



TOWNSHIP OF TOMS RIVER

DEPARTMENT OF ENGINEERING AND COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Zoning Board Members

FROM: David Glynn Roberts, PP/AICP, LLA, LEED AP ND and Robert Hudak, MAP, PP, AICP

DATE: May 5, 2022

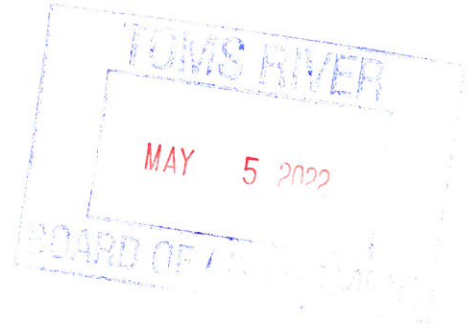
SUBJECT: Block: 662 Lots: 5

Street Address: 27 Washington Street
Applicant Name: 27 Washington Street Associates, LLC

APPEAL #: 13766

ESCROW#: X-23-B01-597

PLANNING REVIEW #2



The Township of Toms River reviewed an amended application for a Use Variance and Amended Preliminary and Final Major Site Plan for an approved six story apartment building with retail and storage at grade. The site is a 6,578 sf lot at the corner of Washington Street and Robbins Street (Bob Levy Way) in the Village Business Zone. The applicant submitted a revised site plan dated August 28, 2021 and last revised on January 14, 2022, a property survey and architectural plans by Yezzi Associates that are dated January 18, 2022 last revised on March 31, 2022. The following comments have been provided

Administrative:

1. The application was certified incomplete on March 24, 2022 and was revised and deemed complete on May 5, 2022.

The applicant was approved for a six story apartment building with 23 dwelling units, five units per floor on levels 2-4 and four units per floor on levels 5 and 6, over a ground level $\pm 4,000$ sf of retail and the remainder of the footprint ($\pm 2,428$ sf) of storage and lobby space. The site is located at 27 Washington Street on the site of the former commercial building that housed 15 businesses, including East Coast Gamers, which was the source of a fire that destroyed the building in May of 2014. The building was demolished and replaced with a landscaped sitting space and is leased by the Township for \$1 per year. The property, however, remains privately owned and is not listed as a public park on the Township's Recreation and Open Space Inventory.

The applicant originally submitted the plans to the Planning Board in early 2018, but a letter from Assistant Township and Planning Board Planner, Erika Stahl, AICP/PP, dated February 16, 2018, determined that the regulations of the VB Zone did not permit the proposed building because "dwelling units shall be permitted only in buildings in which the ground floor is devoted to retail sales or personal service uses". The proposed building has been initially re-designed to provide 1,950 sf of retail or other commercial space on the ground floor, but also with a six floor that increases its height to 66 feet. Because the VB regulations allow an increase



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in height to 55 feet for a mixed-use building and the proposed height exceeds the maximum height by more than the lesser of 10% (5.5 ft.) or 10 feet (11 foot deviation), the nature of the required relief changed to remove the straight "d(1)" Use Variance, but to increase the extent of the deviation of the "d(6)" height variance. The applicant made an application to the Zoning Board which granted the variance relief and site plan approvals on June 12, 2019. The Board based its approval in part on the proposal made during the hearing that public access would be provided to a rooftop amenity. However, the Board's Resolution stipulated that elevator access to and restrooms for the rooftop amenity must be provided and that the height of the building would not exceed 66 feet without returning to the Board. Rather than design the building so that the public rooftop amenity was provided within the approved height of 66 feet, an elevator penthouse with restrooms was added, which results in a change in the overall height of the building from 66 feet (as measured from the average height of the roof) to 73 feet. As noted previously, the applicant seeks a d(6) height variance since the height exceeds 10 feet and/10% above the maximum permitted height in the zone of 55 feet.

