



**TO:** Denver City Council  
**FROM:** Ella Stueve, Senior City Planner  
**DATE:** June 3, 2021  
**RE:** Official Zoning Map Amendment Application #2020I-00076

### **Staff Report and Recommendation**

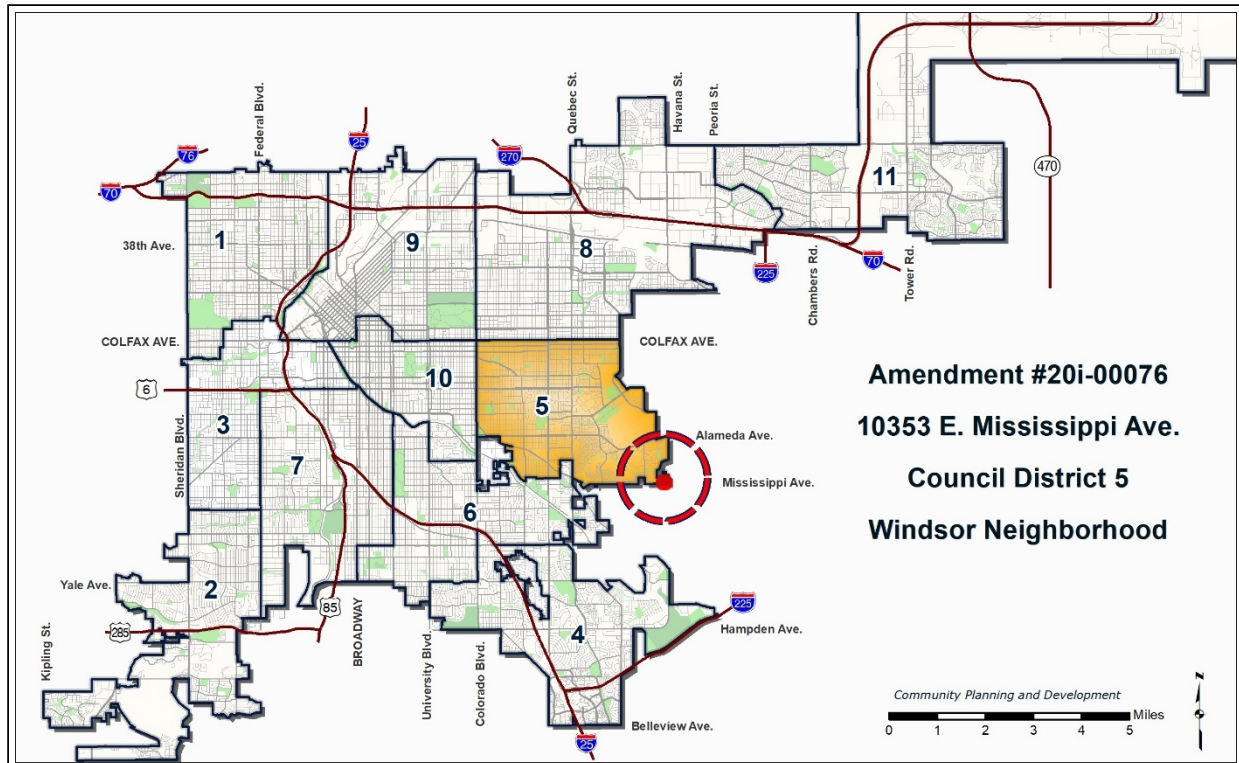
Based on the criteria for review in the Denver Zoning Code, Staff recommends approval for Application #2020I-00076.

