Preliminary Investigation

Block 3107, Lot 1
Westfield, NJ

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TOPO
LOGY

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Introduction

Study Authorization

The following preliminary investigation has been prepared for the Town of Westfield Planning Board to determine whether a certain property qualifies as a non-condemnation area in need of redevelopment under N.J.S.A. 40A:12A-5. The Mayor and Town Council of Westfield authorized the Planning Board, through Resolution 79-2020, annexed hereto as **Appendix A**, to conduct this preliminary investigation to determine whether designation of Block 3107, Lot 1 as shown on the official tax map of the Town of Westfield (the "Redevelopment Area," "Property," or "Study Area") as in need of redevelopment is appropriate and in conformance with the statutory criteria in N.J.S.A. 40A:12A-5.

Summary of Findings

The analysis contained within this report will serve as the basis for the recommendation that Block 3107, Lot 1 be designated as a non-condemnation area in need of redevelopment. The recommended parcel for designation is reflected in the figure below.

Figure 1: Recommended Redevelopment Area

Background

Legal Authority

New Jersey's Local Redevelopment and Housing Law (the "LRHL") empowers local governments to initiate a process by which designated properties that meet certain statutory criteria can be transformed to advance the public interest. Once an area is designated in need of redevelopment in accordance with statutory criteria, municipalities may adopt redevelopment plans and employ planning and financial tools to make redevelopment projects more feasible and to remove deleterious conditions.

Redevelopment Procedure

The LRHL requires local governments to follow a process involving a series of steps before they may exercise powers under the LRHL. The process is designed to ensure that the public is given adequate notice and opportunity to participate in the public process. Further, the redevelopment process requires the Governing Body and Planning Board interact to ensure that all redevelopment actions consider the municipal Master Plan. The steps required are generally as follows:

A. The Governing Body must adopt a resolution directing the Planning Board to perform a preliminary investigation to determine whether a specified area is in need of redevelopment according to criteria set forth in the LRHL (N.J.S.A. 40A:12A-5).

B. The resolution authorizing the Planning Board to undertake a preliminary investigation shall state whether the redevelopment area determination shall authorize the municipality to use all those powers for use in a redevelopment area other than the use of eminent domain (non-condemnation redevelopment area) or whether the redevelopment area determination shall authorize the municipality to use all those powers for use in a redevelopment area, including the power of eminent domain (condemnation redevelopment area).

C. The Planning Board must prepare and make available a map delineating the boundaries of the proposed redevelopment area, specifying the parcels to be included to be investigated. A statement setting forth the basis of the investigation or the preliminary statement should accompany this map.

D. The Planning Board must conduct the investigation and produce a report presenting the findings. The Board must also hold a duly noticed hearing to present the results of the investigation and to allow interested parties to

give testimony. The Planning Board then may adopt a resolution recommending a course of action to the Governing Body.

E. The Governing Body may accept, reject, or modify this recommendation by adopting a resolution designating lands recommended by the Planning Board as an "area in need of redevelopment." The Governing Body must make the final determination as to the redevelopment area boundaries.

F. If the Governing Body resolution assigning the investigation to the Planning Board states that the redevelopment determination shall establish a Condemnation Redevelopment Area, then the notice of the final determination shall indicate that: (i) the determination operates as a finding of public purpose and authorizes the municipality to exercise the power of eminent domain to acquire property in the redevelopment area, and (ii) legal action to challenge the final determination must be commenced within 45 days of receipt of notice and that failure to do so shall preclude an owner from later raising such challenge.

G. A Redevelopment Plan may be prepared establishing the goals, objectives, and specific actions to be taken with regard to the "area in need of redevelopment."

H. The Governing Body may then act on the Plan by passing an ordinance adopting the Plan as an amendment to the municipal Zoning Ordinance.

Only after completion of this process is a municipality able to exercise the powers under the LRHL.

Progress

The Westfield Town Council adopted Resolution 79-2020 on March 10, 2020. A map of the Study Area dated June 30, 2020 is on file with the Municipal Clerk and Planning Board. The resolution and study area investigation map, which satisfy Parts A, B, and C above, are included as **Appendix A** and **Appendix B**.

Purpose + Scope

In accordance with the process outlined above, this Preliminary Investigation will determine whether the property within the Town of Westfield meets the statutory requirements under N.J.S.A. 40A:12A-5 for designation as non-condemnation areas in need of redevelopment. This study was prepared at the request of the Westfield Planning Board and was duly authorized by the Mayor and Council.

The scope of work for the investigation included the following: a site visit on June 10, 2020; visual assessment of property conditions; review of ownership status

within the Study Area; review of municipal tax maps and aerial photos; review of state records; review of municipal records; review of the existing zoning ordinance and zoning map for the Town of Westfield; review of the Town Master Plan and Reexamination; review of Sanborn maps; and review of other planning documents prepared by Westfield stakeholders.

