



STAFF REPORT

Planning Commission

| CASE #Z-544-91-94-23 | | | |
|----------------------|---|----------------------|---|
| PC Date: | April 18, 2023 | Case Planner: | Stacy Wasinger |
| CC Date: | May 15, 2023 | | |
| Location: | 3741 E. 64 th Ave. (north of E. 64 th Ave, west of Colorado Blvd) | | |
| Applicant: | Same as owner | Owner: | Hampton Yard 8, LLC |
| Address: | | Address: | 3200 Cherry Creek Dr. STE 630 Denver, CO 80209 |

| Case Summary | |
|--|--|
| Request: | Zone Change from Heavy-Intensity Industrial (I-3) with conditions to Heavy-Intensity Industrial (I-3) |
| Project Description: | Hampton Yard 8, LLC is requesting a Zone Change from Heavy-Intensity Industrial District (I-3) with conditions to Heavy-Intensity Industrial District (I-3) for the approx. 20.08-acre parcel generally located at 3741 E. 64th Avenue |
| Issues/Concerns: | <ul style="list-style-type: none"> • Former landfill site limits development • Future Development Plan to bring site into compliance • Concurrent adjacent site zone change and consolidation plat |
| Key Approval Criteria: | <ul style="list-style-type: none"> • Land Development Code (LDC) Zone Change Criteria |
| Development Review Team (DRT) Recommendation: | Approval |
| Current Zone District: | Heavy-Intensity Industrial (I-3) with conditions |
| Comp Plan Designation: | General Industrial |

Attachments for Review: *Checked if applicable to case.*

- Vicinity Map
- Applicant's Narrative
- Agency Review Comments

Background Information

Site Information

| | |
|-------------------------------|--|
| Site Size: | Approx. 20.08 acres |
| Current Conditions: | Industrial and outdoor storage, with existing structures |
| Existing Right-of-Way: | E 64 th Avenue to the south, Colorado Boulevard to the east |
| Neighborhood: | Fernald/Frei Crossing |
| Existing Buildings: | Six existing structures, five to be reused as offices associated with the four storage yards. One structure will be removed. |
| Buildings to Remain? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A |
| Site in Floodplain | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |

Surrounding Properties

| <u>Existing Land Use</u> | | <u>Occupant</u> | <u>Zoning</u> |
|--------------------------|------------|--|---------------|
| North | Industrial | Storage yards, contractor's yards | I-1, I-3 |
| East | Industrial | Multi-use industrial, storage yards | I-3 |
| South | Industrial | Industrial/distribution, storage yards | I-3, AG |
| West | Industrial | Storage yards, contractor's yards | I-3, AG |

Case History

The Agricultural zoning for this site was established through Commerce Town incorporation in 1955 and remained Agricultural with incorporation into Commerce City in 1962. The property, encompassing approx. 20.08 acres, was rezoned as part of a larger area west of Colorado Blvd and north of E. 64th Ave. from AG to I-3 with conditions in 1991.

| <u>Case</u> | <u>Date</u> | <u>Request</u> | <u>Action</u> |
|-------------|-------------|---|--------------------------|
| Ord. 40 | 1955 | Zone to Agricultural | Approved |
| Z-544-91 | 1991 | Zone Change to I-3 with conditions | Approved with conditions |
| Z-544-91-94 | 1994 | Development Plan approval for previous truck painting and other uses since ceased | Approved |

The current zoning district allows limited land uses, due to the conditions imposed in the previous zone change case. The conditions imposed with the 1991 zoning ordinance are:

- A. Specific Development Plans for the subject property shall be reviewed by the Planning Commission and approved by the City Council prior to any of the following: site improvements of any kind; change in use; development of any kind; issuance of building permits, or subdivision.
- B. The requirements for Development Plan approval shall be recorded against the deed of the subject property in the form of a deed restriction, or covenant with the Adams County Clerk and Recorder.
- C. The applicant shall enter into a Development Agreement with the City for future public improvements.
- D. A specific Development Plan for the truck painting operation now located on the subject property shall be submitted by the applicant for review by the Planning Commission and approved by the City Council within ninety (90) days after the effective date of this ordinance, and failure to obtain such approval shall cause the truck painting operation to (1) terminate on the subject property and (2) not be located or placed in the property adjacent to the western boundary of the subject property.

