

RESOLUTION

PLANNING BOARD

TOWNSHIP OF LIVINGSTON, NEW JERSEY

Decided: February 18, 2014

Re: Application No. 2013-44-PFSPV

Applicant: Bank of America

Premises: 92 South Livingston Avenue

Block: 3808; Lot: 3

Zone: B-1

SUMMARY OF CASE

1. The Applicant is Bank of America (hereinafter referred to as "Applicant"), the owner of the subject premises on which it currently operates a retail banking branch.
2. The Applicant has submitted Plans that would provide for the construction of a standalone structure that would contain a drive-up Automatic Teller Machine (hereinafter "ATM"). The Plans, prepared by Stonefield Engineering & Design, LLC, were dated July 10, 2013 with final revision date of October 25, 2013. As part of the Application, a new enclosed dumpster area would be constructed, and the parking stalls along the southerly portion of the property would be reduced in number. The Applicant further proposed to install two illuminated signs on the drive-up structure. Additional directional signage on the premises would be added to facilitate traffic flow. An extended curbed landscaped island would be constructed between the ATM and the parking area access aisle from South Livingston Avenue.

3. The Applicant was represented by Scott G. Collins, Esq., of the firm Riker Danzig Scherer Hyland & Perretti, LLP. All taxes have been paid and the Applicant has provided proof of notice by publication and by service on all property owners within 200 feet of the premises. A hearing was had before this Board on January 7, 2014.
4. The Applicant presented as its only witness Matthew Welch, of Stonefield Engineering and Design, LLC, who was admitted as an expert in professional engineering.
5. Member of the public testifying in opposition to the Application was Suzanne Bambo, of 32 Wilson Terrace.

FINDINGS OF FACT

1. The subject premises is currently used for the operation of a retail bank by the Applicant. The premises consist of nearly 2 acres, has 71 existing parking stalls, 4 driveways, but no drive-up banking facility. It is in the B-1 zone and fronts on South Livingston Avenue. There are residential properties that abut the premises to the rear and on the southerly side. Existing parking area lighting is provided by 4 light poles owned and maintained by Public Service Electric & Gas. The Applicant proposes to add 6 additional light poles, each with a height of 25 feet. State regulations require certain minimum levels of lighting for drive-up ATM facilities and the proposed height and location of the light poles would provide the required lighting with no spillover to the adjoining properties. Township Code Section 170-94.A.(6) limits the height of those light poles to 18 feet; so that a 7-foot variance is requested. The Applicant proposed the 25-foot height because use of lower light poles would require the placement of more poles and more light fixtures to achieve the minimal light required for the ATM operation. Accordingly, it was presented that the higher light poles would present a better zoning alternative since it would reduce the number of light poles while reducing the intensity of the light at ground level. There would be no negative impact

to the neighbors, and the Application would not impair the intent and purpose of the zone plan and zoning ordinance.

2. To provide screening of the bank property from the adjoining residential properties, the Applicant proposed to make repairs to the existing board-on-board fencing, and asked to be relieved of any obligation to provide landscaping in front of the fencing. During the course of the hearing it was noted that the fencing adjacent to one residential lot was chain link. The ATM would be a 24-hour operation, and motor vehicle presence on the premises at night would generate more light from headlights than at present. The Applicant agreed to amend its proposal to provide new 6-foot tall solid wood fencing along all of the residential properties. The provision of such solid fencing makes landscaping in front of the fence unnecessary.
3. The Applicant also proposed to construct a new trash enclosure area that was to be placed adjacent to the residential properties to the west, but amended the Application to relocate the enclosure to the northerly side of the parking area approximately 45 feet from the property line of Lot 4 and adjacent to the Oak Street driveway. The Applicant agreed that the exterior of the trash enclosure area would match the new fencing to be installed, and that the two parking spaces in front of the enclosure would be signed for employees only.
4. The Applicant proposed new directional signage set forth on the Plans (Sheet C8) as signs A and B. The Applicant amended its proposal during the course of the hearing to delete the word "bank" from sign A, thereby making it conforming to the requirements of Township Code Section 170-94.A.(3). The inclusion of the word "bank" on proposed sign B would require a variance as requested by the Applicant. The Applicant submitted as grounds for the variance that the sign was necessary to promote free and safe traffic flow on the premises, and to further distinguish the lane for the ATM from the aisle to the parking area. It contended that there would be no harm

to the public good, and that the grant of a variance would not impair the intent and purpose of the zone plan or zoning ordinance.