### **Request for Rezoning**

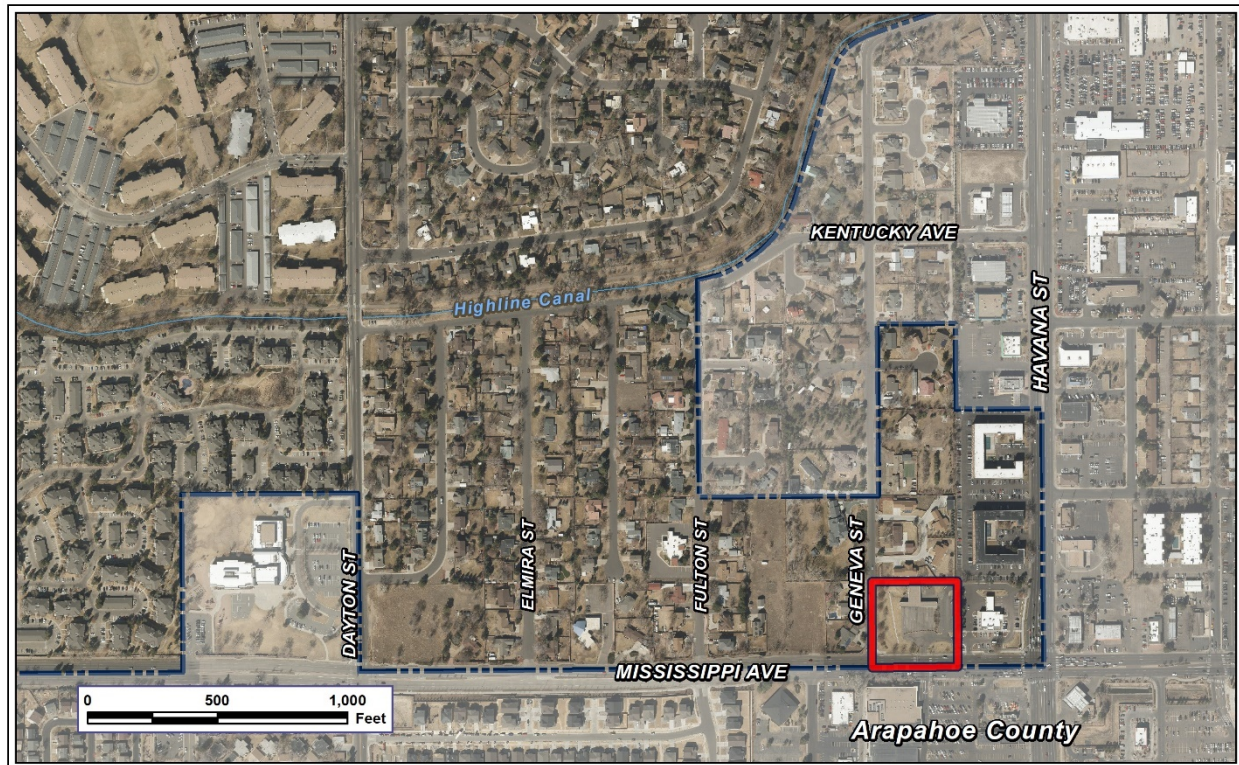
Address: 10353 E. Mississippi Avenue  
Neighborhood/Council District and CM: Windsor Neighborhood / Council District 5, Sawyer  
RNOs: Rangeview Neighborhood Association, Inter-Neighborhood Cooperation (INC)  
Area of Property: 80,819 square feet or 1.86 acres  
Current Zoning: B-1 with a condition  
Proposed Zoning: S-MX-3  
Property Owner(s): Bellco Credit Union  
Owner Representative: Jim Erwin-Svoboda, Galloway & Company, Inc.

### **Summary of Rezoning Request**

- The proposed rezoning is in the Windsor statistical neighborhood in the southeast corner of Council District 5. It is on the north side of E. Mississippi Avenue between S. Geneva Street and S. Havana Street. The property faces Arapahoe County to the south.
- The subject property, which is owned by Bellco Credit Union, contains a one-story structure built in 1994 with multiple drive-up ATMs.
- The proposed rezoning is intended to facilitate redevelopment of the site. Uses anticipated for the proposed site could include a fuel station, eating and drinking establishments, and other retail uses typically found within a suburban, mixed-use development.
- This is the third proposed rezoning for this property; the previous two applications were withdrawn, as detailed under "Existing Context."
- The S-MX-3 (Suburban, Mixed Use, 3-story) zone district allows a mix of uses and is intended for areas or intersections served primarily by local or collector streets where a building scale of 1 to 3 stories is desired. Further details of the requested zone district can be found in the proposed zone district section of the staff report (below) and in Article 3 of the Denver Zoning Code (DZC).







## Existing Context

This neighborhood is primarily suburban in character with areas of modified street grids, single-unit residential uses with cul-de-sacs and irregular blocks, commercial uses with larger setback along arterial streets, and primarily one- to two-story buildings with buildings up to four stories along arterial streets. South Havana Street is a half block to the east, and East Alameda Avenue is five blocks north of the site. Ben Bezoff Park is less than a half mile due north, Windsor Lake is less than a mile to the west, and Expo Park in Aurora is less than a mile to the northeast.

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	B-1 with a Condition	Commercial	1-story drive-through ATM structure with large setbacks and drive aisle between street and structure	Modified grid street patterns without alleys and either attached, no or detached sidewalks. Pattern of irregular shaped blocks.
North	S-SU-I	Single-unit Residential	1-story residential structures with large setbacks and no sidewalks	

	Existing Zoning	Existing Land Use	Existing Building Form/Scale	Existing Block, Lot, Street Pattern
South	B-4 (Aurora)	Commercial	1-story commercial structures with large parking lot between buildings and street	
West	S-SU-I	Single-unit Residential	1-story residential structures with large setbacks and no sidewalks	
East	S-MX-5	Commercial/Multi-unit Residential	1-story commercial building due east and 1-4-story residential structures to the northeast, both with large setbacks, detached sidewalks, and surface parking lot adjacent to the sidewalk	

