

# Preliminary Investigation



**Block 125, Lot 13**

**Bernardsville, NJ**

Topology | 60 Union St #1 Newark, NJ 07105

## Acknowledgements

### Mayor

Mary Jane Canose

### Borough Council

Council President Thomas O'Dea

Councilman John Donahue

Councilwoman Diane Greenfield

Councilwoman Jeffrey Hammond

Councilman Chris Schmidt

Councilwoman Christine Zamarra

### Borough Administrator

Ralph Maresca

### Borough Clerk

Anthony Suriano

### Borough Attorney

John R. Pidgeon, Esq.

### Planning Board

Robert Graham, Chair

Terry Thompson, Vice-Chair

Karen Gardner

Jeffrey Horowitz

Mary Kellogg

Thomas O'Dea

Dorothy Paluck

Hal Simoff

Bonnie Stone Sellers

### Planning Board Secretary

Frank Mottola

### Planning Board Attorney

Steven K. Warner, Esq.

**Report Date:** November 4, 2019

Prepared by:



Philip A. Abramson, AICP/PP  
NJ Planner License No. 609600

## **Table of Contents**

Introduction	4
Background	5
Existing Conditions	7
Application of Statutory Criteria	14
Study Area Evaluation	17
Conclusion	33
Appendices	34

# Introduction

## Study Authorization

The following preliminary investigation has been prepared for the Borough of Bernardsville Planning Board to determine whether certain properties qualify as condemnation “areas in need of redevelopment” under N.J.S.A. 40A:12A-5. The Mayor and Borough Council of Bernardsville authorized the Planning Board through resolution 19-101 annexed hereto as **Appendix A**, to conduct this preliminary investigation to determine whether designation of Block 125, Lot 13 as shown on the official tax map of the Borough of Bernardsville (the “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.



Figure 1: Study area boundary.

## Summary of Findings

The analysis contained within this report will serve as the basis for the recommendation that Block 125, Lot 13 qualifies as a condemnation Area in Need of Redevelopment.

## **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 several planning and financial tools to make redevelopment projects more feasible to remove deleterious conditions. A redevelopment designation may also qualify projects in the redevelopment area for financial subsidies or other incentive programs offered by the State of New Jersey.

### **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 Condemnation 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 forty five (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**

In satisfaction of Part A above, the Bernardsville Borough Council adopted Resolution 19-101 on April 22, 2019. A preliminary investigation map, dated October 28, 2019, is on file with the Borough Clerk and Planning Board. The resolution and blight investigation map, which satisfy Part B above, are included as **Appendix A** and **Appendix B**, respectively.

### **Purpose + Scope**

In accordance with the process outlined above, this Preliminary Investigation will determine whether the Properties (hereinafter referred to as the “Study Area”) within the Borough of Bernardsville meets the statutory requirements under N.J.S.A. 40A:12A-5 for designation as an “area in need of redevelopment.” This study was prepared at the request of the Bernardsville Planning Board and was duly authorized by the Mayor and Council.

The scope of work for the investigation encompassed the following: land use review; assessment of property conditions; occupancy and ownership status within the study area; review of tax maps and aerial photos; review of building records; review of development approvals and permits; review of tax assessment data and documentation submitted in furtherance of a 2018 tax appeal; review of the existing zoning ordinance and zoning map for the Borough of Bernardsville; and review of the Master Plan for the Borough. External site inspections were conducted on several dates, including June 6<sup>th</sup> and July 3<sup>rd</sup>, 2019. In addition, the property owner of the parcel in the Study Area was contacted via counsel to request an internal inspection of the property, to communicate the nature of the redevelopment process, and to address preliminary concerns. As of the date of this report, access to the property for an internal inspection has not been granted.

# Existing Conditions

## Study Context



Figure 2: Study area context.

The Study Area, which comprises one property, is in the southeastern section of Bernardsville, directly east of the Borough’s downtown core. The study area property is bound by an autobody shop to the west, Route 202/Morristown Road to the north, a bank to the east, and passenger rail servicing New Jersey Transit’s Gladstone Line to the south. The site is located in a transitional area between more intense, downtown style uses to the west, and less intense, automobile oriented uses to the east.

Site access is provided via Morristown Road (US-202), a major southwest-northeast arterial that runs from the Borough’s downtown and leads to I-287. Moving west from the site along Morristown Road development patterns become progressively denser when approaching the downtown core, which is comprised primarily of two story commercial and mixed-use buildings with street frontage. The core of Bernardsville’s downtown, as identified by Olcott Square, is roughly .3 miles west of the site, and the Train Station is roughly .5 miles west of the site.

