



CITY OF CONCORD
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Community Development Department

Heather Shank
City Planner

MEMORANDUM

To: Planning Board
From: Heather Shank, City Planner
Date: 10/18/2017
Subject: Request to re-zone land off of Whitney Road from Industrial (IN) to Urban Commercial (CU)

Request

A request was made at the August 14, 2017 City Council meeting by David and Laurie Rauseo, DBA Interchange Development, LLC and Susan Whitney, the owners of property off Whitney Road, to rezone a portion of the property from Urban Commercial (CU) and Industrial (IN) to Highway Commercial (CH), and eliminate the conditions of a covenant recorded in 2008. The request was referred from City Council to the Planning Board for a recommendation.

Please note that the petitioners revised their request in a letter to the City Council and Planning Board dated 10/11/17. The petitioners are now requesting to maintain the original 9.6 acres as CU and rezone an additional 4.6 acres from Industrial (IN) to Urban Commercial (CU). They are still requesting elimination of the covenants.

Existing Land Use

A portion of the subject area, 1 Whitney Road, supports an Xtramart with a Dunkin Donuts drive through and a Mobil gas station on 9.6 acres, and is currently zoned Urban Commercial (CU). The remaining 4.9 acres of the subject area includes land to the south and east of the CU District. It is part of a 33.23 acre parcel zoned Industrial surrounding the Wheelabrator property, and is currently owned by Susan Whitney. To the west is Concord Crossing, a mixed use office/service/industrial building.

A small single family residential area exists to the north across Route 4/Hoit Road. The only means of access to that neighborhood is Old Boyce Road, which intersects with Whitney Road at Hoit. The Hoit Road right-of-way along the frontage of the property is very wide, ranging from approximately 260 to 300 feet. A substantial wooded buffer exists within the right-of-way along the north side of Hoit Road providing some screening for the neighborhood.

Hoit Road is a major arterial with an interchange onto I-93 at Exit 17 immediately east of the property. Hoit Road from Exit 17 to the Merrimack River is a limited access highway with no curb cuts permitted. All access to the subject area would be from Whitney Road. An evaluation of the intersection at Whitney Road can be found in an attached report by the City Traffic Engineer.

Zoning & Planning History

2008 Rezoning – Prior to 2008, the subject area was part of a larger parcel owned by Susan Whitney and zoned Industrial (IN). At that time, the City was in the process of updating the Master Plan 2010, which had designated the entire area as Industrial Service characterized by intense industrial and commercial activity, including wholesale sales, services and industrial activities. During the drafting of the Master Plan 2030, the area was seen as an appropriate location to provide some small scale convenience services for northeast Concord residents as well as for the industrial park area and commuters on Hoit Road. The Master Plan 2030 recommended 5 acres at the southeast corner of the Whitney and Hoit Road intersection as Neighborhood Commercial (CN) to serve that purpose. It should be noted that the location of the 5 acres in the Master Plan coincided with approximately 4.4 acres that had been previously subdivided from the parent tract in 1990.

During the drafting of the Master Plan 2030 in 2008, David and Laurie Rauseo petitioned to rezone 9.6 acres from Industrial (IN) to Urban Commercial (CU). This was not consistent with the recommendations of the Master Plan 2030. Concerns at that time included the following:

- The CU District allows large scale development that could compete with businesses that were planned for downtown Penacook and Fisherville Road at that time, including a grocery store and other local service or retail uses. The CU District also allows a wider range of service and retail uses with buildings of up to 75,000 sf permitted, whereas the recommended CN District would allow maximum building footprints of only 5,000 sf.

The maximum building footprint permitted in the CU District was considered too large for the area, potentially encouraging development similar to that which is found in the Gateway Performance (GWP) District of Fort Eddy Road, instead of a small scale, compact neighborhood commercial center.

To mitigate this concern, the petitioner agreed to enter into a covenant restricting the maximum permitted building footprint to 8,000 sf.

- The petitioners requested to rezone 9.6 acres, nearly double the area recommended by the Master Plan for commercial and retail uses. Consistent with the 2-5 acre size characterizing CN Districts, the 5 acre area was intended to keep the commercial uses compact and prevent sprawling development.

The petitioners presented information stating that a maximum of only 6.9 acres could be built on due to the presence of wetlands and wetland buffers. While the petitioner also stated that only approximately 20,000 sf could be constructed due to the location of wetlands and wetland buffers, Staff at that time estimated that up to 75,000 sf could be built within three sub areas around the wetlands and buffers.

To mitigate the concern regarding the size of the area to be rezoned and the total square footage that could be constructed, the petitioner agreed through the covenant to restrict the total gross floor area for the site to 50,000 sf.

The petitioners request was considered during public hearings for the draft Master Plan 2030. Though the Planning Board and Council voted in favor of the petitioner's request subject to the conditions of the covenant, the CN designation for the 5 acres at the corner of Whitney and Hoit remained in the final Master Plan 2030. Staff has found no record of public opposition to the action in 2008.