Existing Conditions

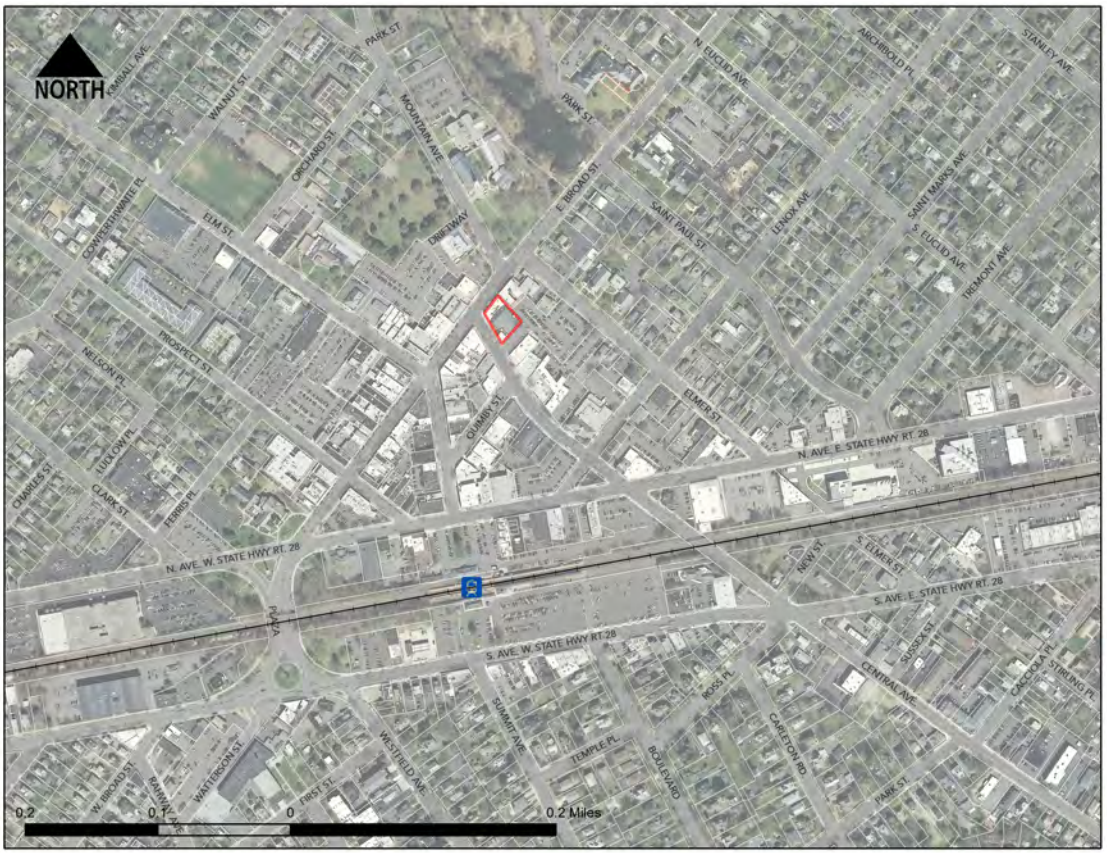


Figure 2: Study Area and surrounding context

Study Area Context

The Study Area contains a commercial building with a prominent theatre marquee and commercial store frontages near the center of the Town of Westfield. Downtown Westfield contains one of the most desirable downtowns in the region, boasting over 400 stores including high-end shopping, entertainment and dining destinations. Downtown Westfield has received numerous accolades, including in 2004 with the receipt of the Great American Main Street Award and in 2018 and 2019 as a finalist in NJ.com's "Best Downtown."

Downtown Westfield is home to an active Special Improvement District, the Downtown Westfield Corporation, and houses a mixture of land uses, including commercial uses, residential areas, houses of worship, transit facilities, and public facilities such as the Westfield Library, parks, Town Hall, and police and fire stations. The Study Area is within the Special Improvement District boundaries.

The area is accessible primarily via New Jersey Route 28 (North Avenue), a major east-west arterial that runs through the Town's center and connects Westfield to the Garden State Parkway via exits 135 and 137. The Westfield Train Station,

along the NJ Transit Raritan Valley Line, is also a major means of access for users of the Study Area. Local site access is also provided via Central Avenue, North Avenue West, and South Avenue East.

While downtown Westfield is recognized as a regional leader, in recent years several high-profile establishments have gone vacant, including the Children's Place, Victoria's Secret, Lucky Brand Jeans, and the property within the Study Area. At the time of this report, the Downtown Westfield Corporation was publicizing fifteen available retail or restaurant spaces in the downtown, totaling roughly 37,480 square feet.[1] In the face of changing market trends evidenced by these vacancies, the Town has adopted a proactive approach to ensuring the continued vibrancy of its downtown, as evidenced through its recent Master Plan Reexamination and its efforts to assess the appropriateness of designating parcels as areas in need of redevelopment.

Study Area Description

The Study Area is comprised of a single property within downtown Westfield. The property is occupied by a commercial building that houses a vacant theatre with a prominent marquee and ancillary commercial uses including small retail storefronts.

The property is bound by East Broad Street to the north and northwest; commercial uses like NY Korean BBQ and the Town Book Store to the northeast; municipal parking lot 5 to the southeast; and Central Avenue to the south and southwest. The property has no on-site parking but is adjacent to a municipal parking lot.

Property History

Known as the "West Fields" of Elizabethtown in the early Colonial times, the Village of Westfield was established in 1720. The village and its residents experienced significant disruptions during the American Revolutionary War, eventually being occupied by the British Army which used the village as a command post for much of the war. As the community's core, in what is now downtown Westfield, continued to develop a distinct identity, the village incorporated as a separate municipality from Elizabeth and became Westfield Township in 1794. The Town would continue to grow throughout this period, with a distinct commercial and civic center taking shape around the Central Railroad

[1] "Available Commercial Space." Downtown Westfield Corporation. <https://westfieldtoday.com/index.php?option=com_content&view=article&id=209&Itemid=231> Accessed May 13, 2020.

of New Jersey Station.[2] The parcel investigated in this report is within this core downtown area.

Based on a review of Sanborn maps, the properties surrounding the Study Area were developed by 1901 in a street pattern that largely reflects the existing conditions today. Land uses present at the time were limited to private dwellings. In the 1921 Sanborn maps, no building was recorded as being on the site, potentially in anticipation of future construction.

Figure 3: 1901 and 1921 Sanborn maps showing the Study Area

In 1922, the site became home to a theatre commonly known locally as the Rialto Theatre. In the ensuing decades, the site underwent changes in ownership, management, and configuration. Additional screens were added in 1978 and 1997, and in 2009 a ribbon cutting ceremony was held to commemorate a renovation process which included upgrades to the theatre's six auditoriums and new concession stands. Throughout these developments, which occurred within the context of an evolving landscape within the movie industry and the changing character and configuration of downtowns, the Study Area retained its primary use as a movie theatre. In August 2019, however, the theatre closed and remains vacant at the time of this report.[3] Since the closure of the theatre, the Town has

[2] "History of Westfield." Downtown Westfield Corporation. <https://www.westfieldtoday.com/index.php?option=com_content&view=article&id=56&Itemid=258> Accessed May 3, 2020.

[3] "Westfield's Rialto Theater closes suddenly." My Central Jersey. <https://www.mycentraljersey.com/story/news/local/union-county/2019/08/23/rialto-theater-westfield-njcloses/2095675001/> Accessed June 16, 2020.

expressed a desire to see the property revived for arts and cultural uses as part of its broader objectives to enhance the downtown core.[4]

Existing Zoning

Figure 4: Study Area zoning

The Study Area is in the Central Business District (CBD) zone. Additional zoning information is available in the Town of Westfield's full zoning code, relevant sections of which are included as **Appendix C**. Excerpts from the zoning code related to the CBD zone are included below:

Permitted uses are:

1. *Business establishments devoted primarily to the retail sales of goods and personal services on the premises, including restaurants and food establishments intended for food consumption on the premises or for take-out of food;*

[4] "Westfield looks to convert Rialto Theatre into performing arts center." My Central Jersey. <https://www.mycentraljersey.com/story/news/local/union-county/2020/02/14/rialto-theatre-westfield-nj-could-become-performing-arts-center/4760719002/> Accessed June 16, 2020.