A portion of the site, primarily the north and west portions, was used as an informal landfill from approximately June through December 1975. A Phase 1 Environmental Site Assessment (ESA)

conducted by Palmetto Environmental Group, LLC identified this previous use and findings. This is not a Superfund site and is not subject to environmental covenants or restrictions. Per the ESA, recommendations include limiting building and impervious surface and monitoring methane levels. The current application and proposed future development complies with these recommendations.

Applicant's Request

Hampton Yard 8 LLC, which recently acquired the subject property, requests a zone change on the property from Heavy-Intensity Industrial (I-3) with conditions to Heavy-Intensity Industrial (I-3). A zoning case (Z-994-23) for the adjacent approx. 0.41 acre property and subdivision plat (S-755-23) to combine the two properties are being processed concurrently. In addition, a development plan (D-409-23) is under administrative review. The development plan cannot be finalized until action has occurred on the rezoning and consolidation plat requests. The overall development is proposed to include six (6) existing buildings reused for office buildings and four storage leasing yard areas. Each storage yard will have an associated office building, as required by the Land Development Code.

The applicant narrative states "*The Leeper Industrial Park is conveniently located to provide excellent access to the surrounding area and needed services to commercial and industrial users in the community. The Leeper Industrial Park will support its current users, which include a crane company, a towing service, and a business that leases mobile storage containers, while marketing sites within the 20-acre property for other uses permitted in the I-3 zone district. The capped landfill on the west side of the property limits potential development but will safely support outdoor storage and the staging of heavy construction equipment, both of which are allowed uses in the I-3 zone district. All outdoor storage uses will be incidental and directly related to a primary business on the property. Businesses will be located within the two existing structures along E. 64th Avenue which will be upgraded to commercial and office use standards.*"

Specifically, the conditions limit the users on site and include a specific type of business that no longer exists on the site. The applicant requests a zone change that would permit operation on the site consistent with the I-3 zone and uses. The Comprehensive Plan and Future Land Use Map call for this area to be General Industrial, and the rezone will be compliant with that document.

Development Review Team Analysis

Site Overview:

The requested Zone Change is for the approximately 20.08 acre parcel generally bound by E. 64th Avenue to the south and Monroe Street to the west. The property contains a flag access approximately 60 feet wide to Colorado Blvd to the east. The property is currently utilized for leased storage such as Pro Box Portable Storage and ARC Thrift Stores. If the zone change and consolidation plat are approved, the associated development plan will bring the site into code conformance for issues including storage yard surfacing and screening, landscaping, looped water line, and drainage improvements. The current zoning conditions have been in place since 1991.

A concurrent development plan (D-409-23) is under administrative review. The proposed development plan is compatible with the existing uses and industrial development in the area. To finalize the development plan, the rezoning of both the parcel considered in this case and the parcel considered in

the concurrent case Z-994-23 is necessary. In addition, the two parcels will have to be consolidated (S-755-23) prior to finalizing the development plan, and before any on-site improvements can be completed.

Through analysis and review, the DRT finds that the area is appropriately industrial and surrounding uses will not be adversely impacted by the removal of zoning conditions. Over time since 1991, there have been a number of code enforcement actions on this site, in part due to uses and the zoning conditions. No changes or improvements to bring the site into compliance can be made in general without review and action by City Council under the current zoning conditions. Removing conditions, as they exist, will allow the site to be developed and utilized in an appropriate manner. It will also allow the developer to continue to work with code enforcement and address any code violations by providing required improvements to the site to bring it into compliance with all regulations. With the improvements and uses proposed, further investment and redevelopment in the area may follow the redevelopment of this site. Current regulations contained in the Land Development Code, Building Code, Fire Code, Engineering Standards, and all other applicable codes are sufficient to ensure orderly future development.

This site is the location of a former landfill, which limits the ability to develop most of the western portion of the site. This landfill operated from approximately June through December 1975 and contained general solid waste. Some disposal of tanks and other items that contained hazardous materials such as oil may have occurred, per the ESA. Due to the informal nature of the landfill and lack of documentation on operations, the ESA provided the most complete review of the site. It concludes with four recommendations, that will be addressed with the future development plan. These recommendations are:

1. According to the construction dates of the on-Site buildings, the potential exists for lead paint and asbestos containing material to be present. In the event that any on-Site structures are to be demolished as part of the proposed development, sampling for asbestos-containing materials should be conducted in accordance with applicable federal and state regulations.

