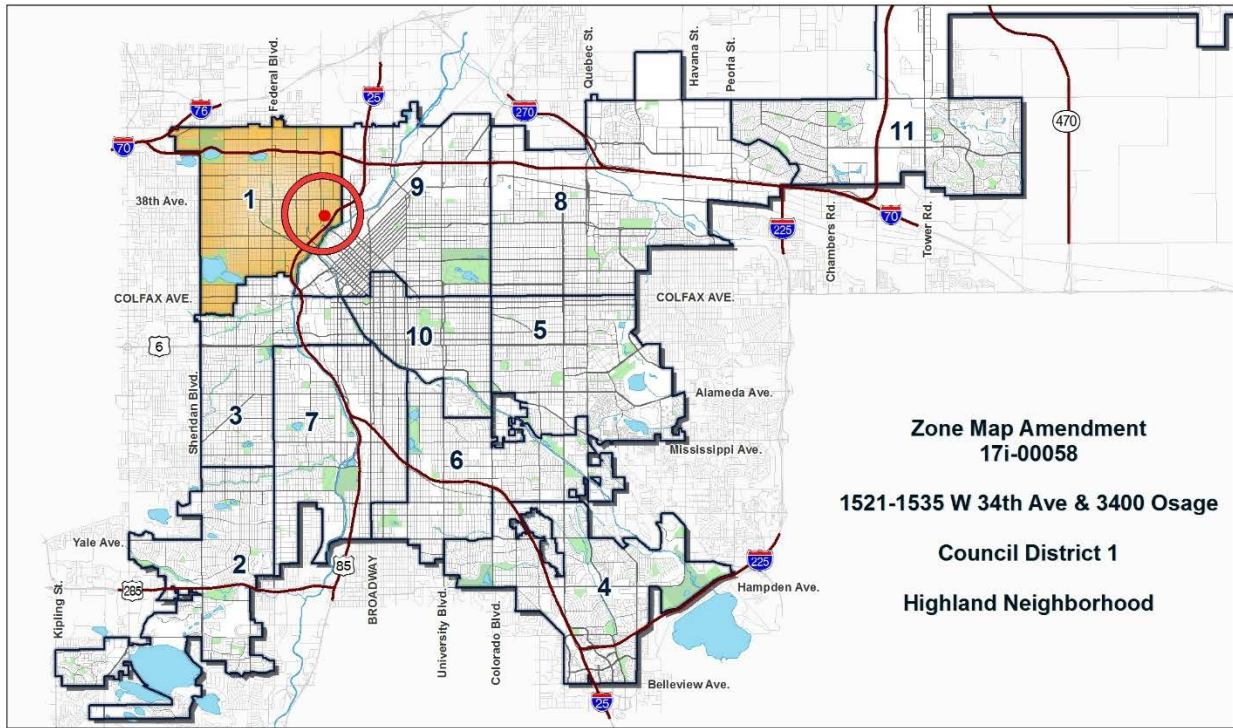
Based on the criteria for review in the Denver Zoning Code, Staff recommends approval for Application #2017I-00058.

## Request for Rezoning

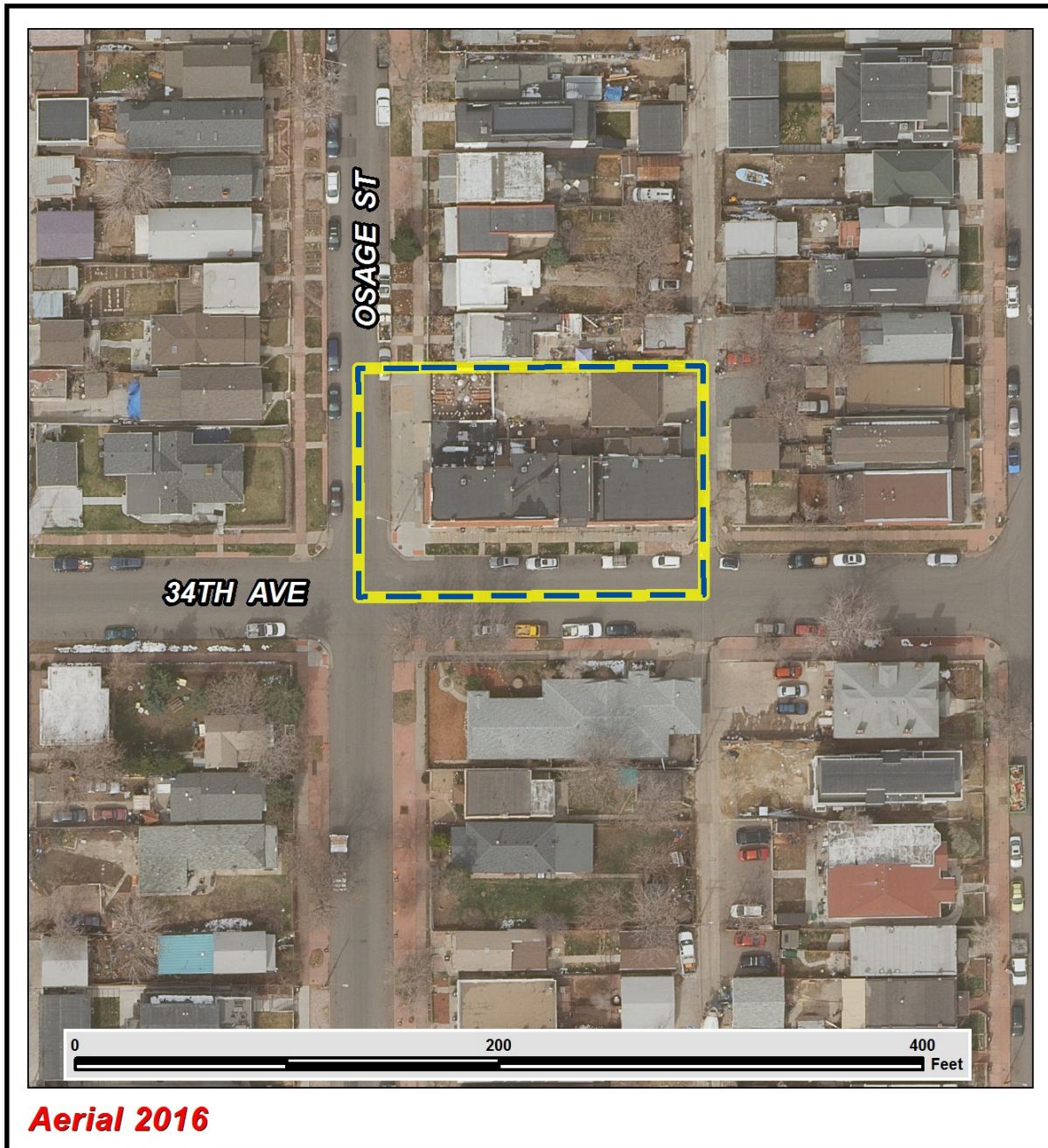
Address:	1521-1535 W. 34 <sup>th</sup> Ave. & 3400 Osage St.
Neighborhood/Council District:	Highland / Council District 1
RNOs:	United Northside Neighborhood; Inter-Neighborhood Cooperation; Denver Neighborhood Association, Inc.; Highland United Neighbors, Inc.
Area of Property:	9,298 square feet
Current Zoning:	U-TU-B2 DO-4
Proposed Zoning:	U-MX-2x
Property Owner(s):	DP Assets, LLC
Owner Representative:	Ryan Boykin

## Summary of Rezoning Request

- The property is located in the Highland neighborhood, at the corner of 34<sup>th</sup> Ave. and Osage St.
- There is currently a mixed-use building on the site, including the Kobe An restaurant and about five residential units.
- The applicant is requesting the rezoning to allow the existing uses to continue as conforming uses without requiring a Zoning Permit with Informational Notice when tenants change.
- The **U-MX-2x** (**U**rban Neighborhood, **M**ixed 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 are more limited than in the U-MX-2 zone district. Further details of the zone districts can be found in Article 5 of the Denver Zoning Code (DZC).







