



**TO:** Land Use, Transportation, and Infrastructure Committee of the Denver City Council  
**FROM:** Scott Robinson, Senior City Planner  
**DATE:** January 10, 2019  
**RE:** Official Zoning Map Amendment Application #2018I-00068

## Staff Report and Recommendation

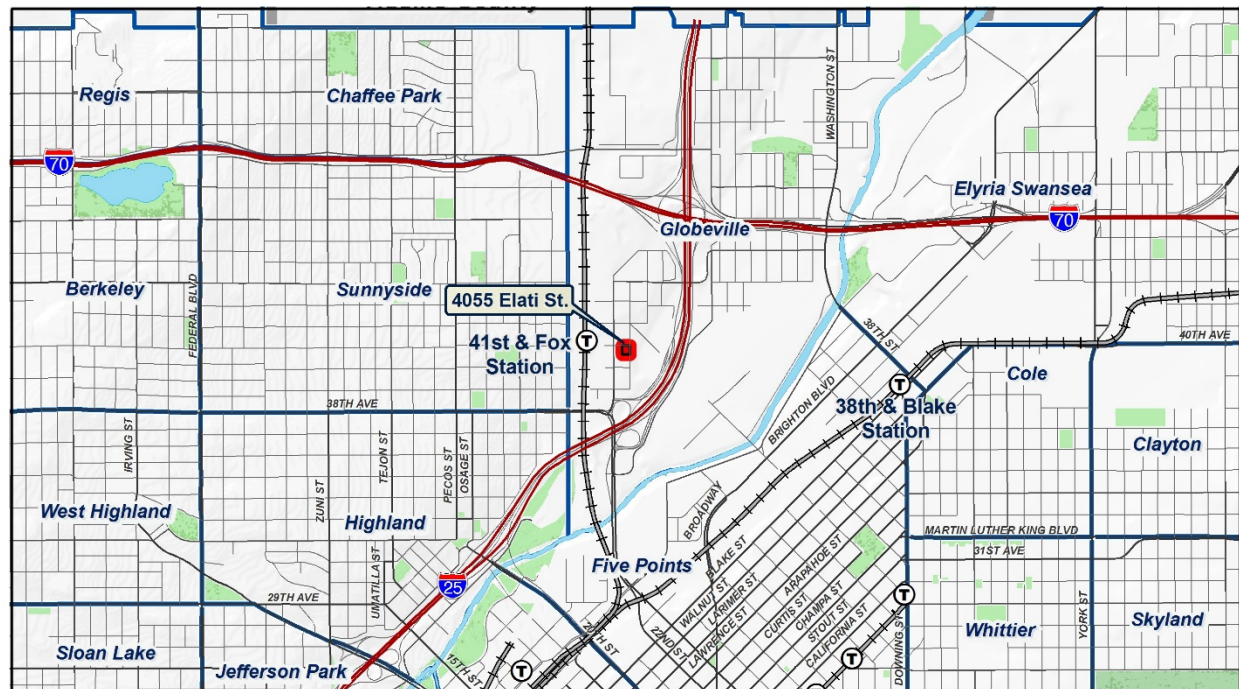
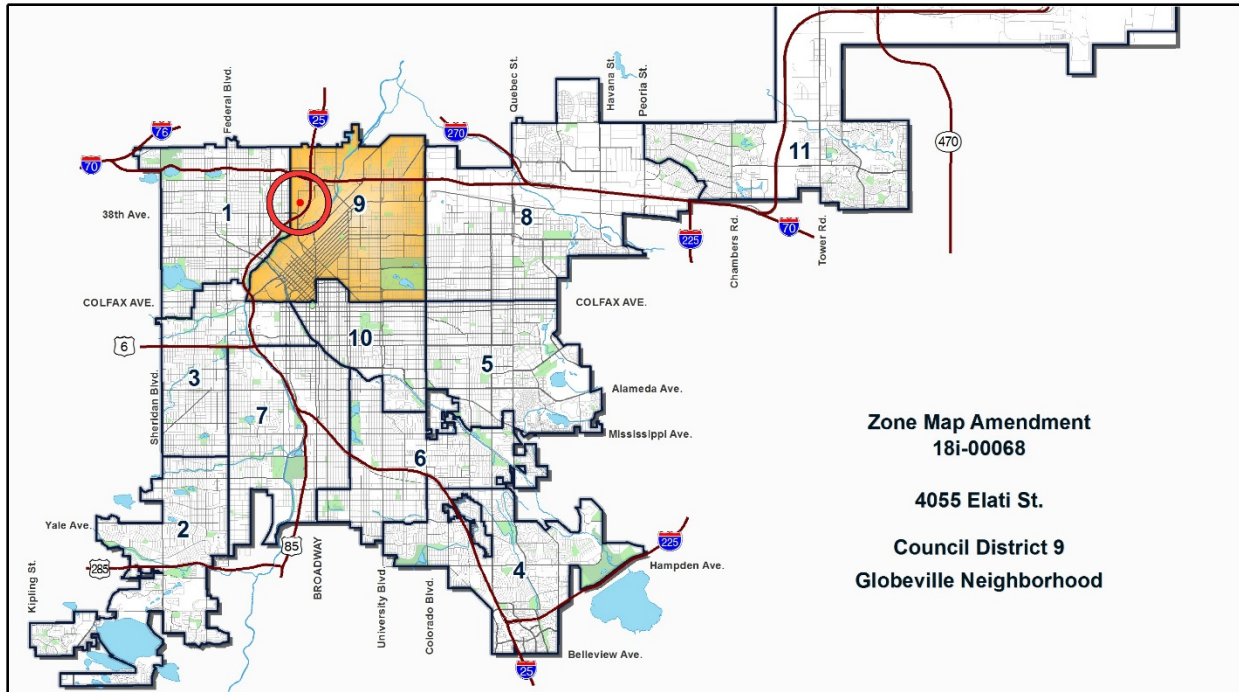
Based on the criteria for review in the Denver Zoning Code, Staff recommends approval for Application #2018I-00068.