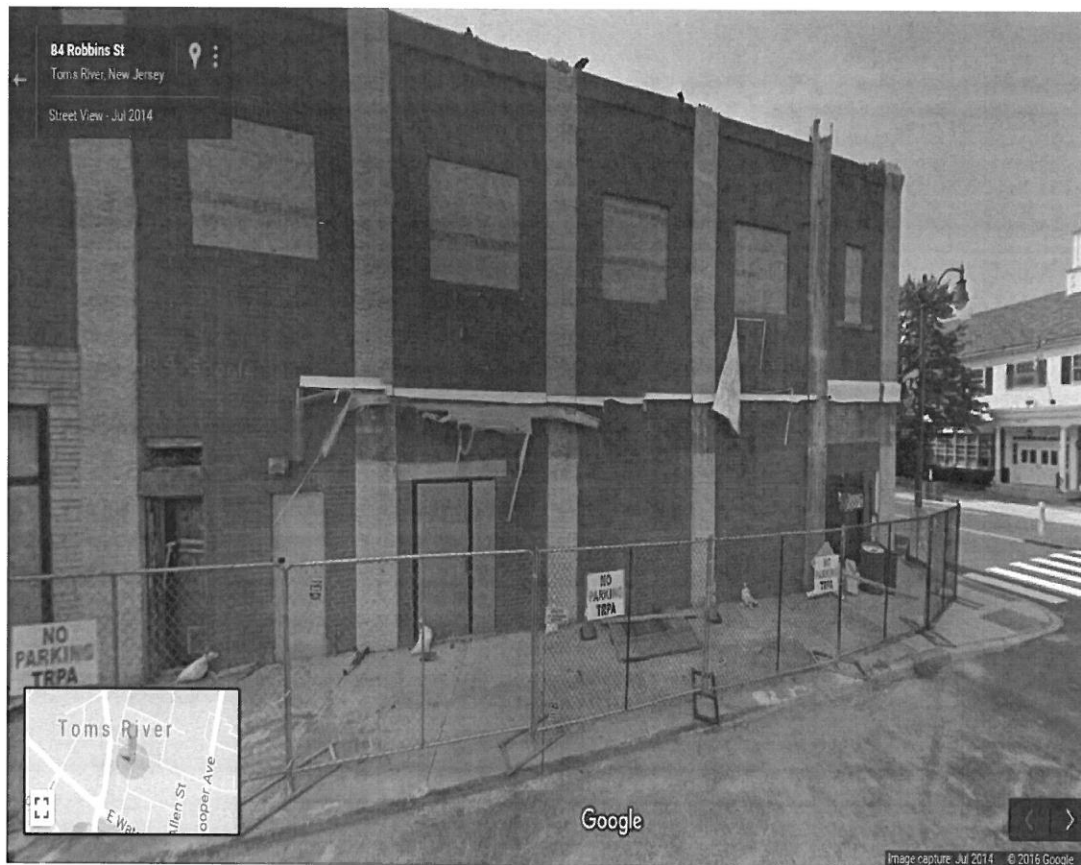


Figure 1: Former commercial building on the site after fire.



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Figure 2 : Current Google Street view of the subject site.



Figure 3: Top - Google Earth overhead image of site and surrounding uses in the downtown.



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2. Additional approvals may be required from:

Yes	No	Agency	Comments
x		Ocean County Planning Board	
x		Ocean County Soil Conservation	
x		NJ DEP - CAFRA	
	x	NJ DEP Wetlands	No wetlands shown
	x	NJDOT	
x		TR MUA	
x		Bureau of Fire Prevention	

Technical:

3. Character of the Neighborhood: The proposed development is within the VB (Village Business) zoning district and in the Downtown Core Rehabilitation Area, which includes properties directly to the north and west. The Town Hall and Ocean County Library Headquarters Branch are directly to the east. The Downtown Core Redevelopment Plan was adopted on February 26, 2019, amended on September 24, 2019 and amended again on December 14, 2021. It is now the governing regulations for the area that includes the subject site. However, the initial application was submitted in December of 2018 prior to the adoption of the Redevelopment Plan, so the VB regulations were applied based on the "Time of Application" rule. Since this is an application amending the prior approval from this Board, it was determined since the initial application applied the VB zone standards, an amended application would also apply these same standards.



