



STAFF REPORT

Planning Commission

CASE #CU-116-19

PC Date:	September 4, 2018	Case Planner:	Brad Callender
CC Date:	October 1, 2018		
Location:	10601 Fulton Street, Brighton, CO 80601		
Applicant:	BASF Corporation	Owner:	Same as applicant
Address:	10601 Fulton Street Brighton, CO 80601	Address:	Same as applicant

Case Summary

Request:	Conditional Use Permit for an adhesive manufacturing operation in the I-3 zoning district for the BASF Corporation
Project Description:	The applicant is requesting Conditional Use Permit approval to turn an existing non-conforming adhesive manufacturing operation into a conforming adhesive manufacturing operation to allow for a parking lot expansion, a future warehouse expansion and future accessory structures on the site.
Issues/Concerns:	• Compliance with the Comprehensive Plan • Compliance with the Land Development Code
Key Approval Criteria:	• Compliance with the Comprehensive Plan • Compliance with the Conditional Use Permit Approval Criteria
Staff Recommendation:	Approval with Conditions
Current Zone District:	I-3 (Heavy-Intensity Industrial Zone District)
Comp Plan Designation:	General/Industrial

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

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| ☒ Applicant's Narrative Summaries | ☒ Vicinity Map |
| ☒ Site Development Plan | |

Background Information

Site Information

Site Size:	±20.399 Acres
Current Conditions:	The site is currently occupied by an existing adhesive manufacturing operation
Existing Right-of-Way:	Fulton Street to the east and Union Pacific Railroad to the west
Neighborhood:	Di Giorgio Industrial Park
Existing Buildings:	150,000 Sf manufacturing building with accessory structures
Buildings to Remain?	☒ Yes ☐ No
Site in Floodplain	☐ Yes ☒ No

Surrounding Properties

<u>Existing Land Use</u>		<u>Occupant</u>	<u>Zoning</u>
North	Industrial	Adams County Animal Shelter & 2 nd Steel Used Parts and Equipment	I-3
South	Industrial	Dowell Schlumberger Incorporated & South Adams County Fire Station #25	I-3
East	Industrial	Sashco & AmWest Control, Inc.	I-3
West	Railroad	Union Pacific Railroad right-of-way	I-1

Case History

The table below provides the relevant case history for this site.

<u>Case</u>	<u>Date</u>	<u>Request</u>	<u>Action</u>
AN-220-07	2007	Annexation from ADCO into Commerce City as part of the "Northern Enclave Industrial Annexation"	Approved
Z-876-08	2008	Zoned to I-3 with other properties included under Case AN-220-07	Approved

AN-220-07:

On December 20, 2007, the City Council approved the annexation of the subject property as part of the "Northern Enclave Industrial Annexation".

Z-876-08:

On March 17, 2008, the City Council approved the annexation zoning for the properties that were annexed in AN-220-07. The subject property of this request was zoned I-3 (Heavy-Intensity Industrial Zone District). No additional zoning considerations or provisions were granted to the subject property in this zoning action. Without additional provisions, the existing industrial use on the subject property was automatically rendered a legal, non-conforming use, which is the basis for this Conditional Use Permit request.

Applicant's Request

History:

BASF SE is a German owned company and is the largest chemical producer in the world. It is comprised of subsidiaries and joint ventures in more than 80 countries and operates six integrated production sites and 390 standalone production facilities in the Americas, Europe, Asia, Australia, and Africa. BASF Corporation, the Americas subsidiary headquartered in Florham Park, New Jersey is the largest affiliate of BASF SE and is the second largest producer and marketer of chemicals and related products in North America. It operates in a variety of business segments including the Construction Chemicals division,

which supplies waterproofing solutions, concrete admixtures, performance grouts and wall systems that are produced at over 20 different manufacturing facilities across North and South America.

BASF Construction Chemicals has been manufacturing high performance polyurethane waterproofing solutions for new construction, maintenance, repair and renovation of structures at the facility since 1997. Prior to BASF purchasing the site, the facility was operated by CHEMREX, Inc. and was used in a similar manner to manufacture construction chemicals that dates back to 1991. During that time, CHEMREX, Inc. operated the facility under the approval of a Conditional Use Permit granted by Adams County in 1991.

