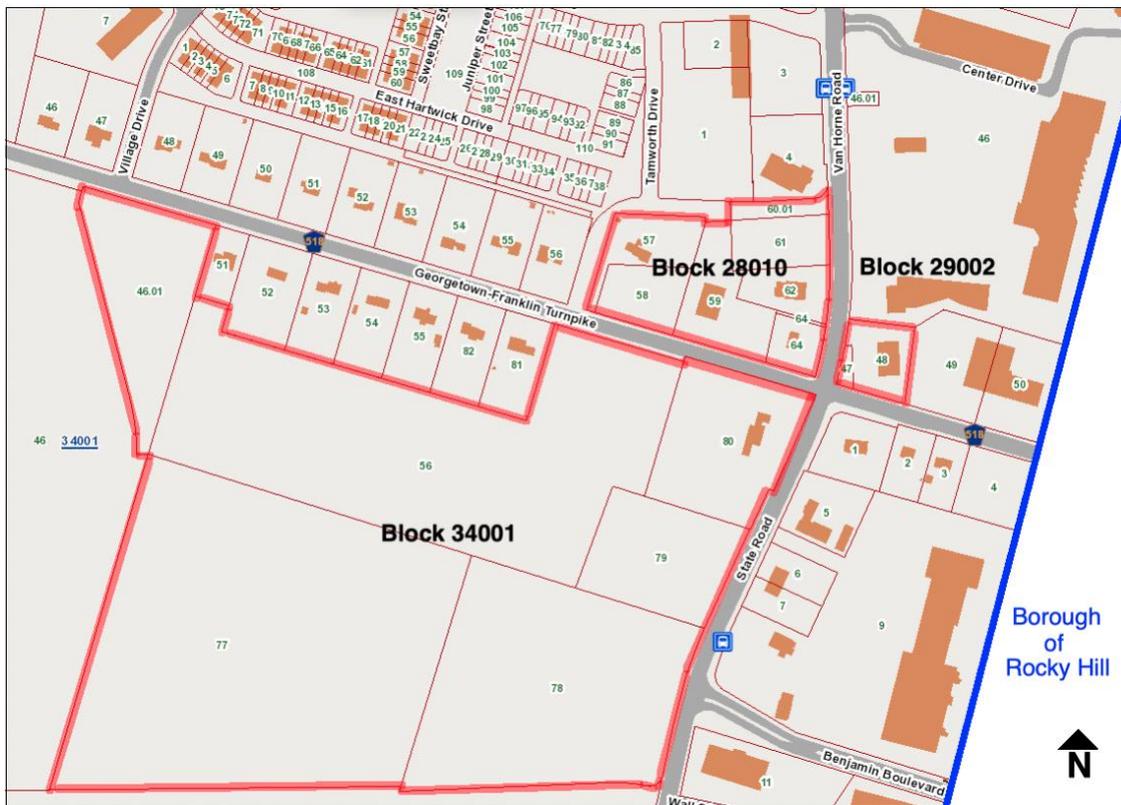


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PLANNING EVALUATION OF PRELIMINARY INVESTIGATION REPORT AREA IN NEED OF REDEVELOPMENT DESIGNATION PHASE 2: GATEWAY REDEVELOPMENT

Montgomery Township
Somerset County, New Jersey



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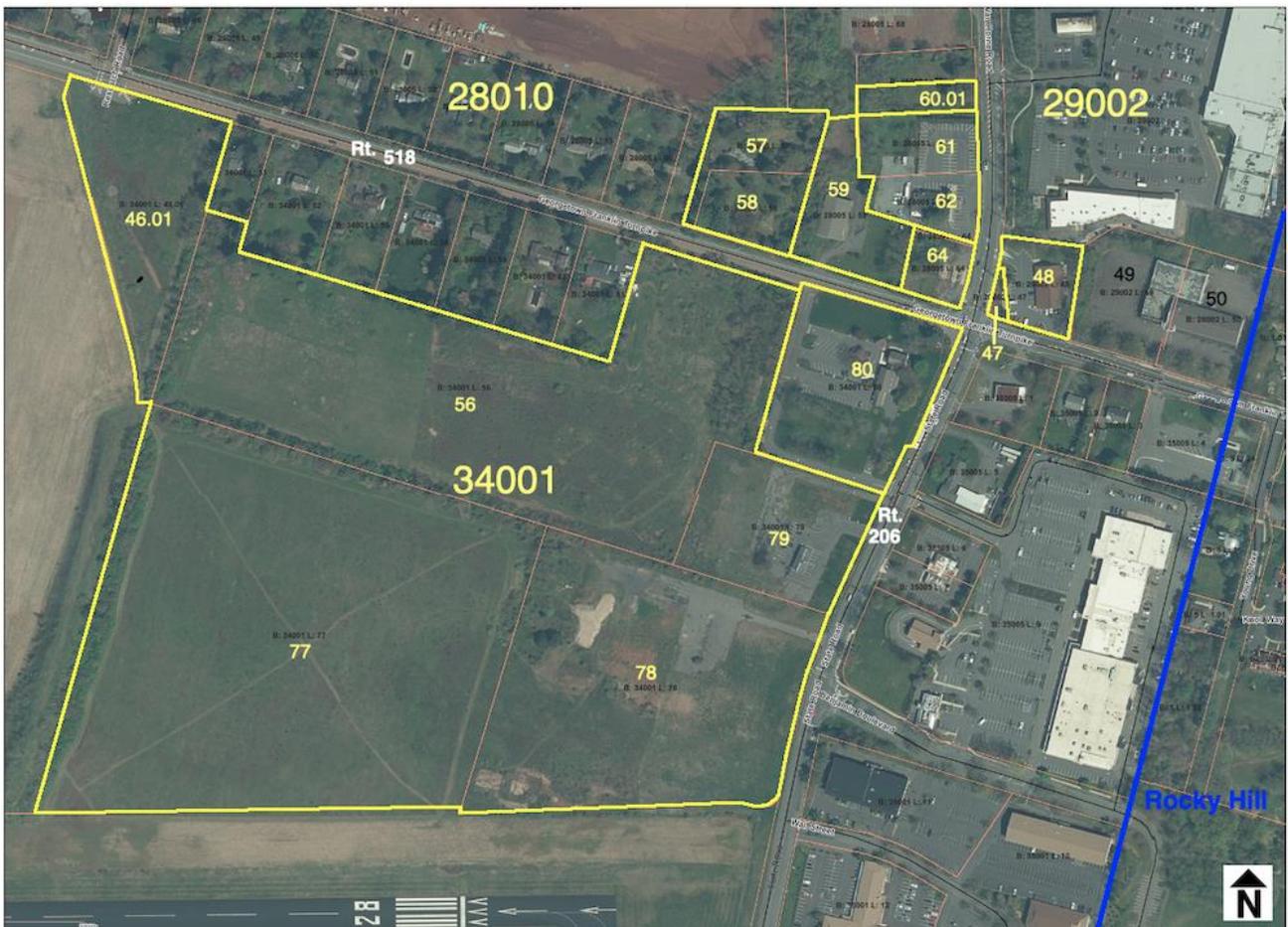
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May 9, 2022

INTRODUCTION

On June 17, 2021 the Township Committee of Montgomery Township directed the Township Planning Board to undertake a preliminary investigation as to whether certain properties near the intersection of County Route 518 and State Route 206 satisfy the statutory criteria for designation as an area in need of redevelopment as set forth in N.J.S.A. 40A:12A-1 et seq. In response to this directive, a "Phase 2: Gateway Redevelopment" report dated March 23, 2022 was prepared for Montgomery Township by the consulting firm of Clarke Caton Hintz. The report concluded that all of the properties in the Phase 2 Study Area were eligible for designation as an area in need of redevelopment with the potential for acquisition by eminent domain.

This Planning Evaluation is being prepared on behalf of NM Properties, L.L.C. which is the owner of Lot 48 in Block 29002 at 1273 Route 206 that is developed with a Wawa convenience store. Upon review of the Phase 2: Gateway Redevelopment report, I conclude that the report does not constitute substantial credible evidence that would support an area in need of redevelopment designation for Lot 48 in Block 29002. I further conclude that the report similarly does not constitute substantial credible evidence for the adjacent Lot 47 in Block 29002, nor for certain other properties in the Study Area. The bases for these conclusions are contained in the remainder of this Planning Evaluation.

**PLATE I
LOCATION OF PHASE 2 STUDY AREA**



REDEVELOPMENT AREA DESIGNATION CRITERIA - BACKGROUND

In New Jersey, the designation of an area as in “need of redevelopment” by a governing body is a formal process governed by state law. The powers are described in the New Jersey State Constitution, and the process is authorized by the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. This statute requires participation by both the planning board and the governing body, and it establishes criteria for designating an area as in need of redevelopment or as blighted. The term “blighted area” has the same meaning as “area in need of redevelopment.”

Regarding procedures for designation of property as an area in need of redevelopment, the governing body must first authorize the planning board to conduct a preliminary investigation. The results of this investigation (which requires notice indicating whether the investigation is for a condemnation or non-condemnation redevelopment area, a public hearing, and an opportunity to be heard) are subsequently referred back to the governing body. The referral is in the nature of a recommendation by the planning board that all or part of the Study Area is, or is not, in need of redevelopment. In response, the governing body has the option of accepting or rejecting in whole, or in part, the planning board’s recommendation. According to case law, the designation must be based on substantial credible evidence that one or more of the criteria set forth in the Local Redevelopment and Housing Law are satisfied. Moreover, the municipality through its planning board bears the burden of presenting such evidence.

The specific criteria for designating an “area in need of redevelopment” are found in N.J.S.A. 40A:12A-5 and are reproduced in part on the following page along with the definition of the term “redevelopment area.” The definition of “redevelopment area” in Section 3 allows for the inclusion of properties which are not by themselves detrimental to the public safety, health, morals, or welfare provided they are found necessary for effective development of the area of which they are a part.

The New Jersey Legislature expressed the specific purpose of the Local Redevelopment and Housing Law in N.J.S.A. 40:12A-2.a as follows:

There exist, have existed and persist in various communities of this State conditions of deterioration in housing, commercial and industrial installations, public services and facilities and other physical components and supports of community life, and improper, or lack of proper, development which result from forces which are amenable to correction and amelioration by concerted effort of responsible public bodies, and without this public effort are not likely to be corrected or ameliorated by private effort.

