

SAZHA ALEXANDRA RAMOS; SHANTELL
CHERRY; PRATIK PATEL; DANIEL
JACKSON; SARAH JACKSON; MATTHEW
KNOBLAUCH; RALPH JOHNSON; ZOE
SCOTTO; KAMUELA TILLMAN; and
STACI BERGER, individually and
o/b/o the PISCATAWAY PROGRESSIVE
DEMOCRATIC ORGANIZATION,
PISCATAWAY FAMILIES FOR CLEAN
AIR; and PISCATAWAY YOUTH
PROGRESSIVE ORGANIZATION,
Plaintiffs,

v.

TOWNSHIP COUNCIL OF PISCATAWAY
TOWNSHIP; and PLANNING BOARD OF
PISCATAWAY TOWNSHIP; JOHN DOES 1-
10, AND XYZ CORPS. 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX
COUNTY

DOCKET NO. MID-L-519-22

REPLY ON BEHALF OF PLAINTIFFS

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PRELIMINARY STATEMENT

The Township of Piscataway's Master Plan designates Block 5701 Lot 2 for "Parks, Recreation, Open Space and Conservation Areas." The question presented is whether a zoning change allowing an industrial use on Lot 2 is consistent with that designation. It is clear that an industrial use is not substantially consistent with Parks, Recreation, Open Space and Conservation. Yet, Defendants argue that it is, through a combination of illogical thinking and a misplaced reliance upon "changed circumstances."

Defendants argue that Plaintiffs unreasonably insist upon a strict adherence to the Master Plan while at the same time they advance their own consistency analysis that is untethered to the Master Plan. While absolute consistency may not be required, a consistency analysis ought to be grounded in the provisions of the Master Plan. Defendants' analysis does not do so.

In contrast, Plaintiffs' expert undertook a comprehensive review of the Master Plan, the zoning change from RR-1 to M-2, the CME planning report recommending the zoning change, and, the regulatory inconsistencies and negative impacts of the change. The conclusion that the zoning amendment in Ordinance No. 2021-38 is not consistent with the Master Plan is supported by the provisions of the Master Plan, the clear discrepancy between an

industrial land use and open space, and, expert opinion undergirded by the language of the Master Plan.

ARGUMENT

I. The "Changed Circumstances" Cited By Defendants Do Not Establish That The M-2 Is Consistent.

Defendants' briefs summarize why they believe the Ordinance 2021-38 zoning change from RR-1 to M-2 was reasonable and appropriate. However, that is not the relevant inquiry. The relevant inquiry under N.J.S.A. 40:55D-62(a) is whether the zoning change is consistent with Piscataway's Master Plan. In this respect, Defendants have fallen short, relying upon two "changed circumstances" as justification for the zoning change. The first changed circumstance is that Lots 1.04 and 1.05 were built out with conforming warehouses under the pre-existing LI-5 zoning. The second is a population decrease in Planning Area C, which cites 2010 Census data in the Reexamination, that would minimize the negative impacts of the zoning change. A changed circumstance ordinarily is used to justify the enactment of an inconsistent zoning ordinance or a decision to grant a variance. In this instance, Defendants make the implausible argument that changed circumstances support a finding of consistency. As discussed further below, neither circumstance establishes that the zoning change is consistent with the Master Plan.

Defendant Township Council identifies the warehouse development on Lots 1.04 and 1.05 as a changed circumstance. Defendant Township Council's Brief ("DTCb") at 16. The two parcels were previously designated in the 2005 Master Plan as "Light Industrial" and zoned as "Light Industrial 5" (LI-5). On those parcels, warehouses were a conforming use before the M-2 zoning and they are still a conforming use after the M-2 zoning. Clearly, their construction did not necessitate any zoning change for Lots 1.04 and 1.05. Additionally, they were built sometime after the 2005 Master Plan but before the 2020 Reexamination. Had the conforming warehouse construction necessitated a zoning change for Lot 2, the 2020 Reexamination would have recommended one.

Defendant Township Council further states that due to the new warehouse development, a "transitional zone" was needed. However, the M-2 is not a transitional zone. By eliminating the low intensity buffering effect of the RR-1, the M-2 "simply allows industrial/commercial development to come closer to residential and neighborhood uses." See Analysis of Rezoning Block 5701 Lot 2, 1690 South Washington Avenue, Township of Piscataway, Middlesex County, New Jersey, Prepared Damon Rich, PP AICP of HECTOR urban design ("Rich Report") at 27, previously submitted on February 7, 2023 (Trans ID: LCV2023477755) and appended hereto as Exhibit A.

With respect to the second changed circumstance, a demographic change, Defendant Township Council states "since 2005,

the area had seen a decrease in population meaning there would be a minimal impact to existing residential uses in the area.” DTCb16. Accordingly, Defendant Township Council now argues that the zoning change is consistent with that population decrease. Again, the relevant inquiry is whether the zoning change is consistent with the Master Plan. While there may have been a population decrease, it does not make the zoning change consistent with the Master Plan nor eliminate the fact that there are still residential neighborhoods that will be negatively impacted by the zoning change.

Defendant Township Council reasons, in reliance on the CME report, that the M-2 is “consistent” because a demographic change means there would be “minimal impacts” from the industrial/commercial uses permitted under the M-2. However, Plaintiffs’ expert identified clear regulatory inconsistencies and potential land use conflicts stemming from the zoning change from RR-1 to M-2. Rich Report at 18. As explained in his report, existing adjacent or nearby residential neighborhood land uses will foreseeably experience negative impacts from industrial and commercial development on Block 5701, Lot 2. *Id.* at 18-25. The fact that warehouses were built on Lots 1.04 and 1.05 makes the buffer zone even more important.

With respect to the Randolphville School, Rich identifies many of the same negative effects identified by the public at the

Township's December 14, 2022 hearing: pedestrian hazards; harmful emissions; and, air quality. *Id.* at 19. He measures the warehouse as less than 400 feet from the school. He also notes the loss of the low-density or open space buffer between the residential neighborhood uses and the industrial/commercial areas to the north. *Id.* at 20.

With respect to Byrne Park, Rich notes that the M-2 potentially brings manufacturing and warehouse uses within 750 feet of the park, again losing the buffering space between the park and more intensive uses. *Id.* at 21.

For residences along Woodland Road, Suttie Road and nearby streets, industrial and manufacturing uses would be considerably closer to those homes, bringing secondary impacts such as vehicular traffic, harmful diesel emissions and noise. *Id.* at 22.

The undeveloped Ambrose and Doty's Brooks Natural Area was established due to the need for "floodplain protection" and provides habitat in the form of undeveloped, early to mid-successional forest habitat for species including Great Herons, egrets, bald eagles, red-tailed hawks, and Indiana bats. *Id.* at 23. The Master Plan recognizes the sensitivity of these water bodies and their ecological benefits. Creating additional conservation areas nearby is beneficial, increasing floodplain protection. The "[n]eed for floodplain protection would be significantly increased by development of Block 5701 Lot 2 with

the 50% lot coverage as permitted by the new M-2 zone, rather than the maximum 20% permitted by the former RR-1 zone." The M-2 will foreseeably cause increased flooding for existing nearby land uses." *Id.* at 34. With more manufacturing and industrial uses nearby, there would be more stormwater runoff and erosion draining from the brooks into Lake Nelson. *Ibid.* More intense development on Block 5701, Lot 2 undermines the ecological benefits of planned land uses in the Master Plan.

As concluded by Plaintiffs' expert,

the previous zoning designation of "Rural Residential 1" (RR-1) generally permits low-intensity land uses that are conventional components of a residential neighborhood, and that the new zoning designation of "Manufacturing 2" (M-2) permits land uses of a distinctly different and more intense industrial and commercial character. Based on our analysis, this zoning change is substantially inconsistent with the township's Land Use Plan, and, as illustrated by the anticipated impacts on established neighborhood assets including Randolphville School; Byrne Park; houses along Woodland Road, Suttie Avenue, and nearby streets; and nearby waterways Ambrose Brook, Doty's Brook, and Lake Nelson, materially undermines and distorts basic provisions and objectives of the Master Plan and Reexamination. *Id.* at 25.

With their emphasis on changed circumstances and their attack on the inappropriateness of the RR-1 Zoning and the Master Plan's designation as open space, Defendants' briefs are a *post hoc* rationalization of what is actually an inconsistent amendment. Defendants could have chosen to acknowledge the obvious inconsistency and to rezone in accordance with the procedures set

forth in N.J.S.A. 40:55D-62(a). Defendants' refusal to acknowledge the inconsistency and their consequent failure to comply with N.J.S.A. 40:55D-62(a) render Ordinance No. 2021-38 invalid.

II. The M-2 Benefits A Particular Private Interest At The Expense Of The Comprehensive Scheme.

Having failed to establish that the M-2 advances a comprehensive scheme, Defendant Township Council now asks the Court to disregard clear evidence that Ordinance No. 2021-38 benefits a particular private interest. DTCb24.

Defendant Planning Board takes the opposite tack, asking the Court to consider the reality that the rezoning had to be tied to a particular private interest, given the prior development approvals obtained by that developer for Lot 2 as a result of a *Whispering Woods* settlement permitting a high-density mixed-use project. Defendant Planning Board's brief ("DPBb") at 4. However, the fact that the private interest, M&M, has chosen not to proceed with the "agreed-upon" project, is not a reason to allow M&M to do whatever it wants now. Nothing in the settlement requires the Township of Piscataway to change the zoning to allow the developer to build a warehouse. The Planning Board's position — that the history of M&M's attempted development requires a new use not contemplated in the Master Plan — is an admission of spot-zoning.

In its attempt to refute the claim of spot-zoning, Defendant Township Council first states that the CME Report "provides substantial evidence" that the M-2 advances a comprehensive zoning plan. DTCb23. However, Defendant Township Council does not specify any details of that comprehensive plan (e.g. the Master Plan) itself. Instead, Defendant Township Council recites various points made in the CME report. *Id.* In contrast, the comprehensive scheme in Planning Area C of Piscataway's Master Plan is clearly described in the Rich Report. The comprehensive scheme contains an open space buffering zone separating industrial/commercial uses to the North from residential/neighborhood uses to the South; it specifically designates Lot 2 for conservation, open space or recreation areas; and, Lot 2 is part of a larger P-35 open space project.