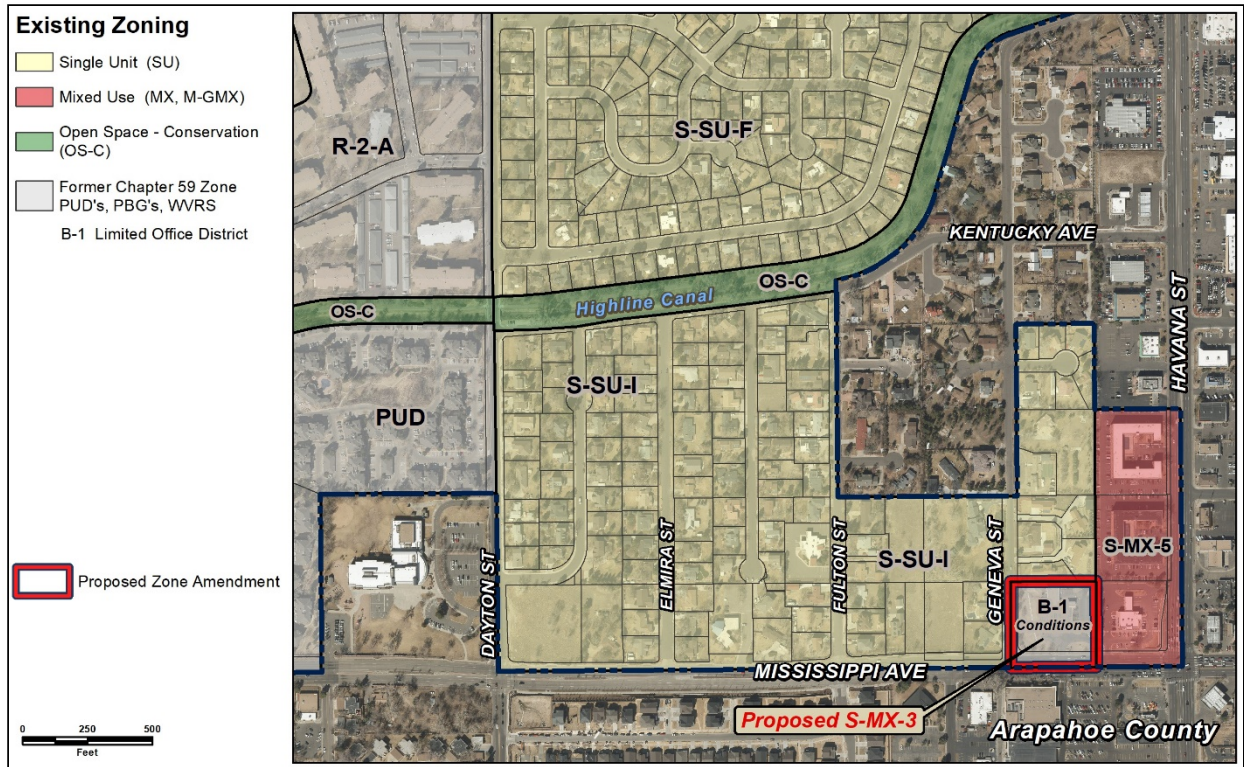
## **1. Rezoning Background**

There have been two previous rezoning applications on this property. In 2018, Leon Capital Group submitted an application for this site to be rezoned to S-MX-3. Comprehensive Plan 2000 and Blueprint 2002 were the adopted plans at that time, and Blueprint 2002 mapped this area as Single Family Residential on a Commercial Arterial in an Area of Stability. Staff recommended approval. On July 18, 2018, six members of the public spoke at the Planning Board hearing. Public comment opposed the rezoning, citing the allowed building height, traffic, and the potential for a drive-thru and commercial uses. Members of Planning Board discussed whether the 3-story district was appropriate given adopted plan guidance at that time and the adjacent single-unit residential to the north and west. There was also discussion about the lack of community outreach and coordination with the Rangeview RNO. After a failed motion to postpone the hearing, Planning Board passed a motion to recommend denial with six in favor, two opposed, and one abstention. The applicant chose to withdraw the application before attending LUTI.

In 2019, Galloway and Company, Inc. submitted an application for the same site to be rezoned to S-MX-3. The current Blueprint 2019 had been adopted, mapping this area as part of a Community Corridor within the Suburban Neighborhood Context on a Residential Arterial, which strengthened this request's consistency with adopted plans compared to the previous application. The second application described the neighborhood outreach, including the details of a meeting with the Rangeview Neighborhood Association RNO, which includes the subject property and the southeast corner of the Windsor neighborhood. Staff recommended approval. The Planning Board hearing was on October 16, 2019. Six members of the public spoke, largely in opposition to the potential impact on traffic and neighborhood character. With only six voting members present for the hearing, Planning Board failed to pass a motion. One motion to recommend approval failed with three votes in favor and three in opposition. One motion to recommend denial failed by the same margin. As a result, the case left Planning Board with no official recommendation. The applicant requested to withdraw the application shortly before the City Council hearing. City Council therefore voted the item down with no hearing.

After the second withdrawal, Councilwoman Sawyer referred the applicant, the property owner, the Rangeview Neighborhood Organization, and the neighbors to mediation. This process and outcome are described in the Public Review Process portion of this report.