2011 Rezoning Request – In 2011, David and Laurie Rauseo petitioned to have the maximum 8,000 sf building footprint and maximum 50,000 sf gross floor area covenant restrictions eliminated. They presented a concept plan showing a 33,000 sf grocery store, fast food restaurant, discount retail, auto parts store, and liquor store, ranging from 3,500 to 9,500 sf, for a total gross floor area of 64,500 sf.

By that time, the wetlands closest to Whitney Road had been filled in accordance with DES permits. The 2011 concept plans also indicated filling of small wetland areas and disturbance to wetland buffers for the grocery store and retail buildings. The square footage proposed in the concept plan was closer to the estimates that Staff had generated in 2008.

Staff at that time reiterated concerns about the size of buildings permitted, the total square footage of development contemplated, and the large scale nature of commercial development possible. While some members of the community were in favor of the project and the possibility of a grocery store in this location, the Board noted that there was no guarantee that a grocery store would be constructed.

The Board ultimately determined that relaxing the deed restrictions and covenants would be inconsistent with the intent of the Master Plan and could adversely impact redevelopment of commercial properties in downtown Penacook.

Current Request – At this time, the sites that were slated for a grocery store in or near downtown Penacook have been otherwise utilized or remain vacant. Further, the community has expressed increasing interest in having a grocery store nearby, along with opportunities to increase the tax base of Penacook to offset the high property taxes in the Merrimack Valley School District.

The petitioner has again presented a concept for development along with their current request to eliminate the covenants and add 4.9 acres to the area zoned CU. The current concept indicates a similar mix of uses to the 2011 concept, along with a 45,000 sf grocery store, and an additional retail building, for a total of 85,000 sf of development over 14.5 acres. The concept also depicts several small warehouse type buildings and a large warehouse building on the remainder of the Industrial zoned property.

Analysis

Master Plan 2030 – Future Land Use Plan

The subject area is part of a larger land area around Whitney Road that has been characterized in the Master Plan as appropriate for industrial, warehouse, and/or office use. This includes the land adjacent to the Wheelabrator property extending south through a possible future connection to Sewall's Falls Road. The location and proximity of the area to the railroad and interstate make it very appropriate for these uses.

Aside from the overall emphasis on industrial uses, five acres of the subject area is designated in the Master Plan as Neighborhood Commercial (CN). As noted previously, the CN land use category is intended for small scale personal service and convenience retail, located within established and developing residential areas. The building development type is characterized as compact and compatible in size and appearance with the surrounding residential neighborhood, on lots no more than 2 to 5 acres in size, with buildings oriented toward the street and parking to the side or rear.

Staff notes that the CN District is described in an urban context. It is characterized as being appropriate for higher density, residential, walkable areas, or areas intended to become such. Parking is recommended behind or to the side of the frontage since it is assumed that buildings should relate to the street, be accessible to pedestrians, and blend with residential neighborhoods. The CN District also allows a mix of residential types.

In contrast, the subject area is disconnected from the residential neighborhoods of Penacook and northeast Concord. It isn't intended for residential uses as currently described in the Master Plan, and the surrounding area is not intended to develop as residential or walkable. The nearest neighborhood is across a limited access highway with no pedestrian amenities. As TPAC noted in their 2011 memo, the subject area is remote and inaccessible by walking or biking.

For these reason, Staff questions the appropriateness of the Master Plan 2030 recommendation for a CN District in this location at present. Concerns about the size and scale of development on this site are legitimate for the community to consider, though the attempt to limit development based on an urban context seems inappropriate. In addition, the Master Plan does not contemplate a land use designation comparable to the Urban Commercial District, so it is not clear whether the CU District would be compatible with the Master Plan recommendation for this area.

Staff suggests that a new analysis is needed. The following is offered for discussion:

- While Planning has historically viewed this area as appropriate for small scale neighborhood commercial development, it is unclear if this is still in the best interests of the community today. This site may be one of the few remaining for a grocery store in the Penacook area, with the most likely model as a mid-sized store accompanied by satellite retail businesses. This scenario would exceed the size and scale of the Master Plan recommendation for the CN land use designation.
- While previous analysis notes that Hoit Road is a busy commuter route, the Master Plan 2030 and previous evaluations of the subject area make very little mention of its proximity to I-93 and the regional access the interchange provides. The land use context of this site is extremely vehicular oriented, and potentially very convenient to regional commuters. The potential to access a regional economic market to improve the tax base of Penacook should not be ignored.
- Staff notes that, according to the Master Plan, it is not intended that this area become similar in character and scale to the vehicular oriented commercial development found on Fort Eddy Road. However, the 14.5 acre area shown in the concept plan is, in fact, very similar in character and size to **either** the east or west side of Fort Eddy Road, from the Petco to Hannaford's, or from B.Good Food to Books-A-Million, both of which are approximately 15 acres each.
- Staff notes that the land use category recommended by the Master Plan for this type of development is Regional Commercial, and is characterized by well-designed large scale commercial development along major arterials and at gateway locations to the City. These areas are intended to be attractive, functional, and serve a citywide or regional market. The Regional Commercial land use designation is implemented in the Zoning Ordinance by the Gateway Performance District.