Figure 4: Subject site with surrounding zoning.



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4. The following bulk variances are required:

VB Zone	Required	Existing	Proposed	Variance	Ordinance
Minimum lot area	5,000 sf	6,578 sf	No change		
Minimum lot width	50'	44.72'	No change	ENC	
Minimum lot depth	100'	129.64'	No change		
Minimum Corner Lot frontage	75'	44.72' Wash.; 129.64' Robbins	No change	ENC	
Front yard setback	Prevailing (0')	N/A	0' Washington 0' Robbins St.		
Side yard setback	None	N/A	None		
Parking stalls	44	N/A	0	PAV	348-8.20(O)(15)
Max Lot Coverage	80%	No info	100%	PAV	348-10.22E(9)
Max. Building Height	55'/5 stories w ground level retail	N/A	73'/6 stories	V	348-10.22E(8)

V = Variance, PAV = Previously Approved Variance, ENC= Existing non conformity

5. Use Variance (NJSA 40:55D-70d(6)):

- A. The proposed six story mixed-use building is now a permitted use in the VB Zone because it includes street level retail space. However, the additional story causes the building height to exceed the maximum allowable height of 55 feet by more than 10% (33% deviation proposed) and by more than 10 feet (18 foot deviation proposed), thereby triggering a d-6 height variance. ***But for the added height, the project would have become a conforming use and jurisdiction would be transferred to the Planning Board, which would then apply the Downtown Core Redevelopment Plan.*** The Downtown Core Redevelopment Plan requires that the frontages on Main Street and Washington Street contain street level retail and provisions are recommended to concentrate parking within shared public-private parking decks operated by the Parking Authority.
- B. The proposed building architectural plans show the proposed apartment building at what appears to be a total height of 73 feet and six stories measured to the top of the proposed elevator penthouse. The maximum height in the VB Zone is currently 50 feet and four stories, although the regulations were amended in 2017 to allow 55 feet, with five usable floors, if the first floor is utilized for retail, restaurants, theaters, galleries, nanobreweries and other similar non-office uses. The fourth and fifth floors in such a mixed-use building are required to be set back 10 feet from the edges of the maximum building footprint of the first three floors to maintain a pedestrian scale. A height variance of up to 5.5 feet (10% of 55 feet max height) is allowable as a Bulk Variance, but a height variance of more than five feet requires a d(6) (Use) Variance for excessive height relief. The revised plan now has increased the d(6) deviation to 33% (18 feet) of the 55 foot maximum height limitation. This deviation should now be viewed by the Board in light of the Downtown Core Redevelopment Plan, which was adopted, became effective, and amended twice during the period since the subject application was submitted. The impact of such a deviation will make the



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proposed building out of character with the surrounding buildings and, combined with the lack of the required 10 foot step back on levels 4 through 6 (a partial recessed façade is now shown along the Robbins Street frontage but does not extend across the entire frontage), will overwhelm the small corner site and the pedestrian environment, especially along Washington Street.

- C. If the proposed project were to be reviewed under the Downtown Core Redevelopment Plan, the height would be restricted to 40 feet at the streetline, 45 feet at the 15-foot maximum setback and 60 feet maximum, but excluding the ground level if entirely devoted to parking or retail. However, the Redevelopment Plan has a density standard, whereas the VB Zone regulations do not. At a maximum allowable density of 40 dwelling units per acre, the proposed density of 152 dwelling units per acre (23 units on 6,578 square feet) is over three times greater than the maximum allowed in the Redevelopment Plan. As a basis for comparison, the first redevelopment project in the Waterfront Redevelopment Area was 285 units on 3.6 acres, which computes to 79.2 dwelling units per acre where the maximum allowed before bonus is 70 dwelling units per acre. The redevelopment agreement for that project allowed the additional height and density based on public amenities such as a waterfront park and outdoor performance venue. The Downtown Core Redevelopment Plan also allows for a bonus in height and density as part of a redevelopment agreement in exchange for public amenities.