## 2. Existing Zoning

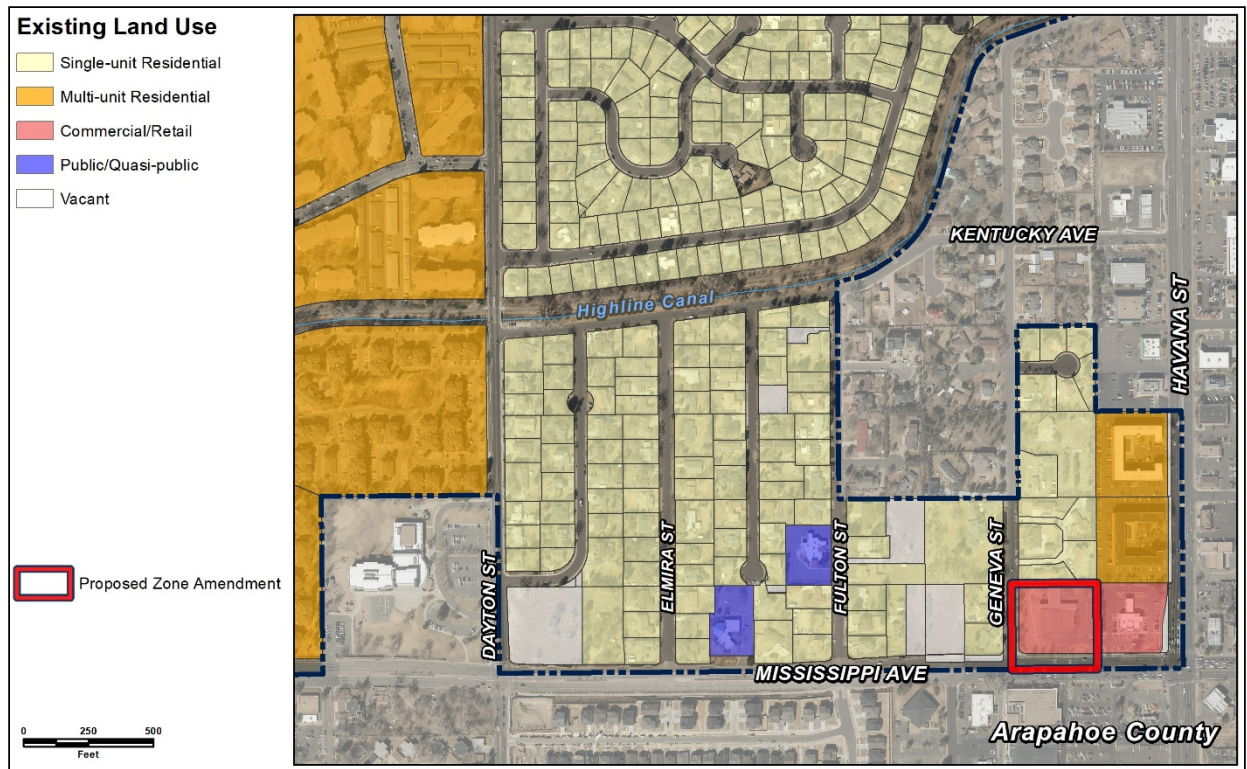


The current zoning of the subject property is B-1 with a condition, approved in 1994. B-1 is a Former Chapter 59 zone district. It is a limited office district intended to form a transition between more intense commercial and lower intensity residential land uses. Other than banking and financial services, retail uses are not permitted. Auto services are among the retail uses not permitted. The maximum allowable floor area ratio in B-1 is 1:1.

The condition approved requires the site to only be developed according to a 1993 recorded site plan which exclusively allows a drive-through ATM with eight aisles in the center of the site and parking to the east and west of the ATMs. The condition and the site plan are included as attachments to this staff report. Without a rezoning, this site cannot be developed other than as illustrated in this site plan.



### 3. Existing Land Use Map



### 4. Existing Building Form and Scale

*All images from Google Maps Street View.*



Subject property facing north from E. Mississippi Avenue





Residential properties to the north of the subject property facing east from S. Geneva Street



Residential properties to the west of the subject property facing west from S. Geneva Street



Commercial buildings to the south of the subject property facing south from E. Mississippi Avenue





Four-story multi-unit residential buildings east of the subject property facing west from S. Havana Street

### Proposed Zoning

The requested S-MX-3 allows a mix of uses. A variety of residential uses are permitted, and office uses are permitted (with limitations for dental or medical offices). Some uses within the Retail Sales, Service & Repair use category, such as Food Sales or Market and Retail Sales, Service & Repair are permitted. Within the use category of Vehicle / Equipment Sales, Rentals, Service & Repair, an Automobile Emissions Inspection Facility is permitted without limitations. Automobile Services, Light, which include a gas station, are permitted with limitations. The limitations, which are detailed in sections 11.4.18 and 11.4.19 of DZC Article 11, include restrictions for outdoor lighting and specify that “automobile services may include the sale of...fuel for vehicles as regulated by the Denver Fire Code” (11.4.18.4.J). For additional details of the requested zone district, see DZC Article 3.

The requested S-MX-3 zone district has a maximum height in feet of 45’ with allowable exceptions. The minimum primary street front setback is 0’. Side interior setbacks are 0’ except adjacent to a protected district, where they are 10’. The rear setback is 0’, except adjacent to a protected district, where it is 0’ where an alley is present an 10’ where there is no alley.

The primary building forms allowed in the existing zone district are limited to only the drive-through ATM site plan as specified in the zoning conditions. The primary building form standards for the proposed zone district are summarized below.

