

**MINUTES OF THE PROCEEDINGS OF THE
ZONING BOARD OF APPEALS OF THE CITY OF WORCESTER**

April 4, 2011

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM

Zoning Board Members Present: Lawrence Abramoff, Chair
Andrew Freilich, Vice-Chair
William Bilotta
Vadim Michajlow
Timothy Loew, Alternate Member
Kola A. Akindele, Alternate Member

Staff Members Present: Joel Fontane, Division of Planning & Regulatory Services
Edgar Luna, Division of Planning & Regulatory Services
John Kelly, Department of Inspectional Services

REGULAR MEETING (5:30 PM)

CALL TO ORDER

Chair Abramoff called the meeting to order at 5:30 PM.

NEW BUSINESS

- 1. 24 Gold Star Boulevard (ZB-2011-008) - Special Permit:** Todd Brodeur, Josh Swerling, Thomas Tredena, Robert Michaud, Gregg Rosen and Chris Foley, representatives for Unibank for Savings (d/b/a Unibank), petitioner, presented the petition. Mr. Brodeur stated that Unibank was seeking approval for the following relief: (a) Special Permit for non-residential use (Bank with drive-through) allowed by Special Permit in MG-2.0 zoning districts, (b) Special Permit for modification of the parking /loading requirements (a reduction in the drive-through service lanes length), and (c), Special Permit for modification of the landscaping requirement for parking/loading (i.e. planting trees every 20-25 feet on center along street lines). In addition, Mr. Brodeur indicated that although Unibank was a lessee of the property, the owner was in agreement of the proposed project.

He also indicated that the proposed project included demolishing the structure on site, and building a two-story 7,291 SF bank branch facility with 2 drive-through lanes (115 feet for the inner lane, and 136 feet for the outer lane), an escape lane, and an accessory parking lot with 28 spaces. Mr. Brodeur further stated that the first floor of the proposed structure will be occupied by a bank retail facility, and the second floor will be used as an office for the bank, including the Loan Department which is currently located at a different location. He indicated that although Unibank has been in the City since 2009, this is their first bank branch facility in the City.

Mr. Brodeur stated that prior to submittal, the applicant and project team members met with the City's Interdepartmental Review Team (IRT) and indicated that the proposed project incorporated all the design elements suggested by IRT staff. He also indicated that

the project would require Definitive Site Plan approval from the Planning Board. In addition, he stated that the project's design team had also met with Ali Khorasani from DPW&P Traffic Department to review the access/egress from Gold Star Boulevard and Glennie Street, and made modifications to the plans based on his recommendations, including the installment of a concrete island barrier at the Gold Star Boulevard entrance to delineate the access and egress from the site and improve vehicular safety and mobility.

Mr. Swerling stated that the proposed project centered on a Unibank building and accessory parking with access/egress facilities from Gold Star Boulevard and Glennie Street. He indicated that the project included significant landscaping along the northerly and easterly sides, including several mature trees which would effectively screen the 28 parking spaces proposed. Mr. Swerling also stated that the landscaping proposed along Gold Star Boulevard did not include trees to prevent obstruction of the view of the building and ensure its safety.

In addition, Mr. Swerling indicated that the building would have a teller window and ATM machine on the first lane, and indicated that the proposed 28 parking spaces were more than adequate for the proposed use. He also stated that utilities are available from Gold Star Boulevard and Glennie Street and from within the site itself. In addition, he indicated that the lighting plan was designed to keep lighting levels within the property and prevent spillage onto abutting properties, while ensuring safety and security associated with the bank use.

Mr. Bilotta stated that he had reviewed the proposed project and supported it, including the landscaping proposed; however, he encouraged the applicant to consider incorporating a six-month landscaping maintenance plan to the project. Mr. Brodeur indicated that the applicant would agree to incorporate a six-month landscaping maintenance plan to the project.

Mr. Abramoff asked Mr. Brodeur whether or not the applicant had considered constructing a side walk along Gold Star Boulevard, and he responded that the applicant was not planning to do so. Mr. Abramoff stated that the area along Gold Star Boulevard is often used for pedestrian activities, as demonstrated by the worn out patches on site. He also indicated that, in his opinion, the area would be best served by having a side walk built in.