Once an area is designated as in need of redevelopment, the governing body (typically the designated redevelopment agency) can adopt a redevelopment plan by ordinance and select a redeveloper of the Study Area. In areas that are designated as condemnation redevelopment areas, a governing body via the adoption of a redevelopment plan can exercise its eminent domain powers to acquire private property for redevelopment purposes despite the unwillingness of the property owner to sell.

REDEVELOPMENT CRITERIA FROM N.J.S.A. 40A:12A and Section 3

5. A delineated area may be determined to be in need of redevelopment if, after investigation, notice and hearing as provided in section 6 of P.L.1992, c.79 (C.40A:12A-6), the governing body of the municipality by resolution concludes that within the delineated area any of the following conditions is found:

a. The generality of buildings are substandard, unsafe, unsanitary, dilapidated, or obsolescent, or possess any of such characteristics, or are so lacking in light, air, or space, as to be conducive to unwholesome living or working conditions.

b. The discontinuance of the use of a building or buildings previously used for commercial, retail, shopping malls or plazas, office parks, manufacturing, or industrial purposes; the abandonment of such building or buildings; significant vacancies of such building or buildings for at least two consecutive years; or the same being allowed to fall into so great a state of disrepair as to be untenable.

c. Land that is owned by the municipality, the county, a local housing authority, redevelopment agency or redevelopment entity, or unimproved vacant land that has remained so for a period of ten years prior to adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections or portions of the municipality, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital.

d. Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

e. A growing lack or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real property therein or other similar conditions which impeded land assemblage or discourage the undertaking of improvements, resulting in a stagnant and unproductive condition of land potentially useful and valuable for contributing to and serving the public health, safety and welfare, which condition is presumed to be having a negative social or economic impact or otherwise being detrimental to the safety, health, morals, or welfare of the surrounding area or the community in general.

f. Areas, in excess of five contiguous acres, whereon buildings or improvements have been destroyed, consumed by fire, demolished or altered by the action of storm, fire, cyclone, tornado, earthquake or other casualty in such a way that the aggregate assessed value of the area has been materially depreciated....

g. In any municipality in which an enterprise zone has been designated pursuant to the "New Jersey Urban Enterprise Zones Act," P.L.1983, c.303 (C.52:27H-60 et seq.) ...

h. The designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation.

3. As used in this act, unless a different meaning clearly appears from the context: ...
(y) "Redevelopment area" shall mean an area of a municipality which the governing body thereof finds is a blighted area or an area in need of rehabilitation whose redevelopment is necessary to effectuate the public purposes declared in this act. A redevelopment area may include lands, buildings, or improvements which of themselves are not detrimental to the public health, safety or welfare, but whose inclusion is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part;

DESCRIPTION OF THE PHASE 2: GATEWAY REDEVELOPMENT REPORT

The testimony at the April 11, 2022 Planning Board hearing was outlined in a 114 page report titled “2022 Preliminary Investigation of an Area in Need of Redevelopment (Condemnation) for Phase 2: Gateway Redevelopment” dated March 23, 2022 prepared by Planner’s Michael F. Sullivan and Emily R. Goldman of the consulting firm of Clarke Caton Hintz. Hereinafter referred to as the Report, its cover indicates that it was prepared for Montgomery Township. The Report is summarized below:

Introduction (Pages 1-2)

The Report indicates that the Planning Board has already recommended the designation of Lots 49 and 50 in Block 29002 as in need of redevelopment as part of a first phase redevelopment effort.

Study Area Description – Location and Existing Conditions (Pages 2-4)

The Study Area is referenced by individual tax map lots near the intersection of State Route 206 and County Route 518 totaling 64.89 acres. Delineated for study are 15 tax map lots separated into three quadrants of the intersection. The portions of the Study Area south of Route 518 and east of Route 206 are noted as in Planning Area 2 on the 2001 State Development and Redevelopment Plan. The remaining portion of the Study Area north of Route 518 and west of Route 206 is in Planning Area 3. The following table lists the properties included in the Study Area with use descriptions from the Report and with addresses and acreage from Township tax assessment records.

**TABLE I
PROPERTY DESCRIPTIONS**

Block	Lot	Address	Ac.	Owner	Use
28010	57	1247 Route 206	2.05	Mary Curtis Horowitz	Dwelling
28010	58				
28010	59	990 Route 518	1.55	K. T. Corporation	Vacant auto parts store
28010	60.01	2261 Route 206	0.35	Montgomery Township	Vacant
28010	61	1290 Route 206	1.00	American Realty Assoc.	Parking for Tiger’s Tale Bar
28010	62		0.83		Tiger’s Tale Bar
28010	64	1276 Route 206	0.52	Mont. 206 Realty, LLC	Vacant Texaco gas station
29002	47	Route 206	0.06	Intersection Billboards, LLC	Billboard
29002	48	1273 Route 206	0.94	NM Properties, LLC	Wawa & new tenant prep.
34001	46.01	Route 518	3.78	Princeton Promenade, LLC	Farm
34001	56	Route 206	16.68	Princeton Promenade, LLC	Vacant
34001	77	Route 206	20.31	Princeton Promenade, LLC	Vacant
34001	78	1190 Route 206	10.02	Princeton Promenade, LLC	Vacant
34001	79	1216 Route 206	3.07	Princeton Promenade, LLC	Vacant
34001	80	995 Route 518	3.73	First Constitution/Lakeland	Bank, medical office

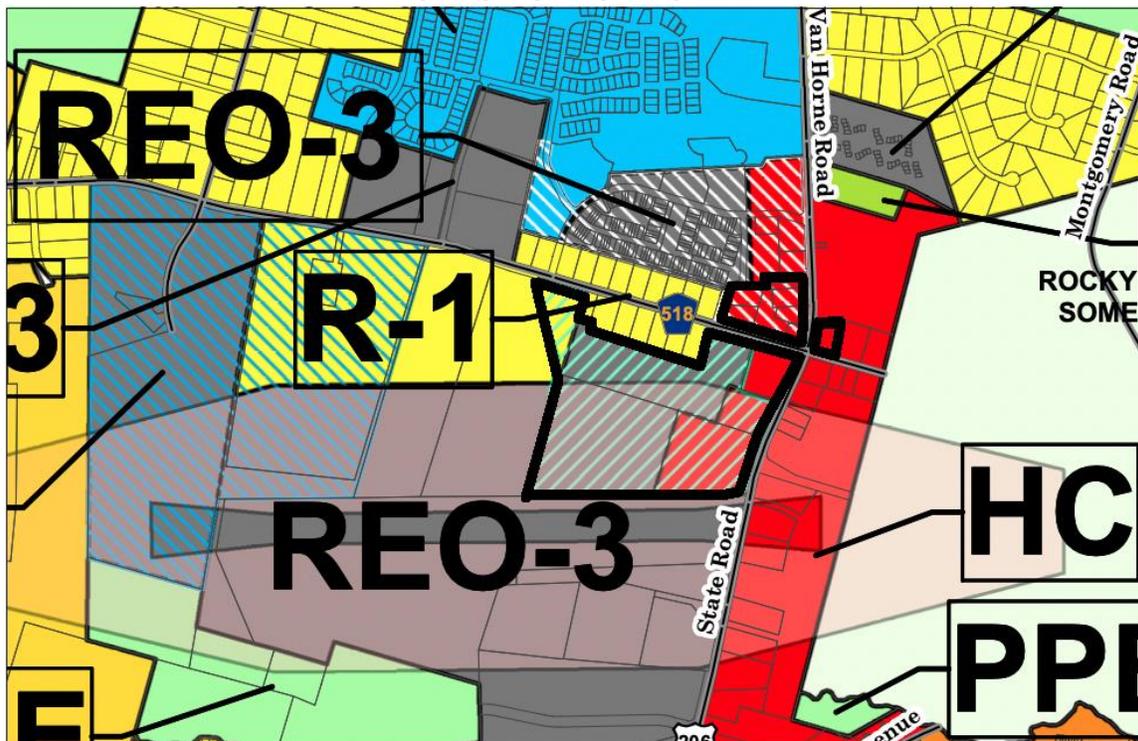
Study Area Description – Existing Zoning (Pages 4-6)

The Report describes the existing zoning that applies to the properties in the Study Area which is presented below in Table II and on Plate II. The Report notes that the properties in Block 34001 except for the Lot 80 have been approved for a planned shopping complex which has not yet been constructed. Included in the Appendix of the Report is a portion of a resolution from the Montgomery Board of Adjustment granting a “use” variance for a billboard structure on Lot 47 in Block 29002, which at the time was known as Lot 9 in Block 29001 in a Neighborhood Commercial Zone.

**TABLE II
APPLICABLE ZONING**

Block	Lot	Address	Zoning
28010	57	1247 Route 206	HC Highway Commercial, PMUD Overlay
28010	58	1247 Route 206	HC Highway Commercial, PMUD Overlay
28010	59	990 Route 518	HC Highway Commercial, PMUD Overlay
28010	60.01	2261 Route 206	HC Highway Commercial, PMUD Overlay
28010	61	1290 Route 206	HC Highway Commercial, PMUD Overlay
28010	62	1290 Route 206	HC Highway Commercial, PMUD Overlay
28010	64	1276 Route 206	HC Highway Commercial, PMUD Overlay
29002	47	Route 206	HC Highway Commercial
29002	48	1273 Route 206	HC Highway Commercial
34001	46.01	Route 518	R-2 Single Family Residential, PSC Overlay
34001	56	Route 206	REO-3 Research, Engineering and Office, PSC Overlay, Airport
34001	77	Route 206	REO-3, PSC Overlay, Airport Hazard Area
34001	78	1190 Route 206	HC Highway Commercial, PSC Overlay, Airport Hazard Area
34001	79	1216 Route 206	HC Highway Commercial, PSC Overlay, Airport Hazard Area
34001	80	995 Route 518	HC Highway Commercial

**PLATE II
PORTION OF ZONING MAP**



Maps (Pages 7-12)

The Report contains a general Location Map as well as maps titled Gateway Redevelopment Area, Phase 2 Gateway Redevelopment Study Area, Tax Map, Land Uses, and Smart Growth Areas. The map labelled "Land Uses" incorrectly shows Lot 47 in Block 29002 as vacant despite having a billboard structure. In error it also shows Lot 61 in Block 28010 as vacant despite its use as a parking area. Additionally, the Land Uses Map shows Lot 46.01 as vacant despite it having been in agricultural use.

