

MEMORANDUM

TO: MR. BRYAN RUSSELL, RPPS, QPA
ADMINISTRATOR, BOROUGH OF NEPTUNE CITY

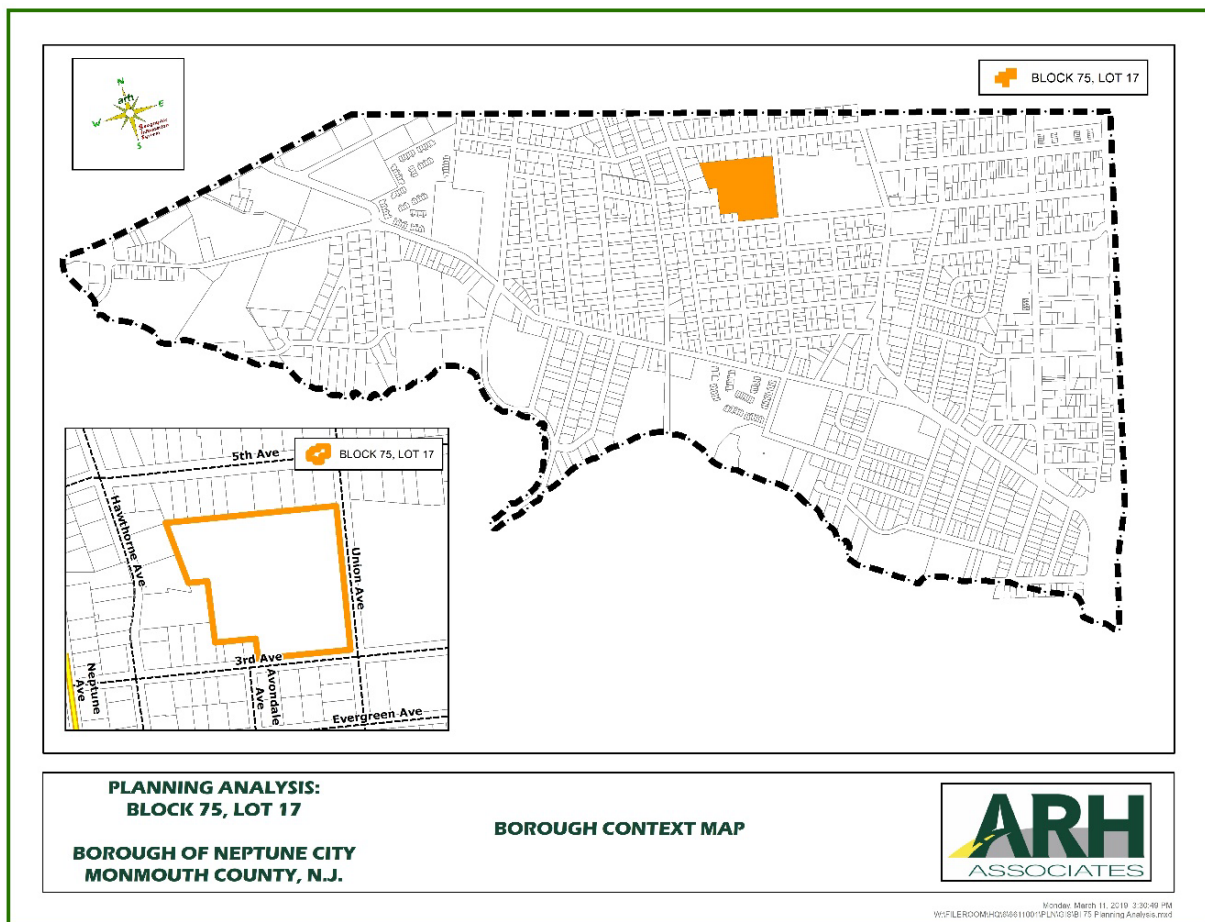
FROM: STUART B. WISER, PP/AICP 
VICE PRESIDENT OF PLANNING & ENVIRONMENTAL SERVICES, ARH ASSOCIATES

DATE: March 16, 2019

RE: PLANNING ANALYSIS: BLOCK 75, LOT 17
 (ARH Project #6611001)

A. Background

There exists in the Borough of Neptune City, Monmouth County, New Jersey ("Borough"), an approximately 6.4-acre lot generally bounded by 3rd Avenue to the south, Avondale Avenue and residential properties fronting Hawthorne Avenue to the west, residential properties fronting 5th Avenue to the north, and Union Avenue to the east ("Property").