## Request for Rezoning

Address:	4055 Elati Street
Neighborhood/Council District:	Globeville / Council District 9
RNOs:	UCAN; Globeville Civic Association #2; Globeville Civic Partners; North Highlands Neighbors Association; Elyria Swansea/ Globeville Businesses Association; Globeville K.A.R.E.S.; Inter-Neighborhood Cooperation (INC); Unite North Metro Denver
Area of Property:	18,750 square feet
Current Zoning:	I-A UO-2
Proposed Zoning:	C-MX-8
Property Owner(s):	Harold V. Nothhaft II & Nicholas J. Nothhaft
Owner Representative:	Bruce O'Donnell, Starboard Realty Group

## Summary of Rezoning Request

- The subject property is at the corner of 41<sup>st</sup> Avenue and Elati Street in the 41<sup>st</sup> and Fox station area.
- The property is currently used for storage.
- The applicant is requesting the rezoning to develop the parcel.
- The **C-MX-8** (Urban **C**enter, **M**ixed Use, **8** story) zone district allows a wide range of commercial, civic/institutional, and residential primary uses in the General, Shopfront, and Town House building forms. Drive Thru building forms would not be allowed at the subject location because it is less than ¼-mile from the 41<sup>st</sup> and Fox transit station. Further details of the zone district can be found in Article 7 of the Denver Zoning Code (DZC).
- The applicant's request includes removing the Billboard Use Overlay, UO-2, on the property.





