

PLANNING BOARD

TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: December 18, 2012

Re: Application No. 2012-33-PFSP
Applicant: Investors Bank
Premises: 371 East Northfield Road
Block: 2505; Lot: 2
Zone: P-B3

SUMMARY OF CASE

1. The Applicant is Investors Bank (hereinafter referred to as “Applicant”), the owner of the subject premises, commonly known as 371 East Northfield Road, (hereinafter “Site”) on which it currently operates a retail banking branch with a drive-up facility. The Applicant has submitted an application to the Planning Board of the Township of Livingston (hereinafter “Board”) for Preliminary and Final Site Plan approval.
2. The Site was previously the subject of a Minor Site Plan application heard by the Subdivision/Site Plan Committee of the Board and approved in a Resolution on December 6, 2011 under Application Number 2011-55-MS, for which the Applicant now seeks amendment.
3. Public hearings on this Application were held before the Board on October 2, 2012 and November 27, 2012. The Applicant was represented by its attorney Stephen A. Geffner, Esq., of Schenck Price Smith & King, L.L.P., and demonstrated that the Application was in compliance with the statutory requirements and that there were no taxes due or delinquent with respect to the Site.

4. Mr. Joseph Ratchko, residing at 29 Herbert Terrace, appeared pro se in opposition to, and testified against, the Application.

5. The existing bank building on the Site was originally operated as a Carteret Savings Bank branch and has operated continuously as a banking facility since 1978. It contains an entrance facing East Northfield Road and a rear entrance facing the parking lot. There is a two-lane drive-up structure on the westerly side of the property facing Herbert Terrace. Only the lane closest to the building is currently functioning.

6. The Applicant has submitted revised plans that would provide for certain improvements and changes to the exterior of the premises as well as to the building; including the elimination of a front entrance, additional landscaping and sidewalks, elimination of a present walk-up ATM and installation of an ATM at the drive-up facility.

7. The December 6, 2011 Resolution approved a remote ATM at the outer drive-up lane. The Applicant now proposes to install that unit in the interior lane which is directly adjacent to the building. The walk-up ATM location was at the rear door and was accessible by both motorists and customers arriving as pedestrians. The Applicant also proposes to install sidewalk improvements to the property and to add additional traffic safety signage. The December 6, 2011 Resolution approved the installation of "No Thru Traffic" signs on the Site. Subsequently, the Building Department entered a partial "Stop Work" order because residents on Herbert

Terrace claimed to have a right to transit the Site with their vehicles in order to turn eastward on East Northfield Road when exiting Herbert Terrace.

8. The Application and Site Plan represent that the Site is in the B-1 General Business District, and the Applicant requested a waiver from the Township Code § 170-73.B.(14) requirement that all commercial buildings in that district have their primary entrance toward and accessible from the street right-of-way. The Applicant proposes to close the current building entrance that faces East Northfield Road and to utilize a single entrance located at the rear that would be accessible from the parking lot and from Herbert Terrace but would not face any street.

9. Testifying on behalf of the Applicant were:

A: Jose Valente, Vice President of facilities for the Applicant

B: David Antonio, Supervising Planner for Essex County

C: Joseph Staigar, admitted as an expert in planning and traffic engineering

D: Peter Korzen, admitted as an expert in civil engineering

E: Mark A. Haas, admitted as an expert in architecture.

10. Members of the public testifying were:

Paul Fenske, 25 Herbert Terrace

William W. Frieman, 24 Herbert Terrace

Katherine Murphy, 22 Herbert Terrace

Robert Rashkes, 35 Oak Crest Road, West Orange

Donna Sharpe, 25 Herbert Terrace

11. A number of nearby residents appeared and offered testimony that through an agreement with prior owners of the Site and with the approval of Essex County, residents of Herbert Terrace were permitted to drive their vehicles, when not doing business at the bank, from the Herbert Terrace driveway and through the Site in order to make left turns onto East Northfield Road, utilizing the traffic light at the Northfield Road/Old Short Hills Road intersection that also controls traffic exiting the bank property. No written confirmation of that arrangement in the form of an Easement or Resolution or otherwise was produced. It also appeared that the aforesaid claimed accommodations between the Herbert Terrace residents and the prior owners of the property preceded enactment of N.J.S. 39:4-66.2 that prohibits the operation of motor vehicles on private property, with or without permission of the owner, for the purpose of avoiding a traffic control signal or sign.