Mr. Abramoff asked Mr. Fontane if the City had any plans to install side walks along Gold Star Boulevard and he responded that he was not aware of any DPW&P plans to do so, and indicated that he was uncertain whether or not there was sufficient land in the area to install a side walk. Mr. Abramoff stated that the site plan showed a strip of land along Gold Star Boulevard which could be used to install a side walk. Mr. Swirling acknowledged that there was a strip of plan approximately 10 feet wide along Gold Star Boulevard, but indicated that such area had a slope which would need to be leveled in order to support a side walk for pedestrian traffic.

Mr. Brodeur stated that if a side walk were to be built on site, it would connect to nowhere because there were no sidewalks along Gold Star Boulevard to connect the proposed sidewalk. He also said that the strip of land along Gold Star sloped downward toward the proposed site; therefore, constructing a side walk would be difficult and costly. In addition, he indicated that the applicant would need additional time to carefully review and consider installing a sidewalk on site as suggested by Mr. Abramoff.

Mr. Abramoff acknowledged that a sidewalk on site along Gold Star Boulevard may appear disconnected; however, he indicated that, in his opinion, it would be beneficial to

pedestrians and potentially trigger an extension along the entire length of the road. Mr. Fontane indicated that the Board could consider adopting Mr. Abramoff's suggestion as condition of approval; however, he stressed that DPW&P staff should be consulted as to whether or not they recommended a sidewalk in the area, given the infrastructure that may or may not be located in the area.

Mr. Freilich stated that although he supported a sidewalk on site from a safety standpoint, he indicated that his main concern was the vehicular congestions in the area which, in his opinion, are generated by a fueling station and convenience stores located in the immediate vicinity. He indicated that these commercial businesses regularly trigger vehicular jams along Gold Star Boulevard which often prevents consumers from accessing and/or exiting these sites in a safe manner.

Mr. Freilich asked Mr. Brodeur to inform the Board if individuals using the bank branch facility would be able to utilize the right of way located on the abutting property to safely egress the site in case there was a vehicular jam on Gold Star Boulevard. Mr. Brodeur responded that although the adjacent property on Glennie Street is owned by a different individual, the owner of the site has rights to the easement on site; therefore, bank consumers would be able to utilize it to access/egress the site at any given time.

Mr. Freilich asked how many employees would be utilizing the second floor office and Mr. Brodeur responded that 12 employees would be utilizing the second floor offices; however, he added that most of them would leave the premises by 5:00 PM. Mr. Freilich also requested clarification regarding what would be the busiest days and times for banking business, and how many vehicles were expected to be waiting in both lanes during peak times. Mr. Foley indicated that based on his experience at other bank branches, the busiest days and times would be Thursday evenings, Friday evenings and Saturdays. In addition, he stated that the queuing expected at peak time would be approximately 4 vehicles on each lane, and indicated that Unibank limits the types of services available from exterior lanes in order to encourage use of the bank offices and facilities.

Mr. Freilich expressed support for the project and commended the applicant for submitting a comprehensive floor plan, especially, the access/egress provided to/from Glennie Street. Mr. Abramoff stated that, in his opinion, it would be a great civic gesture if Unibank could consider installing a sidewalk along its property line on Gold Star Boulevard. He added that such sidewalk would be an important factor in preventing pedestrians and/or employees from getting hurt from vehicular traffic.

Mr. Brodeur stated that the applicant was not prepared to make an immediate commitment to install a sidewalk along the property line fronting Gold Star Boulevard, but indicated that Unibank was willing to further discuss the matter with City Staff, especially, DPW&P staff. He also stated that Unibank would accept a condition of approval to further discuss the matter with DPW&P staff, and if recommended, Unibank would implement it. Alternatively, he said that Unibank could contribute financially to a sidewalk fund, and/or, a sidewalk improvement plan.