### Existing Context

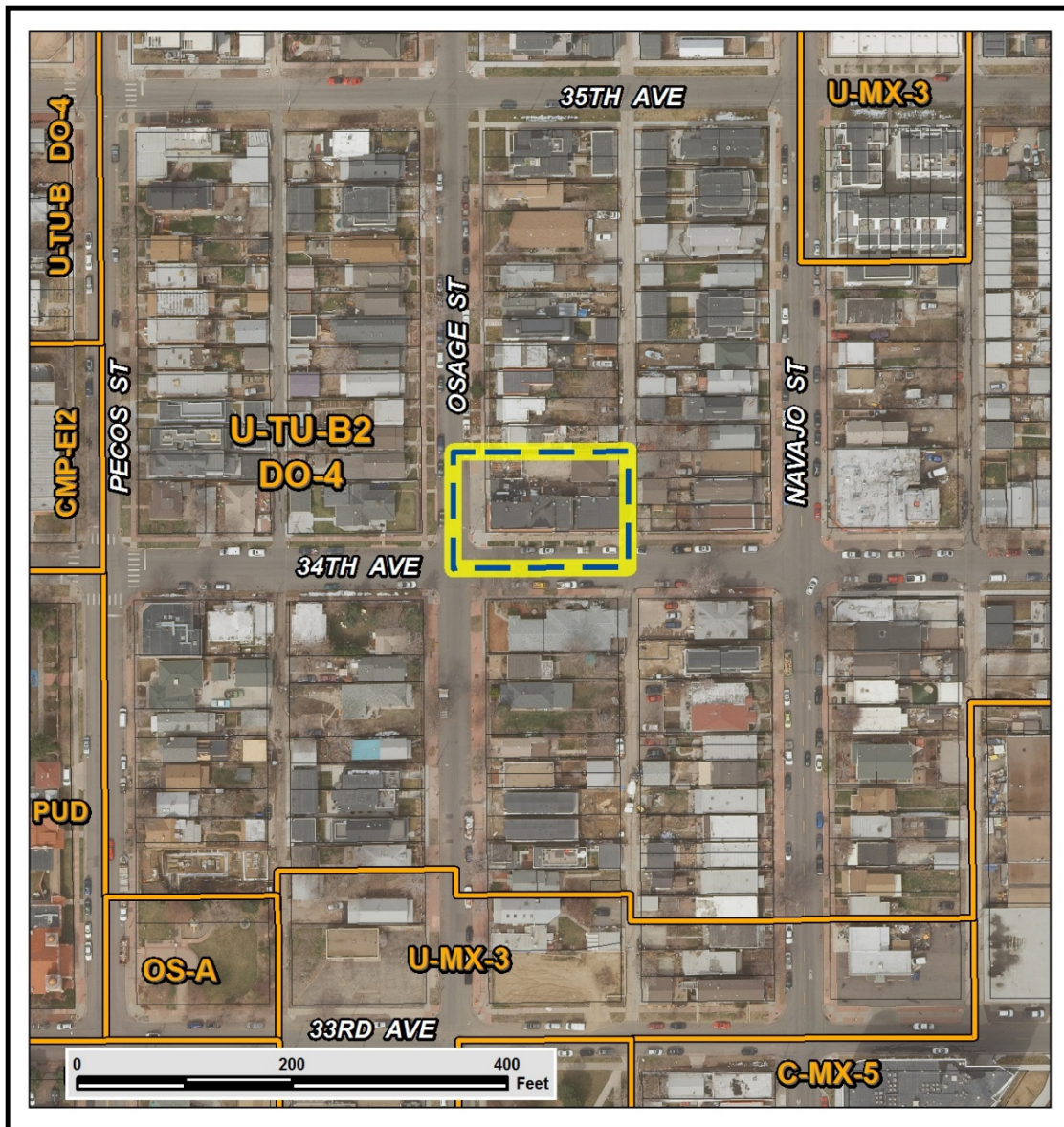
The subject property is in a residential neighborhood primarily composed of single-family, duplex, and multi-unit residential buildings. However, there are several commercial and mixed-use buildings scattered throughout the area, including two located a block to the east at 34<sup>th</sup> Ave. and Navajo St. Community Plaza Park and St. Patrick's Neighborhood Park are one block to the south and Highland Gateway Park is two blocks to the south. There is bus service on Navajo St.

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	U-TU-B2 DO-4	Restaurant, multi-unit residential	1-2 story mixed-use structure with restaurant and patio on Osage St. and residential units on 34 <sup>th</sup> Ave.	Generally regular grid of streets interrupted to the south and east by I-25, and the Downtown angled street grid to the south. Block sizes and shapes are consistent and rectangular. Vehicle parking to the side or rear of buildings (alley access).
North	U-TU-B2 DO-4	Single-unit residential	Single-story flat-roof houses	
South	U-TU-B2 DO-4	Duplex and single-unit residential	Single-story houses in eclectic styles	
East	U-TU-B2 DO-4	Duplex and single-unit residential	1-2 story houses in eclectic styles	
West	U-TU-B2 DO-4	Single-unit residential	1-2 story houses in eclectic styles	



## 1. Existing Zoning



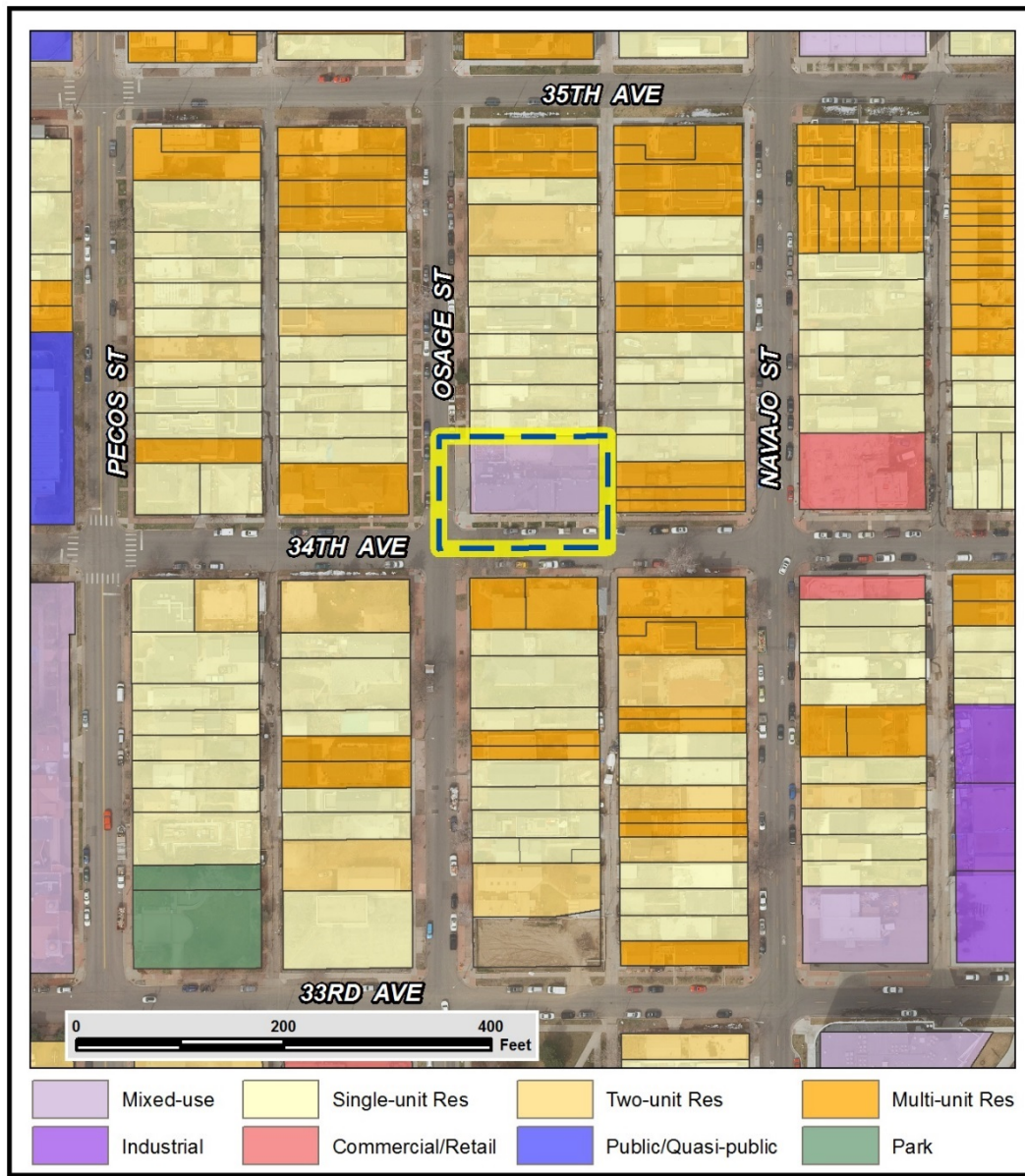
The current U-TU-B2 zone district allows up to two residential units on most lots in the Urban House, Duplex, and Tandem House building forms. The Row House building form is allowed on corner lots adjacent to a collector or arterial streets, which the subject property is not. The zoning allows a maximum height of 2.5 stories and 30 feet. Setback requirements vary based on the setbacks of surrounding properties and the width of the lot. Allowed uses are mostly limited to civic uses and single unit and two unit dwellings with one parking space required per unit. However, existing commercial structures are allowed to have non-residential uses that would be allowed in the U-MS-2x zone district if approved through the Zoning Permit with Informational Notice (ZPIN) process and any additional review process that would be required for the use in the U-MS-2x zone

