



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

Heather Shank  
*City Planner*

**MEMORANDUM**

**To: Planning Board**  
**From: Heather Shank, City Planner**  
**Date: 3/21/2018**  
**Subject: Request to re-zone 28.5 acres off of Whitney Road from Industrial (IN) and Urban Commercial (CU) to Gateway Performance (GWP)**

**Background**

A petition dated October 11, 2017 was submitted to City Council and the Planning Board by David and Laurie Rauseo, dba Interchange Development, LLC and Susan Whitney, the owners of property off Whitney Road, to eliminate covenants on 9.6 acres of land zoned Urban Commercial (CU) and to rezone an additional 4.9 acres from Industrial (IN) to CU, or alternatively to rezone a total of 14.5 acres to Gateway Performance (GWP) without covenants.

Consistent with the Planning Board's recommendation, Council voted to remove the covenants but not take action on the rezoning request. Council concurred with the Board's recommendation that, since the request was inconsistent with the Master Plan, the petitioner should engage the public in a meeting to discuss the long term vision for the site. After conducting a public meeting on December 2, 2017, led by a consultant from TF Moran, the petitioner submitted a report with a new request dated to rezone a total of 28.5 acres from CU and IN to GWP. This analysis is a review of that report and new request.

**Existing Land Use**

The CU zoned lot at 1 Whitney Road is 9.6 acres; it supports an Xtramart with a Dunkin Donuts drive through and a Mobil gas station. The remaining 18.9 acres of the area requested for rezoning includes land to the south and east of this lot. It is part of a 33.23 acre parcel zoned IN that wraps around the Wheelabrator property. This parcel is currently owned by Susan Whitney.

To the west of the subject area is Concord Crossing, a mixed use office/service/industrial building also owned by the petitioners. A small single family residential area exists to the north across Route 4/Hoit Road within the limits of Concord. The only means of access to that neighborhood is Old Boyce Road, which intersects with Whitney Road at Hoit. Old Boyce Road is also the only means of access for several residential and non-residential uses within the limits of Canterbury.

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.

## Zoning & Planning History

2008 Rezoning – Prior to 2008, 1 Whitney Road was part of the larger IN zoned parcel owned by Susan Whitney. In 2008, 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. During the drafting of the Master Plan 2030, it was determined that a 5 acre area would also be appropriate for small scale convenience services, recommended to be zoned Neighborhood Commercial (CN).

During the drafting of the Master Plan 2030, the petitioners requested to rezone a larger 9.6 acre area from IN to CU. Concerns at that time included the following:

- The CU allowed buildings as large as 75,000 sf, which could compete with businesses anticipated in downtown Penacook and along Fisherville Road, including a grocery store and other service or retail uses. The 75,000 footprint was considered too large, potentially encouraging big box development similar to the businesses found in the Fort Eddy GWP district. To mitigate this concern, the petitioner agreed to a covenant restricting the footprint to 8,000 sf.
- The 9.6 acres requested was nearly double the area recommended by the Master Plan for commercial and retail uses. The 5 acre recommendation was intended to keep the commercial uses compact and prevent sprawling development. To mitigate concerns about sprawling development, 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.

2011 Request – In 2011, the petitioners requested to have the covenants lifted. They presented a concept plan for the 9.6 acres, which included a 33,000 sf grocery store, fast food restaurant, discount retail, auto parts store and liquor store, for a total gross floor area of 64,500 sf.

Staff 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 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.

2017 Request – After the City entered into an agreement for residential development on the former Tannery site, the petitioner noted that the sites slated for a grocery store in or near downtown Penacook had been otherwise utilized or remained vacant. The petitioners again requested to lift the covenants, and also requested to rezone a total of 14.5 acres to allow a grocery store and other retail uses.

The concept plan presented at that time indicated a similar though more intense mix of uses, including a 45,000 sf grocery store and additional commercial buildings for a total of 85,000 sf of development. The concept also depicted several warehouse uses on the remainder of the 27.5 acres of IN zoned property.