6. Bulk Variances:

- A. Parking Stalls – The approved site plan application was for 23 dwelling units that included 13 one-bedroom units, five two bedroom units, and five three bedroom units. Based upon the Residential Site Improvement Standards (RSIS) and the Township Code, the total parking stalls required for the residential uses totaled 44 spaces:

Approved Residential Parking Breakdown		
Unit Bedroom Count	Parking Requirement Per Unit	Previously Approved Required Parking
13 - 1 bedroom units	1.2 spaces	23.4
5- 2 bedroom units	2 spaces	10
5- 3 bedroom units	3 Spaces	10.5
Total Parking Spaces Required (Residential Only)		43.9 (Rounded up to 44)

As amended, the applicant proposes maintaining the overall 23 units, however the bedroom count is reduced. The applicant now proposes 13 one bedroom units, seven two bedroom units and three three bedroom units, that maintains the overall parking amount as show below;

Proposed Residential Parking Requirement Breakdown		
Unit Bedroom Count	Parking Requirement Per Unit	Previously Approved Required Parking
13 - 1 bedroom units	1.2 spaces	23.4



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7 – 2 bedroom units	2 spaces	14
3 -3 Bedroom units	3 Spaces	6.3
Total Parking Spaces Required (Residential Only)		43.7(Rounded up to 44)

Of note, the three-bedroom units are needed because at least four units (15%) are required to be affordable if the units are rental and at least five units (20%) if the units are for sale and at least 20% of the affordable units are required to have three bedrooms.

The original application proposed 1,950 square feet of retail space, however there is no mention of a variance being granted from the required parking for the commercial space that requires nine on-site parking spaces as required for retail spaces (one space per 225 square feet of gross floor area). As amended, the total retail space increased to 4,000 square feet that requires 18 on-site parking spaces. In addition to the 44 spaces required for the residential use, the applicant must also account for these 18 spaces generated by the proposed retail use.

Total Proposed Required Parking	
Use Type	Required Parking
Residential Uses	44 parking spaces
Retail use	18 parking spaces
Total Required Parking	62 parking spaces



Figure 2: GIS measurement of 457 feet walking distance between 27 Washington Street and the Township Parking Deck.



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The applicant should provide testimony demonstrating that they made arrangements the Parking Authority to address the 62 parking space shortage. The Downtown Core Redevelopment Plan encourages the consolidation of parking in one or more additional decks so that employees and customers use the parking on weekdays and residents of newly developed dwelling units use them in the evenings and weekends. The Plan provides that a contribution be made equivalent to the cost of constructing the required parking spaces toward a fund to be used to finance the construction of the decks. **If the entire requirement of 62 parking spaces cannot be supplied through existing parking spaces pursuant to a certification by the Parking Authority, pursuant to Section 348-10.22B(1)(b), for daily parking passes for the 18 retail spaces and 44 night/weekend passes for the residential units, a commitment to enter into a redevelopment agreement with the Township regarding a contribution for the parking generated by the building should be considered as a condition of approval.**

7. Site Plan:

- A. General - As the application involves both a d(6) Height Variance and Preliminary and Final Site Plan, testimony will be required on stormwater management, solid waste removal and landscaping. The Board previously granted a variance for the 80% impervious coverage restriction, as the proposed building, like its predecessor, will cover the entire site. In lieu of landscaping, the revised plan includes a streetscape plan, inclusive of street trees, tree grates, planters, benches and trash receptacles. However, we had recommended that bicycle racks, a brick or paver sidewalk design and street lighting that will be consistent with the Township's 2020 Transportation Assistance Program (TAP) grant application for streetscape improvements also be considered. A bikerack was included within the storage portion of the building off the lobby, but now that the building has retail with frontage on Washington and half of the Robbins Street façade, at least one bike rack should be provided as part of the streetscape improvements.

