



To: Bloomfield Zoning Board of Adjustment & Applicant

From: George Wheatle Williams, PP, AICP Principal
Steven Martini, PP, AICP Associate

Date: February 20, 2024

Re: **D-1 Use Variance Approval**
D-4 Floor Area Ratio (FAR) Variance Approval
D-5 Density Variance Approval
D-6 Building Height Variance Approval
“C” Variance Approvals
Preliminary and Final Site Plan Approval
78-88 Locust Avenue (Block #129, Lot #70)

Planning Review Memo

INTRODUCTION

This office has reviewed the application submitted by Ioannis Golemis (“Applicant”). The applicant has filed an application with the Bloomfield Zoning Board of Adjustment. The property in question (“subject site”) consists of one tax lot: 78-88 Locust Avenue (Block #129, Lot# 70). The proposed project consists of constructing a multi-family residential development containing 44 dwelling units. The subject site is split-zoned: The majority of the subject site is located in the M-1 General Industrial Zone, however, approximately 7,000 square is located in the R-2B Two-Family Residential Zone. Although self-storage facilities are a permitted use in M-1 Zone, it is not a permitted use in R-2B Zone. To that end, a “D-1” variance is required for the proposed use. Further, a “D-4” Floor Area Ratio (FAR) variance is required for exceeding the maximum FAR permitted in the M-1 Zone, a “D-5” variance is required for exceeding the maximum residential density permitted in the R-2B Zone and a “D-6” variance is required for exceeding the maximum building height by greater than 10 feet or 10% of the permitted height in the R-2B Zone. Additionally, “C” variances are requested for deviating from exceeding the maximum building coverage in the R-2B Zone; not meeting the minimum front, rear and side yard setbacks in the M-1 Zone and minimum rear



yard and side yard setbacks in the R-2B Zone; and not meeting the minimum parking space requirement for the proposed multi-family dwelling.

In preparation of this report, this office reviewed the following documents:

- Standard Development Application dated October 16, 2023.
- Preliminary and Final Subdivision and Site Plan Application Checklists undated.
- Variance Application Checklist undated.
- Cover Letter, prepared by Jennifer M. Porter dated October 17, 2023.
- Property Tax Records of the subject site as of October 5, 2023.
- Architectural Drawings containing fifteen (15) sheets prepared by AB design studio, inc. dated October 13, 2023.
- Letter re: Bound and Topographic Survey dated October 13, 2023
- Preliminary and Final Major Site Plans containing twenty-three (23) sheets prepared by David Juzmeski, P.E. and John J. Dunlea, P.E. of Neglia Engineering Associates dated October 18, 2023 with a print date of October 13, 2023.
- Project Description documentation undated.
- Circulation and Parking Assessment prepared by Dynamic Traffic, LLC dated October 5, 2023.
- Property List Request, List of Property Owners within 200 feet of the subject site and Map showing propertied with 200 feet of the subject site.
- Prior Township approvals:



- Zoning Board of Adjustment resolution for a use variance and for preliminary and final site plan approval to permit the conversion of a manufacturing and storage facility at 58-76 Locust Avenue (Block 129, Lot 60), to a self-storage and warehouse facility, adopted on January 16, 2002.
 - Zoning Board of Adjustment resolution for extension of final site plan approval and the granting of other “D” and “C” variances, permitted the construction of two mid-rise apartment buildings at 58 Locust Avenue, (Block 129, Lots 60 and 70), adopted May 11, 2006.
 - Zoning Board of Adjustment resolution for use and other “D” variances, bulk variances, and site plan and subdivision approvals authorizing the construction of two mid-rise apartment buildings at 58 Locust Avenue (Block 129, Lots 60 and 70), adopted May 11, 2006.
 - Zoning Board of Adjustment resolution for amended preliminary and final site plan approval, permitting the construction of two mid-rise apartment building at 58 Locust Avenue (Block 129, Lots 60 and 70), adopted May 18, 2011.
- Deed, Subdivision Deed and Parking Easement.
 - Corporate Disclosure Statement for Golemis Realty, LLC dated October 9, 2023.
 - Township of Bloomfield Land Development Ordinance (**Chapter 315**).
 - Township of Bloomfield Master Plan Reexamination Report (**2014**).
 - Township of Bloomfield Zoning Map.



PROPERTY AND AREA DESCRIPTION

The subject site is an irregularly-shaped through lot with street frontages along the southern side of Locust Avenue and the northern side of Willow Street. The site contains one Township tax lot: Block 129, Lot 70. According to MOD-IV Tax Records, the site contains an area of approximately 0.96 acres. The entire site is cleared and vacant. The only visible site improvements consist of a chain-link fence surrounding the perimeter of the site. The subject site is located approximately 1,075 feet north of the Township's municipal border with the City of East Orange.