The entrance to I-287 is roughly 1.5 miles east of the site along Morristown Road. Land uses in this corridor of Morristown Road are mixed but generally more suburban than those found to the west of the site along Morristown Road. Immediately east of the site along Morristown Road development is largely auto-oriented and includes a major shopping center, retail, and office uses. Between the intersection of Madisonville Road and Morristown Road and the approach to I-287 at Morristown Road and N Maple Ave,

development becomes less intense, and residential uses become interspersed with commercial uses. Commercial uses in this corridor remain auto-oriented, marked by significant setbacks and surface parking areas.

The areas to the north and south of Morristown are primarily comprised of residential neighborhoods. Bernards High School and affiliated uses are located directly north of the site.

### Property History

Based on a review of historical maps from the early twentieth century, the portion of Morristown Road (then Main Street) that includes the study area was lightly developed in 1909. Buildings in the vicinity of the property appeared to relate primarily to agricultural uses, and included a lumber shed; a building for hay, straw, and horses; and a building to store feed and grain. Maps showing the development pattern on Morristown Road as of 1909 are reflected in Figure 3 below.

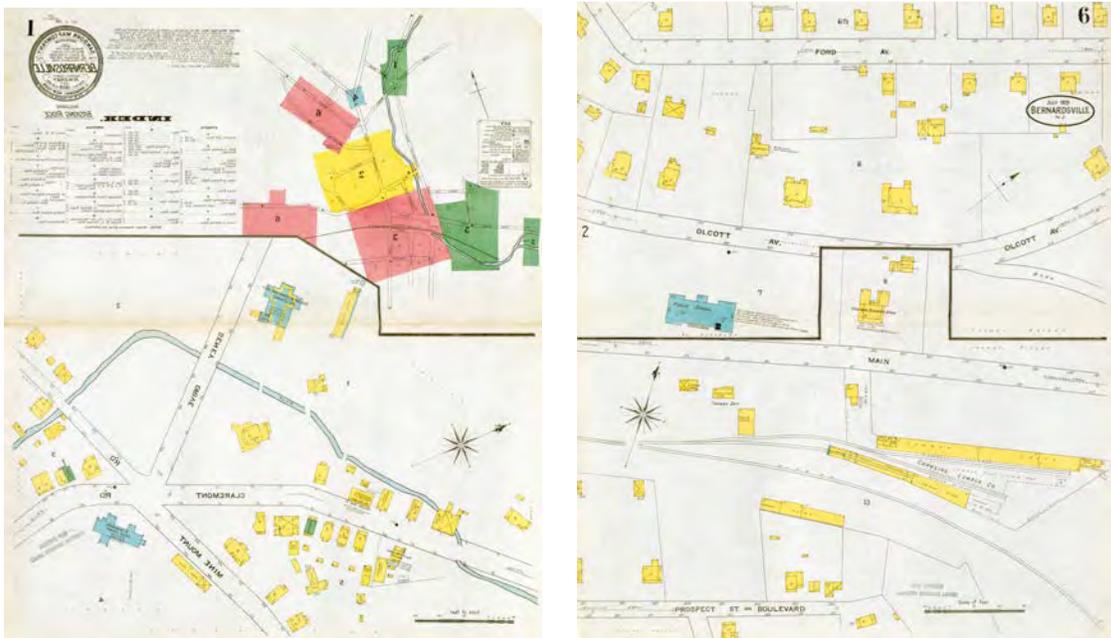


Figure 3: 1909 Sanborn maps showing development in the vicinity of the study area.

In recent decades, the property has been used almost exclusively as an automobile dealership. This automobile oriented use is consistent with evolving land-use patterns in Bernardsville and Somerset County during this era.

The first identified record that established the property as an auto dealership are minutes from the Bernardsville Board of Adjustment's meeting on January 20, 1970. These minutes indicate that the property had previously been operated by a dealer and service agent for Pontiac autos, but would be transitioning to a new tenant that would be selling Porsche and Audi vehicles. A letter from the President of L&W Porsche-Audi to a Borough representative in reference to an application for a sign permit, establishes the continuation of this use continued throughout the 1970s.

The next identifiable record indicating property use was a Certificate of Continued Occupancy dated October 11, 1994, with the contractor listed as “Somerset Hills Audi” dated October 11, 1994. A note on this document establishes the prior and proposed use— “Zoning OK- no change in use.” On October 23, 1995, the Borough issued another Certificate of Continued Occupancy noting that the property use was transitioning “from Audi dealer to another Audi dealer.” This document corresponds closely to the start of a lease agreement provided by the Borough between Susan C. Gardner and Audi of Bernardsville, Inc. which ran from October 15, 1995 through October 14<sup>th</sup>, 2015.

Finally, in June 18, 2015, a Change of Occupancy for a new use, “Sale of antiques + misc items” was issued. Based on a review of records, the property has been vacant since this user vacated the site in the Fall of 2015. The documents evidencing these uses are included as **Appendix C**.