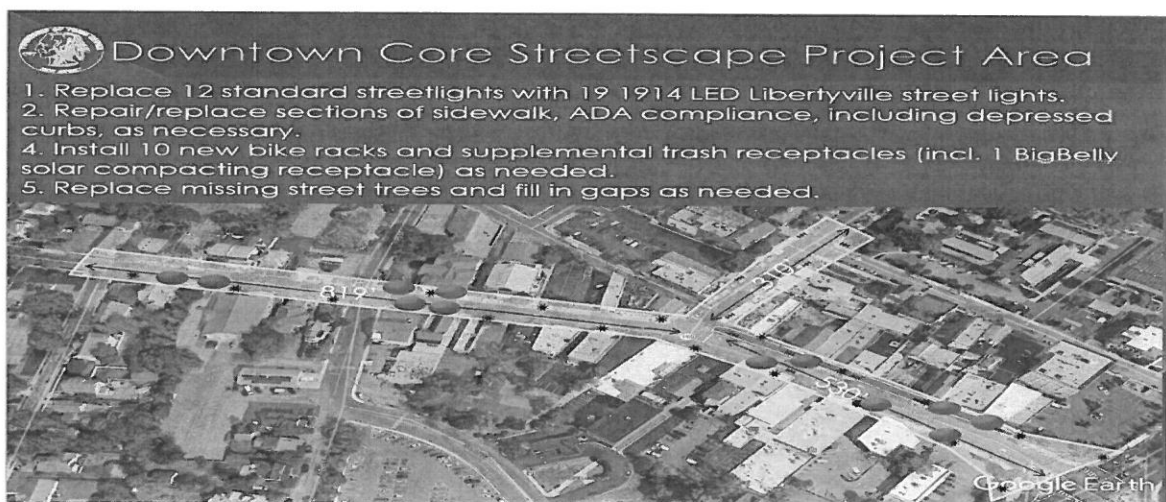


Figure 3: Graphic showing the project area of the 2020 Downtown Streetscape Grant application.



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- B. Lighting – A complete detail of each different type of exterior lighting should be provided. If the application is approved a more complete set of architectural details should be provided for review by the Architectural and Landscape Plans Committee.
- C. Signage – No new identification signs are shown. Any signage the applicant intends to install should be a part of this application or testimony provided that signage will comply with the design standards of the Downtown Core Redevelopment Plan when adopted.
- D. Architectural – The applicant has proposed the six story building at 73 feet in total height at the streetline with no vertical or horizontal articulation other than a recessed and covered balcony on the 5th and 6th floor and balconies overhanging the Robbins Street ROW. The VB regulations for mixed-use buildings allow 55 feet of height when there is retail on the ground floor, but require that the 4th and 5th stories be setback 10 feet. The Downtown Core Redevelopment Plan also limits building height at the streetline to the current 40 foot height in the VB zone, 45 feet at the maximum required setback (none at this site) and 60 feet maximum, but with a 10 foot stepback at 40 feet in height (see table below, taken from the redevelopment plan).

Area and Bulk Requirements – VB & VS Zones	
Regulation	Requirement
Minimum Project Area (acres)	Per underlying zoning
Residential Density	40 units/acre except 70 units/acre in Robbins Parkway Redevelopment Area
Maximum Building Height (feet)	40 ft. at streetline / 45 ft. at max setback/ 60 ft. max (excluding any level entirely devoted to parking and/or retail use)
Maximum Building Coverage	100%
Maximum Building Setbacks	15 foot from streetline.
Minimum Stepback	10 foot stepback at 40 feet in building height to 60 foot max height
Maximum Impervious Coverage	Greater of prior coverage or 80% of area not part of acreage set aside as open space/public park
Minimum Open Space Areas	10% of project site

Other architectural design standards in the Draft Downtown Core Redevelopment Plan are as follows:

Architecture

1. Materials

- Building facades visible from a street should be compatible with materials and colors in keeping with the character of the historic downtown Toms River area.*
- Predominant exterior building materials shall consist of brick, sandstone, native stone veneer, cultured stone and stone veneer, composite siding and tinted/textured concrete masonry units, or other high-quality material.*
- The use of metallic or predominantly black finishes, high intensity or fluorescent colors shall be prohibited.*



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- d) *In order to reduce the "Heat Island Effect", roofing materials for at least 75% of the roof area of all new buildings in the Project Area should have a Solar Reflectance Index (SRI) of at least 29 for roofs with a slope greater than 2:12 and a SRI of 78 for roofs with a slope of 2:12 or less. The use of vegetated roofs for at least 50% of the roof area of all new buildings within the project; or a combination of SRI-compliant and vegetated roofs for at least 75% of the roof area of all new buildings in the Project Area would also meet this standard (LEED-ND GIB Credit 9, "Heat Island Reduction").*

2. Scale

- a) *Building Orientation – Proposed buildings shall be oriented to generally front on Water Street, Main Street, Washington Street, Hooper Avenue, Bob Levy Way, Robbins Parkway and Allen Street. The building façade shall create a defining wall along the streetscape.*
- b) *Building exteriors shall have vertical and/or horizontal offsets to create visual breaks on the exterior.*
- c) *Long, blank, windowless, monotonous, uninterrupted walls or roof planes are not permitted along public street frontages or walkways.*
- d) *Building wall offsets, including projects and recesses, such as balconies, canopies, awnings, and other architectural details, are encouraged.*
- e) *Street level height – The street level of a building shall have at least 12 feet clear height.*
- f) *Not less than 50% of the upper story dwelling units fronting on a street shall have balconies and/or balconettes, which may project up to 6 feet beyond the building line.*

3. Articulation

- a) *The building façade shall have a clearly defined base, body, and cap.*
- b) *The middle section of the faced may be horizontally divided at floor, lintel, or sill levels with belt courses.*
- c) *The architectural treatment of a façade shall be completely continued around all street facing facades of a building. All sides of a building shall be architecturally designed so as to be consistent with regard to style, materials, colors, and details.*

4. Roofs

- a) *The shape, pitch, and color of a roof should be architecturally compatible with the style, materials, and colors of such building.*
- b) *If the building has a flat roof, a parapet shall project vertically and extend around the entire building to hide any roof-mounted mechanical equipment. Additionally, a cornice shall project out horizontally from the façade and shall be ornamented with moldings, brackets, or other detailing.*
- c) *If the building has a pitched roof, a minimum pitch of 5:12 shall be provided. A pitch of 8:12 is encouraged.*
- d) *Pitched roofs are encouraged to have dormers, chimneys, cupolas, and other similar elements to provided architectural interest. These elements shall be compatible with the style, materials, colors, and details of the building.*
- e) *Roofline offsets shall be provided along any roof measuring more than 50 feet in length in order to provide architectural interest and articulation to a building.*



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f) Rooftop heating, ventilating, and air conditioning (HVAC) systems, exhaust pipes and stacks, satellite dishes, and other telecommunications receiving devices shall be screened or otherwise specially treated to be inconspicuous as viewed from the primary to secondary street and adjacent properties.

5. Transparency

- a) Non-residential uses on the ground floor in the Redevelopment Area should have large pane display windows along the street frontage at an elevation of between three feet and eight feet above grade. Such windows shall be framed by the surrounding wall and shall be a minimum of 60% of the total ground level façade area (LEED-ND NPD Credit 1, "Walkable Streets").
- b) Transoms above display windows are encouraged.
- c) Window sills shall not more than 3 feet above the sidewalk. Base panels or bulkheads are encouraged between the sidewalk and the window sills.
- d) Upper story facades facing a public street or parking area shall have between 30% and 80% fenestration measured for each story between three (3) and nine (9) feet above the finished floor.
- e) Windows are encouraged to be vertically proportioned whenever possible.
- f) Glass blocks are not permitted on front windows at street level.
- g) Exterior security grates are prohibited.