Staff Analysis: Demolition of structure associated with the development will be conducted in full compliance with all applicable federal, state, and local regulations, including environmental and lead-based paint.

2. Previous environmental assessments have confirmed the presence of a solid waste landfill on the western and northern portion of the Site. Elevated methane levels are found to be present. Palmetto recommends no additional structures be built on the property without adequate foundation venting. Additionally, no impervious surface cover, such as concrete or asphalt, should be applied to the Site.

Staff Analysis: The extent of the landfill area has been identified and the site improvements proposed by the applicant will avoid disturbing the landfill to the maximum extent possible. This includes the installation of the fire lane and water line. The outdoor storage areas will be surfaced with recycled asphalt and similar material that does not create an impervious hard surface cover.

3. Installation of soil vapor monitoring points adjacent to on-Site structures and periodic sampling of soil gas levels of methane will ensure that methane does not present an explosive risk.

Staff Analysis: *Monitoring for methane will continue, and had been coordinated within the regulations and recommendations of Tri-County Health Department. In the future, such monitoring or regulations will be coordinated with Adams County Health Department.*

4. The location of the heating oil tank which was previously noted to be associated with Building #1, the former residence, should be verified. If identified, soil samples should be collected from within and around the heating oil tank to assess the tank for possible impacts to surrounding soil. Additionally, it should be determined if the heating oil tank is still present in Building #1. If present, the heating oil tank should be emptied and properly closed.

Staff Analysis: *Per the applicant's research and survey, no such tank has been identified on site. If any such tank or similar tank is identified, it will be closed properly.*

The zoning conditions were placed upon the property in August 1991 and were common conditions placed upon speculative rezonings at the time. These conditions were added at a time when the city was smaller, less complex, and did not have all of the processes and standards in place to ensure a high level of development. There was also more uncertainty about how the surrounding area would develop at that time. The Development Review Team has reviewed the conditions for the property and provides the following analysis for the Planning Commission:

- A. Specific Development Plans for the subject property shall be reviewed by the Planning Commission and approved by the City Council prior to any of the following: site improvements of any kind; change in use; development of any kind; issuance of building permits, or subdivision.

Staff Analysis: *The City now has effective, City Council approved processes and standards in place that provide for high quality development, including industrial design standards, landscape standards, and parking standards, which can be administratively approved. By requiring city council approval for every building permit or change in use on this property, this condition imposes a lengthy, uncertain review that is a detriment for future development of this property.*

- B. The requirements for Development Plan approval shall be recorded against the deed of the subject property in the form of a deed restriction, or covenant with the Adams County Clerk and Recorder.

Staff Analysis: *The City does not enforce deed restrictions and any such limitations would be able to be removed by the property owner. Removing this condition would provide more certainty and flexibility for the current proposal and also for any future development.*

- C. The applicant shall enter into a Development Agreement with the City for future public improvements.

Staff Analysis: *A Development Agreement/Public Improvements Agreement was entered into in 1991. No additional Development Agreement or update is required with current proposed uses.*

- D. A specific Development Plan for the truck painting operation now located on the subject property shall be submitted by the applicant for review by the Planning Commission and approved by the City Council within ninety (90) days after the effective date of this ordinance, and failure to obtain such approval shall cause the truck painting operation to (1) terminate on the subject property and (2) not be located or placed in the property adjacent to the western boundary of the subject property.

Staff Analysis: This use no longer exists on the subject site, and no similar use is proposed. All future development and uses will comply with the Land Development Code and I-3 zone district, if approved.