While the initial LI-5 zoning and conforming warehouse construction on Lots 1.04 and 1.05 may have been part of a comprehensive plan, their removal from the larger LI-5 Zone and their assembly with Lot 2 to create the M-2 Zone as part of a "transitional zone" was not. As discussed previously, the changed circumstances identified by CME do not implicate provisions of the Master Plan and do not prove that the M-2 is in accordance with that comprehensive scheme.

Defendant Township Council argues that comments by the Assistant Township Attorney and the Township Council should be

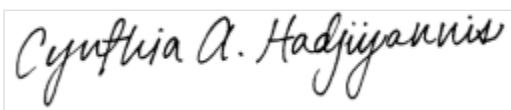
disregarded as evidence of spot-zoning citing Hawrylo v. Bd. Of Adj., 249 N.J.Super. 568, 575 n.10 (App. Div. 1991). In Hawrylo, a prerogative writ action appealing a variance to rebuild a barn, the Appellate Division evaluated the Board's comments stating "[m]embers of the Board commented extensively on the application prior to voting." *Id.* at 576. The Appellate Division concluded "i[t] is clear from the comments and the resolution that the Board relied upon what it believed to be the tenor of its 1984 Master Plan" and that "the Board's cited reasons justified the variance." *Id.* at 576, 585. If Hawrylo can be made to stand for any proposition, it is that the Court should undertake a close reading and content-based analysis of comments made by Council members and the Ordinance passed by the Council.

Similarly, Defendant Township Council asks the Court to disregard Mayor Wahler's letter to the editor defending the decision to re-zone to enable a warehouse to be built on Lot 2. While the Mayor's letter is revealing as to the true motive behind the legislation, even without his letter, there is ample evidence in the record that the M-2 was passed solely to benefit a particular private interest, M&M. Such evidence cannot be ignored and waved away as meaningless banter.

CONCLUSION

For the foregoing reasons, and for the reasons previously stated in Plaintiffs' original brief, Plaintiffs request Ordinance 2021-38 be declared null and void *ab initio*.

Respectfully submitted,

A handwritten signature in black ink that reads "Cynthia A. Hadjiyannis". The signature is written in a cursive, flowing style.

Cynthia A. Hadjiyannis, Esq.

/s/ Renée Steinhagen

Renée Steinhagen, Esq.

Date: 8/7/2023

EXHIBIT A

February 7, 2023

Analysis of Rezoning Block 5701 Lot 2
1690 South Washington Avenue
Township of Piscataway, Middlesex County, New Jersey



Prepared by HECTOR urban design
Damon Rich, PP AICP
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Analysis of Rezoning of Block 5701 Lot 2, 1690 South Washington Avenue
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1. Introduction

This report considers whether the 2021 rezoning of Block 5701 Lot 2 in the Township of Piscataway from the “Rural Residential 1” (RR-1) zone to the “Manufacturing 2” (M-2) zone is consistent with the municipality’s standing master plan and master plan reexamination. In so doing, we also evaluate the “Zoning Analysis for the Rezoning of Block 5701 Lots 1.04, 1.05, and 2” dated December 1, 2021 and revised December 6, 2021, prepared for the Township of Piscataway Planning Board by Steven L. Gottlieb of CME Associates, which found this rezoning to be consistent with the township’s Master Plan and Reexamination. Finally, this report addresses whether the rezoning is spot-zoning.

N.J.S.A. §40:55D-62a requires that the zoning ordinance and amendments “shall either be substantially consistent with the land use plan element and the housing plan element of the master plan or designed to effectuate such plan elements.” While it is accepted that there is not a legislated definition of “substantially consistent,” and that the law does not “mandate absolute consistency,”¹ in our professional planning opinion, we find that the inconsistency between the master plan and reexamination on the one hand, and the rezoning on the other, is not only somewhat inconsistent, but substantially inconsistent in a way that materially undermines and distorts basic provisions and objectives of the Master Plan as we interpret them in this analysis. The rezoning does this by redrawing and stretching the boundary separating residential and open space land uses from industrial uses and truck-intensive warehousing uses.

The clear establishment and predictable maintenance of these types of boundaries between substantially different land uses is central to the goals and mechanisms of New Jersey’s laws that govern municipal master plans and zoning ordinances. To find that this specific rezoning is “substantially consistent” with the master plan would leave that phrase with no practical meaning.

¹ “[T]he Legislature has not defined what is meant by “substantially consistent” with a master plan... Thus, the concept of “substantially consistent” permits some inconsistency, provided it does not substantially or materially undermine or distort the basic provisions and objectives of the Master Plan.” *Manalapan Realty v. Tp. Committee*, 140 N.J. 366, 383 (1995).

Our analysis begins with the treatment of this property by the 2005 Master Plan and 2020 Reexamination, and then applies these findings to analyze the consistency of rezoning from LL-1 to M-2.

2. Review of Master Plan & Reexamination

2005 Master Plan Revision

Piscataway Township's Master Plan Revision of 2005, adopted 12/14/05 by the Planning Board, includes Block 5701 Lot 2 within Planning Area C. The Land Use Plan for this area, the primary regulatory mapping of a New Jersey municipal master plan, on Plate 8C, is reproduced below, with Lot 2 outlined in purple dashed line:



FIGURE 1. 2005 Piscataway Master Plan, Land Use Plan for Planning Area C
 (Block 5701 Lot 2 outlined in purple dashed line)

An overall pattern is recognizable within this overall land use plan including:

- Along the northern reaches of the Planning Area, a band of properties runs east and west of Light Industrial (shown in white) and Commercial (shown in red) land uses, parallel to Interstate 287 and Centennial Avenue. Overall, this area is occupied by major roads and intensive land uses that this infrastructure supports.
- The southern reaches of the Planning Area include land mainly designated as “Single Family Residential” (shown in yellow) interspersed with “Public Schools/Public Facilities” (light blue) reflecting the presence of Randolphville Elementary School and Piscataway High School, “Semi-Public” land uses (dark blue) reflecting existing Resurrection Cemetery and Lake Nelson Memorial Cemetery, “Parks, Recreation, Open Space and Conservation Areas” (green) reflecting the presence of Byrne Park and Lake Nelson Park, and one area of “Planned Residential Development” (orange), which is the Castle Pointe townhouse development. This area is characterized by quieter residential neighborhood land uses, and includes no commercial or light industrial areas.
- Between these two larger areas with quite different land uses and overall characters sit a variety of buffering properties, generally designated “Parks, Recreation, Open Space and Conservation Areas” (green).

This overall scheme, concentrating commercial and industrial uses and separating them from residential neighborhoods with areas open space and low-intensity uses, follows longstanding planning practices of buffering everyday living environments from the smells, sights, sounds, traffic and other nuisances of intense commercial and industrial activities.²

Zooming into the specific properties that are the subject of rezoning under evaluation:

- Block 5701 Lots 1.04 and 1.05 are designated as “Light Industrial” (white), and lay on the southernmost boundary of the larger “Light

² “[T]he idea that the activities taking place on one piece of land may be harmful to those on a neighboring parcel is almost as old as zoning itself. The zoning buffer is an attempt to solve this ever-present problem of incompatible land uses.” “Zoning Buffers: Solution of Panacea?” in American Society of Planning Officials Advisory Service, Information Report 133, April 1960.

Industrial” area that extends north to Centennial Avenue and Interstate 287.

- Block 5701 Lot 2 is designated “Parks, Recreation, Open Space and Conservation Areas,” and lies immediately south of the boundary between the “Light Industrial” area to the north and the residential, open space, and school area extending south to Morris Avenue and Metlars Lane.

The separation of major land use types such as industrial, commercial, and residential uses, and the creation of boundaries and buffers between them, has been central to land use planning and zoning practice in the United States since the Supreme Court upheld this public power in *Village of Euclid V. Ambler Realty Co.* in 1926. The separation of industrial/commercial uses near Interstate 287 and Centennial Avenue from residential neighborhood uses to the south is clearly reflected in the overall pattern of the Land Use Plan, and the division indicated by the Land Use Plan between Lots 1.04 and 1.05 to the north, and Lot 2 to the south, is one stretch of the larger boundary created by these planning documents.

Further, the designation of Block 5701 Lot 2 for “Parks, Recreation, Open Space and Conservation Areas” is highlighted as a major land use action in the plan: “An additional Land Use Plan revision incorporates two existing farm tracts as Conservation / Open Space / Recreation. These two lots [Lot 2 and Lot 11 to its south] comprise an approximate total area of 64 acres, are traversed by overhead power lines and contain wetlands. They are located directly across South Washington Avenue from additional open space, which is also depicted on the Land Use Plan and will provide a logical and valuable extension to the township’s open space and recreation inventory.” (2005 Master Plan, Page 45) The Master Plan is clear that Block 5701 is not only designated for “Conservation / Open Space / Recreation” to increase the amount of conserved open space *generally* in the township, but more importantly, because it is *specifically* situated near other designated open space “directly across South Washington Avenue.” This contiguity and position within a larger conservation and open space plan, while creating ecological and habitat benefits, also serves the larger land use plan described above, since this larger contiguous open space also serves as separation

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between the industrial/commercial land uses to the north and the residential neighborhood land uses to the south.

This clear plan for the future land use of Block 5701 Lot 2 is corroborated by how it is treated by the Recreation and Conservation Plan Element of the same 2005 Master Plan Revision. “Table 29. Existing and Proposed Parks, Recreation, and Conservation Areas,” and “Plate 12. Recreation and Conservation Plan,” designate Block 5701 Lot 2 as included within the specific open space project labeled “P-35 Proposed Open Space,” as described on page 63 of the Master Plan: “Open Space preservation is proposed in the central, eastern portion of the township along South Washington Avenue. This open space area consists of three separate large individual parcels of land along both sides of the roadway, and is identified as P-35 on the Recreation and Conservation Plan, and on Table 29. This proposed open space area comprises a total area of 138.5 acres, and will compliment [sic] the proposed Middlesex County Ambrose and Doty’s Brook Park, which is located directly adjacent to this area.”