6. Entrances

- a) All entrances to a building shall be defined and articulated by architectural elements such as lintels, pediments, pilasters, columns, overhangs, or canopies. These elements shall be compatible with the style and materials of the building.
- b) Entrances may also defined by planters.

All of these details of the architectural design of the building should be addressed in the submission to the Architectural & Landscape Plans Committee and we recommend that any approval of the d(6) Variance be conditioned on either the approval of the Plans Committee or a separate redevelopment agreement with the Township that includes architectural plans approved by the Township Council. The proposed balconies overhanging Robbins Street are an encroachment over Township property and must be approved by Township Council. This can be done through a redevelopment agreement or separate action by the Council, if they agree to allow it. However, while balconies are mentioned in the Downtown Core as a way of adding visual interest to mixed-use and residential apartment buildings facades, we have serious concerns regarding allowing them to overhang public spaces of any kind.

E. Bike Network and Storage

The Downtown Redevelopment Plan's design standards will require at least one secured, enclosed bicycle storage space for 30% of planned occupancy, but not less than one space per residential unit (LEED-ND SLL (Site Location and Linkage) Credit 4 "Bicycle Network and Storage"). Bike racks for visitors are also addressed based on at least one bicycle space per ten dwelling units. A bicycle rack for resident bike storage is now shown on the architectural plan and detailed on the site plan, but no exterior bike rack for visitor bike storage is provided as part of the streetscape.



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F. Roof Top Amenity

- (1) The prior approval noted that that a roof amenity would be open to the public and would include an elevator and restroom facilities available to the public. The resolution also indicated the the roof amenity may be leased to a member of the public if they obtained a permit from the management company of the building. The applicant was to enter into a developer's agreement with the Township regarding the public use and access to the roof. Should the Board be inclined to grant this proposal, we recommend that these conditions and all other conditions outlined in the prior approval remain in any subsequent approval. The applicant should opine further on the functioning of this roof top deck (how it will function, what hours, who will maintain said deck, etc.)
- (2) The architectural plans show a simple layout for the roof "patio" amenity providing three center planters with one or two benches each and three benches along one side of a perimeter planter. Considering the importance placed by the Board in their original approval on the roof amenity space being available to the public, we suggest that greater attention be given to its design so that it functions as an equivalent or superior replacement for the public's use of the passive space currently on the site.

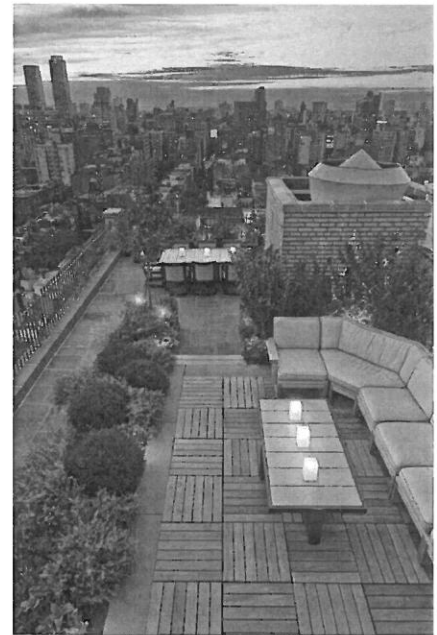


Figure 4: Example of roof amenity deck.