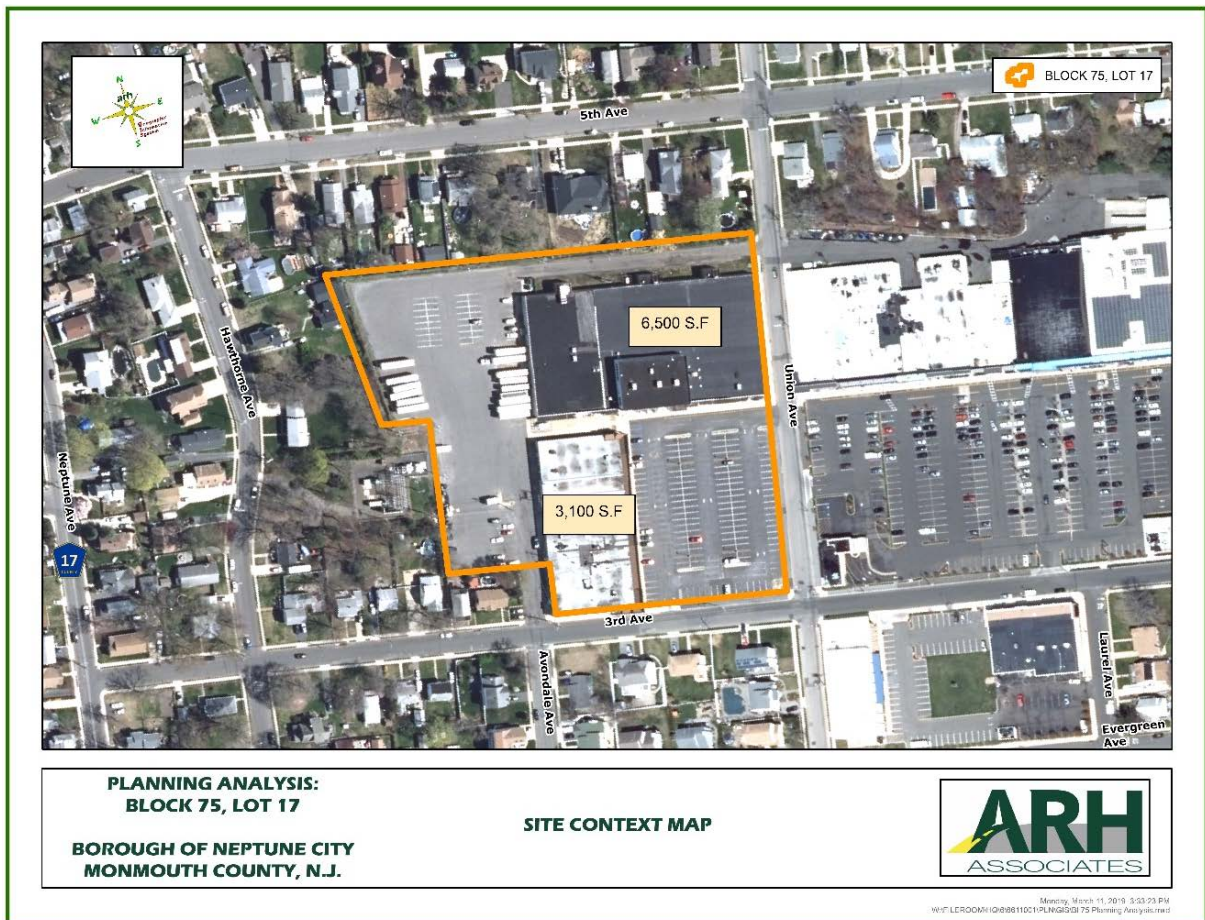


Over the years the Property was developed into an approximately 65,000 s.f. building, an approximately 31,000 s.f. building, and on-site parking and loading for the two structures.

