



CITY OF CONCORD
New Hampshire's Main Street™
Community Development Department

REPORT TO THE MAYOR AND CITY COUNCIL

FROM: Carlos P. Baía, Deputy City Manager for Development

DATE: December 17, 2021

SUBJECT: AN ORDINANCE amending the CODE OF ORDINANCES, Title IV, Zoning Code; Chapter 28, Article 28-2, Zoning Districts and Allowable Uses

Recommendation

Continue the public hearing on the attached proposed amendment to Article 28-2 and consider whether to include an additional amendment to the proposed ordinance amendment from Councilor Champlin.

Background

The City's Zoning Ordinance Table of Principal Uses currently includes use category E3 which allows by right "offices of healthcare practitioners including clinics and outpatient healthcare" in the following nine zoning districts: CG (General Commercial), CU (Urban Commercial), CBP (Central Business Performance), GWP (Gateway Performance), OCP (Opportunity Corridor Performance), OFP (Office Park Performance), CVP (Civic Performance), and IS (Institutional). This use category is allowed by Conditional Use Permit (CUP) in the CN (Commercial Neighborhood) zoning district.

The proposed amendment to this use category is as follows:

First, the proposed amendment changes use category E3 from "Offices of healthcare practitioners including clinics and outpatient healthcare" to "Offices of healthcare practitioners." The zoning districts in which this use is allowed would not be changed.

Second, the amendment establishes a new use category E6 for "Clinics providing outpatient procedures, walk-in services, urgent care, and substance abuse treatment." The new use category is intended to regulate businesses in which the principal use involves medical services such as outpatient same-day surgery, non-emergency walk-in care, urgent care and substance use disorder

treatment such as methadone and suboxone centers. These clinics will continue to be permitted in the same districts as use category E3 with the exception of the CBP located in the downtown of Concord and Penacook, and the CN zoning district. The amendment does not permit this new use in the CBP or CN.

Discussion

The proposed zoning ordinance amendment would clarify the City's use table, and also create consistency with the purpose and character of the CBP and CN zoning districts.

A. The CBP Zoning District

Under the "Purpose of Established Districts" section of the Concord Zoning Ordinance, the CBP district is intended to incorporate uses such as "retail, restaurant, service, entertainment, cultural, lodging, office, governmental, and high density residential . . . in a pedestrian-oriented area, with little or no on-site parking." City of Concord Code of Ordinances, Article 28-2-2(b)(10).

There is no mention of medical clinics which provide treatment such as outpatient procedures, walk-in services or urgent care in the purpose section of the CBP zoning district. This omission could be explained because these types of medical facilities are not typically recognized uses that are compatible with "pedestrian-oriented areas." These clinics generally dispense medical treatment to patients who do not have a long-term connection with the providers and/or who may or may not have appointments. From a practical perspective, clinics typically require convenient on-site parking to accommodate waiting rooms and/or patients arriving with emergent illnesses, injuries, or to receive outpatient treatment or procedures. Out of all of the City's zoning districts, only the CBP does not require parking. As such, uses in the CBP largely rely on public on-street parking or spaces in public garages which may not be close or readily available when needed.

The 2030 Concord Master Plan recognizes that uses necessitating parking be located outside of the downtown cores (*2030 Master Plan, III-14*). This understanding is reflected in Concord's built environment today where the vast majority of clinics are located outside of the CBP and have on-site parking. These include Convenient MD on Loudon Road, Concord Hospital Urgent Care at Horseshoe Pond, and Metro Treatment Center on Hall Street.

The 2030 Concord Master Plan contemplated the CBP district to be a pedestrian-oriented location where there could be a synergy between uses; *i.e.* people might visit a bank and then walk to a restaurant for lunch and then to a shop for purchases, etc. Ostensibly from a customer perspective, clinics would not appear to generate the type of economic multiplier effect that other more traditional downtown uses foster. It is less likely that patients receiving treatment for urgent illness or injury or following a medical procedure, for example, would then opt to frequent a variety nearby downtown businesses.

B. The CN Zoning District

Under the "Purpose of Established Districts" section of the Concord Zoning Ordinance, the CN district is intended to "to allow a range of residential uses together with small scale convenience retail and personal service uses within a compact area that will serve a surrounding

residential neighborhood...[and] are not intended to impose impacts of excessive traffic, noise, or light upon the neighborhood and are intended to be compatible in scale and appearance with adjacent residential uses.” City of Concord Code of Ordinances, Article 28-2-2(b)(7).

