



STAFF REPORT

Planning Commission

CASE #Z-983-22			
PC Date:	September 6, 2022	Case Planner:	Stacy Wasinger
CC Date:	October 17, 2022		
Location:	NEC E. 48 th Avenue and Ivy Street		
Applicant:	Starboard Realty Group	Owner:	48 th and Holly LLC
Address:	1115 Acoma St STE 107 Denver, CO 80231	Address:	1280 S Parker Road STE 205 Denver, CO, 80231

Case Summary	
Request:	Zone Change from Agricultural (AG) to Medium-Intensity Industrial (I-2)
Project Description:	Starboard Realty, on behalf of property owner 48 th and Holly LLC, is requesting approval of a zone change from AG to I-2 to facilitate industrial development of the Triangle Logistics Park distribution use. The larger development includes approximately 65.29 acres, including this 8.79 acre parcel.
Issues/Concerns:	<ul style="list-style-type: none"> Environmental restrictions for former landfill site
Key Approval Criteria:	<ul style="list-style-type: none"> Land Development Code (LDC) Zone Change Criteria
Staff Recommendation:	Approval
Current Zone District:	Agricultural (AG)
Comp Plan Designation:	General Industrial

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

- Vicinity Map
- Applicant's Narrative
- Work Plan and Environmental Restrictions
- Agency Review Comments

Background Information

Site Information

Site Size:	8.79 acres
Current Conditions:	Undeveloped
Existing Right-of-Way:	E. 48 th Avenue to the south, Ivy Street to the west
Neighborhood:	Sand Creek
Existing Buildings:	N/A
Buildings to Remain?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Site in Floodplain	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Surrounding Properties

Existing Land Use		Occupant	Zoning
North	Industrial	Railroad spur and multiple industrial development	I-1
East	Industrial	Railroad spur and multiple industrial development	I-1
South	Industrial	Multiple industrial development	Denver
West	Undeveloped	Undeveloped (future development associated with the subject parcel)	I-3 with conditions

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 through present. The property west of Ivy Street, encompassing 56.5 acres, was rezoned from AG to I-3 with conditions in 1975. This 8.79-acre triangle piece east of Ivy St. was not rezoned at that time. No development on either side has occurred since the Sand Creek landfill ceased operation. Environmental concerns and remediation have been implemented and will be updated with the Environmental Protection Agency (EPA) and Colorado Department of Public Health and Environment (CDPHE) with the proposed development.

<u>Case</u>	<u>Date</u>	<u>Request</u>	<u>Action</u>
Ord. 40	1955	Zone to Agricultural	Approved

Applicant's Request

48th and Ivy LLC requests a zone change on the property from AG to Medium-Intensity Industrial (I-2). A concurrent development plan and subdivision plat have been submitted for this parcel as well as the approximately 56.5-acre parcel west across Ivy Street. The overall development is proposed to contain six (6) warehousing and logistics buildings totaling approximately 839,500 square feet in the Triangle Logistics Park development. The larger parcel is zoned I-3 with conditions, which will allow this use but this approximately 8.79 acre parcel requires a zone change to allow the use.

The applicant narrative states "*The property has been dormant for over 30 years as a vacant landfill with remediation operation and maintenance performed by the RPs. As a result of such remediation, methane gas level has declined, and the EPA upgraded the site into the agency's Superfund Redevelopment Program. This nationally coordinated effort provides EPA with a process to return Superfund sites to productive use.*" The applicant has worked with both EPA and CDPHE to ensure all appropriate and required remediation is implemented. The rezone from AG to I-2 for a portion of the site will allow the full development to proceed.

The current zoning district allows limited land uses and has been sufficient for the remediation phase of the site. The Comprehensive Plan and Future Land Use Map call for this area to be industrial, and the rezoning will be compliant with that document.

The new allowed uses are typical to medium intensity industrial, including distribution and logistics to accommodate the full development east and west of Ivy St. This is compatible with the overall area and surrounding industrial development.

Development Review Team Analysis

Review and Public Hearing:

In accordance with Section 21-3251(2) of the Land Development Code (LDC), Zone Changes are reviewed by the Development Review Team (DRT) and the Director of Community Development. Then the Planning Commission holds a public hearing and provides a recommendation to the City Council. City Council holds a public hearing and makes a final decision to approve, approve with conditions, or deny the application based on the approval criteria from Section 21-3232(5).

Site Overview:

The requested amended Zone Change is for the approximately 8.79 acre triangle shaped parcel generally bound by E. 48th Avenue to the south and Ivy Street to the west. The property is currently vacant, but was the site of a former landfill. The current zoning has been in place since 1962.