Application of Redevelopment Criteria to the Study Area (Pages 13-33)

The Report references the statutory criteria for designating a property as in need of redevelopment. It also references the definitional section of the Local Redevelopment and Housing Law [LRHL] with the following explanation:

In addition to the criteria contained at N.J.S.A. 40A:12A-5, the LRHL also permits the designation of areas, or portions of study areas that are not necessarily detrimental to the public health, safety and welfare to be designated as an area in need of redevelopment when their inclusion facilitates the redevelopment of the remaining area. [Page 13]

Pages 13 and 14 are alleged to reproduce the statutory criteria "a" through "h" of the Local Redevelopment and Housing Law. However, criteria "b" and "e" are incorrect in that the Report does not faithfully reproduce the current wording of the statute.

Each of the sites in the Study Area is discussed and rationales are presented in alleged support of the recommended area in need of redevelopment. Table III and Plate III on the following page summarize the findings of the Report. It is noted that the recommendations on page 33 of the Report differ from the findings in the body of the Report. More particularly, criterion "d" was referenced as applicable to Lots 46.01, 56, and 77 in Block 34001 in the body of the Report but was not referenced in the final recommendations on page 33 of the Report. The graphics on Plate III include references to criterion "d" despite that criterion not being included in the recommendations section of the Report on page 33 for Lots 46.01, 56, and 77.

In its application of criterion "h" the Report automatically blends this criterion with the other statutory criterion in N.J.S.A. 40A:12A-5 or Section 3 of the Local Redevelopment and Housing Law as evinced from the following quote:

Criterion "h" can apply to all properties that either meet or other criteria or are determined to be necessary for the effective redevelopment under the definition of "redevelopment area" pursuant [to] the LRHL, N.J.S.A. 40A:12A-3. [Page 14]

Additionally, in its review of the Township owned Lot 60.01 in Block 28010, planners Michael F. Sullivan and Emily R. Goldman disagree with the findings in the 1998 case of Winters v. Twp. of Voorhees (320 N.J. Super. 150) opining that Camden County Assignment Judge Orlando misinterpreted the law. Planners Sullivan and Goldman contend that the simple fact of municipal ownership supports the applicability of criterion "c" directly contrary to the holding of the Winters case which is a published Law Division opinion.

**TABLE III
SUMMARY OF PHASE 2 REPORT FINDINGS**

Block	Lot	Criterion in Findings	Recommendation Page 33	Site Identification
28010	57	h,3	h,3	Horowitz Site
28010	58	h,3	h,3	
28010	59	b,d	b,d	Thul Site
28010	60.01	c	c	Township Lot
28010	61	d	d	Tiger's Tale
28010	62	d	d	
28010	64	b,d	b,d	Former Texaco Gas Station
29002	47	d,h	d,h	Billboard Site
29002	48	h,3	h,3	Wawa Site
34001	46.01	c,d,h,3	c,h,3	Montgomery Promenade Site (Inconsistency in the criteria for Lots 46.01, 56 and 77)
34001	56	c,d,h,3	c,h,3	
34001	77	c,d,h,3	c,h,3	
34001	78	c,d,h,3	c,d,h,3	
34001	79	c,d,h,3	c,d,h,3	
34001	80	h,3	h,3	First Constitution/Lakeland Bank

**PLATE III
MAP OF PHASE 2 REPORT FINDINGS**



Block 29002, Lot 48 (Wawa Site) (Pages 26-27)

The Report concludes that criterion “h” and Section 3 as a companion criterion are applicable to Lot 48 in Block 29002 which is owned by NM properties, LLC and developed as a Wawa convenience store plus an additional tenant space.

Criterion “h” is invoked solely on the basis that the lot is in a PA-2 Suburban Planning Area in the 2001 New Jersey State Development and Redevelopment Plan.

Section 3 is invoked in the Report on the basis that Lot 48 is situated between Lot 47 (the billboard lot) and Lots 49 and 50 to the east on Route 518 (previously recommended by the author to be an area in need of redevelopment and subsequently included within a Planning Board Resolution recommending designation)* and by virtue of this location are “an integral component of the redevelopment...that will share utility and street infrastructure with the remainder of the *Study Area*. As the site and building plans are developed it is important that they be developed in concert with the remainder of the *Study Area* as part of a holistic development.” The complete discussion in the Report for Lot 48 in Block 29002 is reproduced in Attachment A of this Planning Evaluation.

Appendix C of the Report contains an engineering traffic analysis of certain properties in the Study Area by Joseph A. Fishinger, Jr. of Bright View Engineering. In Appendix C, professional engineer Fishinger concludes that the Wawa Site is compliant with New Jersey State Department of Transportation access code requirements and has an adequate parking supply.

Block 29002, Lot 47 (Billboard Site) (Pages 24-26)

The Report concludes that Lot 47 is eligible for an area in need of redevelopment designation based on criterion “d” as well as criterion “h” ~~and Section 3~~. With respect to criterion “d” the Report concludes that all billboards “manifest a negative visual impact, through their structures, messaging and illumination” and that the elimination of billboards is a valid purpose of zoning because of their negative visual impacts.

Although the billboards were approved by the Township Board of Adjustment prior to 1973, the Report bases its conclusions on nonconformance with current Township zoning standards. Current Township standards prohibit billboards on any property in the Township. Additionally, permitted free-standing signs of this size are required to be setback 25 feet from the public right-of-way and the base of the subject sign is claimed to be located only 18 feet from the Route 206 right-of-way. Also referenced are the current lighting standards in the Township Zoning Ordinance that require that the light source be shielded. Also observed are “lantern-style” light fixtures that are “not shielded to prevent glare at a level above the ground that puts the lights close to the eye line/view of drivers.”

The Report referenced as a basis for invoking criterion “d” a property maintenance violation notice dated October 21, 2021 for untrimmed grass and weeds. The owner was given until November 1, 2022 to cut the grass or a fine and penalty would result. No evidence is provided that the violation continued past the due date.

*To the writer’s knowledge, the Montgomery Governing Body has not yet acted on the Planning Board’s recommendation and does not intent to act until the Planning Board has completed the hearings for all phases of the redevelopment effort.

Finally, the Report invokes criterion “h” because Lot 47 is in a PA-2 Suburban Planning Area which is a “smart growth” area. There is no claim in the discussion of Lot 47 that Section 3 is applicable.

Attachment B of this Planning Evaluation reproduces the complete analysis of Lot 47 in Block 29002 and Attachment C reproduces a portion of the Board of Adjustment approval for a billboard.

Recommendation (Page 33)

Presumably based on the application of redevelopment criteria as detailed on pages 14 through 33 of the Report, recommendations are offered by the two authors on page 33 that the entire study area is eligible for designation as an area in need of redevelopment as reproduced below:

RECOMMENDATION

This report and appendices constitute a preliminary investigation for determining an Area in Need of Redevelopment as directed by the Township Committee of Montgomery Township. It is the conclusion of this preliminary investigation that the Study Area qualifies under the criteria set forth at N.J.S.A. 40A:12A-1 et seq., to be designated as an Area in Need of Redevelopment. Block 28010 Lots 59 and 64 satisfy criterion “b” due to persistent substandard and unsafe building conditions, Block 28010 Lot 60.01 satisfies criterion “c” due to public ownership while Block 34001, Lots 46.01, 56, 77, 78 and 79 satisfies criterion “c” due to the lack of private investment for over ten years. Block 28010 Lots 59, 61, 62 and 64, Block 29002 Lot 47, and Block 34001 Lots 78 and 79 satisfy criterion “d” due to persistent negative site conditions that exhibit faulty design, obsolescence and dilapidation. Block 28010 Lots 57 and 58, Block 29002 Lots 47 and 48 and Block 34001 Lots 46.01, 56, 77, 78, 79 and 80 satisfy criterion “h” for smart growth and are necessary for the effective redevelopment of the *Study Area*.

As noted previously, the statutory redevelopment criteria alleged to be satisfied in the page 33 “Recommendation” section of the Report differ in some cases from those alleged to apply in the body of the Report. Criterion “d” was considered applicable to Lots 46.01, 56, and 77 in Block 34001 in the body of the Report whereas the applicability of this criterion was not recommended on page 33 of the Report.

Subsequent Procedural Steps (Pages 34-35)

The Report outlines activities that are possible after properties have been recommended by the Planning Board for designation as a redevelopment area.

Appendices A through F

Appendix A is a copy of the June 17, 2021 Township Committee Resolution #21-6-151 directing the Planning Board to conduct a preliminary investigation.

Appendix B was intended to contain deeds to Lot 60.01 in Block 28010. However, the copies of deeds are illegible.

Appendix C contains correspondence to and from Bright View Engineering concerning a traffic analysis of certain properties in the Study Area.

Appendix D includes Township violation records associated with Lot 64 in Block 28010.

Appendix E contains one page of a Zoning Board of Adjustment resolution for Lot 47 in Block 29002 approving a use variance for a billboard structure.

Appendix F contains an October 21, 2021 violation notice concerning untrimmed grass and weeds on Lot 47 in Block 29002.

PLANNING EVALUATION OF CRITERION USED IN THE PHASE 2 REPORT

The investigation of whether a property is eligible for an area in need of redevelopment designation requires a proper understanding of the statutory criteria used in the evaluation. A review of the Report indicates that the authors are misinterpreting the statutory criteria. In support of this observation are the following:

Criterion “h” has not yet been activated.

h. The designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation.

In New Jersey there is yet no law or regulation that adopts “smart growth planning principles.” Smart growth planning principles are not listed in the Local Redevelopment and Housing Law. They are not listed in the State Planning Act; nor are they listed in the New Jersey State Development and Redevelopment Plan. They are not listed in the Municipal Land Use Law or in any other New Jersey state statute or regulation. Because smart growth planning principals have not been adopted pursuant to law or regulation, criterion “h” is not yet applicable.

