

**ORDINANCE REVIEW MEMORANDUM**

**DATE:** February 26, 2013

**TO:** ABSECON CITY PLANNING BOARD

**FROM:** ROBERT L. REID, AICP, P.P., Board Planner

**SUBJECT:** Review of:  
Proposed Redevelopment Plan Ordinance Revisions  
Project No. ABS 119.01

As directed by the Planning Board, the following review is offered:

City Council is in the process of revising the Redevelopment Plan Ordinance for Absecon Gardens. On January 17, 2013 Council Meeting adopted a Resolution sending the proposed revisions to Redevelopment Plan to be reviewed by the Planning Board for consistency with the Master Plan. Under the statute the Planning Board has 45 days (from the referral by City Council to the Planning Board) to submit to City Council a report with recommendations. On January 22, 2013 the Planning Board was presented with a letter from Terry Dolan as a formal referral from City Council.

Section 11.1 of the Redevelopment Plan adopted 3/4/04, States:

This Redevelopment Plan may be amended from time-to-time upon compliance with all applicable laws and statutes and upon approval of the Governing Body. In addition to any other requirements, including but not limited to those imposed by N.J.S.A. 40A:12A-13, mutual agreement between the City and a Redeveloper is required where a Redeveloper's Agreement is in place and where an amendment would change the controls governing the use of land under said Agreement.

**Documents Received 01/22/13:**

Item No./ Sheet No.	Description	Date
	Letter from Terry Dolan, City Administrator	01/22/13
	This letter included City of Absecon Resolution 32-2013, dated 01/17/13, unsigned, and 4 pages (without a date, title, or page numbers) listing proposed amendments to the Redevelopment Plan.	
	Redevelopers Agreement (Draft)	11/20/12

**Documents Received 02/24/13:**

Item No./ Sheet No.	Description	Date
1 of 1	Conceptual Amended Site Rendering	11/30/12
1 of 1	Conceptual Amended Landscaping Plan	09/18/12
1 of 1	Conceptual Amended Site Plan	09/25/12

### **Referral of Redevelopment Plan to the Planning Board**

Unless the Planning Board has itself prepared the redevelopment plan ordinance (and/or prepared the revisions), and recommended it to City Council, the plan must be referred to the Planning Board for a review of master plan consistency. Under the statute the Planning Board has 45 days from the referral to submit to City Council a report containing its recommendation concerning the redevelopment plan. This report is to include an identification of any provisions in the proposed redevelopment plan, which are inconsistent with the master plan and recommendation concerning these inconsistencies and any other matters as the Planning Board deems appropriate. Although master plan consistency is a major element of such a review, it should be noted that the Planning Board review need not be so limited. Also, this referral to the Planning Board is essentially the same as the referral of zoning or land use ordinances provided for in the Municipal Land Use Law in N.J.S.A. 40:55D-62.

When considering the adoption of the redevelopment plan ordinance, or revisions to the ordinance, City Council is obligated to review the report of the Planning Board, but may then approve or disapprove or change any recommendation of the Planning Board by a vote of a majority of its full authorized membership. It must also specifically record the reasons for not following the recommendations.

### **Planning Board Report**

Although the Planning Board in its report may address both master plan consistency and also general recommendations regarding the Redevelopment Plan, it is likely that the master plan consistency aspect of the report would be held to be the most important. The Municipal Land Use Law places great importance upon the necessity of municipalities having a master plan and also keeping it current. All local zoning is intended to be based upon the master plan. On the other hand, it is recognized that the requirement to have zoning conform to the master plan is tempered by the need for some flexibility.

Thus, in order for a municipality to adopt an ordinance or a redevelopment plan which is not consistent with its current master plan, it must demonstrate the basis for the departure.

N.J.S.A. 40:55D-62 requires that land use ordinances must "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 element." In defining "substantial consistency" the New Jersey Supreme Court has made it clear that some inconsistency is permitted "provided it does not substantially or materially undermine or distort the basis provisions and objectives of the master plan."

The proposed 19 amendments to the Redevelopment Plan Ordinance, dated 10/10/03, revised 2/17/04, and adopted 3/4/04, include minor insignificant changes and approximately 4 substantive changes, ranging from updating the history of the site to allowing non-age-restricted units.

### **List of Substantive Changes Proposed**

The substantive changes include:

1. Section 6.4.1 A 1 – Removing Age-Restricted and permitting Residential Housing.
2. Section 6.2.4.1 B 5 c – Increasing the permitted building height.
3. Section 6.2.6 G d – Removing the requirement for the realignment of Mechanic Street into New Jersey Avenue at 90 degrees.
4. Section 7 – Development will be included in the Housing Element and Fair Share Plan to provide affordable housing.