### Existing Context

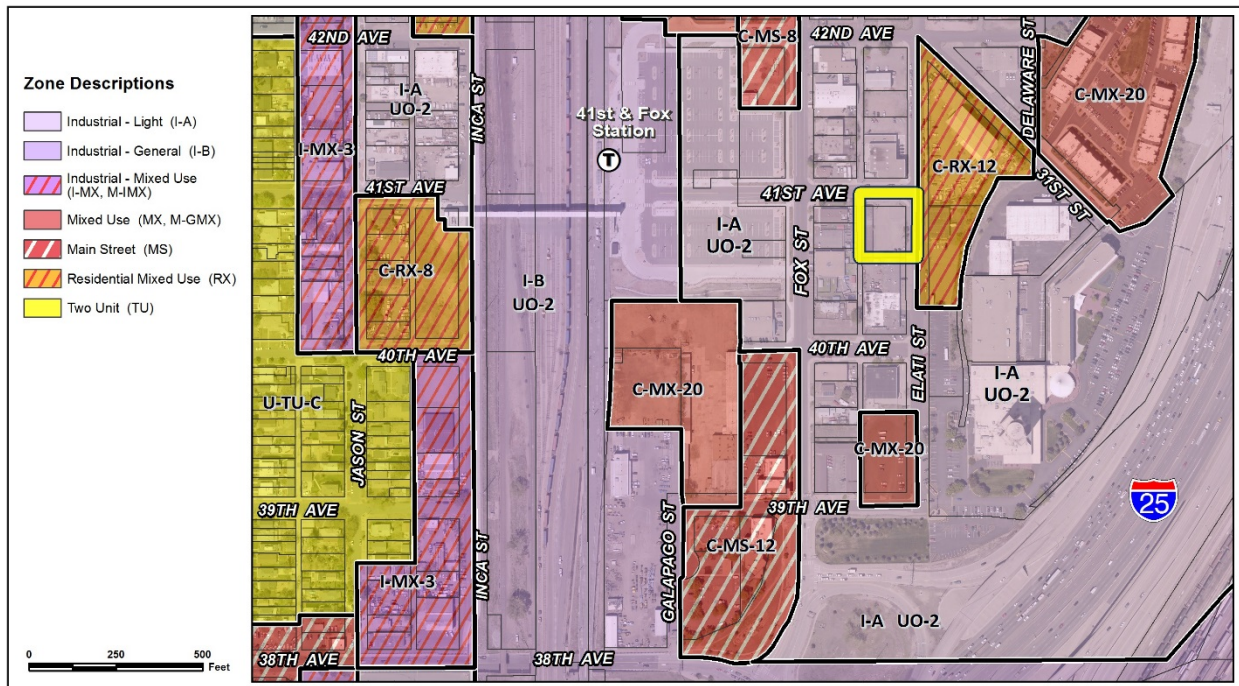
The subject property is in the Globeville neighborhood, in the 41<sup>st</sup> and Fox station area. It is part of an approximately 164-acre portion of the Globeville neighborhood that is separated from other parts of Globeville and other nearby neighborhoods by Interstates 25 and 70 to the north, east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

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

	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
Site	I-A UO-2	Industrial/storage	Mostly open storage with 1-story metal sheds along the alley	A limited orthogonal grid extends along Fox Street from 38 <sup>th</sup> Ave. to 44 <sup>th</sup> Ave. The grid is limited by the rail
North	I-A UO-2	Industrial	2-story concrete industrial building	

	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
South	I-A UO-2	Industrial	1-story brick industrial building	corridor to the west, I-25 to the south and east, and by large industrial sites and I-70 to the north. The area has limited access from other neighborhoods, including 44 <sup>th</sup> Ave. from the southeast portion of Globeville, 38 <sup>th</sup> Ave. from the Sunnyside neighborhood (west), and Fox Street to Park Avenue that provides direct access to downtown.
East	C-RX-12	Office	1-story brick and stucco office building and parking lot	
West	I-A UO-2	Dog kennel	1-story building with fenced exterior dog runs	