### **On-Site Existing Conditions**



*Figure 4: Aerial imagery showing Study Area.*

The property is an irregularly shaped pentagon and is listed in the Borough’s tax records as measuring .43 acres. Based on a sewer connection plan dated June 19, 2018 and filed with the Borough, the property is 150.22 feet from north to south at its longest point, and 138.22 feet from east to west at its longest point. The topography on site generally slopes down as it moves away from Morristown Road. The elevation of the property varies from

95.9 feet in the southeastern corner to 103.1 feet at the northwestern corner. There is an existing cesspool in the southwestern corner of property. Portions of the property that are not occupied by building footprints are used for circulation and parking. Pervious and landscaped spaces on the property are negligible. The sewer connection plans referenced are included as **Appendix D**.

The property has one structure on the site. Based on plans filed with a 2007 Planning Board application for internal modifications, the first floor of the structure includes roughly 5,540 square feet. The second floor includes roughly 1,380 square feet. Contemporaneous notes taken during the hearing of this application noted that no expansion or change of footprint was proposed as part of this application. Based on these records, the total occupiable space of the property is estimated to be at roughly 6,920 square feet. The documents related to the 2007 Planning Board application are included as **Appendix E**.

The area listed in the 2007 Planning Board documents is roughly 500 fewer square feet than advertised in a listing document, accessed October 28, 2019, that references approximately 7,408 square feet of leasable space. This discrepancy may be explained by ancillary spaces that are not associated with the core operation being included in the listing document, or measurement errors as part of the 2007 Planning Board Application or the 2019 listing document. The 2019 property listing is included as **Appendix F**.

While no internal inspection of the property was conducted as part of this study, the internal condition of the building as documented via the 2007 Planning Board application is reflective of its use for several decades as an automobile dealership. Uses include a showroom space, a service area, parts areas, a wash bay, storage areas, breakrooms, and an office. The condition of the building is further documented in subsequent sections of this report.

## Existing Zoning

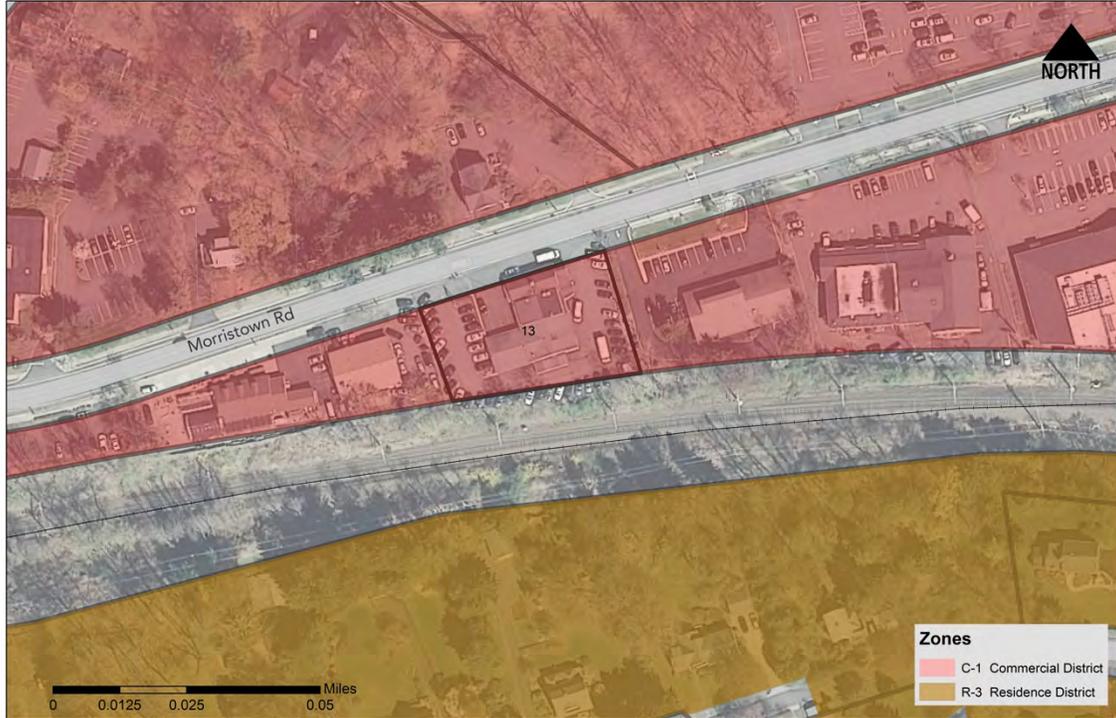


Figure 5: Study Area zoning.

The Property lies in the C-1 Commercial District. Relevant provisions from the Borough's zoning ordinance are included below. Additional detail regarding the property zoning can be found in the Borough's Zoning Ordinance, which is attached as **Appendix G**.