2. *Banks and other financial institutions engaged in the business of accepting deposits from the public and/or extending credit to the public in the form of loans. Such business must be conducted on the premises, and must be the principal activity of the use on the premises;*
3. *On any floor of a building located in property with a frontage on North Avenue or South Avenue, and only on the second or third floors of a building on other property within the CBD zone district, business, administrative and professional offices or other business establishments providing the following services:*
    a. *Finance, insurance or real estate sales or services;*
    b. *Business or professional services;*
    c. *Health services;*
    d. *Social services;*
    e. *Consulting service; and,*
    f. *Educational services.*
4. *Retail services;*
5. *Childcare centers;*
6. *Governmental buildings and municipal parking facilities;*
7. *Public parks and playgrounds;*
8. *Residential dwelling units on the second or third floors of a building;*
9. *A shared use of a single tenant space by multiple non-residential uses which are permitted principal uses as included in this section; and*
10. *The temporary use of existing floor area by a permitted principal use or uses as listed in this section, for a period of not more than 60 days tolled continuously from the first date of operation, shall not be subject to parking requirements for the duration of the use. Such temporary use shall be allowed once per calendar year for each tenant space. Temporary uses must comply with all sign provisions of Article 16 (of the Town Land Use Ordinance).*

Permitted accessory uses are:

1. *Parking and parking facilities as regulated in Article 17;*
2. *Signs as regulated in Article 16;*
3. *Antennas, as regulated in section 13.04;*
4. *Sidewalk cafes as permitted and regulated by sections 24-46 through 24-57 of the Town Code; and*
5. *Other accessory uses and structures customarily subordinate and incidental to permitted principal uses and permitted conditional uses.*

Conditional uses and structures (permitted in the CBD district only if they comply with the appropriate regulations for such uses or structures in Article 18) are:

1. *Non-profit chartered membership organizations;*
2. *Residential-type public utility facilities;*
3. *Certain cellular telecommunications antennas as set forth in Article 18;*
4. *Age-restricted multi-family housing on the ground floor of a building;*
5. *Microbreweries and craft distilleries, and*
6. *Commercial use of rooftops.*

General required conditions are as follows:
Maximum height:

- *No principal building shall exceed the maximum of three habitable floors, exclusive of basement, or 40 feet in height, whichever is less.*

Minimum yard setbacks:

- *Front: No front yard shall be required.*
- *Side: All principal buildings may be constructed without side yards, except that when a side yard is provided, it shall not be less than 10 feet. Notwithstanding the above requirement, when the side yard in the CBD zone district abuts a property in any residential zone, said side yard shall be not less than one foot for every two feet of height of the building located in the CBD zone district, but not less than 10 feet. Within this required side yard, there shall be a buffer at least 10 feet deep, within which plant material and/or a fence shall be installed, as required by the Planning Board, to adequately protect the abutting residentially zoned property.*
- *Rear: There shall be a rear yard of at least one foot for every two feet of height of the principal building on the lot, which is the subject of the application, but not less 10 feet.*

Ownership

A review of the Town's property tax records was conducted to determine current ownership information. The table below shows the most current ownership information, based on records from the Town.

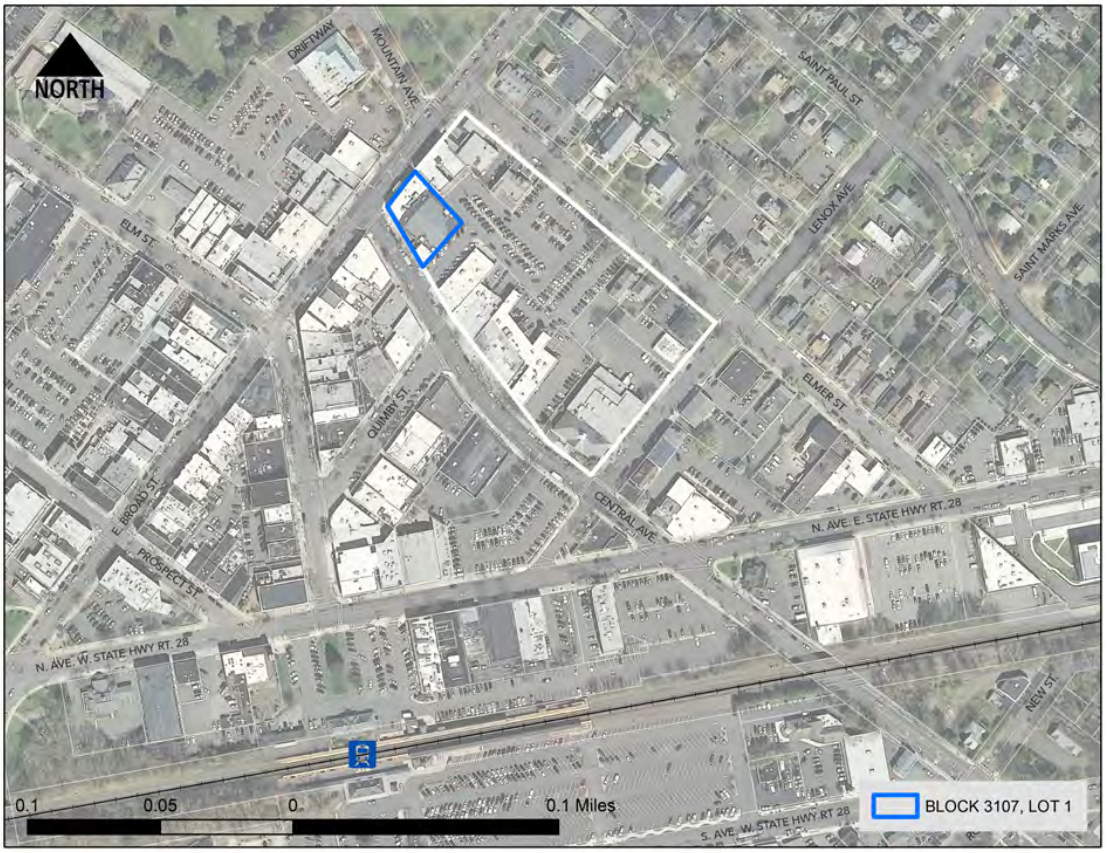


Figure 5: Property comprising Study Area

Block	Lot	Property Class	Area (Acres)	Address	Owner
3107	1	4A	.3231	244-254 E. Broad Street	Rialto Holding Company, LLC

Property Taxes

Property tax records from the State of New Jersey Division of Taxation's database and the Town of Westfield were analyzed to determine the assessed value of the property in the Study Area and current property taxes, respectively. The value of the land, improvements thereon and the net taxable value for the parcels are displayed in the table below.

Block	Lot	Assessed Land Value	Assessed Improvement Value	Net Assessed Value	Taxes 2019	Taxes 2018
3107	1	$4,302,400	$984,200	$5,286,600	$119,265.70	$87,317.90

Application of Statutory Criteria

Introduction

The "Blighted Areas Clause" of the New Jersey Constitution empowers municipalities to undertake a wide range of activities to effectuate the redevelopment of blighted areas:

> The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment; and improvements made for these purposes and uses, or for any of them, may be exempted from taxation, in whole or in part, for a limited period of time… The conditions of use, ownership, management and control of such improvements shall be regulated by law."
>
> - NJ Const. Art. VIII, Section 3, Paragraph 1.