Staff noted that while the request was not consistent with the Land Use recommendations of the Master Plan, the community of Penacook and the surrounding areas appeared to be strongly in favor of development at this site to encourage tax base expansion and provide a grocery store. This suggested that the Master Plan recommendation should be revisited. However, Staff still had concerns about the low density sprawl of the proposed layout. Staff noted that the layout was inconsistent with the goals of the Master Plan to reduce sprawl and encourage efficient, compact development.

During the Planning Board hearing, the Board supported the notion that the petitioner should host a public discussion to evaluate the uses and type of development that the community feels would be appropriate at this location. The Board supported lifting of the covenants, since the petitioner acknowledged that they could not develop the site as proposed until the zoning was changed.

Consistent with the Board's recommendations, Council voted to remove the covenants, but took no action on the zoning request until the petitioner could hold a public meeting to gather input from the community.

Staff notes that the petitioners held a fairly well attended public meeting facilitated by the Rauseo's and a consultant from TF Moran. Opportunities and constraints were reviewed, as well as the overall context of the site. Participants discussed desired uses and were given maps of the subject property, along with cutouts of various building and parking footprints to place on the maps. The petitioners summarized this process and their results in their attached report.

2018 Request – After the a public meeting, the petitioners submitted a new request to rezone 28.5 acres to GWP, and keep 13.5 acres IN, along with a summary report of their public outreach process and a new concept plan. For the rezoned 28.5 acres, the concept plan indicates approximately 79,000 sf for a supermarket; 45,000 sf of retail; 15,000 sf of medical/office; 5,000 sf for a restaurant; 3,000 sf for a bank, and a fast food restaurant, for a total of approximately 150,000 sf of development. The remaining IN zoned area indicates 125,875 sf of warehouse use.

## **Analysis**

### Compatibility with Future Land Use Plan

The majority of the subject area is part of a larger land area south of Hoit Road, characterized in the Master Plan as appropriate for industrial, warehouse, and/or office use. Five acres at the southeast corner of Hoit and Whitney are designated as Neighborhood Commercial (CN). The CN land use category is intended for small scale personal service and convenience retail uses, located within established and developing residential areas.

As noted in a previous report, the urban neighborhood oriented intent of the CN district appears incompatible with the context of the subject area, as well as the goals of the community at this time to acquire a grocery store and expand economic development opportunities in Penacook. Staff notes that this area may be one of the few remaining locations for a grocery store convenient to Penacook. Staff also notes that the Master Plan 2030 does not consider the site's proximity to I-93 and the regional access the interchange provides.

The Master Plan describes large scale commercial development along major arterials and at gateway locations to the City as the land use category Regional Commercial. These areas are intended to serve a citywide or regional market. The Regional Commercial land use designation is implemented in the Zoning Ordinance by the Gateway Performance District.

While Staff feels that a grocery store and some amount of commercial, restaurant, or retail development could be appropriate in this location with a GWP zoning designation, it should be recognized that a development of the size currently proposed may affect the surrounding community in unanticipated ways. The petitioner's current concept plan is twice as intense in building size and amount of development compared with the 2017 request. With the exception of super centers such as Walmart or Target, the proposed super market would be the largest grocery store in the City of Concord, with additional commercial development intensity similar to areas along Loudon Road.

The original concern regarding development at this site was that too much development would pull business from the village of Penacook and Fisherville Road. Please note:

- The average conventional grocery store is 40,000 to 55,000 square feet, consistent with the Hannaford's and Fort Eddy Market Basket existing in Concord. The current popular trend is for even smaller stores, anywhere from 10,000 to 25,000 square feet. While the petitioner may be proposing a conventional grocery store, a building in excess of 78,000 sf also could be a big box retail super center.

The potential to adversely impact redevelopment of downtown Penacook is much greater if the tenant is a super center offering multiple services and products. Staff notes that community members have expressed a desire to exclude a pharmacy from potential uses. A store of greater than 78,000 sf is likely to have this and other services.