*Permitted uses are:*

1. *Retail sales and services such as:*
  - a. *Stores*
  - b. *Shops*
  - c. *Business and Professional Offices*
  - d. *Restaurants*
  - e. *Banks*
  - f. *Theaters*
  - g. *Newspaper Offices*
  - h. *Printing Establishments*
  - i. *Recreational Instructional Studios*
2. *The above uses on the ground floor combined with upper-story studio and 1-bedroom residential units.*

*Permitted accessory uses are:*

1. *Accessory uses customarily incident to the above retail and service uses.*
2. *Accessory uses for new and used automobile sales and displays:*
  - a. *Repair and preparation of automobiles wholly within a building.*

- b. *Storage areas for repaired or to-be-repaired automobiles screened from adjacent properties. All automobile display and storage areas shall be paved.*
- c. *Used car sales displays outside the confines of the building only when all of the following requirements are complied with:*
  - i. *The area devoted to the accessory used car sales is no larger than the showroom floor area of the building in which the principal use of the premises is conducted.*
  - ii. *The area devoted to the accessory used car sales is surfaced with an asphalt, bituminous or cement binder pavement which shall be graded and drained to dispose of all surface water.*
  - iii. *Any lighting connected to the accessory used car sales is arranged as to reflect the light downward away from all adjoining properties and streets and complies with subsection 9-10.1e.*

*Conditional uses are:*

1. *Institutional Uses*
2. *Public Utilities*
3. *Public Garages*
4. *Hotels*
5. *Outdoor Dining*

*The maximum height is:*

- *The lesser of 2 stories or 30', if both stories are used for permitted business or commercial uses.*
- *The lesser of 3 stories or 35', if used for business or commercial use in the first story and residential above.*

*Parts of yards not used for parking shall be landscaped as required by the Planning Board, including special fencing or landscaping approved by the Planning Board to hide the property from residential zones. The maximum impervious coverage is 85%.*

The Borough Council is considering a proposed amendment to the zoning ordinance that would affect the Study Area. Should this proposed zoning be adopted, the property would become part of the D-C, "Downtown Core" district.

## **Ownership**

A review of the Borough's property tax records was conducted to determine current ownership information. The table below shows the most current ownership records based on records from the Borough's Tax Assessor. The property tax card is included as **Appendix H**.



Figure 6: Study Area outline.

Block	Lot	Zoning	Property Class	Area (Acres)	Address	Owner
125	13	C-1	4A	0.43	65 MORRISTOWN ROAD	GARDNER INVESTMENTS, LLC.

### Property Taxes

Property tax records from the State of New Jersey Division of Taxation’s 2018 database were analyzed to determine the assessed value of each property in the Study Area and current property taxes. The value of the land, improvements thereon and the net taxable value for the parcel parcels is displayed in the table below.

Block	Lot	Assessed Land Value	Assessed Improvement Value	Net Assessed Value	Taxes 2018
125	13	\$592,000	\$108,000	\$700,000	\$29466.80

The property’s assessed value has been reduced in recent years. Specifically, prior to an appeal dated March 24, 2018, the value was \$1,480,000. The reduction was due to a modification to the improvement value which reduced the value from \$845,000 to \$108,000, or a change of 87.2%. The Net Assessed Value changed from \$1,480,000 to \$700,000, or by 52.7%.

# 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 redevelopment of blighted areas:

“The clearance, replanning, development or redevelopment of blight 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 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 untenable.
- c) Land that is owned by the municipality, the county, a local housing authority, redevelopment agency or redevelopment entity, or unimproved vacant land that has remained so for a period of ten years prior to adoption of the resolution, and that by reason of its location, remoteness, lack of means of access to developed sections or portions of the municipality, or topography, or nature of the soil, is not likely to be developed through the instrumentality of private capital.
- d) Areas with buildings or improvements which, by reason of dilapidation, obsolescence, overcrowding, faulty arrangement or design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use or obsolete layout, or any combination of these or other factors, are detrimental to the safety, health, morals, or welfare of the community.

- e) A growing lack or total lack of proper utilization of areas caused by the condition of the title, diverse ownership of the real 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.

It should be noted that, under the definition of "redevelopment area" and "area in need of redevelopment" in the LRHL, individual properties, blocks or lots that do not meet any of the statutory conditions may still be included within an area in need of redevelopment provided that within the area as a whole, one or more of the expressed conditions are prevalent. This provision is referred to as "Section 3" and is set forth under N.J.S.A. 40A:12A-3, which states that:

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

## Redevelopment Case Law Principles

The New Jersey Local Redevelopment and Housing Law 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 bulk of the case law relevant to this analysis has addressed: 1) the minimum evidentiary standard required to support a governing body's finding of blight; and 2) the definition of blight that would satisfy both the State Constitution and the LRHL.

**Standard of Proof:** According to the New Jersey Supreme Court's decision, Gallenthin Realty v. Borough of Paulsboro (2007), 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 parcels within the Study Area as they currently exist. The standard of proof established by the Court in Gallenthin was later upheld in Cottage Emporium v. Broadway Arts Ctr. LLC (N.J. App. Div. 2010).