FINDINGS OF FACT

1. The Site is a corner lot at the intersection of East Northfield Road and Herbert Terrace and has been the location of a bank since approximately 1978. Vehicular entrance to the property is from a driveway at Herbert Terrace and from a driveway at westbound East Northfield Road. Traffic exits the Site either to Herbert Terrace or onto East Northfield Road. The East Northfield Road driveway is at the intersection of that street and Old Short Hills Road. The intersection is controlled by a traffic light, and that light also controls vehicles exiting via the bank driveway. The Applicant proposes to install signs prohibiting through traffic across its property.

2. The bank also proposes certain improvements to upgrade the property, including renovation of the two lane drive-up to reactivate the lane furthest from the building and to install an ATM machine in the lane adjacent to the building. There now are front and rear entrances to the building, located at the front and rear of the property. The proposal would close off the front door so that access would be only from the rear entrance facing the parking area. The ATM presently next to the rear entrance would be removed. A new ATM installation would be in the drive-up lane adjacent to the building. Motorists would no longer have to park and exit their vehicle in order to access the ATM machine.

3. Improvements would include replacing asphalt sidewalk on Herbert Terrace with concrete, installation of an ADA compliant ramp, new landscaping along the front of the building, a painted pedestrian path from Herbert Terrace to the building entrance, striping the sidewalk at the East Northfield Road driveway, and installation of various traffic control and pedestrian safety features and signs. The building interior would be redesigned to provide a waiting area for the public, and increased privacy areas for bank employees to conduct business. The area where the front door will be removed will have additional landscaping and will be an enhancement to the appearance of the property.

4. A design standard waiver from Township Code § 170-73.B.(14) was requested since the building will not have its primary entrance fronting on the street right-of-way. As established by Ordinance No. 5-2011, the Site is in the P-B3 Professional Office District and not in the B-1 General Business District. A bank is a permitted use in the district, but

the particular design standard does not apply in the district. Grant of a waiver is not required.

5. The Applicant's witnesses testified that the "No Thru Traffic" signs were necessary because transiting cars create safety hazards on the Site and would interfere with operation of the two-lane drive-up facility. The Board heard testimony from numerous residents of the Herbert Terrace area opposing the "No Thru Traffic" signs. They testified that they had been transiting the Site in their vehicles for as many as 30 years in order to make left turns onto East Northfield Road, since such a traffic turn is not possible exiting Herbert Terrace. East Northfield Avenue is a divided highway at that point and there is a "One-Way" sign requiring vehicles exiting Herbert Terrace to turn right. The residents testified that a transiting arrangement existed since Carteret Bank first opened a bank branch at this location. They contended that there was an agreement permitting such access, but no written agreement, Resolution or Easement was produced. They also relied upon a memorandum dated February 16, 1978 from a Robert E. Busch, then the principal traffic engineer for Essex County, to the county engineer and supervisor of roads. The residents argued that the memorandum permitted the access. Said document did not satisfy the Board that an enforceable agreement exists, or that the Board has the jurisdiction to enforce such an agreement. Applicant's Exhibit A-1, a letter dated August 6, 2012 from the Secretary of the Essex County Planning Board, and the testimony at the hearing by David Antonio, supervising planner for Essex County, both took the position that no such access was recommended or required by the County. Furthermore, N.J.S.

39:4-66.2 prohibits motorists from driving on private property, with or without permission of the owner, for purposes of avoiding a traffic control signal or sign.

7. During the course of the hearings, the Applicant agreed to certain amendments to the Site Plan, and to conditions, including:

A: The handicap parking space shall be moved away from the trash receptacle area and located opposite the entrance at the rear of the building.

B: A pedestrian crossing warning sign shall be added for exiting vehicles at the East Northfield Road driveway.

C: The Applicant shall promptly apply to Essex County for permission to install crosswalk striping on the sidewalk at the driveway on East Northfield Road, and shall make such installation upon receipt of such permission.

