



STAFF REPORT

Board of Adjustment

CASE #AH-1746-17

BOA Date:	December 12, 2017	Case Planner:	Brad Callender
Location:	3960 E. 56 th Avenue, Commerce City, CO 80022		
Applicant:	Phillips 66 Pipeline, LLC	Owner:	Same as Applicant
Address:	3960 E. 56 th Avenue, Commerce City, CO 80022	Address:	Same as Applicant

Case Summary

Request:	Phillips 66 Pipeline, LLC is requesting a 10' (ten-foot) height exception to allow construction of a 60' (sixty-foot) vapor combustion unit (VCU).
Project Description:	Phillips 66 Pipeline, LLC currently operates a bulk petroleum terminal on the subject property. The applicant is requesting to replace an existing 45' (forty-five foot) tall VCU with a 60' (sixty-foot) tall VCU. The applicant is requesting height exception approval to allow for construction of the 60' (sixty-foot) replacement VCU.
Issues/Concerns:	<ul style="list-style-type: none">Compliance with the Height Exception Approval Criteria
Key Approval Criteria:	<ul style="list-style-type: none">Compliance with State and Federal regulatory agencies
Staff Recommendation:	Approval
Current Zone Districts:	I-3 (Heavy Intensity Industrial District)
Comp Plan Designation:	Industrial/Distribution

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

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|---|--|
| <input checked="" type="checkbox"/> Applicant's Narrative Summary | <input checked="" type="checkbox"/> Vicinity Map |
| <input checked="" type="checkbox"/> Tri-County Health Letter | <input checked="" type="checkbox"/> Building Elevation – Vapor Combustion Unit |
| <input checked="" type="checkbox"/> Site Plan | |

Background Information

Site Information

Site Size:	±8.39 acres
Current Conditions:	Bulk Petroleum Terminal
Existing Right-of-Way:	E 56 th Avenue to the north, Colorado Boulevard to the east
Existing Roads:	E 56 th Avenue and E 56 th Avenue Connector to the north, Colorado Boulevard to the east
Existing Buildings:	Distribution terminal, management offices, vapor combustion unit and accessory structures
Buildings to Remain?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
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 & Office/Warehousing	Suncor Energy and Sand Creek Business Park	PUD & I-3
South	Industrial	Union Pacific RR, Regent Power & Compression, and Hooligan Off Road	I-3
East	Industrial & Commercial	All Star Gas of Colorado and the 6-85 Restaurant (currently unoccupied)	I-3 & C-2
West	Industrial	Union Pacific RR and Phillips Pipeline Company	I-3

Case History

The relevant case history related to the subject property has been detailed below.

<u>Case</u>	<u>Date</u>	<u>Request</u>	<u>Action</u>
A-934-87	December 1987	Variance to reduce the front building setback from 50 feet to 22 feet	Approval with conditions
Z-466-87	December 1987	Zone Change from C-2 to I-3	Approval with conditions
CU-002-87	December 1987	Conditional Use for operating a petroleum products storage and fuel distribution facility	Approval with conditions
CU-012-90	March 1990	Conditional Use for temporary installation of a liquid propane distribution plant	Approval with conditions
A-1045-90	October 1990	Variance from sign setback and height requirements	Approval with conditions
A-1094-91	October 1991	Variance for an 18-month extension of the temporary use of a mobile office structure	Approval

A-934-87:

In December of 1987, the Board of Adjustment approved a setback variance from 50 feet to 22 feet to allow for construction of an accessory building for billing truck drivers as they exit the subject property.

Z-466-87:

In December of 1987, the City Council approved a zone change on the subject property from C-2 to I-3 to allow the existing petroleum products storage and distribution facility to be in conformance with the Commerce City Zoning Ordinance.

CU-002-87:

In December of 1987, the City Council approved a Conditional Use Permit to allow the site to operate a petroleum products storage and distribution facility.

CU-012-90:

In March of 1990, the City Council approved a Conditional Use Permit to allow the temporary installation of a liquid propane distribution plant.

A-1045-90:

In October of 1990, the Board of Adjustment approved a 49'6" (forty-nine feet and six inch) setback variance from the east property line and an 11' (eleven-foot) sign height variance.

