



CITY OF CONCORD
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Community Development Department

REPORT TO THE MAYOR AND CITY COUNCIL

From: Heather Shank, City Planner
Date: 8/27/2019
Subject: Ordinance to amend Article 28-2, Zoning Districts and Allowable Uses, The Zoning Map, Article 28-4, Development Design Standards, and Article 28-9, Administration and Enforcement

Recommendation

Accept this report and set a public hearing on the proposed ordinance amendment.

Request

A request has been made by Attorney Ari Pollack, on behalf of ROI Irrevocable Trust, Christine M. Windler, Trustee, to rezone two of the Trust's properties off of Black Hill Road from Open Space Residential (RO) to Gateway Performance (GWP) to allow a mixed use development.

The petitioner is requesting to amend the uses permitted in the GWP District to allow residential uses, add residential density requirements for the GWP District, and amend the definition of the Flood Hazard Zone to exclude land that is the subject of a map adjustment request submitted to FEMA.

Site Context

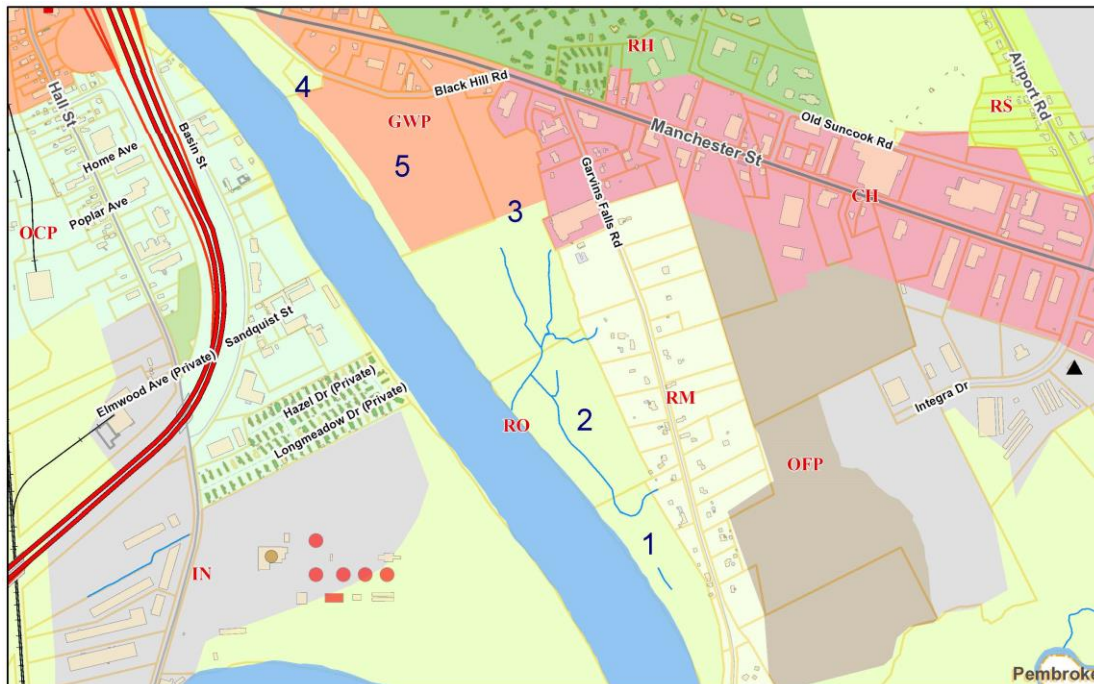
The petitioner's property consists of 5 parcels adjacent to the Merrimack River, totaling approximately 82.24 acres, currently zoned GWP and RO. The entire tract is mostly wooded, consisting of floodplain forest, oak-pine species, and hemlock-hardwood species. The entire tract is considered a Conservation Focus Area by the recently updated Open Space Plan, indicating that land should be conserved to the greatest extent possible, or that development of the tract should be sensitive to natural features.

The parcels labelled 1 and 2 on the map below, (27.8 ac total) are zoned RO and constrained by wetlands and riparian resources. These are not part of the zoning request. The petitioner has suggested that these parcels may be put under conservation easement.