Smart growth planning principles essentially “exist” as bullet points on various websites and are typically displayed as follows:

- Mixed land uses
- Compact, clustered community design
- Range of housing choice and opportunities
- Walkable neighborhoods
- Distinctive, attractive communities offering a sense of place
- Open space, farmland, and scenic resource preservation
- Future development strengthened and directed to existing communities using existing infrastructure
- Transportation option variety
- Predictable, fair, and cost-effective development decisions
- Community and stakeholder collaboration in development decision-making

These unadopted smart growth principles are too general and, more importantly, have no bearing on whether a property is blighted as that term is used in the New Jersey Constitution.

Criterion “h” has no bearing on whether a property is blighted.

A careful reading of criterion “h” yields the conclusion that it has no bearing on whether a property is blighted as that term is used in the New Jersey Constitution. This conclusion was reached by New Jersey Public Advocate Ronald Chen in his publication “Reforming the Use of Eminent Domain for Private Redevelopment in New Jersey” dated May 18, 2006. See the New Jersey State Library web address: <https://dspace.njstatelib.org/handle/10929/25113?show=full>, File r2882006e.pdf.

As stated by Attorney Chen on page x of his publication:

Smart growth speaks to future change and alternative uses for land. By comparison, the term “blighted area” historically and constitutionally focuses on the present state of the land and not possible future uses for the land. Indeed, the word “blighted,” by plain meaning, implies that the deleterious condition has already occurred. Thus, there is no logical connection relation between an area designated for smart growth and a blighted area. On its face, criterion (h) exceeds constitutional bounds. Whether an area’s current use is consistent with smart growth planning principles has nothing at all to do with determining whether the area is presently in a blighted condition.

Considering properties in smart growth areas as blighted has an absurd result.

The New Jersey Office of Planning Advocacy has mapped certain areas of the State as smart growth areas. The 2001 New Jersey State Development and Redevelopment Plan contained a Policy Map dated March 1, 2001 dividing the State into several planning areas. Considered as smart growth areas are lands in Planning Area 1 (Metropolitan Planning Area), lands in Planning Area 2 (Suburban Planning Area) and designated centers outside of PA1 and PA2 areas as well as certain portions of lands under the jurisdiction of the New Jersey Sports and Exposition Authority (previously known as the Meadowlands Commission) and the Pinelands Commission. See 2006 Smart Growth Areas map in Attachment D. It is likely that well over 1.5 million acres of New Jersey would be considered within a smart growth area and, according to the authors of the Report, automatically considered as eligible for designation as an area in need of redevelopment regardless of the characteristics of the properties or their improvements. It is absurd that this amount of land in New Jersey is blighted as that term is used in the New Jersey Constitution.

As also stated in 2006 by Public Advocate Ronald Chen on page x of his document:

The reference to smart growth areas in criterion (h) de facto categorizes all State Planning Areas 1 and 2 – which include both metropolitan and suburban areas – as “blighted areas.” See N.J.S.A. § 13:1D-144. While there may certainly be smart growth areas that are also blighted, there can also be smart growth areas that in no way qualify as blighted areas; thus to categorically designate all smart growth areas as blighted exceeds constitutional limits. An area could meet none of the traditional requirements of a “blighted area” but because it fell within a swath targeted for smart growth, it would be blighted. The potential for abuse is apparent and the Constitutional limitation must be enforced.

Misinterpretation of Section 3.

3. As used in this act, unless a different meaning clearly appears from the context:...
(y) "Redevelopment area" shall mean an area of a municipality which the governing body thereof finds is a blighted area or an area in need of rehabilitation whose redevelopment is necessary to effectuate the public purposes declared in this act. A redevelopment area may include lands, buildings, or improvements which of themselves are not detrimental to the public health, safety or welfare, but whose inclusion is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part;

A careful reading of Section 3 of the Local Redevelopment and Housing Law requires a finding that inclusion of a non-blighted property must be found necessary for the effective redevelopment of the area of which it is a part. "Necessary" means that it is absolutely needed. It is insufficient to find that the inclusion of a property is important or that it facilitates redevelopment or that it is holistic or that it provides groundwork for effective redevelopment. These alternate findings are commonly relied upon in the Report. But these fabricated standards fall short of the required demonstration that the inclusion of a property is necessary for effective redevelopment.

Necessary means that effective redevelopment cannot take place without the inclusion of the non-blighted property. It means, for example, that the property is akin to the "the hole in the donut" which is the classic scenario for inclusion of a property which is not blighted. See U. S. Supreme Court case Berman v. Parker, 348 U.S. 26 (1954).

Illustrating the authors' misunderstanding is the Report's conclusion that Lot 48 in Block 29002 (the Wawa Site) is eligible for designation under Section 3. As stated on page 27 of the Report:

Block 29002 Lot 48 represents a much smaller portion (roughly 1.45%) of the *Study Area*. However, this lot represents an integral component of the redevelopment due to its location between Block 29002 Lot 47 (billboard) and Lots 49 and 50 (Phase I Gateway Redevelopment: Princeton Gamma-Tech Instruments Inc.) that will share utility and street infrastructure with the remainder of the *Study Area*. As the site and building plans are developed it is important that they be developed in concert with the remainder of the *Study Area* as part of a holistic development. Therefore, Block 29002 Lot 48 should be included to provide the groundwork for the effective redevelopment of the Study Area.

Examining this rationale, it is first observed that the properties considered eligible for designation as an area in need of redevelopment in Phase 1 were designated without reference to the need or necessity to include properties in Phase 2. Secondly, there is no explanation of how Lot 48's location between Lot 47 and Lot 49 is an integral component. Moreover, Lot 48 is served by utilities within the abutting public rights-of-way which is generally true of all properties served by public water and sewer. Those public rights-of-way are outside of the study area and owned by superior governmental entities: Somerset County and the State of New Jersey.

Unexplained is how Lots 47 and 48 in Block 29002 (billboard site and Wawa Site) can be integrated with the remainder of the Phase 2 area when the intervening space is outside of the Study Area and consist of public rights-of-way under the jurisdiction of Somerset County and the State of New Jersey. Unaddressed is why three corners of the intersection of Route 518 and Route 206 are within the study area and claimed to be “necessary for effective redevelopment” but the fourth corner developed as a Shell gas station was not included in the Study Area and apparently was not needed for a “holistic” redevelopment effort.

In essence, the applicability of Section 3 in the Report is based on the principle that bigger is better; that more land is always necessary for effective redevelopment regardless of its functional relationship to the remainder of the Study Area or to one of the three separate segments of the Study Area. However, this rationale in the Report does not match the mandate of the Local Redevelopment and Housing Law that requires that a property be found necessary for effective redevelopment.

Misinterpretation of criterion “c.”

c. Land that is owned by the municipality, the county, a local housing authority, redevelopment agency or redevelopment entity, or unimproved vacant land that has remained so for a period of ten years prior to adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections or portions of the municipality, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital.

The authors of the Report claim that a site can be declared in need of redevelopment based on municipal ownership alone regardless of any physical characteristics of the property or its location. However, this is an incorrect reading of criterion “c.” A reading of criterion “c” indicates that land that is owned by a municipality must also be found not likely to be developed through the instrumentality of private capital owing to certain named factors. Those factors include its location, remoteness, lack of means of access to developed sections or portions of the municipality, or topography or the nature of the soil. The insufficiency of declaring a site blighted based only on municipal ownership has been affirmed in the 1998 case of *Winters v. Twp. of Voorhees* (320 N.J. Super. 150).

The planners who authored the Report believe that Assignment Judge Orlando was wrong in his ruling in the *Winters* case because in their opinion he had a simplistic reading of the statute, put too much emphasis on punctuation, and failed to indicate how private capital could be used to redevelop public land. However, Judge Orlando concluded:

I reach this conclusion based on principles of statutory construction, along with the legislative intent as expressed in the statute itself. The Legislature did not want municipal governing bodies declaring tracts to be in need of redevelopment without there being a demonstration that it is unlikely that the property would be developed by private effort. This qualification permits the vast majority of land to be developed through the operation of the marketplace. Government action occurs only after a demonstration that private action is not likely to occur. This balance preserves private enterprise, while giving governments a tool to address problems which private enterprise is not likely to remedy.

The contrary opinion of the authors of the Report compromises their credibility as planners particularly with respect to their application of criterion “c.”

Misreading and Misinterpretation of “b.”

b. The discontinuance of the use of a building or buildings previously used for commercial, retail, shopping malls or plazas, office parks, manufacturing, or industrial purposes; the abandonment of such building or buildings; significant vacancies of such building or buildings for at least two consecutive years; or the same being allowed to fall into so great a state of disrepair as to be untenable.

The Report invokes criterion “b” with respect to two sites in the Study Area. Initially it is observed that the authors have relied upon an older version of the Local Redevelopment and Housing Law which was expanded by an amendment that became effective in August of 2019. With respect to the Thul Site, the Report claims that it is abandoned based upon observations that the building on Lot 59 in Block 28010 shows signs of disrepair. Although the building is vacant and shows signs of disrepair, it cannot be said that the property is abandoned. There is no evidence that real estate taxes are delinquent or that the grounds are not being maintained. Hence, the authors of the Report cannot invoke criterion “b” based on abandonment because of their misinterpretation of the meaning of the word.

Misinterpretation of criterion “d.”

d. Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

The Report invokes criterion “d” in several cases for eligibility as an area in need of redevelopment based on nonconformance with current development standards. Cited are instances of nonconformity with the New Jersey State Highway Access Management Code and with design standards in Montgomery’s current Land Development Ordinance. Firstly, such design standards apply only when existing development sites are proposed to be modified. Existing sites were presumably developed in accordance with the standards extant at the time of development or variances or exceptions were granted by the appropriate development board at the time. More importantly, nonconformity with current development standards is not a recognized basis to declare a site in need of redevelopment. Were that the case, a municipality could adopt revised development standards on a previously fully conforming site and subsequently designate the site as in need of redevelopment based on nonconformity with the new legislation.