**The Meaning of Blight:** The Supreme Court in Gallenthin emphasized that only parcels that are truly "blighted" should be designated as "in need of redevelopment" and clarified that parcels designated under criterion "e" should be underutilized due to the "condition of the title, diverse ownership of the real properties." Prior to this decision, municipalities had regularly interpreted criterion "e" to have a broader meaning that would encompass all properties that were not put to optimum use and may have been more financially beneficial if redeveloped. Gallenthin ultimately served to constrict the scope of properties that were once believed to qualify as an "area in need of redevelopment" under subsection (e). On the other hand, in 62-64 Main Street LLC v. Mayor & Council of the City of Hackensack (2015), the Court offered a clarification that resisted an overly narrow interpretation, "[this Court has] never stated that an area is not blighted 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.” This evaluation was based on surveys of land use, property conditions, occupancy, ownership status, and a review of other relevant data.

### Summary of Findings:

The table below summarizes this report’s findings with regard to the statutory criteria’s (described above) applicability to the parcel within the Study Area:

Block	Lot	Acreage	Criteria								Section 3
			A	B	C	D	E	F	G	H	
125	13	0.43	X	X		X	X				

**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.”**

Based on a review of available documentation and multiple exterior inspections of the building, the property qualifies as an Area in Need of Redevelopment under criterion A.

As previously noted, a request to conduct an internal inspection of the property was made to the property owner via the Borough’s Counsel. The purpose of this visit was to conduct an independent analysis of the interior building conditions. Access was not granted by the property owner as of the time of this report. As no interior inspection was permitted, a report commissioned by the property owner was relied upon to assess the interior conditions of the site. This report, titled the “Lease Space Move Out Survey,” prepared by EBI Consulting and dated April 7, 2016, was submitted by the property owner to the Borough in the course of tax appeal proceedings. This report is attached as **Appendix I**. The report supports the determination that the condition of the building is conducive to unwholesome working conditions. Specifically, it notes the following conditions:

### **Superstructure**

- “Based on the overall appearance and observed general condition of the buildings, the superstructure appears to be failing in several important areas in each garage bay and in poor conditions. Fire retardant treated plywood was not reported or observed.” (8)
- “Cracks were observed on the wood truss systems in the two and the three car bays. The trusses have scabbed board attached to the original wood truss system which is cracking along the queenpost and the chords at each and a separation of the wood members is evident. It appears that the exterior walls are moving outward from perpendicular at these trusses.” (8)
- “The structure for the overhead door and the corner appears to be failing allowing the support for the door to move and sag.” (8)

- “The T-111 siding on the air compressor room is failing and is in need of repair and attachment on the south side.” (8)
- “An investigation of the entire building and garage bays by a qualified structure engineer is recommended as an immediate repair.” (8)

### **Facades**

- “Cracking was observed in many areas of the stucco finishes on the front, sides, and rear of the building. The southeast corner of the two bay garage and around the corner near the single bay appear to have prior repairs to the stucco with additional damages nearby.”(9)
- “The vinyl on the south side is damaged in several areas and the vinyl on the east side is pulling away from the building.” (10)
- “The wood trim at the building is deteriorating in many areas of the corners, around entrance and garage doors, wooden trim at the entrance pediment on the west side, and many other areas around the building.” (10)
- “The observed doors appear to be in fair condition with the exception of the door into the service area east side. The wooden trim and siding have evidence of vehicular damage at the right hand side. The trim is broken and offset, the stucco is damaged with possible damage extending to the jamb, jack, and king studs.” (10)
- “The lower portion of the northern set [of windows] has damaged windows from attempts to access the building.” (10)
- “...In most cases however the wooden windows appear to be failing. Damaged sills, broken glass, and damaged trim were observed. Other wooden windows and frames appear to be damaged at the trim and sills.” (10)

### **Roofing**

- “Evidence of presumably active roof leaks in the form of stained ceiling tiles were observed during the survey in the second floor offices, the two bay garage area in several locations and the single car bay at the south side of the building. On-going roof leaks were also reported as was water inside the two bay garage on the floor. Areas of the roof at the Subject Property had evidence of wet insulation that will be required to be replaced following roof repair.” (12)

- “Gutters and downspouts observed are in fair to poor condition with missing downspouts damaged gutter, and many of the gutters have improper slope allowing water to overflow and damage the wood fascia. The turn outs are also missing in several areas allowing water to directly access the foundation. Immediate Repairs is recommended for replacement of the failing gutters at the Subject Property. As part of the gutter, down spout and turnout replacement, the wood fascia is recommended to be replaced where found damaged or rotted. Note, the wooden rafter tails may also be impacted by the wood rot and may need repairs, the cost of which can be significant but are not included in his report.” (12)



Figure 7: Images of the compromised roof (from EBI Consulting Report)