Parcel 3 (29.3 ac) consists of land partially constrained by wetlands, with other land available for development. This lot has frontage on Black Hill Road with approximately 7.8 acres zoned GWP, and 21.5 acres to the south zoned RO. The 7.8 acre portion zoned GWP is adjacent to non-residential lots zoned Highway Commercial (CH) fronting on Manchester Street and Garvin's Falls Road. The remaining 21.5 acres, currently zoned RO, is bounded by the Merrimack River to the west, the Health Club of Concord to the east, and a single-family residence zoned Medium Density Residential (RM) also to the east. This parcel consists of steep slopes and wetlands adjacent to the properties fronting on Garvin's Falls Road. The applicant is requesting that the 21.5 acres be rezoned GWP.

Parcel 4 (.34 ac) is a small RO zoned lot at the northernmost point of the applicant's property. It appears heavily constrained by wetlands or wetland buffers, though a narrow strip of approximately 20,000 square feet off Black Hill Road may be unconstrained. The applicant is requesting to rezone this lot GWP to combine the developable area with Parcel 5.

Parcel 5 (24.8 ac) has the largest frontage on Black Hill Road. It is zoned primarily GWP, with a narrow strip of RO zoned land adjacent to the Merrimack River. The lot is the former site of a drive-in movie theater. The developable land is already zoned GWP.



Development Concept

The applicant presented a development concept for the property (see attached) in conjunction with the rezoning request. The concept includes a grocery store, multifamily residential units above parking, an assisted living facility, a restaurant, and several mixed-use retail/residential buildings. The plan also includes a public access trail along the river and riverfront access, with conservation easements planned for the parcels not intended for development.

The applicant has met with Planning staff several times to discuss conceptual layouts and strategies for encouraging a higher density, pedestrian oriented development that relates to the river, creates an attractive streetscape, has a high degree of connectivity, and is sensitive to the natural features of the site. Development of the plan concept is ongoing.

Staff notes that recent changes to the zoning ordinance to regulate flood hazard areas with current FEMA maps versus the older Army Corps maps has encouraged the property owner to pursue development of the site. The petitioner is also requesting to amend how floodplains are identified in the ordinance to allow development projects to move forward through the planning process while applicants are seeking map delineation adjustments through FEMA. Staff met with the petitioner several times to determine the appropriate language for the amendment. The final proposal allows an applicant to obtain a building permit only after FEMA has issued a Letter of Map Revision (LOMR), which confirms that the land has been successfully removed from the flood plain without detrimental effects.

Consistency with the Master Plan 2030

Land Use

According to the Future Land Use Plan of the Master Plan 2030, Parcel 3 (29.3 ac) is bisected by the Urban Growth Boundary (UGB), with the portions currently zoned GWP indicated for “Regional Commercial” and the portions zoned RO indicated for “Natural Resource Protection.” Parcel 4 is also outside the UGB.

The Master Plan characterizes the “Regional Commercial” land use by well-designed, large scale commercial development, including retail, restaurant, and office uses, along arterial and collector streets at entrances to the City. Portions of the subject property were zoned GWP to allow for these uses off Manchester Street near the I-93 exit.

The Master Plan characterizes the “Natural Resource Protection” land use by the presence of water resources, flood plains, wetlands, steep slopes, agricultural soils, aquifers, and wildlife habitat. The RO areas of the petitioner’s property were most likely zoned as such to protect riparian and wetland resources, floodplains, and wildlife habitat. The Open Space Plan notes that the entire tract is considered the highest ranked habitat in the region for its habitat type by NH Fish and Game.

The Future Land Use Plan does not recommend any changes to the UGB; however, it does state that, along with the location of natural resources, the ability to provide municipal sewer, water, and transportation infrastructure is a key variable in defining the UGB. The petitioner would bear the responsibility to extend these utilities and services to the adjacent parcel. Staff notes that the UGB could not be shifted any further than the petitioner is requesting, since the land to the south would be put under easement, and there is no access to additional developable land.

Staff also notes that there are regulations in place to accomplish the riparian, wetland resource, and floodplain protection goals of the Master Plan. There are currently several City and State regulations that protect riparian resources, wetlands, and wetland buffers, including the Shoreland Protection District buffers, bluff buffers, and restrictions on wetland and wetland buffer disturbance.

Portions of the lot proposed for development are predominantly outside these features, though habitats and floodplains would be affected. Plan revisions to reduce impacts to wetlands, buffers, and the intensity of the development could be made through the conditional use permit and site plan review process. The petitioner has also discussed providing a public walking trail along the Merrimack River, which could be a valuable public amenity and precedent for waterfront development in Concord.

The Board and Council should determine whether the housing and economic development benefits of rezoning justify shifting the UGB, and the possible impacts to natural resources.