The New Jersey Local Redevelopment and Housing Law ("LRHL") implements this provision of the New Jersey Constitution, by authorizing municipalities to, among other things, designate certain parcels as "in need of redevelopment," adopt redevelopment plans to effectuate the revitalization of those areas and enter agreements with private parties seeking to redevelop blighted areas. Under the relevant sections of the LRHL (N.J.S.A. 40A:12A-1 et. seq.), a delineated area may be determined to be "in need of redevelopment" if the governing body concludes there is substantial evidence that the parcels exhibit any one of the following characteristics:

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 untenantable.
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 10 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 properties therein or other similar conditions which impede 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.) the execution of the actions prescribed in that act for the adoption by the municipality and approval by the New Jersey Urban Enterprise Zone Authority of the zone development plan for the area of the enterprise zone shall be considered sufficient for the determination that the area is in need of redevelopment pursuant to sections 5 and 6 of P.L.1992, c.79 (C.40A:12A- 5 and 40A:12A-6) for the purpose of granting tax exemptions within the enterprise zone district pursuant to the provisions of P.L.1991, c.431 (C.40A:20-1 et seq.) or the adoption of a tax abatement and exemption ordinance pursuant to the provisions of P.L.1991, c.441 (C.40A:21-1 et seq.). The municipality shall not utilize any other redevelopment powers within the urban enterprise zone unless the municipal governing body and planning board have also taken the actions and fulfilled the requirements prescribed in P.L.1992, c.79 (C.40A:12A-1 et

al.) for determining that the area is in need of redevelopment or an area in need of rehabilitation and the municipal governing body has adopted a redevelopment plan ordinance including the area of the enterprise zone.

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

Redevelopment Case Law Principles

The LRHL has been interpreted extensively by the New Jersey State courts with regard to the specific application of the redevelopment criteria established under N.J.S.A. 40A:12A-5. The case law cited herein that is relevant to this analysis addresses the minimum evidentiary standard required to support a governing body's finding of an "area in need of redevelopment."

Standard of Proof: The New Jersey Supreme Court's decision, Gallenthin Realty v. Borough of Paulsboro (2007), affirmed that a "municipality must establish a record that contains more than a bland recitation of the application of the statutory criteria and declaration that those criteria are met." In Gallenthin, the Court emphasized that municipal redevelopment designations are only entitled to deference if they are supported by substantial evidence on the record. It is for this reason that the analysis herein is based on a specific and thoughtful application of the plain meaning of the statutory criteria to the condition of the parcel within the Study Area as it currently exists.

Ultimately, the Gallenthin decision was perceived to constrict the scope of properties that were once believed to qualify as an area in need of redevelopment, specifically under subsection (e). In 62-64 Main Street LLC v. Mayor & Council of the City of Hackensack (2015), however, the Court offered a clarification that resisted an overly narrow interpretation of the statute:

> [this Court has] never stated that an area is not in need of redevelopment unless it 'negatively affects surrounding properties' because, to do so, would undo all of the legislative classifications of blight established before and after the ratification of the Blighted Areas Clause."

The Hackensack case is largely perceived as having restored a generally expansive view of the Housing and Redevelopment Law, except as restricted by the Gallenthin interpretation of subsection (e).

Study Area Evaluation

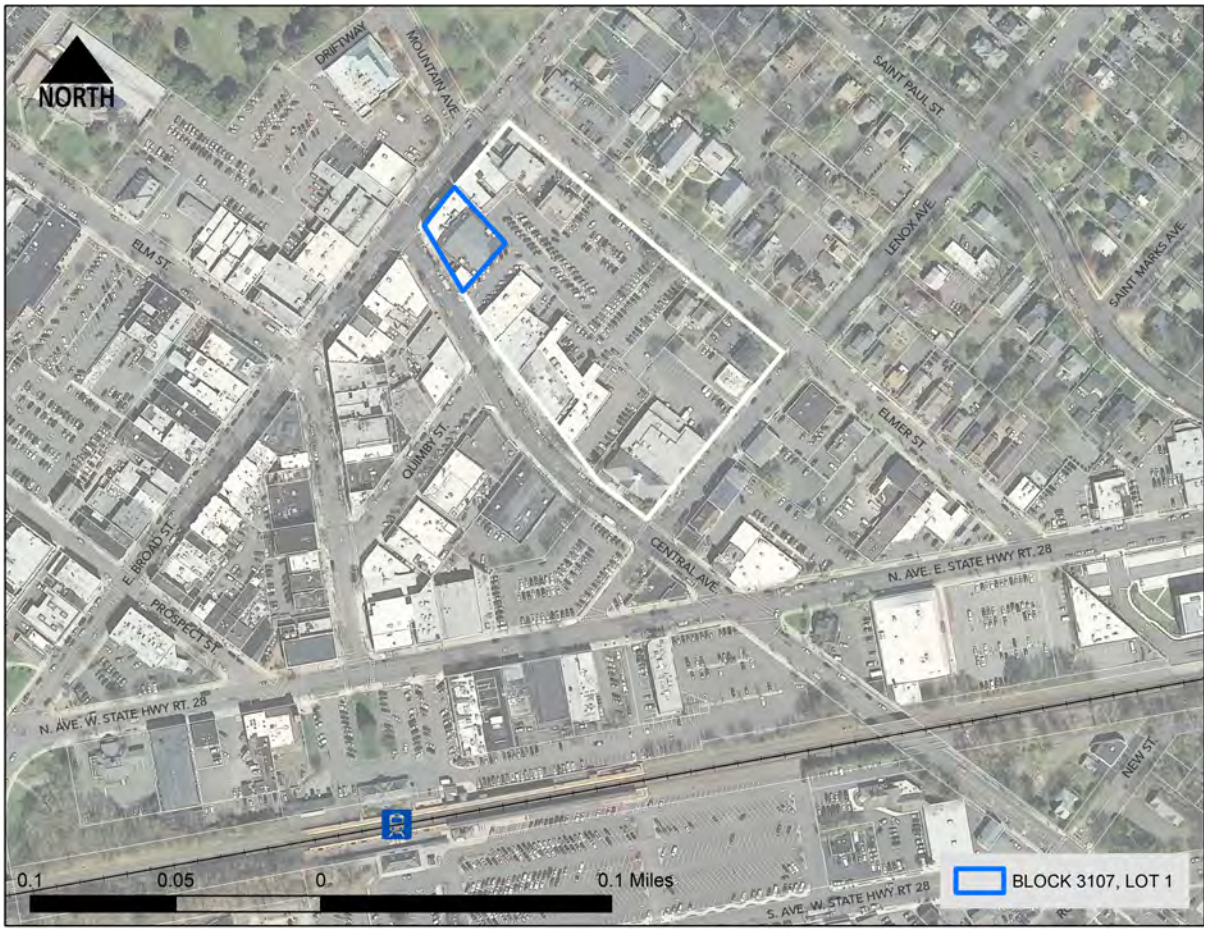
The following evaluation of the Study Area is based on the statutory criteria described above for designation as an area in need of redevelopment.

Summary of Findings:

The table below summarizes this report's findings with regard to the statutory criteria's applicability to the property within the Study Area:

Block	Lot	Criteria							
		A	B	C	D	E	F	G	H
3701	1	X	X		X				X

Block 3701, Lot 1



Address: 244-254 East Broad Street
Size: 0.3231 Acres
Owner: Rialto Holding Company, LLC
Current use: Commercial building with movie theatre and secondary commercial uses

Based upon an inspection of the property and examination of records, Block 3701, Lot 1 meets the following criteria under the LRHL:

Criterion 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.

The property qualifies under Criterion A as the generality of buildings are obsolescent and unsafe and, as a result, create unwholesome working conditions

and present health and safety risks to the general public entering the property. In this case, the analysis centers on the portion of the property utilized as a movie theatre, which is the primary use on site and reflects the generality of the building.