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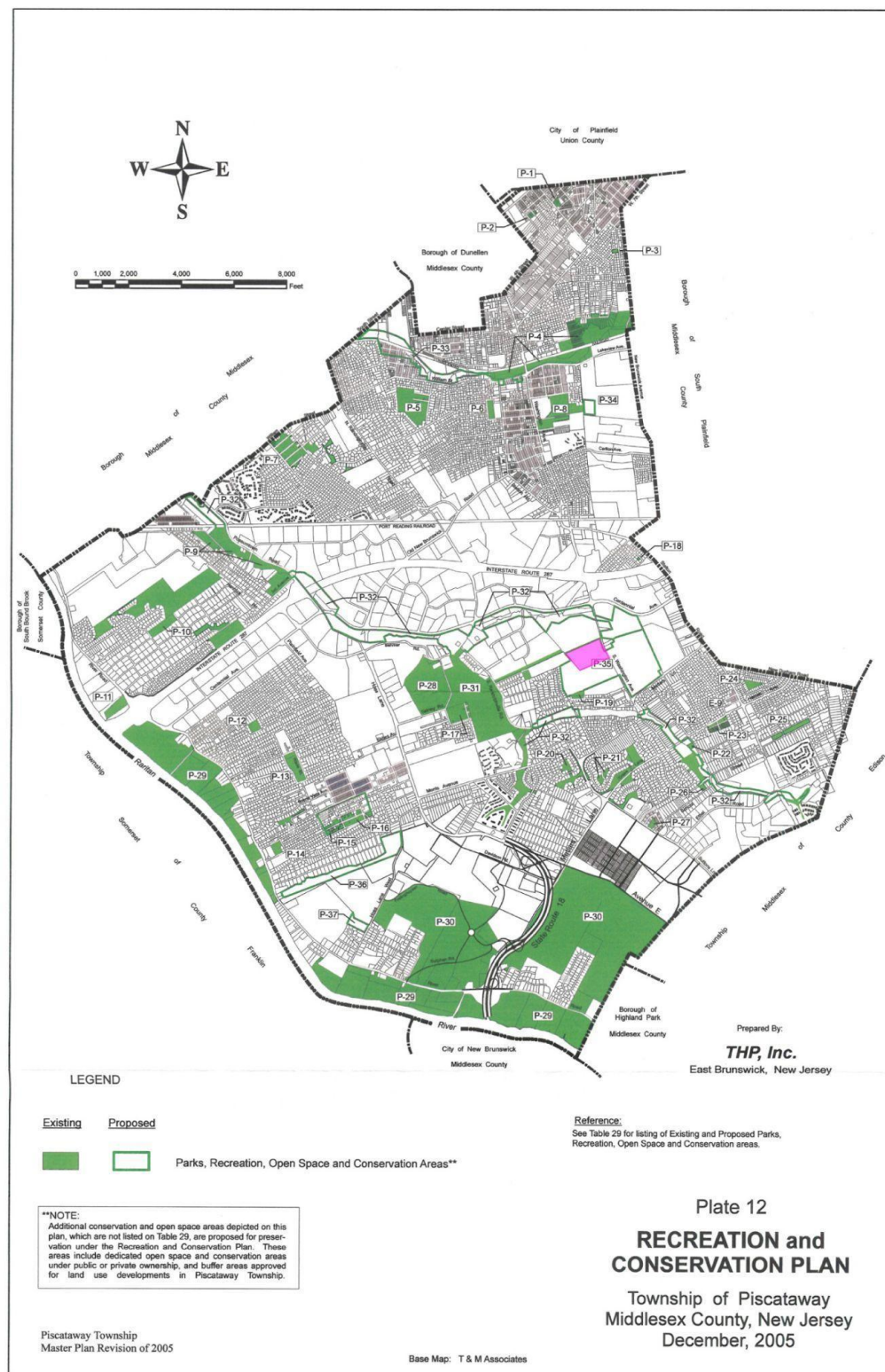


FIGURE 2. 2005 Piscataway Master Plan, Plate 12. Recreation and Conservation Plan
(Block 5701 Lot 2 highlighted in purple)

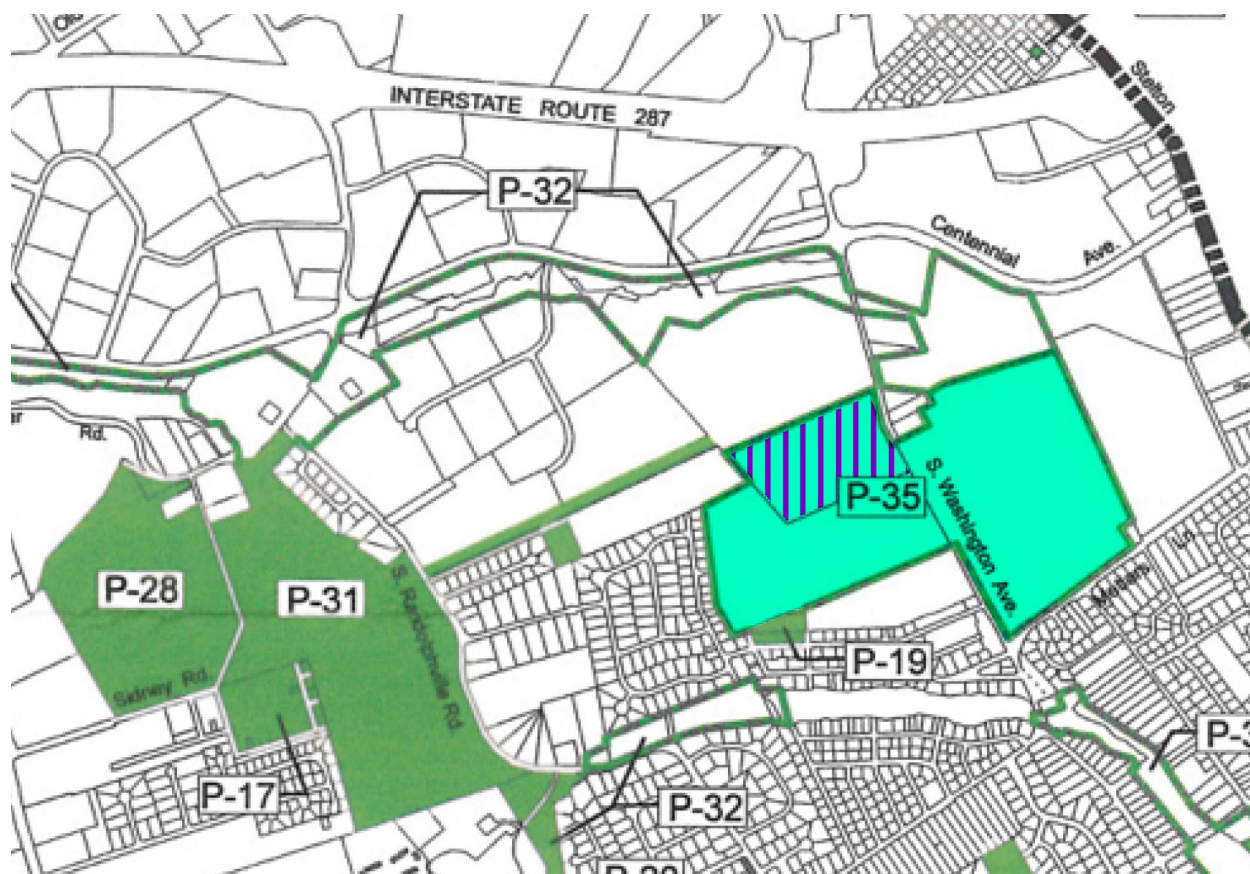


FIGURE 3. Detail of 2005 Piscataway Master Plan, Plate 12. Recreation and Conservation Plan (“P-35 Proposed Open Space” filled with light green and Block 5701 Lot 2 highlighted with purple hatching)

Figure 3 shows the extent of the “P-35 Proposed Open Space” in light green fill, with Block 5701 Lot 2 highlighted with purple hatching. (P-35 includes the property planned for an ecological park on the former Halper Farm). Noted above by the Master Plan text, the connection between the three properties contained within the including Block 5701 Lot 2, to the Middlesex County Ambrose and Doty’s Brook Park marked P-32, shows how the selection of this specific property for “Open Space Preservation” is in part based on the specific ecological functions connected to its specific location, and the potential benefit of its conservation due to the locational role it plays in a larger network of open spaces among other land uses.

Specifically, Block 5701 Lot 2 is located at the watershed divide between these two small streams, and its development could have a significant impact on the ecological and hydrological functions of the property and beyond compared to a similarly sized parcel elsewhere. Also, because the parcel connects already preserved areas of open space, it has a greater potential to act as a connective habitat corridor than any other remaining undeveloped parcel in the region.

From this examination of the 2005 Master Plan Revision, we find that Block 5701 Lot 2 has been clearly and specifically designated for future use as “Parks, Recreation, Open Space and Conservation Areas” within the specific P-35 Proposed Open Space.