Economic Development & Fiscal Impact

The Economic Development Plan goals and policies of the Master Plan include enhancing the property tax base, discouraging sprawl, focusing on redevelopment, encouraging the expansion of local business, and expand quality of life amenities.

The petitioner's request could greatly assist Penacook in expanding the tax base and providing quality of life amenities if a grocery store and other retail services were to locate here. The intent to focus on redevelopment and minimize sprawl would not be met, but could be mitigated with thoughtful planning and sensitive site development.

Staff notes that the community has expressed concerns in the past that development at this site would detract from redevelopment of downtown Penacook. While this is a possibility, the type of vehicular-oriented development targeted for this site may not be compatible with the small scale service, restaurant, and retail businesses that the community may want in the Village.

The petitioner provided general estimates for the amount of tax revenue that could potentially be generated if their concept plan were fully built out. Tax revenue from the Xtramart and Mobil gas station

is approximately \$38,000; tax revenue from proposed retail development, including a grocery store, is estimated at approximately \$685,000; and tax revenue from proposed industrial development is estimated at approximately \$377,000, for a potential total of \$1.1 million in tax revenue, if fully built out.

Environmental Impact

The original analysis of the site indicated several wetlands across the property. By 2011, the wetlands closest to Whitney Road had been filled in accordance with DES permits and were ultimately the site of the Mobile station and convenience store. The concept plan submitted in support of the current request contemplates approximately 36,000 sf of wetland disturbance, including 5,000 sf for the additional area requested for rezoning from Industrial to Urban Commercial (CU), and approximately 30,000 sf located on the area to remain Industrial.

The petitioner provided a wetlands report indicating that much of the wetlands on the site were man made and created during previous excavations, or are a result of Route 4 drainage. Since the site is intended to be developed as either commercial or industrial, Staff would defer to DES during the permitting process with regard to permitted disturbance and required mitigation. Staff anticipates that the Conservation Commission would also weigh in on the appropriateness of proposed development during site plan review.

Municipal Impact

The area has access to water and sewer. Gas would most likely need to be extended up the future Whitney Road extension corridor. The greatest impact to the City is likely to be the improvements needed to the Route 4/Whitney Road intersection to accommodate the increase in traffic. The petitioner has asked the State DOT to prioritize improvements to this intersection in their ten year plan. City staff has supported that request to the State; however, it is Staffs' understanding that the intersection improvements are not currently in the ten year plan.

Zoning Analysis

The CU District permits multi-family housing and many community-oriented uses such as social services, day care, and secondary schools. It also permits most service, office, restaurant, and retail uses up to a maximum of 75,000 sf in area. The CU District prohibits many automobile related uses with the exception of car washes. Staff notes that most of the permitted uses are those that would be appropriate in downtown Penacook or in any of the higher density residential neighborhoods. In other words, the uses encouraged and permitted are those that might be desired in the Village center.

Alternatively, the Gateway Performance District (GWP) does not allow residential or community oriented service uses, but is intended for commercial, office, and retail uses; it also permits hotels. The GWP District has no limit on the square footage permitted. The GWP also does not allow many of the automobile related uses, which staff notes were prohibited on the subject property in the 2008 covenant. Since the GWP is a Performance District, any exterior building modifications or sign applications would require Architectural Design Review, and thus would be subject to a higher aesthetic standard and community input.

Discussion

Staff offers the following criteria found in Section 28-10-4 of the Zoning Ordinance for the Board and Council to utilize in determining whether the covenants should be lifted, whether additional land should be rezoned CU, and/or whether the zoning district should be changed to GWP:

- (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 Staff has noted, the petitioners' request is not consistent with the Land Use recommendations of the Master Plan, though it is not clear that the Master Plan recommendations are in the best interest of the community at this time in terms of economic development and quality of life amenities.

An additional concern from the planning perspective pertains to the type of vehicular oriented commercial development allowed by the GWP District. Low density commercial sprawl such as this is often the focus of redevelopment projects today, to retrofit the area into a more compact, pedestrian friendly space. The piecemeal approach to carving up large spaces for pad sites is more often viewed as inefficient in terms of land and resources, with lower economic returns creating spaces that are not appealing for people to spend time in. A more coordinated, higher density development that includes gathering spaces, attractive landscaping and other amenities is the preferred model today. The Master Plan echoes this sentiment by characterizing Concord as a "City of Villages."

It is Staff's opinion that a high quality development such as this could be envisioned for the subject area, though a plan would need to be developed, ideally with community input or buy in.

Recommendation

Staff recommends that the Planning Board discuss:

- Whether commercial development is the most appropriate use in this location, and if so, how much? Noting that any increase in commercial development may occur at the expense of potential future industrial development.
- What type of commercial development should be permitted, and what is the best action to accomplish that goal? Some alternatives the Planning Board may wish to consider (although not an exhaustive list):
 - Leave the zoning and covenants as they are;
 - Eliminate the covenants and leave the zoning as is;
 - Eliminate the covenants and rezone an additional 4.6 acres to CU;
 - Eliminate the covenants and rezone the entire 14.6 acres to GWP; or
 - Require the petitioner to engage the community to create a Master Plan guiding development of the site as a condition of rezoning the entire 14.6 acres.