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# Planning Review & Analysis

PREPARED FOR

## Galaxy Invest, Inc.,

FOR PROPERTY LOCATED AT

## 536-544 Washington Avenue, Nutley, NJ
## Essex County 07110

## Block: 1502 Lots: 12

*August 25, 2026*

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# Table of Contents

**Introduction** ..... 2

**1. Development Regulations and Identified Variance Relief** ..... 2

A. M-O District Bulk Compliance ..... 2

B. Curb Cuts, §700-94A(3) and §700-94A(3)(b) ..... 5

C. Alternative C(2) Planning Analysis ..... 6

**2. Planning Considerations** ..... 6

A. Use, Warehouse Versus Truck Terminal ..... 6

B. Plan Changes ..... 7

C. General Operational Information ..... 8

D. Performance Standards and Hazardous Materials ..... 8

E. Circulation and Parking ..... 8

F. Lighting ..... 9

**3. Landscaping, Screening, Fencing and Walls** ..... 9

**4. Front Yard Landscaping and Landscape Plan** ..... 11

**5. Architecture and Signage** ..... 11

**6. Trash and Recycling** ..... 12

**7. Planning Board Review Under the Municipal Land Use Law** ..... 12

**Conclusion** ..... 13

# Introduction

This memorandum, as requested, responds to the August 3, 2026, Planning Review Memorandum concerning the proposed redevelopment of 536–544 Washington Avenue.

It is intended to clarify the applicable zoning framework, respond to the outstanding planning comments in the order presented, and distinguish those matters requiring ordinance compliance from recommendations that may represent desirable planning considerations but are not codified development standards.

The application has evolved through the Board's review. Most significantly, the previously proposed second floor office component has been eliminated, reducing the structure from approximately 48.4 feet and two stories to approximately 29.4 feet and one story. The current proposal consists of an approximately 26,833 square foot warehouse building with associated parking, loading, circulation, landscaping, lighting, utilities, refuse facilities and stormwater improvements.

The underlying zoning posture is important. The property is located in the M O District. Under §700-21A, "any use and building permitted in an M Zoning District" is permitted in the M O District, and §700-20A(2) expressly identifies commercial warehouses as permitted uses. The August 3 Planning Review similarly recognizes that warehouses are permitted in the M O District.

Likewise, the Zoning Officer's May 4, 2026 denial identifies only two substantive zoning deviations:

the proposed number of curb cuts under §700-94A(3), and

curb cut width under §700-94A(3)(b).

No use variance, buffer variance, setback variance, height variance, building coverage variance or other bulk variance was identified.

# 1. Development Regulations and Identified Variance Relief

## A. M-O District Bulk Compliance

Section 700-46A expressly incorporates Nutley's Schedule of Regulations into Chapter 700, and §700-46B provides that the standards contained in that schedule constitute the prescribed dimensional requirements for each zoning district.

The applicable M O standards establish a development envelope considerably greater than that proposed:

| Standard | M O Requirement | Current Proposal | Compliance / Delta |
|---|---|---|---|
| Lot Area | 43,560 SF minimum | 67,833.4 SF | ***24,273.4 SF above minimum*** |
| Lot Width | 150 FT minimum | Approx. 205 FT existing | ***Approx. 55 FT above minimum*** |
| Lot Depth | 150 FT minimum | Existing conforming lot | ***Complies*** |
| Front Yard | Building height, 20 FT minimum | Conforming | ***Complies*** |
| Rear Yard | Building height, 20 FT minimum, 50 FT when adjacent to R Zone | Conforming | ***Complies*** |
| One Side Yard | 10 FT minimum | Conforming | ***Complies*** |
| Combined Side Yards | 20 FT minimum | Conforming | ***Complies*** |
| Building Height | 100 FT maximum | Approx. 29.4 FT | ***Approx. 70.6 FT below maximum*** |
| Stories | 8 maximum | 1 story | ***7 stories below maximum*** |
| Building Coverage | 50% maximum | Approx. 39.6% | ***Approx. 10.4 percentage points below maximum*** |
| Parking | 9 spaces minimum | 19 spaces | ***10 spaces above minimum*** |
| Loading | 4 spaces minimum | 4 spaces | ***Complies*** |

The M O Schedule permits a minimum lot area of 43,560 square feet, 150 feet of lot width and depth, eight stories, 100 feet of building height and 50% building coverage. The August 3 review independently confirms that nine parking spaces are required and 19 are proposed, and that four loading spaces are required and four are provided.