### 1. Existing Zoning

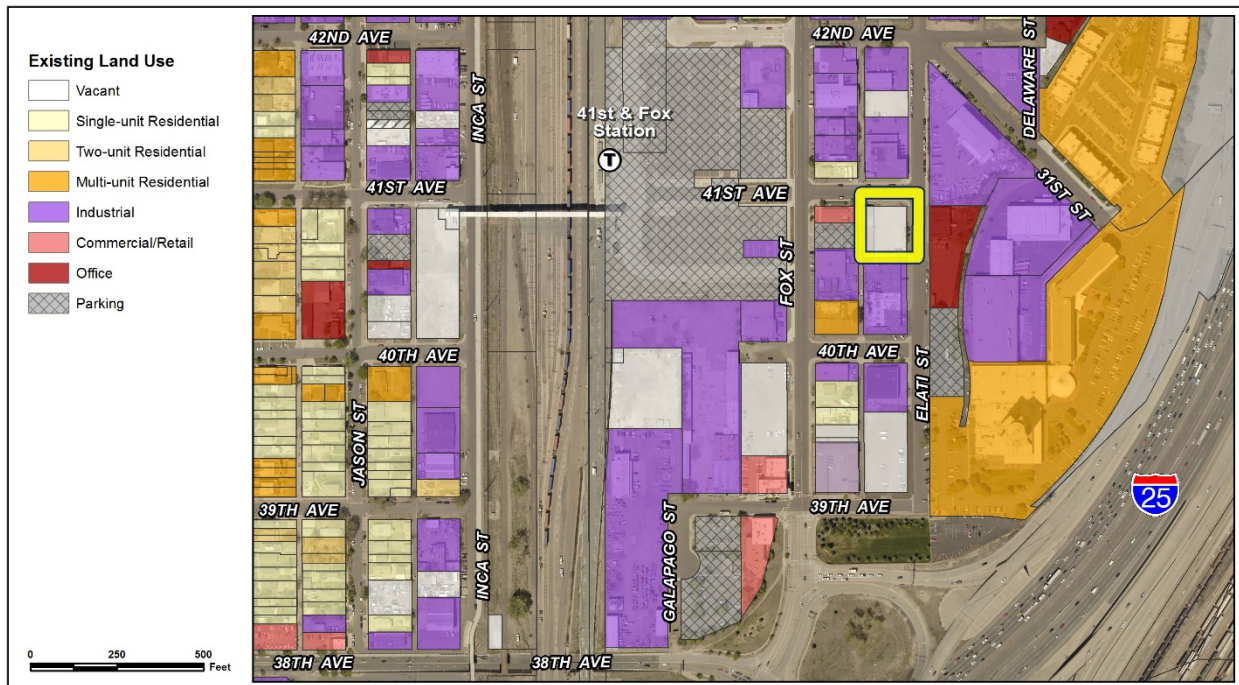


The existing zoning on the subject property is I-A, UO-2. I-A is a light industrial zone district in the Industrial Context. It allows office, business, and light industrial uses. Residential uses are

only permitted where a residential structure existed prior to July 1, 2004. The General and Industrial building forms are allowed in the I-A zone district and building mass is regulated by a maximum Floor Area Ratio of 2.0. No maximum building height is specified for the zone district except for when a site is within 175 feet of a Protected District, in which case the maximum permitted building height is 75 feet. There are no build-to requirements, transparency requirements, or street level activation standards in the I-A zone district. Surface parking is permitted between the building and primary and side streets. See DZC Division 9.1.

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

## 2. Existing Land Use Map



### 3. Existing Building Form and Scale



**Site** – from 41<sup>st</sup> Ave. & Elati St.



**North** – from 41<sup>st</sup> Ave. & Elati St.



**East** – from 41<sup>st</sup> Ave. & Elati St.



**South** – from Elati St.  
Source: Google Maps



**West** – from 41<sup>st</sup> Ave. & Fox St.

## **Summary of City Agency Referral Comments**

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

### **Development Services – Wastewater: Approved – See 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.

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

- Notes. DEH does not object to the rezoning request; however, the property is adjacent to the historical locations of leaking underground storage tanks and is within the footprint of the Vasquez Boulevard and I-70 Superfund Site. Proper materials management protocol should be followed during redevelopment activities.
- General Notes: Most of Colorado is high risk for radon, a naturally occurring radioactive gas. Due to concern for potential radon gas intrusion into buildings, DEH suggests installation of a radon mitigation system in structures planned for human occupation or frequent use. It may be more cost effective to install a radon system during new construction rather than after construction is complete.
- Denver's Noise Ordinance (Chapter 36–Noise Control, Denver Revised Municipal Code) identifies allowable levels of noise. Properties undergoing Re-Zoning may change the acoustic environment, but must maintain compliance with the Noise Ordinance. Compliance with the Noise Ordinance is based on the status of the receptor property (for example, adjacent Residential receptors), and not the status of the noise-generating property. Violations of the Noise Ordinance commonly result from, but are not limited to, the operation or improper placement of HV/AC units, generators, and loading docks. Construction noise is exempted from the Noise Ordinance during the following hours, 7am–9pm (Mon–Fri) and 8am–5pm (Sat & Sun). Variances for nighttime work are allowed, but the variance approval process requires 2 to 3 months. For variance requests or questions related to the Noise Ordinance, please contact Paul Riedesel, Denver Environmental Health (720-865-5410).
- Scope & Limitations: DEH performed a limited search for information known to DEH regarding environmental conditions at the subject site. This review was not intended to conform to ASTM standard practice for Phase I site assessments, nor was it designed to identify all potential environmental conditions. In addition, the review was not intended to assess environmental conditions for any potential right-of-way or easement conveyance process. The City and County of Denver provides no representations or warranties regarding the accuracy, reliability, or completeness of the information provided.

**Public Works – City Surveyor: Approved – See Comments**

LEGAL DESCRIPTION

LOTS 25 THROUGH 30, BLOCK 26, VIADUCT ADDITION TO DENVER,  
 CITY AND COUNTY OF DENVER, STATE OF COLORADO  
 CONTAINING ±18,750 FEET OR ±0.430 ACRES MORE OR LESS

**Assessor: Approved** – No response

**Asset Management: Approved** – No response

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

**Parks and Recreation: Approved** – No response

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

**Development Services – Project Coordination: Approved** – No response

**Development Services – Fire Prevention: Approved** – No response

**Public Review Process**

	Date
CPD informational notice of receipt of the rezoning application to all affected members of City Council, registered neighborhood organizations, and property owners:	9/13/18
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, registered neighborhood organizations, and property owners:	12/3/18
Planning Board recommended approval by a 7-1 vote:	12/19/18
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:	12/31/18



Land Use, Transportation and Infrastructure Committee of the City Council meeting:	1/15/19
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):	2/4/19
City Council Public Hearing (tentative):	2/25/19

- **Registered Neighborhood Organizations (RNOs)**
  - Globeville Civic Partners, a registered neighborhood organization, submitted a letter supporting the application because it is consistent with the plan recommendations and would allow for more amenities in the area.
- **Other Public Comment**
  - To date, no other public comment has been received.