Existing Operations Overview:

The existing manufacturing building is approximately 150,000 Sf in size, and contains manufacturing, raw material and finished goods storage areas. The facility also includes maintenance operations, a quality control laboratory and management office areas to support production. BASF's urethane sealant and waterproof coatings manufacturing process is comprised of the following:

- 21 above ground raw material storage tanks
- 4 underground raw material storage tanks
- 4 pre-production batch mixers
- 2 intermediate batch mixers
- 19 intermediate holding tanks
- 8 finish batch mixers
- 14 product packaging lines

The manufacturing process begins by combining liquid raw materials and solid fillers in pre-production batch mixers to produce intermediate prepolymers for all various forms of finished products (one-form, multi-component, self-leveling and vertical applications). Prepolymers are then reacted to produce a thixotropic (thickened) product, mixed with performance additives and pigmented in finish batch mixers to result in the final products. The material is then processed through one of 14 packaging lines into either fiber cartridges, foil propaks or pails for sale to commercial customers nationwide via several distribution centers located outside of Colorado. Due to the proprietary and confidential nature of the chemical operations that take place within the facility, limited details regarding the process are able to be documented for distribution to ensure protection of patented intellectual property.

Outside of the facility, there are four truck dock bays to handle shipping and receiving activities. The truck dock bays are located on the east side of the building facing Fulton Street. The combined number of inbound and outbound trucks is approximately 150 per month, or 35 weekly on average. There are also three bulk receiving locations for raw materials located near the southwest corner of the manufacturing building. Two of the bulk receiving areas are for trucks and one is for railcars. The railcar spur extends into the site from the Union Pacific railroad. The spur enters the on the western side of the site and branches into two spurs near the southwest corner of the building. The two rail spurs typically accommodate up to six railcars. The facilities railcar consumption is roughly 15 tankers per month.

The facility operates 24 hours a day each week. Operations run on two 12-hour shifts. Management, administrative and support personnel work Monday through Friday from 8 pm to 5 pm. The facility has a total of 145 employees, with a maximum of 70 employees on-site at any given time.

Request:

BASF is requesting approval of this Conditional Use Permit request to allow for additional improvements to their facility. Currently, the BASF facility is considered a legal, non-conforming use under the existing I-3 zoning on the property. In order to permit any improvements or additions on the site, a Conditional Use Permit is required which is the basis for this request. The applicant provided a Future Site Plan with this Conditional Use Permit request. The Future Site Plan includes several improvements to be constructed on the site.

Parking Lot Expansion:

The primary and immediate need for this Conditional Use Permit is to allow for a parking lot expansion on the northeast corner of the site. The proposed parking area will contain approximately 117 parking spaces and is intended for use by BASF employees. The parking lot expansion will include landscaping required by the Land Development Code. Additionally, the parking area will be enclosed with security fencing.

Warehouse Expansion:

The Future Site Plan illustrates a future warehouse expansion on the north side of the manufacturing building. The proposed warehouse expansion is approximately 42,000 Sf in size. The applicant did not provide any specific time frame for construction of the warehouse expansion. If this CUP request is approved, the applicant would have the ability to pursue development of the warehouse expansion administratively with a building permit.

Proposed Accessory Structures:

In addition to the warehouse expansion described above, the Future Site Plan also illustrates future tank expansions outside of the manufacturing building on the south and west sides of the building. Similar to the warehouse expansion, approval of the CUP request will grant the applicant the ability to construct the tank expansions administratively with a building permit.

Safety:☐ **Hazardous Materials:**

Some of the materials produced by BASF use isocyanates as part of the chemistry to create high performance weather resistant sealants and coatings. These raw materials are stored in bulk tanks and automatically supplied to the process via a plant control system. In addition to strict internal BASF policies and procedures, the portion of production associated with isocyanates is installed and managed with adherence to the Risk Management Plan outlined by the Environmental Protection Agency. All applicable processing is contained in an H-Occupancy area per International Building Code requirements. Supplemental information regarding handling of hazardous information can be found in the attached BASF Brighton Integrated Contingency Plan, including detailed information on emergency response handling and internal training.

☐ **Environmental Safety:**

BASF is required to comply with all state, county and federal environmental rules, laws and regulations applicable to the facility. Facilities are designed and built to minimize frequency and magnitude of hazardous releases. An appropriate combination of engineering controls, work practices, personal protective equipment, and training, is used to minimize employee exposures. BASF has provided copies of the Integrated Contingency Plan to the Adams County Fire and Sheriffs Departments, The Adams County Office of Emergency Management Agency and the Platte Valley Medical Center.

☐ **Personnel Safety:**

It is the policy of BASF to operate in a safe manner with minimum risk to employees, contractors and visitors on-site and to the surrounding community and environment. While there is a strong emphasis on the prevention of accidents, the site is also committed to being prepared to respond to emergencies in order to minimize damage to human health and the environment, both on and off-site.