A-1094-91:

In October of 1991, the Board of Adjustment approved an extension for a period of 18 months to allow a temporary office structure remain on the site until the construction of a permanent building is completed.

Applicant's Request

The applicant is requesting a height exception to allow for the installation of a new 60' (sixty-foot) Vapor Combustion Unit (VCU). The current operation on the site is a bulk petroleum distribution terminal. Based upon the applicant's narrative, the purpose for requesting the height exception is to construct a replacement VCU. The existing VCU has a total height of 45' (forty-five feet). A photo of the existing VCU is on the bottom right side of this page. In lieu of constructing an additional 45' (forty-five foot) tall VCU on the site, the applicant is requesting a height exception to allow replacement of the existing VCU with a larger, more efficient unit. An elevation of the proposed VCU is illustrated on the upper right side of this page. If the height exception is granted for the larger 60' (sixty-foot) VCU, the applicant's narrative indicates the existing 45' (forty-five foot) VCU will be dismantled and removed from the site.

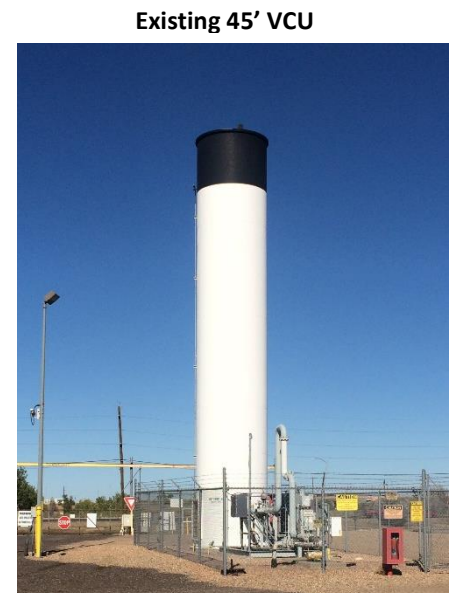
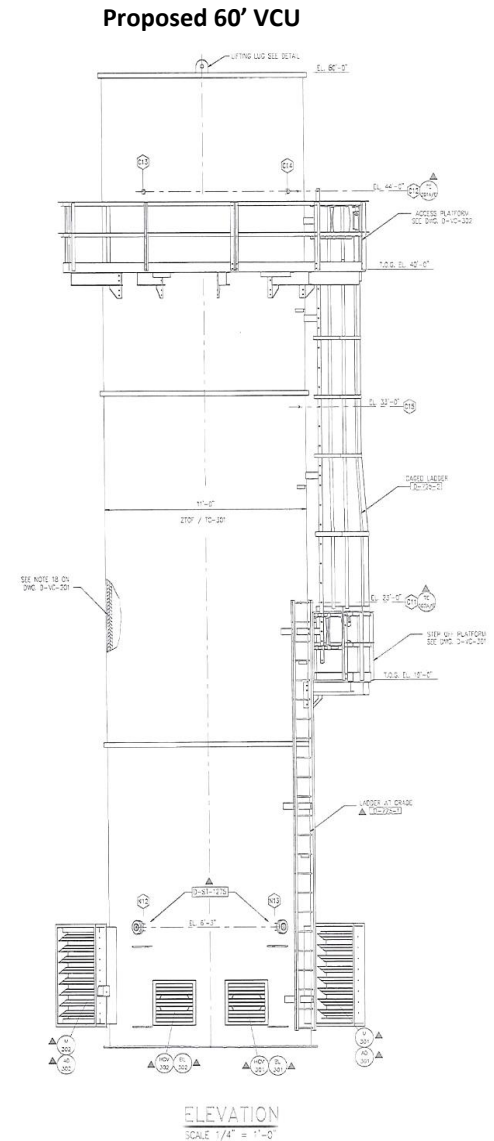
The applicant's narrative states, *"The function of the VCU is designed to safely burn vapors consisting of hydrocarbons, thus controlling/combusting emissions from the Denver truck rack meeting the requirements of the CDPHE (Colorado Department of Public Health and Environment) air permit requirements."*