ARH Associates

Corporate Headquarters – 215 Bellevue Avenue – PO Box 579 – Hammonton, NJ 08037 – 609.561.0482 – fax 609.567.8909
 Bloomfield Office – 2 Broad Street – Suite 602 – Bloomfield, NJ 07003 – 973.337.8562 – fax 973.337.8876

www.arh-us.com



The 65,000 s.f. building was originally developed as a Two Guys department store. Upon the closing of the store, the building was purportedly used for the warehousing and packaging of canine toys (manufactured at another location within the Borough), and then for office and warehousing related to TFH Publications. TFH occupied the building from 1997 to 2018, when it relocated to another site. The building has remained vacant and unutilized since.



The 31,000 s.f. building is the Neptune City Plaza shopping center that currently hosts a mix of retail and service uses as well as vacant commercial space.



Prior to its development, the Property was Borough-owned. As part of a land transfer from the Borough to a developer in July 1956, a deed restriction was instituted that, in pertinent part, restricted the use of the property against *“residential purposes”* and *“warehouse purposes or for public storage of any kind”*. Only *“business”* uses were permitted.¹

Over the past year, the Borough has been approached by two companies seeking to use the 65,000 s.f. building; one as a *“light manufacturing / fabrication facility”* for specialty lighting systems and one as a public self-storage facility (e.g. *“Cubesmart”*). Based on the materials submitted to the Borough, the light manufacturing / fabrication use does not propose additional improvements to the property, while the storage use proposes improvements (discussed below).

While both the manufacturing / fabrication proposal and the self-storage proposal appear to require ‘d-1’ (Use) Variance and ‘c’ (bulk) Variance relief ~ as well as Site Plan approval, the deed restriction appears to be fatal to both proposals².

At issue for the Governing Body is whether or not to lift the deed restriction in order to permit either of the uses proposed.

B. Planning Analysis

1. Deed Restriction

- a. The deed restriction was instituted via Indenture dated July 23, 1956. After presenting the metes and bounds of the Property, the Indenture specifies that the lands as described “are hereby conveyed subject to the following restrictions:

¹ It would appear that the prior warehousing use was contrary to the deed restriction as well.

Note that the copy of the Indenture provided to this office does not appear to be the entire document. It is therefore not possible to determine if any additional restrictions were instituted.

² While the Indenture for the deed restriction could be interpreted to permit light manufacturing / fabrication, the president of the manufacturing company is requesting a Zone change in the form of an Overlay District.

They shall not be used for residential purposes, nor shall any building, buildings or other structure or structures be erected or constructed thereon designed to be used for residential purposes.

The said lands and premises and all buildings and structures erected and constructed thereon shall be used and occupied for business purposes only.

The party of the second part (i.e., the purchaser), its successors and assigns, shall provide 4 square feet of parking space or area for each square foot of ground floor area of buildings, and this ratio shall be maintained as additional buildings are from time to time erected and constructed.

The said lands and premises are sold subject to the provisions of the Zoning Regulations of the Borough of Neptune City.

The said lands and premises shall not be used or occupied as or for warehouse purposes or for public storage of any kind.

The party of the second part, its successors and assigns, shall erect and constructed upon said lands and premises or some part thereof a building or buildings, structure or structures of semi-fireproof construction, to be used for business purposes, which shall cost not less than \$100,000.00, within 18 months after the delivery of the deed for said lands and premises.³

- b. The language of the Indenture prohibits any use other than “business”, but does not specify the types of “business” desired. While somewhat of an all-encompassing term ~ rental apartments are businesses ~ §139-4 (Definitions) of the Borough’s Zoning Ordinance equates “business” with “commercial” use.

Webster⁴ defines “Business”, in pertinent part, as:

a usually commercial or mercantile activity engaged in as a means of livelihood

a commercial or sometimes an industrial enterprise

dealings or transactions especially of an economic nature

Based on this analysis, it would appear that the Indenture contemplated mercantile or retail uses on the Property.

³ The copy of the Indenture provided for this Analysis consisted of a first and second page. No signature (i.e. last) page was included. It is therefore not possible to know if the entirety of the restrictions are captured in the document reviewed.