All employees are trained annually on the facility emergency procedures. Employees are instructed to contact the Production Supervisor in order to make contact with the Emergency Response Team (ERT). Any employee can initiate appropriate elements of the plan upon discovery, notification or observance of a situation described in the Integrated Contingency Plan. The employee has the duty to warn others, secure the area, and notify their supervisor or the Site Manager. The Site Manager or Designated Personnel has ultimate control of the site until relieved of their duties. Additional assistance from outside services and agencies will be available to assist in the response.

☐ **Community Safety:**

As a result of the implementation and dedication to the safety practices and procedures that exist at the manufacturing facility to protect the employees and customers as well as the environment, the safety of the community is subsequently increased.

In conjunction with the mandated local, state, and federal regulations to be followed, BASF has developed certain rules that are required to be followed on-site. Also, proper procedures for operations are required to be followed including the location, appropriate tools, specific procedures, and personal protective equipment.

Security at the facility also plays an important role in protecting the community. Restricted access and perimeter fencing provide for the control of trespassing and tampering of equipment by unqualified persons. The facility is also private and not open to the public.

The continual inspecting of on-site equipment and operations also ensures the safety of the surrounding community. By being proactive, personnel become aware of and are able to provide immediate attention to any potential hazards that may exist, ultimately decreasing and removing the opportunity to harm the community, customers, the environment, or themselves.

Development Review Team Analysis

The Development Review Team (DRT) has reviewed the request for a Conditional Use Permit against the goals found in the City's Comprehensive Plan. That analysis is provided below:

The DRT recommendations for this case are supported by the following Comprehensive Plan Goals:

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Land Use	LU 1	Maintain a balanced mix of land uses.
<u>Analysis:</u>	The existing use is a heavy industrial use, which is consistent with the General Industrial designation in the Comprehensive Plan and allows for the heaviest industrial activities within the City. This goal of the Comprehensive Plan is to ensure a healthy mix of land uses.	

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Land Use	LU 4	Retain existing industrial areas and land use for jobs.
<u>Analysis:</u>	The request in this application is being made by an existing industrial business. The approval of this CUP will help retain an existing industrial business, as well as permit future expansions of the existing industrial business.	

Site Layout:

The address of the subject property is 10601 Fulton Street. The subject property is currently zoned I-3 (Heavy-Intensity Industrial Zoning District). The property is rectangular in shape and located on the west side of Fulton Street and east side of the Union Pacific railroad. The subject property has a total land area of 20.399 acres. The site is currently developed as an adhesive manufacturing facility. The site has two accesses from Fulton Street, with one entrance providing access to truck docks to accommodate shipping and receiving and the second entrance providing vehicular access to employees. The site also has a rail spur from the Union Pacific Railroad located on the west side of the property. The site was originally developed in the 1980's as a light industrial building. Since 1991, the site has been operating as an adhesive manufacturing operation. The site is surrounded to the north, east and west by other properties also zoned I-3 and developed with moderate to heavy industrial uses.

Analysis of the Request:

In reviewing the requested Conditional Use Permit (CUP), the DRT recognized the BASF manufacturing facility was operating prior to being annexed into the City. Prior to being annexed, BASF was compliant with the zoning regulations in Adams County by virtue of having Conditional Use Permit approval with the county. When this property was annexed as part of the Northern Enclave Industrial Annexation, it was zoned to I-3 in the City. However, no additional provisions were granted to the subject property in terms of zoning approval thereby the property was automatically rendered a legal, non-conforming use. In order to grant any permits for the subject property, it is necessary for the applicant to now obtain Conditional Use Permit approval with the City. Without CUP approval, BASF would not be allowed to develop additional parking at the facility, or be allowed to expand their operation in any manner. Considering the CUP request is for an existing land use that is already operating in the City, the need for the CUP is a legal necessity to allow for the improvements desired by BASF. For these reasons identified above, staff is supportive of this CUP request.

Outside Agency Review:

As with all applications that are submitted for review, the DRT provided BASF's request to a variety of outside organizations for their review and comment. The relevant comments that were provided to the DRT have been detailed below. Given the level of comfort from the outside agencies, the DRT is supportive of this request.

South Adams County Fire Protection District (SACFPD):

"BASF meets the requirements of the International Fire Code and National Fire Protection Association Standards as adopted by Commerce City. BASF has fire protection systems, emergency planning and preparedness plans, and safety procedures that meet or exceed the International Fire Code and the National Fire Protection Association. The South Adams County Fire Department does not have any issues with BASF's proposed conditional use permit."