Housing & Economic Development

One of the goals of the Housing section of the Master Plan is to encourage the expansion of the housing supply to meet the needs of all ages, incomes and lifestyles through updating of land use regulations to allow a variety of housing types and densities. There is currently a need for more housing of all types within the City, with vacancy currently at around 1%. Allowing residential uses in the Performance Districts would help accommodate this need while activating predominantly commercial spaces with pedestrian and neighborhood amenities. To that end, staff is recommending additional residential use categories be added to the list of permitted uses as part of this ordinance amendment, to encourage redevelopment of other GWP zoned lots where housing may be appropriate in conjunction with mixed use projects.

The pressing need for housing also highlights a concern with allowing residential uses in districts that have historically been the location for high value non-residential amenities. To avoid losing valuable retail and commercial space, staff recommends that residential uses be permitted in the GWP and OCP Districts only where a mixed use component is provided, and where a Comprehensive Development Plan has been approved by the Planning Board.

Staff notes that the Land Use section of the Master Plan still promotes the separation of residential and non-residential uses in neighborhoods outside the downtown area. This strategy tends to encourage high intensity commercial uses in low density, auto-oriented areas, recreating the pattern of commercial sprawl. Current best planning practices attempt to redevelop these commercial strips into pedestrian oriented, mixed-use developments that connect neighborhoods to jobs and amenities. While the rezoning request is not consistent with the assumption of single use districts outside the downtown area, it is consistent with the broader goals of the Master Plan to create high value, high quality commercial spaces in gateway locations, and is consistent with the goals of the community to create opportunities for housing of various types in new neighborhoods in close proximity to jobs, services, and amenities.

Consistency with the Zoning Ordinance

The changes being requested at this time are consistent with anticipated changes to the zoning code through the update to the ordinance currently underway. Much of the Performance District land area, with the exception of the Central Business Performance (CBP) District, is targeted for future visioning to maximize the value to the City and benefit to the community. The Performance Districts should allow greater flexibility for mixed use development and other types

of re-development that are more responsive to today's market.

The petitioner is proposing to add the GWP District to the floor to area ratio (FAR) standards for Performance Districts. Staff recommended that the language be amended to indicate that floor to area ratio standards apply when a structure is on its own lot, as is common in the CBP, but that the density standards of the non-performance districts for multifamily housing apply when the structure is part of a larger development tract. This is because floor to area ratio standards only make sense when a structure is on its own lot.

Staff also recommended increasing the density standards for all Performance Districts that allow attached and multifamily housing. The current standards were intended to maintain office uses by limiting the amount of residential permitted. However, the City needs more housing than office uses at this time.

Fiscal Impact

The rezoning will expand the area generating commercial and residential tax revenue. This should increase the economic benefit to the City by expanding the tax base. There may also be an impact due to increased need for services related to residential development. The petitioner will be responsible for extending municipal water and sewer, gas, and electricity. The petitioner must ensure through the site plan review process that there is adequate access for fire, police, and emergency vehicles. The property is also in close proximity to Terrill Park, which is proposed for major improvements, and which can more than meet the needs of additional residential units. The petitioner should ensure safe pedestrian access to Terrill Park.

Discussion

Section 28-10-4 of the Zoning Ordinance outlines the following criteria to be met in considering an amendment to the Zoning Ordinance or to the Zoning Map:

- (a) The consistency of the proposed amendment with the Master Plan;
- (b) The consistency of the proposed amendment with other plans, studies, or technical reports prepared by or for the Board and the City;
- (c) The effect of the proposed amendment on the City's municipal services, capital facilities, and planned facilities as described in the Capital Improvements Program;
- (d) The effect of the proposed amendment on the natural, environmental, and historic resources of the City;
- (e) The effect of the proposed amendment on neighborhoods including the extent to which nonconformities will be created or eliminated;
- (f) The effect of the proposed amendment on the City's economy and fiscal resources; and
- (g) The recommendation of the Planning Board relative to whether the proposed amendment should be adopted or rejected, and any recommendations for conditions of adoption or modifications to the proposed amendment.

As noted in this report, the proposed concept, if implemented, will have disturbance impacts on

natural resources identified as valuable. However, the project could also have very positive impacts for the City by creating a new neighborhood, more housing, public recreational amenities along the river, and economic development opportunities, including a precedent for waterfront development.

The Planning Board voted unanimously to recommend approval of the proposed zoning ordinance amendments and the rezoning of the subject parcels from the RO to the GWP District.