This is relevant planning context. *The proposal does not attempt to maximize the development intensity afforded by the zone*. It is one story where eight are permitted, approximately 29.4 feet where 100 feet are permitted, and remains approximately ten percentage points below maximum building coverage.

In my professional planning opinion, *sound planning begins with the adopted zoning ordinance*. The ordinance embodies the governing body's legislative determination concerning the uses, scale and dimensional characteristics appropriate for the district. Site plan review appropriately tests a development against those standards, but should not create a different development envelope on an application-by-application basis.

That principle is consistent with *PRB Enterprises, Inc. v. South Brunswick Planning Board*, 105 N.J. 1 (1987). There, the applicant sought site plan approval for a permitted industrial use, and the planning board denied the application based on concerns that the proposed

use was incompatible with surrounding development. The Supreme Court rejected that approach, explaining that site plan review permits a board to evaluate the layout and physical details of a permitted use, but does not authorize the board to prohibit the use itself. The Court stated that site plan review was never intended to give a planning board "the power to prohibit a use permitted by the zoning ordinance." *Id.* at 12. The decision is particularly relevant here because the proposed warehouse is a permitted use in the M O District, and the Board's review should therefore focus on the site's compliance with applicable bulk, circulation, parking, loading, landscaping and performance standards rather than on whether the permitted warehouse use should be allowed at all.

The same distinction is reflected in *Pizzo Mantin Group v. Township of Randolph*, 137 N.J. 216 (1994). In that case, the Supreme Court considered whether a municipality could rely on generalized planning concerns and informal standards to restrict development without clear ordinance criteria. The Court emphasized that land use regulation must be grounded in standards adopted through the legislative zoning process, so that applicants and reviewing boards can understand what is required and so that similar applications are treated consistently. *Pizzo Mantin* is relevant here because the Board's discretion must be exercised within the standards established by Chapter 700 and the applicable site plan regulations, rather than through requirements that are not stated in the ordinance.

In *Sartoga v. Borough of West Paterson*, 346 N.J. Super. 569 (App. Div. 2002), the Appellate Division addressed the limits of a planning board's authority when reviewing a permitted use. The court recognized that a board may review site design, circulation, parking, drainage, landscaping and other physical aspects of a proposal, but may not use those subjects as a means of effectively prohibiting the use or imposing requirements unrelated to adopted zoning standards. *Sartoga* therefore supports evaluating this application through the objective standards applicable to the M O District and the proposed warehouse, while distinguishing mandatory ordinance requirements from discretionary recommendations.

Similarly, *Shakoor Supermarkets, Inc. v. Old Bridge Township Planning Board*, 420 N.J. Super. 193 (App. Div. 2011), involved a permitted commercial use and the extent to which a planning board could condition or deny site plan approval based on concerns beyond the governing ordinance. The Appellate Division reaffirmed that site plan review is not an unlimited grant of authority and that a board's conditions must remain connected to legitimate site plan concerns and applicable regulatory standards. The case is relevant because conditions concerning access, circulation, landscaping, lighting, refuse and operations should be tied to identifiable ordinance provisions or to reasonable measures addressing documented site-specific impacts.

