TOWN OF WELLESLEY MASSACHUSETTS

ZONING BOARD OF APPEALS

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ZBA 98-25
Petition of Guardian Savings & Loan Association
999 Worcester Street

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, April 2, 1998 at 8 p.m. in the Great Hall of the Town Hall, 525 Washington Street, Wellesley, on the petition of GUARDIAN SAVINGS & LOAN ASSOCIATION requesting Site Plan Approval pursuant to the provisions of Section XVIA, Section XI, Section XIVE and Section XXV of the Zoning Bylaw to allow demolition of the existing building and construction of a one-story building to contain the offices of the bank and rental retail space, with a footprint of 6,160 square feet, a floor area of 6,160 square feet and a Floor Area Ratio of .29 on a 29,420 square foot lot, of which 21,284 square feet are zoned Business and 8,136 square feet are zoned Single Residence A, at 999 WORCESTER STREET, in a Business District, a Single Residence A District and a Water Supply Protection District. Forty-one parking spaces and additional landscaping will be provided.

On February 23, 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.

PUBLIC HEARING - APRIL 2, 1998

Presenting the case at the hearing was Patrick Toomey, legal counsel from Gadsby & Hannah LLP; who was accompanied by project manager Rebecca Longley of Rust Environmental Infrastructure; and Jeffrey Maxtutis, Traffic Consultant from Rizzo Associates.

Mr. Toomey explained that the bank is submitting a request to DEP for "Down Gradient Property Status" due to the contamination found on the property. In the course of investigation, it was determined that the contamination, which was coming from the Mobil site west of the locus, is in the groundwater, but not the soil. Copies of all filings with DEP will be sent to the Board.

Mr. Toomey stated that as the contamination is not generated on the site, the Bank is limited as to remediation. During construction, any soils removed will be managed, as will any dewatering required, in accordance with the Mass Contingency Plan. Any long term solution is the responsibility of Mobil, as the contamination occurred about ten years ago when Mobil removed a storage tank.

Due to the fact that the Board had received the second set of revised plans that day, and had not yet received recommendations from the Town's Traffic Engineer regarding the petitioner's submitted traffic plan, the Board voted unanimously to continue the hearing to April 30, 1998. The Board requested further information on the extent of the contamination and any remediation program planned by the petitioner.

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On April 16, 1998, due notice was given by mailing and publication of the Public Hearing scheduled for April 30, 1998 in the Selectmen's Meeting Room (Conference Room B).

PUBLIC HEARING - APRIL 30, 1998

Prior to the presentation of the case, John A. Donovan, Jr., Chairman, disclosed that his law firm, Burns & Levinson, represents Rizzo Associates, the petitioner's traffic consultant. Although he, personally does not represent Rizzo Associates, a department in his firm provides counsel for the company.

Presenting the case at the hearing was Andrew Craft, representing Guardian, who was accompanied by Leigh Gilligan of Gadsby & Hannah LLP; Cameron Smith, Asst. Vice President of Guardian; Rebecca Longley, project manager from Rust Environmental Infrastructure; and Douglas Burgess, Licensed Site Professional from ATC Associates.

The following issues were discussed:

1. Site Contamination

Ms. Gilligan stated that the contamination on site consists of low level gasoline constituents migrating from the abutting Mobil site. The levels at the well closest to the Mobil site are below risk based standards for cleanup required by the Mass Contingency Plan. After conferring with Dr. Katz, Director of Public Health, they have reached an agreement that a fourth well will be placed in the area of the building footprint. Levels from that well will be compared with those of the three others and with the Mass State cleanup standards. They expect the levels in the fourth well will also be below risk based standards.

The Board asked if the soil under the building will be clean before the building is occupied.

Ms. Gilligan said that no cleanup of the site is required. because the levels are below risk based criteria of DEP regulations, which means that no significant risk is posed by the levels found at the site, and therefore, no remediation is required. If they do find levels above the risk standards, they will address the problem with appropriate mitigation measures before construction begins.

Ms. Gilligan stated that the findings on the fourth monitoring well will be submitted to the Board of Health and to the ZBA prior to construction. The Board responded that this

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submission would be condition to be fulfilled prior to the issuance of a building permit.

2. Site Access

The Board stated that its Traffic Consultant had recommended that the first entrance from Edgemoor Avenue be used solely for ingress and the rear entrance on Edgemoor Avenue be used solely as egress. Ms. Longley said that Guardian has agreed to this condition.

3. Site Lighting

Mr. Craft agreed to the condition that the height of 27 feet 2 inches for the light poles on site would be reduced to 25 feet. The property will be lit with low pressure sodium vapor lamps which are shielded from Worcester Street and all abutting properties.