In Spruce Manor Enterprises v. Borough of Bellmawr (1998), the New Jersey Superior Court relied, in part, upon the following definition of obsolescence in their evaluation of a redevelopment designation: "obsolescence is the process of falling into disuse and relates to the usefulness and public acceptance of a facility." This definition of obsolescence is applicable to the Study Area. In the case of the Study Area, the building's obsolescence has contributed to its vacancy which, in turn, has accelerated the emergence of unsafe conditions that are conducive to unwholesome working conditions.

Importantly, health and safety standards for motion picture theatres as an assembly space have changed dramatically since the theatre opened its doors in the 1920s. The building's obsolescence, as evidenced in its outdated configurations, creates health and safety risks for both moviegoers and staff working on the premises. The outdated electrical wiring – including exposed, loose, and hanging wires – creates a hazardous situation. These unsafe and hazardous situations are conducive to unwholesome working conditions.

Figure 6: Outdated electrical wiring; exposed wires within one of the technical rooms

As an assembly space, motion picture theatres present, "a significant potential life safety hazard because of the large occupant loads and the concentration of people within confined spaces", according to the 2018 International Building Code (IBC) Commentary.[5] The 2018 IBC is listed on the New Jersey Department of Community Affairs' website as a universally accepted building standard in New

[5] 2018 International Building Code (IBC) Code and Commentary, Chapter 3: Occupancy Classification and Use (2018), p.3.

Jersey.[6] The fuel load (equipment, curtains, lighting devices, and mechanical appliances) present in motion picture theatres, the above-normal sound levels, and low lighting level present a risk for the large group of people sitting in the confined space of an auditorium. Therefore, the means of ingress and egress are of paramount importance to the safe operation of a motion picture theatre.

The building's limited means of ingress and egress, including access to the six auditoriums, create a safety risk to those present in the building. As evidenced in the pictures below, some of the auditoriums can only be reached by a narrow staircase. The six auditoriums have a capacity ranging from about 100 to over 250 persons. In case of an emergency, these limited means of ingress and egress make it difficult for such a large occupant load to exit the auditorium safely and timely. The narrow staircases especially present a risk to older adults, children, and people with disabilities. A similar issue is presented by the two fire escape stairs, one of which is located in the narrow walkway adjacent to the building connecting the municipal parking lot to East Broad Street.

Figure 7: Under-dimensioned and limited means of ingress and egress; narrow staircase leading up to an auditorium and narrow alleyway where fire escape stairs are located

An inspection of the building's basement revealed extensive water intrusion. Water intrusion can compromise a building's structural integrity and can lead to the emergence of mold. Both outcomes create unwholesome working conditions by creating health and safety hazards. As the United States Environmental Protection Agency (EPA) mentions on its website, "The key to mold control is moisture control. It is important to dry water damaged areas and items within 24-48 hours to prevent mold growth." As the building has been vacant for a prolonged period of time, water damaged areas and any resulting mold growth

[6] "Codes & Regulations". New Jersey Department of Community Affairs. <https://www.nj.gov/dca/divisions/codes/codreg/> Accessed June 19, 2020.

are likely to remain unnoticed for a longer period of time. The EPA also points out the health risks posed by mold: "Molds have the potential to cause health problems. Molds produce allergens (substances that can cause allergic reactions) and irritants. Inhaling or touching mold or mold spores may cause allergic reactions in sensitive individuals. Allergic responses include hay fever-type symptoms, such as sneezing, runny nose, red eyes, and skin rash. Allergic reactions to mold are common."[7]

Figure 8: Standing water in the basement

Obsolete and unsafe conditions exhibited in the generality of the building include insufficient means of ingress and egress, evidence of water intrusion, and outdated or exposed electrical wiring. These characteristics are conducive to unwholesome working conditions and present a health and safety risk to building users. As such, the property qualifies as an area in need of redevelopment under Criterion A.

[7] "Mold and Health". United States Environmental Protection Agency. <https://www.epa.gov/mold/mold-and-health> Accessed June 29, 2020.

Criterion 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 untenantable.

The property qualifies as an area in need of redevelopment under Criterion B as it consists of a building previously used for commercial use, specifically the movie theatre which is the primary use of the building, that has been allowed to fall into so great a state of disrepair as to be untenantable.

While untenantability does not explicitly mean vacancy, in this case it applies to a vacant space. For the purpose of this report, being untenantable means that the site could not be reoccupied by another user without extensive improvements that are likely to extend beyond what a private actor could be reasonably expected to invest. The unsuitability of the building for tenancy is supported by the fact that the property has remained vacant since August 2019.

Many of the characteristics that reflect this condition are consistent with the substandard and obsolete nature of the building described with regard to Criterion A and Criterion D. As noted, the current state of the building necessitates extensive updating and renovations to resolve safety risks – presented by outdated electrical wiring and insufficient means of ingress and egress – in order to be tenantable. Absent their resolution, the property is in a sufficient state of disrepair so as to be untenantable.

The tenantability of the property is also negatively affected by its need for major upgrades and system replacements in order to function as a movie theatre. It is untenantable because it lacks the basic infrastructure to fulfill this purpose, which is the only use that most of the building in its current configuration and without extensive renovation can reasonably be put to. Movie picture projection equipment and fixed seating, both essential facilities for the showing of motion pictures, are now absent in locations throughout the building. Replacement of these facilities and, thus, the restoration of this property to tenantable status would require overwhelming investments that would likely exceed the economic value of the building absent public or philanthropic intervention.

Based on the lack of necessary infrastructure to be operated as a movie theatre and the persistence of health and safety hazards, the property qualifies as an area in need of redevelopment under Criterion B. Specifically, it is a building that was

previously used for commercial purposes that has been allowed to fall into such a state of disrepair so as to be untenantable.

Criterion 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 property qualifies as an area in need of redevelopment under Criterion D as it exhibits characteristics of obsolescence, faulty arrangement, excessive land coverage, and obsolete layout, in a manner that is detrimental to the safety, health, and welfare of the community.

As noted, in Spruce Manor Enterprises v. Borough of Bellmawr (1998), the Court relied on the generally understood meaning of obsolescence as "the process of falling into disuse and relates to the usefulness and public acceptance of a facility." According to property records and news reports, the building was constructed in the 1920s and was used as a motion picture theatre until operations ceased in 2019. The building has fallen into disuse as a result of the diminished usefulness and public acceptance of its configurations and use as a motion picture theatre.

This report does not suggest that all downtown movie theatres are obsolescent, but rather the obsolescence of this specific building. The building's obsolescence is partially related to its lack of the amenities and infrastructure found in successful modern theatres of similar scale. The dominant market trend in smaller movie theatres is to provide a highly amenitized experience that features a high-quality food and beverage program and luxury seating.[8] The theatre lacks these resources and, as such, is obsolescent relative to modern standards and has limited economic value. The building's vacancy is evidence of its obsolescence. Vacant and obsolete buildings have limited economic value, fail to contribute to the economic well-being of a community, and can result in a diminished tax

[8] "Living Large: The Rise of Boutique and Luxury Cinemas in North America". Box Office Pro. <https://www.boxofficepro.com/living-large-rise-boutique-luxury-cinemas-north-america/> Accessed June 12, 2020.

base.[9] As a result, vacant buildings are detrimental to the welfare of the community.