⁴ <https://www.merriam-webster.com/dictionary/business>

2. Current Zoning

The Property is located in the Borough's Commercial (C) Zoning District, which is governed by §139-41. Permitted Principal and Conditional Uses in the C Zone are:

a. Permitted Principal Uses⁵

- (1) Retail stores and shops such as grocery stores, delicatessens, liquor stores, hardware stores, dry good stores, meat and poultry stores, flower shops, luncheonette, haberdashery and apparel shops and shoe stores, stationery stores, book stores;
- (2) Personal service establishments such as barber shops, beauty shops, dry cleaning shops, tailor shops, self-service laundries, appliance repair shops;
- (3) Business and professional offices and banks;
- (4) Restaurants;
- (5) Theatre, indoor assembly halls, bowling alleys and similar public recreational activities;
- (6) Municipal buildings, facilities and service essential to the operation of and solely intended for the needs of the Borough of Neptune City...;
- (7) Warehousing, provided (1) that the property is adjacent to Memorial Drive...; and
- (8) Public parks and playgrounds.

b. Permitted Accessory Uses (omitted for brevity).

c. Permitted Conditional Uses (subject to issuance of Conditional Use Permit)⁶

- (1) Private and public nonprofit educational facilities as regulated by the New Jersey Department of Education;
- (2) Churches and other Places of Worship.
- (3) Hospitals and nursing homes.

d. Supplemental Regulations⁷

- (1) Nothing shall be stored or displayed outdoors for any purpose except in compliance with

⁵ Cross-referenced in §139-41 with Permitted Principal Uses in the Residential Limited Commercial (RLC) Zone (§139-38), which itself cross-references Permitted Principal Uses in the R-1 Single Family Residential Zone (§139-33).

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⁷ Cross-referenced in §139-41 with the Supplemental Regulations in the Highway Commercial (HC) Zone (§139-40), which itself cross-references Permitted Conditional Uses in the Residential Commercial (RC) Zone (§139-39).

the following provisions:

- (a) New or used automobiles, or new or used boats, trailers, campers, or other types of drawn or propelled vehicles or displayed for sale or awaiting delivery are permitted. All display and storage are to be conducted on the same lot as the principal use. Said vehicles shall be stored on paved parking areas constructed in accordance with the standards established by the Site Plan Review Ordinance.
- (b) All garbage or trash awaiting collection shall be stored in a rear yard area in a completely enclosed container.
- (c) Products and materials necessary to and supplemental to a permitted principal use and which are customarily stored out-of-doors may be stored out-of-doors in a side or rear yard area, provided that:
 - i. The area used for such outdoors storage shall be paved in accordance with standards established by the Site Plan Review Ordinance.
 - ii. All outdoor storage shall be screened from view from any public street.
 - iii. All materials stored out-of-doors shall be arranged and maintained in an orderly and safe manner and no outdoor storage shall be permitted within 10' of any street line or within 5' of any side or rear lot line.
 - iv. Persons establishing uses in the zone are required to give particular attention to esthetic consideration particularly in conjunction with structural design and the use of landscaping to soften building lines and provide visual breaks and parking areas and as may be required and approved by the Planning Board or other appropriate authority pursuant to the Borough Site Plan Review Ordinance and Law.
- (2) The provisions of (1) hereinabove⁸ are directly contradicted by the Supplemental Regulations of §139-40,⁹ which state "there shall be no outdoors storage or display except that garbage and trash awaiting collection shall be stored only in rear yard areas in completely enclosed containers as required by local ordinance and the Site Plan Review Ordinance".
- (3) Residential uses are specifically "excluded" from the C Zone.
- e. Applying a liberal interpretation of the uses permitted by Ordinance on the Property to be prohibited by the deed restriction:
 - Theatres, indoor assembly halls, bowling alleys and similar public recreational activities;
 - Municipal buildings, facilities and services;
 - Warehousing;
 - Public parks and playgrounds;

⁸ Cross-referenced Supplemental Regulations for the RC Zone (§139-39)

⁹ Supplemental Regulations for the HC Zone.

- Educational facilities;
- Churches and other Places of Worship; and
- Hospitals and nursing homes.

f. Area, Yard and Building Requirements.

Uses permitted under RLC Zone regulations shall comply with the requirements of the RLC Zone. Uses permitted under R-1 Zone regulations shall comply with the requirements of the R-1 Zone.

Restaurants shall comply with the standards and requirements for this use as set forth in the RC Zone.

REGULATION	C ZONE	RC ZONE (Restaurants)	RLC ZONE	R-1 ZONE
Minimum Lot Area	1 ac	10,000 s.f.	7,500 s.f.	Regulations limited to Single Family Dwellings, which are prohibited in the C Zone.
Minimum Frontage	100'		75'	
Minimum Lot Width			50'	
Minimum Lot Depth			57'	
Minimum Setbacks				
Front	25'		25' – 40' ¹⁰	
Rear	30'		15'	
Side	10' / side		5' each	
	25' aggregate			
Maximum Lot Coverage	75%	70%		
Maximum Height	35'	30'		
Minimum Usable Floor Area of Principal Building			1,600 s.f.	