## Criteria for Review / Staff Evaluation

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

### DZC Section 12.4.10.7

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

### DZC Section 12.4.10.8

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

## 1. Consistency with Adopted Plans

The following adopted plans apply to this property:

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

### Denver Comprehensive Plan 2000

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

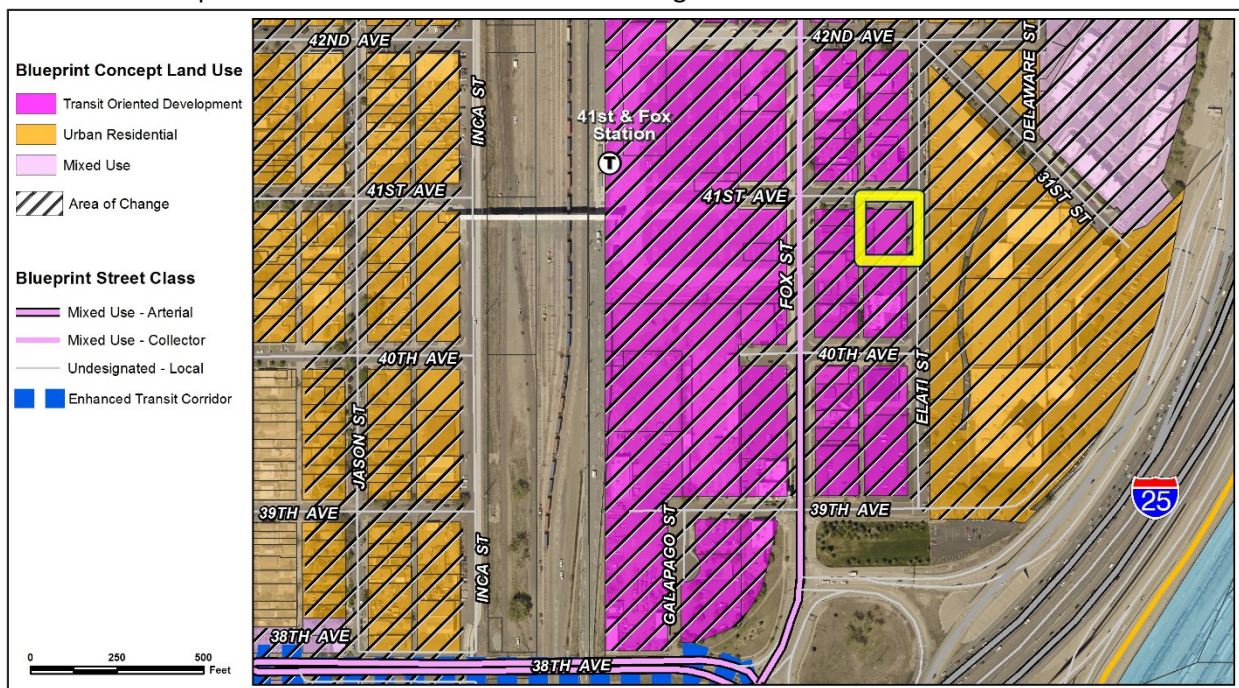
- Environmental Sustainability Strategy 2-F – *Conserve land by: promoting infill development within Denver at sites where services and infrastructure are already in place; designing mixed-use communities and reducing sprawl, so that residents can live, work and play within their own neighborhoods; creating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

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

The proposed map amendment would allow for mixed-use infill development near the new 41<sup>st</sup> and Fox station for the RTD G Line, which will provide high-quality transit service to downtown Denver, Arvada, and Wheat Ridge. The new transit station provides an opportunity to transform the area around it into a dense, mixed-use neighborhood. The proposed C-MX-8 zoning would allow a range of appropriate uses at an intensity consistent with the desire for dense, walkable, mixed-use neighborhoods around transit expressed in Comprehensive Plan 2000.