Bulk petroleum terminals are subject to federal regulation through the U.S. Environmental Protection Agency. The applicant's narrative describes the regulations by stating the following, *"The facility (P66 Terminal) is subject to the requirements of 40 CFR Part 60, Subpart XX – Standards of Performance for Bulk Gasoline Terminals as adopted by reference in Colorado Regulation No. 6, Part A, which requires the facility to have the following:*

1. *The facility shall be equipped with a vapor collection system designed to collect volatile organic vapors displaced from tank trucks during product loading.*
2. *The operator shall act to assure that the vapor collection system is connected during each loading of a gasoline tank truck."*

According to the descriptions in the applicant's narrative, the VCU will be painted tan with the top 5 feet of the VCU painted black to avoid visible soot residue/marks. The applicant's narrative also describes reducing the height of an existing telecommunication tower on the site to a total height of 50' (fifty-feet).

The applicant's narrative describes 3 potential benefits for approving the height exception request, as follows, *"The benefits for approving the requested height exception for an 11'x60' tall VCU unit are:*



Development Review Team Analysis

Comprehensive Planning Documents

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

<u>Section</u>	<u>Goal</u>	<u>Description</u>
Land Use & Growth Strategies	LU 1a	<u>Future Land Use Plan as Guide:</u> Use the Future Land Use Plan (FLUP) to guide development patterns and mix of uses and amendments to the Land Development Code.
<u>Analysis:</u>	The existing bulk petroleum distribution terminal on the subject property is consistent with the use of this property as Industrial/Distribution according to the Comprehensive Plan.	
<u>Section</u>	<u>Goal</u>	<u>Description</u>
Economic Development Strategies	ED 3a	<u>Future Land Use Plan to Guide Decisions:</u> Use the Future Land Use Plan Develop to guide Land Use Decisions.
<u>Analysis:</u>	The subject property is currently being used for industrial purposes and this request for a height exception directly relates to the industrial use of the property.	
<u>Section</u>	<u>Goal</u>	
Fiscal Stability	FS 2a	<u>FLUP Consistency:</u> Retain, support, and expand the community's industrial base by approving development that is consistent with the Future Land Use Plan and Economic Development Strategic Plan and modifying the LDC to reflect the FLUP.
<u>Analysis:</u>	The subject property is currently being used for industrial purposes and this request for a height exception directly relates to the industrial use of the property.	

Need for a Height Exception:

The applicant is proposing to construct a 60' (sixty-foot) tall Vapor Combustion Unit. Table IV-15 in Article IV of the Land Development Code identifies a maximum building height of 50' (fifty-feet) in the standards for the I-3 zoning district. In cases where equipment, buildings, or structures cannot meet the maximum building height requirement, the appropriate process for relief is the Height Exception process. Therefore, the applicant has submitted the requested a 10' (ten-foot) height exception to exceed the maximum height allowed by the underlying I-3 zoning district.

Site Operation & Layout:

The site is developed as a bulk petroleum distribution terminal. The site is bound by the Union Pacific Railroad to the west and south of the site. Properties to the east contain a former restaurant and a gas distribution facility. East 56th Avenue is adjacent to the northern boundary of the site. The distribution terminal operates 24 (twenty-four) hours-a-day. The site is secured by fencing and gate controlled access. The site is not accessible to the general public.

Staff Analysis:

The subject property is surrounded by similar industrial operations on adjacent properties. In addition, all similar petroleum distribution terminals located in the vicinity also have similar VCUs. By granting the height exception for the vapor combustion unit, the impact to adjacent properties will be minimal due to the size of existing structures on adjacent properties, including similar VCUs located on the adjacent properties.

Based upon a thorough review of the application and a site visit made by staff, the DRT has determined that the applicant is compliant with all other applicable LDC land use requirements and all conditions attached to previous land use approvals. The DRT has also determined the requested height exception is being made to allow the applicant to increase their capabilities in an effort to meet their current and future petroleum distribution demands. The DRT supports the efforts by the applicant to increase efficiency and to reduce the quantity of Volatile Organic Compounds released from the site by as much

as 30%. The DRT concludes the request for a 10' (ten foot) height exception to construct a larger, more efficient vapor combustion unit is the minimum needed by the applicant.