2020 Master Plan Reexamination

Piscataway Township’s Master Plan Reexamination, titled “Reexamination Report: Master Plan & Development Regulations,” dated 12/10/20 and adopted by the Planning Board on 12/23/20, cites the Municipal Land Use Law (MLUL) to explain its goals and purpose to communicate all important updates to the “assumptions, policies and objectives forming the basis for the master plan or development regulations as last revised,” and more specifically to convey any “specific changes recommended for the master plan or development regulations.” The MLUL sections are cited in the Reexamination:

c. The extent to which there have been significant changes in the assumptions, policies and objectives forming the basis for the master plan or development regulations as last revised, with particular regard to the density and distribution of population and land uses, housing conditions, circulation, conservation of natural resources, energy conservation, collection, disposition and recycling of designated recyclable materials, and changes in state, county and municipal policies and objectives.

d. The specific changes recommended for the master plan or development regulations, if any, including underlying objectives, policies and standards, or whether a new plan or regulations should be prepared.
 (N.J.S.A. 40:55D-89 entitled “Periodic reexamination”)

In Chapter IV, concerning “Significant Changes in the Assumptions, Policies, and Objectives Forming the Basis for the 2005 Master Plan and Development

Regulations, Section D. Land Use and Zoning” (page 37), the Reexamination lists the “Major land use developments (including ongoing development) and Zone Map changes in the Township since the adoption of the 2005 Master Plan Revision” organized by the five Planning Areas. The list for Planning Area C includes no mention of land use developments that would alter the “Parks, Recreation, Open Space and Conservation Areas” Land Use designated for Block 5701 Lot 2 by the 2005 Master Plan. From this, a resident or other reader could safely conclude that the general pattern of development proposed for this area remains in place

Several other aspects of the Reexamination corroborate that no changes were proposed or contemplated for Block 5701 Lot 2:

- Positive update on the P-35 Proposed Open Space described in the 2005 Conservation and Recreation Element: “Two open space/recreation areas are proposed along both side [sic] of South Washington Avenue, north of the Metlars Lane intersection. The area along the west side of South Washington includes two parcels and has not yet been developed. **The Township now owns both lots.**” (page 10, emphasis added)
- Continued support for connection of future open space including Block 5701 Lot 2 to the planned County open space system: “Proposed Middlesex County Ambrose and Doty’s Brook Park system will provide more active and passive recreation opportunities”. . . “[t]he Township is exploring funding options in order to purchase additional private land to supplement this Middlesex County Park facility and create further opportunities for active and passive recreational activities.” (page 9)
- These general and specific goals are restated as part of the “Open Space & Conservation Recommendations” on page 60:
 - “It is recommended that the Township continue to explore opportunities to provide recreational space and facilities to serve residents of the Township”
 - “[P]assive open space/recreational opportunity should also be encouraged”
 - “that the Township consider the future acquisition of private, environmentally sensitive properties adjacent to County parkland

to supplement the Middlesex County Ambrose and Doty's Brook parkland system.”

- Finally, a reader of the Reexamination will be reminded of the overall land use pattern prescribed by the Land Use Plan for Planning Area C, where intense and nuisance-producing industrial and commercial uses are clustered along Interstate 287 and Centennial Avenue, which are then separated from neighborhood uses to the south including houses, schools, and parks: “In consideration of potential land use change(s) along Centennial Avenue, it is imperative that traffic, access, and potential adverse impacts upon nearby residential neighborhoods be taken into consideration.” (page 54) From this passage, a resident could be reasonably assured that the township intended to regulate land use and development to protect and buffer neighborhoods from negative impacts of industrial and commercial development, not exacerbate them.

From this examination of the 2020 Master Plan Reexamination, we find that it upholds and advances the clear and specific designation of Block 5701 Lot 2 by the 2005 Master Plan for “Parks, Recreation, Open Space and Conservation Area.”

3. Review of Changes to Development Regulations for Block 5701 Lot 2

We have reviewed the 2005 Master Plan and 2020 Master Plan Reexamination and established their treatment of Block 5701 Lot 2, designated as “Parks, Recreation, Open Space and Conservation Area” in the Land Use Plan, and included it in a proposed open space project outlined in the Master Plan and updated as under public ownership by the Reexamination.

Before examining the rezoning of this parcel in 2021 from “Rural Residential 1” (RR-1) to “Manufacturing 2” (M-2), we note in passing that the 2021 rezoning action also included two parcels to the north of Block 5701 Lot 2, namely Block 5701 Lots 1.04 and 1.05. These two parcels had previously been designated by the 2005 Master Plan as “Light Industrial,” zoned as “Light Industrial 5” (LI-5),” and are currently developed with warehouses. In our analysis of the overall scheme

put forth by the Land Use Plan for Planning Area C (page 5 of this document), these lots are situated to the north of the boundary created between industrial and commercial uses to the north and neighborhood uses to the south. While these parcels were nominally rezoned by the 2021 action, the development regulations for the prior zoning of “Light Industrial 5” do not functionally differ from those for the new zoning of “Manufacturing 2.” The reasons for this nonfunctional change are not clear, except for potentially slightly diminishing the appearance of the inconsistency of the rezoning action that creates the entirely new zone of “Manufacturing 2.” Despite the change in zoning label, because these parcels retain the same designation for industrial use with the same regulations, their rezoning remains consistent with both the prior zoning as well as the underlying Master Plan and Master Plan Reexamination that designate these lots for industrial uses. This is also evident from the fact that Lots 1.04 and 1.05 are already fully developed with warehouses, a conforming use under the prior and new zoning designations.³

The situation of Block 5701 Lot 2 is quite distinct from Lots 1.04 and 1.05 to the north, both in its treatment by the Master Plan and Master Plan Reexamination, as well as its previous zoning designation of “Rural Residential 1” (RR-1). The following table compares and contrasts the land uses (primary, conditional, and accessory) permitted by the previous RR-1 zoning with the 2021 rezoning to M-2:

³ The warehouses on Lots 1.04 and 1.05 had already been constructed by the time of the 2020 Reexamination as noted on page 40 of the report: “538,800 SF Warehouse/Distribution use (constructed) – South Washington Avenue (Block 5701, Lots 1.04 & 1.05). Former vacant lot - zoned LI-5.”

RR-1 Permitted Uses	M-2 Permitted Uses [Same as Light Industrial 1 (LI-1) Zone]
<p>1. Single-family detached dwellings</p> <p>2. Farms of a customary and conventional nature except that no roadside stand or other building shall be used for the retail sale of farm products. No manure or other odor or dust producing substances shall be stored within 100 feet of any property line.</p> <p>3. Governmental parks and playgrounds, governmental buildings and uses.</p>	<p>1. All uses permitted in the Business Professional (B-P) Zones:</p> <ul style="list-style-type: none"> a. Government buildings and uses b. Businesses and professional offices c. Banks and studios d. Research activities necessary to the conduct of business and industry <p>2. Industrial uses of a type not having the potential for, or involving, processes of a nuisance-generating character, which may include</p> <ul style="list-style-type: none"> a. Executive, administrative or professional offices b. Experimental, research or testing laboratories and offices c. The manufacture, compounding, processing or packaging of food, cosmetics, perfumes, plastics of a type not producing odors and similar products d. Manufacture or assembly of molded rubber or plastic products, electrical appliances, electronic instruments and devices of similar products including machine and tool fabrications e. The warehousing, receiving or shipping of products or materials, providing that such materials are not hazardous in nature e. Establishments involving printing or publishing operations f. Other uses that are determined by the Board of Adjustment to be of the same general character as the above types of permitted principal uses, which are not objectionable due to odor, dust, noise, vibrations, smoke or other similar causes, but excluding uses specifically prohibited in this chapter <p>3. Public utility installations</p> <p>4. Commercial laundry establishments (not retail)</p>

Sources: "Township of Piscataway 21-501.2 Schedule of Use Requirements" (March 2021)

"Township of Piscataway Schedule of Uses in LI-1 and LI-5 Districts" (March 2021)

"Township of Piscataway 21-501.5 M-1, M-2 and M-5 Industrial Districts" (March 2022)

In terms of permitted principal uses, Rural Residential 1 (RR-1) is the least intensive residential zone of the 35 zones created by the Piscataway Township Zoning Ordinance (Chapter 21-502.2), which does not include specific zones for

less intensive uses such as parks or open space conservation. Only three principal uses are permitted in the RR-1 zone, all of which are low-intensity land uses:

1. Single-family detached dwellings.
2. Farms of a customary and conventional nature except that no roadside stand or other building shall be used for the retail sale of farm products. No manure or other odor or dust producing substances shall be stored within 100 feet of any property line.
3. Governmental parks and playgrounds, governmental buildings and uses.

While the RR-1 zone does not exclusively require the development of parks or open space on Block 5701 Lot 2 as described in the Master Plan and Master Plan Reexamination, RR-1 permits these uses. The additional permitted uses, namely farms and single-family houses on minimum one-acre lots, are substantially consistent with the Master Plan, in their low intensity character and preservation of the land as a low intensity buffer between industrial and commercial uses to the north, and neighborhood and residential uses to the south.

In contrast, the Manufacturing 2 (M-2) zone permits a much wider and more intense set of principal land uses, including offices, banks, laboratories, manufacture, compounding, processing and packaging of food, cosmetics, perfumes, and plastics, manufacture and assembly of molded rubber or plastic products, electrical appliances, and electronic instruments, printers, and warehousing, receiving or shipping of products or materials, public utility installations, and commercial laundries.

While the M-2 regulations state that uses are not permitted “having the potential for, or involving, processes of a nuisance-generating character,” it is clear that the uses permitted within the RR-1 zone such as farms and single-family houses on large lots would have drastically different secondary impacts on neighboring properties than the uses permitted within the M-2 zone such as manufacturing and warehousing. For example, deliveries and pick-ups by diesel trucks and other large vehicles that create unhealthy emissions would be much increased.

Overall, the permitted uses within the RR-1 zone are clearly components of a residential neighborhood, while those permitted within the M-2 zone are of a distinctly different and more intense industrial and commercial character.