A correct reading of criterion “d” requires that substantial credible evidence be presented that the site conditions have caused detriment to the safety, health, morals, or welfare of the community. Relevant questions, for example, are has there been an increase in traffic accidents associated with the alleged site deficiencies, has the public health been compromised as a result of such alleged site deficiencies, etc. Simple nonconformity with current development standards by itself has been ruled as an insufficient basis to designate a site as in need of redevelopment. See Spruce Manor v. Borough of Bellmawr, 315 N.J. Super. 286 (Law Div. 1998).

DESCRIPTION OF LOT 48 IN BLOCK 29002 (WAWA SITE)

Lot 48 in Block 29002 is a 0.9 acre site with frontage on both Route 518 and Route 206. It is developed with a 6,000+ square foot one-story building the majority of which is occupied by a Wawa convenience store. The remainder is currently being fitted for a new tenant: Native Ceuticals. A 2020 satellite photo of the Wawa Site is included on Plate IV with additional photos provided on Plate V. This site has 35 parking spaces.

**PLATE IV
NJDEP GEOWEB 2020 SATELLITE PHOTO OF WAWA SITE**



PLATE V
PHOTOS OF LOT 48 IN BLOCK 29002 (WAWA SITE)

1. View of front façade looking northeast.



2. View of front sidewalk looking south.



3. View from Route 206 driveway looking southwest.



4. View of space being fitted for Native Ceuticals.



5. View of interior of Wawa convenience store.



DESCRIPTION OF LOT 47 IN BLOCK 29002 (BILLBOARD SITE)

Lot 47 in Block 29002 is a corner parcel at the intersection of Route 518 and Route 206 that totals approximately 4,290 square feet. It is developed with landscaping and a low billboard structure. The structure consists of two 4 ft. by 17 ft. painted panels facing Route 206 framed by brick columns topped with colonial lighting fixtures similar to what would be placed adjacent to a residential driveway. There is one 4 ft. by 17 ft. two-panel section on the opposite side facing the parked cars in the Wawa parking lot. The total height of the sign panels is 5 feet. The sign panels facing Route 206 have ground-mounted lighting fixtures to illuminate the painted sign panels. The general location of Lot 47 is shown on Plate IV. The signs are not visible from westbound vehicles on Route 518 when the Wawa parking lot has cars as demonstrated in one of the photos on Plates VI and VII.

PLATE VI PHOTOS OF LOT 47 IN BLOCK 29002 WITH BILLBOARD STRUCTURE

1. View of sign panels facing Route 206 looking southeast.



2. View of sign panels facing Wawa parking lot looking northwest.



Photos taken by Peter Steck, P.P. on April 22, 2022

PLATE VII
PHOTOS OF LOT 47 IN BLOCK 29002 WITH BILLBOARD STRUCTURE

1. View of subject billboards travelling north on Route 206.



2. View of subject billboards travelling east on Route 518.



3. View of billboards travelling south on Route 206.



4. View of billboard location travelling west on Route 518. (Billboards are not visible.)



Photos taken by Peter Steck on April 22, 2022

PLANNING EVALUATION OF SELECTED SITES IN THE PHASE 2 STUDY AREA

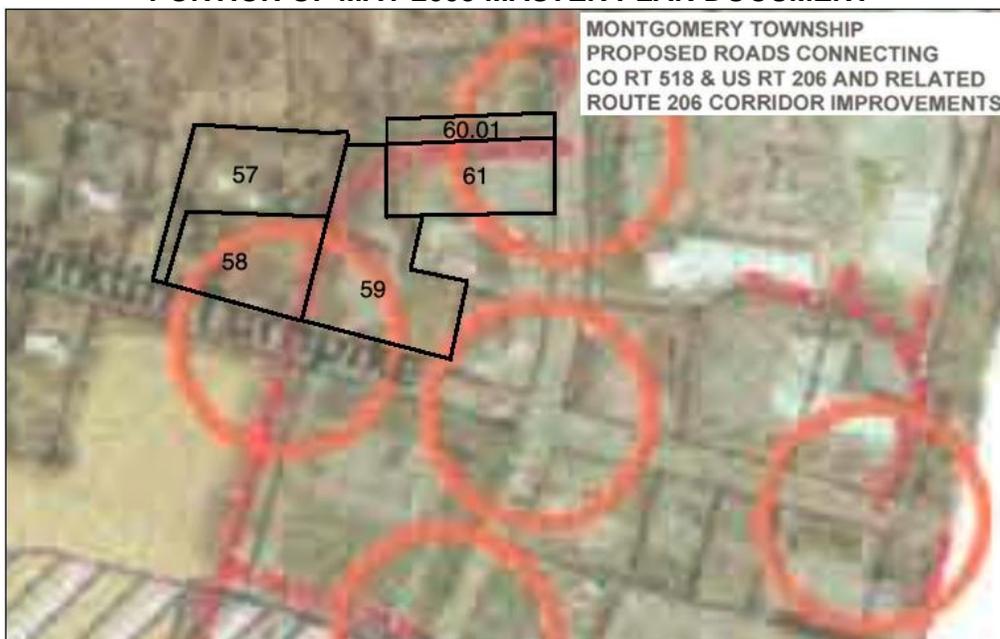
Upon review of the Report, it is concluded that it does not constitute substantial credible evidence that all of the sites in the Study Area are eligible for designation as an area in need of redevelopment. The lack of substantial credible evidence is particularly true with respect to Lot 47 in Block 29002 (the Billboard Site) and Lot 48 in Block 29002 (the Wawa Site), but the defective nature of the analysis also compromises the integrity of the entire Report. Commentary on the deficiencies in the analysis of selected sites is provided below:

Block 2810, Lots 57 and 58 (Horowitz)

The Report claims site eligibility as an area in need of redevelopment based on criterion “h” and Section 3. As previously noted, criterion “h” has not yet been activated and location in a designated “smart growth” area on the state plan is an insufficient basis for designation. Astoundingly, this site is in the Planning Area 3 in the New Jersey State Development and Redevelopment Plan which is not considered a “smart growth” area.

Section 3 is invoked as a basis in the Report claiming that the site “represents an integral component of the redevelopment as a portion of a Master Plan roadway crosses the tract, and the remaining tract area will share utility and street infrastructure with the remainder of the Study Area.” However, a review of a May 2003 document associated with the Township’s master plan indicates that the Master Plan recommended a new roadway only affecting the far eastern portion of the Horowitz Site, and that this master plan proposal was not associated with any redevelopment project. See Plate VIII below. Moreover, the Montgomery Township’s website shows the potential right-of-way for a connecting road west of Lots 57 and 58. See graphic on the cover of this Planning Evaluation.

PLATE VIII PORTION OF MAY 2003 MASTER PLAN DOCUMENT



Lot lines for certain lots added by Peter Steck, P.P.

Block 28010, Lot 59 (Thul Site)

The Report claims that Lot 59 has been abandoned as a basis for invoking criterion “b.” However, signs of disrepair by themselves cannot support a conclusion that the site has been abandoned. Plate IX contains an April 22, 2022 photo of the site. Additionally, in its citation of criterion “d” the Report offers no evidence that the lack of maintenance and alleged dilapidation have caused detriment to the safety, health, morals, or welfare of the community.

**PLATE IX
PHOTO OF THUL SITE**



Block 28010, Lot 60.01 (Township Lot)

The Report claims that Lot 60.01 is eligible for designation as an area in need of redevelopment based only on its ownership by the Township of Montgomery. As previously noted, this is an incorrect reading of criterion “c” that does not take into account case law.

Block 28010, Lots 61 and 62 (Tiger’s Tale)

The Report invokes criterion “d” based on nonconformity with current design standards in Montgomery’s Development Ordinance. Without any evidence that these design nonconformities cause detriment to the safety, health, morals, or welfare of the community, the alleged applicability of criterion “d” is invalid.

Block 28010, Lot 64 (Former Texaco Gas Station)

The Report claims in part that criterion “b” is satisfied because the building is abandoned. Without any evidence that real estate taxes are delinquent or that no maintenance is performed on the premises, the claim of abandonment is untrue. The Report also invokes criterion “d” by citing nonconformities with current design standards. However, without any evidence that these design nonconformities cause detriment to the safety, health, morals, or welfare of the community, the applicability of criterion “d” is defective.

Block 29002, Lot 47 (Billboard Site)

The Report invokes criterion “d” observing that the site constitutes an obsolescent nonconforming use because billboards are not permitted in any zone in Montgomery Township and all billboards “manifest a negative visual impact, through their structures, messaging and illumination.” However, a proper understanding of the word “obsolete” indicates that the billboard is not obsolete. “Obsolete” is defined as “no longer active or in use, disused, neglected,” *Webster’s Third’ New International Dictionary*, 1558 (1967). Hence, because the billboard is in use, it is not obsolete.

Although not a use permitted in any zone in Montgomery Township, the subject billboard was approved through the granting of a “use” variance by the Township Board of Adjustment. In any event, nonconformity with current development standards is not by itself a valid basis to declare a site as in need of redevelopment.

The billboard is illuminated in the evening from ground-mounted fixtures. The ornamental colonial style fixtures on the top of the columns serve an aesthetic purpose. They do not illuminate the advertising panels. These fixtures are of a style and intensity that typically illuminates a walkway or a driveway on the residential property. There is no evidence that any accidents or other detriments to the safety, health, morals, or welfare of the community were attributable to the billboards.

The Report also indirectly invokes Section 3 stating that Lot 47 should “ideally” be part of a larger tract. However, the test under Section 3 is whether Lot 47 is necessary for effective redevelopment of the area and not whether it should ideally be included.

The Report cites one ‘high grass and weeds’ violation notice from October of last year which apparently had been timely corrected as there is no evidence of any court proceedings or payment of a fine.

Finally, the Report relies on criterion “h” which has not been activated and which has been considered unconstitutional on its face from a reputable source.

Block 29002, Lot 48 (Wawa Site)

The report invokes criterion “h” and Section 3 concluding that Lot 48 is eligible for designation as an area in need of redevelopment. As previously discussed, criterion “h” has not been activated and is defective on its face as not related to the meaning of blight as used in the New Jersey Constitution.