## B. Curb Cuts, §700-94A(3) and §700-94A(3)(b)

The two deviations presently identified as variances for this application arise from §700-94, entitled:

*"Additional regulations on off-street parking for one- and two-family dwellings."*

That title is not the only indication of the provision's scope. Section 700-94A itself begins by regulating:

*"a lot upon which is located a one- or two-family dwelling"*

and then states that use of the driveway associated with that residential condition is subject to the limitations that follow. Those limitations address garages, main dwellings, residential front yards and residential driveway dimensions before arriving at §700-94A(3), which limits each property to one driveway and one curb cut.

Section 700-94A(3)(a) then establishes curb cut dimensions in the R-1, R-1A, R-1AA, R-2 and R-3 Districts, while §700-94A(3)(b) provides that curb cuts *"in all other districts"* shall not exceed 24 feet.

Read in context, the reference to "all other districts" is reasonably understood to address one- and two-family dwellings located in districts other than the enumerated residential zones. It does not transform §700-94, in its entirety, into a generally applicable commercial and industrial access standard.

The ordinance structure further supports that reading. Immediately thereafter, §700-95 separately regulates certain office, home occupation and multifamily parking, while §700-96 is expressly entitled *"Location of off-street parking for other uses"* and begins, *"Except for uses specified above in §§700-94 and 700-95…"*

The Township has advised that §700-94 has historically been interpreted more broadly. That history is respectfully acknowledged. From a planning and ordinance interpretation standpoint, however, the written regulation itself remains the controlling starting point.

The importance of identifiable ordinance standards is reflected in *Pizzo Mantin*, 137 N.J. 216. Predictable land use review requires standards ascertainable from the duly adopted ordinance rather than requirements developed through individual application review.

*For those reasons, the position remains that relief under §700-94A(3) and §700-94A(3)(b) should not be required for this non-residential warehouse development.*

### C. Alternative C(2) Planning Analysis

If the Board ultimately determines that §700-94 applies, the proposed access configuration nevertheless presents a strong planning basis for relief under N.J.S.A. 40:55D-70(c)(2).

Two curb cuts exist at the property today. More importantly, the proposed access system must safely accommodate the ingress-egress and turning characteristics of tractor trailers serving a permitted warehouse use. A commercial driveway designed for that vehicle type serves a fundamentally different circulation function than the residential driveway contemplated throughout §700-94.

The Supreme Court explained in *Kaufmann v. Planning Board for Warren Township*, 110 N.J. 551, 563 (1988), that a c(2) variance is appropriately based upon an opportunity for "improved zoning and planning that will benefit the community," rather than upon hardship peculiar to the owner. The ultimate inquiry is whether the benefits substantially outweigh any detriments.

Here, two appropriately designed access points facilitate ingress, egress, internal circulation and tractor trailer maneuvering. Those improvements advance the general welfare under N.J.S.A. 40:55D-2(a) and the free flow of traffic under N.J.S.A. 40:55D-2(h).

From a planning perspective, requiring tractor trailer access associated with a permitted warehouse to function through a residentially scaled curb opening would not constitute the better zoning alternative. The proposed configuration does.

## 2. Planning Considerations

### A. Use, Warehouse Versus Truck Terminal

The August 3 memorandum correctly recognizes that a warehouse is permitted, and a truck terminal is prohibited. It further identifies the applicable truck terminal definition as a lot upon which more than three qualifying trucks are parked outdoors overnight.

The application before the Board is for a warehouse.

Operational testimony provided at the July 1 hearing established that *no more than three tractor trailers would be parked outdoors overnight.* Accordingly, the threshold characteristic identified by the ordinance for a truck terminal is not proposed.

That distinction should remain clear throughout the balance of the review. The Planning Board is considering the development shown on the plans and the use established through testimony, not a hypothetical future operation inconsistent with those representations.

This does not leave the Township without protection. Any future operation exceeding the limitations of the approved warehouse use would become a zoning enforcement matter. The same principle applies throughout zoning administration: a building approved and occupied as a single-family dwelling does not become a lawful two-family use merely because it is physically capable of being occupied in that manner. An unauthorized conversion would constitute a zoning violation subject to enforcement. The same applies to a warehouse subsequently operating contrary to its approval or contrary to the ordinance.