Surrounding land uses consist of an array of uses. North of the subject site, across Locust Avenue, is Watsessing Park, specifically the dog park component of the Park. There is also a large vacant and cleared lot northeast of the subject site, at the corner of Locust Avenue and John F. Kennedy Drive South. West of the subject site is the Watsessing Elementary School. A 3-story brick self-storage facility (Compass Self-Storage; 58 Locust Avenue) is immediately southeast and east of the subject site, and slightly further east are the John F. Kennedy Drive South and Garden State Parkway rights-of-way. South of the subject site is residential uses along both sides of Willow Street, including a 14-unit, 3-story multi-family dwelling and single family dwellings with building height of 2.5 stories.

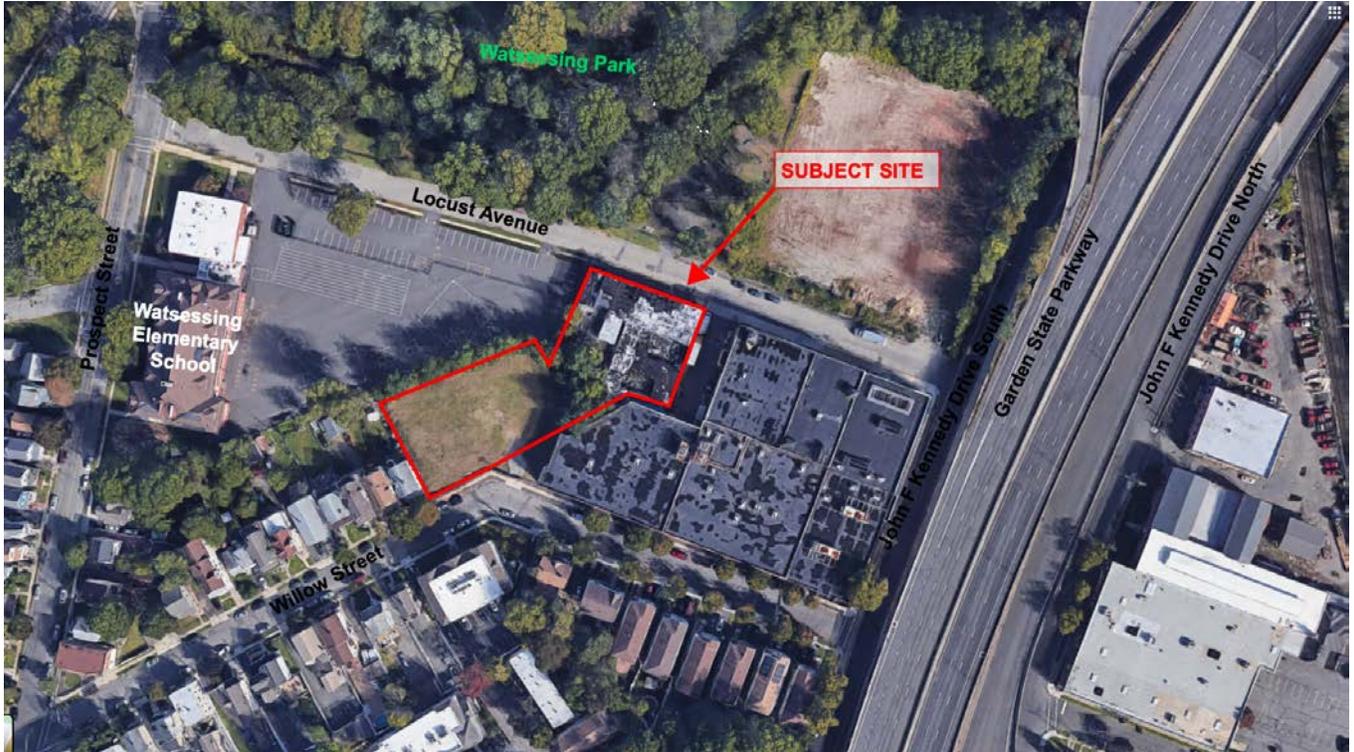


Exhibit 1. Aerial showing subject site location outline in red (Source: Google Maps, Accessed April 2023).