In reviewing the new proposed use category E6, medical clinics included in this category would not be appropriate in the CN zoning district because of their size and scale, as well as the traffic and parking needed for these medical facilities.

Planning Board Recommendation

The Planning Board reviewed the proposed amendment to Article 28-2 at its December 15, 2021 meeting. Two advocates from the substance use disorder treatment community testified seeking clarification on potential grandfathering provisions and the ordinance’s impact on initiatives such as periodic vaccination clinics and its effect on Riverbend’s property at North State Street and Pleasant Street as well as on the Feminist Health Center on South Main Street (both currently in CBP today).

Upon review, the Riverbend facility is classified as a “social service center.” The provision of substance use disorder therapy is not considered to be its primary use, and, therefore, would not fall under the definition of a clinic in the new proposed use category E6. As such, the proposed amendment would not affect this property.

As for the Feminist Health Center at South Main Street, this facility, qualifies as “Offices of Health Care Practitioners” under the existing E3. This means that the proposed amendment would have no effect on this property.

In addition, health clinics located inside pharmacies, retail businesses and medical offices in CBP or CN would remain unaffected by the proposed amendment as long as the “clinic” does not become the primary use of the establishment. Similarly, the availability for organizations such as schools and businesses to host special events such as “pop-up clinics” at their facilities for vaccines and other medical services would not be impacted by this proposal because such events are not considered a primary use. However, as always, any organization seeking to host a special event should contact the Code Administration Division to the extent it has questions about whether such events are allowed and/or other requirements (for example, to ensure compliance with life safety codes).

Finally, one of the advocates who testified suggested changing a portion of the wording of the new E6 category to read “substance use disorder treatment centers” rather than “substance abuse treatment centers” since the former is the currently accepted terminology in the treatment industry. The Planning Board was supportive of this wording change but did not explicitly request that the wording be altered in their ultimate motion.

The Board ultimately voted to recommend approval of the ordinance as presented. Should Council desire to change the terminology to “substance use disorder treatment centers” this would be a *de minimis* change in the amendment and could simply be referenced within the approval motion for the amendment.

Councilor Champlin Recommendation to Preclude Use Category E6 from CG (General Commercial) District

At the Board's December 15, 2021 review of this matter, Councilor Champlin, the Council representative on the Planning Board, suggested an amendment to the ordinance to add the General Commercial (CG) district as another zoning district in which category E6 would not be permitted. The Board was not prepared to endorse this without additional information and suggested that the Council consider this at their January 10, 2022 hearing.

The CG district, per the purpose section of the Ordinance, is "established to provide for a mixture of retail, restaurant, service uses, and high density residential uses, serving a citywide or regional market which require access to arterial streets and proximity to limited access highways." Because this district tends to be adjacent to dense residential, there is a higher expectation for buffering and screening to protect those abutting neighborhoods.

Areas of CG include Loudon Road from roughly Hazen Drive to D'Amante Drive; the area immediately south of Exit 12 at the Concord/Bow municipal line; the commercial swaths of Fisherville Road; and Village Street from Borough Road to the Woodlawn Cemetery.

Staff is not aware of any establishments in these zones whose principal use today would be considered clinics. Council should discuss whether this is a zone they would like to remove from consideration for use category E6.

Due to the notice requirements in RSA 675:7 for public hearings on zoning ordinances, a proposed amendment to the zoning ordinance must be noticed and the full text of the proposed amendment must be available to the public at least ten days before the hearing. This statutory requirement prohibits substantive revisions of a proposed zoning ordinance amendment during the public hearing. As such, in the event Council seeks to also preclude use category E6 from the CG zone, it has two options to effectuate that change.

The first option is for Council to hold a public hearing on January 10, 2022, and, vote on the text of the proposed ordinance relative to the CBP and CN zones, and to further direct staff to submit an additional zoning ordinance amendment which prohibits use category E6 from the CG zone. Since this additional zoning ordinance amendment would be submitted as a new ordinance, it will require a first reading of the title during the February 14, 2022 meeting and could be voted upon at the March 14, 2022 meeting. Alternatively, in the event the Council votes to suspend its rules requiring a first reading of the title, the new zoning ordinance amendment addressing the CG zone can be noticed for a public hearing at the February 14, 2022 hearing of the City Council.

The second option is for Council to continue the public hearing set for January 10, 2022, and direct staff to revise the text of the current proposed ordinance to additionally prohibit use category E6 from the CG zone. In such instance, a public hearing could be held on the revised proposed amendment at the February 14, 2022 hearing.

w/att.: Map of affected districts