D: A "No Right Turn" sign, a "Stop" sign and a painted stop bar for exiting vehicles shall be installed at the driveway to East Northfield Road.

E. The concrete side walk on Herbert Terrace shall extend along the full frontage of the Site.

E. The Applicant shall pay its fair allocation of the cost of any improvements Essex County finds necessary at the Glenview Road or Herbert Terrace intersections with East Northfield as a result of the closing of access to the Site for through traffic.

CONCLUSIONS OF THE BOARD

1. The Board finds that the subject property is in the PB-3 District, that a design standard waiver is not required, and that the Preliminary and Final Site Plan is approved in

accordance with the Application submitted and as amended during the course of the hearings.

2. The Board finds that the proposed improvements will provide an esthetic enhancement to the property, the additional signage will improve traffic and pedestrian safety, the improvements to the sidewalks will be of a benefit to pedestrians, handicap access will be improved, and there will be no increase in traffic. The size and use of the bank will not be altered from its current operation, so that no additional traffic impact can be expected.
3. The Board finds that the design of the Herbert Terrace driveway and of the Northfield Road driveway will not present any unsafe conditions for ingress and egress.
4. The Board finds that the December 6, 2011 Resolution of its Subdivision/Site Plan Committee was in error in finding that the ATM would be relocated to the outer drive-up lane. It will be located in the inner lane as established in this hearing before the Board.
5. The Board finds that no written agreement, Resolution, Easement, or other document or evidence was produced to establish a binding and enforceable agreement to allow transit of the Site by vehicles of Herbert Terrace residents.
6. The Board finds that it has no authority to impose or enforce a right of transit upon the Applicant.
7. The Board takes note the Applicants citation of N.J.S. 39:4-66.2, but does not reach any

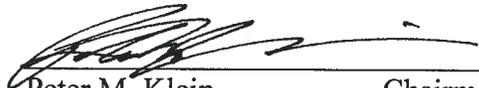
determination as its applicability.

NOW, THEREFORE, BE IT RESOLVED, by the Planning Board of the Township of Livingston, having duly considered the evidence and testimony presented, the Board concludes as follows:

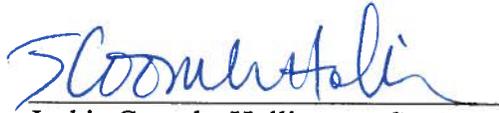
1. The Board hereby approves the Application in accordance with the Site Plan and architectural drawings submitted and as amended in the course of the hearing and with the conditions set forth below.
2. Conditions.
 - A: The handicap parking space shall be moved away from the trash receptacle area and located opposite the entrance at the rear of the building.
 - B: A pedestrian crossing warning sign shall be added for exiting vehicles at the East Northfield Road driveway.
 - C: The Applicant shall promptly apply to Essex County for permission to install crosswalk striping on the sidewalk at the driveway on East Northfield Road, and shall make such installation upon receipt of such permission.
 - D: A “No Right Turn” sign, a “Stop” sign and a painted stop bar for exiting vehicles shall be installed at the driveway exit to East Northfield Road.
 - E: The concrete side walk on Herbert Terrace shall extend along the full frontage of the Site.
 - F: All conditions contained in the December 6, 2011 Resolution shall remain in full force and effect.

G. In the event that Essex County finds any improvements necessary at the Glenview Road or Herbert Terrace intersections with East Northfield Road due to the closing of access to the Site for thru traffic, the Applicant shall pay its fair allocation of the cost of such improvements.

NOW THEREFORE, for the reasons set forth herein and as stated on the record by the Members of the Planning Board of the Township of Livingston, it is resolved that Preliminary and Final Site Plan approval, be and is hereby granted and approved, subject to the terms and conditions set forth herein.


Peter M. Klein, Chairman

I hereby certify this to be a true and accurate copy of the Resolution adopted by the Planning Board of the Township of Livingston on December 18, 2012 by the affirmative votes of Board Members Anthony, Dinar, Kalishman, Klein, Leopold, Ratner, and Alternate No. 2 Wishnew (in place and stead of Member Meade); they being all of the Members both present and eligible to vote,


Jackie Coombs Hollis, Secretary