For that reason, a reasonable condition confirming that the property shall not operate as a truck terminal as defined by the governing ordinance would accurately memorialize the testimony and provide a clear enforcement mechanism.

What should not occur, in my planning opinion, is treatment of the presently proposed warehouse as though the prohibited future condition already exists.

That distinction is consistent with *PRB Enterprises*, 105 N.J. 1, which recognizes that site plan review does not confer authority to prohibit a use the zoning ordinance permits.

## B. Plan Changes

The revisions presented since the original submission materially reduce the vertical intensity of the development and refine the site layout.

The principal modifications include:

1. Elimination of the second-floor office component;
2. Reduction in building height from approximately 48.4 feet and two stories to approximately 29.4 feet and one story;
3. Revision of the warehouse footprint to approximately 26,833 square feet;
4. Reduction in parking from 27 spaces to 19 spaces, while continuing to provide more than twice the nine spaces required;
5. Relocation of the loading docks approximately 15 feet northerly, farther from the Wilmington Drive residential interface; and
6. Provision of enclosed exterior refuse containers in accordance with the applicable refuse and recycling requirements.

## C. General Operational Information

The building remains speculative and no tenant has been identified. Accordingly, precise tenant specific information concerning employee shifts, delivery schedules, internal business practices or similar operations does not presently exist.

That does not prevent meaningful site plan review.

The proposed use is known. The building size is known. Parking, loading, access, circulation, lighting, landscaping, stormwater management and the physical site configuration are known and subject to Board review. Indeed, the August 3 memorandum concludes that parking and loading comply with the ordinance.

Operational testimony can therefore address those characteristics that are reasonably known for the proposed speculative warehouse. A future tenant would remain bound by the approved site plan, permitted use, performance standards, certificate of occupancy requirements and all other applicable State and municipal regulations.

This concept of an envelope or box fit out for a future tenant is at its core no different from a commercial strip mall meeting all applicable bulk standards, parking regulations, and the like for an unknown commercial tenant(s). The tenant operates within the confines of the box (building) in which they lease and most notably operate within the regulations that govern the use of the property.

## D. Performance Standards and Hazardous Materials

Section 700-42 applies to the proposed use, and compliance with those standards is appropriately required.

Because no tenant has been identified, it would be speculative to identify materials, processes, emissions or operating characteristics that do not presently exist. Nevertheless, any occupancy of the building must comply with §700-42 and all applicable State and local requirements concerning noise, vibration, smoke, fumes, odors, dust, glare, hazardous materials, fire safety and related impacts.

This is appropriately addressed as a continuing condition of occupancy and enforcement rather than through assumptions regarding an unidentified future tenant.

## E. Circulation and Parking

The August 3 review confirms that §700-91 requires nine parking spaces for the approximately 26,833 square foot warehouse and that 19 spaces are provided. Section

700-91 expressly requires warehouse parking at one space per four employees, but in no event less than one space per 3,000 square feet.

Likewise, four loading spaces are required and four loading bays are provided.

The application therefore meets or exceeds the ordinance standards governing both parking and loading. The proposed curb cut dimensions should be considered within that same circulation framework, particularly the need to accommodate the design vehicle safely and efficiently.

### F. Lighting

The August 3 memorandum concludes that the proposed lighting levels and controls are acceptable from a planning perspective and notes that testimony was provided confirming appropriate shielding and downward orientation.

This item therefore appears resolved, subject to incorporation of the final fixture information into the approved plan set.

## 3. Landscaping, Screening, Fencing and Walls

This issue warrants some clarification because the concepts of *buffer width, landscaping*, and *screening* should not be treated interchangeably.