As stated above, the Planning Board's charge is to prepare a report which is to include an identification of any provisions in the proposed redevelopment plan which are inconsistent with the master plan and recommendation concerning these inconsistencies and any other matters as the Planning Board deems appropriate.

### **Substantive Change #1 (Section 6.4.1 A 1 ) Removing Age-Restricted and permitting Residential Housing.**

#### **Redevelopment Plan Ordinance**

On March 4, 2004, City Council adopted the Redevelopment Plan, dated October 10, 2003. The Goals and Objectives of the Redevelopment Plan states, in part:

Section 4.4...the provisions of this Redevelopment Plan may be **expected to benefit businesses in the shopping district by providing for an increased customer base in the area...**

Section 5.2.7 Improve the general appearance and condition of New Jersey Avenue and thereby provide a more attractive setting in the City's downtown shopping district.

Section 5.3.6 Consistent with section 5.2.7 and Objective 5.3.4, provide for the creation of an attractive, pedestrian-friendly streetscape on Area 1 rights-of-way, with special attention focused on New Jersey Avenue as part of the downtown shopping district.

Section 5.3.2 Provide for Age-Restricted Housing in an appropriately planned Redevelopment Project designed to harmonize with the existing residential neighborhood in the vicinity of Redevelopment Area 1 while **providing an active customer base for New Jersey Avenue businesses** and thereby complementing existing land uses in this section of the City.

Section 5.4.1 **This Redevelopment Plan does not attempt to anticipate every possible project design or land use solution. Accordingly, this Plan has been generated to be as flexible as possible in order to foster quality Redevelopment Projects while maintaining consistency with the foregoing municipal Goals and Objectives.**

### City of Absecon 2005 Reexamination of the Master

The City of Absecon 2005 Reexamination, Section VII, Changes Recommended for the Master Plan, B. Zoning District Changes, paragraph 9, Proposed Absecon Station Area Overlay on portion of C 1 Central Business District, (which included the subject property within the 35+/- acre area overlay), in part, states:

“The Absecon Train Station Area Plan proposes a strategy to revitalize the area by developing mixed uses, which will **add more pedestrian activity, increase trade in the Absecon Central Business District and encourage the development of affordable housing to conform to our COAH obligation**, pedestrian links and transit ridership. The plan will create a stronger sense of community in the area, by using the Train Station as a focus; redevelop the old Downtown Central Business District; and connect the Absecon Train Station to New Jersey Avenue (Absecon’s “Main Street” in our Downtown Central Business District).

Age Restricted housing now planned on the former Marsh School site within walking distance of downtown **will help strengthen our small town “downtown” and will add much needed pedestrian activity to downtown which will be a benefit to the community. The proposed development will encourage further investment on New Jersey Avenue which will in turn substantially improve the rent structure for our downtown Central Business District.”**

Add affordable residential units in accordance with the Council on Affordable Housing (COAH) and office uses at increased densities within walking distance of the shopping and transit facilities **to stimulate pedestrian activity, enliven the Central Business District**, reduce auto trips and generate transit riders;

The primary goal of the Absecon Station Area Plan is to increase trade in the Absecon Central Business District, provide for affordable residential units in accordance with COAH and to restore Absecon’s downtown image as a town center. The strategy to achieve this goal has two main objectives: **to locate more potential customers in the area by adding apartments, retail shops and offices; and to provide the types of retail and services, as well as the enhanced atmosphere, which will attract additional customers and increase the rent structure downtown.**

These two objectives reinforce each other: a larger customer base will draw merchants to the area to provide neighborhood and commuter shopping services and will create the incentive to merchants to improve their stores and the streetscape; conversely, the larger the variety of services provided, and the more pleasant the surroundings, the more likely the area will attract shoppers.

The other goals also reinforce the goal of increasing trade in the Absecon Train Station Area. **Pedestrian activity provides a lively atmosphere which can attract more shoppers.** Reducing traffic congestion will also make the area a more pleasant place to shop. Linking the Absecon Train Station and its 179 parking spaces with a pedestrian bridge across the existing six lane divided highway to Absecon’s downtown main street, New Jersey Avenue will attract more transit riders to downtown business establishments.

The Planning Board should prepare a draft ordinance for the proposed Absecon Train Station Area Overlay District which will include the goals and objectives outlined above, Goals and objectives of the State Plan and design policies of the State Plan.”

### **Train Station Area Ordinance (Ordinance 23-2007)**

City Council did adopt the Train Station Area Ordinance (Ordinance 23-2007) as recommended by the Planning Board in December 2007.