As previously noted, the building exhibits obsolescence resulting from limited means of ingress and egress and outdated electrical wiring. Furthermore, the layout of the building is obsolete as it presents obstacles for those requiring ADA accessibility. Each of these conditions of obsolescence of the building and its improvements are detrimental to the health and safety of the community.

Figure 9: Excessive lot coverage and absence of modern stormwater management infrastructure

The property also exhibits excessive land coverage. Excessive land coverage by buildings can exacerbate stormwater management issues, thus negatively impacting the safety of the community which may become subject to flooding, or the welfare of the community if businesses avoid areas with flooding. While high lot coverage ratios are often found in the context of downtowns, modern downtown development projects would typically include stormwater management infrastructure to mitigate the impacts of excessive lot coverage. No such modern stormwater management infrastructure, like green roofs or underground stormwater infrastructure, was identified in the Study Area. As a result, the condition of excessive lot coverage will exacerbate stormwater

[9] "Vacant Properties. The True Cost to Communities." National Vacant Properties Campaign. <https://files.hudexchange.info/resources/documents/VacantPropertiesTrueCosttoCommunities.pdf> Accessed June 26, 2020.

management issues and, therefore, be detrimental to the safety and welfare of the community.

The property exhibits characteristics of obsolescence, faulty arrangement, excessive land coverage, and obsolete layout in a manner that is detrimental to the safety, health, and welfare of the community. As such, it qualifies as an area in need of redevelopment under Criterion D.

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

Criterion H applies to the property within the Study Area in addition to the other criteria identified. Criterion H states: "the designation of the delineated area is consistent with smart growth planning principles adopted pursuant to law or regulation."

The Smart Growth principles crafted by the Smart Growth Network and cited by the United States Environmental Protection Agency include:

- Mix land uses
- Take advantage of compact building design
- Create a range of housing opportunities and choices
- Create walkable neighborhoods
- Foster distinctive, attractive communities with a strong sense of place
- Preserve open space, farmland, natural beauty, and critical environmental areas
- Strengthen and direct development towards existing communities
- Provide a variety of transportation decisions
- Make development decisions predictable, fair, and cost effective

The Study Area exhibits many of the characteristics of an area suitable for Smart Growth. It has excellent access to public transit, including commuter rail. It is an established community center, with a land use form conducive to creating a walkable neighborhood that has a mixture of land uses. This community center has a distinct architectural character that could be enhanced via additional considerate and contextually appropriate development. Each of these characteristics supports the property qualifying under Criterion H.

The New Jersey State Development and Redevelopment Plan (the "State Plan") was adopted March 1, 2001 and is intended to "serve as a guide for public and private sector investment in New Jersey."[10] In the State Plan, the Study Area is

[10] "New Jersey State Development and Redevelopment Plan". State of New Jersey (2001), p. 6.

located in the Metropolitan Planning Area (PA-1). The State's intention for PA-1 is to:

- Provide for much of the state's future redevelopment
- Revitalize cities and towns
- Promote growth in compact forms
- Stabilize older suburbs
- Redesign areas of sprawl
- Protect the character of existing stable communities

In 2010, Executive Order 78 reiterated the importance of using "State planning as a tool to align all levels of government behind a shared vision for future growth and preservation." Redevelopment of the Study Area property would be in line with the objectives of the State Plan and the directive of Executive Order 78, and the aims of the State Plan for PA-1 zones are consistent with Smart Growth principles. As such, designation of the Study Area would be consistent with the goals of the State Plan and warrant designation under Criterion H.

Consideration of Redevelopment Designation

The results of the preliminary investigation indicate that the Study Area, encompassing Block 3107, Lot 1 can be designated as an area in need of redevelopment under Criteria A, B, D, and H in accordance with N.J.S.A. 40:12A as described above.

Conclusion

This Preliminary Investigation was prepared on behalf of the Town of Westfield Planning Board to determine whether the property identified as Block 3701, Lot 1 can be designated as a non-condemnation area in need of redevelopment. Based on the above analysis and investigation of the Study Area; we conclude that the above property meets Criteria A, B, D, and H for a redevelopment area designation. A map of the recommended area in need of redevelopment is included as **Appendix D.**

Appendices

Appendix A: Authorizing Resolution

TOWN OF WESTFIELD
WESTFIELD NEW JERSEY
RESOLUTION NO. 79-2020

CODE REVIEW & TOWN PROPERTY COMMITTEE **MARCH 10, 2020**

RESOLUTION OF THE TOWN OF WESTFIELD, COUNTY OF UNION, STATE OF NEW JERSEY, AUTHORIZING AND DIRECTING THE PLANNING BOARD OF THE TOWN OF WESTFIELD TO UNDERTAKE A PRELIMINARY INVESTIGATION OF THE PROPERTY KNOWN AS BLOCK 3107, LOT 1 TO DETERMINE WHETHER THE PROPERTY QUALIFIES AS A NON-CONDEMNATION AREA IN NEED OF REDEVELOPMENT

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1, *et seq.* (the "**Redevelopment Law**") provides a mechanism to empower and assist local governments to promote the advancement of community interests through programs of redevelopment for the expansion and improvement of commercial, industrial, residential and civic facilities; and

WHERAS, the Redevelopment Law empowers the Town of Westfield (the "**Town**"), by and through its Mayor and Council (the "**Governing Body**"), to direct the Town's Planning Board to conduct a preliminary investigation into certain real property to determine whether such property qualifies as an area in need of redevelopment pursuant to the Redevelopment Law; and

WHEREAS, the Governing Body desires to authorize and direct the Planning Board of the Town (the "**Planning Board**") to undertake a preliminary investigation to determine whether certain real property, specifically Block 3107, Lot 1, located at 244-254 East Broad Street (the "**Study Area**") qualifies as a non-condemnation area in need of redevelopment pursuant to and in accordance with the Redevelopment Law; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Town of Westfield, County of Union, and State of New Jersey, as follows:

1. The Planning Board is hereby authorized and directed to undertake a preliminary investigation pursuant to *N.J.S.A.* 40A:12A-6 to determine if the Study Area qualifies as a non-condemnation area in need of redevelopment pursuant to and in accordance with the Redevelopment Law, specifically *N.J.S.A.* 40A:12A-5 (the "**Investigation**").

2. As part of the Investigation, the Planning Board shall prepare a map covering the Study Area and showing the boundaries of the proposed non-condemnation redevelopment area and the location of the parcel contained therein and attaching to the map a statement setting forth the basis for the investigation.

3. The Planning Board shall conduct a public hearing, after giving due notice of the boundaries of the Study Area and the date of the hearing to any persons who are interested in or would be affected by a determination that the Study Area be designated as a non-condemnation area in need of redevelopment (the "**Public Hearing**"). The Public Hearing shall be conducted in accordance with the provisions set forth at *N.J.S.A.* 40A:12A-6.