district. See DZC Section 11.4.5. For additional details of the zone district, see DZC Section 5.2.2. The DO-4 design overlay allows for reduced side setbacks for certain lots. See DZC Section 9.4.5.8.

## 2. View Planes

The subject property falls under the Park at 51<sup>st</sup> Ave. and Zuni St. view plane, which protects views of downtown. The maximum building height allowed on the subject property under the view plane is about 125 feet – significantly higher than the current and proposed zoning would allow.

## 3. Existing Land Use Map





#### 4. Existing Building Form and Scale



Site – at 34<sup>th</sup> Ave. and Osage St.



North – from Osage St.



East – from Navajo St.



South – from Osage St.



West – from Osage St.  
Source: Google Maps

## 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:

**Asset Management:** Approve – No comments.

**Public Works – City Surveyor:** Approve – No comments.

## Public Review Process

	Date
CPD informational notice of receipt of the rezoning application to all affected members of City Council and registered neighborhood organizations:	7/15/17
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:	10/16/17
Planning Board recommended approval by a vote of 8-0	11/1/17
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:	11/6/17
Land Use, Transportation and Infrastructure Committee of the City Council review:	11/21/17
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 (tentative):	12/11/17
City Council Public Hearing (tentative):	1/2/18



- **Registered Neighborhood Organizations (RNOs)**
  - Highland United Neighbors, Inc. has submitted a letter of conditional support (attached).
- **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)
- Highland Neighborhood Plan (1986)

### **Denver Comprehensive Plan 2000**

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

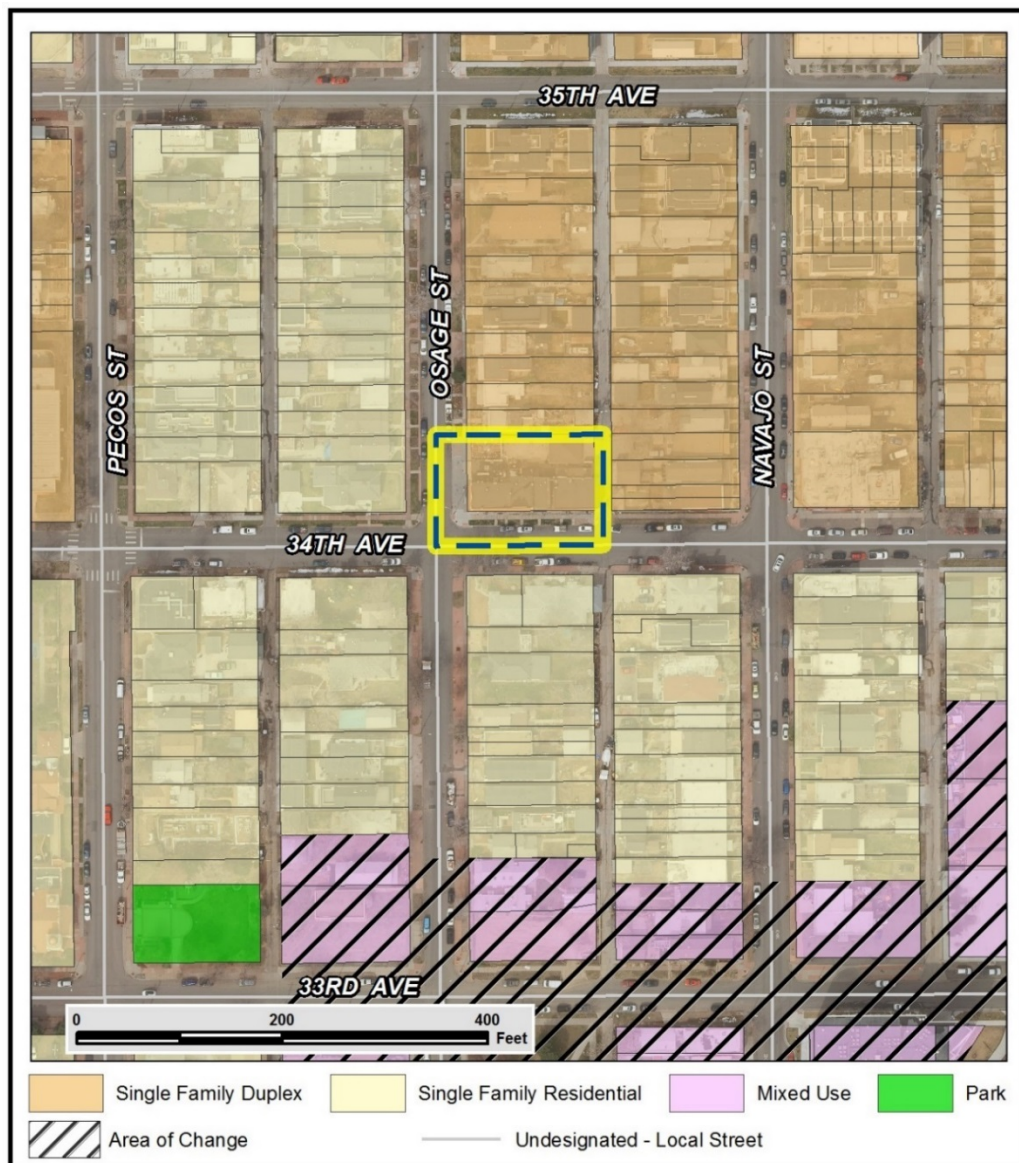
- Environmental Sustainability Strategy 2-F – *Conserve land by promoting infill development with Denver at sites where services and infrastructure are already in place; designing mixed use communities and reducing sprawl so that residents can live, work and play within their own neighborhoods.* (p. 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-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)
- Neighborhoods Strategy 1-A – *Respect the intrinsic character and assets of individual neighborhoods.* (p. 149)

The proposed map amendment would allow the existing mixed-use structure to continue to be used for commercial and residential uses. The commercial and mixed-use structures scattered throughout the Highland neighborhood are important elements of the neighborhood's character and provide focal points. The U-MX-2x zone district would support maintaining this character, consistent with the recommendations of Denver Comprehensive Plan 2000.

### Blueprint Denver

According to the 2002 Plan Map adopted in Blueprint Denver, this site has a concept land use of Single Family Duplex and is located in an Area of Stability.

### Future Land Use





Blueprint Denver defines Single Family Duplex areas as “moderately dense areas that are primarily residential but with some complementary, small-scale commercial uses. However, the employment base is minor compared to the housing base” (p. 42). The plan also says the area should be “primarily residential with periodic small-scale commercial uses” (p. 65). The proposed U-MX-2x zone district would allow the continuation of the existing neighborhood-scale commercial uses on the property, which is embedded in the larger residential area. The map amendment would preserve the existing pattern of commercial uses and structures scattered throughout the neighborhood, consistent with Blueprint Denver’s future land use recommendations.