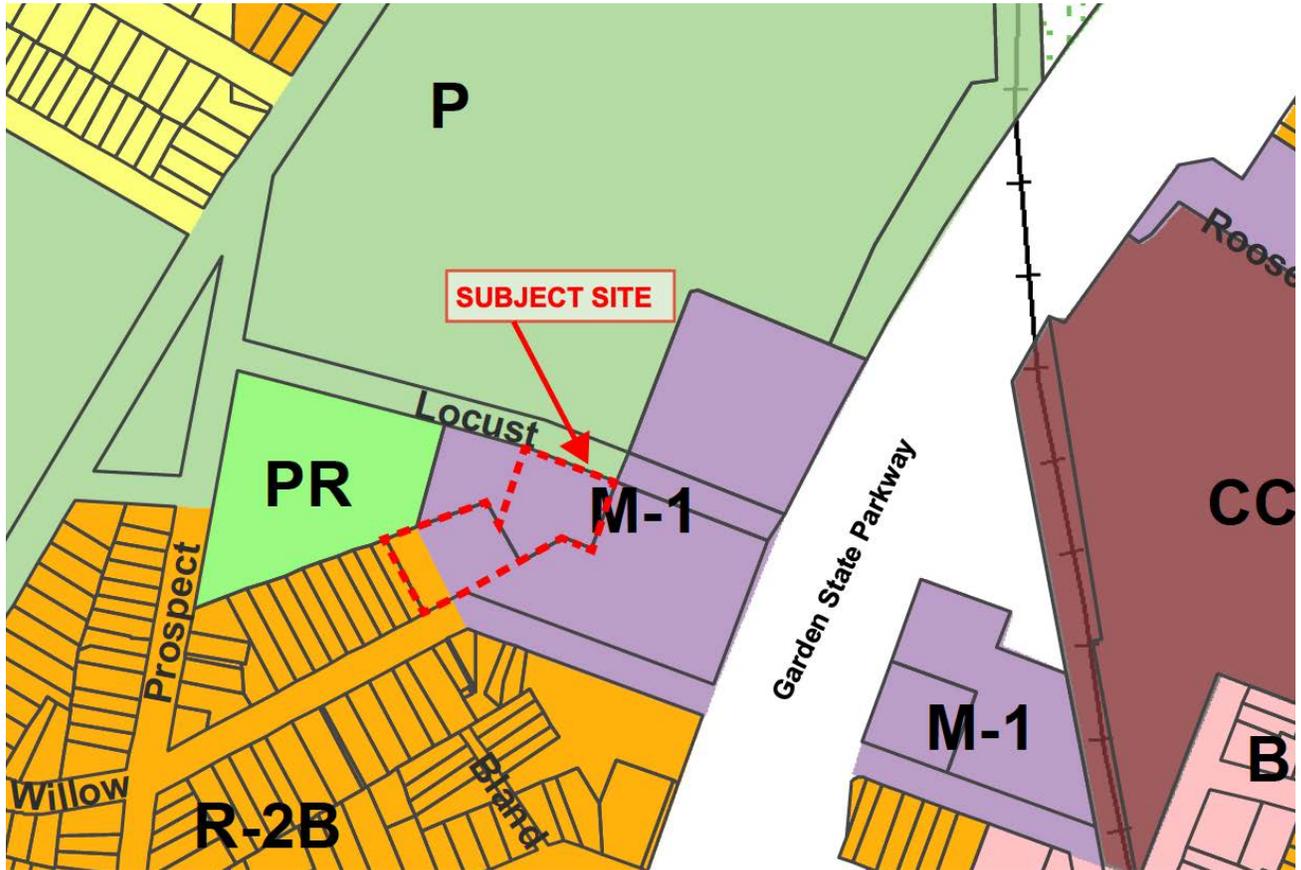


Exhibit 2: Excerpt of Bloomfield Township Zoning Map. The site is split between two zoning districts: B-2 at its northern portion fronting along Dodd Street and R-2B at its southern portion, including Lot 40. Note that of the site area's 42,003 square feet, approximately 7,000 square feet is in the R-2B Zone.



Photo 1: View of the subject site's existing vacant conditions (from Locust Avenue).



Photo 2: View of the existing 3-story Compass self-story facility (looking from Locust Avenue and John F. Kennedy Drive South intersection). Note that this property is also in the M-1 Zone.



Photos 3: 92 Willow Street is a 3-story multi-family dwelling south of the subject site and contains 14 units.



Photo 4: The Watsessing Elementary School property is contiguous to the subject site along its northwesterly boundaries. Note that the school building and play area are separated by the onsite parking lot.



Photo 5: View of subject site along Willow Street, where it abuts 99 Willow Street.



Photo 6: View of existing frontage along Willow Street (looking northeast).



PROJECT DESCRIPTION

The Applicant is proposing to construct a 6-story multi-family residential development. This multi-family development will contain 44 dwelling units (with a bedroom distribution of 28 one-bedroom units and 16 two-bedroom units). Nine (9) of these units (with a unit distribution of 5 one-bedroom units and 4 two-bedroom units) will be designated as affordable. These affordable units are scattered throughout residential floors 3 through 6.

The building will front along the site's Locust Avenue frontage. The portion of the site that fronts along Willow Street will be utilized as a parking lot which will contain 27 spaces. Of these 27 spaces, 9 spaces will be tandem along its westerly side. Two-way vehicular access will be provided via a curb cut along Locust Avenue and also a two-way vehicular access along the Willow Street curb cut.

Within the proposed building, the first floor will contain 26 parking spaces within the building, and of these spaces, 5 will be tandem. There will also be a storage room, air lock room, vestibule, utilities and controls room, refuse/recycling room and bicycle storage with the ability to accommodate 44 bicycles. Access to the upper floors will be provided via two elevators (one service elevator and one passenger elevator) and a stairwell at the southeastern corner of the building.

The second floor will contain a gym, foyer, office, restrooms, storage room, recycling/refuse room, and elevator and stairwell access to the other floors. There will also be parking spaces provided for 14 vehicles, including 10 electric vehicle charging stations. There will also be one loading space provided, which has access to the foyer and elevators. Vehicles will be able to access the second floor via Willow Street frontage.