Design Standards	S-MX-3 (Proposed)
Primary Building Forms Allowed	Drive Thru Services*; Drive Thru Restaurant*; General; Shopfront
Height in Stories/Feet (max)	3/45’
Primary Street Build-To Percentages (min)	50% or 75% or n/a**

Primary Street Build-To Ranges	0' to 80', 0'-150', 0' to 10', or n/a**
Minimum Zone Lot Size/Width	N/A
Primary Street Setbacks (min)	0'
Floor Area Ratio	N/A

\*Building form not allowed within ¼ mile of a transit station platform

\*\*Standard varies between building forms

### Summary of City Agency Referral Comments

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

**Assessor:** Approved – No Response.

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

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

**Department of Public Health and Environment:** Approved – No Response.

**Denver Parks and Recreation:** Approved – No comments.

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

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

**Development Services – Wastewater:** Approved – No Response.

**Development Services – Project Coordination:** Approved – No comments.

**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:	10/23/2020



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:	3/22/2021
Planning Board voted 5 to 3 at the public hearing to recommend approval to City Council (This hearing was initially scheduled for February 3, 2021. On January 26, 2021, the applicant requested to postpone the Planning Board hearing to allow the mediation, which was ongoing at the time, to finish.):	4/7/2021
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 (10) working days before the meeting:	3/30/2021
Land Use, Transportation and Infrastructure Committee of the City Council:	4/13/2021
Property legally posted for a period of 21 days and CPD notice of the City Council public hearing sent to all affected members of City Council and registered neighborhood organizations:	5/17/2021
City Council Public Hearing:	6/7/2021

- **Public Outreach and Input**

- **Registered Neighborhood Organizations (RNOs)**

The Rangeview Neighborhood Organization submitted a letter of opposition, citing the residential character of the area and a preference that this site become residential or one-story district more closely aligned with the Chapter 59 B-1 zone district. The letter was signed by the President and Chairperson of the Rangeview RNO committee for Bellco site redevelopment. The Rangeview Neighborhood Organization also included a petition with 97 signatures of people opposed to the rezoning as well as the proposed development. The letter and signatures are included as part of Attachment 3.

- **General Public Comments**

CPD received 14 letters from neighbors of the subject site expressing the opposition of the rezoning. These letters listed concern about the impact of this rezoning on the residential character of the surrounding area, the vehicle traffic impacts on people walking to the bus stop, the environmental and health impacts of a gas station and

convenience store in close proximity to residential uses. Two of these letters were submitted by an attorney representing the Rangeview Estates Association. One letter also attached language submitted to City Council for a proposed 10-month moratorium on gas stations within 100 feet of a residential neighborhood, a requested continuance of the Planning Board hearing for a period of 10 months, and two photos of the site. CPD received two letters of support submitted by Holland & Hart, attorneys for Belco Credit Union, providing information on the property status, rezoning history, outlining public outreach and how the proposal meets the rezoning criteria, and a request to recommend approval. The letters and attached moratorium and photos are included as part of Attachment 3.

- **Mediation Summary**

After the applicant chose to withdraw the previous application on this site in December 2019, Councilwoman Sawyer referred the applicant, the Rangeview RNO, and the neighbors to free mediation services performed by a third-party, neutral facilitator. Mediation began in May 2020 and ended in March 2021. All parties participated in good faith to work towards a Good Neighbor Agreement intended to mitigate the neighbors' concerns over this rezoning and proposed development. While all parties were able to come to agreement on almost all issues, they were not able to reach agreement on operating hours. This impasse in the discussion effectively ended the mediation with no agreement in place. The mediation summary is included as Attachment 4.

- **Planning Board Hearing:** The Planning Board held a hearing on this proposed rezoning on April 7, during which they heard testimony in opposition from 10 neighbors and other stakeholders. In their deliberation, Planning Board members grappled with whether the proposal met the Public Health, Safety and Welfare criterion. Ultimately, five members voted to recommend approval, while three members voted against recommending approval.

## **Protest Petition**

A Protest Petition was submitted by a property owner within 200 feet of the subject property. Staff has determined that the required number of signatures have been submitted. See the attached memo summarizing the results.

## **Criteria for Review / Staff Evaluation**

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

### **DZC Section 12.4.10.7**

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

### **DZC Section 12.4.10.8**

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



## **1. Consistency with Adopted Plans**

The following adopted plans currently apply to this property:

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

### ***Denver Comprehensive Plan 2040***

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

The requested map amendment will enable mixed-use development at an infill location where current zoning includes a condition that permits only the existing drive-through automated teller machines per the approved site plan, which is consistent with the following strategies in the Strong and Authentic vision element:

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

Furthermore, the site is an infill location where infrastructure is already in place and provides services in proximity to residential neighborhoods, which is consistent with the following strategies in the Environmentally Resilient vision element:

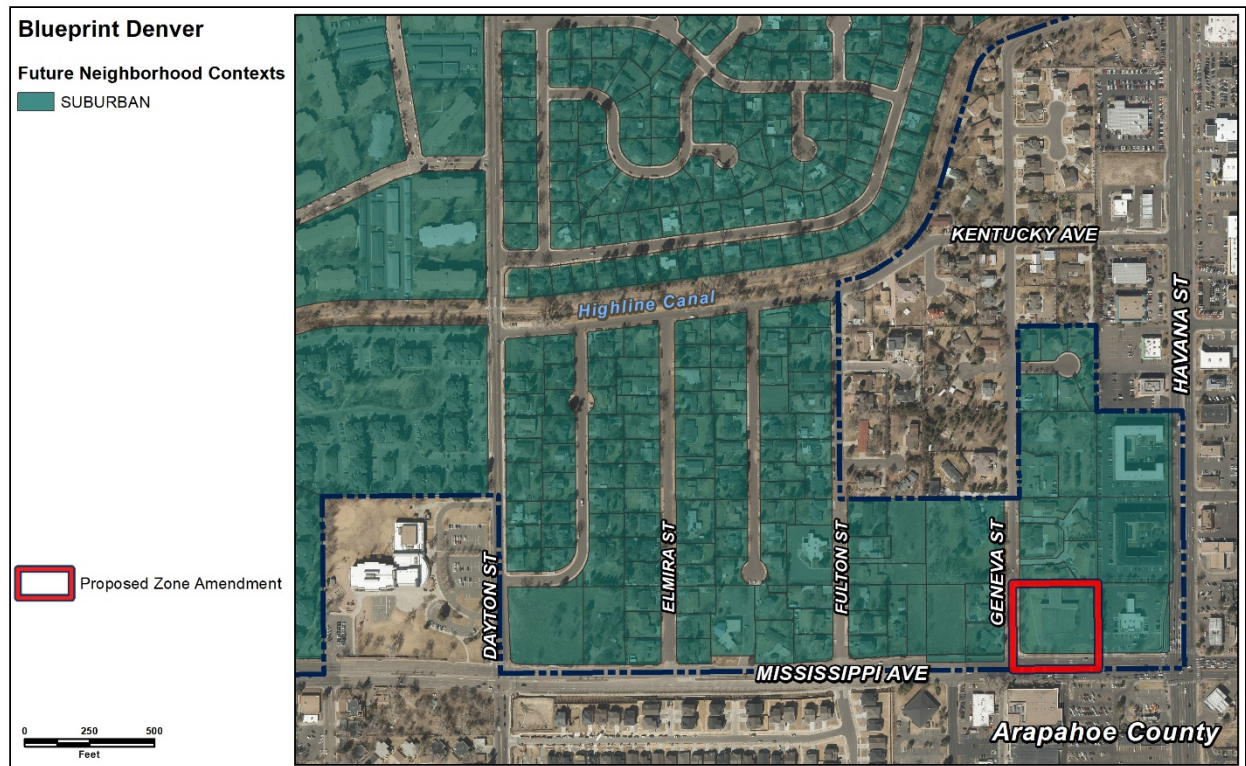
- Environmentally Resilient Goal 8, Strategy A – *Promote infill development where infrastructure and services are already in place* (p.54).
- Environmentally Resilient Goal 8, Strategy B – *Encourage mixed-use communities where residents can live, work and play in their own neighborhoods* (p. 54).

The requested S-MX-3 zone district broadens the variety of uses allowing residents to live, work and play in the area, therefore the rezoning is consistent with *Denver Comprehensive Plan 2040* recommendations.

### ***Blueprint Denver***

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

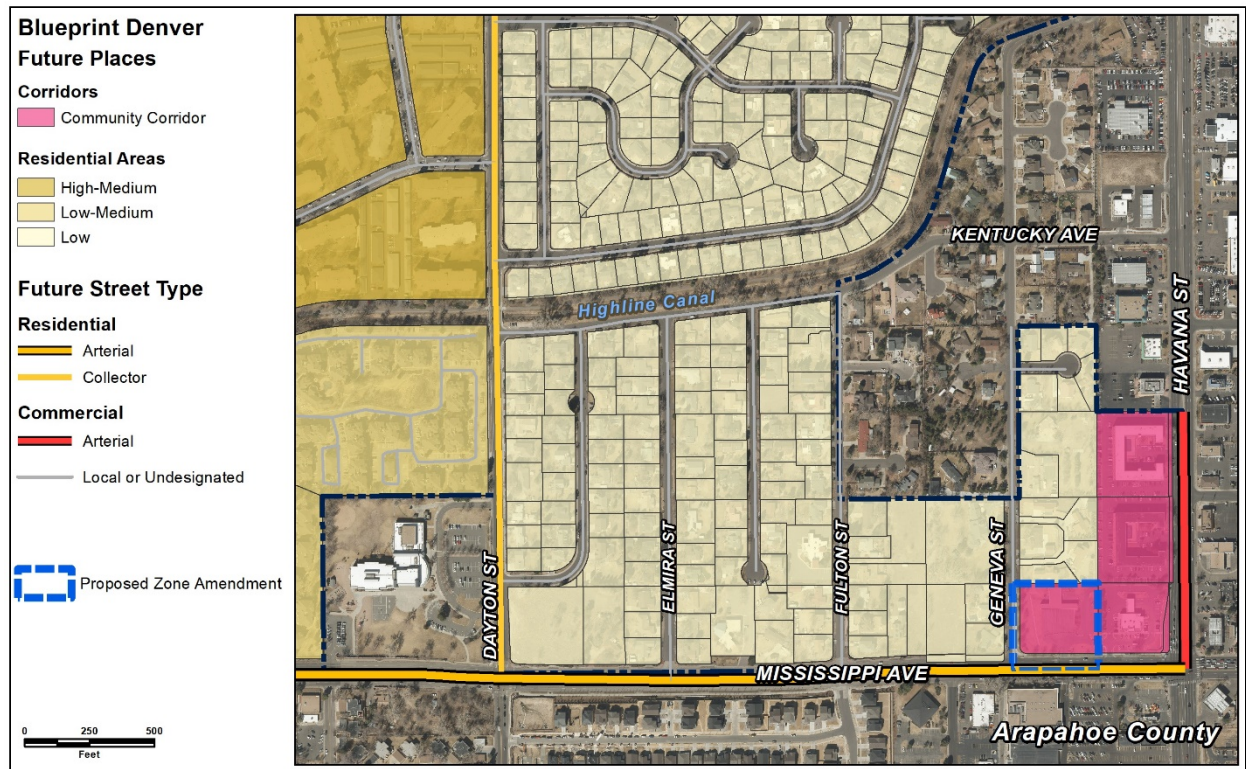
### **Blueprint Denver Future Neighborhood Context**