SECTION 3, ORDINANCE 23-2007 - To Create the Train Station Overlay District, § 224-265. PURPOSE:

The purpose of the Absecon Train Station Area Overlay is **to revitalize the area** by developing mixed uses, which will **add more pedestrian activity, increase trade in the Absecon Central Business District**, to encourage pedestrian oriented uses to replace existing vehicle oriented uses, encourage pedestrian links, transit ridership and the **development of housing to meet our constitutional obligation to provide for affordable housing**. The development of Absecon Train Station Area is intended to create a stronger sense of community in the area, by using the Train Station as a focus; redevelop the old Downtown Central Business District; and connect the Absecon Train Station to New Jersey Avenue.

### **Absecon Gardens Conversion**

On May 10, 2011, The Planning Board granted approval of an amended site plan in accordance with Chapter 82, NJSA 45:22A-46.3 et seq.(The Conversion Law) as memorialized in . Resolution dated 6/14/11. Objectors filed an appeal and the Court affirmed the Planning Board approval in a decision dated March 19, 2012. Objectors filed another appeal, the decision is pending.

The Absecon Planning Board, Application No. 2-2011, Decision and Resolution, dated 6/14/11 states, in part:

Section 24. Absence of Substantial Impairment to the Zone Plan and Zoning Ordinance.

N.J.S.A. 45:22A-46.6c requires that the conversion from age restricted to non-age restricted will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The site is located within the RA1-Central Business District Redevelopment Area which was established by the Absecon City Council in a Redevelopment Plan adopted on March 4, 2004. On December 20, 2007, the Absecon Zoning Map was revised to show the subject property in the RA1-Central Business District Redevelopment Area with the prior C-1 District and prior Senior Citizen Housing Community Overlay District B removed as alternative zoning controls for the area. It had not previously been clear whether the Redevelopment Plan was intended to entirely supersede the prior Senior Citizen Housing Community Overlay District B and accordingly the 2005 approval was based upon compliance with both the requirements of the Redevelopment Plan and the Senior Citizen Housing Community Overlay District B. Also, although developed in accordance with the provisions of the Redevelopment Plan, the Applicant did not seek and the City of Absecon did not require that the Applicant be named as a redeveloper and enter into a redevelopment agreement with the City. Accordingly, there never was a redevelopment agreement executed with respect to this project.

As set forth in Section 2.0 Historical Review in the Redevelopment Plan the Absecon Mayor and Council originally directed the Planning Board to undertake a Preliminary Investigation to determine whether the City's central business district and surrounding areas met the criteria established in the Redevelopment Statute for Redevelopment Area designation. It states that the Mayor and Council issued such directive in response to a persistent loss of retail establishments in the City's Central Business District. **Section 4.4 of the Redevelopment Plan explains that the Plan is expected to benefit businesses in the downtown shopping district primarily by "providing for an increased customer base in the area."** Although this project does not address the other goal of the Redevelopment Plan to provide additional public parking for the downtown shopping district, **it clearly addresses the primary goal of providing for the increased customer base in the area. Although the Redevelopment Plan provided for age restricted housing, the development of this project as non-age restricted housing will still be consistent with the goal of providing housing adjacent to the downtown shopping district and thereby helping to reinvigorate the area. Accordingly, the Planning Board finds that the conversion of the project from age restricted to non-age restricted housing will still address a primary goal of the Redevelopment Plan and, therefore, will not substantially impair the intent and purpose of the zone plan and zoning ordinance.**

35. Conversion. For the reasons set forth in detail in the testimony presented on behalf of the application and the documents submitted in support of the application, as well as the testimony and reports of the Planning Board Professional Consultants, the previously approved age restricted development is changed to a converted development which is no longer age restricted and may be marketed with no age restrictions.

The change from Age-Restricted Housing to housing units that can be marketed with no age restrictions is consistent with, and will advance, the Goals and Objectives of the 2005 Reexamination of the Master Plan which is to:

add more pedestrian activity, increase trade in the Absecon Central Business District and encourage the development of affordable housing;

encourage further investment on New Jersey Avenue which will in turn substantially improve the rent structure for our downtown Central Business District;

stimulate pedestrian activity, enliven the Central Business District;

locate more potential customers in the area by adding apartments, retail shops and offices; and to provide the types of retail and services, as well as the enhanced atmosphere, which will attract additional customers and increase the rent structure downtown;

increase trade in the Absecon Train Station Area with increased Pedestrian activity provides a lively atmosphere which can attract more shoppers.

The proposed change from Age-Restricted Housing to housing units that can be marketed with no age restrictions is consistent with, and will advance, the purpose of the Absecon Train Station Area Overlay District Ordinance (Ordinance 23-2007) which is to:

revitalize the area by developing mixed uses;

add more pedestrian activity;

increase trade in the Absecon Central Business District.