Image A: Current Site Photos



Northwestern storage yard (ARC)



East property line and fence (adjacent property storage)

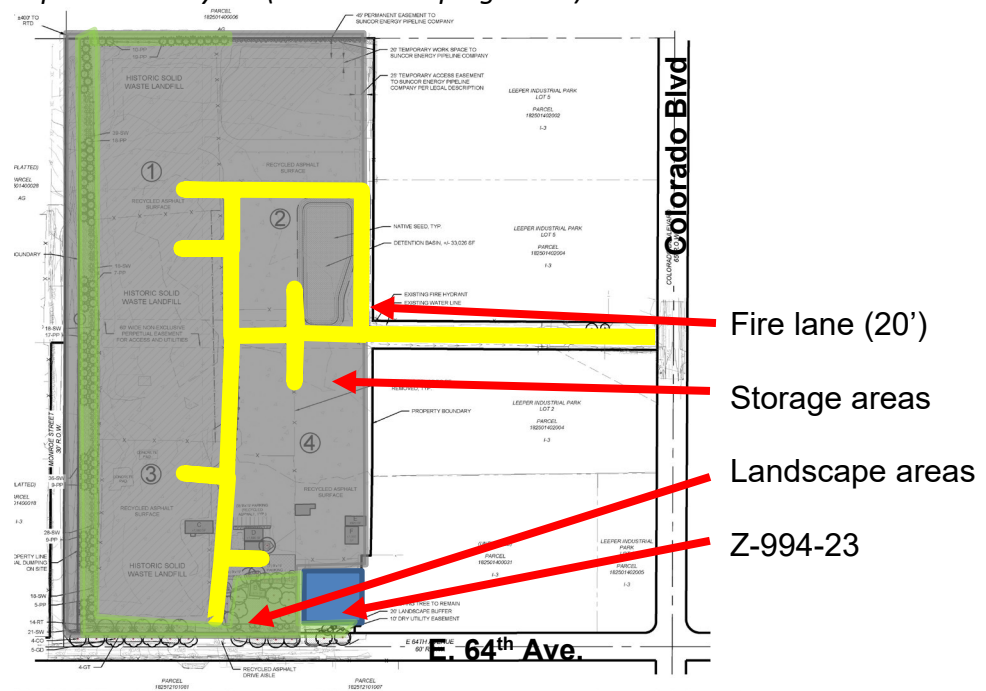


Existing building to remain



Existing building to remain

Image B: Proposed Conceptual Site Layout (with landscaping areas)



The applicant held a virtual neighborhood meeting on May 31, 2022 (meeting summary attached). The applicant team and a Commerce City planning representative were present. No neighboring property owners or tenants attended.

Outside Agency Review:

Staff referred this application to several departments in the city as well as outside agencies. All of the responses that were received indicated that the proposed zone change would not create conflicts with their regulations and no objections were received regarding the rezone. Initial comments from Tri-County Health Department (TCHD) did express concern regarding the methane mitigation and disturbance of former landfill site; with additional information on the remediation status and discussion with the applicant regarding current and future conditions, TCHD removed their objection to the rezone. The correspondence documents are attached to this staff report. A memo from Dr. Rosemarie Russo, Commerce City environmental planner, concurring with the TCHD review is also attached.

As part of the full development plan and future site improvements, the site will include a looped water line and fire access lanes. These improvements will address South Adams County Water and Sanitation District and South Adams County Fire Department comments and regulations. However, due to the current zoning conditions, no site improvements can be made until the rezone is complete for the subject property.

Summary:

In summary, the DRT has determined that the request meets the approval criteria for a zone change outlined in the LDC as provided below, the proposal meets the Comprehensive Plan goals, and the proposal is appropriate given the surrounding industrial area. The proposed zone change will facilitate redevelopment of an underutilized parcel and allow continued investment into the neighborhood. After performing this analysis, the DRT recommends that the Planning Commission forward a recommendation for **approval** to City Council.

Comprehensive Plan Analysis

In reviewing the requested Zone Change, the DRT reviewed the request’s compatibility with the City’s Comprehensive Plan. That analysis is provided in the following table.