### Blueprint Denver

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



### **Future Land Use**

Transit Oriented Development areas “offer an alternative to traditional development patterns by providing housing, services, and employment opportunities for a diverse population in a configuration that facilitates pedestrian and transit access” (p. 44). Common attributes of Transit Oriented Developments include “a balanced mix of uses (residential, retail, office, entertainment, public facilities and others); compact mid- to high-density development;” and “attractive, multi-story buildings facing the station and adjacent streets” (p. 44). The proposed C-MX-8 zone district would allow a wide range of residential, commercial, and institutional uses at a medium density. The zone districts in the Urban Center neighborhood context also include build-to and transparency requirements to ensure buildings appropriately address the street, consistent with the plan recommendations.

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

As noted, the site is in an Area of Change. In general, “The goal for Areas of Change is to channel growth where it will be beneficial and can best improve access to jobs, housing and services with fewer and shorter auto trips” (p. 127). The proposed C-MX-8 zoning would allow additional development near a transit station, supporting jobs, housing, and services with less reliance on automobiles, consistent with the goals of Blueprint Denver.

### **Street Classifications**

Elati Street and 41<sup>st</sup> Avenue are classified as Undesignated Local streets by Blueprint Denver. The plan describes Local streets as “influenced less by traffic volumes and tailored more to providing local access. Mobility on local streets is typically incidental and involves relatively short trips at lower speeds to and from other streets” (p. 51). The proposed C-MX-8 zoning would allow mid-density mixed-use development that, under some circumstances, would not be appropriate for Local streets. However, the subject property is near the 41<sup>st</sup> and Fox transit station which will soon serve the area with high-capacity transit. In addition, the site is a half-block from Fox Street, which is a collector and connects to 38<sup>th</sup> Avenue and Park Avenue, both major arterials, and Interstate 25. While connectivity to the citywide street network is limited, the city is taking steps to limit the traffic generated in the area around the 41<sup>st</sup> and Fox station and to improve transportation connections into and out of the area. The Local streets adjacent to the subject site will connect the property to the broader multimodal transportation network, consistent with the recommendations of the plan. The proposed C-MX-8 zoning is consistent with the concept land use, area of change, and street type recommendations of Blueprint Denver.

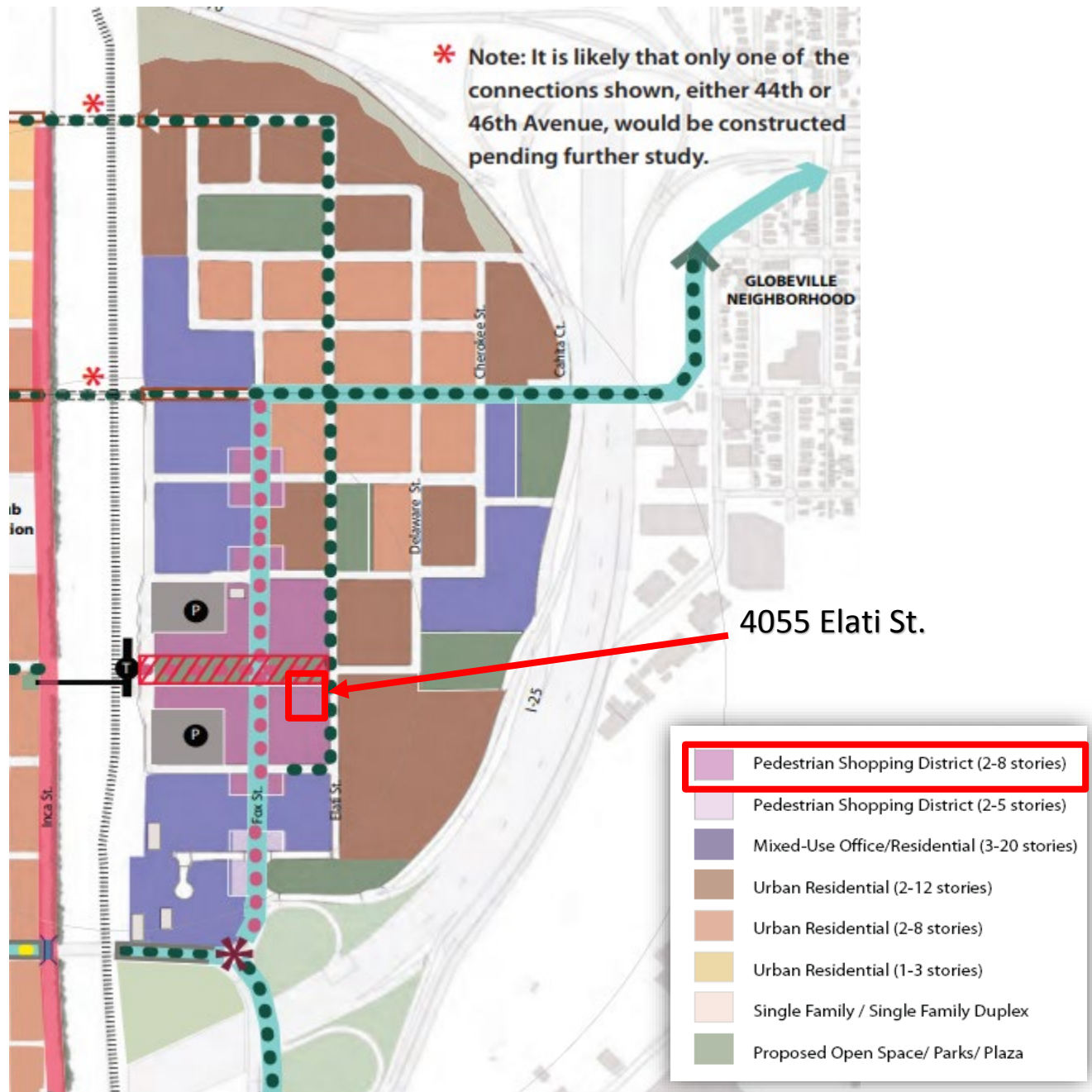
### **41<sup>st</sup> and Fox Station Area Plan**