4. At the conclusion of the Public Hearing, the Planning Board shall make a recommendation to the Mayor and Council in the form of a resolution with supporting documentation as to whether the Mayor and Council should or should not designate the Study Area as a non-condemnation area in need of redevelopment pursuant to the Redevelopment Law.

5. Any designation made by the Mayor and Council with respect to the Study Area as an area in need of redevelopment shall authorize the Town to use all those powers provided by the New Jersey Legislature for use in a redevelopment area, other than the use of eminent domain.

6. All Town officials and employees are hereby authorized and directed to take all action necessary and appropriate to effectuate the terms of this Resolution.

7. This Resolution shall take effect immediately.

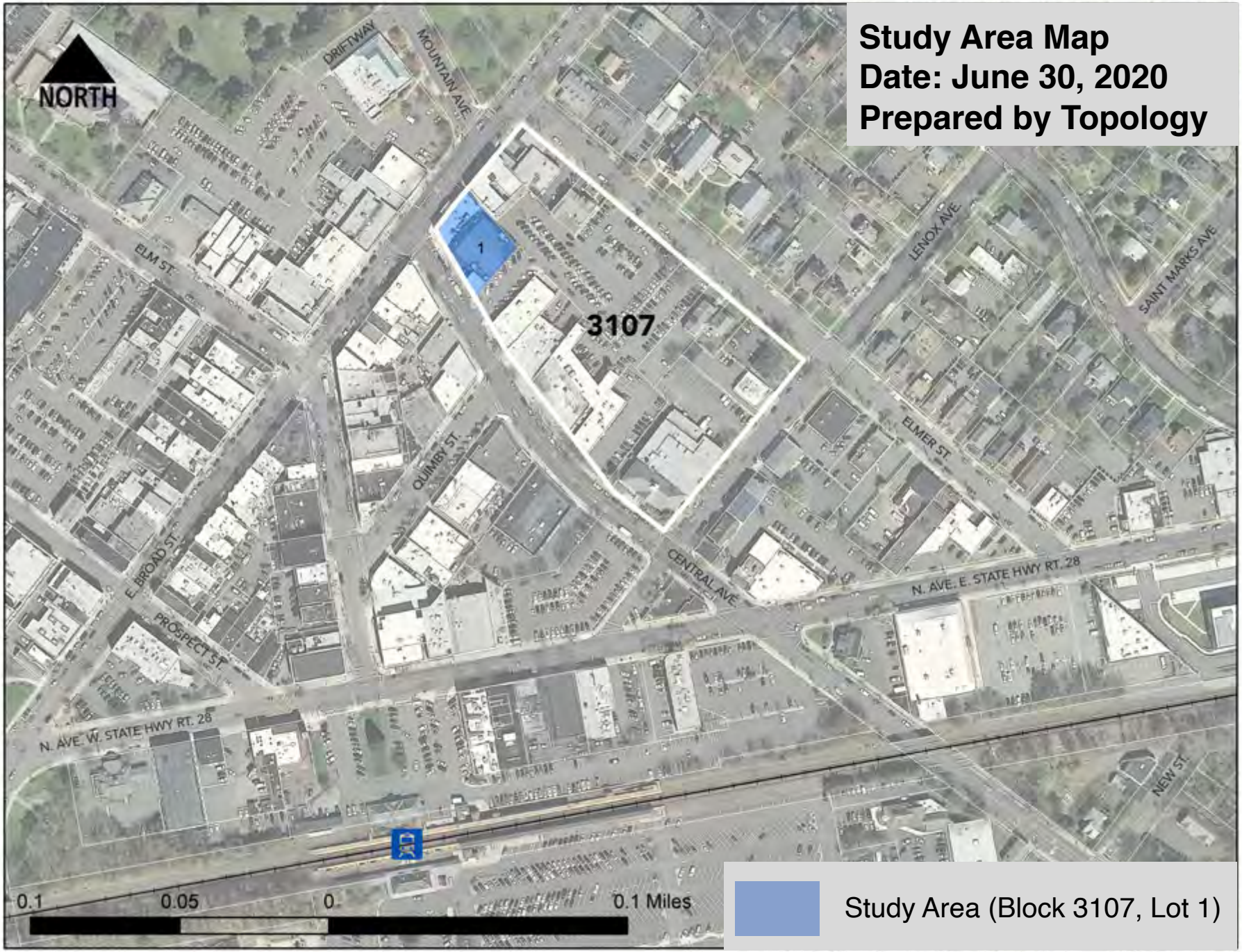
****

I hereby certify that the within Resolution is a true and exact copy of the Resolution adopted by the Westfield Town Council at their meeting of March 10, 2020.

Tara Rowley

Tara Rowley, RMC
Town Clerk

Appendix B: Study Area Map


Study Area Map
Date: June 30, 2020
Prepared by Topology
NORTH
DRIFTWAY
MOUNTAIN AVE
ELM ST
LENOX AVE
SAINT MARKS AVE
1
3107
QUIMBY ST
ELMER ST
E. BROAD ST
PROSPECT ST
CENTRAL AVE
N. AVE. E. STATE HWY RT. 28
N. AVE. W. STATE HWY RT. 28
NEW ST
0.1
0.05
0
0.1 Miles
Study Area (Block 3107, Lot 1)

Appendix C: Zoning Excerpt

§ 11.25. CBD Central Business District.

A. Principal uses and structures. The CBD zone district is intended to encourage retail sales, retail services, personal services, offices, and residential uses in appropriate locations as set forth within this section, all within a mixed-use environment which encourages street activity throughout the day and evening hours. The following principal uses and structures shall be permitted in the CBD zone district: **[Amended 6-6-2017 by Ord. No. 2082]**

1. Business establishments devoted primarily to the retail sales of goods and personal services on the premises, including restaurants and food establishments intended for food consumption on the premises or for take-out of food;

2. Banks and other financial institutions engaged in the business of accepting deposits from the public and/or extending credit to the public in the form of loans. Such business must be conducted on the premises, and must be the principal activity of the use on the premises;

3. On any floor of a building located in property with a frontage on North Avenue or South Avenue, and only on the second or third floors of a building on other property within the CBD zone district, business, administrative and professional offices or other business establishments providing the following services:

    a. Finance, insurance or real estate sales or services;

    b. Business or professional services;

    c. Health services;

    d. Social services;

    e. Consulting services; and,

    f. Educational services.

4. Retail services;

5. Child care centers;

6. Governmental buildings and municipal parking facilities;

7. Public parks and playgrounds;

8. Residential dwelling units on the second or third floors of a building;

9. A shared use of a single tenant space by multiple non-residential uses which are permitted principal uses as included in this section; and

10. The temporary use of existing floor area by a permitted principal use or uses as listed in this section, for a period of not more than 60 days tolled continuously from the first date of operation, shall not be subject to parking requirements for the duration of the use. Such temporary use shall be allowed once per calendar year for each tenant space. Temporary uses must comply with all sign provisions of Article 16.