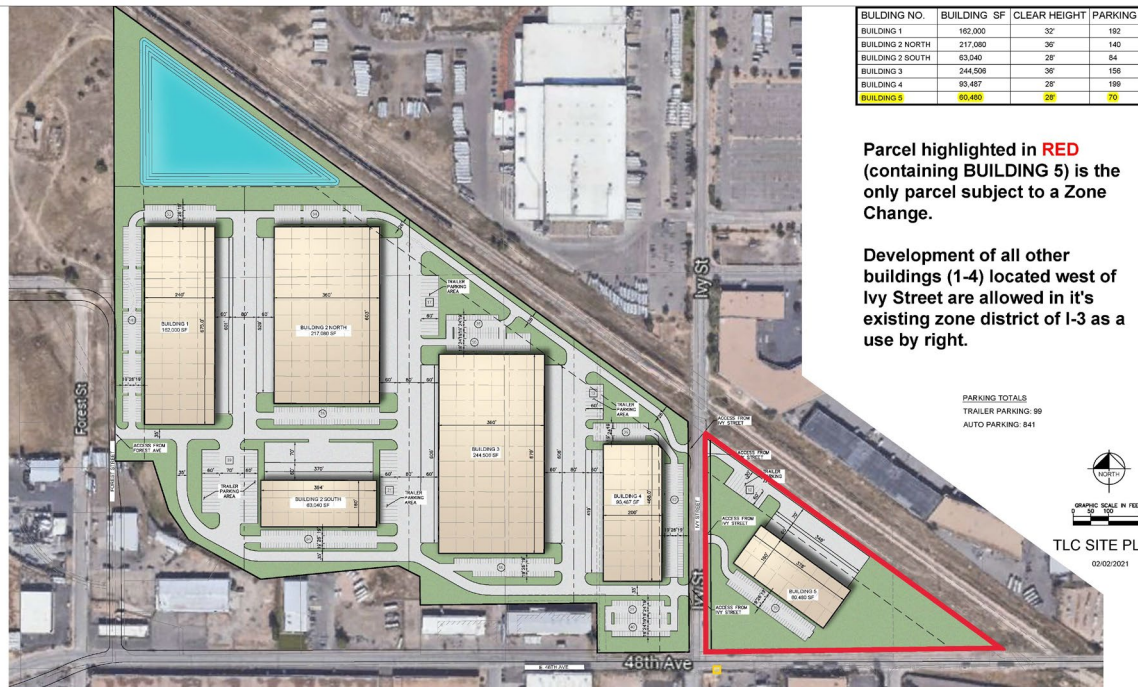
Formerly known as the Sand Creek Industrial Superfund site, this is the location of a former landfill, which created environmental hazards such as methane gas and soil contamination. The site was placed on the National Priority List in the 1980s due to high levels of contamination. The responsible parties implemented a Landfill Gas Extraction System and a Clean Soil Cap to provide needed remediation. The previous remediation of the site led to its removal from the National Priority List in 1996; the site has had continued monitoring from the EPA and remediation since that time. A use-restrictive environmental covenant was placed on portions of the overall site and required modification. The site was moved to the Superfund Redevelopment Initiative, in coordination with the EPA, due to the success of remediation efforts. Both the work plan and the environmental covenant, known as a Notice of Environmental Use Restriction (NEUR), have been approved and signed by the EPA and CDPHE. The NEURs amend the previous environmental covenant, which did not allow for the proposed use. In conjunction with the approved work plan, the NEURs allow this use and provide for on-going monitoring and remediation of the site. The NEURs will be recorded with the closing of the property to the new purchaser/developer. The work plan does not require recordation and is finalized.

A concurrent development plan (D-539-22) and subdivision plat (S-829-22) are under administrative review. Review of those submittals is concurrent; the rezoning of the 8.79 acres is required to finalize those reviews. In addition, the approval criteria for a development plan and plat will require the NEURs be recorded prior to final approval of those applications. The proposed development is compatible with the existing uses and industrial development in the area.

Image A: Current Site Aerial



Image B: Proposed Conceptual Site Layout



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 did express concern regarding the methane mitigation; with additional information on the remediation status and discussion with CDPHE, they removed their objection to the rezone. TCHD has seen the work plan and NEURs and these documents addressed the remediation concerns; TCHD deferred to the EPA and CDPHE as the regulatory agencies for the remediation and Superfund site, with the suggestion that Commerce City obtain and keep copies of these documents. Both the work plan and NEURs have been provided to Community Development and TCHD. As a former landfill site, the applicant worked through processes through the EPA and CDPHE to establish a work plan and remediation, specifically for methane gas ventilation and impacts of the landfill. Both EPA and CDPHE have approved the work plan and NEURs for this property, and Tri-County Health Department does not object to the rezone due to these documents. Those documents are attached to this staff report.

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 is recommending 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 increase the employment base and promote economic development in this portion of the City.	

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. The work plan and covenants with CDPHE/EPA will effectively mitigate environmental impacts.

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. A Development Agreement will be required and will address road and public improvements. The environmental covenant and previous landfill will be addressed per CDPHE/EPA work plan.

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 has support from Economic Development and will result in development of an under-utilized industrial area of the City.

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-983-22, in a meeting on August 4, 2022. 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 at **the northeast corner of E. 48th Avenue and Ivy Street** contained in case **Z-983-22** 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 approval with conditions:

I move that the Planning Commission enter a finding that the requested Zone Change for the property located at **the northeast corner of E. 48th Avenue and Ivy Street** contained in case **Z-983-22** meets the criteria of the Land Development Code and, based upon such finding, recommend that the City Council approve the PUD Zone Document Amendment, subject to the following conditions:

Insert conditions

To recommend denial:

I move that the Planning Commission enter a finding that the requested Zone Change for the property located at **the northeast corner of E. 48th Avenue and Ivy Street** contained in case **Z-983-22** 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 at **the northeast corner of E. 48th Avenue and Ivy Street** contained in case **Z-983-22** to a future Planning Commission agenda.