Mr. Freilich stated that he agreed with Mr. Abramoff's concern regarding pedestrian safety in this area; however, he expressed concern that a sidewalk along Gold Star Boulevard could be more hazardous than safe. He indicated that, in his opinion, installing a sidewalk along the access way to/from Glennie Street would be safer for pedestrians. Mr. Abramoff stated that people do walk along Gold Star Boulevard sides to reach several commercial

destinations along the way, even though the area did not have sidewalks. As an example, he indicated that the proposed site had a worn path along Gold Star Boulevard.

Mr. Brodeur indicated that the applicant would prefer to consult with DPW&P staff regarding this matter prior to making any definitive commitments. Mr. Fontane stated that the Board could consider placing a condition of approval indicating that “a sidewalk would be installed to DPW&P standards along the right of way of Gold Star Boulevard, provided there is enough area to do so within the invoked right of way”.

Mr. Abramoff asked if the City had any plans to install sidewalks along Gold Star Boulevard. Mr. Fontane responded that he was aware of any DPW&P plans to install sidewalks in the right of way along Gold Star Boulevard. He also indicated that, for the most part, the right of way along Gold Star Boulevard was completely developed and the paved road took most of the area; therefore, he stated that there may not be sufficient area for sidewalks.

Mr. Abramoff asked Mr. Brodeur to indicate the width of the area between Gold Star Boulevard and the proposed structure, and he responded that the width was approximately 10 feet. Mr. Abramoff asked if those 10 feet would be sufficient to install a sidewalk. Mr. Brodeur indicated that, as he had stated before, the applicant would prefer to consult with DPW&P prior to giving a definitive response, especially, given the fact that the parcel’s strip of land along Gold Star Boulevard sloped down towards the proposed site.

Mr. Abramoff asked whether the right of way included City property only or, as in this case, a portion of the proposed parcel as well. Mr. Fontane stated that a right of way includes the built and un-built portions of a roadway. However, he indicated that as it pertained to this case, it seemed that the roadway did not include a portion of the proposed site.

Mr. Freilich asked the applicant to inform the Board if there was a strategic or financial reason as to why several banks were opening branches in the City of Worcester. James F. Paulhus, president and CEO of Unibank stated that 3 years ago Unibank decided to establish a Loan Office in the City of Worcester in order to market their name, gather some business and establish a foothold in the City. He indicated that the establishment of the Loan Office was successful and the company gained momentum; therefore, Unibank decided to expand their business by opening a retail branch, and relocating their Loan Office to the City; hence the reason for the proposed project. Mr. Paulhus also stated that Unibank successfully implemented the same strategy in Milford, Mass. and hoped to get the same rate of success in Worcester.

He also indicated that it was his understanding that other community banks were interested in opening branches in Worcester, and were currently evaluating several commercial locations in the City as potential sites.

Mr. Michajlow expressed his support for the project, and indicated that he has not seeing pedestrian traffic in the area; therefore, he said that he was not concerned regarding foot traffic in the area. Mr. Michajlow asked if the landscaping proposed included ALB-resistant trees. Mr. Brodeur indicated that the proposed project also required Definitive Site Plan approval from the Planning Board; therefore, the proposed landscaping was designed according to the Zoning Ordinance requirements for landscaping.

Commissioner Kelly requested clarification regarding a note in the site plan that stated “potential future directional sign on Glennie Street”. Mr. Brodeur stated that the applicant intended to install a directional sign on Glennie Street, but indicated that the location had

not been determined at the moment, and would require further discussion with the owner of the abutting parcel.

Upon a motion by Mr. Freilich and seconded by Mr. Michajlow, the Board voter 4-0 to close the Public Hearing. Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Zoning Board of Appeals voted 4-0 to accept the petitioner's findings of fact as amended by staff as the Board's own, and approve the following Special Permits:

- a) Special Permit: on-Residential use (Bank with drive-through) allowed by Special Permit in MG-2.0 zoning district.
- b) Special Permit: Modification of parking/loading requirements (length reduction in the drive-through service lanes).
- c) Special Permit: Modification of landscaping requirements for parking/loading (i.e. planting trees every 20-25 feet on-center along street lines)

With the following conditions of approval:

- I. That the applicant will construct, at its own expense, a sidewalk to the City's standards in the public right-of-way of Gold Star Blvd, provided there is enough area within unbuilt portion of Gold Star Blvd for such a sidewalk.
- II. That landscaping on-site is maintained bi-annually.
- III. That the project be constructed in accordance with the Definitive Site Plan as approved by the Planning Board on file with the City of Worcester, and in compliance with all governmental codes.