The third through sixth floors will each consist of 11 dwelling units, including 7 one-bedroom units and 4 two-bedroom units. Of these units, affordable units will be scattered throughout the residential floors with between one to three units per floor. The southwestern portion of these floors will be connected via a bridge/corridor. Each unit will have access to an outdoor balcony. There will also be a storage room, refuse/recycling room, and stairwell and elevator access is provided to the other floors.



On the rooftop level, there will be a roof deck containing two hot tubs, pergolas, two storage rooms, restrooms, and elevator and stairwell access to the floors below. There will also be green roof on a portions of the roof. A 5-foot metal fence will surround the roof. Lastly, there will be mechanical units on curbs, vent towers, and sound walls with a height of 7.5 feet.

Landscaped lawn areas will be provided along the Locust Avenue front yard. There will also be substantial landscaping planted at the rear of the site along the Willow Street frontage and also along each side of the parking lot at the southwestern portion of the site near Willow Street. Lighting is also proposed within the parking lot and around the proposed dwelling.



RELIEF SOUGHT ACCORDING TO THE APPLICATION

The relief that the Applicant is requesting is summarized below:

- **“D” Variances:**
 - **Use Variance (“D-1”)** to construct the proposed multi-family dwelling on the subject site as it is not a permitted principal use in either the R-2B Zone or the M-1 Zone.
 - **Maximum FAR (“D-4”):** 0.5 is the maximum permitted in the R-2B Zone, whereas approximately 2.52 is proposed (COMMENT: The M-1 Zone does not have a maximum FAR regulation.)
 - **Maximum Density (“D-5”):** Two-family dwellings on a lot size of 4,000 square feet is permitted in the R-2B Zone. This equates to a residential density of approximately 27.48 units per acre, whereas the proposed 44-unit multi-family dwelling has a proposed density of approximately 45.63 units per acre.
 - **Maximum Building Height (“D-6”):** 40’ is the maximum building height permitted in the R-2B Zone, however, 61.84’ is proposed (COMMENT: The proposed building height necessitates a “D-6” Variance as the proposed height is more than 10% or 10 feet greater than the maximum height permitted in the zone.)
- **“C” Variances**
 - **Maximum Building Height:** 60’ is the maximum building height permitted in the M-1 Zone, whereas 61.84’ is proposed. (COMMENT: This height variance is considered a “C” Variance as it is less than 10% or 10 feet than the maximum height permitted in the M-1 Zone.)



- **Minimum Front Yard Setback:** 20' is the minimum required in the M-1 Zone. (**COMMENT:** As indicated on the Township's Schedule A Bulk Regulations Table, when abutting a residential zone, this requirement is doubled. Therefore, the minimum required is 40'), whereas 20' is provided along Locust Avenue).
- **Minimum Side Yard Setback:** 6' is the minimum required in the R-2B Zone, whereas 5' is provided.
- **Minimum Rear Yard Setback:** 20' is the minimum required in the M-1 Zone and 25' is the minimum required in the R-2B Zone. (**COMMENT:** As indicated on the Township's Schedule A Bulk Regulations Table, when abutting a residential zone, this requirement is doubled. Therefore, the minimum required is 40'), whereas 5.04' is provided.
 - **COMMENT:** The proposed building will also partially front along Willow Street. Regardless if this is considered a rear yard or front yard, the same requirement is applicable (20' is the minimum for either setback in the M-1 Zone and it is doubled when abutting a residential zone. Therefore, 40' is the minimum required for either a front yard or rear yard setback.
- **Maximum Building Coverage:** 25% is the maximum permitted in the R-2B Zone, whereas 33% is proposed.
- **Minimum Parking Spaces:** 82 spaces are required, whereas 67 spaces are proposed (including 14 tandem spaces), however with the application of the electric vehicle credit, 74 spaces are provided. To that end, a variance is still required even within the inclusion of the electric vehicle credit. Section 315-41 notes that residential units shall follow the parking requirements of the New Jersey Residential Site Improvement Standards (RSIS). As per the RSIS requirements, the parking requirement for Garden Apartments consists of the following:



- 1-bedroom units: 1.8 spaces per unit x 28 units = 50.4 spaces
- 2-bedroom units: 2 spaces per unit x 16 units = 32.0 spaces
- **Total: 82 spaces**
- **RSIS De minimis exception** for minimum parking spaces

There are several pre-existing, non-conforming conditions which will not be changed as part of the Application. These conditions consist of:

- Minimum lot area (1 acre is the minimum required in the M-1 Zone, whereas 0.96 acres is existing)
- Minimum lot width (150' is the minimum required in the M-1 Zone, whereas 140' is existing)

LAND USE AND ZONING ANALYSIS

As shown on Exhibit 2, the subject site is split between two of the Township's zoning districts: General Industrial (M-1) and Two-Family Lower-Density Residential Zone (R-2B).