The subject property is within the Suburban neighborhood context. The suburban context “represents the most varied development in Denver’s neighborhoods. Homes in this context are largely single-unit, but can also include higher intensity residential. Commercial development is focused along main corridors and centers bordering residential areas” (p. 189). The proposed S-MX-3 district is within the Suburban Context, which is “characterized by single-unit and multi-unit residential, commercial strips and centers, and office parks” (Section 3.1.1, DZC). The proposed zone district, which allows a mix of uses in buildings up to three stories, is consistent with the Blueprint Denver Future Neighborhood Context plan direction.



## **Blueprint Denver Future Places**



The subject property is mapped as Community Corridor in the Future Places Map. In the Suburban context, areas designated as Community Corridors “typically provide some mix of office, commercial and residential...Buildings have a distinctly linear orientation, [and]... heights are generally up to 5 stories” (p. 196). The proposed zone district is a mixed use district that allows a mix of civic, residential, and commercial uses in buildings up to three stories. Therefore the proposed S-MX-3 zone district is consistent with the Community Corridor Blueprint Denver Future Places plan direction.

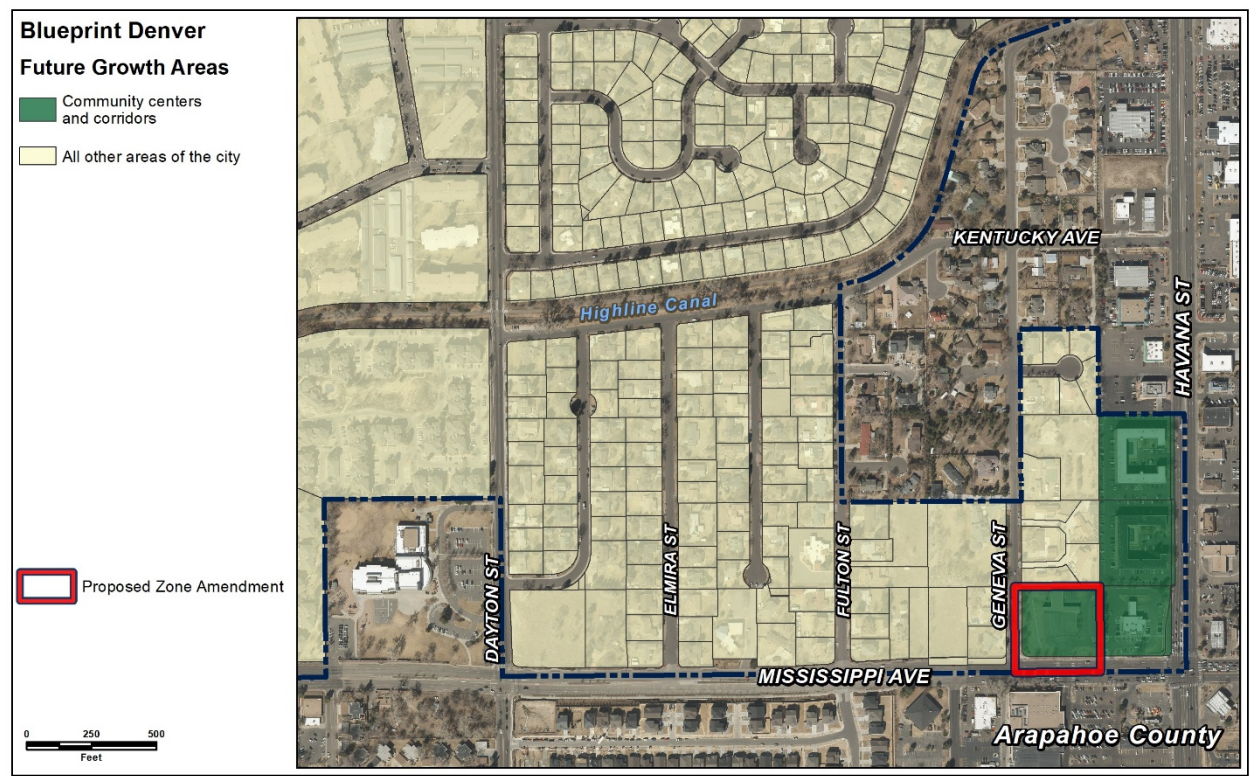
## **Street Types**

“Blueprint Denver’s street typology is intended to serve as a framework to develop context-sensitive street design guidelines and to update regulations and standards for how streets are designed” (p. 155). Street types tend to be consistent over larger stretches of roads rather than varying at the parcel level. For the purposes of rezonings, the street types are intended to “work in concert with the future place” to inform “the appropriateness of the intensity of the adjacent development” (p. 67).