4. Air Quality of Building

The Board asked how the air inside the building would be monitored. Ms. Gilligan responded that the present levels of contamination are not of a nature that poses a significant risk of volitization to indoor air under MCP levels.

The Board asked how Guardian would know if the levels had been exceeded once the building is occupied. Ms. Gilligan said that the type of contaminants that exist are subject to natural attenuation. They expect that the levels will become lower unless there is a new release in the area. Mr. Burgess added that although there is technology to monitor the air, they don't believe it will be necessary. The plume of contamination is lateral to the building and does not intersect the building footprint.

Cynthia Hibbard, Associate Member of the ZBA, but not sitting or voting on this petition, agreed that if the levels found on site are below NCP risk based levels, that will be sufficient assurance that there will be no risk to the building occupants.

5. Overbrook Drive Issues

Kimberly Walker, 132 Overbrook Drive, asked if the proposal for a third traffic lane on Overbrook Drive, recommended by the petitioner's Traffic Consultant, was still being considered. The Board stated that it has been determined that the road is not wide enough to support three lanes.

Ms. Walker asked if the Board could require that no left turns be made from the Overbrook Drive driveway, so that vehicles exiting the site would not travel through the neighborhood. Mr. Smith agreed to that condition.

Lori Schneider, 32 South Woodside Avenue, asked if a sweep turn could be installed at the

Overbrook driveway. Mr. Smith and Ms. Longley agreed that there was not sufficient width to install a sweep turn without reducing the number of parking spaces.

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Statement of Facts

The subject property is located at 999 Worcester Street, on a 29,420 square foot lot, of which 21,284 square feet are in a Business District and 8,136 square feet are in a Single Residence A District. The entire property is in a Water Supply Protection District. The property fronts on Worcester Street and is bounded on the left by Edgemoor Avenue, on the right by Overbrook Drive and to the south by a residential property. Until March 17, 1998, the property was owned by A.S.L. Realty Trust, of which A. Lewis Sozio is a principal trustee.

Guardian Savings & Loan Association is now the sole owner of the property and is requesting Site Plan Approval to demolish the existing building and construct a one-story building to contain offices of the bank and rental retail space, with a footprint and floor area of 6,160 square feet (FAR .29). Forty-one parking spaces and additional landscaping will be provided.

On February 12, 1998, the petitioner was granted an extension of a variance originally granted to Carmen J. and Laura M. Surro in 1957; and again to Squire Circle Associates in 1970; to allow parking of automobiles connected with or going to the business establishments on the premises in the Single Residence A portion of the property (ZBA 98-8). This portion is 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 December 15, 1998, the Wetlands Protection Committee voted to issue an Order of Conditions (DEP 324-255) for the proposed activities on the site.

On December 4, 1997, the Design Review Board held a preliminary review and on December 18, 1997, a final review on the project.

The following engineering plans were submitted: Existing Site Features Plan (201619-1) dated 11/3/97, drawn by William J. Ferro, Registered Professional Land Surveyor; Site Development Plan (201619-2) dated 11/3/97, revised 12/11/97, revised 3/12/98, revised 4/1/98, drawn by Duane C. Hines, Registered Professional Engineer; Utilities Site Plan (201619-3) dated 11/3/97, revised 12/11/97, revised 3/12/98, revised 4/1/98, drawn by Duane C. Hines, Registered Professional Engineer; Landscape Plan (201619-4) dated 11/3/97, revised 12/11/97, revised 3/12/98, revised 4/1/98, drawn by William J. Fleming, Registered Landscape Architect; Details (201619-5) dated 11/3/97, revised 12/11/97, revised 4/1/98, drawn by Duane C. Hines, Registered Professional Engineer; Details (201619-6) dated 11/3/97, revised 12/11/97, revised 3/12/98, revised 4/1/98, drawn by Duane C. Hines,

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Registered Professional Engineer; Subsurface Conditions Plan (201619-7) dated 11/3/97, drawn by Duane C. Hines, Registered Professional Engineer and signed on 2/28/98.

The following architectural plan was submitted: Architectural Floor Plan, Elevations and Sections (201619-8) signed on 2/10/98 by Jeffrey P. Gerber, Registered Architect.

The following written materials were submitted: Official Development Prospectus; Drainage Study dated February, 1998, prepared by Duane C. Hines, Registered Professional Engineer; Technical Traffic Report dated March 19, 1998, prepared by Rizzo Associates, Inc.; and copies of Release Notification Form, Downgradient Property Status Submittal and related documentation pursuant to the Massachusetts Contingency Plan, all of which were submitted to the Mass DEP on April 13, 1998.