M-1

According to Section 315-38(K) of the Land Development Ordinance, the intent of the M-1 zone is to establish areas within which industrial uses may be established and expanded under suitable controls. Such uses shall not be construed to include any use that, by reason of noise, odor, air and water pollution, glare or other nuisance factor, shall have an adverse effect upon adjacent property.

The following are principal, accessory and conditionally permitted uses in the M-1 Zone:

Principal Permitted Uses

- a) Offices.
- b) Manufacturing.



- c) Automobile sales.
- d) Research laboratories.
- e) Public buildings.
- f) Public utilities.
- g) Educational institutions.
- h) Public parks.
- i) Warehousing and self storage
- j) Parking facilities.
- k) Outdoor storage.

Accessory Uses

- a) Uses that are customarily incidental and accessory to the principal use as permitted herein.

Conditional Uses

- a) Adult uses.
- b) Gasoline service stations.
- c) Automotive repair services.
- d) Wireless communications facilities

R-2B

According to Section 315-38. A. (1) of the Land Development Ordinance, the intent of the R-2B zone is to preserve the integrity of the existing residential areas by preventing the intrusion of nonresidential uses into residential neighborhoods and by maintaining existing development intensity and population density consistent with residential neighborhood patterns and the specified one- or two-family density for the zone.

Principal Permitted Uses

- (a) Single-family detached dwellings.
- (b) Public parks and playgrounds.
- (c) Two-family dwellings.

Accessory Uses

- (a) Uses that are customarily incidental and accessory to the principal use as permitted herein.



Conditional Uses

(a) Home occupations.

For contextual purposes, as depicted on Exhibit 2, there are a few other zoning districts nearby the subject site. North of the subject site is a Public Zone (P), which consists of Watsessing Park. East of the subject site, on the opposite side of the Garden State Parkway is another M-1 Zone as well as a Community Commercial Zone (CC). Immediately east of the subject site is a Public/Recreational Zone (PR), which consists of Watsessing Elementary School.

Definitions

- **Impervious coverage:** Any material which generally reduces or prevents absorption of stormwater into the ground, including but not limited to buildings, parking areas, driveways, sidewalks, paving, decks and patios, but excluding outdoor swimming pools accessory to one- or two-family dwellings. All required parking areas that are permitted to remain unimproved and all gravel areas shall be considered as impervious surfaces. (Section 315-6 of the Bloomfield Land Development Ordinance)
- **Building coverage:** The ratio of the horizontal area of all principal and accessory buildings measured from the exterior surface of the exterior walls of the ground floor on a lot to the total lot area. (Section 315-6 of the Bloomfield Land Development Ordinance)
- **Height of structure:** The vertical distance from the average finished grade surrounding the structure to the level of the highest point of the roof surface. (Section 315-6 of the Bloomfield Land Development Ordinance)
- **Wall Sign:** Any sign that shall be affixed parallel to the wall or printed or painted on the wall of any building in such a manner as to read parallel to the wall on which it is mounted; provided, however, said wall sign shall not project above the top of the wall or beyond the end of the building. For the purposes of this chapter, any sign display surface that is affixed flat against the sloping surface of a mansard roof shall be considered a wall sign (Section 315 – 42.A.(5) of the Bloomfield Land Development Ordinance)



- **Yard, Front:** A space extending the full width of the lot between the principal building and the front lot line and measured perpendicular to the building at its closest point to the front lot line. (Section 315-6 of the Bloomfield Land Development Ordinance)
- **Yard, Rear:** The space between the rear building wall of the principal building, as extended from side lot line to side lot line, and the nearest lot line, and measured perpendicular to the building at its closest point to the nearest lot line. (Section 315-6 of the Bloomfield Land Development Ordinance)
- **Yard, Side:** The space between a side building wall of the principal building and a side lot line, extending from the front yard to the rear yard and measured perpendicular to the building at its closest point to the side lot line. (Section 315-6 of the Bloomfield Land Development Ordinance)



BLOOMFIELD MASTER PLAN

The last comprehensive Master Plan for the Township of Bloomfield was adopted in November 2002. The Bloomfield Planning Board adopted Reexamination Reports in 2008 and 2014. Many of its recommendations are repeated in both Reexamination Reports for official incorporation into the Bloomfield Master Plan.