This description of the differences between the RR-1 and M-2 zones is supported by further comparison of the permitted Accessory Uses and potentially permitted Conditional Uses within the two zones, as seen in the table below:

RR-1 Accessory Uses	M-2 Accessory Uses [Same as Commercial (C) Zone]
1. Private garages for not more than 3 cars. 2. Private, residential swimming pools in rear yard areas 3. Customary farm accessory uses except that structures used for the storage of hay or other highly inflammable material, or fenced chicken runs, or similar areas for fowl or livestock shall not be closer to any street line than 200 feet nor to any side or rear lot line than 100 feet.	1. Private garages for business vehicles used for a permitted use 2. Other access uses customarily incidental to the main use 3. Off-street parking lots for customers, clients, patrons.
RR-1 Conditional Uses	M-2 Conditional Uses [Same as Manufacturing 1 (M-1) Zone]
1. Public utilities installations 2. Hospitals 3. Educational institutions below college level 4. Golf courses 5. Church or other places of worship, Sunday school, church school 6. Cluster development 7. Commercial wholesale greenhouses 8. Cemeteries (see § 21-623) 9. Home occupations (accessory only) 10. Home professional (accessory only) 11. Solar energy systems (see § 21-1014)	1. Industrial and manufacturing uses not specifically prohibited in Section 21- 1301, only upon issuance of a conditional use permit by the Planning Board. Such permit will be issued upon proof of meeting the conditions set forth in Section 21-1010. Such uses may include the following: <ul style="list-style-type: none"> a. Heavy metal work, foundry or metal fabrication; b. Manufacture of plastic, chemicals and petroleum based materials; Processes involving the storage of hazardous material(s); c. Brick and/or concrete manufacturing; d. Glass manufacturing; e. Other uses that are determined by the Board of Adjustment to be of the same general character as the above types of conditional uses permitted, which may involve processes of a nuisance-generating character f. Solar energy systems (see Section 21-1014) 2. Restaurants possessing plenary retail consumption liquor licenses 3. Solar energy systems (see Section 21-1014)

Sources: “Township of Piscataway 21-501.2 Schedule of Use Requirements” (March 2021)

“Township of Piscataway Schedule of Uses in LI-1 and LI-5 Districts” (March 2021)

“Township of Piscataway 21-501.5 M-1, M-2 and M-5 Industrial Districts” (March 2022)

Here again, we see that the permitted Accessory Uses within the RR-1 zone, including private garages for no more than three cars, private backyard swimming pools, and farm uses, are consistent with a low-density, low-intensity residential use. In contrast, the M-2 zone permits garages for business vehicles for permitted

uses (which could be a large structure for a truck fleet connected to a warehouse or logistics facility), parking lots for customers, clients, and patrons, and a very broad category of “other access[ory] (sp) uses customarily incidental to the main use.”

In terms of potentially permitted Conditional Uses, the same logic holds. With the special approval that conditional uses require, the RR-1 zone potentially permits a narrow range of uses that are important to the life of a residential neighborhood, such as schools below college level, places of worship, home occupations and professions, cemeteries, public utility installations, and, at the most intense, hospitals. In contrast, the M-2 zone conditionally permits a much wider range of more intensive uses including “industrial and manufacturing uses not specifically prohibited in Section 21-1301” such as “heavy metal work, foundry or metal fabrication; manufacture of plastic, chemicals and petroleum based materials; processes involving the storage of hazardous material(s); brick, concrete, and glass manufacturing.” These intense industrial and manufacturing land uses are on their face inconsistent with the designation of Block 5701 Lot 2 as “Parks, Recreation, Open Space and Conservation Areas” by the 2005 Master Plan and 2020 Master Plan Reexamination.

To complete the comparison of the RR-1 and M-2 zones, the following table lists the regulations for the design and bulk of buildings on Block 5701 Lot 2 before rezoning (RR-1) and after (M-2):

	Rural Residential 1 (RR-1)	Manufacturing 2 (M-2)
Max coverage	20%	50%
Max height	35'	50'
Min Floor Area	n/a	20,000 sf
Min Lot	43,000 sf (150 x 200)	10 acres (300 x 300)
Min Yard Reqs	50 front, 50 rear, 25 side	80 front, 50 rear, 50 side

Source: “Township of Piscataway 21-501.1 Schedule of General Requirements” (March 2022)

For the design of buildings, RR-1 zones prescribe a light and low-intensity use of land, creating a minimum lot size of 43,000 square feet with a maximum lot coverage of 20%, leaving 80% of land unbuilt, and free to perform ecological services including stormwater management. In contrast the M-2 zone permits building over up to 50% of the land, leaving 30% less land uncovered than the RR-1 zone. So even though the minimum lot required by M-2 is larger than RR-1, a much greater percentage of the land is allowed to be built. Some secondary impacts of development permitting within the M-2 zone, like increasing stormwater runoff, would be further exacerbated by accessory uses like parking lots and other impermeable surfaces associated with large manufacturing and warehouse operations.

To illuminate some regulatory inconsistencies and potential land use conflicts created by rezoning Block 5701 Lot 2 from RR-1 to M-2, we offer four examples of existing adjacent or nearby residential neighborhood land uses that will foreseeably experience negative impacts from industrial and commercial development on Block 5701 Lot 2.

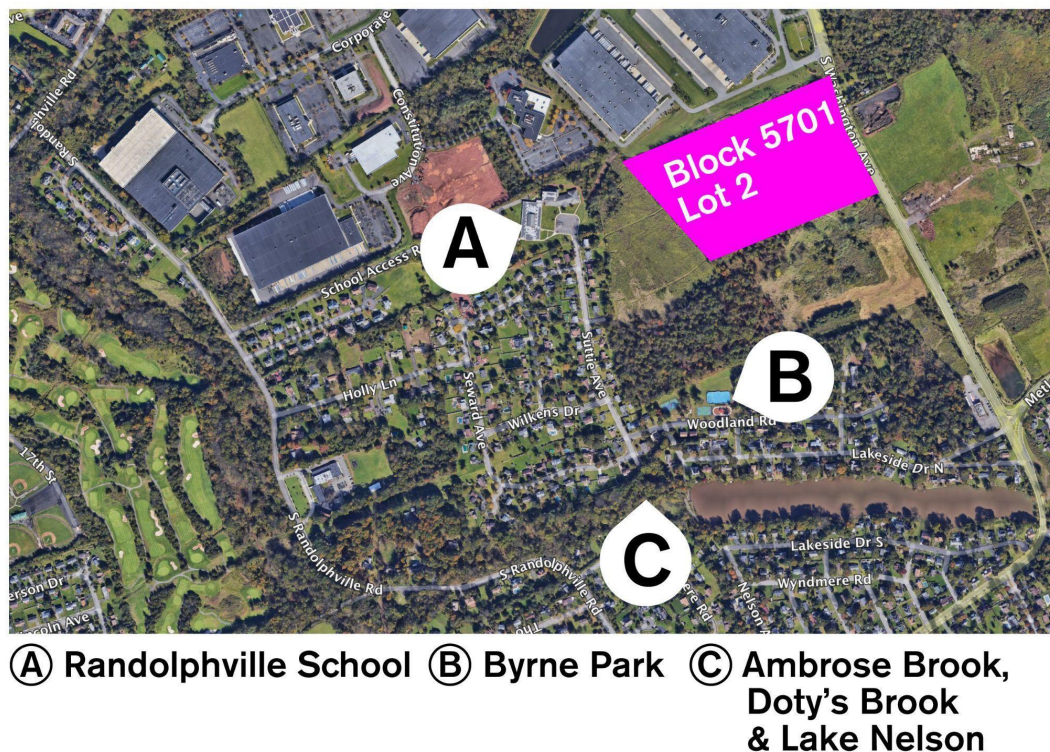


FIGURE 4. Visual key for relative locations of Randolphville School, Byrne Park, Ambrose Brook, Doty's Brook and Lake Nelson (aerial image from Google Earth dated 9/5/2020)

Randolphville School



FIGURE 5. Aerial image of Randolphville School viewed from the south (aerial image from Google Earth dated 9/5/2020)

Enrolling over 400 elementary school students, Randolphville School sits on a parcel that abuts Block 5701 Lot 2 to the east.

Industrial development on the currently undeveloped Lot 2 would increase negative secondary effects on it, foreseeably including the pedestrian hazard and harmful emissions from diesel truck trips necessary for even a “non-nuisance” use like a warehouse. In particular, the air quality impacts would affect the outdoor area near the school building that is used for children’s recess, where the air quality already receives poor ratings from the American Lung Association, and many children suffer from asthma and allergies.

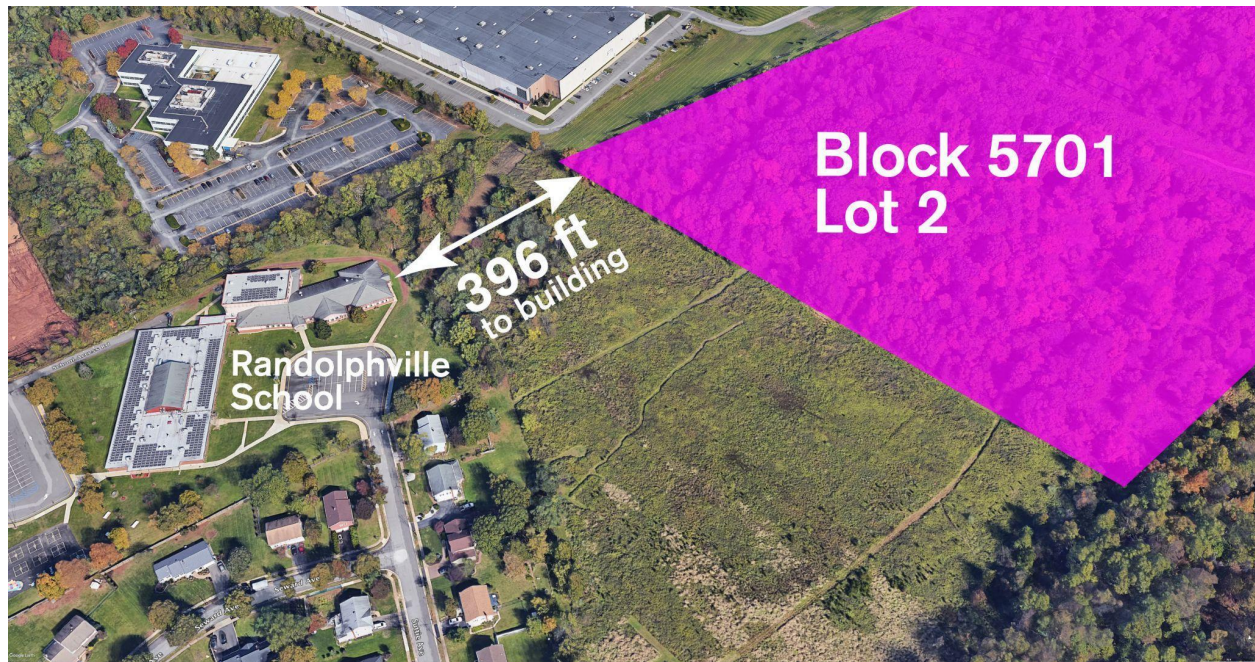


FIGURE 6. Aerial image of Randolphville School viewed from the southwest with Block 5701 Lot 2 highlighted in purple (aerial image from Google Earth dated 9/5/2020)

At present, warehouse development already occupies Parcel 1.04 and 1.05 that sit catercorner from the school, to the north of the division established by the 2005 Master Plan between industrial/commercial and residential neighborhood uses. The extension of industrial/commercial uses into the former low-density or open space buffer between industrial/commercial uses and residential neighborhood uses materially undermines and distorts the basic provisions and objectives of the Master Plan and Reexamination.