Summary:

BASF is requesting the approval of this Conditional Use Permit in order to allow for expansions of their existing facility and to make the entire site a legal and conforming land use in accordance with the Land Development Code (LDC). The Future Land Use Plan designates the subject property as General Industrial. The existing I-3 zoning on the subject property, as well as the existing manufacturing land use on the site, complies with the intent of the General Industrial future land use designation. Once compliance with the LDC is achieved, they will be able to implement the first project on their property with a parking lot expansion through the administrative development review and building permit review process. In the analysis of the Conditional Use Permit approval criteria below, the adhesive

manufacturing facility is identified as being in compliance with the necessary approval criteria. Therefore, based on the information provided above and the detailed analysis related to the Conditional Use Permit criteria listed below, DRT recommends that the Planning Commission forward the Conditional Use Permit request to the City Council with a favorable recommendation.

Conditional Use Permit – Approval Criteria:

The Development Review Team (DRT) has reviewed the request for a Conditional Use Permit against the Approval Criteria found in the Land Development Code. That analysis is provided below:

Criteria Met?	Sec. 21-3230. Conditional Use Permits	Rationale
☒	The proposed use will not result in a substantial or undue adverse effect on adjacent property, the character of the neighborhood, traffic conditions, parking, public improvements, either as they presently exist or as they are envisioned to exist in any adopted City plan, program or ordinance;	The character of this area is heavy industrial in nature and the existing use is considered a heavy industrial use. Additionally, these operations have been in place at this site since 1991.
☒	Any adverse effect has been or will be mitigated to the maximum extent feasible, including but not limited to sufficient landscaping and screening to ensure harmony for adjoining uses;	The applicant has provided documentation that their operations are compliant with the necessary regulating agencies. The proposed parking area expansion includes required landscaping in the parking lot and along Fulton Street.
☒	The characteristics of the site are suitable for the proposed use;	The manufacturing operation has been operating at the site since 1997 and the characteristics of the site are suitable for the existing use.
☒	The proposed use will be adequately served by and will not impose an undue burden on any of the existing improvements, facilities, and services of the city or its residents or the applicant has committed to provide such improvements, facilities, utilities and services in sufficient time to serve the proposed use;	The requested use is an existing use and is adequately served by the necessary utilities and infrastructure.
☒	The applicant has provided adequate assurances of continuing maintenance;	The materials submitted with this application indicate ongoing and continued maintenance for the existing manufacturing operation. This will be ensured by a variety of regulating agencies at several levels of government.
☒	No evidence suggests that the use violates any federal, state, or local requirements.	There is no indication that the use violates any federal, state, or local requirements.
☒	The proposed use complies with the general purposes, goals, objectives, policies, and	The request complies with the City's plans and ordinances.

Criteria Met?	Sec. 21-3230. Conditional Use Permits	Rationale
	standards of all City plans, programs, and ordinances	
☒	The use complies with the general purposes, goals, objectives, policies, and standards of the comprehensive plan and all other plans or programs adopted by the City.	The request is compliant with the purpose, goals, and objectives of the comprehensive plan as outlined above.

Development Review Team Recommendation

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

Recommended Motion

To recommend approval subject to condition(s):

I move that the Planning Commission enter a finding that, subject to certain conditions, the requested **Conditional Use Permit** for the property located at **10601 Fulton Street** contained in case **CU-116-19** meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the **Conditional Use Permit** subject to the following conditions:

- A. The applicant shall remain compliant will all standards regulating their operations.
- B. The applicant shall provide any updates or changes to the BASF Brighton Integrated Contingency Plan within 30 days of said updates or changes.
- C. This Conditional Use Permit allows for adhesive manufacturing on the subject property. This Conditional Use Permit is not attached to and does not run with the property for which it is granted. Any change in ownership shall require the issuance of a new conditional use permit.

Alternative Motions

To recommend approval:

I move that the Planning Commission enter a finding that the requested **Conditional Use Permit** for the property located at **10601 Fulton Street** contained in case **CU-116-19** meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the **Conditional Use Permit**.

To recommend denial:

I move that the Planning Commission enter a finding that the requested **Conditional Use Permit** for the property located at **10601 Fulton Street** contained in case **CU-116-19** fails to meet the following criteria of the Land Development Code:

List the criteria not met

I further move that, based upon this finding, the Planning Commission recommend that the City Council deny the **Conditional Use Permit**.

To recommend continuance:

I move that the Planning Commission continue the requested **Conditional Use Permit** for the property located at **10601 Fulton Street** contained in case **CU-116-19**.