While a conformance review of the existing structures and any changes thereto attendant to the proposed uses is beyond the scope of this Analysis, the current structures are long-established and likely pre-date current zoning. As such, any non-conformities are pre-existing and therefore eligible to be grandfathered. A Certificate of Nonconformity under N.J.S.A. 40:55d-68 is recommended to formalize such grandfather status.

3. Master Plan

- a. The Borough's 2005 Master Plan Reexamination recommends an updated Land Use Plan Element, with "specific attention" given to "the potential to create a 'Main Street' area at the intersection of Route 35 and Third Avenue". Under Recommendations Concerning Redevelopment, the 2005 Reexamination recommends that the Borough "investigate the possibility of delineating certain

¹⁰ The same as established by the structure adjacent to the subject lot which is set back furthest but in no case more than 40' or less than 25'.

properties along Route 35 and Third Avenue for the purpose of creating a mixed use central business district that would essentially function as the Borough's 'Main Street'".

- b. The Borough's 2017 Master Plan Reexamination recommends that the Borough implement the zoning and use changes recommended in the 2005 Reexamination that had yet to be adopted. Pertinent to this Analysis, the 2005 Reexamination states:

The properties east and west of the intersection of Route 35 and Third Avenue [for] mixed-use development to encourage the development of a Main Street district at this location. This area is appropriate for retail and office uses, as well as upper story residences.

Local policymakers refer to this concept as a "Town Center". Such recommendation has yet to be instituted.

- c. While a detailed evaluation of the impacts of and requirements for a Town Center in this section of the Borough is beyond the scope of this Analysis, a lifting of the deed restriction would appear to be required to effectuate the mixed-use Town Center concept as proposed by the 2005 and 2017 Master Plan Reexaminations.

C. Proposal Analysis

1. Light Manufacturing / Fabrication Proposal

Details provided for this proposal is limited to a 1 page letter of interest from Specialty Lighting Industries, Inc.,¹¹ who is interested in relocating their company from Ocean Township to the Property.

The information sheet attached to the letter states that Specialty Lighting Industries is "a leading manufacturer of high-end architectural lighting solutions...". They are a "'one-stop-shop' that provides a full line of standard and custom" lighting. The company was founded in 1993 and is owner-operated. They have "40+ employees" who work 2 full-time shifts.

Other than using the currently-vacant building, no information has been provided as to visitors expected to the Property, economic benefits to the local businesses or impact to the surrounding residential neighborhood has been provided.

2. Storage Proposal

Details provided for this proposal is limited to a discussion with the Mayor and Borough Administrator, a review of the plans provided by Wentworth Properties (the proposed purchaser / developer) and a review of a YouTube video of the February 11, 2019 Neptune City Council Meeting where representatives of Wentworth and others promoting the project (collectively "Wentworth") presented details of the project.

According to Wentworth and their representatives:

¹¹ dated February 15, 2019

- The building *“is not a retail site”*. *“Retail is dying”*, and subdividing the 65,000 s.f. Building into smaller retail units is *“cost prohibitive”*.
- A real estate representative of the current property owner spent 6 - 7 months marketing the site to national retailers and junior & full sized anchors with no success.
- Neptune City is underserved by self-storage. The proposal is to install 600± storage units of varying size (range from 5'x5' to 10'x30') in the existing building in order to create a climate-controlled, high-bay, drive-up self-storage facility.
- Based on other facilities owned by Wentworth, 40% of storage renters are small businesses using the facilities for off-site storage and 60% of renters are households using the facility for personal storage. Additionally, some boat storage may be expected.
- While there will be no change in building size, additional buildings to the west of the existing buildings are proposed. It is not clear from the video if this is to be the “outside” storage discussed at the meeting or if “yard” storage is proposed. Buffers from the buildings to the adjacent uses are to range from 30' to 50'.
- There will be a small retail component for sale of boxes, locks, and other items related to storage but there will be no truck or trailer rental. A retail Shipping Office is possible.
- 2-3 employees are anticipated to be on-site at any time. Hours of operation are 8:00 a.m. to 6:00 p.m. The facility will be staffed between 9:00 a.m. to 6:00 p.m.
- The facility would expect 17 trips per day.
- There will be no on-site residential unit for facility management. Security will be addressed via a camera system. Trespassers will not be permitted in the storage units.
- The following building and site improvements are proposed:
 - Facade improvements will soften the appearance of the building. While details had not been finalized, the discussion did include matching the facades of the adjacent (Roccasano) shopping center.
 - Again, while details had not been finalized, the discussion did include matching the lighting and landscaping of the adjacent (Roccasano) shopping center.
 - Some existing impervious coverage will be removed and replaced with basins, other stormwater management facilities and landscaping. The remaining paved area will be milled and overlaid. This will result in a loss of parking stalls.
 - The existing fence is to remain but a general clean-up of the remaining area will be undertaken.
- The existing retail in the 31,000 s.f. building is to remain.