Byrne Park



FIGURE 7. Aerial image from the southeast of Byrne Park School with Block 5701 Lot 2 highlighted in purple (aerial image from Google Earth dated 9/5/2020)

The development of uses permitting under M-2 zoning could bring manufacturing and warehouse uses within 750 feet of this recreation space, about half the distance of the existing warehouse use on Lot 1.04 and 1.05. The extension of industrial/commercial uses into the former low-density or open space buffer between industrial/commercial uses and residential neighborhood uses materially undermines and distorts the basic provisions and objectives of the Master Plan and Reexamination.

Houses along Woodland Road, Suttie Avenue, and nearby streets



FIGURE 8. Aerial image from the southwest of Block 5701 Lot 2, highlighted in purple, and nearby houses (aerial image from Google Earth dated 9/5/2020)

Similarly, land uses permitted on Block 5701 Lot 2 by the M-2 zone could leave residents living along Woodland Road, Suttie Avenue, and nearby streets significantly closer to manufacturing and industrial uses than the Master Plan, Master Plan Reexamination, and the prior zoning plan would allow. This would inevitably increase unwelcome secondary impacts including vehicular traffic, harmful PM 2.5 diesel emissions, and sound upon these nearby homes, in contrast with the impacts of the planned uses for open space conservation. The extension of industrial/commercial uses into the former low-density or open space buffer between industrial/commercial uses and residential neighborhood uses materially undermines and distorts the basic provisions and objectives of the Master Plan and Reexamination.

Ambrose Brook, Doty's Brook, and Lake Nelson

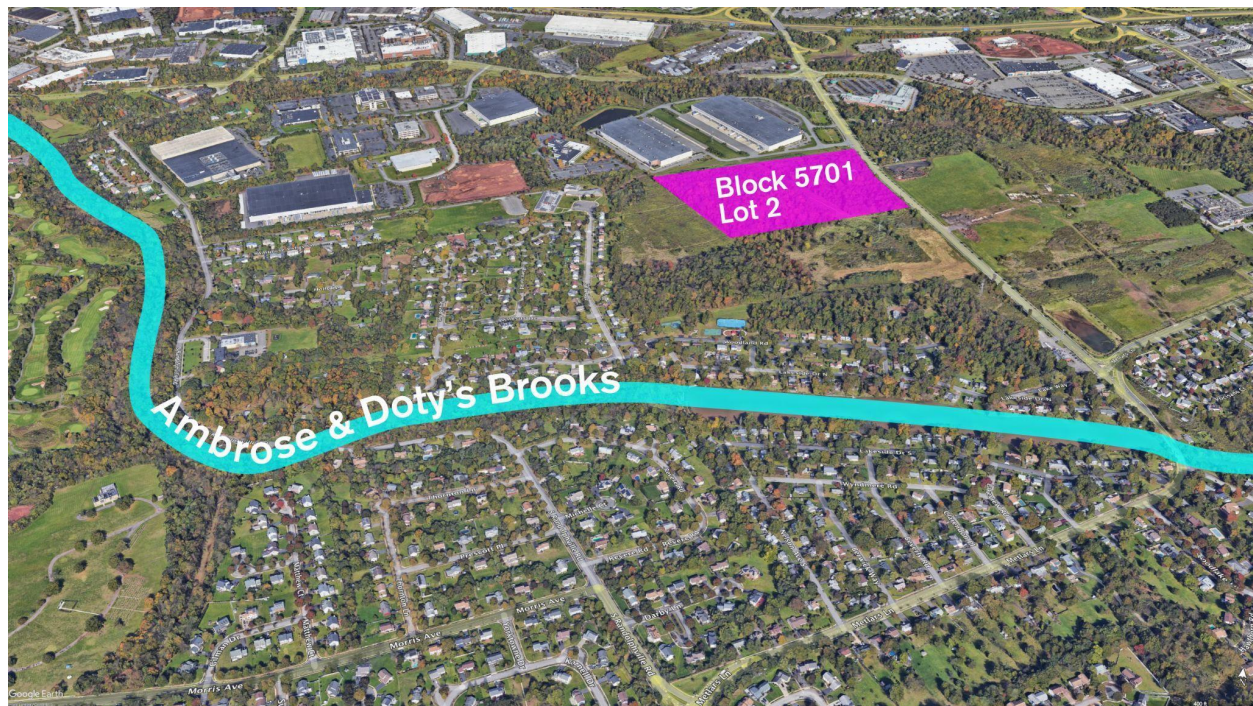


FIGURE 9. Aerial image from the southwest of Block 5701 Lot 2, highlighted in purple, and nearby waterways (aerial image from Google Earth dated 9/5/2020)

The Middlesex County Ambrose & Doty's Brooks Natural Area is “an undeveloped linear park along Ambrose Brook and Doty's Brook providing floodplain protection to both and greenways in a highly developed area of the County.”⁴ This open space has been established due to the existing need for the ecological service of “floodplain protection,” and also provides service in the form of undeveloped, early to mid-successional forest habitat for species including Great Herons, egrets, bald eagles, red-tailed hawks, and Indiana bats.

The Master Plan clearly recognizes the sensitivity of these water bodies and repeatedly connects the Land Use Plan designation of Block 5701 Lot 2 as “Parks, Recreation, Open Space and Conservation Areas” and “Proposed Open Space” to the beneficial effects of creating additional conservation areas near and around the County Natural Area.

⁴ <https://www.middlesexcountynj.gov/Home/Components/FacilityDirectory/FacilityDirectory/81/36>

Need for floodplain protection would be significantly increased by development of Block 5701 Lot 2 with the 50% lot coverage as permitted by the new M-2 zone, rather than the maximum 20% permitted by the former RR-1 zone. This will foreseeably cause increased flooding for existing nearby land uses.



FIGURE 10. Aerial image from the south of Block 5701 Lot 2, highlighted in purple, and Lake Nelson (aerial image from Google Earth dated 9/5/2020)

These brooks drain to Lake Nelson, which would also foreseeably suffer the effects of increased stormwater runoff and erosion. Disturbances caused by the increased intensity of development permitted by the M-2 zone may also harm ecological services formerly provided by Block 5701 Lot 2 in its undeveloped state or with potential low-intensity development accommodated by the RR-1 zone, also consistent with its planned land uses provided in the Master Plan and Master Plan Reexamination. By undermining the ecological benefits cited as reasons for the Master Plan's designation of Block 5701 Lot 2 for low-density and open space land uses, as well as by permitting intensive industrial/commercial development on land formerly serving as buffer between industrial/commercial uses and these sensitive ecological sites, the rezoning of this lot from RR-1 to M-2 is substantially inconsistent with the Master Plan and materially undermines and distorts the basic provisions and objectives of the Master Plan and Reexamination.

From this review of changes to the development regulations for Block 5701 Lot 2, we find that the previous zoning designation of “Rural Residential 1” (RR-1) generally permits low-intensity land uses that are conventional components of a residential neighborhood, and that the new zoning designation of “Manufacturing 2” (M-2) permits land uses of a distinctly different and more intense industrial and commercial character. Based on our analysis, this zoning change is substantially inconsistent with the township’s Land Use Plan, and, as illustrated by the anticipated impacts on established neighborhood assets including Randolphville School; Byrne Park; houses along Woodland Road, Suttie Avenue, and nearby streets; and nearby waterways Ambrose Brook, Doty’s Brook, and Lake Nelson, materially undermines and distorts basic provisions and objectives of the Master Plan and Reexamination.

4. Additional responses to CME Zoning Analysis

CME Associates prepared a “Zoning Analysis for the Rezoning of Block 5701 Lots 1.04, 1.05, and 2” dated 12/1/21. Importantly, the CME analysis affirms that:

“The map providing the Land Use Plan for Planning Area C (“Plate 8C” in the 2005 Master Plan) indicates...the southern lot (Lot 2) is to be located in a Parks, Recreation and Conservation Areas [sic]...The 2020 Reexamination does not suggest any changes or provide any recommendations that would affect the north lots on the site (Lots 1.04 and 1.05)...” (page 12)

CME also notes that the sole reference in the Reexamination to Lot 2 affirms its designation for open space:

“On page 10, the document notes ‘Two open space/recreation areas are proposed along both sides of South Washington Avenue, north of the Metlars Lane intersection. The area along the west side of South Washington Avenue includes two parcels and has not yet been developed. The Township now owns both lots.’ No further mention (direct or indirect) is made of Lot 2.” (page 13)

In addition to the primary arguments against CME’s conclusion that the rezoning of these three blocks to the “Manufacturing 2” (M-2) zone is consistent with the Townships’s Master Plan and Master Plan Reexamination contained in the preceding sections, below are additional specific responses to claims made in the CME Associates zoning analysis:

1. Arguments that RR-1 zoning is not appropriate for Block 5701 Lot 2 due to location, vehicular access, sewer capacity, and low density, which justifies rezoning to M-2

CME ANALYSIS

“The current RR-1 zoning of the property is not appropriate due to the overall location of the Site. The RR-1 zoning which supports single family housing on large lots is not an appropriate transitional zone or use to existing adjoining warehousing. There is no other similar residential zoning or development in the general vicinity of the site.” (page 17)

RESPONSE

The Master Plan and Reexamination designate Block 5701 Lot 2 for “Parks, Recreation, Open Space and Conservation Areas” and include it in a specific Proposed Open Space. Based on this land use, Rural Residential 1 (RR-1) is the best fitting zone of the 35 zones created by the Piscataway Township Zoning Ordinance (Chapter 21-502.2) to support this land use, as it is the least intensive residential zone, and there are no specific zones for less intensive uses such as parks or open space conservation.