5. The Applicant also proposes two internally illuminated signs on the drive-up ATM structure. These proposed signs would identify the ATM location for motorists approaching from the north who would not otherwise have an adequate indication of its presence. Illuminated signs are required because the ATM is accessible 24 hours a day. A variance is required for the ATM signs and for their illumination.
6. The proposed drive-up ATM structure is requested because none currently exists at this bank. Modern banking trends make a drive-up facility a necessity as it provides access for banking customers beyond normal banking hours and allows faster and easier access to banking operations. They have become normally and customarily incident and subordinate to retail banks. The proposed ATM aisle would have room to stack up to 4 vehicles, which would be more than sufficient to meet customer demand and would not cause any impairing of traffic flow. The ATM will have voice activated features and it was stipulated that any sound generated by the ATM would not exceed 50 dBa at adjacent residential property lines.
7. The Applicant proposes to provide 4 painted directional arrows on pavement so that traffic would be guided to the exit onto South Livingston Avenue as the primary exit. 46 parking spaces are required. 71 spaces are presently provided. 14 spaces would be eliminated, leaving 57 spaces; exceeding the required 46 spaces.
8. The members of the public questioning witnesses or testifying in opposition to the Application indicated concern over light spillage onto their properties, possible noise from ATM speakers, as well as the maintenance of the existing stockade fence on the property. In response, the Applicant agreed to replace all of the fencing along the boundaries with the residential properties with a solid wood fence 6 feet in height that would block headlight spillage from

vehicles on their site, and to ensure that any sound generated by the ATM will not exceed 50 dBa at residential property lines adjacent to the premises. The Applicant also agreed to review whether the two light fixtures, owned by h Public Service Electric & Gas, that are closest to residences are required. If they are not, Applicant shall amend its contract with the utility to have those two fixtures removed from the service contracted for. If the lighting is required, then the Applicant shall either have them fitted with house shields or have them replaced with shielded lights on lower poles.

9. The Applicant also agreed that a new Site Plan Sheet #7. "Overall Site Lighting Plan", will be submitted to the Township Engineer and will demonstrate that there will be zero light spillage from the premises to adjacent residential properties.
10. Suzanne Bambo, a member of the public, testified that in the past there had been chains closing the driveways from Oak Street and Wilson Terrace at night, The Applicant agreed that if a prior development approval required such chains they would be restored.

CONCLUSIONS OF THE BOARD

1. The Board concludes that the Application as amended during the course of the hearing meets the requirements for Preliminary and Final Site Plan approval which is now granted with the conditions and variances set forth hereinafter.
2. The Board grants the variances for the installation of the two internally illuminated signs to be located on the proposed ATM drive-up structure. The Board further approves the variance for the installation of the proposed sign B. Both variances are required from the prohibitions of Township Code Section 170-94.A.(3). The Board finds that the variances are necessary to provide safe and free traffic flow to and on the site, and to provide proper identification of the

ATM facility. The grant of the variances meets the requirements of N.J.S.A. 40:55D-70,c.(2) in that they provide a better zoning alternative than required by the Township Code in that they promote proper facility identification and safe traffic flow to and on Site. The grant of the variances will not impair the intent and purpose of the zone plan and zoning ordinance and can be granted without any substantial detriment to the public good in that the benefits of the approval substantially outweigh any detriment, particularly with the modifications to the Plans as made during the course of the hearing.

3. The Board also grants a variance from the provisions of Township Code Section 170-94.A.(6) to permit the erection of four new light poles at a 25-foot height. The Board grants a 7-foot variance from the height limitation of 18 feet set forth in said ordinance. The Board finds that the grant of the variance will allow the use of less intense lighting than would result with an 18-foot pole height. The variance can be granted pursuant to the provisions of N.J.S.A. 40:55D-70.c.(2) in that it provides a better zoning alternative than the existing ordinance, and will allow less of an impact on the surrounding neighbors so that the benefits of the variance outweigh any detriment. The variance will not impair the intent and purpose of the zone plan or zoning ordinance.