Section 700-47A defines the purpose of a buffer as "*an area set aside primarily to reduce the impact of commercial, industrial and parking activities upon residential uses*." Section 700-47B then establishes how that objective is regulated. Specifically, §700-47B(1) directs parking and loading buffers to the other applicable regulations of Chapter 700, while §700-47B(3) requires buffer areas to be *"screened and/or landscaped"* in accordance with Chapter 600.

The applicable parking and loading requirement is found in §700-98, which provides:

"Where any parking or loading area adjoins a lot in any R District, *a landscaped buffer strip at least six feet in width containing plantings at least six feet high shall be provided*."

The plans provide that six-foot buffer and in other areas the buffer extends to over nine feet.

In addition, §700-20C specifically addresses the relationship between commercial or industrial property and adjoining residential uses. It requires dense evergreen screening at least five feet in height and width along applicable side and rear property lines. Section 700-21A carries the M District use framework into the M O District.

Importantly, this is not a newly created landscape condition. A substantial mature vegetative buffer presently exists along portions of the property boundary**.** The landscape plan recognizes that established vegetation and proposes preservation of the existing screening while supplementing identified voids with additional evergreen material at six feet in height. The August 3 memorandum itself describes the existing vegetative buffer and proposed Green Giant Arborvitae supplementation.

Mature vegetation has a planning value that newly planted material cannot immediately duplicate. Preserving established screening while supplementing identifiable gaps is therefore a reasonable and effective means of maintaining the buffer function contemplated by §700-47A.

The August 3 memorandum also acknowledges that additional buffering may be desirable *"despite compliance with the ordinance."*

That is an important distinction. The Board may certainly desire additional landscaping, and additional plantings may be considered where they can reasonably be accommodated. The existence of a preference for additional buffering, however, does not create a buffer variance where the dimensional and screening standards of the ordinance are satisfied.

The fence and wall conditions should likewise be considered under their specific ordinance framework.

Section 700-71 expressly provides that "yard requirements in this chapter shall not apply to fences and retaining walls," and §700-71I permits fences in nonresidential zones up to eight feet in height, subject to the other applicable provisions of the chapter.

A fence also performs a legitimate screening function. Section 700-47B(3) deliberately uses the phrase *"screened and/or landscaped."* A properly designed fence provides immediate and continuous visual separation, while the established vegetation provides mature landscape screening. The two functions are complementary rather than inherently conflicting.

Accordingly, the presence of a fence, retaining wall or guiderail within the general buffer area does not, by itself, establish a zoning deviation. If a particular improvement is believed to violate a specific dimensional or design requirement, the appropriate analysis is to identify that ordinance provision, the required standard, the proposed condition and the resulting deviation. The proposed wall and fence are located outside of the six-foot vegetated buffer.

No such buffer variance appears in the Zoning Officer's denial.

This distinction is also consistent with *Pizzo Mantin*, 137 N.J. 216. The governing body establishes the standards through ordinance; the site plan process applies those standards to the development. Professional recommendations may appropriately improve an application, but should remain distinguishable from mandatory zoning requirements.

## 4. Front Yard Landscaping and Landscape Plan

The removal of the former front parking area and movement of the building toward Washington Avenue changes the character of the frontage and creates an opportunity for a more defined pedestrian and landscape treatment.

The final landscape plan can appropriately address the resulting planting areas, street frontage and internal walkway. At the same time, any requested landscape treatment should remain consistent with the actual standards of Chapter 600 and Chapter 700.

The landscaping discussion should also account for the significant mature vegetation already present on the site. Preservation of viable established vegetation is itself an important planning objective and should be weighed alongside requests for new planting material.

Long term landscape maintenance and replacement of failed plantings can appropriately be incorporated as a condition of approval.

## 5. Architecture and Signage

Exterior building materials and samples can be presented to assist the Board in understanding the final architectural treatment.

The second-floor office component has been eliminated, and the building is now one story.

The August 3 memorandum further concludes that the proposed wall signage appears to comply with Nutley's sign ordinance. Final signage can therefore be confirmed for compliance at the appropriate permit stage.