While the RR-1 zone does not exclusively require the development of parks or open space on Block 5701 Lot 2 as described in the Master Plan and Master Plan Reexamination, RR-1 permits these uses, and the additional permitted uses, namely farms and single-family houses on minimum one-acre lots, are substantially consistent with the Master Plan, in their low intensity character and preservation of the land as a low intensity buffer between industrial and commercial uses to the north, and neighborhood and residential uses to the south.

The Master Plan is clear that the future land use for Block 5701 Lot 2 is “Parks, Recreation, Open Space and Conservation Areas,”

which serves as a buffer space between industrial/ commercial development and residential neighborhoods, a far more reasonable “transitional zone” than M-2, which simply allows industrial/commercial development to come closer to residential and neighborhood uses.

CME ANALYSIS

“The opportunity to access 1690 South Washington Avenue would be solely from South Washington Avenue...Access directly to a secondary arterial...for residential development is not appropriate” (page 17)

“Sanitary Sewer capacity is currently not available for residential demand. The existing sanitary sewer system would need to be expanded or individual lot septic systems would be required for large lot residential development.” (page 17)

“The RR-1 large lot residential zoning may have been appropriate for this site twenty to thirty years ago. However, current development trends lean towards denser developments with smaller lots...Affordability and housing variety is also not feasible within the RR-1 zone on large lots...” (page 17)

RESPONSE

As explained above, the Rural Residential 1 (RR-1) zone is the most suitable of the 35 zones created by the Township’s zoning ordinance for implementing the Master Plan’s designation of Block 5701 Lot 2 as “Parks, Recreation, Open Space and Conservation Areas,” as the zone that most severely limits the intensity of development. While it permits “rural style” low-density residential development, it also accommodates open space conservation uses. Therefore, the adequacy of vehicular access and sanitary sewer capacity does not impinge on the Master Plan’s prescribed land use for this block, and certainly does not justify transforming its land use to the industrial/commercial development permitted by the Manufacturing 2 (M-2) zone. Similarly, as the RR-1 zone is designed to be the least intense zone in the township’s zoning

ordinance, the existing level of sewer service reflects this plan for low-intensity development rather than undermines it.

Overall, questions about whether RR-1 zoning is appropriate to the development of the site are not relevant to the central question at hand of whether the M-2 zone is consistent with the Master Plan and Reexamination.

2. Arguments that general goals of Master Plan and Reexamination justify rezoning to M-2

CME ANALYSIS

“The M-2 zoning proposed for the Site can be considered appropriate based upon the consistency with the previously listed goals and objectives of the Piscataway Master Plan and Reexamination Report” (page 18)

RESPONSE

All goals and objectives listed lack site specificity, such as “To provide sufficient space in appropriate locations for a variety of agricultural, residential, commercial, industrial uses, and open space, both public and private, according to their respective environmental requirements...” Such general goals not linked to the specific characteristics of Block 5701 Lot 2 cannot justify rezoning it into substantial inconsistency with the Master Plan.

The general goal of “continu[ing] the policy of maximizing open space and recreational lands for both passive and active recreational opportunities...” is specifically undermined by the rezoning. Similarly, the goal of “insur[ing] the harmonious interrelationships of the various land use activities throughout the entire Township” is also undermined. (Reexamination, page 5)

CME ANALYSIS

“Although the 2020 Reexamination does not, as discussed above, provide changes to the proposed land uses of the Site, it does recognize that changes along the Centennial Avenue corridor may require additional analysis to determine, among other things, ‘future development potential.’” (page 14)

RESPONSE

The recommendation to consider “future development potential” of industrial/commercial uses along the Centennial Avenue corridor in no way eliminates the need for buffering land uses between this industrial/commercial corridor and the residential neighborhoods uses to the south, and therefore does not support rezoning Block 5701 Lot 2 from RR-1 to M-2.

We find that the arguments made in the CME report that (1) RR-1 zoning is not appropriate for Block 5701 Lot 2 due to location, vehicular access, sewer capacity, and low density, which justifies rezoning to M-2 and (2) general goals of Master Plan and Reexamination justify rezoning to M-2 do not justify the conclusion that rezoning Block 5701 Lot 2 from “Rural Residential 1” (RR-1) to “Manufacturing 2” (M-2) is substantially consistent with the Master Plan and Reexamination.

5. Procedural Implications of Inconsistency of Rezoning Block 5701 Lot 2 from RR-1 to M-2

On 12/14/21, the Piscataway Township Council adopted Ordinance 2021-38 on second reading, creating a new “Manufacturing 2” (M-2) zone and applying it to Block 5701 Lots 1.04, 1.05, and 2.

As described above, the rezoning of Block 5701 Lots 1.04 and 1.05, which were designated “Light Industrial” by the Master Plan Land Use Plan, and zoned as “Light Industrial 5” (LI-5), creates no substantial regulatory differences, raising questions about the reasons for including these properties in the rezoning action.

Also described above, the rezoning of Block 5701 Lot 2, which was designated “Parks, Recreation, Open Space and Conservation Areas” by the Master Plan Land Use Plan, included within a proposed open space, and zoned as “Rural Residential 1” (RR-1), produces substantial inconsistencies with the Master Plan and Reexamination, and materially undermines and distorts the basic provisions and objectives of the Master Plan and Reexamination.

In so doing, the Township Council and the Planning Board dispensed with the New Jersey MLUL’s statutory requirements. N.J.S.A. 40:55D-62 requires zoning ordinances and amendments to be substantially consistent with the Land Use Element of the Master Plan or designed to effect such Plan elements and “shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land.”

Importantly, the MLUL allows for a zoning amendment that is inconsistent with the Master Plan and Reexamination to be adopted, but only upon specific conditions: “may adopt zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate the land use plan element...but only by affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes when adopted such a zoning ordinance.” To make such an amendment also requires personal notice to

affected property owners at least ten days prior to hearing when a change in zone classification or boundary is not implementing recommendations made by a Master Plan Reexamination. However, because the zoning amendment affecting Block 5701 Lot 2 was inconsistent with the Master Plan and Reexamination, and the governing body did not set forth reasons for adopting an inconsistent amendment, the amendment was adopted in violation of law.

6. Spot Zoning

“Spot zoning” is the use of the zoning power to benefit particular private interests rather than the collective interests of the community. It is zoning which disregards the requirement of N.J.S.A. 40:55D-62(a) that regulation be accomplished in accordance with a comprehensive plan to promote the general welfare.” (See *Taxpayers Ass’n v. Weymouth Township*, 80 N.J. 6 (1976) at 18.)

In this matter, the Township rezoned three separate lots in Block 5701: Lot 1.04, Lot 1.05, and Lot 2. As set forth above, the rezoning of Lots 1.04 and 1.05 to M-2 did not functionally differ from the prior LI-5 zoning. (Section 3, *infra.*, pp. 12-13.) Both lots had already been developed with a conforming warehouse use, as noted in the 2020 Reexamination, making it clear that rezoning of Lots 1.04 and 1.05 was unnecessary and had no impact. Effectively, the exclusive focus of the rezoning was Lot 2, to the detriment of the Master Plan.

The consistency analysis in Sections 2 and 3 of this report demonstrates that the rezoning does not further the 2005 Master Plan or 2020 Reexamination and undermines the goal of “insur[ing] the harmonious interrelationships of the various land use activities throughout the entire township” (2020 Reexamination, page 5). The recent 2020 Reexamination did not recommend rezoning any of the subject parcels or expanding the warehouse use.

The consistency analysis also shows how the rezoning fails to further the general welfare by (i) violating the boundary between industrial/commercial uses and residential uses; (ii) foreclosing its plan to expand open space; (iii) placing an inappropriate warehouse use in close proximity to Randolphville School, Byrne Park, residential properties and Ambrose and Doty’s Brooks and Lake Nelson.

At the time of the passage of Ordinance No. 2021-38 to implement the rezoning, no member of the Township Council mentioned the 2005 Master Plan, or the CME report recommending rezoning during the hearing or at the time of voting. No references were made to consistency or inconsistency throughout the entire hearing, nor any references to the general benefit or welfare of the broader area of the Township.

Instead, statements of reasons by the Council display only an awareness of the private developer interests. For three examples:

- “The developer is not going to let it remain open space. The developer is going to build exactly what he wants there, because that’s what he does.” (Transcript of Proceedings dated December 14, 2021 (Tr.) 70:14-71:4)
- “M&M is in contract with the owner of the land and is not releasing the owner of the land. So that said, the township does not get into disputes with private entities on their contracts. So, I don’t know [...] how in the world we would get in the middle of a contract.” (Tr. 73:8-13)
- Immediately prior to voting the assistant township counsel advised the Council members that among the reasons for rezoning the “warehouse use will also further the township’s master plan goal to provide for the continued expansion of the economic base and the tax base of the township.” (Tr. 66:25-67:5)

Without a supportable finding of consistency, expansion of the tax base is an insupportable reason for rezoning an individual lot.

Because the transcript contains no substantial reasons for the governing body’s actions beyond the specific interests and intentions of the associated landowner and developer, and contains no references to the consistency of rezoning with the Master Plan and Reexamination Report, we therefore conclude that this constitutes impermissible spot zoning.

7. Conclusion

The Township of Piscataway incorrectly found the rezoning of Block 5701 Lot 2 from the “Rural Residential 1” (RR-1) zone to a new “Manufacturing 2” (M-2) zone to be consistent with the Township Master Plan and Reexamination. This has been demonstrated by

- 2005 Master Plan designation of Block 5701 Lot 2 designation for “Parks, Recreation, Open Space and Conservation Areas”
- 2005 Master Plan inclusion of Block 5701 Lot 2 designation for “Parks, Recreation, Open Space and Conservation Areas”
- 2005 Master Plan inclusion of Block 5701 Lot 2 within the larger planned “P-35 Proposed Open Space”
- Reexamination upholding and not proposing changes for Block 5701 Lot 2
- Analysis and comparison of prior “Rural Residential 1” (RR-1) zoning regulations with new “Manufacturing 2” (M-2) zoning regulations, along with examples of reasonably anticipated negative effects on the zoning plan

Therefore, the uses permitted by the M-2 zone are substantially inconsistent with the Master Plan and Reexamination.