- Allowing this intensity of commercial development could put commercial and residential development pressures on the entire area of northeast Concord, Canterbury, and Boscawen. Demand for residential development often follows large commercial developments. As an area becomes more built out, the expectation for services and residential density increases. From a planning perspective, a commercial development of this size would not be recommended unless it was in close proximity to planned residential density where walkable, bikeable access could be provided.

Staff suggests that a development of this size could act as a catalyst over time to change the entire character, land use patterns, and market demands of this region, even without a coordinated plan or intent. For this reason, Staff suggests that a development of this size and intensity should be looked at in the context of a larger planning study, evaluating the impact on commercial and residential land use patterns for the entire region, including the extension of Whitney Road, land development in northeast Concord, connections with Penacook, and the need for transportation infrastructure.

Staff also notes that the Master Plan recommends **compact development** to encourage an efficient use of space and resources, minimize sprawl, and create destinations that are easy for pedestrians to navigate. Characteristics of compact development include grouping buildings together, sharing parking, and including small gathering space amenities such as plazas or green spaces. While the applicant has made an effort to include gathering spaces in their latest concept, the plan overall is a classic example of low density commercial sprawl, with its widely spaced single use pad sites surrounded by parking lots. In that respect, the concept proposed is not consistent with the intent of the Master Plan to encourage best planning practices, as noted below.

#### Consistency with Best Planning Practices

Trends in commercial development have changed fairly dramatically over the past 15 years. At the time the Master Plan 2030 was drafted, a low density, single use, vehicular model of development still dominated both the grocery and retail models. Though the Master Plan attempted to counter that trend with its emphasis on compact development, it didn't provide strategies or suggest zoning tools to create it. One of the goals for the current zoning ordinance update is to address commercial development models and provide tools and strategies to create compact development and discourage sprawl.

Today, grocery stores are getting smaller, retailers prefer to be in mixed use lifestyle centers, and communities are increasingly demanding "people-oriented" spaces that are safer to navigate, more attractive, and use space more efficiently. The piecemeal approach of carving up large spaces for pad sites surrounded by parking lots is, in planning circles today, considered an outdated approach. It is regarded as a problem to be solved, since most developments of this nature are in need of retrofit and better community oriented solutions. However, the piecemeal approach is the model depicted in the petitioner's concept plan.

Unfortunately, until the zoning ordinance is updated, or the GWP District amended to provide better guidance for site layout, the City has no regulatory tools to implement best planning practices for commercial development.

The charrette hosted by the petitioner focused mostly on desired uses and general location for uses on the site. Participants were given models representative of the classic “pad surrounded by parking” model. No charrette tools were provided to explore compact development types in line with best planning practices. The consultants stated that they felt it was too soon in the public outreach process to discuss complex topics such as layouts and compact development types. While the meeting was well organized and useful for a discussion of uses, a follow up meeting to explore the critical topic of layouts and development types did not occur.

Staff notes that by the time any applicant is ready to develop the site, the zoning will likely be changed as a result of the new ordinance. With that in mind, the current concept plan will not represent the final site layout. Any rezoning should make it clear that approval does not represent an endorsement of the current layout proposed, and that the expectation is that the site will comply with new zoning regulations once adopted.

### Transportation Impact

One of the most significant aspects of the rezoning request is its impact on the intersection of Hoit Road and Whitney Road. Please see the attached memo from the City Traffic Engineer for a more detailed explanation of the issues around the intersection. In summary, any development on the site will trigger the need for significant intersection improvements, including either signalization and widening of the road, or construction of a roundabout.

Hoit Road is a state road, and the intersection is the responsibility of NHDOT. However, the project is not in NHDOT’s 10-year plan. This raises the question of who will pay for the improvements and when will they occur. Past practice has been that the developer bears the cost of improvements needed for their project to move forward. If the City intends to contribute to those costs in this case, strategies for funding and priorities for projects City wide should be discussed to evaluate feasibility.