B. Accessory uses and structures. The following accessory uses and structures shall be permitted in the CBD zone district: **[Amended 8-3-2004 by Ord. No. 1838]**

1. Parking and parking facilities as regulated in Article 17;

2. Signs as regulated in Article 16;

3. Antennas, as regulated in § 13.04;

4. Sidewalk cafes as permitted and regulated by § 24-46 through § 24-57 of the Town Code; and

5. Other accessory uses and structures customarily subordinate and incidental to permitted principal uses and permitted conditional uses.

C. Conditional uses and structures. The following conditional uses and structures shall be permitted in the CBD district only if they comply with the appropriate regulations for such uses or structures in Article 18: **[Amended 12-14-2004 by Ord. No. 1843]**

1. Non-profit chartered membership organizations;

2. Residential-type public utility facilities;

3. Certain cellular telecommunications antennas as set forth in Article 18; and

4. Age-restricted multi-family housing on the ground floor of a building.

5. Microbreweries and craft distilleries, and **[Added 9-25-2018 by Ord. No. 2111]**

6. Commercial use of rooftops. **[Added 11-6-2018 by Ord. No. 2115]**

D. Prohibited uses and structures. Any use or structure other than those uses or structures permitted in Subsection A, B or C above are prohibited. In addition, and notwithstanding the above permitted uses, the following uses shall be specifically prohibited:

1. Any business conducted outside the confines of a building, except for the commercial use of rooftops, except for the use of ground level patios as places for eating and drinking, except for sidewalk cafes permitted and regulated by § 24-46 through 24-57 of the Town Code, and except those temporary activities permitted by special permission from the Town Council; **[Amended 8-3-2004 by Ord. No. 1838; 11-6-2018 by Ord. No. 2115]**

2. Gasoline filling stations, gasoline service stations, public garages, automobile body repair or painting shops;

3. Lumber or building material yards;

4. Sale, rental or repair of automobiles, motorcycles, boats, trailers, lawn mowers, small gasoline or other liquid fuel engines;

5. Dry cleaning establishments where the dry cleaning is done on the premises;

6. Warehouses or businesses which do not sell directly to the general public;

7. Public or private schools;

8. Drive-in or drive-through restaurants; **[Amended 6-6-2017 by Ord. No. 2082; 11-6-2018 by Ord. No. 2115]**

9. Funeral services, undertakers, crematories and morticians;

10. Residential use of any kind other than those uses as permitted in Subsections A and C above. Existing nonconforming residential buildings or structures shall not be extended or enlarged for use relating to a business, unless the first floor is used entirely for business use; **[Amended 12-14-2004 by Ord. No. 1843]**

11. All above-ground and underground bulk storage of liquefied petroleum gases, gasoline, diesel fuel, kerosene, No. 2 fuel, fuel oil, chemicals or similar hazardous, flammable or combustible liquids in any amount, except as permitted otherwise by § 13.05. Aboveground or basement storage of up to 530 gallons of kerosene or No. 2 heating fuel in approved

storage tanks and used exclusively for heating purposes on the premises is exempted from the above prohibition;

12. Any building, structure or use which would create an undue hazard of fire, explosion or nuisance by reason of odor, noise, dust or smoke, or which in any way would be detrimental to the health, public morals and public safety of the community; and

13. Private commercial parking lots as a principal use.

E. Bulk and lot regulations. The following bulk and lot regulations shall apply to all uses permitted within the CBD zone district, unless more stringent requirements are provided by this ordinance:

1. Minimum front yard. No front yard shall be required.

2. Minimum side yard. All principal buildings may be constructed without side yards, except that when a side yard is provided, it shall not be less than 10 feet. Notwithstanding the above requirement, when the side yard in the CBD zone district abuts a property in any residential zone, said side yard shall be not less than one foot for every two feet of height of the building located in the CBD zone district, but not less than 10 feet. Within this required side yard, there shall be a buffer at least 10 feet deep, within which plant material and/or a fence shall be installed, as required by the Planning Board, to adequately protect the abutting residentially zoned property.

3. Minimum rear yard. There shall be a rear yard of at least one foot for every two feet of height of the principal building on the lot which is the subject of the application, but not less 10 feet. Notwithstanding the above requirement, the following rear yard regulations shall apply to all properties in the CBD zone district which are used for residential purposes, or which abut a residential zone:

a. When a building in the CBD zone district is to be used in whole or in part for residential purposes, there shall be a rear yard of not less than 35 feet.

b. When the rear yard in the CBD zone district abuts a property in any residential zone, said rear yard shall be not less than 35 feet. Within this required rear yard, there shall be a buffer at least 10 feet deep, within which plant material and/or a fence shall be installed, as required by

the Planning Board, to adequately protect the abutting residential property.

4. Maximum building height. No principal building shall exceed the maximum of three habitable floors, exclusive of basement, or 40 feet in height, whichever is less.

F. Facade regulations. The following regulations shall apply to the design of storefront facades in the CBD zone district: **[Amended 6-6-2017 by Ord. No. 2082]**

1. Window area. Building facades which face the street shall contain a transparent window area on the ground floor which comprises not less than 40% of the area of the ground floor facade, when the following conditions exist or are proposed:

   a. The facade in question is set back less than 10 feet from the right-of-way; and

   b. A new building, substantial renovation or reconstruction of the street facade of an existing building, or a conditional use as set forth in Subsection C.1 or C.2 above, is proposed.

   When an existing building contains more than one unit occupied by different tenants, the above requirement shall apply only for the facade of the unit(s) being renovated or reconstructed. For purposes of administering the above requirements, the ground floor facade area shall be construed to be the product of the width of the facade times 10 feet.

2. Awnings. Awnings shall be permitted as regulated by the Town Code. Internally illuminated awnings are prohibited.

3. Entrances. Each ground floor tenant shall provide at least one customer/client entrance on a street-facing facade. Service doors shall not be located along any street-facing facade.

4. Existing window and door openings. Existing window and door openings on a facade may not be filled in unless the finished materials and color match those of immediately adjacent finishes on the building.

5. Ground floor street-facing facades shall be occupied by permitted principal and approved conditional uses. However, vehicular access to parking areas (limited to 15 feet in width for a one-way driveway and 25 feet in width for a two-way

driveway) are permitted along a ground floor street-facing facade.

G. Mixed residential and non-residential use. The following regulations shall apply to dwelling units on the second or third floor of a principal building:

1. The habitable floor area devoted to residential use(s) shall not exceed 2/3 of the total habitable floor area of the building or structure containing said residential use(s).

2. Any single-dwelling unit shall have a minimum of 600 square feet of habitable floor area.

3. Parking shall be provided for the residential use as required by Article 17.

H. Other regulations. In addition to the above requirements, any development in the CBD zone district must comply with all applicable regulations of this ordinance, including but not limited to the following:

1. The general provisions of Article 12;

2. The regulations affecting accessory buildings, structures and uses in Article 13;

3. The off-street parking provisions of Article 17; and

4. The sign provisions of Article 16.

Appendix D: Recommended Redevelopment Area

Recommended Redevelopment Area