D. Opinion

The purpose of this assignment is to evaluate the uses proposed for Block 75, Lot 17 given the Property's current zoning and the vision contained in the Borough's Master Plan, and to provide a Planning Opinion as to whether or not it would be in the best interests of the Borough to lift the 1956 deed restriction placed on the land as a condition of transfer from the Borough to a private developer.

This Opinion is based on our understanding of the two proposals and the deed restriction as detailed herein.

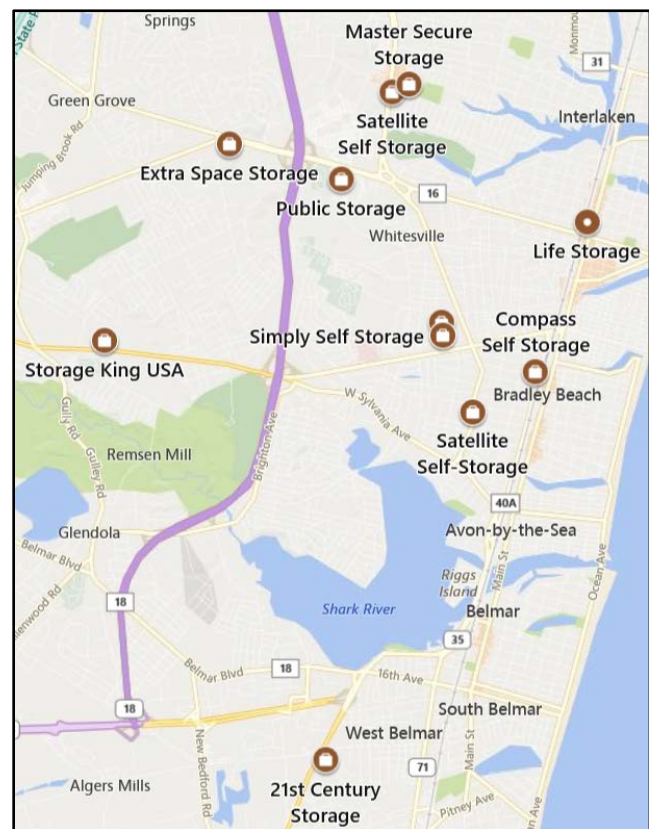
1. Availability of Self Storage

Wentworth asserted that Neptune City is "*underserved*" by self-storage facilities. It is not clear how they arrived at this assumption and we have no factual basis to challenge this claim. However, we do note that a number of self-storage facilities exist between (approximately) West Deal, West Belmar, Hamilton and the Ocean.

2. Local Economic Impact

a. Proposed Light Manufacturing / Fabrication Facility

This facility is anticipated to have "*40+ employees*". While no information as to the number of daily visitors expected at the facility has been provided, it is likely that such a specialized operation would not be a large traffic generator.



Assuming 3 visitors per day brings the total daily population of the facility to 43.

The facility is to be operated by 2 shifts. No information has been provided as to the hours per shift. Assuming the 1st shift is (approximately) 8:00 a.m. to 5:00 p.m. and the 2nd shift is (approximately) 5:00 p.m. to 2:00 a.m. means that the economic impact of the 2nd shift is discounted since workers will be leaving the facility when the local stores are closed.

b. Proposed Self-Storage Facility

This facility is anticipated to have up to 3 employees at a given time and 17 daily visitor trips. Assuming 3 people per car brings the total daily population of the facility to 54.