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

Blueprint Denver designates the subject property as in an Area of Stability. According to the plan, “the goal for Areas of Stability is to identify and maintain the character of an area while accommodating some new development and redevelopment” (p. 120). Additionally, “in some cases, it may be appropriate to change the zoning in an area to create a better match between existing land uses and the zoning” (p. 124).

The proposed map amendment would create better alignment between the existing land use and building form on the site and the zoning. It would help maintain the existing character of the Highland neighborhood, with its scattered commercial structures, which is consistent with the Area of Stability goals of Blueprint Denver.

#### **Street Classifications**

Both 34<sup>th</sup> Avenue and Osage Street are classified as Undesignated Local streets. Blueprint Denver states “the design features of local streets are influenced less by traffic volumes and are tailored more to providing local access. Mobility on local streets is typically incidental and involves relatively short trips at lower speeds to and from other streets” (p. 51). The proposed U-MX-2x zone district is intended for embedded commercial areas served by local streets, consistent with the street classifications of Blueprint Denver.

The proposed rezoning to U-MX-2x would allow uses consistent with those established and with the existing neighborhood character, as recommended by Blueprint Denver.

#### **Highland Neighborhood Plan**

The Highland Neighborhood Plan was adopted in 1986. The plan includes general recommendations for the entire Highland neighborhood and more specific recommendations by subarea. General recommendations include to “increase neighborhood employment opportunities” (p. 6b), “encourage a mixture of residential types and costs as a part of new development” (p. 11), “improve and stabilize the condition of housing in Highland” (p. 15), and “encourage a variety of residential mixed use projects” (p. 16). The plan also recommends that infill development “should be compatible in character and materials and provide appropriate buffering to the surrounding properties; proposed uses should be low traffic generators; proposed uses should not create parking, noise, or pollution problems; and examples of acceptable uses are senior citizen housing, mom and pop shops, and low density multi-family housing” (p. 14).

The plan includes specific recommendations for the area along 34<sup>th</sup> Ave. from Osage St. to Mariposa St., including to “encourage landscaping, upkeep, and police security” for the businesses there (p. 23). The subject property also falls within Subarea 13 of the plan. Recommendations for Subarea 13 include to “improve and stabilize the residential areas,” “encourage reuse of vacant or abandoned commercial structures,” and “discourage further industrial and commercial encroachment” (p. 47).

The proposed U-MX-2x zone district would allow the continued use of an existing building with a mix of neighborhood scale commercial and residential uses. The U-MX-2x zone district is intended for commercial properties embedded in residential areas and includes protections to promote compatibility with surrounding development. The proposed map amendment would not create further commercial encroachment as the property is and has been commercial. Instead it would contribute to neighborhood stability by allowing an existing businesses and residential units to remain. Overall, the proposed U-MX-2x zoning would continue compatible uses and development in the area, consistent with the recommendations of the Highland Neighborhood Plan.

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

The proposed rezoning to U-MX-2x would 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 U-MX-2x zone district would allow easier continued commercial use of the existing structure, which would likely encourage further investment in the maintenance and upkeep of the building, advancing the health, safety, and welfare of the building’s owners and occupants and the surrounding community.

## **4. Justifying Circumstance**

The application identifies several changed or changing conditions as the Justifying Circumstance under DZC Section 12.4.10.8.A.4, “The land or its surrounding environs has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area or to recognize the changed character of the area.” There has been significant redevelopment in the Highland neighborhood in the last several years. This increase in the intensity of land use in the area has created additional need for neighborhood-serving commercial services of the type that would be allowed in the U-MX-2x zone district. So, while the proposed rezoning would not necessarily facilitate a redevelopment of the property – instead allowing the existing uses to continue without additional permitting process – it will facilitate reinvestment in the property and is justified by the changed character of the area because the recent changes in and around the area now make continued commercial uses appropriate. Therefore, the proposed map amendment is justified in order to recognize the changed character of the area.



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

The requested U-MX-2x zone district is within the Urban Neighborhood Context. The neighborhood context generally consists of single-unit and two-unit residential uses with embedded small-scale multi-unit residential and commercial areas (DZC, Division 5.1). The current zone district, U-TU-B2, is also within the Urban Neighborhood Context. The neighborhood surrounding the subject property matches the description of the Urban Neighborhood Context and the proposed U-MX-2x zoning would allow development consistent with that description.

According to the zone district intent stated in the Denver Zoning Code, the U-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 5.2.3.2.B). The subject property is one parcel embedded in an existing neighborhood at the intersection of two local streets. The proposed U-MX-2x zoning would allow low-scale buildings and uses consistent with the purpose and intent of the zone district.

### **Attachments**

1. Application
2. HUNI letter of support



## Zone Map Amendment (Rezoning) - Application

PROPERTY OWNER INFORMATION*	
<input type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION	
Property Owner Name	DP Assets, LLC
Address	2345 7th St
City, State, Zip	Denver, CO 80211
Telephone	303-242-8980
Email	
<p><b>*If More Than One Property Owner:</b>            All standard zone map amendment applications shall be initiated by all the owners of at least 51% of the total area of the zone lots subject to the rezoning application, or their representatives authorized in writing to do so. See page 3.</p>	

PROPERTY OWNER(S) REPRESENTATIVE**	
<input checked="" type="checkbox"/> CHECK IF POINT OF CONTACT FOR APPLICATION	
Representative Name	Ryan Boykin (owner DP Assets)
Address	2345 7th St
City, State, Zip	Denver, CO 80211
Telephone	303-242-8980
Email	ryan@realatlas.com
<p>**Property owner shall provide a written letter authorizing the representative to act on his/her behalf.</p>	

Please attach Proof of Ownership acceptable to the Manager for each property owner signing the application, such as (a) Assessor's Record, (b) Warranty deed or deed of trust, or (c) Title policy or commitment dated no earlier than 60 days prior to application date.

If the owner is a corporate entity, proof of authorization for an individual to sign on behalf of the organization is required. This can include board resolutions authorizing the signer, bylaws, a Statement of Authority, or other legal documents as approved by the City Attorney's Office.

SUBJECT PROPERTY INFORMATION	
Location (address and/or boundary description):	1521-1535 W 34th Ave and 3400 Osage St (All one proper
Assessor's Parcel Numbers:	2281-25-032
Area in Acres or Square Feet:	6,876 sq ft (building) 9,298 sq ft (lot)
Current Zone District(s):	U-TU-B2, DO-4

PROPOSAL	
Proposed Zone District:	U-MX-2x



**REVIEW CRITERIA**

<p>General Review Criteria: The proposal must comply with all of the general review criteria DZC Sec. 12.4.10.7</p>	<p><input checked="" type="checkbox"/> Consistency with Adopted Plans: The proposed official map amendment is consistent with the City's adopted plans, or the proposed rezoning is necessary to provide land for a community need that was not anticipated at the time of adoption of the City's Plan.</p> <p>Please provide an attachment describing relevant adopted plans and how proposed map amendment is consistent with those plan recommendations; or, describe how the map amendment is necessary to provide for an unanticipated community need.</p> <p><input checked="" type="checkbox"/> Uniformity of District Regulations and Restrictions: The proposed official map amendment results in regulations and restrictions that are uniform for each kind of building throughout each district having the same classification and bearing the same symbol or designation on the official map, but the regulations in one district may differ from those in other districts.</p> <p><input checked="" type="checkbox"/> Public Health, Safety and General Welfare: The proposed official map amendment furthers the public health, safety, and general welfare of the City.</p>
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<p>Additional Review Criteria for Non-Legislative Rezoning: The proposal must comply with both of the additional review criteria DZC Sec. 12.4.10.8</p>	<p><b>Justifying Circumstances - One of the following circumstances exists:</b></p> <p><input type="checkbox"/> The existing zoning of the land was the result of an error.</p> <p><input type="checkbox"/> The existing zoning of the land was based on a mistake of fact.</p> <p><input type="checkbox"/> The existing zoning of the land failed to take into account the constraints on development created by the natural characteristics of the land, including, but not limited to, steep slopes, floodplain, unstable soils, and inadequate drainage.</p> <p><input checked="" type="checkbox"/> The land or its surroundings has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area to recognize the changed character of the area.</p> <p><input type="checkbox"/> It is in the public interest to encourage a departure from the existing zoning through application of supplemental zoning regulations that are consistent with the intent and purpose of, and meet the specific criteria stated in, Article 9, Division 9.4 (Overlay Zone Districts), of this Code.</p> <p>Please provide an attachment describing the justifying circumstance.</p> <p><input checked="" type="checkbox"/> The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed Zone District.</p> <p>Please provide an attachment describing how the above criterion is met.</p>
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**REQUIRED ATTACHMENTS**