Staff notes that a meeting is being coordinated by the Central New Hampshire Regional Planning Commission (CNHRPC) for City staff, the petitioner, DOT staff, and representative from Canterbury and Boscawen to discuss the intersection.

### 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 expanding quality of life amenities.

The petitioner’s request could 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. The applicant’s current proposal does not satisfy this concern.

Staff notes that the community has expressed concerns in the past that development at this site would detract from redevelopment of downtown Penacook. It is staff’s opinion that a smaller scale of vehicular-oriented development would be less of a concern in this regard, since it is dissimilar enough from the service, restaurant, and retail businesses that the community may want in the Village. However, a larger development incorporating office, restaurant, and retail uses, along with the potential of a commercial super center, is the type of development that would justify those concerns.



The petitioner provided a general estimate of just under \$40 million in tax revenue that could potentially be generated by proposed development if their concept plan were fully built out. While conversations with the Assessing office indicate that some of the petitioner's estimates may be high for Concord, in particular for the grocery store, staff is overall in agreement with the applicant's methods and results. The actual fiscal impact on the tax base of Penacook is unclear due to the length of the build out process, other development that may be spurred by the project, and the impact of possible funding strategies for any intersection improvements.

### Environmental Impact

The petitioner provided a wetlands report indicating that much of the wetlands on the site were man made and created during previous excavations, or were a result of Route 4 drainage. Staff would defer to DES during the permitting process with regard to allowed disturbance and required mitigation. The 2017 concept plan, which appears similar in impact to the current proposal, contemplated approximately 36,000 sf of wetland disturbance.

### 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 increase in traffic. Other impacts could include an increased demand for municipal services as a result of increased development in the area.

### Zoning Analysis

An analysis of the zoning is likely to change significantly once the new zoning ordinance has been adopted. The following is an analysis of the current districts.

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 current 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.

As noted previously, Staff agrees that the GWP District would be the most appropriate zoning tool the City currently has to regulate commercial development at this location. However, the current GWP district is in need of revisions to ensure appropriate and efficient site development of a high quality that adheres to current best planning practices. Long term planning of this site and this region might also include a need for different residential development types or other mixed use models.

### **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 what recommendation should be made to Council on the petitioner's request:

- (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.

A summary of the issues staff feels should be considered include:

- The appropriateness of the amount of area requested for zoning, considering the intensity and scale of development proposed;
- Potential impacts on commercial and residential development, transportation, and land use patterns for northeast Concord, Whitney Road and the extension to Sewall's Falls Road, and the Village of Penacook;
- Whether it's appropriate to rezone an area of this size without a comprehensive master plan for the area that is in keeping with the goals of the City for coordinated compact development, and is consistent with best planning practices; and
- The timing of the request considering the current zoning ordinance update process underway, as well as the need to develop a plan for addressing the intersection and associated improvements.

It is still staff's opinion that a high quality development could be possible for this site. However, a development more consistent with the original 14.5 acre request would meet the community's desire for an average sized grocery store with a few retail or commercial amenities without being as likely to prompt a dramatic change in the overall land use patterns or character of the area. Staff does not feel that the petitioner has provided justification for the intensity of development proposed, other than a general assertion that a potential tenant desires it. The economic benefit is unclear due to the long term nature of the build out and the funding of the intersection improvements.

It is also unclear whether the City should agree to a rezoning of this size without any assurances regarding the type or quality of development that could be constructed.

Finally, staff feels that a rezoning of this size and intensity warrants a more thorough planning study and analysis of the entire area, and a discussion of the long term desires of the community. The implications of this rezoning are dramatically different from what the current Master Plan envisions for this area.

## **Recommendation**

Staff suggests the following options:

- Support the petitioner's request to rezone 28.5 acres from IN and CU to GWP, acknowledging that any development would need to conform to the new zoning standards;
- Offer an alternative, such as supporting the original request for 14.5 acres; or
- Support tabling the request until further analysis and discussion can occur.