Updated renderings of the Washington Avenue and Wilmington Drive elevations will further illustrate the reduced one-story building and its relationship to the adjoining properties. Rear elevation concepts along Wilshire Drive are restricted by virtue of private access of the gated community to the rear of the site.

## 6. Trash and Recycling

The revised plan identifies enclosed outdoor refuse containers.

Section 614-6 and §614-7 permits the applicable refuse and recycling arrangement, and the final plan can identify the enclosure and collection configuration accordingly. No trash compactor is presently proposed. Should a future tenant require equipment not presently shown, that equipment would remain subject to the applicable municipal approvals and ordinance requirements.

## 7. Planning Board Review Under the Municipal Land Use Law

The points above are not intended to constrain legitimate site plan review. They are intended to maintain the distinction recognized by the Municipal Land Use Law and New Jersey courts between review of a development against adopted standards and the creation of additional requirements through the review process.

Under N.J.S.A. 40:55D-46, preliminary site plan review is undertaken against the requirements of the MLUL and the municipality's site plan and zoning ordinances. The Supreme Court has repeatedly recognized the corresponding limitation on planning board authority.

In *PRB Enterprises*, 105 N.J. 1, the Supreme Court held that site plan review does not include the authority to prohibit a permitted use.

In *Pizzo Mantin*, 137 N.J. 216, the Court emphasized the necessity of ascertainable ordinance standards so that development review is predictable and uniformly administered.

In *Sartoga*, 346 N.J. Super. 569, the Appellate Division reiterated that a planning board reviewing a permitted use is principally determining whether the development conforms to the zoning and site plan ordinances.

Likewise, *Shakoor Supermarkets*, 420 N.J. Super. 193, recognizes the circumscribed nature of site plan discretion where an application satisfies the standards governing the permitted use.

These principles do not eliminate professional planning judgment. To the contrary, they provide the framework within which that judgment is exercised: the ordinance establishes the development standards, the professionals evaluate the proposal against those standards, and reasonable conditions may address legitimate site plan concerns without changing the permitted use or creating a new substantive zoning requirement.

## Conclusion

The current application is considerably more straightforward when reduced to the governing standards.

A commercial warehouse is a permitted use under §§700-20A(2) and 700-21A. The proposal complies with the M O District bulk requirements established through §700-46 and Schedule A. The building has been reduced to one story and approximately 29.4 feet in height where eight stories and 100 feet are permitted. Building coverage remains below the permitted 50%. Parking exceeds the minimum requirement by ten spaces. Required loading is provided. Lighting has been found acceptable. The existing mature vegetative buffer is being preserved and supplemented, and no buffer variance has been identified by the Zoning Officer.

The only two zoning deviations identified in the May 4, 2026 denial concern the number and width of curb cuts under §700-94A(3) and §700-94A(3)(b). The applicability of those provisions to a commercial warehouse remains disputed because §700-94 expressly regulates additional off-street parking conditions for one and two family dwellings. If the Board determines that relief is nevertheless required, the proposed commercial access configuration represents the better zoning alternative under N.J.S.A. 40:55D-70(c)(2), particularly given the existing two curb cuts and the need to safely accommodate tractor trailer circulation.

Finally, the use before the Board is a warehouse, not a truck terminal. Testimony has established that no more than three tractor trailers will be parked outdoors overnight. That testimony is consistent with the ordinance distinction identified in the August 3 memorandum. Any future operation contrary to that approval would properly be addressed through zoning enforcement rather than through an assumption, during site plan review, that a presently un-proposed prohibited use will occur.

In my professional planning opinion, the application can be evaluated and acted upon within a clear and established framework: the permitted use, the M O bulk standards, the applicable site plan regulations, the testimony presented to the Board, and reasonable conditions ensuring continued compliance. All of which provides the appropriate balance between thorough Board review, protection of adjoining properties and the predictable application of Nutley's adopted zoning regulations.

Respectfully submitted,