### Interior Finishes and Components

- “The garage bays were left in disarray with damaged pegboard, dirt and grease on the walls and concrete floors. The areas where the vehicle lifts were removed had threaded rod approximately 2.5 inches in height that are now trip hazards in the bays.” (14)
- “The exterior wall in the covered room with the waste oil tank has a hole punched in it from poor installation of air lines and the oil line to the burner and Immediate Repair is recommended for repair.” (14)
- “The ventilation louver on the west side garage bay is damaged on the lower third and Immediate Repair is recommended for replacement.” (14)
- “The interior near the stairs to the second floor in the two bay areas has pegboard on the wall. The pegboard has holes where receptacles are reached behind the pegboard. Other wiring disappears behind the pegboard and is suspect of having junctions hidden behind it. Immediate Repair is recommended for an electrician to evaluate the building wiring in this area as well as a review of the entire electrical service.” (14).

### Building Plumbing

- “Sanitary lines were in poor condition due to long term tenant misuse” (1)

## HVAC

- “The condensing units on the ground do not have the necessary refrigerant access locks that have been required for several years. The locks deter unauthorized access to the Freon which has been breathed in or huffed to make one feel high. This effect is from robbing the brain of oxygen and can be dangerous or even kill.” (17)
- “The two bay garage has a ceiling mounted waste oil heater. As the name implies, it uses waste oil and other organic fluids to heat the bays and to recycle the used oil generated at the site. The system including the tank appears to be a newer one and in good condition. The waste oil tank at the rear of the single bay garage, former air compressor room has oil on top and several waste oil drums outside the enclosure. This is a hazardous condition as the drums could leak or overflow or be overturned by vandals.” (18)

## Building Electrical

- “The wires from the utility enter through a mast head. This mast head appears to allow water to enter the pole and allows rust to form on the inside and outside of the pole. Immediate Repair is recommended for replacement of the entrance drop head and paint the pole.” (19)
- The single bay garage has electrical wiring that is not in conduit and is not terminated near the water heater. If this is live wiring, it is a life safety condition, especially in light of the hay being stored in this location.” (19)

The cost of improvements identified in the report is estimated at \$1,019,319.

A review of building permits issued by the Borough was conducted, partially to ascertain any major improvements that have been completed subsequent to the 2016 report. The only permits identified that had been applied for through the Buildings Department since April 7, 2016 were to remove a 500 gallon gasoline tank (11/21/2016) and for a main sewer connection (6/15/2016). A document reflecting permit history is included as **Appendix J**. As no permits for work related to improving the unwholesome working conditions documented inside the building have been filed or secured, it is reasonable to assume, in the absence of permission for an interior inspection, that the interior conditions noted in the EBI report remain.

Several exterior inspections of the building were conducted, including on Wednesday, July 3<sup>rd</sup>, 2019. These visits confirmed many of the conditions noted in the EBI report. Garage doors were compromised and in disrepair. Defects in the stucco indicated the emergence of potential structural issues. Framing on doors and windows, and wood along the façade and building elements were rotting or cracked. Windows were boarded up or broken. Gutters and downspouts were broken, with pieces found on the ground of the property. Sagging rooflines suggested rotting fascia or compromised joists. Portion of the shed roof appear to have slipped. Peeling and blistered paint was observed along

facades. Damage was observed along wood and vinyl siding. The property was left unsecured, suggesting a safety issue. Signage depicting previous tenants remained in place and appears to be deteriorating. Collectively, the observed exterior conditions reflected the fact that the building was in a substandard, unsafe, and dilapidated condition that was conducive to unwholesome working conditions.

These conditions are documented in the photos below:



*Figure 8: Sagging rooflines.*



*Figure 9: Damaged gutters and/or downspouts.*



*Figure 10: Broken and/or boarded up windows.*



*Figure 11: Aerial imagery suggests roof leakage.*



*Figure 12: Peeling and blistered paint; deteriorating wood exteriors.*



*Figure 13: Cracks in stucco suggest developing structural issue.*



*Figure 14: Separation between building elements.*



*Figure 15: Building left unsecured.*



Figure 16: Cracked areas on and around door frames.



Figure 17: Signage from previous tenant remains and is deteriorating.

Based on a visual inspection of the property and review of available documentation, the building on site is substandard, unsafe, and dilapidated, and these characteristics are conducive to unwholesome working conditions. As such, the property qualifies as an Area in Need of Redevelopment under Criterion A.

**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 untenable.**

As established in the Existing Conditions section above, the building on site was previously used exclusively for a commercial purpose. The commercial property qualifies as an Area in Need of Redevelopment under Criterion B as it has experienced significant vacancies for at least two consecutive years.

Based on review of available documentation, including photographs, reports, and articles, the property has been vacant since the fall of 2015. This period of significant vacancy extends well beyond the statutory minimum of two years.