4. The Board approves the Application subject to the following conditions as set forth on the record:

A: The Applicant shall submit a report from a sound engineer confirming that the sound level from any speakers at the proposed ATM shall not exceed 50 dBa at the property line of adjacent residential lots. Said report shall be submitted to the Township Engineer for his approval.

B: The word "Bank" shall be removed from proposed sign A as shown on the Plans.

C: The Applicant shall remove all existing fencing and install new board fencing along all of the residential property lines. Said fencing shall be 6 feet tall and solid, so that there will be no light spillage through the fence.

D: The trash enclosure shall be relocated to the northerly side of the site and the two parking spaces adjacent thereto shall be signed for employee use only. The enclosure shall match the new fencing.

E: The Applicant shall review whether the two light fixtures, owned by Public Service Electric & Gas, that are closest to residences are required. If they are not, Applicant shall amend its contract with the utility to have those two fixtures removed from the service contracted for. If the lighting is required, then the Applicant shall either have them fitted with house shields or have them replaced with shielded lights on lower poles.

F: The Township Engineer shall review existing Township records, to determine whether chains that closed the driveway entrances at Oak Street and Wilson Terrace after normal business hours were required by a prior Township Resolution, and, if so, the Applicant shall have such chains replaced and maintained as required.

G. The Applicant shall prepare, and submit to the Township Engineer for approval, a new Site Plan Sheet #7. "Overall Site Lighting Plan", that shall demonstrate that there will be zero light spillage from the premises to adjacent residential properties.

H. Numbers 3, 6, 8, 10, 11, 18 and 19 of the attached Model Conditions of Approval are incorporated herein.

I. Conditions A, E, and G above and Model Conditions of Approval 6 and 11 shall be met before any permits are issued.

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, and consistent with the proofs and testimony presented at the hearing, it is resolved that the Board does hereby approve and grant the Application for Preliminary and Final Site Plan with variances, as set forth herein, 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 February 18, 2014 wherein Board Members Dinar, Kimmel, Klein, Meade, Santola, Alternate No. 1 Alvarez (in place and stead of Member Anthony) and Alternate No. 2 Wishnew (in place and stead of member Ratner) voted in favor of the Application; they being all of the Members present and eligible to vote..



Jackie Coombs Hollis, Secretary

PLANNING BOARD, TOWNSHIP OF LIVINGSTON

Model Conditions of Approval
(As Amended through February 12, 2013)

Every application turns on its own facts and is judged on its own merits. Listed below are models of conditions which may be considered "standard". A standard can be tailored to

specific circumstances, and may not always apply. Other or additional conditions may be tailored for any application.

1. Architecture

- a. Rooftop ancillary structures and equipment (other than alternative small energy systems and communications equipment) shall be screened by material compatible with the exterior finish of the building and matching the exterior color of the building as closely as possible.
- b. Enclosures of trash bins, recycling bins or dumpsters shall be of the same type of materials and the same color as the exterior finish of the building.

2. Blasting

In the event that blasting be necessary on the Site, the following conditions shall apply in addition to all requirements of federal law or regulations:

- a. All blasting operations shall be performed in strict compliance with N.J.S.A. 21:1A-128 *et seq.* and N.J.A.C. 12:190-1.1 *et seq.*, or superseding requirements.
- b. A pre-blast inspection of all structures on all properties adjacent to the Site or within 200 feet of the intended blasting location (whichever is the greater distance) shall be conducted at Applicant's expense. It shall be conducted no more than 60, nor less than 30, days before blasting commences. A written report of the inspection results shall be provided to the owner of each structure inspected within 10 days after completion of the inspection.
- c. Blasting shall occur only between 10:00 a.m. and 3:00 p.m. on Monday through Friday. Blasting during other hours may be permitted, temporarily, by the Township Engineer upon his finding that a condition constituting an emergency exists and necessitates such permission.
- d. Applicant shall coordinate all blasting with the Livingston Police and Fire Departments. If traffic control is required, it shall be provided at Applicant's expense.