East Mississippi Avenue and South Havana Street are both classified as arterial streets. “Arterial streets are designed for the highest amount of through movement and the lowest degree of property access” (p. 154). Arterials tend to support a higher level of adjacent development intensity than collector or local streets.

South Havana Street is a Commercial Arterial, which “typically contain[s] commercial uses including shopping centers, auto services and offices” (p. 159). East Mississippi Avenue is classified as a Residential Arterial. Residential Arterials have a lower adjacent land use intensity than Commercial Arterials. However, this residential classification does not indicate that only residential uses are appropriate along Residential Arterials. The description of land uses served by Residential Arterials specifically includes that “small retail nodes and other similar uses” are appropriate (p.160). The proposed S-MX-3 zone district “applies to areas or intersections served primarily by local or collector streets” (DZC Section 3.2.4.2.D), indicating that this zone district is compatible along streets that can support less land use intensity than East Mississippi Avenue at this location. Therefore, staff found that the request is consistent with the street type plan direction.

### **Growth Strategy**



The Future Growth Areas map, which is a version of the future places map, designates the subject property as community centers and corridors, which are anticipated to account for 20 percent of jobs and 25 percent of new households in the city by 2040. “Focusing growth in centers and corridors helps to provide a variety of housing, jobs and entertainment options within a comfortable distance to all Denverites and is a key element of building complete neighborhoods throughout Denver” (p. 49). The proposed map amendment to S-MX-3 will focus an appropriate intensity of mixed-use growth to a Community Corridor where it has been determined to be most appropriate and therefore is consistent with the Blueprint Denver Future Growth Areas plan direction.

## **Blueprint Denver Strategies**

Blueprint Denver provides recommendations related to rezoning. Because this site currently has a Former Chapter 59 zone district with custom zoning in the form of a condition, two strategies from the Land Use & Built Form: General section, Policy 3 are relevant for this proposed rezoning:

- Strategy A states, “Rezone properties from the Former Chapter 59 zoning code so that the entire city is covered by the DZC, including continuing to incentivize owners to come out of the old code” (p. 73).
- Strategy B states, “Limit the use of site-specific, customized zoning tools—such as Planned Unit Developments (PUDs) and waivers/conditions—to unique and extraordinary circumstances. The zoning code offers a wide variety of zone districts that cover the diverse contexts and places of Denver. Custom zoning tools are most effective when a standard zone district does not exist to implement the adopted plans for an area” (p.73).

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

The proposed rezoning to S-MX-3 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 through implementation of adopted plans. Additionally, a mixed-use district such as S-MX-3 facilitates uses and building form standards that can provide improved public health and general welfare outcomes compared to the current zoning. While the current zoning allows only a drive-through ATM, the proposed S-MX-3 facilitates increased density in a variety of building forms as well as a mix of uses, which have been linked to increased physical activity,<sup>1</sup> decreased obesity,<sup>2</sup> and decreased driving.<sup>3</sup>

Neighbors have expressed concern about the location of gas tanks as permitted by S-MX-3; those tanks are regulated by existing Department of Public Health and Environment and Fire Department rules to ensure public safety.

## **4. Justifying Circumstance**

Justifying Circumstance is defined under DZC Section 12.4.10.8.A.4 as, “Since the date of the approval of the existing Zone District, there has been a change to such a degree that the proposed rezoning is in the public interest. Such change may include: (c.) That the City adopted the Denver Zoning Code and the property retained Former Chapter 59 zoning.” The adoption of the Denver Zoning Code in 2010 and the retention of a Former Chapter 59 zone district on the subject property, including custom zoning

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

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

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



adhering the property to a 1993 site plan, is an appropriate justifying circumstance for the proposed rezoning.

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

The Suburban Context is characterized by single-unit, and multi-unit residential, commercial strips and centers, and office parks. Multi-unit building forms are typically separated from single-unit residential and consist of Duplex or Town House and occasional mid- and high-rise Apartment building forms. Commercial buildings are typically separated from residential and consist of Shopfront and General forms. Multi-unit and commercial uses are primarily located along arterial and collector streets. The block patterns in the Suburban Context are irregular and shaped by curvilinear streets and modified grid streets. The requested S-MX-3 is consistent with the neighborhood context description.

The Suburban Mixed Use zone districts are intended to “promote safe, active, pedestrian-scaled, diverse areas... The Mixed Use districts are appropriate along corridors, for larger sites and at major intersections...The Mixed Use zone district standards are also intended to ensure new development contributes positively to established residential neighborhoods and character and improves the transition between commercial development and adjacent residential neighborhoods” (DZC, Section 3.2.4.1). The S-MX-3 zone district is a Mixed Use zone district intended for areas served by local or collector streets where a building scale of 1-3 stories is desired.

The proposed map amendment is consistent with the mixed-use intent described in the Suburban Neighborhood Context. The proposed development will be limited to a moderate scale, will contain multiple structures on the zone lot and will be separated from single-unit residential. The mixed-use development will complement the character of existing surrounding development. The S-MX-3 zone district is consistent with both the general and specific purpose and intent of the Suburban Context and the S-MX-3 zone district description.

## **Attachments**

1. Application
2. Currently Adopted Ordinance (1994) and Site Plan (1993)
3. Public and RNO comment letters
4. Mediation Summary
5. Petition of Protest Memo