Please ensure the following required attachments are submitted with this application:

- Legal Description (required to be attached in Microsoft Word document format)
- Proof of Ownership Document(s)
- Review Criteria

**ADDITIONAL ATTACHMENTS**

Please identify any additional attachments provided with this application:

- Written Authorization to Represent Property Owner(s)
- Individual Authorization to Sign on Behalf of a Corporate Entity

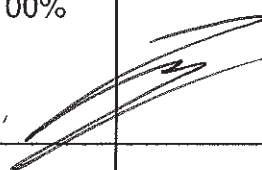
Please list any additional attachments: *Liquor License, Good Neighbor Agreement, Liquor Lic. Testimony*



# REZONING GUIDE

## PROPERTY OWNER OR PROPERTY OWNER(S) REPRESENTATIVE CERTIFICATION/PETITION

We, the undersigned represent that we are the owners of the property described opposite our names, or have the authorization to sign on behalf of the owner as evidenced by a Power of Attorney or other authorization attached, and that we do hereby request initiation of this application. I hereby certify that, to the best of my knowledge and belief, all information supplied with this application is true and accurate. I understand that without such owner consent, the requested official map amendment action cannot lawfully be accomplished.

Property Owner Name(s) (please type or print legibly)	Property Address City, State, Zip Phone Email	Property Owner Interest % of the Area of the Zone Lots to Be Rezoned	Please sign below as an indication of your consent to the above certification statement	Date	Indicate the type of ownership documentation provided: (A) Assessor's record, (B) warranty deed or deed of trust, (C) title policy or commitment, or (D) other as approved	Has the owner authorized a representative in writing? (YES/NO)
<b>EXAMPLE</b> John Alan Smith and Josie Q. Smith	123 Sesame Street Denver, CO 80202 (303) 555-5555 sample@sample.gov	100%	<i>John Alan Smith</i> <i>Josie Q. Smith</i>	01/01/12	(A)	YES
DP Assets, LLC as <i>Ryan Boykin (owner of LLC)</i>	3400 Osage St	100%		<i>6/22/17</i>	<i>B/A</i>	NA

Last updated: February 22, 2017

Return completed form to [rezoning@denvergov.org](mailto:rezoning@denvergov.org)

201 W. Colfax Ave., Dept. 205  
Denver, CO 80202  
720-865-2974 • [rezoning@denvergov.org](mailto:rezoning@denvergov.org)



Legal Address

Lot 13, 14, and 15

Block 7,

Central Subdivision as an Addition to the Town of Highlands,

City and County of Denver

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**2345 7<sup>th</sup> Street | Denver, Colorado | 80211 | Phone: 303.242.8980 | REALATLAS.COM**





06/20/2014 02:12 PM  
City & County of Denver  
Electronically Recorded

R \$11.00

QCD

D \$0.00

**QUIT CLAIM DEED**

THIS DEED, Made this 18th day of June, 2014

between Steele Capital, LLC, a Colorado limited liability company

of the County of Denver and State of COLORADO, Grantor(s)

and DP Assets, LLC, a Colorado limited liability company

whose legal address is 2345 7<sup>th</sup> Street, Denver, CO 80211-5218

of the County of Denver and State of COLORADO, Grantee(s)

*Title purpose  
No Doc fee*

WITNESSETH, That the grantor(s), for and in consideration of the sum of **TEN AND NO/100 DOLLARS, (\$10.00)**, the receipt and sufficiency of which is hereby acknowledged, has remised, released, sold, and QUIT CLAIMED, and by these presents does remise, release, sell and QUIT CLAIM unto the grantee(s), his heirs, successors and assigns, forever, all the right, title, interest, claim and demand which the grantor(s) has in and to the real property, together with improvements, if any, situate, lying and being in the County of Denver and COLORADO, described as follows:

**Lots 13, 14 and 15,  
Block 7,  
Central Subdivision as an Addition to the Town of Highlands,  
City and County of Denver,**

\*\*\*\*No Doc Fee required Deed of Convenience\*\*\*\*

also known by street and number as: **3400 Osage St. Denver, CO 80211**

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest, and claim whatsoever, of the grantor(s), either in law or equity, to the only proper use, benefit and behoof of the grantee(s), his heirs and assigns forever.

The singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, the grantor(s) has executed this deed on the date set forth above.

No doc fee owed. This deed is to correct Quit Claim Deed recorded July 23, 2012 at Reception #2012095788 which was erroneously signed by Grantee, instead of Grantor.

Steele Capital, LLC, a Colorado limited liability company

By: ~~DP Assets, LLC~~ a Colorado limited liability company  
~~Ryan Boykin, Managing Member~~



STATE OF COLORADO  
COUNTY OF Denver

} ss:

The foregoing instrument was acknowledged before me this 18th day of June, 2014 by Ryan Boykin Managing member of DP Assets, LLC a Colorado limited liability company, member of Steele Capital, LLC a Colorado limited liability company

BEVERLY CUBAN  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 19904014965  
MY COMMISSION EXPIRES NOVEMBER 3, 2014

*Beverly Cuban*  
Notary Public

Witness my hand and official seal.  
My Commission expires: 11/3/14

1529 W 34TH AVE

Owner	Schedule Number	Legal Description	Property Type	Tax District
DP ASSETS LLC 2345 7TH ST DENVER, CO 80211-5218	0228125032000	CENTRAL SUB AN ADD TO TOWN OF HIGHLANDS B7 L13 TO 15	COMMERCIAL - MIX USE	DENV

Summary	Property Map	Assessed Values	Assessment Protest	Taxes	Comparables	Neighborhood Sales	Chain of Title
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Property Description	
<b>Style:</b>	OTHER Building Sqr. Foot: 2155
<b>Bedrooms:</b>	0/0 Baths Full/Half: 0/0
<b>Effective Year Built:</b>	1899 Basement/Finish: 0/0
<b>Lot Size:</b>	9,375 Zoned As: U-TU-B2
<b>Mill Levy:</b> 20171-00058	81.547 Document Type: July 14th, 2017 \$1,000 fee pd CC



**TO:** Eugene D. Howard, Senior City Planner  
720.865.3261  
[eugene.howard@denvergov.org](mailto:eugene.howard@denvergov.org)

**FROM:** Ryan Boykin  
DP Assets  
ryan@realatlas.com

**DATE:** October 3rd, 2017

**To Whom it May Concern,**

DP Assets, LLC is requesting that 3400 Osage St be rezoned from U-TU-B2 to a more appropriate designation of U-MX-2x. The building at 3400 Osage is a mixed-use restaurant/residential building. It has been continuously operating as a mixed-use building for decades. Prior to the current restaurant, Kobe An, the building hosted Little Pepina's for over twenty years. The intent of this rezoning application is not to redevelop the site, but to have the zoning accurately reflect the recognized use of the building. We believe the site should be rezoned for the following reasons:

## Consistency with adopted plans:

- 1.1  Proposed Project supports the vision of the Comprehensive Plan 2000:
  - a.  The rezoning promotes infill housing in the neighborhood by matching the zoning of the parcel to the existing use. Should any sort of catastrophe happen to the building, the redevelopment possibilities would be limited to the current U-TU-B2 zone district.
  - b.  Promotes new design for future projects and can increase the quality of housing in the existing neighborhood.
  - c.  The existing design builds on the assets of the neighborhood to foster a better sense of community.
  - d.  Consistency with the Highland Neighborhood Plan:
    - The parcel is consistent with the Highland Neighborhood Plan by promoting infill development, providing neighborhood serving businesses and increasing neighborhood employment opportunities by allowing a mixed-use development that can host new small and local business. The current building already satisfies these conditions as it hosts a small restaurant that can employ neighborhood residents. Even though there are no current plans to redevelop this site, a future redevelopment with the proposed U-MX-2x zoning would meet all of these criteria. These goals would not be met should the zoning remain U-TU-B.
    - The Highland Neighborhood plan "recommends that a number of areas be rezoned to bring zoning in conformance with existing land uses". We believe the subject property is a prime example of a land use that has been continuous and would benefit from having the zoning changed to match that land use.
    - The Highland Neighborhood Plan also envisions strong commercial areas and "new retailers will be encouraged to locate in the neighborhood and existing commercial establishments fixed up to strengthen Highland's economic base".
    - The Highland Neighborhood Plan specifically calls out the subject property (and past operator Little Pepinas) on page 23 under Economic Development. The Plan acknowledges that the building hosted/hosts a bar, a use that would have not been available under the two-unit zoning. Furthermore,



the properties existing business was permitted by the City of Denver in 2013 and the City renewed this permit earlier in 2017.

**5. West 34th Avenue - Osage to Mariposa Street:**

**Character:** There are a number of bars in this area. With the exception of Little Pepinas, the area is brought down because of unsightly conditions of the bars and lack of landscaping.

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e.  Consistency with Blueprint Denver:

- o  The subject property is located in an Area of Stability. According to Blueprint Denver, "it may be appropriate to change the zoning in an area to create a better match between existing land uses and zoning" (pg. 124). The current designated Land Use is single family/duplex which permits moderately dense residential uses but also permits small-scale commercial uses that complement the residential building forms. Rezoning the subject property to U-MX-2x will be consistent with Blueprint Denver in that it allows a cohesive mix of small-scale commercial adjoining residential units, served by local streets that will be burdened by local activity.

## Justifying Circumstances:

*"The land or its surrounding has changed or is changing to such a degree that it is in the public interest to encourage a redevelopment of the area to recognize the changed character of the area."*

- 2.1  The Highland Neighborhood has experienced a tremendous amount of growth and change in the last 10 years. Many of the adjacent parcels have been redeveloped and the neighborhood has seen a massive influx of new restaurants, bars and housing developments.
- 2.2  Attached is the testimony obtained during the liquor license application process for Kobe An. Paragraph 4, 5 and 6 of the testimony speak to this rapid growth:
  - a.  ¶ 4 "...described the neighborhood as up and coming, experiencing gentrification, and becoming a more desirable place to live."
  - b.  ¶ 5 "...she described the neighborhood as up and coming and gentrifying."
  - c.  ¶ 6 "...he described the neighborhood as experiencing rapid growth and becoming a more desirable place to live."
- 2.3  The subject property is situated in Lower Highland Neighborhood (LoHi). This neighborhood has seen a tremendous amount of redevelopment, infill and change in the last few years.
  - a.  The Centric LoHi mixed use-development at 18th and Central St is nearing completion. This project added 302 new apartment units and 9,000 square feet of restaurant space to the neighborhood.
  - b.  2680 18th Street has an estimated completion date of summer 2018. This project is bringing 100 new homes to LoHi.
  - c.  The Alexan LoHi project at 32nd and Tejon brings 106 homes and 9,500 square feet of ground-floor retail and restaurant space to the neighborhood.
- 2.4  What about the changes makes it in the public interest to rezone this property?
  - a.  Many similar developments have been completed in the last few years and have brought a massive influx of residents desiring a walkable neighborhood with a good mix of housing, dining and entertainment options. The

subject parcel currently serves the neighborhood in this capacity and has for decades, however the zoning does not reflect that.

## Consistency with the Neighborhood Context:

The proposed official map amendment is consistent with the description of the applicable neighborhood context, and with the stated purpose and intent of the proposed zone district. The proposed zone district U-MX-2X is consistent with the neighborhood context for the following reasons:

- 3.1  The Urban Neighborhood Context is characterized by low scale buildings. The current building adheres to the 2-story limit imposed by U-MX-2x.
- 3.2  U-MX-2x applies to small sites served primarily by local streets embedded within an existing or proposed neighborhood. These are typically limited to low scale building forms and low intensity uses.
- 3.3  The operating hours of the business are only from 5:00pm-9:30pm, further keeping with the low intensity use of U-MX-2x.
- 3.4  The height requirements will be less than the adjacent buildings to the east along Navajo St zoned U-MX-3.
- 3.5  The attached testimony from various neighbors during the liquor license approval process for Kobe An lends support to show that the mixed-use nature of the building is desired by the neighborhood and its residents.
- 3.6  Please see the attached Good Neighbor Agreement between Kobe An and HUNI.

## Uniformity with District Regulations:

- 3.7  “Mixed Use – 2x (U-MX-2x) 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”
- 3.8  The map amendment will be consistent with the district regulations of U-MX-2x calling for low intensity uses. The small residential apartment units provide a pedestrian-friendly housing options for residents. The existing restaurant has limited business hours, closing no later than 11:00pm on Friday and Saturday. The restaurant operates for no more six hours in any day, and primarily serves as a dining establishment for neighborhood residents as the building provides zero parking spaces.
- 3.9  U-MX-2x is also intended to “(. . .) enhance the convenience, ease and enjoyment of transit, walking, shopping and public gathering within and around the city’s neighborhoods”. The existing mixed-use operation of the building provides a very walkable residential and shopping/dining establishment within an existing neighborhood.

## Public Health, Safety and General Welfare:

1.  Kobe An has signed a Good Neighbor Agreement with HUNI. We feel this shows their commitment to creating positive and safe neighborhood environment that supports the general welfare of the neighborhood and its residents.
2.  As is consistent with the Highland Neighborhood Plan, promoting infill development is goal that city planners hope to achieve. This in turn promotes the general welfare of the neighborhood residents.
3.  Rezoning the parcel to U-MX-2x will allow any potential future development to reuse an existing building that is similar to the neighborhood in character and scale.

Thank you for your consideration in reviewing this application. If you have any questions or concerns, please feel free to contact me at 303-242-8980.

Respectfully,

Ryan Boykin, Principal  
DP Assets, LLC

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## AGREEMENT

This agreement is made and entered into effective this 30 day of March 2013, by and between Highland United Neighbors, Inc., a Registered Neighborhood Organization under the provisions of Ordinances of the City and County of Denver, Colorado (“H.U.N.I.”), and Kobe An 3400 Osage St Denver, CO 80211 (separately a “party” and jointly the “parties”).

WHEREAS, Applicant has received a Hotel & Restaurant License,

WHEREAS, H.U.N.I. and Applicant wish to enter into this agreement concerning the operations at 3400 Osage St Denver, CO 80211,

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties do hereby agree as follows:

### I

Applicant hereby agrees to endorse and support the concepts and standards set forth in the H.U.N.I. Policy on Liquor Licenses developed by H.U.N.I. and the Good Neighbor Sub-Committee of H.U.N.I.

### II

All parties request the Denver Department of Excise and License attach the agreements in paragraph (III - 3.1 a, b, c.) herein as conditions upon any Liquor License to be issued to the applicant and that if there is any violation of the said agreements it will be a considered a violation of the Liquor License granted from the Denver Department of Excise and License.

All parties request the Denver Board of Adjustments attach the agreements in sections III, IV, V, and VI herein as conditions upon any Zoning Permit for outdoor eating be issued to the applicant and that if there is any violation of the said agreements it will be a considered a violation of the Zoning Permit granted by the Denver Board of Adjustments.