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

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

- Improve pedestrian connections to the station, between neighborhoods, and along major corridors
- Create opportunities to add more housing, jobs and services to the station area
- Incorporate plazas, parks and open space into redevelopment areas

- Capitalize on the station area's proximity to Downtown and location on the Gold Line and Northwest Rail corridors
  - Balance the needs of new development and existing uses
- Key elements of the plan concept include the following (p. viii):
- Development of a high intensity activity node close to the station on the east side
  - Capture views of Downtown and buffer the station area by locating taller structures along I-25 and I-70



The subject property is designated as Pedestrian Shopping District (2-8 stories) in the Land Use Plan. According to the plan, in these areas “ground floor uses include a wide variety of shopping, entertainment, and services with residential, employment, or expanded commercial uses on the upper floors” (p. 15). The plan also states that in these areas “urban design features such as continuous street frontages with sidewalk entrances, ground floor windows, awnings, pedestrian oriented signs and lighting are important to creating the necessary building forms” (p. 15).

The 41<sup>st</sup> and Fox Station Area Plan also includes urban design recommendations, including that “the ground floors of buildings in all areas should contain the following elements: prominent, street facing entries, extensive ground floor windows and frequent entrances, pedestrian scaled facades, awnings to protect pedestrians and mark entrances, and building entrances that meet the sidewalk” (p. 18). The plan also calls for buildings edges to be “brought to the sidewalk with minimal setbacks” (p. 18).

The proposed C-MX-8 zone district would allow a wide mix of uses including office, retail, residential, and lodging, in buildings up to 8 stories in height, consistent with the plan’s land use recommendations. The proposed zone district also includes significant build-to and transparency requirements, ensuring development would meet the design and pedestrian-friendliness recommendations of the plan.

Given the Pedestrian Shopping District land use designation for the property, it may seem that a Main Street (MS) zone district is more appropriate than the proposed Mixed-use (MX) zone district. Both zone districts allow retail uses, but no DZC zone district requires retail uses on the ground floor. Both zone districts allow the Shopfront building form with the same build-to, transparency, and active use requirements. They also both allow the Town House building form, where the only difference is the MS zone district has additional build-to requirements for side streets that the MX district does not. The most significant difference between the districts is that the General building form is allowed in the MX, but not in the MS. However, comparing the General and Shopfront building forms, the active use requirements are the same and the primary street build-to requirements are similar (70% in a 10’ to 15’ range for General compared to 75% in a 5’ to 10’ range for Shopfront). The General building form does not have build-to requirements for side streets, which the Shopfront does, and it only requires 40% transparency on the primary street frontage, compared to 60% for the Shopfront. Based on this comparison, the Main Street zone district may be more consistent with the plan recommendations as previously implemented in rezonings on parts of Fox Street, but the proposed C-MX-8 zone district, with the build-to, transparency, and active use requirements described above, is also consistent with the recommendations of the 41<sup>st</sup> and Fox Station Area Plan.