- e. Applicant shall give the Township Engineer, the Chief of Police, the Fire Chief, and all owners of structures required to be inspected under “b” above, written notice of scheduled blasting operations to be received not less than 20 days, nor more than 40 days, prior to their commencement. If scheduled blasting operations are delayed or suspended they shall not be resumed until new notice has been given and received. All notices shall include the name and telephone number of Applicant’s representative for purposes of receiving and responding to questions and comments.
- f. These conditions do not supersede any requirements of law or regulation that are more strict or restrictive.

3. Cleanliness During Demolition or Construction

- a. At the close of each work day the Site shall be thoroughly cleaned and all trash and construction debris, including that within buildings under construction, shall be placed in covered dumpsters. Dumpsters shall be removed from the Site, and replaced, before they overflow.
- b. Not less often than weekly, and whenever else required by the Construction Official or the Township Engineer, the public streets adjacent to the Site shall be manually or mechanically broom swept to remove dirt, mud or debris originating from the Site and located within 500 feet of the Site.
- c. Dust suppression methods acceptable to the Construction Official and the Township Engineer shall be utilized on the Site.

4. Deeds & Easements

- a. All conditions of approval that are continuing conditions shall be set forth within all deeds executed with regard to the Site.
- b. All deeds, easements, dedications or restrictions required by this approval shall be subject to review and approval by the Board Attorney prior to signing and shall be filed for recordation after such approval. The Applicant shall submit proof of such recordation to the Board Secretary, the Township Engineer and the Construction Official prior to the issuance of any permits.

5. Detention Basins

- a. Stormwater management basins shall be established on lots created for that purpose only. No structures that are not an approved part of the stormwater management system shall be erected on any such lot. Such basins, together with

their required landscaping and fencing, shall be completed, and shall have been inspected and approved by the Township Engineer, prior to issuance of the first Certificate of Occupancy.

- b. If the approval of the Application calls for title to such a lot to be transferred to the Township; at such time as the Township accepts any new streets or roads on the Site, title to the lot shall be conveyed to the Township provided that the Township Engineer is then satisfied that the basin has been constructed in full compliance with all applicable requirements. The deed conveying such title shall be subject to prior approval by both the Board Attorney and the Township Attorney.
- c. A maintenance plan meeting the requirements of the Residential Site Improvement Standards or the Township's Stormwater Control Ordinance, or both, as applicable, shall be prepared by Applicant and shall have received the approval of the Township Engineer prior to issuance of any construction permit. Any future revisions to the maintenance plan shall not become effective until the Township Engineer's approval shall have been obtained.
- d. Unless maintenance of the basin is assumed by the Township or a public agency as its direct responsibility, (1) the maintenance plan and any future revisions of it shall be recorded upon the deed of record for the property in terms approved in advance by both the Board Attorney and the Township Attorney; and, (2) the Applicant shall provide a performance bond for such maintenance, including landscaping and cleanliness.

6. Final Plans

Prior to the issuance of any Township permit for demolition of any structure, preparation of the Site, or construction of any improvement:

- a. The full text of all of the conditions of this approval, and all plan changes agreed to in the course of the hearing, shall be set out on final plans submitted to the Construction Official, the Township Engineer and the Board Secretary; and
- b. Such final plans shall have been reviewed by the Board Secretary or the Board's Planning Consultant for determination of whether the plans conform to the Board's approvals and shall then have been signed by the Board Chairman, the Board Secretary and the Township Engineer.
- c. Such final plans shall comply with the Uniform Construction Code and the Barrier Free Subcode as then in force in the State of New Jersey. If, during performance of work pursuant to the Board's resolution and permits that have been issued, field conditions indicate need for change(s),

such need shall be called to the attention of both the Construction Official and the Township Engineer for approval of any such change before it is implemented. If any such change is significant, permission to amend the Site Plan may have to be sought from the Planning Board. Until all requirements under approved plans and the Uniform Construction Code, including accessibility requirements, have been completed or bonded, any certificates of occupancy issued shall be temporary certificates only.