Referral Responses:

The requested height exception was referred to a variety of agencies within the City and outside of the City. Referral agencies such as South Adams County Fire, the Colorado Department of Health, and Union Pacific Railroad had no objections or did not provide a response to the referral request. Only one referral agency raised an objection regarding investigating the site for methane gas potentially present in subsurface soils caused by closed landfills in the vicinity. The Tri-County Health Department requested the applicant to conduct a Flammable Gas Investigation on the site and to provide this report directly to the Tri-County Health Department for review and approval. The applicant performed a Flammable Gas Investigation on the site for a period of two weeks and submitted the results to Tri-County. The report concluded flammable soil gas vapors were not detected during the evaluation. The Tri-County Health Department concurred with the findings provided in the investigation report, therefore no further action or mitigation is required.

Conclusion:

The DRT recommends approval of the 10' (ten foot) height exception for the Phillips 66 Pipeline, LLC property to construct a 60' (sixty-foot) vapor combustion unit.

Sec. 21-3220(3).		
Criteria Met?	Height Exceptions – Approval Criteria	Rationale
<input checked="" type="checkbox"/>	The structure and development, if applicable, complies with all other standards not specifically waived by the city;	If the height exception is granted, the proposed VCU and the existing development on the subject property will comply with the requirements of the Land Development Code.
<input checked="" type="checkbox"/>	The exception would have minimal effect upon adjacent properties with respect to solar access, visual access, and rights of privacy, light, and air	By granting approval of the height exception, the applicant would be allowed to replace the existing VCU and would also eliminate the need to construct multiple VCU's on the site. If the height exception is granted, the new VCU will have minimal effect on adjacent properties with respect to solar access, visual access and rights of privacy, light, and air.
<input checked="" type="checkbox"/>	The exception will not interfere with the city's ability to provide public services to the site at the level currently enjoyed by the area, or at adequate levels per existing city policies and regulations	Based upon review of the application, there is no evidence that suggests approval of the height exception would interfere with the city's ability to provide public services to the site at the level currently enjoyed by the area, or at levels per existing city policies and regulations.
<input checked="" type="checkbox"/>	There is no evidence to suggest that the exception would interfere with or complicate emergency services or otherwise impair public safety; and	Based upon review of the application, there is no evidence that suggests the approval of the height exception would complicate emergency services or impair public safety.
<input checked="" type="checkbox"/>	The architecture and character of the proposed building or structure that will exceed the height standards are compatible with existing development on surrounding or adjacent parcels.	Based upon review of the application, the proposed 60' (sixty-foot) replacement VCU is compatible with the heights of structures on surrounding and adjacent parcels.

Development Review Team Recommendation

Based upon the analysis above, the Development Review Team believes that the application meets the criteria for a Height Exception set forth in the Land Development Code and recommends that the Board of Adjustment approve the request with conditions.

Recommended Motion

To recommend approval subject to condition(s):

I move that the Board of Adjustment find that upon satisfying the following conditions:

- A. The proposed Vapor Combustion Unit (VCU) shall be painted tan in color, with the top 5' (five-feet) of the VCU painted black to avoid visible soot/residue marks.
- B. The existing Vapor Combustion Unit (VCU) shall be dismantled and removed from the site within 6 (six) months of the completion of construction the proposed 60' (sixty-foot) VCU.

The requested Height Exception for the property located at **3960 East 56th Avenue** contained in case **AH-1746-17** meets the criteria of the Land Development Code and, based upon such finding, approve the Height Exception.

Alternative Motions

To recommend approval:

I move that the Board of Adjustment find that the requested Height Exception for the property located at **3960 East 56th Avenue**, contained in case **AH-1746-17**, meets the criteria of the Land Development Code and, based upon such finding, approve the Height Exception.

To recommend denial:

I move that the Board of Adjustment deny the requested Height Exception for the property located at **3960 East 56th Avenue** contained in case **AH-1746-17** because it fails to meet the following criteria of the Land Development Code:

List the criteria not met

To recommend continuance:

I move that the Board of Adjustment continue the requested Height Exception for the property located at **3960 East 56th Avenue** contained in case **AH-1746-17**.