All submitted plans and written materials were also sent to the Planning Board, Wetlands Protection Committee, Town Engineer, Board of Health and Fire Chief as required by Section XVIA of the Zoning Bylaw. A copy of the submitted Technical Traffic Report was sent to McDonough & Scully, the Town's Traffic Consultant. Written responses from each of the above were received and are on file in the office of the Board of Appeals.

Dr. Robert Katz, Director of Public Health, has requested one additional monitoring well to be placed within the footprint of the proposed building. Dr. Katz stated, in his letter of April 30, 1998, that if this well produces confirmation that the groundwater concentration of the contaminants is below the GW-2 standard of the Mass. Contingency Plan, there is no significant risk of human exposure. The petitioner has agreed to the installation of the fourth monitoring well.

On April 27, 1998, the Planning Board reviewed the petition and recommended that the request be denied unless the Edgemoor Avenue right-of-way is widened by 10 feet along the entire frontage of both the lot in the Business District and the adjacent lot in a Single Residence A. District, to allow for a standard 24 foot wide roadway pavement, as also recommended by William Scully, Town Traffic Consultant.

In regard to this recommendation, the Board of Appeals has determined that it does not have the jurisdiction, nor is it empowered either under Section XVIA or Section XXV of the Zoning Bylaw to require the petitioner to adhere to this recommendation, which is in the nature of a "taking" and would necessitate reconfiguration of the building and the parking lot which would be substantially detrimental to the petitioner.

Decision

This Authority has made a careful study of the plans and materials submitted and the information presented at the hearings. The petitioner's proposed construction of a one-story

building with a footprint of 6,160 square feet constitutes a major construction project pursuant to Section XVIA of the Zoning Bylaw because it includes construction of 2,500 or more square feet of gross floor area, and is also pursuant to Section XIVE of the Zoning Bylaw because the property lies in a Water Supply Protection District.

It is the opinion of this Authority that the submitted plans, as enumerated in the foregoing Statement of Facts, comply with the Zoning Bylaws of the Town, protect the safety, convenience and welfare of the public, minimize additional congestion in public and private ways, and insure adequate protection for water, sewerage and drainage. Furthermore, compliance is ensured with Section XVI, Section XXI and Section XXII of the Zoning Bylaw.

A Special Permit is hereby granted, as voted unanimously by this Authority at the April 30, 1998 Public Hearing, and Site Plan Approval is given by this Authority pursuant to Section XVIA, Section XIVE, and Section XI of the Zoning Bylaw, subject to the conditions attached hereto as Addendum A.

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.

John A. Donovan, Chairman

Kendall P. Bates

William E. Polletta

cc: Planning Board
Wetlands Protection Committee
William Millett/DPW
Dr. Robert Katz, Board of Health
Rebecca Longley/Rust Environmental
Andrew Craft/Guardian Savings & Loan

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ADDENDUM A

1. All work shall be performed in accordance with the plans submitted and on file with this Authority.

2. All design and construction must comply with all applicable state and local codes.

3. All requirements of the Town of Wellesley Fire Department shall be complied with.

4. All requirements of the Department of Public Works shall be met, including but not limited to the requirement that water, sewer and electric connections, together with drainage connections, be made in accordance with DPW standards, and installed and maintained at no cost to the Town of Wellesley.

5. On completion of the project, a complete set of Site Utility Plans shall be submitted to the Department of Public Works.

6. A copy of the Occupancy Permit issued by the Inspector of Buildings shall be submitted to this Authority at the time of issuance.

7. All conditions in the Order of Conditions (DEP 324-255) issued by the Wetlands Protection Committee are hereby incorporated into this decision.

8. Prior to the issuance of any Building Permit, a fourth monitoring well shall be installed within the footprint of the proposed building. An analysis of the findings from this well shall be submitted to the Board of Appeals and to the Director of Public Health and shall contain a comparison of the results to the GW-2 standard of the Mass. Contingency Plan. If said results are below the GW-2 standard, no remediation measures will be required within the building footprint. If results are above said standard, remediation measures approved by DEP and signed by the petitioner's Licensed Site Professional shall be submitted to the Board of Appeals and to the Director of Public Health for approval.

9. No light pole on the premises shall exceed the height of 25 feet. All lighting shall be done by low pressure sodium vapor lamps which are shielded from Worcester Street, and all abutting properties.

10. Edgemoor Avenue shall be resurfaced from Worcester Street to the northerly side of the second Edgemoor Avenue driveway.

11. The first driveway on Edgemoor Avenue shall be used solely for the entrance of vehicles and the second driveway on Edgemoor Avenue shall be used solely for the egress of vehicles.

12. Signage shall be installed at the single driveway on Overbrook Drive indicating that no left turns can be made from the premises onto Overbrook Drive.