The applicability of Section 3 is also invoked. As stated on page 27 of the Report:

Block 29002 Lot 48 represents a much smaller portion (roughly 1.45%) of the *Study Area*. However, this lot represents an integral component of the redevelopment due to its location between Block 29002 Lot 47 (billboard) and Lots 49 and 50 (Phase I Gateway Redevelopment: Princeton Gamma-Tech Instruments Inc.) that will share utility and street infrastructure with the remainder of the *Study Area*. As the site and building plans are developed it is important that they be developed in concert with the remainder of the *Study Area* as part of a holistic development. Therefore, Block 29002 Lot 48 should be included to provide the groundwork for the effective redevelopment of the Study Area.

However, repeating the comments made on page 12 of this Planning Evaluation, it is observed that the properties considered eligible for designation as an area in need of redevelopment in Phase 1 were recommended for designation without reference to the need or necessity to include properties in Phase 2. Secondly, there is no explanation of how Lot 48's location between Lot 47 and Lot 49 is an integral component. Moreover, Lot 48 is served by utilities within the abutting public rights-of-way which is practically true of all properties served by public water and sewer whether within the Study Area or outside of the Study Area. Those public rights-of-way are outside of the study area and are owned by the superior governmental entities of Somerset County and the State of New Jersey. Simply put, the authors of the Report have presented no substantial credible evidence that the inclusion of Lot 48 is necessary for effective redevelopment of the Study Area. Without such a finding, Lot 48 cannot be validly designated as an area in need of redevelopment.

Block 34001, Lots 46.01, 56, 77, 78 and 79 (Montgomery Promenade Site)

The Report cites criterion "c" and the basis for finding that this site is eligible for designation as an area in need of redevelopment observing that despite numerous approvals granted and some approvals denied, the site has not been developed as a shopping center. However, that the owners have sought approvals is evidence that the private marketplace is operational and given the current weak economic conditions for new retail buildings and the amount of retail development that exists in the Route 206 corridor, the lack of current building activity for a new shopping center is not automatically dispositive of the applicability of criterion "c." See sign posted on the site on Plate X.

It is also observed that the referenced lots were not unimproved vacant land for the ten years prior to June 17, 2021, the date of the authorizing resolution. In 2012, Lots 78 and 79 had buildings and parking areas and Lots 46.01, 56 and 77 were in agricultural use. as documented in Plate XI.

Aside from the observation that the referenced lots were not unimproved vacant land for ten years prior to June 17, 2021, the Report contains no analysis that the reasons for the lack of development of those alleged unimproved vacant lands were by reason of their "location, remoteness, lack of means of access to developed sections or portions of the municipality, or topography, or nature of the soil." Without such evidence, the application of criterion "c" is invalid.

The Report also invokes criterion "d" because the unused paved areas which remain on Lots 78 and 78 are deteriorated. The Report references tire marks from a vehicle doing donuts (spinning the wheels to make a vehicle navigate in a tight circle) as a threat to the health, safety and welfare of the public. Debris piles are also cited as potential of unsafe or unhealthy conditions. However, given the large acreage of the site and the lack of any documentation as to persons being injured or vehicular accidents have occurred, these incidental observations and the speculated potential for harm are insufficient to utilize criterion "d" as a basis for eligibility as an area in need of redevelopment.

Furthermore, the Report cannot claim that criterion "c" applies to Lots 78 and 79 as unimproved vacant land and at the same time claim that improvements on those lots are eligible for designation under criterion "d." These two lots cannot be both unimproved vacant land and have deteriorated improvements at the same time.

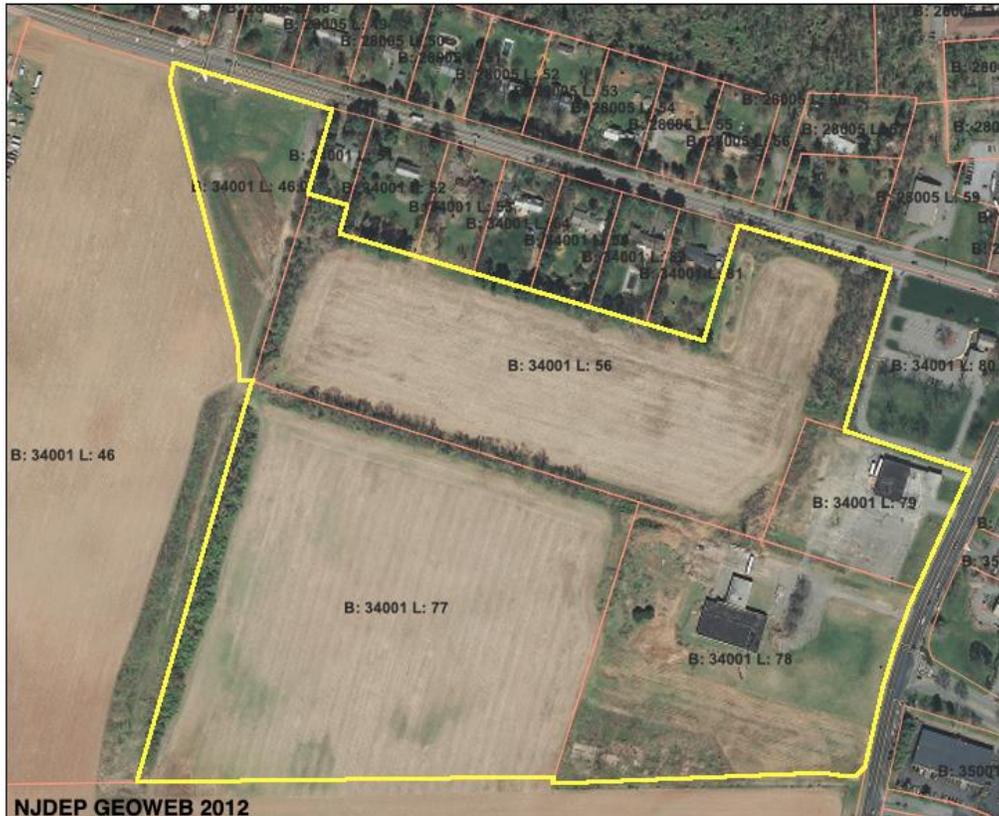
Finally, criterion "h" is invoked despite it not being activated and despite authoritative opinions challenging its constitutionality.

**PLATE X
SIGN POSTED ON MONTGOMERY PROMENADE SITE**



Photo taken by Peter Steck on April 22, 2022

**PLATE XI
2012 SATELLITE PHOTO FROM NJDEP GEOWEB SITE**



Block 34001, Lot 80 (First Constitutional Bank/Lakeland Site)

The Report cites criterion “h” and Section 3 as the basis for being eligible for designation as an area in need of redevelopment. As stated above, criterion “h” has not been activated and authoritative opinions exist challenging its constitutionality.

The Report cites the applicability of Section 3 for Lot 80 concluding that “it is important that they be developed in concert with the remainder of the Study Area as part of a holistic compact residential development. Therefore, Block 34001 Lot 80 should be included to provide the groundwork for the effective redevelopment of the Study Area.” This rationale is not aligned with the statutory requirement that Lot 80 must be is found to be necessary for effective redevelopment of the remainder of the area.

SUMMARY PLANNING CONCLUSIONS

A review of the March 23, 2022 Report titled “2022 Preliminary Investigation of an Area in Need of Redevelopment (Condemnation) for Phase 2: Gateway Redevelopment” reveals that it does not constitute substantial credible evidence that lots in the Study Area are eligible for designation as an area in need of redevelopment. The Report contains factual errors and misinterprets and misapplies the statutory criteria for designation as an area in need of redevelopment. The conclusion that no substantially credible evidence has been provided is particularly true of Lots 47 and 48 in Block 29002, the Billboard Site and the Wawa Site.

EXCERPT FROM PAGES 26 AND 27 OF THE REPORT

Block 29002, Lot 48 (Wawa Site)**Criterion “h”**

Block 29002, Lot 48 meets criterion “h” since “the designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation”. Criterion “h” can apply to all properties that either meet other criteria or are determined to be necessary for the effective redevelopment under the definition of



Block 29002, Lot 48 retail building

“redevelopment area” pursuant the LRHL, N.J.S.A. 40A:12A-3. At N.J.S.A. 40A:12A-3, the LRHL defines a “redevelopment area” or “area in need of redevelopment” to include:

“...lands, buildings, or improvements which of themselves are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part.”

Smart Growth

Smart Growth is an approach to planning that directs growth to enhance and rebuild existing communities where infrastructure and services are available, supports transit, reduces the number of vehicular trips, limits sprawl, protects the environment and reduces energy consumption.

EXCERPT FROM PAGES 26 AND 27 OF THE REPORT

The New Jersey Office for Planning Advocacy has developed a smart growth area GIS data layer to help implement the goals of the New Jersey State Development and Redevelopment Plan. The New Jersey Office for Planning Advocacy has determined that a site is considered a “smart growth area” if it meets any one of the following criteria:

- Metropolitan Planning Area (PA1);
- **Suburban Planning Area (PA2);**
- A designated center;
- An area identified for growth as a result of either an initial or advanced petition for plan endorsement that has been approved by the State Planning Commission;
- A smart growth area designated by the New Jersey Meadowlands Commission; and
- A Pinelands Regional Growth Area, Pinelands Village or Pinelands Town as designated by the New Jersey Pinelands Commission.

A noted in the Study Area Description and bolded for clarity, the second section applies to this tract within the Study Area.

Necessary for the Effective Redevelopment of the Study Area

Block 29002, Lot 48 is necessary for the redevelopment of the *Study Area*. The LRHL provides that, in addition to the criteria contained at N.J.S.A. 40A:12A-5, the LRHL also permits the designation of areas, or portions of Study Areas to be designated as an area in need of redevelopment when their inclusion facilitates the redevelopment of the remaining area. At N.J.S.A. 40A:12A-3, the LRHL defines a “redevelopment area” or “area in need of redevelopment” to include:

“...lands, buildings, or improvements which of themselves are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part.”

Block 29002 Lot 48 represents a much smaller portion (roughly 1.45%) of the *Study Area*. However, this lot represents an integral component of the redevelopment due to its location between Block 29002 Lot 47 (billboard) and Lots 49 and 50 (Phase I Gateway Redevelopment: Princeton Gamma-Tech Instruments Inc.) that will share utility and street infrastructure with the remainder of the *Study Area*. As the site and building plans are developed it is important that they be developed in concert with the remainder of the *Study Area* as part of a holistic development. Therefore, Block 29002 Lot 48 should be included to provide the groundwork for the effective redevelopment of the *Study Area*.