Accordingly, the Township of Bloomfield has set the following Goals & Objectives and Recommendations relevant to this application:

2002 Master Plan Goals and Objectives

Goals #1: Provide a balanced land use pattern that preserves residential neighborhoods, strengthens the vitality of commercial districts, enhances remaining industrial areas, preserves and addresses parks and open space, protects environmentally sensitive natural features, accommodates community facilities and facilities local/regional circulation. (*Goals & Objectives, Chapter I, Page 1*)

Goals #4: Promote the growth of a diversified economic base that generates employment growth, increases tax ratables, improves income levels and facilitates the redevelopment of brownfield sites. Focus economic development efforts on growth sectors of the economy and existing commercial and industrial districts. (*Goals & Objectives, Chapter I, Page 1*)

Land Use Objective #3: Encourage and retain industrial uses wherever feasible, subject to the provision of buffering and screening, adequate access and performance standards to mitigate nuisances. (*Goals & Objectives, Chapter I, Page 2*)

Land Use Objective #9: Address quality of life issues resulting from land use conflicts, intensive commercial and industrial uses, increases in residential density from illegal conversions, vacant or underutilized parcels and limited parking in residential and commercial districts. (*Goals & Objectives, Chapter I, Page 2*)



Excerpts from 2002 Land Use Element

Land Use Issue #9: The Industrial District is recommended for further consolidation and reduction because of the continued erosion of the Township's manufacturing base. (*Chapter II, Page 7*)

Industrial: The bulk regulations should be updated to reflect the one story, high ceiling buildings with extensive floor area and large parking lots that are demanded by the modern industrial market. The standards for setbacks and buffers should also be increased in order to protect adjacent nonindustrial neighborhoods. (*Land Use Plan, Chapter II, Page 40*)

Industrial Recommendation # 1: Strengthen the Industrial District by consolidating industrial uses in areas where access, infrastructure and a concentration of similar uses increase their viability. (*Land Use Plan, Chapter II, Page 40*)

Industrial Recommendation # 3: Revise the M-1 Zone to emphasize light industrial uses and permit warehouse/distribution, self-storage and high technology internet data centers and "cyber hotels." (*Land Use Plan, Chapter II, Page 40*)

Industrial Recommendation # 4: Revise the M-1 Zone to strengthen bulk regulations for setbacks, buffers, building/lot coverage and building height (*Land Use Plan, Chapter II, Page 40*)

2008 Re-examination Report

The subject site is specifically mentioned in the 2008 Master Plan Re-examination Report. The follow are recommended uses and re-zoning options for the subject site (**COMMENT:** The Peerless Tube Company building has been demolished and the site has been cleared. To that end, reuse options are no longer applicable.)

The M-1 Zone on the west side of the Parkway consists of the "Peerless Tube Company Site" on both sides of Locust Avenue. The Peerless Tube Company manufactured a wide variety of custom empty containers such as collapsible metal



tubes and seamless aluminum aerosol containers for the pharmaceutical, cosmetic and toiletry industries. Peerless Tube Company no longer operates at this site, and therefore is no longer viable as an Industrial District. The main building is used for document/self-storage currently and is considered to be of very heavy construction that would make demolition cost prohibitive. Any future rehabilitation of the building for adaptive reuse would need to address parking needs in what has become essentially a residential neighborhood.

Possible options for future could be:

1. Multifamily Residential – The building appears to have been expanded over time and portions may lend themselves more practically for demolition to provide either parking or landscaped outdoor spaces. It may also be possible to convert the loading area into semi-structured and garage parking, depending on interior column spacing. If enough parking can be created within the building and in reclaimed portions of the site from partial demolition, a residential conversion, similar to Annin Flag, may be possible;

2. Community Center – The Township is actively searching for a feasible site for a major community center that would provide a full range of recreational facilities and large enough to adequately serve the Township’s population. A building such as Peerless Tube, if designed with a structural support system that provides a relatively open floor plan and adequate ceiling heights, may be adaptable for recreational use and be an option for the Township if the Memorial Park site adjacent to 225 Belleville Avenue site does not work out. In addition, the large expanses of flat roof area suggest the potential for incorporating a green roof into the rehabilitation that would absorb and reduce roof stormwater runoff and enable the application of other sustainable design techniques. The main obstacle would be parking. However, there may be a partial solution in the Watsessing School parking lot and the opportunity exists to coordinate the use of the parking between the school and community center and potentially enable the shared use of recreational facilities within the two buildings by students and the community.

The portions of the M-1 Zone other than where the Peerless Tube building is situated has already been approved for residential redevelopment. Included is a 44 unit condominium project known as “Parkside at



Bloomfield” on the site of a former commercial building on Locust Avenue. Another project includes eight two family homes adjacent to the Watsessing School. The building across the street from Peerless Tube at 71 Locust Ave was approved for redevelopment as 104 condominium units, but site contamination was found to be affecting the Second River and remediation imposed by NJDEP made the clean-up cost prohibitive and the project was abandoned by the developer pending some form of financial assistance.

Recommendations for rezoning include the R-G (Garden Apartment) zone for the Peerless Tube Building and 71 Locust Avenue, in combination with the R-2B Zoning that has been enacted for the portion of the site that have been developed as eight two family homes.” (Pgs. 28-30)

2014 Master Plan Re-examination Report

The 2014 Master Plan Re-examination Report reiterates the mentioning of the subject site in the 2008 Master Plan Re-examination Report and also offers the following regarding the extent to which this issue has been reduced or increased:

***Willow Street East & West of Parkway:** Both areas mentioned were included in the Watsessing Center Transit-Oriented Design Plan. The Watsessing Plan recommends that the east side remain M-1 Zone and the west side be rezoned to Multi-Family Medium Density Residential. The Zoning Ordinance has not been amended to permit "backup sites" as a principal use. Currently the aforementioned areas are being used as industrial, therefore no zoning changes are proposed at this time. This issue will be revisited during the next reexamination of the Master Plan. (Pgs. 6-7)*



STANDARDS FOR GRANTING VARIANCE RELIEF

The New Jersey Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70 sets forth the statutory requirements for variance relief.