The Land Use Plan from the 41<sup>st</sup> and Fox Station Area Plan shows the northern portion of the subject property as Proposed Open Space/Parks/Plaza, with a further indication that it should be an expanded Pedestrian Plaza along 41<sup>st</sup> Avenue. For Proposed Open Space/Parks/Plaza, the plan says “although parks are conceptually shown on the land use plan, the actual size and locations are not determined. Future park space in the station area will require working with private property owners, additional study by the Parks Department, and developing funding partnerships to pay for park land, improvements, and maintenance” (p. 17). Regarding the Pedestrian Plaza, it says “along 41<sup>st</sup> Avenue, a pedestrian plaza will connect the station platform to Fox Street and Elati Street to the east. This pedestrian plaza should include decorative pavers or pavements, benches, trees and planters, pedestrian-scale lighting, outdoor seating, and room for street carts and vendors” (p. 22).

The proposed C-MX-8 zoning would not prevent the city from acquiring a portion of the property for park or open space, or widening the 41<sup>st</sup> Avenue right-of-way to create a pedestrian plaza. These would be accomplished through the Site Development Plan process or another procedure outside the rezoning process. As described above, the proposed zone district would require active, pedestrian-friendly development that would be appropriate fronting a pedestrian plaza.

The plan includes mobility infrastructure recommendations intended to ensure the area can accommodate the growth called for in the plan (p. 20). Some of these recommendations have been completed, such as the multi-use path connecting across 38<sup>th</sup> Avenue to the South Platte River Trail and the new pedestrian bridge over the railroad tracks at the station. Some recommendations have not been completed, such as the proposed new street connection across the railroad tracks at 44<sup>th</sup> Avenue or 46<sup>th</sup> Avenue. With the RTD G Line opening soon and the proposed Rules & Regulations relating to parking and trip capacity currently under development, the potential development from the proposed C-MX-8 zone district would be adequately accommodated by the transportation system and the proposed map amendment is consistent with the 41<sup>st</sup> and Fox Station Area Plan.

### **Globeville Neighborhood Plan**

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

As described above the proposed C-MX-8 zone district is consistent with the recommendations of the 41<sup>st</sup> and Fox Station Area Plan, which are reinforced in the Globeville Neighborhood Plan. The proposed rezoning would facilitate the redevelopment of the subject site and allow a wide mix of uses, strengthening the economy of the area consistent with the Globeville Neighborhood Plan recommendations.

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

The proposed rezoning to C-MX-8 will result in the uniform application of zone district building form, use and design regulations.

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

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

### **4. Justifying Circumstance**

The application identifies several changes as the Justifying Circumstance under DZC Section 12.4.10.8.A.4, "Since the date of the approval of the existing Zone District, there has been a change to such a degree that the proposed rezoning is in the public interest." The city adopted the Globeville Neighborhood Plan in 2014, after the current zoning was put in place in 2010, meeting subsection b of the criterion. In addition, there are changing conditions in the area, with the construction of the 41<sup>st</sup> and Fox Station, the improved pedestrian and bicycle connections, new apartment buildings two blocks to the east, and new retail development at 39<sup>th</sup> Avenue and Fox Street. These changing conditions, along with the recently adopted neighborhood plan, justify the rezoning to serve the public interest.

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

The proposed C-MX-8 zone district is within the Urban Center Neighborhood Context. The neighborhood context generally consists of multi-unit residential and mixed-use commercial strips and commercial centers (DZC, Division 7.1). While the area around the subject property does not currently fit the description of the Urban Center neighborhood context, the future intent for the area, as described in the plans mentioned above, is for a mixed-use center consistent with that neighborhood context description. The proposed zone district of C-MX-8 would allow development consistent with that vision and is therefore appropriate.

According to the zone district intent stated in the Denver Zoning Code, the C-MX-8 district is intended "to promote safe, active, and pedestrian-scaled, diverse areas through the use of building forms that clearly define and activate the public street edge" (DZC Section 7.2.2.1.A) and for "areas or intersections served primarily by arterial streets where a building scale of 2 to 8 stories is desired" (DZC Section 7.2.2.2.C). Though the subject property is not directly adjacent to an arterial street, it is served by arterials including Fox Street, which is one half-block to the west and becomes an arterial one block south and gives direct access to 38<sup>th</sup> Avenue and Park Avenue – both of which are major arterials – and Interstate 25. The proposed C-MX-8 zone district would facilitate the development of an active and diverse urban center, consistent with the purpose and intent of the zone district.

### **Attachments**

1. Application
2. RNO comment letter