Further, the imposition of the M-2 zone on Block 5701 Lot 2 materially undermines and distorts the basic provisions and objectives of the Master Plan and Reexamination insofar as these have been created to allow industrial/commercial land uses near Interstate 287 and Centennial Avenue to coexist in the same Planning Area as residential neighborhood uses due to a buffering property intended for open space conservation.

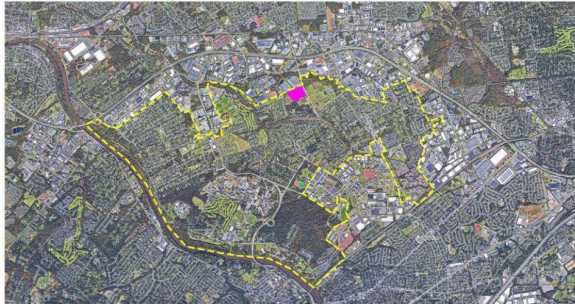
As analyzed in Section 6 of this report, the substantial inconsistency between the Master Plan and Reexamination and the rezoning to “Manufacturing 2” (M-2) is not relieved by examining the transcripts of the governing body’s adoption of this land use action. Instead, the lack of consideration of consistency with the Master Plan and Reexamination, and the verbose consideration of the specific land owners and development plans for the site, indicate that this action may be characterized as spot-zoning.

To argue otherwise would mean that every parcel designated by the master plan as open space or neighborhood uses, if adjacent to existing industrial and commercial land uses, may be rezoned to allow industrial and commercial development. As seen in the diagrams of Figure 9 below, such logic could, over a number of years, squeeze the residential neighborhoods to the south of Block

5701 Lot 2 out of existence, no matter what the township's Master Plan and Reexamination had led residents to believe.

Because the zoning amendment is substantially inconsistent with the Master Plan and Reexamination, the township's governing body was required by the New Jersey MLUL to provide reasons for the inconsistency in its resolution and personal notice to nearby landowners. Neither of these actions were taken, making the zoning amendment improper.

Residential neighborhood Land Uses



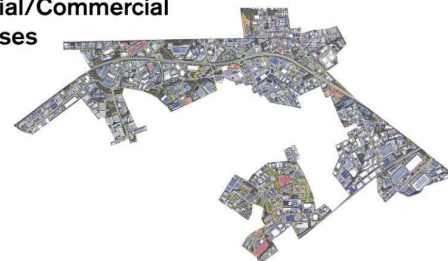
Industrial/Commercial Land Uses



**Residential neighborhood
Land Uses**



**Industrial/Commercial
Land Uses**



Representing Industrial/Commercial land uses in purple and residential neighborhood uses in yellow demonstrates that rezoning Block 5701 Lot 2 constitutes an inconsistent incursion into the residential zone it was meant to protect.

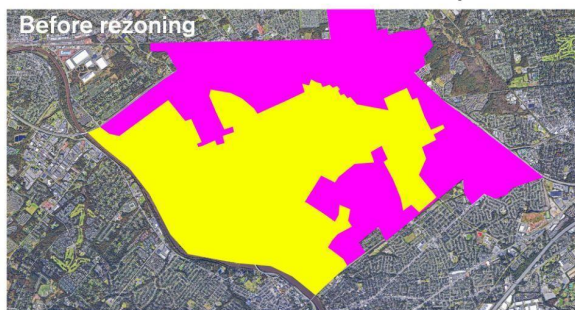


FIGURE 11. Relationship between Industrial/Commercial Land Uses and Residential Neighborhood (aerial image from Google Earth dated 9/5/2020)

Appendix A. Curriculum Vitae

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 Newark, NJ 07105
 862 955 2577
 damon@HECTORurbandesign.com

EXPERIENCE	<p>HECTOR urban design, planning & civic arts 2015–present</p> <p><i>Partner</i></p> <p>Lead urban design, planning, building, and civic arts projects for clients in private, public, and nonprofit sectors. Recent projects include designing a park in Philadelphia’s most diverse census tract, planning a youth-centric neighborhood on Detroit’s west side, and creating a memorial to environmental activist Sister Carol Johnston on the Newark riverfront.</p> <p>City of Newark Planning Office</p> <p><i>Planning Director</i> 2012–2015</p> <p><i>Chief Urban Designer</i> 2008–2015</p> <p>Lead planning and urban design efforts for city of 280,000 residents, including design review for over \$2 billion of real estate development, design and development of Newark's first true riverfront parks on the Passaic, planning and rezoning of 250 acres of riverfront land, drafting and implementing the first comprehensive revision to Newark's Zoning & Land Use Regulations in 60 years, and working with public and private development community to improve public space and retail corridors, including the This is Newark! public art program.</p> <p>The Center for Urban Pedagogy (CUP)</p> <p><i>Chair</i> 2007–2015</p> <p><i>Founder, Creative Director</i> 1997–2007</p> <p>Lead and direct all design efforts of nonprofit organization dedicated to increasing the impact of public participation in urban planning and community development.</p> <p>City of New York Parks & Recreation 1997–1999</p> <p><i>Chief of Staff for Capital Projects</i></p> <p>Work on management team responsible for \$200 million of annual construction. Coordinate with city, state, and federal agencies and elected officials. Recruit and hire engineers, landscape architects, architects, and support staff. Manage personnel issues for staff of 300 people.</p> <p><i>Architectural designer</i></p> <p>Work on designs for a variety of New York City park facilities, including comfort stations, bathhouses, recreation centers, and natatoria, including site analysis, program survey, concept design, and construction documents.</p>
EDUCATION	<p>Columbia College, Columbia University, BA, Architecture, June 1997</p> <p>Deep Springs College, Liberal Arts, June 1993–May 1995</p>

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AWARDS	<p>MacArthur Fellowship, 2018 National Design Award (to CUP for Institutional Achievement), 2016 American Planning Association National Planning Award for Public Outreach, 2015 Charles Cummings Award of the Newark Preservation & Landmarks Committee, 2015 New Jersey Smart Growth Award for <i>Newark's River Redevelopment & Public Access Plan</i>, 2014 Isadore Starr Center for the Study and Practice of Social Studies Star Award, 2014 Lewis Mumford Award for Development (to CUP), Architects, Designers, and Planners for Social Responsibility, 2013 Curry Stone Design Prize (to CUP), 2012 Leadership Newark Fellow, 2011–2 Loeb Fellow in Advanced Environmental Studies, Harvard Graduate School of Design, 2007 Fellow, Center for Advanced Visual Studies, Massachusetts Institute of Technology, 2006–8 MacDowell Fellow in Architecture, 2004–5 Graham Foundation for Advanced Studies in the Fine Arts, 2004 New York State Council on the Arts, 2001</p>														
AFFILIATIONS	<p>Member, American Institute of Certified Planners Licensed Professional Planner in the State of New Jersey Newark Preservation & Landmarks Committee, Board Member Newark United Parks As One, Board Member American Architecture Foundation Sustainable Cities Design Academy Resource Team, 2016 Leadership Newark Team Coach, 2015–2016 American Planning Association New Jersey Chapter, Vice-President for Public Relations Urban Land Institute Advisory Services Panel Member, 2014, 2015 Curry Stone Design Prize Jury Member, 2013 Regional Plan Association Committee for the Fourth Regional Plan Committee Member Mayors' Institute on City Design Resource Team, 2012 Center for Urban Pedagogy Board Member, 2001–2015 (Board Chair 2007–13)</p>														
TEACHING	<table border="0"> <tr> <td>COLUMBIA UNIVERSITY BARNARD / GSAPP</td><td>2016–present</td></tr> <tr> <td>RHODE ISLAND SCHOOL OF DESIGN</td><td>2020</td></tr> <tr> <td>HARVARD UNIVERSITY GRADUATE SCHOOL OF DESIGN</td><td>2013</td></tr> <tr> <td>SYRACUSE UNIVERSITY SCHOOL OF ARCHITECTURE</td><td>2010–2018</td></tr> <tr> <td>PRATT INSTITUTE</td><td>2008–2010</td></tr> <tr> <td>PARSONS SCHOOL OF DESIGN</td><td>2003–2006</td></tr> <tr> <td>COOPER UNION FOR THE ADVANCEMENT OF SCIENCE AND ART</td><td>2001</td></tr> </table> <p><i>Visiting Professor</i> Develop and teach studios and seminars in architecture, urban planning, urban studies, and communication design.</p>	COLUMBIA UNIVERSITY BARNARD / GSAPP	2016–present	RHODE ISLAND SCHOOL OF DESIGN	2020	HARVARD UNIVERSITY GRADUATE SCHOOL OF DESIGN	2013	SYRACUSE UNIVERSITY SCHOOL OF ARCHITECTURE	2010–2018	PRATT INSTITUTE	2008–2010	PARSONS SCHOOL OF DESIGN	2003–2006	COOPER UNION FOR THE ADVANCEMENT OF SCIENCE AND ART	2001
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Appendix B. Documents reviewed in preparation of this report

Township of Piscataway 21-501.1 Schedule of General Requirements, March 2022
Township of Piscataway 21-501.2 Schedule of Use Requirements,” March 2021
Township of Piscataway 21-501.5 M-1, M-2 and M-5 Industrial Districts, March 2022
Township of Piscataway Master Plan Revision of 2005, Adopted 12/14/05, Prepared by
THP, Inc
Township of Piscataway Reexamination Report: Master Plan & Development
Regulations, Adopted 12/23/20, Prepared by John T Chadwick IV, PP
Township of Piscataway Schedule of Uses in LI-1 and LI-5 Districts,” March 2021
Zoning Analysis for the Rezoning of Block 5701 Lots 1.04, 1.05, and 2, Revised
12/6/21, Prepared by CME Associates
Zoning Ordinance of the Township of Piscataway, Municipal Code Chapter 21: Zoning
Township of Piscataway Zoning Map, Revised 1/25/23
Transcript Of Proceedings Of Township Council, Township Of Piscataway, December
14, 2021 7:30 P.M.
Ordinance No. 2021-38 creating new M-2 Zone adopted 12-14-2021
Transcript Of Proceedings Of Planning Board, Township Of Piscataway, December 8,
2021, 7:30 P.M.
Resolution of Piscataway Township Planning Board memorializing 12-8-2021 decision