Section 3.1 of Ordinance 23-2007, § 224-268, B, Permitted Residential Uses, a. Permitted Density, allows for 35 units per acre with the inclusion of 25% affordable housing. The residential development proposed is 58 units on 2.8 acres (or 20.7 units per acre) with 20% affordable housing.

The Planning Board Decision and Resolution No. 2-2011, memorializing the approval of an amended site plan in accordance with Chapter 82, NJSA 45:22A-46.3 et seq. (The Conversion Law), referenced the Redevelopment Plan, Section 4.4 of the Redevelopment Plan which explains that the Plan is expected to benefit businesses in the downtown shopping district primarily by "providing for an increased customer base in the area.

The common tread through the 2005 Reexamination, the subsequent Train Station Overlay Ordinance that came out of the 2005 Reexamination, and the site plan amendment granted in accordance with the Conversion Law, all cite that the residential development will add more pedestrian activity and increase trade in the Absecon Central Business District.

**Substantive Change #2 (Section 6.2.4.1 B 5 c) – Increasing the permitted building height.**

The proposed changes allow for an increase in the permitted building height from 35' to 55'. Building height requirements are silent and not specified in the 2005 Reexamination of the Master Plan. The subsequent Train Station Overlay Ordinance that came out of the 2005 Reexamination allowed for building heights ranging from 28' to 55' in the Train Station Overlay Area District. Although building height is not consistent with surrounding land use patterns, the Planning Board and City Council should take in consideration that the building already exists; the current developer inherited the non-conforming building height; a 90' +/- setback from Church Street; that the existing 2 ½ story townhouses fronting on Church Street in the 90' +/- setback is a transition; and a 250' +/- front yard setback from New Jersey Avenue, each, to an extent, mitigates the non-conforming building height.

**Substantive Change #3 (Section 6.2..6 G d)– Removing the requirement for the realignment of Mechanic Street (Marsh Lane) into New Jersey Avenue at 90 degrees.**

The recommendation to vacate and realign Mechanic Street (Marsh Lane) is not directly specified in the 2005 Reexamination of the Master Plan. However, it was recommended indirectly with the addition of additional public parking. Section VIII, D (page VIII -3 of 5) states:

Mr. Harry Harper offered a portion of his property to the City back in 2000 to create additional convenient public parking with some conditions. A conceptual parking plan <sup>(note 1)</sup> of Mr. Harper's property was provided to the developer to use as a basis to assist with estimate of cost of his contribution.

This was a condition part of the preliminary site plan approval granted on May 24, 2005. Mr. Harry Harper offered a portion of his property to be included for public parking. A condition of approval was that applicant was required to place into escrow funds to construct a public parking lot on Block 160, Lot 8, also known as Parcel 2 in the Redevelopment Plan. (Preliminary Approval Decision & Resolution 4-2005, paragraph 7d) A conceptual parking plan dated April 19, 2000 <sup>(note 1)</sup> depicting a realigned street and parking lot was provided. The condition continued with the Final Approval granted on November 22, 2005. (Final Approval Decision & Resolution 10-2005, paragraph 2) On December 15, 2005 City Council adopted Resolution 223-2005 accepting \$34,488.60 from the developer.

Mechanic Street should be realigned to create 90 degree intersection at New Jersey Avenue, for public safety reasons. Block 160, Lot 8 (Parcel 2) is not part of the development application. The property is currently unoccupied and available for purchase. The City should consider utilizing the funding for public parking or towards the realignment if possible.

Note 1 – The conceptual parking plan depicting the realignment of Mechanic Street was also included in the Redevelopment Plan as Exhibit 12.12.

**Substantive Change #4 (Section 7) – Development will be included in the Housing Element and Fair Share Plan to provide affordable housing.**

Section VII K. of the City of Absecon 2005 Reexamination of the Master Plan recommends Affordable Housing Plan Implementation and describes possible mechanisms for Absecon City to meet its affordable housing obligations.

On May 10, 2011, The Planning Board granted approval of an amended site plan in accordance with Chapter 82, NJSA 45:22A-46.3 et seq. (The Conversion Law) as memorialized in Resolution dated 6/14/11. A condition of approval included the requirement to provide for 20% affordable housing.

The development being included in the Housing Element and Fair Share Plan to provide affordable housing is consistent with the 2005 Reexamination of the Master Plan and the amended site plan approval granted by the Planning Board.



It is my opinion that the changes proposed are substantially consistent with, and will advance, the Goals and Objectives of the 2005 Reexamination of the Master Plan for reasons stated above. The Planning Board should find that the changes are substantially consistent with the master plan and do not substantially or materially undermine or distort the basis provisions and objectives of the master plan.

CC: Michael Malinsky, Esq.  
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