The DRT recommendation for this case is supported by the following Comprehensive Plan Goals:

| Section | Goal | Description |
|--------------------------------|--|--|
| Land Use and Growth Strategies | LU 2 | Phase Growth in an Orderly, Compact Manner |
| Analysis: | The proposed zone change will allow and promote infill development in an under-utilized parcel | |

| Section | Goal | Description |
|---------------------------------|---|-----------------------------------|
| Economic Development Strategies | ED 1 | Increase economic diversification |
| Analysis: | The proposed development would promote the employment base with approximately 12 full-time positions in this portion of the City. | |

| Section | Goal | Description |
|---|--|--|
| Public Facilities and Infrastructure Strategies | PF 1 | Coordinated utilities and infrastructure/future growth |
| Analysis: | The proposed development would utilize an existing developed industrial area and bring new improvements and site uses to the area. | |

LDC Zone Change Approval Criteria Analysis

The DRT recommendation for this case is based on the following LDC criteria, from Sec. 21-3232(5):

Approval Criteria. A zone change may be approved only if:

Criteria (a): The zone change corrects a technical mistake on the part of the city in classifying a parcel within a specific zoning district; or;

Analysis: This proposal is not a technical mistake in the zoning map.

Staff finds this criterion is not applicable.

Criteria (b): The zone change meets all of the following:

Criteria (b)(i): The proposed zone district and allowed uses are consistent with the policies and goals of the comprehensive plan, any applicable adopted area plan, or community plan of the city;

Analysis: The proposed zone change is consistent with the future land use designation and the policies and goals of the comprehensive plan. This includes LU 2.1 to promote infill development and ED 1 to increase economic base.

Staff finds this application meets this criterion.

Criteria (b)(ii): The proposed zone district and allowed uses are compatible with proposed development, surrounding land uses and the natural environment;

Analysis: Surrounding uses are primarily industrial and the proposed zone is compatible with this development and the proposed use. As an infill site, the proposed development will have limited impact on the natural environment in the area. Future development will effectively mitigate environmental impacts and aid in remediation of the former landfill site.

*Staff finds this application **meets this criterion.***

Criteria (b)(iii): The proposed zone district will have, or future development can provide, efficient and adequate provision of public services, including but not limited to, water, sewerage, streets, and drainage;

Analysis: This infill site has adequate infrastructure and future development will provide any additional or upgraded facilities. Removing the existing zoning conditions will not affect the required improvements and services, which are subject to all City required regulations.

*Staff finds this application **meets this criterion.***

Criteria (b)(iv): The proposed zone district will have, or future development can provide, efficient and adequate provision of public uses including but not limited to, parks, schools, and open space;

Analysis: The proposed zone and development will not impact public uses directly and adequate open space, parks, and other public uses exist in the area.

*Staff finds this application **meets this criterion.***

Criteria (b)(v): There is a community need for the zoning district in the proposed location, given need to provide or maintain a proper mix of uses both within the city and the immediate area of the proposed use; and;

Analysis: The proposed zone is consistent with the area and will allow the development of industrial uses in an industrial area. The redevelopment of this site will result in development of an under-utilized industrial area of the City and may help spur future growth and improvements in the area.

*Staff finds this application **meets this criterion.***

Criteria (b)(vi): The area for which zone change is requested has changed or is changing to such a degree that it is in the public interest to allow a new use or density;

Analysis: This area has been transitioned from original AG zoning to industrial over many years and developments. Allowing this site to be fully utilized for industrial development will help with economic development in the area and city, and benefit the public interest.

*Staff finds this application **meets this criterion.***

Development Review Team Recommendation

The DRT discussed this case, Z-544-91-94-23, in a meeting on March 2, 2023. There were no significant issues, comments, or concerns, therefore the DRT made an official recommendation of approval.

Based upon the analysis above, the Development Review Team believes that the application meets the criteria for a Zone Change set forth in the Land Development Code and recommends that the Planning Commission forward the Zone Change request to the City Council with a favorable recommendation.

Recommended Motion

To recommend approval:

I move that the Planning Commission enter a finding that the requested Zone Change for the property located **generally at 3741 E. 64th Avenue** contained in case **Z-544-91-94-23** meets the criteria of the Land Development Code and based upon such finding, recommend that the City Council approve the Zone Change.

Alternative Motions

To recommend denial:

I move that the Planning Commission enter a finding that the requested Zone Change for the property located **generally at 3741 E. 64th Avenue** contained in case **Z-544-91-94-23** fails to meet the following criteria of the Land Development Code:

List the criteria not met

I further move that based upon this finding that the Planning Commission recommend that the City Council deny the Zone Change.

To continue the case:

I move that the Planning Commission continue the requested Zone Change for the property located **generally at 3741 E. 64th Avenue** contained in case **Z-544-91-94-23** to a future Planning Commission agenda.