### III

3.1 Applicant agrees that it will:

- a.) Turn off any recorded music emanating from any exterior speakers on the Premises to the following hours:  
9:00pm to 11:00am on Sunday through Thursday  
10:00pm to 11:00am on Fridays and Saturdays and any City of Denver recognized holidays
- b.) Not dump any Bottles in any exterior trash receptacles between the hours of 9:00pm to 7:00am
- c.) Agree to strategically place, mutually agreed upon signage to be used as a reminder to the patrons leaving the premises that they are in a residential area and to please be courteous while outside
- d.) install cigarette butt disposal device to reduce the number of butts that might be generated by the seating area.
- e.) Commitment to a daily cleanup in the right-of-way, both at the property, and in front of adjacent properties

3.2 Applicant will use its best efforts to manage and control unruly behavior of its patrons upon entering and leaving the premises; will maintain the exterior of its premises in a neat and clean manner at all times; and will plan and manage any parking operations in a way that will minimize traffic and related issues for other businesses and residents in the area. Applicant further agrees to use its best efforts to communicate and maintain a good relationship with its surrounding neighbors.

3.3 Applicant agrees that the ambient noise combined with any recorded music (or live music if Applicant is granted any Cabaret License in the future) emanating from speakers on Premises whether by doors, windows, patio speakers or any such combination of noises will not generate noise levels which exceeds the noise limits set by the City of Denver's ordinance and that there will be no live entertainment on the exterior of the premises. Applicant further agrees to use its best efforts to prevent loud noises emanating from the premises, whether by doors, windows or otherwise, and agrees in any event that any such noise will not violate the City's noise ordinances. In the event that any neighbors complain about noise emanating from the premises that does not violate City noise ordinances, Applicant will make reasonable efforts to reduce the noise by lowering volume, redirecting speakers, or by other means. There shall be no speakers at the sidewalk seating area.

3.4 Applicant will orient lighting at the outdoor seating area inwardly and will meet City and County of Denver Outdoor Eating Area regulations.

IV

4.1 Applicant agrees that no "special events" will supersede the provisions of its licenses or this Agreement without the express prior approval of H.U.N.I.

V

5.1 Applicant agrees to notify H.U.N.I. of any sales or transfers of ownership within a reasonable time, but no less than 30 days, before they are proposed to occur. In the case of a proposed action requiring approval of the Denver Department of Excise and Licenses, such notice shall be given no less than 30 days before the date of the filing seeking the necessary approval. Applicant further agrees that it will use its best efforts to ensure that any successors or assigns agree to be bound by the terms of this Agreement.

VI

In the event of a claimed breach of this Agreement by either party, the parties agree that the appropriate court in and for the City and County of Denver shall have exclusive jurisdiction of any legal proceedings; that injunctive relief is an appropriate remedy subject to the sound discretion of such court; and that the prevailing party in any litigation shall be entitled to recover its reasonable attorneys' fees.

Signed and agreed to this Date March 30, 2013

Applicant

By: Michelle Greppell  
Applicant

Highland United Neighbors, Inc.

By: \_\_\_\_\_  
Matthew Steinke  
Chair, H.U.N.I. Good Neighbor Sub-Committee

**OFFICE OF THE DIRECTOR OF EXCISE AND LICENSES  
CITY AND COUNTY OF DENVER, COLORADO**

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**RECOMMENDED DECISION**

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**IN THE MATTER OF THE APPLICATION OF JAPANESE FOOD CONCEPTS, LLC,  
DOING BUSINESS AS KOBE AN JAPANESE FONDUE, FOR A HOTEL AND  
RESTAURANT LIQUOR LICENSE FOR THE PREMISES KNOWN AND  
DESIGNATED AS 3400 OSAGE STREET, UNIT 101, DENVER, COLORADO.**

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This matter came on for hearing on Friday, April 26, 2013, pursuant to an application and prior notice filed by Japanese Food Concepts, LLC, doing business as Kobe An Japanese Fondue, for a hotel and restaurant liquor license for the premises located at 3400 Osage Street, Unit 101, Denver, Colorado.

The Applicant, Japanese Food Concepts, LLC, was represented by Attorney Scott L. Evans of the law firm of Messner & Reeves. The Licensing Authority was represented by Assistant City Attorney Dan Douglas. No parties appeared in protest to the application, and no representatives of registered neighborhood organizations appeared at the hearing. All witnesses were sworn-in to testify.

After reviewing the testimony and exhibits received into evidence, as summarized below, and applying existing law, the Hearing Officer finds, concludes, and recommends as follows:

1. The Applicant, Japanese Food Concepts, LLC, is a Colorado limited liability company in good standing and authorized to do business in the State of Colorado.
2. Several exhibits were offered into evidence and accepted upon stipulation of the parties, including:
  - City's Exhibit C-1, the Notice of Publication, showing that the notice of the hearing was duly published, notifying all interested parties of their right to appear at a hearing on the license application;
  - City's Exhibit C-2, a map of the designated area;
  - City's Exhibit C-3, a listing of a total of 22 liquor licenses issued to establishments in the designated area, including ten hotel/restaurant licenses, eight tavern licenses, one 3.2% beer license, two retail liquor store licenses, and one arts license;
  - City's Exhibit C-4, the compliance check, which demonstrates that the premises were properly posted;
  - City's Exhibit C-5, a floor plan of the designated premises at 3400 Osage Street; and
  - Applicant's Exhibit A-1, the Hearing Posting Affidavit.



3. Pursuant to the Revised Municipal Code of the City and County of Denver, Councilwoman Judy Montero was given notice of the hearing. The following registered neighborhood organizations were given notice of the hearing: Inter-Neighborhood Cooperation, Denver Neighborhood Association, Inc., Highland United Neighbors, Inc., Northside Neighbors, Northwest Neighbors Coalition, and Northwest Quadrant Association. Division Chief of Patrol David Quinones was also notified of the hearing.
4. Mr. Jason D. Shepherd testified in support of the application: He has been a resident of the designated neighborhood for about six months, and his residence is about 30 yards from the Applicant's premises. He is over the age of 21 and occasionally consumes an alcohol beverage. He personally desires that the application be approved, and he believes that there is a need and desire in the neighborhood that the license be issued. He described the neighborhood as up and coming, experiencing gentrification, and becoming a more desirable place to live. The building where the restaurant will be located is now dilapidated, and a nice restaurant and bar will be desirable for the neighborhood, and it will help revitalize the area. There is a need in the neighborhood because most of the existing outlets are just bars and do not have much character. He has talked to other residents of the neighborhood who also desire that the application be issued. He believes that the business will have a neutral or positive effect on the health, safety, and welfare of the neighborhood.
5. Ms. Sevasti Kouremetis testified in support of the application: She has lived in the designated neighborhood for about 10 months. She is over the age of 21 and occasionally consumes an alcohol beverage. She personally desires that the application be approved, and she believes that there is a need and desire in the neighborhood that the license be issued. Like the previous witness, she described the neighborhood as up and coming and gentrifying. She said that there are not enough restaurants with liquor licenses in the neighborhood. In particular she said that existing outlets are mostly bars, and there is not enough variety. She believes that residents in the neighborhood are looking for new concepts coming into the neighborhood like Kobe An Japanese Fondue. She believes that the establishment will have a positive effect on the health, safety, and welfare of the neighborhood, and she believes that the establishment will be lawfully operated.
6. Mr. Clayton Markwell testified in support of the application: He lives about a block and a half from the Applicant's location, and he has lived in the designated neighborhood for about two years. He is over the age of 21 and occasionally consumes an alcohol beverage. He personally desires that the application be approved, and believes that there is a need and desire in the neighborhood that the license be issued. He described the neighborhood as experiencing rapid growth and becoming a more desirable place to live. He believes that the growing neighborhood needs more licensed outlets and more diversity of establishments such as Kobe An Japanese Fondue. In addition, the building where the restaurant will be located is now a dilapidated eyesore, and the new business will clean up the premises, thereby fostering more business and growth in the neighborhood. He believes that the establishment will have a positive or neutral effect on the health, safety, and welfare of the neighborhood and that it will be lawfully operated.