D Variances

The Municipal Land Use Law (MLUL) at N.J.S.A. **40:55D-70(d)(1)** permits the Board of Adjustment in particular cases for special reasons, grant a variance to allow departure from regulations to permit "a use or principal structure in a district restricted against such use or principal structure". This represents the Positive Criteria of the statute. A "d" variance also requires a showing of the Negative Criteria. An applicant must demonstrate that the proposed variances can be granted "without substantial detriment to the public good and will be substantially impair the intent and purpose of the Zone Plan and Zoning Ordinance."

D-4 Floor Area Ratio (FAR) Variance

Floor area ratio controls are controls on intensity of use. They apply primarily to nonresidential and multi-family residential structures. There has been a trend, however, toward using floor area ratio provisions in single-family residence districts.

The term "floor area ratio" is defined in N.J.S. [40:55D-4](#) as meaning "the sum of the area of all floors of buildings or structures compared to the total area of the site". The term "building" is defined in N.J.S. [40:55D-3](#) as meaning "a combination of materials to form a construction adapted to permanent, temporary, or continuous occupancy and having a roof." The term "structure" is defined in N.J.S. [40:55D-7](#) as "a combination of materials to form a construction for occupancy, use or ornamentation whether installed on, above or below the surface of a parcel of land."

According to N.J.S. [40:55D-70d\(4\)](#), variances from FAR controls may be granted only by boards of adjustment under subsection d(4) and not by planning boards. The reason is that variances of this type can pose a greater threat to the zone plan



and public good than other dimensional controls, which are regulated by subsection (c).

Any application to "increase ... the permitted floor area ratio" is cognizable only under subsection d(4) of the statute and relief can be granted only upon the showing of "special reasons." However, it has been held that in establishing special reasons for a FAR variance, *Coventry Square v. Westwood Zoning Bd. of Adjustment*, [138 N.J. 285](#) (1994) and **not** *Medici v. BPR Co.*, [107 N.J. 1](#) (1987) controls. Therefore, the applicant for a FAR d(4) variance need **not** show that the site is particularly suited for more intensive development. Rather, such an applicant must show that the site will accommodate the problems associated with a floor area larger than that permitted by the ordinance. (Cox & Koenig)

D-5 Density Variance

The term "density" is defined in N.J.S. 40:55D-4 as "The permitted number of dwelling units per gross area of land to be developed."

Density restrictions, primarily applicable to residential structures, perform the same functions as floor area ratios, that is, they control intensity of use.

The standard for granting such relief is that applied to a floor area ratio case: i.e., demonstration that the site may accommodate the extra density. Note, however, that although variances for density and height are subject to the weighing analysis of other (d) variances, when a zoning board considers application for (d)(1) use variances, associated density and height variances are tested against a more relaxed standard that requires applicants to demonstrate that the site will accommodate problems associated with a proposed use with greater density or height than permitted. *Price v. Himeji, LLC*, 214 N.J. 263, 296-297 (2013).

D-6 Building Height Variance

The Zoning Board of Adjustment has exclusive jurisdiction over an application for a variance concerning the height of a principal structure which exceeds by either ten feet or 10% the maximum height permitted in the district.



In *Grasso v. Bor. of Spring Lake Heights*, 375 N.J. Super. 41 (App. Div. 2004), the court explored reasons for adopting height controls in residential zones and some of the special reason and negative criteria arguments that might be advanced in seeking a variance from such controls, likening the test to be applied to that for a FAR variance. The Grasso court found that the special reasons may be established by demonstrating an undue hardship, which for a d(6) variance requires a showing that the height restriction prohibits use of the property for a conforming structure, or in the alternative by demonstrating that the increased height of the building does not offend the purpose of the height restriction which the court characterized as being focused primarily on light and air concerns as well as being another method of controlling density. (Cox & Koenig)

C Variances

The Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70c sets forth the standards for variances from the bulk regulations of a zoning ordinance. A c(1) variance is for cases of hardship due to a) exceptional narrowness, shallowness or shape of a specific property, or b) by reason of exceptional topographic conditions or physical features uniquely affecting a specific piece of property or c) by reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

A c(2) variance may be granted where the purposes of the Municipal Land Use Law would be advanced by deviation from the zoning ordinance requirements, that the variance can be granted without substantial detriment to the public good, that the benefits of the deviation would substantially outweigh any detriment and that the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The benefits identified in granting a c(2) variance must include benefits to the community as a whole, not only the applicant or the property owner. A c-variance applicant must address the “negative criteria,” and affirmatively demonstrate that the variance can be granted “without substantial detriment to the public good” and “without substantial impairment to the intent and purpose of the zone plan and zoning ordinance”.