7. Flood Hazards

- a. Insert on the final site plan and/or subdivision map a metes and bounds description of all flood hazard areas located on the Site.
- b. Insert in all deeds for individual lots that contain or are adjacent to flood hazard areas, and on the preliminary and final subdivision maps or plats, the following covenant: “The lands designated herein contain flood hazard areas. There shall be no disturbance of any kind as to any flood hazard area unless permitted by N.J.D.E.P. pursuant to the Flood Hazard Control Act, N.J.S.A. 58:16A-50 *et. seq.* or superseding requirements.”

8. Guarantees and Bonds

- a. The approval of this Application is subject to the posting, with terms acceptable to the Township Engineer, of any and all required performance guarantees, bonds, soil erosion and sediment control approvals, and any other requirements of Township ordinances prior to the issuance of any permits for commencement of site preparation or construction.
- b. This approval is also conditioned upon the Applicant’s providing, prior to issuance of the first Certificate of Occupancy, a performance guarantee acceptable to the Township Engineer for any aspects of the approved landscaping or fencing that has not been completed by the time of issuance of such certificate.

9. Landscaping & Environmental Protection

- a. All deciduous trees planted shall have a caliper of not less than 2.5 inches measured at a height of 4.5 feet above ground level. All evergreen trees planted shall have a height of 6.0 to 8.0 feet.
- b. Street shade trees shall be planted as required by Township Code § 170-72 and shall not be included in the calculation of Replacement Trees required by the Trees Ordinance.

- c. Any tree or other planting installed in accordance with the plans which dies shall be replaced, within the current or next planting season, in kind and at the same size as it had reached at the time of death; except that if it died more than three years after planting its replacement need not be larger than the size it had reached three years after planting. The same replacement requirements shall apply to any tree or other planting installed in accordance with the plans if subsequently removed because of damage or disease.
- d. No tree existing on the Site at the time of filing of the application shall be removed unless removal is approved under the Trees Ordinance or by this Board. Every existing tree to be preserved shall be tagged and shall be shown on the Site Plan or Subdivision Plan. During site preparation and during construction, each such tree shall be protected by snow fencing or a more substantial means approved by the Construction Official. No soils, excavated materials, or any construction equipment or building materials, shall be stored or operated within a root protection zone that shall be the greater distance of (i) the crown drip line, or (ii) a distance equal to caliper multiplied by one (1) foot, (but never less than eight (8) feet from the trunk of a tree to be preserved), or anywhere else where such soil or materials can adversely affect the health of trees to be preserved. All work done within the root protection zone shall be accomplished with hand tools.
- e. The grade of land located within the root protection zone shall not be raised or lowered more than three (3) inches unless compensated for by welling or retaining wall methods; but in no event shall welling or retaining walls be installed less than eight (8) feet from the trunk of a tree.
- f. During site preparation or construction, no fuel storage, and no refueling, maintenance, repair or washdown of construction vehicles or equipment, shall occur within fifty (50) feet of any tree to be preserved.
- g. Any provision of the Trees Ordinance, Chapter 306 of the Code of the Township of Livingston, that establishes a conflicting standard or requirement shall control.
- h. No mulch shall be placed, or allowed to accumulate, within six inches of the trunk of any tree or shrub planted on the Site in compliance with this resolution. Mulch shall not be applied, or allowed to accumulate, elsewhere within the drip line of the tree or shrub to a depth in excess of four inches.

10. Noise

- a. No site preparation, demolition or construction activity shall be performed on the Site on Sundays, or before 7:30 a.m. or after 5:00 p.m. on weekdays, or before 9:00 a.m. or after 5:00 p.m. on Saturdays or federal holidays.

- b. All vehicles and motorized machinery operated on the Site shall be equipped with properly operating mufflers.
- c. No site preparation, demolition or construction activity (other than authorized blasting) shall produce, at the property line, (i) continuous airborne sound at a sound level in excess of 65 dBa, or which has an octave band sound pressure level in decibels which exceeds the standards provided in 32 N.J.R. 2230 et. seq., or (ii) impulsive sound in air which has a peak sound pressure level in excess of 80 decibels, or (iii) impulsive sound in air which repeats more than four times in any hour and has a peak sound pressure level in excess of 50 decibels.
- d. Relief from these noise conditions may be permitted, temporarily, by the Township Engineer upon his finding that a circumstance constituting an emergency exists and necessitates such permission.