7. Ms. Michelle Trujillo testified in support of the application: She and her husband Marco are each 50% owners of the Applicant, Japanese Food Concepts, LLC. She has experience owning and operating a liquor-licensed restaurant. Specifically, she is the owner and manager of the Kobe An restaurant in Lakewood, Colorado. She described the concept and planned operation of Kobe An Japanese Fondue. She is planning to open the new restaurant in July or August. Her husband Marco will be the manager.
8. Ms. Trujillo described the policies and procedures that will be followed to ensure compliance with the liquor code and regulations thereunder. There will be about ten employees, and all servers will be TIPS certified. Servers will ask for ID from anyone ordering an alcohol beverage who appears to be under 40 years of age, and they will monitor consumption by customers. Any employee who serves a minor or a visibly intoxicated person will be terminated. In response to a question from the City Attorney, she stated that her Lakewood restaurant was cited for serving a minor about five or six years ago, and she took corrective measures that included alcohol awareness training for employees. The patio will be monitored at all times, and food will be served at all times that the restaurant is open for business.
9. Ms. Trujillo believes that her establishment will fill a need in the neighborhood. Mostly there are only bars nearby, and there are no restaurants like hers. She met with representatives of Highland United Neighbors, Inc., a registered neighborhood association, and she entered into a Good Neighbor Agreement with that neighborhood association.
10. The testimony and evidence presented warrant the confidence of the Director that the businesses will be lawfully operated, and that the health, welfare, and morals of the neighborhood will not be adversely affected by issuance of the applied-for license.
11. The proposed premises are suitable and adaptable for the intended purpose. The Applicant has the right to possession of the premises and the required zoning approval.

ACCORDINGLY, having considered the evidence in its entirety, as summarized above, it is concluded by the weight thereof that the Applicant, Japanese Food Concepts, LLC, doing business as Kobe An Japanese Fondue, has sustained its burden to show that there is a need for the applied-for hotel and restaurant liquor license for the premises known and designated as 3400 Osage Street, Unit 101, Denver, Colorado, to meet the reasonable requirements of the neighborhood; and that the residents, as well as the owners and managers of businesses, within the designated neighborhood, desire that the license issue. **IT IS RECOMMENDED that the license application be approved.**

**RECOMMENDED** this 26<sup>th</sup> day of April, 2013.

/s/ William A. Hobbs

William A. Hobbs  
Hearing Officer

Any party in interest may file objections to the foregoing Recommended Decision within ten (10) calendar days from the date above.

All filings shall be made by email to the Director, [tom.downey@denvergov.org](mailto:tom.downey@denvergov.org), copying [ruthie.sullivan@denvergov.org](mailto:ruthie.sullivan@denvergov.org), [john.jennings@denvergov.org](mailto:john.jennings@denvergov.org), and any opposing parties.

The Director of the Department of Excise and Licenses will issue a **FINAL DECISION** in this matter following review and consideration of the Recommended Decision, and if applicable, any objections.

**CERTIFICATE OF SERVICE**

The undersigned hereby states and certifies that one true copy of the foregoing Recommended Decision was sent via email, on the date above, to the following:

Tom Downey, Director, Dept. of Excise and Licenses  
[tom.downey@denvergov.org](mailto:tom.downey@denvergov.org)

Ruthie Sullivan, Dept. of Excise and Licenses  
[ruthie.sullivan@denvergov.org](mailto:ruthie.sullivan@denvergov.org)

John Jennings, Dept. of Excise and Licenses  
[john.jennings@denvergov.org](mailto:john.jennings@denvergov.org)

Dan Douglas, Assistant City Attorney  
[daniel.douglas@denvergov.org](mailto:daniel.douglas@denvergov.org)

Scott L. Evans, Attorney at Law  
Messner & Reeves  
1430 Wynkoop Street, Suite 300  
Denver, CO 80202  
[sevans@messner.com](mailto:sevans@messner.com)

/s/ William A. Hobbs

William A. Hobbs  
Hearing Officer

THIS LICENSE MUST BE POSTED IN PUBLIC VIEW

DR 8402 (07/01/2012)

**STATE OF COLORADO  
DEPARTMENT OF REVENUE**

**LIQUOR ENFORCEMENT DIVISION  
1881 Pierce Street, Suite 108  
Lakewood, Colorado 80214**

**JAPANESE FOOD CONCEPTS LLC  
dba KOBE AN SHABU SHABU  
3400 OSAGE STREET UNIT 101  
DENVER CO 80211**

**ALCOHOL BEVERAGE LICENSE**

Liquor License Number <b>4701306</b>	License Expires at Midnight <b>05/21/2018</b>
License Type <b>HOTEL &amp; RESTAURANT (CITY)</b>	
Authorized Beverages <b>MALT, VINOUS, AND SPIRITUOUS</b>	

This license is issued subject to the laws of the State of Colorado and especially under the provisions of Title 12, Articles 46 or 47, CRS 1973, as amended. This license is nontransferable and shall be conspicuously posted in the place above described. This license is only valid through the expiration date shown above. Any questions concerning this license should be addressed to: Colorado Liquor Enforcement Division, 1881 Pierce Street, Suite 108, Lakewood, CO 80214.

In testimony whereof, I have hereunto set my hand. 4/11/2017 sjs



Division Director



Executive Director



# Highland United Neighbors, Inc.

P.O. Box 11235, Denver, Colorado 80211

## PLANNING AND COMMUNITY DEVELOPMENT COMMITTEE

Authorized by the Board of Directors to represent HUNI in all zoning and planning matters.

October 23, 2017

Scott Robinson  
Senior City Planner  
City and County of Denver  
Community Planning and Development  
201 West Colfax Avenue  
Denver, CO 80202

Re: Map Amendment #2017I-00058: 1521-1535 W 34th Ave & 3400 Osage St  
Proposed Rezoning from U-TU-B2 to U-MX-2x

Dear Mr. Robinson:

The Planning and Community Development (PCD) Committee of Highland United Neighbors, Inc. (HUNI), has met with the Applicant on September 12, 2017, to review their request for rezoning from U-TU-B2 to U-MX-2x. This committee voted 6-0 that evening to recommend approval to the Planning Board, subject to reaching agreement with the Applicant on deed restrictions that would limit new construction in the future to something similar to what currently exists. We are pleased to have reached such an agreement in principle at this time.

The PCD Committee is authorized by the HUNI Board of Directors to represent HUNI in all zoning, land use, and planning matters, including Landmark issues. Membership in HUNI is open to all residents and businesses in the Highland Neighborhood, which is bounded by West 38<sup>th</sup> Avenue, Federal Boulevard, Speer Boulevard, and Interstate 25. There are approximately 7000 households within the HUNI boundaries and roughly 300 paying members of HUNI. 3-6 mailings go out per year to these households and email newsletters are sent out twice a month to those who have opted in. These emails and many of the mailings contain information regarding notices of meetings with detailed agendas. There were approximately 20 people in attendance at this meeting.

This property has an historic mixed-use structure on it, containing a restaurant and six apartment units. The 1956 zoning classified it as R2, and the commercial use apparently operated with a Business Structure Use Exception. The new zoning code in 2010 changed the R2 zoning to U-TU-B2, which did not allow commercial uses. New owners propose to change the zoning to U-MX-2x to formally recognize the current uses, protecting their development rights should some harm come to the building in the future.

This committee has agreed to support this rezoning based on the following conditions which will be recorded as restrictions on the property deed:

1. New buildings to front both 34<sup>th</sup> and Osage with a build-to line no greater than 2 feet behind property line.
2. Limited to 6 dwelling units.
3. Mixed use zoning requires at least 30% of first floor building area to be dedicated to commercial uses (office, restaurant, retail).
4. Access to garages must be from alley.
5. Minimum 20% of site area to be reserved as usable open space.
6. Height limited to 28 feet along Osage and to 20 feet on the rear 50% of frontage along 34<sup>th</sup> Avenue

We believe these limitations will protect both the property owner and the neighborhood in the future. Should you have any questions on our position, please do not hesitate to contact us. Thank you for this opportunity to offer our opinion.

Sincerely,

HIGHLAND UNITED NEIGHBORS, INC.

A handwritten signature in black ink that reads "Timothy C. Boers". The signature is written in a cursive, flowing style.

Timothy C. Boers, AIA  
Chair, Planning and Community Development Committee

Cc: HUNI Board President  
Applicant  
Committee Members  
Councilman Rafael Espinoza  
Councilwoman Debbie Ortega  
Councilwoman Robin Kniech