The designation of Block 29002, Lot 48 as an area in need of redevelopment would be consistent with Smart Growth and the policy objectives of the Suburban Planning Area in the New Jersey State Development and Redevelopment Plan as well as necessary to effectuate the redevelopment of the *Study Area*.

EXCERPT FROM PAGES 24 TO 26 OF THE REPORT

Block 29002, Lot 47 (Billboard Site)**Criterion “d”**

Block 29002, Lot 47 meets criterion “d” since it contains “*areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities...or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of a community.*” The following discussion summarizes the evidence demonstrating satisfaction of criterion “d”.

Obsolescent Non-Conforming Use

Pursuant to Section 16-2.1, the Township defines billboards as “*any structure or portion thereof on which lettered or pictorial matter is displayed for advertising purposes other than on a building or the grounds to which the advertising applies. Billboards are prohibited in all districts.*” Moreover, Section 16-5.13e.4 indicates billboard signs are prohibited in all zoning districts. However, this particular billboard did receive Zoning Board approval prior to 1973 (see Appendix E).



Billboard

Billboards manifest a negative visual impact, through their structures, messaging and illumination. Elimination or prevention of negative visual impacts is recognized in the Municipal Land Use Law as a valid purpose of zoning, which is also a basis for Montgomery’s Master Plan and Zoning. Prohibition of billboards (off-site signs) represents Montgomery’s objective to prevent negative visual impacts within the public view sheds and within its public street infrastructure. This billboard has multiple message panels with uncoordinated design/copy. The base of the billboard set is setback approximately 18-feet from the N.J.S.H. Route 206 right-of-way whereas, pursuant to Section 16-4.12i.1(a), a minimum setback of 25-feet is required for a sign that is greater than 55 square feet in area.

Pursuant to Section 16-5.13d.6(b) states “*if a sign is to be externally illuminated, then the lighting shall be provided either from below the sign by ground mounted lights or from above the sign by lights attached to the top of the sign. The lights shall be focused directly and completely on the sign face, with appropriate and necessary shielding on the top, sides, and if necessary, bottom of the fixture to prevent any sight of the light source from any street, sidewalk or neighboring property.*” It also has “lantern-style” globe lighting that is not shielded to prevent glare, at a level above the ground that puts the lights close to the eye line/view of drivers.

Billboards draw drivers’ attention away from the task of driving. Such distractions add to the spectrum of influences of which drivers must be aware, including traffic signals, turning vehicles, stacking/stopping vehicles, oncoming vehicle movements, vehicles entering/exiting adjacent driveways and other traffic movements. Beyond the potential road hazards, internal

EXCERPT FROM PAGES 24 TO 26 OF THE REPORT

distractions relating to cell phones and other “while-driving” activities also persist. This particular billboard is located at the CR 518/NJSH 206 intersection that is well known for heavy traffic during peak hours for an intersection of its size and configuration.

Redevelopment of this property with a conforming use, ideally as part of a larger tract, would eliminate this negative visual element within the public thoroughfare view shed and remove an additional distraction for drivers at this intersection/corridor.

Dilapidation through lack of Property Maintenance

On October 21, 2021, the Township Board of Health issued a Notice of Violation from the Townships’ Board of Health Code BH:8 “Property Maintenance and Non-Residential Buildings” in response to a complaint regarding high grass and weeds present at the site. The property owner was notified they had until November 1, 2022 to abate the violation. A copy of the violation notice is included in Appendix F. Unmaintained high grass and weeds poses a public health nuisance.

These faulty conditions, and the persistent negative effects resulting therefrom, constitute substantial evidence to support the finding that Criterion “d” is met.

Criterion “h”

Block 2902, Lot 47 meets criterion “h” since *“the designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation”*. Criterion “h” can apply to all properties that either meet other criteria or are determined to be necessary for the effective redevelopment under the definition of “redevelopment area” pursuant the LRHL, N.J.S.A. 40A:12A-3. At N.J.S.A. 40A:12A-3, the LRHL defines a “redevelopment area” or “area in need of redevelopment” to include:

“...lands, buildings, or improvements which of themselves are not detrimental to the public health, safety or welfare, but the inclusion of which is found necessary, with or without change in their condition, for the effective redevelopment of the area of which they are a part.”

Smart Growth

Smart Growth is an approach to planning that directs growth to enhance and rebuild existing communities where infrastructure and services are available, supports transit, reduces the number of vehicular trips, limits sprawl, protects the environment and reduces energy consumption.

The New Jersey Office for Planning Advocacy has developed a smart growth area GIS data layer to help implement the goals of the New Jersey State Development and Redevelopment

EXCERPT FROM PAGES 24 TO 26 OF THE REPORT

Plan. The New Jersey Office for Planning Advocacy has determined that a site is considered a “smart growth area” if it meets any one of the following criteria:

- Metropolitan Planning Area (PA1);
- **Suburban Planning Area (PA2);**
- A designated center;
- An area identified for growth as a result of either an initial or advanced petition for plan endorsement that has been approved by the State Planning Commission;
- A smart growth area designated by the New Jersey Meadowlands Commission; and
- A Pinelands Regional Growth Area, Pinelands Village or Pinelands Town as designated by the New Jersey Pinelands Commission.

A noted in the Study Area Description and bolded for clarity, the second section applies to this tract within the Study Area.

The designation of Block 29002, Lot 47 as an area in need of redevelopment would be consistent with Smart Growth and the policy objectives of the Suburban Planning Area in the New Jersey State Development and Redevelopment Plan.

EXCERPT FROM REPORT APPENDIX E

WHEREAS, Douglas H. Merritt and A. Theodore Merritt have applied to the Board of Adjustment of Montgomery Township for permission to obtain a variance from Article IX, Section 901, (3) (c), Section 901, (3) (g), of the Zoning Ordinance on Lot 9 in Block 29001, of the Tax Map of Montgomery Township, also known as the corner of Route 518 and Route 206, for the purpose of obtaining a building permit for a sign which premises are in a Neighborhood Commercial Zone; and

WHEREAS, the Board after carefully considering the evidence presented by the applicants and of the adjoining property owners and general public, has made the following factual findings:

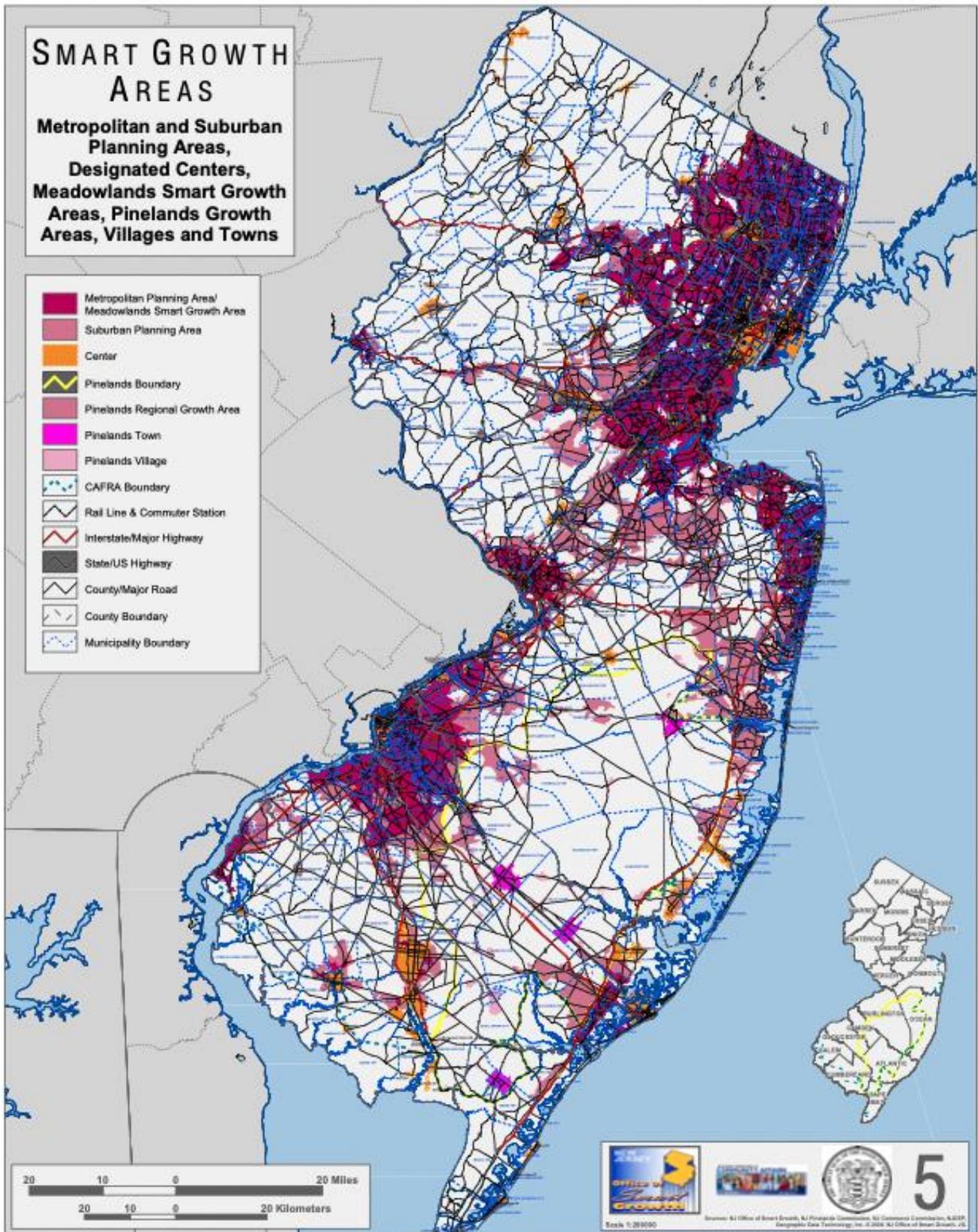
1. The lot in question is not satisfactory for building purposes.
2. The lot in question is unusual in size and location.
3. The lot now houses a dilapidated building which is to be destroyed.
4. The lot would be of little economic value if the request for a variance were denied.