Based on lease records reviewed for the property, the last active lease for an automobile dealership expired on October 14<sup>th</sup>, 2015. This lease is included as **Appendix K**. As noted in previous sections, prior to the expiration of Audi's lease, a change of certificate of occupancy, received by the Borough on June 4<sup>th</sup>, 2015 and approved on June 11<sup>th</sup>, 2015, was issued authorized changing the use for "sale of antiques + misc. items."

The change of use for antique sales and the term of occupancy for this tenant is evidenced by a review of several local publications, including Bernardsville-Bedminster Patch,<sup>1</sup> TapInto Livingston,<sup>2</sup> and NJ.com.<sup>3</sup> In an NJ.com article dated September 10, 2015, Mr. Conti, the operator of the sale, was quoted as saying "This is the last weekend." The conclusion of the sale, and the commencement of property vacancy in September of 2015 is consistent with a notation into the TapInto Livingston article that Mr. Conti held the lease through fall of 2015. The lack of any tenant subsequent to the departure of the antique sale is supported by the lack of subsequent applications to the Borough for a Certificate of Occupancy or a Change of Certificate of Occupancy.

Continuous vacancy since 2015 is also documented through property photos. The four photos below reflect the evolution of the property over time. The first, dated August 2015, shows the building occupied during the antique sale. The second, dated August 2016, shows the property vacant, with a broker's sign in the window. The third, dated August 2018, shows the property still vacant, with a broker's sign in the window. The fourth, taken July 3<sup>rd</sup>, 2019 in the course of preparing this study, shows the property vacant and with a broker's sign in the window.

---

<sup>1</sup> Gstrycharz. "Local estate sale to benefit school for individuals with autism," August 3, 2015. <https://patch.com/new-jersey/bernardsville-bedminster/local-estate-sale-benefit-school-individuals-autism-0>. Accessed October 27, 2019.

<sup>2</sup> Tap Into Livingston Staff. "Grandparent and Philanthropist Nat Conti Holds Estate Sale Benefitting the Children's Institute in Livingston," August 7, 2015. <https://www.tapinto.net/towns/west-orange/sections/other-nj-news/articles/grandparent-and-philanthropist-nat-conti-holds-es-4>. Accessed October 27, 2019.

<sup>3</sup> Di Ionno, Mark. "Charity begins at home for Jersey construction magnate," September 10, 2015. [https://www.nj.com/news/2015/09/charity\\_begins\\_at\\_home\\_for\\_jersey\\_construction\\_mag.html](https://www.nj.com/news/2015/09/charity_begins_at_home_for_jersey_construction_mag.html). Accessed October 27, 2019.



Figure 18: August 2015 (Google Earth Street View)



Figure 19: August 2016 (Google Earth Street View)



Figure 20: August 2018 (Google Earth Street View)



Figure 21: July 2019

Persistent property vacancy is also reflected in available digital records. The aforementioned EBI Consulting report, dated April 7, 2016, does not make record of any tenant present or show the presence of any tenant in their internal photos. An available CoStar listing dated 11/6/2018, submitted with the EBI Consulting report in support of the 2018 tax appeal, noted that the property is 0% leased, further establishing the ongoing vacancy of the property. This listing is included as **Appendix L**.

The property qualifies as an Area in Need of Redevelopment under Criterion B. Specifically, it houses a building previously used for commercial use that has experienced significant vacancies for at least two consecutive years.

**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.**

Sufficient evidence exists to conclude that the current use and conditions support designation under “criterion D.” Specifically, the property possesses excessive land coverage, obsolescent improvements, including sanitary facilities, and dilapidated improvements. These factors are detrimental to the safety, health, morals, and welfare of the community.

Based on an aerial assessment, the land coverage for the property is roughly 98.75%. The limited portion of the property that is not covered by impervious surfaces is reflected in green in the figure below. Excessive land coverage can have negative impacts to the community by contributing to flooding and stormwater runoff. Excessive land coverage can be particularly problematic in the case of auto-oriented uses, as have previously existed on the site.



Figure 22: Excessive land coverage (pervious area shown in green)

The property also features dilapidated improvements. The pavement for the driveway and parking areas is cracked in many places. The retaining wall on the west side of the property is in poor condition and showing signs of deterioration. The signage is rusting and in a state of disrepair. Where there is vegetation, it is overgrown. Drums, apparently unmoved since the 2016 EBI report are haphazardly placed at the rear of the site. Each of these conditions may be detrimental to the health, safety, morals, or welfare of the community by discouraging investment in surrounding areas. The images below reflect these conditions:



*Figure 22: Damaged retaining wall.*



*Figure 23: Accumulation of debris suggests draining issue.*



*Figure 24: Drums haphazardly placed on the property.*



*Figure 25: Cracked pavement.*



*Figure 26: Overgrown vegetation.*



*Figure 27: Dilapidated signage.*

In addition to the visibly dilapidated improvements on site, the property also possesses a cesspool. Cesspools are obsolescent sanitary facilities. As per N.J.A.C. 7:9A, construction of cesspools is prohibited, and cesspools must be replaced at the time of real property transfer. While exemptions are permitted in cases where conforming replacement systems cannot be installed on a property, the fact that the property owner has been pursuing a conforming system for several years, as indicated by their pending sewer connection application, indicates that this is not one of those exceptional cases. Cesspools may be detrimental to the health, safety, morals, and welfare of the community by causing negative environmental outcomes and detracting potential investment from a potential purchaser deterred by the presence of an obsolete improvement.