List of Exhibits:

- Exhibit A: Special Permits Application received March 1, 2011 prepared by Unibank for Savings.
- Exhibit B: Special Permits Plan dated February 16, 2011, revised March 16, 2011, prepared by Bohler Engineering.
- Exhibit C: Traffic Impact Assessment for the proposed Unibank development at 24 Gold Star Boulevard; prepared by MDM Transportation Consultants, Inc.; dated March 18, 2011.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals re: Special Permits, dated March 30, 2011.
- Exhibit E: Memorandum from the City of Worcester Department of Public Works & Parks to the Zoning Board of Appeals re: Special Permits, dated April 1, 2011.
- Exhibit F: Letter from Todd E. Brodeur to Lawrence Abramoff, Chair re: Special Permits; dated March 1, 2011.
- Exhibit G: Letter from Todd E. Brodeur to Lawrence Abramoff, Chair re: Special Permits dated March 17, 2011.
- Exhibit H: Email and color photographs submitted on April 4, 2011 regarding existing trees.

2. **18 Falmouth Street (ZB-2011-009) – Variance and Special Permits:** Wee Nguyen, representative for the petitioner and Dina Nguyen, petitioner, presented the petition. Mr. Nguyen stated that the petitioner was seeking approval for the following relief: (a) Variance for relief of 25 feet from the frontage requirement, (b) Special Permit to allow a three-family detached dwelling in a RL-7 zoning district, (c) Special Permit for extension, alteration or change of a privileged pre-existing, nonconforming structure. In addition, Mr. Nguyen indicated that the petitioner was his mother.

Chair Abramoff reminded the petitioner that only four (4) members were present to render a vote on the matter. He also stated that the proposed petition would require 4 consenting votes; therefore, he indicated the applicant reserved the right to request continuance the Public Hearing to another meeting to ensure that additional voting members were present and able to vote. Mr. Nguyen stated that the petitioner decided to waive her continuation rights, and requested to move forward with the petition.

Mr. Nguyen indicated that his mother had purchased the site at auction, approximately 6 months prior to the hearing. He also stated that property was sold and purchased as a two-family dwelling; however, while renovating the interiors, it was discovered that the dwelling structure had been used as a three-family because the third floor was equipped with a kitchen, bathroom facilities and one large bedroom. However, he stated that the third floor dwelling unit did not have a second means of egress.

Mr. Nguyen indicated that given the fact that the third unit already existed and the parcel had sufficient area to provide six parking spaces, the petitioner decided to seek approval from the Zoning Board of Appeals to legalize the third dwelling unit. He also indicated that in order to enhance the residential use of the site and provide added safety to prospective tenants, the applicant was proposing to install a sprinkler system and construct a new second means of egress for all three dwelling units. In addition, he indicated that the parcel was large enough to provide 8 off-street parking spaces.

Mr. Bilotta asked Mr. Nguyen why the applicant had not purchased a three-family dwelling structure instead, when several of them were available for sale in the area. Mr. Nguyen responded that the applicant chose to purchase the building due to its location and proximity to an elementary school, and indicated that his mother intended to live on site. In addition, he stated that he was planning to register his 3 children in the elementary school located nearby, and indicated that his mother would care for his children after school until he and his wife returned from work.

Mr. Nguyen also stated that the building's interior was undergoing complete renovation and indicated that when complete, each residential unit would comply with code regulations. Mr. Abramoff stated that he was not able to see a Building Permit posted on site as required. Mr. Nguyen indicated that the Building Permit was posted in one the windows facing the driveway.

Mr. Kelly confirmed that the Department of Inspectional Services issued a Building Permit on December, 2010; however, he stressed that at the time, the Building Permit was issued to renovate the site as a two-family dwelling structure. However, he indicated that although the petitioner had received a Building Permit to renovate the structure, and had a legal

permit for 2 dwelling units, it was up to the Board to decide whether or not, the building could or should be converted to a three-family dwelling.