Summary: A d(6) height variance with Preliminary and Final Site

Plan and bulk variances for required parking is proposed for the vacant lot at the corner of Washington Street and Robbins Street, which is currently improved as a landscaped space open to the public. Testimony should be provided as to the Special Reasons for granting a height variance that exceeds the maximum height limitation by 20% (11 feet higher than 55 feet limitation) when the project could be made conforming under current VB zoning regulations, by removing the sixth floor and stepping back the fourth and fifth floors by 10 feet from the streetline of Washington and Robbins to comply with the ordinance and avoid a 66 foot high wall as viewed from the sidewalk. Because the removal of the d(6) variance through the elimination of the 6th floor would put the application under the jurisdiction of the Planning Board and thereby the Downtown Core Redevelopment Plan and a maximum density of 40 dwelling units per acre (where the VB zoning does not address or limit density), we believe that the requested height variance is intended to avoid the density standard. For comparison, 23 units on a lot of 0.15 acres is **152 dwelling units per acre** and, if the same 0.15 acre site was capped at 40 dwelling units per acre, **only 6 dwelling units would be permitted.**

Based on the extreme deviation just described, the grant of the height variance would have a substantial detrimental impact on the goals and objectives of the Downtown Core Redevelopment Plan because it would also result in an extreme deviation in the density on the site. Conversely, The Redevelopment Plan (Section VI, provides for flexibility in this very situation, but when the deviations result in specific benefits to the Township as follows:



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7. *An amendment to the Redevelopment Plan shall be required where a deviation would result in permitting or expanding a use not specifically permitted in this Plan, except that an increase by more than ten percent (10%) or 10 feet of the permitted maximum height or an increase in the density permitted in this Plan may be authorized by the Redevelopment Entity in a redevelopment agreement as a bonus to reward a redeveloper for providing a specific benefit to Downtown Toms River and the Township as a whole, including but not limited to:*
- a. Enhanced recreational amenities, such as an active recreation facility, open to the public;*
 - b. Neighborhood gardens for the production of fruits and vegetables for consumption by residents of the new development and the larger neighborhood of which the new development is a part, consistent with the provisions of LEED-ND NPD Credit 13 (Local Food Production);*
 - d. Enhanced design for persons with disabilities consistent with LEED-ND NPD Credit 11 (Visitability and Universal Design);*
 - e. Two or more buildings within the proposed development, or the entire project certified under the LEED for New Construction and Major Renovation (LEED-NC) Rating System;*
 - f. Inclusion of a public park or enhancement of an existing public park within or adjacent to the redevelopment project, inclusive of features such as landscaped sitting areas, fountains, sculpture, formal gardens, picnic pavilions, etc.;*
 - g. Inclusion of a cultural-entertainment amenity such as indoor-outdoor performance spaces including theaters, outdoor performance venues, public art, art galleries, etc.;*
 - h. Structured parking available to the public during specified hours to be set forth in a redevelopment agreement;*
 - i. Provision of affordable housing in excess of twenty percent (20%) of the total number of dwelling units to be created within the project to be set aside as affordable in accordance with state requirements, subject to a maximum density agreed to by the redeveloper and Redevelopment Entity as part of the Redevelopment Agreement.*

If the Board determines that the d(6) height variance should be granted, we recommend that it be conditioned upon approval of architectural and streetscape plans that are based upon the adopted Downtown Core Redevelopment Plan, including either the procurement of the use of parking from the Parking Authority and/or a redevelopment agreement providing for a contribution toward a dedicated fund for the construction of additional public parking. We also recommend that it be conditioned upon a more detailed design for the rooftop amenity deck, consistent with Section VI (7f) of the Redevelopment Plan cited above, and an operations plan for how its use will be managed so that both building's residents and the public will be able to share the amenities without impacting the security or privacy of the residents. We further recommend that the rooftop amenity plans be submitted to the Architectural & Landscape Plans Committee and we recommend



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that any approval of the d(6) Variance be conditioned on either the approval of the Plans Committee or a separate redevelopment agreement with the Township that includes architectural plans approved by the Township Council.

Township reserves the right to further comment based upon the testimony at the public hearing.

Township of Toms River
David Glynn Roberts, P.P., AICP, LLA, LEED AP ND
Planner to the Board

Robert A. Hudak, MPA, PP, AICP
Assistant Township Planner

Cc: Gregory Hock, Esq.