Sufficient evidence exists to conclude that the current use and conditions support designation under “criterion D.” Specifically, the property possesses excessive land coverage, obsolescent improvements, including sanitary facilities, and dilapidated improvements. These factors are detrimental to the safety, health, morals, and welfare of the community.

**Criterion 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.**

Based on a review of documentation, the property qualifies as an Area in Need of Redevelopment under Criterion E, as there is a condition which impedes land assemblage or discourages 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. More specifically, the building on the property encroaches on adjacent property.

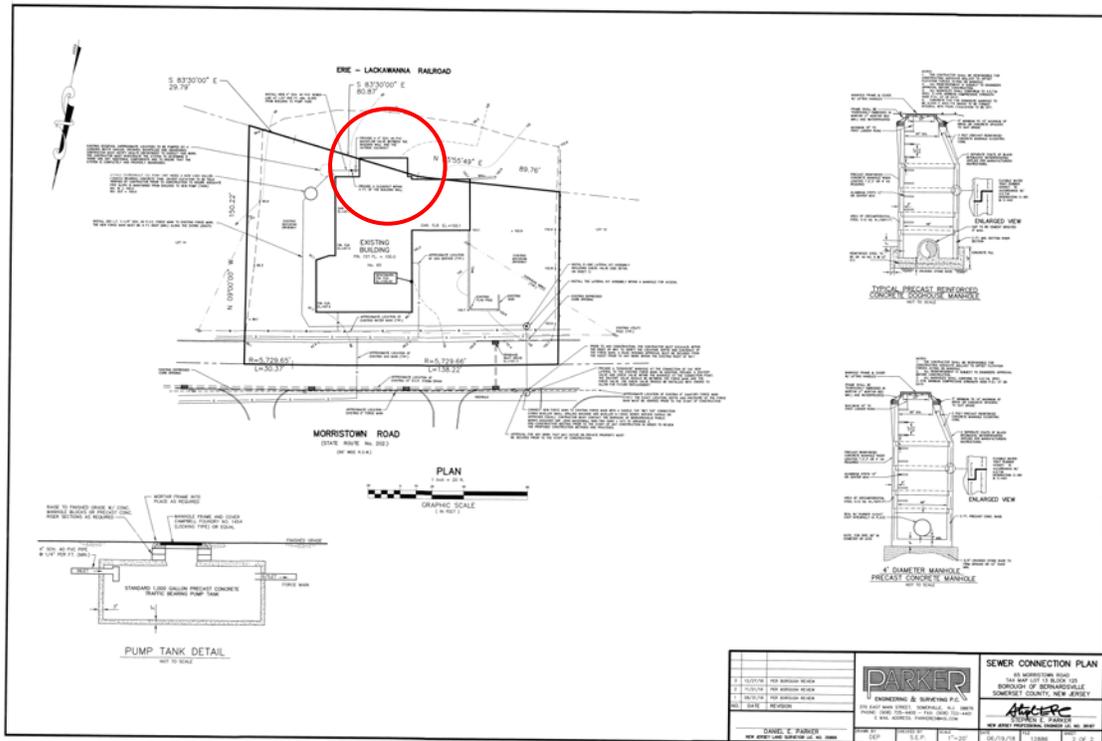


Figure 28: Sewer connection plan showing encroachment.

The figure above, a Sewer Connection Plan submitted as part of a 2018 application, depicts the extension of the building beyond the property line. As a result of this encroachment, investment in the property is discouraged, and a property that would otherwise have a beneficial impact on the surrounding area or community, has remained stagnant. Based on this encroachment, the property qualifies as an Area in Need of Redevelopment under Criterion E.

### Consideration of Redevelopment Designation

The results of the preliminary investigation indicate that the study area, encompassing Block 125, Lot 13 can be appropriately designated as an "area in need of redevelopment" in accordance with N.J.S.A. 40:12A, subsections A, B, D, and E as described above.

## **Conclusion**

This Preliminary Investigation was prepared on behalf of the Borough of Bernardsville Planning Board to determine whether properties identified as Block 125, Lot 13 qualify as a condemnation "area in need of redevelopment" in accordance with N.J.S.A. 40A:12A-1 et seq. Based on the above analysis and investigation of the Study Area, Block 125, Lot 13 meet the criteria for a redevelopment area designation.