

**ZONING BOARD OF APPEALS**

TOWN HALL • 525 WASHINGTON STREET • WELLESLEY, MA 02181-5992

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ZBA 98-6

Petition of Guardian Savings & Loan Association  
999 Worcester Street

Pursuant to due notice, the Permit Granting Authority held a Public Hearing on Thursday, January 29, 1998 at 8 p.m. in the Great Hall at the Town Hall, 525 Washington Street, Wellesley, on the petition of GUARDIAN SAVINGS & LOAN ASSOCIATION, pursuant to the provisions of MGL Chapter 40A, Section 10, requesting an extension of a variance, originally granted in 1957 to Carmen J. and Laura M. Surro (ZBA 57-45), to allow the petitioner to continue to use a portion of the property located in a Single Residence District, at 999 WORCESTER STREET, in a Business and Single Residence District, for the parking of automobiles connected with or going to the business establishments on the premises. The variance was granted in 1970 to Squire Circle Associates (Louis A. Sozio) (70-18), owner of record, under the condition that the off-street parking of motor vehicles be connected with the petitioner's retail business.

Said extension pertains to the land bounded northerly by land of the owner approximately 160 feet; easterly by Overbrook Drive 50 feet; southerly by land of the owners approximately 160 feet and westerly by Edgemoor Avenue 50 feet.

On January 12, 1998, the petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Patrick Toomey, attorney with Gadsby & Hannah LLP; and Rebecca Longley, Senior Project Manager at Rust Environment & Infrastructure. Mr. Toomey explained that the bank is requesting an extension of the existing variance. Guardian Savings & Loan intends to demolish the existing Sozio appliance store, and construct a new building containing about 5,900 square feet, and must comply with the parking requirements for that size building. In order to comply, they will need to continue the use of the 50 foot area starting at the zoning line separating the Business District from the Single Residence District, and continuing 50 feet back. In that area, 17 parking spaces would be installed.

Mr. Toomey said that the variance has been in effect for 40 years. The conditions which were in existence at the time of the initial grant are still in existence. Because the property fronts on Worcester Street, Edgemoor Avenue and Overbrook Drive, the zoning setback requirements significantly restrict the buildable area and the ability to provide the requisite parking.

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Mr. Toomey stated that the Bank is proposing to keep the parking strictly within the allowed 50 feet. Presently, the parking spaces may extend beyond the 50 foot line. Behind the subject lot is a second lot which is totally within a Single Residence District. The bank is only purchasing the front lot which contains the split zoning. The rear 10 feet of the Single Residence portion of the bank owned lot will be fully landscaped. The bank will only occupy 2,000 square feet of the proposed 5,900 square foot building. The remainder will be rented to retail tenants.

Mr. Toomey said that the present access to the site is from Worcester Street. The State has closed the Route 9 access and moved it to Overbrook Drive. There is also access from Edgemoor Avenue.

The Board commented that it will be concerned with the increased traffic on Overbrook Drive due to the development of the CEA/Wellesley Trust site, (formerly Chin's Village) combined with the additional traffic from the Guardian site. Before the Overbrook Drive entrance is finalized, the bank should co-ordinate its traffic plan with that of CEA/ Wellesley Trust. The Executive Secretary suggested that Guardian obtain a copy of the traffic analysis submitted by Chin's Village and a copy of the PSI decision issued by the Planning Board, which contains conditions relating to traffic, so that Guardian can co-ordinate its traffic plan with what has already been approved and conditioned.

Mr. Toomey responded that they know the project will require Site Plan Review, but don't think a traffic study will be necessary, as the number of vehicle trips during peak hours will not exceed fifty. The Board stated that the traffic from the two sites would be substantial, and that additional traffic is also being generated by the new residential development in the area.

The Board asked if the required number of parking spaces had been met. Ms. Longley said that they would be met if the Board extended the variance.

Joseph Harkins, 24 Overbrook Drive, expressed support for the petition. He is a direct abutter. He stated that he is hoping to develop three lots in the future, which will involve extending Edgemoor Avenue, which might help to relieve the traffic on Overbrook Drive.

Kimberly Walker, 132 Overbrook Drive, said that the neighborhood is not concerned about the bank use; it is concerned about cars turning back on Overbrook Drive through the neighborhood and about the retail use, as there is no information about the trip generation of the retail use. Mr. Toomey said that they have not identified a tenant for the retail use.

The Board asked if the bank could block the Overbrook Drive access. Ms. Longley said that the bank needs this access for identification. Mr. Toomey said that they could consider restrictions on direction of turning egress at the Site Plan Review hearing.

Steve Burt, 20 Ledyard Road; Ted Chryssicas, 176 Benvenue Street; and Dean Berend, 136 Worcester Street, all expressed support for the petition.

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Statement of Facts

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The subject premises are located at 999 Worcester Street on a 29,420 square foot lot of which 20,959 square feet are in a Business District and 8,191 square feet are in a Single Residence District. The property is also in a Water Supply Protection District. The property is currently owned by Squire Circle Associates (Louis A Sozio), but will be owned by Guardian Savings & Loan Association by the end of February.

Guardian is proposing to construct a 5,935 square foot one-story building of which the bank will occupy 2,000 square feet and the remainder will be used by retail tenants. The parking required by the Zoning Bylaw is a total of 40 spaces. The Business zoned portion of the lot can hold only 23 spaces.