PLANNING COMMENTS

1. As required of “D-1” use variances, the Applicant should provide the Positive and Negative Criteria of the use variance for the proposed multi-family dwelling on the subject site. As outlined in *Medici v. BPR*, the Applicant must demonstrate the special reasons promote the general welfare of the community and that the site is particularly suited for the development (*positive criteria*). Also stated in *Medici*, the Applicant must show that the project will not be substantial detrimental to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance (*negative criteria*).
2. The Applicant shall provide testimony regarding how the proposed multi-family dwelling use will fit into the land development pattern of this area of the Township.
3. The Applicant shall provide proofs relevant to exceeding the maximum floor area ratio (FAR) permitted in the M-1 Zone (“D-4” variance). The Applicant should address that the site can accommodate the greater FAR than permitted, as outlined in *Price v. Himeji* case.
4. The Applicant should address that the site can accommodate the greater density (“D-5” variance) than permitted, as outlined in *Price v. Himeji* case.
5. The Applicant should also provide proofs for exceeding the maximum building height (“D-6” variance) and that the site can accommodate the issues associated with a greater building height. The Applicant should address that the site can accommodate the greater height than permitted, as outlined in *Price v. Himeji* case. Additionally, the Applicant shall demonstrate that the additional height will not obstruct neighboring properties from accessing sufficient light and air.
6. As per the Boundary and Topographic Survey, the grade of subject site has a fairly steep incline at the approximate center of the subject site, increasing approximately 13 feet. The subject site is in the Zone AE flood zone, which has a 1% change of annual flood, as per FEMA.



7. The Applicant shall discuss if there will be an onsite supervisor and/or property management staff. Further, the Applicant shall discuss proposed security measures for the multi-family dwelling.
8. The Applicant shall confirm that the proposed landscaping will effectively screen the subject site where its abuts residential properties along the Willow Street frontage and the southwesterly property line.
9. The subject site is split between two zoning districts. The north and easterly portions are zoned M-1 and approximately 7,000 square feet of the southwesterly portion of the site is zoned R-2B. As noted in Cox & Koenig:

“Hardship may also arise out of ‘split lot zoning’. This occurs when a zoning boundary line runs through a piece of property so that, for example, the portion fronting on a street is zoned for a commercial use but the rear portion of the lot is zoned residential. If the effect of such zoning is to render unusable the rear portion of the lot so as to effectively zone it into idleness, hardship exists sufficient to support the grant of a variance subject, however, to an appropriate finding as to the negative criteria. In AMG Associates v. Tp. Of Springfield, [65 N.J. 101](#) (1974), for example, frontage along a main thoroughfare was zoned for business to a depth of 150 feet which left the rear portions of two of an owner’s lots in a residence district which, because of their size, could not be used in conformity with residential zoning purposes. The Supreme Court held that the owner was entitled to use the rear portions of the lot only to provide off-street parking required for office uses under the zoning ordinance.”

10. The Applicant shall provide testimony regarding safety, parking and vehicular/pedestrian circulation onsite.
 - a. The Applicant shall provide testimony regarding site circulation from both curb cuts along Locust Avenue and Willow Street.
 - b. We defer any further traffic and circulation comments/concerns to the Board Traffic Engineer.



11. The Applicant shall confirm if there is any signage proposed as part of this application.
12. The Applicant shall confirm if there will be any lighting spillover onto adjacent properties.
13. The Applicant shall confirm that the roof deck fence will surround the entire roof deck area to be accessible by residents, including the bridge/corridor between building portions.
14. The Applicant should provide testimony demonstrating compliance with all applicable RSIS requirements.
15. There are several previous Township approvals associated with the subject site:
 - a. Zoning Board of Adjustment resolution for a use variance and for preliminary and final site plan approval to permit the conversion of a manufacturing and storage facility at 58-76 Locust Avenue (Block 129, Lot 60), to a self-storage and warehouse facility, adopted on January 16, 2002.
 - b. Zoning Board of Adjustment resolution for extension of final site plan approval and the granting of other "D" and "C" variances, permitted the construction of two mid-rise apartment buildings at 58 Locust Avenue, (Block 129, Lots 60 and 70), adopted May 11, 2006.
 - c. Zoning Board of Adjustment resolution for use and other "D" variances, bulk variances, and site plan and subdivision approvals authorizing the construction of two mid-rise apartment buildings at 58 Locust Avenue (Block 129, Lots 60 and 70), adopted May 11, 2006.
 - d. Zoning Board of Adjustment resolution for amended preliminary and final site plan approval, permitting the construction of two mid-rise apartment building at 58 Locust Avenue (Block 129, Lots 60 and 70), adopted May 18, 2011.



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CONCLUSION

The above comments are based on the review of the materials submitted to date. Nishuane Group reserves the right to provide new or updated comments as additional information becomes available. This Report should be cross-referenced with the Board Engineer's Review Letter.