WHEREAS, the Board has determined that the relief requested by the applicants can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and Zoning Ordinance of Montgomery Township.

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of Montgomery Township on this 8th day of September, that approval of the application be granted subject to the following conditions:

1. An official sight easement shall be established at this intersection running a distance of 30 feet on County Route 518 and 100 feet on Route 206. Said easement is to be granted to Somerset County.
2. Curbing is to be extended along Route 518 subject to the approval of the Somerset County Engineer.
3. The use of the sign shall be restricted to advertising for professional, business, industry, laboratory and similar activities located in Montgomery Township or the Borough of Rocky Hill.
4. The sign shall be constructed according to the plans and landscaping sketch as attached to the application.
5. All other regulations of Sections 901 and 902 of the Zoning Ordinance of Montgomery Township shall apply.

SMART GROWTH AREAS FROM THE NEW JERSEY OFFICE OF SMART GROWTH



Peter G. Steck

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EDUCATION

Bachelor of Science in Civil Engineering, Marquette University, Milwaukee, Wisconsin, 1970
Master of City and Regional Planning, Rutgers University, New Brunswick, New Jersey, 1972

LICENSING AND CERTIFICATION

New Jersey Professional Planner License No. 33L100177600 received in 1976
American Institute of Certified Planners, Past Member ID#036672

POSITIONS HELD

- 1990 – Present Principal of own planning consulting firm:
Peter G. Steck – Community Planning Consultant
- 1981 – 1990 Director of the Department of Planning and Community Development,
Township of Montclair. Coordination of 16-person department responsible for
technical services to the Planning Board and Board of Adjustment,
administration of Uniform Construction Code, commercial and residential
property maintenance codes, Community Development Block Grant Program,
Section 8 Existing Housing Program, and Neighborhood Preservation
Balanced Housing Program. Prepared Master Plan, Housing Element, and
Reexamination Reports. Secretary to the Planning Board and Board of
Adjustment and Zoning Administrative Officer.
- 1978 – 1980 Associate Planner with Malcolm Kasler Associates, Hackensack, New Jersey.
Responsibilities included preparation of master plans, development
ordinances, fair share housing studies, and development application reviews.
- 1973 – 1978 Assistant Township Planner, Township of Montclair. Responsibilities included
technical services to the Planning Board and Board of Adjustment, preparation
of master plan background studies and capital improvement programs.
- 1972 – 1973 Associate Planner, Alvin E. Gershen Associates, Trenton, New Jersey.
Prepared master plan background studies, land use studies, and development
application reviews.

CITIZEN AND PROFESSIONAL INVOLVEMENT

Municipal Land Use Law Technical Review Committee, N. J. League of Municipalities
New Jersey Planning Officials, Board of Councilors, Instructor
Montclair Historical Society, Past Trustee
Rutgers Center for Governmental Services – Continuing Education Lecturer
CLE International – Conference Panelist
Lorman Educational Services – Conference Panelist
New Jersey Association of Planning and Zoning Administrators – Conference Panelist
New Jersey Planning Officials – Achievement in Planning Award, 2009
American Planning Association, New Jersey Chapter – Conference Panelist
New Jersey Redevelopment Authority, Redevelopment Training Institute – Panelist
Planner of Church Street in Montclair – Named a “Great Place” in New Jersey by APA, NJ in
2012 and named a “Great American Street” by the National Main Street Center in 2015.

CONSULTING EXPERIENCE

Engaged in private consulting as a land use planner since 1981 representing municipalities, development boards, developers, and neighborhood associations. Work performed in OVER 200 New Jersey Municipalities. Expert testimony presented in Bergen, Passaic, Essex, Union, Mercer, Morris, Monmouth and Sussex Counties Superior Courts and before the New Jersey Meadowland Commission (now New Jersey Sports and Exposition Authority, various appraisal commissions, and the New Jersey Tax Court.

SERVICES PROVIDED TO THE FOLLOWING MUNICIPALITIES

Bridgewater Township	Caldwell Borough	Cedar Grove Township	Deal Borough
East Hanover Township	Elizabeth City	Englewood City	Franklin Township
Hackensack City	Kearny Town	Kenilworth Borough	Lafayette Township
Long Branch City	Madison Borough	Millburn Township	Moonachie Borough
Paramus Borough	Paterson City	Pequannock Township	Randolph Township
Ringwood Borough	Saddle Brook Twp.	Stillwater Township	Sayreville Borough
Teaneck Borough	Union Township	Upper Saddle River Boro.	

SERVICES TO PRIVATE CLIENTS IN THE FOLLOWING MUNICIPALITIES

Aberdeen Township	Allendale Borough	Andover Borough	Atlantic City
Atlantic Highlands Borough	Bayhead Borough	Bergenfield Borough	Berkeley Heights
Berkeley Township	Bernards Township	Blairstown Township	Bloomfield Township
Bogota Borough	Boonton Township	Boonton Town	Bound Brook Boro.
Bradley Beach Borough	Branchburg Twp.	Brick Township	Bridgewater Twp.
Byram Township	Camden City	Carlstadt Borough	Carteret Borough
Cedar Grove Township	Chatham Borough	Chatham Township	Cherry Hill Township
Clifton City	Cliffside Park Boro.	Clinton Township	Cranford Township
Deal Borough	Delaware Township	Denville Township	Dover Town
Edgewater Borough	Evesham Township	East Hanover Township	East Brunswick Twp.
East Orange City	East Rutherford Boro.	Eatontown Borough	Edison Township
Elizabeth City	Elmwood Park Boro.	Englewood City	Englewood Cliffs
Englishtown Borough	Essex Fells Borough	Ewing Township	Fairfield Township
Fair Haven Borough	Far Hills Borough	Florham Park Borough	Fort Lee Borough
Franklin Lakes Borough	Franklin Township	Freehold Borough	Freehold Township
Garfield City	Garwood Borough	Glen Ridge Borough	Glen Rock Borough
Green Brook Township	Hackensack City	Hacketstown Town	Hampton Township
Hanover Township	Harrington Park Boro.	Harrison Town	Hasbrouck Heights
Hoboken City	Hohokus Borough	Highland Park	Hillsdale Township
Hillside Borough	Hillsborough Twp.	Hawthorne Borough	Holmdel Township
Howell Township	Hope Township	Hopatcong Borough	Hopewell Township
Independence Township	Irvington Township	Jackson Township	Jamesburg Borough
Jersey City	Kearny Town	Kenilworth Borough	Lacy Township
Lakewood Township	Leonia Borough	Lincoln Park Borough	Linden City
Little Falls Township	Little Silver Borough	Livingston Township	Loch Arbor Village
Lodi Borough	Long Branch City	Long Hill Township	Lopatcong Township
Manchester Township	Mansfield Township	Maplewood Township	Manalapan Twp.
Marlboro Township	Mahwah Township	Maywood Borough	Mendham Borough
Mendham Township	Middletown Twp.	Midland Park Borough	Millburn Township
Monmouth Beach Borough	Monroe Township	Montclair Township	Montvale Borough
Montville Township	Morris Township	Morristown Town	Morris Plains Boro.
Mt. Arlington Borough	Mt. Laurel Township	Mt. Olive Township	Mountain Lakes
Neptune Township	Newark City	New Providence Borough	North Bergen Twp.

SERVICES TO PRIVATE CLIENTS IN THE FOLLOWING MUNICIPALITIES

Continued

North Caldwell Township	Northvale Borough	Nutley Township	Ocean Township
Oceanport Borough	Old Bridge Township	Old Tappan Borough	Oradell Borough
Oxford Township	Park Ridge Borough	Parsippany-Troy Hills Boro.	Piscataway Twp.
Plainfield City	Point Pleasant Boro.	Point Pleasant Beach Boro.	Princeton Township
Peapack Gladstone Boro.	Pequannock Twp.	Perth Amboy City	Rahway City
Ramsey Borough	Randolph Township	Raritan Township	Readington Twp.
Red Bank Borough	Ridgefield Park Village	Ridgewood Village	Ringwood Borough
River Edge Borough	River Vale Township	Rochelle Park Township	Rockaway Borough
Rockaway Township	Roseland Borough	Rumson Borough	Saddle Brook Twp.
Saddle River Borough	Sayreville Borough	Seaside Heights Borough	Secaucus Town
Shrewsbury Borough	Somers Point City	South Hackensack Twp.	South Orange Twp.
South Plainfield Borough	Springfield Township	Stanhope Borough	Stillwater Township
Summit City	Scotch Plains Boro.	South Brunswick Township	South Hackensack
Teaneck Township	Tenaflly Borough	Teterboro Borough	Tewksbury Twp.
Tinton Falls Borough	Toms River Township	Tinton Falls Borough	Union City
Union Township	Upper Freehold Twp.	Upper Pittsgrove Borough	Upper Saddle River
Verona Borough	Vineland City	Wallington Borough	Wanaque Borough
Warren Township	Washington Twp.	Watchung Borough	Wayne Township
Weehawken Township	West Amwell Twp.	West Caldwell Township	Westfield Town
West Orange Township	West Milford Twp.	West Windsor Township	Wharton Borough
Wildwood City	Wood-Ridge Borough	Woodbridge Township	Wyckoff Township
Woodcliff Lake Borough			

PARTIAL LISTING OF PRIVATE CLIENTS

The Heller Group	Marriott Corporation	Weldon Materials	Kessler Institute
Kings Supermarkets	Barnes & Noble	Stavola Construction Materials	Salvation Army
The Rockefeller Group	Millennium Homes	Trammell Crow Residential	The Advance Group
Seton Hall Preparatory School	Schindler Elevator	Chase Manhattan Bank	Murray Construction
Saint Peter's College	Vornado, Inc.	The Home Depot	Manor Restaurant
Exxon Mobile Corporation	U S Home Corporation	The Applied Companies	Kindercare
K. Hovnanian Companies	Prudential Insurance	BMW of North America, LLC	Toll Brothers
Dwight-Englewood School	Wildlife Preserves, Inc.	Prism Capital Investors	Seton Hall University
Bob Ciasulli Auto Group	Montammy Golf Club	Metro Honda Properties	Avalon Bay