11. Other Governmental Approvals

- a. Applicant shall comply with all applicable Federal, State and local laws and regulations and obtain any other governmental approvals required for implementation of this application as approved. If any other governmental agency or authority grants a waiver of or variance from any law, rule or regulation, or imposes any condition or requirement, which affects this approval or any of the conditions contained herein, then this Board shall have the right to review such action as it relates to this Board's approval or conditions and to modify, amend or revoke its approval and/or conditions.
- b. No Township permit for demolition of any structure, or preparation of the Site or construction of any improvement shall be issued until proof of request for such required approvals and any action thereupon, shall have been presented to the Construction Official and the Board Secretary by the Applicant.

12. Paving and Sidewalks

- a. Applicant shall install the top course of street paving:
 - (1) For residential development not later than the earlier of three (3) years after the issuance of the first Certificate of Occupancy or three (3) months after fifty percent (50%) of residential units have received Certificates of Occupancy.
 - (2) For non-residential or mixed-use development, prior to issuance of the first Certificate of Occupancy.
- b. All manholes, catch basins, and driveway curbs shall be ramped until the top course of street paving has been installed.

c. All sidewalks shall be constructed of concrete or of non-asphalt pavers and shall be not less than four feet wide in a residence district or five feet wide in the Business Improvement District. Existing sidewalks that do not meet prior Township Code requirements shall be replaced to the standard for the new sidewalks.

13. Signs

The Board retains jurisdiction over any and all signs until the final Certificate of Occupancy has been issued.

14. Traffic and Parking Safety and Enforcement

- a. At the time of applying for a building permit the Applicant shall submit proof of having filed a written request pursuant to, and in accordance with, N.J.S.A. 39:5A-1, requesting that N.J.S.A. 39:1-1 *et seq.* be made applicable to the roads, streets, driveways, parking areas, etc. within the Site. The Applicant shall provide proof of the governmental action on such request to the Construction Official prior to issuance of the final Certificate of Occupancy.
- b. Lines of sight established for entrance and exit driveways of the Site shall be shown on the as-built site plans, and no structures, trees or plants that would interfere with such lines of sight shall be permitted at any time.
- c. All traffic and parking provisions in the approved site plans or otherwise required by the Board's resolution shall be accomplished prior to issuance of the first Certificate of Occupancy.
- d. The Applicant shall comply with State law and applicable Township ordinances regarding handicapped parking and shall maintain such spaces and all the traffic and parking signage and markings on the Site in good order and repair.

15. Utilities for Site Plans and Major Subdivisions

Applicant shall construct all utilities underground as required by law, and shall submit to the Engineering Department a written instrument from each serving utility evidencing full compliance with this condition and with Township Code §170-73.A.(17) before issuance of any Certificate of Occupancy.

16. Wetlands

- a. Applicant shall insert on the final subdivision map and/or site plan a metes and bounds description of all wetlands, wetlands transition areas, and buffers on the Site.
- b. Where applicable, each deed for a lot, and the subdivision plat, shall contain the following language: "The lands designated herein contain wetlands and wetlands transition areas. There shall be no disturbance of any kind as to any wetlands or

wetlands transition areas unless permitted by N.J.D.E.P. pursuant to law, and Best Management Practices (as defined in N.J.A.C. 7:7A-1.4 or superseding requirements) for prevention or reduction of adverse impacts upon or pollution of wetlands, wetlands transition areas and buffers shall be followed at all times. This restrictive covenant shall run with the land and be binding upon the grantees, their heirs and successors and assigns.”

17. Developer’s Agreement

Prior to issuance of any permit for site preparation, or construction, the Applicant shall have entered into a Developer’s Agreement negotiated with the Township Attorney in conjunction with the Township Engineer.

18. Written Response to Memoranda

Prior to issuance of any permit for site preparation, demolition or construction, the Applicant shall have provided written responses to all issues raised in all memoranda from the Township Engineer, or any consultant to the Township, that were considered by the Board in the hearings.

19. As-built Plans

A final Certificate of Occupancy shall not be issued until the Applicant shall have submitted to the Construction Official four (4) properly signed and sealed copies each of as-built site plans, surveys and building elevations.