Mr. Abramoff indicated that the parcel was large enough to accommodate an additional dwelling unit on site. He also stated that several three-family dwellings existed in the immediate vicinity, and added that the petitioner's ability to provide the required parking on site was a plus. In addition, he indicated that he appreciated the fact that the applicant was proposing to install a sprinkler system and had implemented a complete renovation plan to bring the building into code compliance, and indicated that, in his opinion, the renovations appeared to be good quality work

Commissioner Kelly stated that the location and use of the structure for multi-family residential uses triggered the need to install a sprinkler system, which he said the applicant had agreed to do from the beginning.

Mr. Freilich asked Mr. Kelly if he could provide an estimate of how many two-family dwelling structures are currently being used illegally as three-family dwelling structures in the City. He indicated that his request stemmed from a concern that some developers may be selectively purchasing two-family dwellings at lower cost with the intent of requesting ZBA approval to convert them into three-family dwellings for financial gain.

Commissioner Kelly indicated that it would be difficult to provide an estimate of the number of two-family dwelling structures currently used as three-family dwellings in the City. However, he stated that through do diligence from Building Inspectors and concern citizens, the City does becomes aware of the existence of an illegal dwelling units from time to time. In those instances, he indicated that a Building Inspector investigates the matter and when confirmed, they are addressed immediately. In addition, he indicated that Building Inspectors review carefully Building Permit application issued to renovate attics and basement to ensure that the intent of application is not to create an illegal dwelling unit.

Mr. Freilich suggested placing a public notice that the Department of Inspectional Services indicating the enforcement regulations, in an effort to prevent potential violations and avoid after-the-fact petitions to legalize residential units built illegally.

Mr. Michajlow asked the applicant if she was planning to make other substantial changes to the house, and Mr. Nguyen stated that no additional changes were expected.

Mr. Fontane stated that the applicant had requested a waiver regarding the requirement to provide a plot plan to scale, and indicated that the Board would need to act on the request prior to rendering a vote on the petition. Chair Abramoff asked Commissioner Kelly if the Department of Inspectional Services would require a plot plan to scale during the building permitting process. Commissioner Kelly responded that due to the size of the parcel, a plot plan was not required.

Upon a motion by Mr. Michajlow and seconded by Mr. Freilich, the Zoning Board of Appeals voted 4-0 to close the Public Hearing. Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Zoning Board of Appeals voted 4-0 to accept the petitioner's findings of fact as amended by staff as the Board's own, and approve the following Special Permits:

- a) Variance: Relief of 25 feet from the frontage requirement.
- b) Special Permit: To allow a three-family detached dwelling in a RL-7 zoning district.

- c) Special Permit: Extension, alteration or change of a privileged pre-existing, nonconforming structure

With the following conditions of approval:

- I. That the conversion is constructed and operated in substantial accordance with the Mortgage Plot Plan submitted with the application to the Division of Planning and Regulatory Services on March 2, 2011 and in compliance with all governmental codes.
- II. That the petitioner plants at least one Asian Long-Horned Resistant tree at the rear of the lot in order to off-set a slight increase in the impervious surface.
- III. That the petitioner shall not pave an area in the rear of the house larger than is required for six (6) standard size (9' by 18') off-street parking spaces. The rest of the parcel is to remain as green space and not be paved.

List of Exhibits:

- Exhibit A: Zoning Board of Appeals Special Permit and Variance Application; received March 2, 2011; prepared by Dina Nguyen.
- Exhibit B: Mortgage Inspection Plan for 18 Falmouth Street; dated 10-04-2010; prepared by Reney, Moran & Tivan.

OTHER BUSINESS:

Mr. Fontane informed the Board that Planning Division staff would be sending an invitation to all land-use Boards regarding the 495 Corridor Study report, and encouraged the Board to read it and participate, indicating that CMRPC was leading the process.

Adjournment: Chair Abramoff adjourned the meeting at 7:30 pm.