Pursuant to the provisions of MGL Chapter 40A, Section 10, the petitioner is requesting an extension of the variance originally granted to Carmen and Laura Surro in 1957, and further extended to Squire Circle Associates (Louis A. Sozio) in 1970, to continue to use the 50 feet of the Single Residence District approximately 150 feet north of Worcester Street for parking of 17 vehicles connected with or going to the business establishments on the premises. Without the extension of this variance, the petitioner will be unable to comply with the parking requirements of Section XXI of the Zoning Bylaw.

MGL Chapter 40A, Section 10 provides that "no variance may authorize a use or activity not otherwise permitted in the district in which the land or structure is located; provided, however, that such variances properly granted prior to January 1, 1976, but limited in time, may be extended on the same terms and conditions that were in effect for such variance upon said effective date".

In 1971, the Board of Appeals granted an extension of the variance, previously granted to Carmen and Laura Surro (ZBA 57-45), to Squire Circle Associates (ZBA 70-18). Said variance was granted "and said land may be used for off-street parking purposes **while the petitioner's business is being conducted on that portion of the lot which is zoned for business use**, subject to the following conditions:

1. That the land in the Single Residence District,... may be used to an extent not exceeding a depth of fifty feet northerly of the existing business zone, for the off-street parking of motor vehicles in connection with the business to be conducted on the property by the petition, viz., a retail store.

Conditions imposed by the Board in its previous decisions (i.e. ZBA 57-45, ZBA 61-25 amended on March 28, 1962) were also incorporated into the decision.

A Proposed Site Plan dated 10/30/97, revised 11/3/97, drawn by Rust Environment & Infrastructure, Inc. was submitted.

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On January 20, 1998, the Planning Board reviewed the petition and had no objection to the granting of this request. The Planning Board recommended that the ingress and egress should be consistent with the recently approved CEA project site drive. The Board further recommended that in the event of a future change of use, the applicant should, at that time, be required to submit for a review and renewal of the variance.

#### Decision

This Authority has made a careful study of the material submitted and the information presented at the hearing. The petitioner is requesting an extension of the variance last granted in 1970 to Squire Circle Associates, the current owner, to extend the business use at the rear of the property at 999 Worcester Street, in a Business District, northerly for a distance of 50 feet into the more restrictive Single Residence District portion of the property for the purpose of parking cars by those connected with or going to the business establishments on the premises.

The Permit Granting Authority makes the following findings:

1. MGL Chapter 40A, Section 10 requires that in order for a variance to be extended, it must have been granted prior to January 1, 1976; that it must have had a time limit; and that it may contain the same terms and conditions of the effective variance.
2. The variance extension granted to Squire Circle Associates on May 1, 1970 (ZBA 70-18) complies with the first requirement as it was granted prior to January 1, 1976.
3. The above quoted phrase "while the petitioner's business is being conducted on that portion of the lot which is zoned for business use" denotes a time limit, thus satisfying the second operative requirement.
4. The proposed change in use from retail to banking and retail will not alter the need for off-street parking; and that the proposed use of the land involved is reasonably necessary and will not reduce the value of any property within the area or otherwise injure the neighborhood.
5. Without the grant of the variance extension, the petitioner would suffer substantial hardship, and that relief may be granted without substantially derogating from the purpose or intent of the Zoning Bylaw.

Therefore, the requested variance extension is granted, as voted unanimously by this Authority at the Public Hearing, subject to the following conditions:

1. The land in the Single Residence District, to which the petition refers and which is shown on the Proposed Site Plan noted in the foregoing Statement of Facts, may be used to an extent not exceeding a depth of 50 feet northerly of the existing business zone, for the off-

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street parking of motor vehicles in connection with the business of the petitioner and future retail use of the premises.

2. In the event that the petitioner should transfer the property to another owner, or the use of the use of the premises should change, a new petition for the extension of the subject variance shall be required to be submitted to the Board of Appeals prior to the change of ownership and/or use.

3. A six-foot split sapling or other fence shall be erected along the entire line abutting the Single Residence District to which the use is extended, from Overbrook Drive to Edgemoor Avenue. The solid hedge of evergreens previously planted and said fence shall be maintained in good condition for the life of the extension hereby granted.

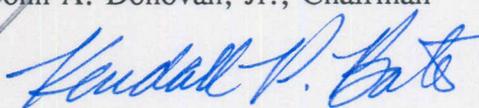
4. The land in the Single Residence District to which the business use is hereby extended shall be used only for parking in connection with the petitioner's banking business and the business of any future tenant(s). No sign or structure, other than modest signs to direct traffic and parking shall be placed on the land.

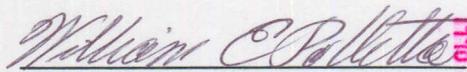
5. No parking shall be done on any of the land herein referred to now belonging to the petitioner, which is north of the line to which the business use is hereby extended.

6. In the event of the breach of any condition hereof, the extension of use hereby granted may be terminated by this Board without notice or hearing.

APPEALS FROM THIS DECISION,  
IF ANY, SHALL BE MADE PURSUANT  
TO GENERAL LAWS, CHAPTER 40A,  
SECTION 17, AND SHALL BE FILED  
WITHIN 20 DAYS AFTER THE DATE  
OF FILING OF THIS DECISION IN  
THE OFFICE OF THE TOWN CLERK.

cc: Planning Board  
Inspector of Buildings

  
John A. Donovan, Jr., Chairman  
  
Kendall P. Bates

  
William E. Polletta  
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