However, the economic impact of these 54 people is discounted since the visitors to the facility are either moving items into or out of storage and will therefore have limited opportunity or desire to shop locally.

While the discounts attributable to each proposal are not calculable, this office estimates the local economic impacts of the proposals to be relatively equivalent.

3. Neighborhood Impact

a. Proposed Light Manufacturing / Fabrication Facility

The Borough's Zoning Ordinance contains Performance Standards regulating noise, glare, vibration, heat, electronic radiation, odors, toxins, explosive / flammable materials, smoke / airborne particles, waste discharge, screening of unsightly objects / conditions and like and similar issues. No information has been provided as to the impacts that this facility might have on the adjacent residential neighborhood.

Again, assuming the 2nd shift is (approximately) 5:00 p.m. to 2:00 a.m., any impacts (if at all) that may be generated from this facility will be experienced during normal sleeping hours.

b. Proposed Self Storage Facility

Given its limited intensity, it is not likely that the facility will have an impact on the adjacent residential neighborhood.

Wentworth's reply to the question about trespassers being able to use the storage units for shelter as they do in the units in Neptune Township contradicted their statement that the proposal would have no impact on municipal services. Relying on Borough Police to address trespassing will impact municipal services.

Assuming that trespassing does not become a significant issue, this office estimates that the Storage facility will have less of a neighborhood impact than the Manufacturing / Fabrication facility.

4. Property Tax Impact

No tax information was provided for either proposal.

Property taxes in New Jersey are based on a formula of Assessed Land Value + Assessed Improvement Value x the Tax Rate. Land Value is based on market conditions and Improvement Value is determined by the cost of the buildings and its fixtures and finishes.

While the Land Value should not change under either proposal, the Improvement Value for a refitted Manufacturing / Fabrication facility is likely more than the Improvement Value for the existing building that is outfitted with 600± non-permanent storage units.

We request that the Borough's Tax Assessor opine on this issue.

E. Recommendations

At issue for Council is whether or not to lift the deed restriction to permit either of the proposals detailed herein. Related to this issue is whether or not to accept either proposal or pursue the Town Center concept as described in the Master Plan.

Based on our analysis, it appears that the deed restriction must be lifted for either proposal, OR for the Town Center. Within this context, we offer the following for consideration:

1. The Borough has before it a choice between 2 (presumably) solid reuse proposals with near-term completion and the Town Center concept, which will likely require years of planning and the dedication of resources to accomplish. Based on the information received to date, neither reuse proposal is ideal. The Town Center on the other hand, has a much larger long-term benefit to the community and is the direction adopted by the Master Plan.
2. We concur with the Wentworth representative in their comments that the Property "*is not a retail site*" and that "*retail is dying*". We also believe it plausible that subdividing the 65,000 s.f. Building into smaller retail units is "*cost prohibitive*". However, Wentworth's analysis does not reflect the development potential that could be realized under a (re)development plan for the Property ***in conjunction with*** other undeveloped / underdeveloped / underutilized parcels in the area. By creating a larger (re)development footprint, a crucial mass of commercial and residential uses could be sufficient to establish the Town Center.
3. Should the Borough elect to accept either reuse proposal, it is recommended that the lifting of the deed restriction be conditioned upon the developer submitting an Improvement Plan, satisfactory to the Governing Body,¹² for the entire lot. Such conditions could include, but need not be limited to:
 - The developer obtaining Major Site Plan Approval for the Project.
 - Replacing the existing fence and providing an appropriate landscaped buffer along the adjacent residential uses.
 - Replacing existing sidewalks with decorative treatments and adding appropriate site lighting and streetscaping.
 - Undertaking facade improvements to soften the appearance of the building (matching the adjacent (Roccasano) shopping center is encouraged).
 - Improving the parking lot by repaving and adding decorative lighting, perimeter landscaping and landscape islands and peninsulas.
 - Improving the existing stormwater management system.

¹² While such improvements are typically the purview of a Land Use Board as part of a Site Plan review, such a Board is legally subject to the variance, design waiver, design exception process under the Municipal Land Use Law. As such, protections that the Governing Body may desire may not be enforceable at the Board level. Such protections would be enforceable as a condition of lifting the deed restriction.

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Cc: S. Warner
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