

**BEFORE THE BOARD OF SUPERVISORS OF WEST GOSHEN TOWNSHIP  
CHESTER COUNTY, PENNSYLVANIA**

IN RE: Conditional Use Application of 704 E. Market Street Associates, L.P.

**DECISION AND ORDER**

704 E. Market Street Associates, L.P. (the “Applicant”), filed a conditional use application (the “Application”) on November 5, 2019, which was amended in an application dated November 20, 2019, requesting conditional use approval from the Board of Supervisors of West Goshen Township (the “Board”) pursuant to Section 84-32.N(5) of the West Goshen Township Revised Zoning Ordinance of 1990, as amended (the “Ordinance”) seeking approval to build a 2,635 square foot bank to be leased to TruMark Financial Credit Union on two parcels of property located at 700 E. Market Street and 11 S. Bolmar Street, identified as Chester County Tax Parcel Nos. 52-5F-86 and 52-5F-87 (the “Property”).

The Board conducted a public hearing on the Application on January 21, 2020. The Township was represented by Kristin S. Camp, Esquire and Applicant was represented by Louis J. Colegreco, Jr., Esquire. No individuals requested party status.

From the testimony and exhibits presented at the hearing, the Board makes the following:

**FINDINGS OF FACT**

1. The factual statements set forth in the introductory paragraphs above shall be incorporated herein as findings of fact of the Board.

2. Applicant is the owner of the Property pursuant to a Deed dated February 25, 2019 and recorded in the Chester County Recorder of Deeds on March 4, 2019. See Exhibit A-4.

3. The Property is currently configured as two separate parcels located at 700 E. Market St. (Parcel 52-5F-87) and 11 S. Bolmar St. (Parcel 52-5F-86).

4. The Property is currently improved with two existing buildings which were used as an automobile dealership and automobile repair shop/garage.

5. The Property is surrounded by commercial uses and is located immediately to the east of the municipal boundary with the Borough of West Chester.

6. Applicant proposes to demolish the existing buildings on the Property, consolidate the parcels for a total lot area of 0.864 acres and construct a one-story, 2,635 square foot commercial bank and 14 off-street parking spaces as shown on the conditional use development plan prepared by D.L. Howell and Associates, Inc. consisting of eight sheets dated October 24, 2019 (the "Plan"). See Exhibit B-3.

7. The Property is located in the C-5 General Highway Commercial District.

8. Applicant seeks approval to use the new building on the Property as a bank or financial institution which is permitted by conditional use of the Board pursuant to Section 84-32.N(5) of the Ordinance.

9. The Property today has unregulated access from E. Market St. and S. Bolmar St. that Applicant intends to improve with the proposed development of the Property.

10. Applicant proposes to install a one-way in access driveway from S. Bolmar St. leading to the rear of the proposed bank at a point approximately 165 feet south of E. Market St.

11. Applicant also proposes to install a two-way access driveway to and from E. Market St. at a point approximately 150 feet east of S. Bolmar St.

12. The Plan also provides a proposed access driveway and connection to the adjacent parcel located at 704 E. Market St. (Parcel 52-5F-88.1) which will allow cross access and circulation between the Property and the rear of the building at 704 E. Market St.

13. The Plan proposes two drive-through lanes in the rear of the bank which will circulate counterclockwise around the rear and sides of the building.

14. The Property currently is nonconforming with respect to the following four area and bulk requirements:

- (i) The existing repair shop/garage building on the Property is located 10.2 feet from the right-of-way of S. Bolmar St. The proposed bank building is located 35.4 feet from the right-of-way of S. Bolmar St.
- (ii) There is no setback on the Property today for the existing parking area. The Plan proposes a 5.5 foot setback for the parking area behind the proposed building to the rear property line.
- (iii) The existing condition of the Property contains 69.48% paved surface area. The Plan proposes a reduction in the total paved surface area to 68.47% of the total lot area.
- (iv) The existing condition of the Property does not have any perimeter landscaping on the northeastern side where it abuts the lot at 704 E. Market Street. Applicant proposes compliant perimeter landscaping along all sides of the Property except on the northeastern side of the property which is adjacent to the lot at 704 E. Market St.

15. Applicant intends to decrease all of the above-summarized nonconforming conditions with development of the Property in accordance with the Plan.

16. Other than the existing nonconforming conditions summarized in finding of fact number 14 above, the Plan will meet all applicable zoning regulations.

17. Applicant intends to provide public water and public sewer to the proposed bank.

18. According to Applicant's civil engineer, the proposed bank will generate less sewage flow than the existing uses on the Property.

19. The proposed development of the Property pursuant to the Plan will decrease surface water runoff from the Property and thus no stormwater management will be required.

20. The stormwater from the Property will flow into an existing pipe which connects into the storm sewer drains located in S. Bolmar St. Applicant will be required to inspect the existing stormwater facilities where stormwater from the Property will enter to make sure they are of sufficient size and condition to handle the stormwater runoff from the Property.

21. Applicant conducted a Phase 1 and Phase 2 environmental assessment before purchasing the Property which according to Applicant's witness did not reveal the presence of underground tanks or hazardous substances.

22. Applicant received zoning approval to install a 10-foot high freestanding sign identifying the use of the Property on the right-of-way of Market Street within a landscape island between Market Street and the parking on the Property. See Exhibit B-9.

23. The West Goshen Township Planning Commission reviewed the Application on January 14, 2020 and recommended that the Board approve the Application subject to Applicant converting an area in the rear parking lot into green space and installing sidewalks along S. Bolmar St. and E. Market St.

24. At the conditional use hearing Applicant agreed to implement the recommendations made by the Planning Commission and convert an area in the rear of the parking lot to grass and to install sidewalks along the frontage of S. Bolmar Street and E. Market St.

25. Applicant introduced into the record a revision to the Plan that was submitted with the Application with a last revision date of January 21, 2020 (the "Revised Plan"). See Exhibit A-6. The Revised Plan depicted the area in the rear of the bank as a grass strip as recommended by the Planning Commission.

26. Applicant also introduced into the record a Plan which depicted sidewalks along S. Bolmar St. frontage and along E. Market St. frontage. See Sidewalk Exhibit Plan dated January 17, 2020 admitted as Ex. A-8.

27. Applicant's witness testified that it would be willing to install the sidewalks shown on Exhibit A-8 if the Board believed that such sidewalks were necessary.

28. Applicant introduced at the hearing a rendering of the proposed bank. See Ex. A-7.

29. One of the Board members asked Applicant if the roof structure of the proposed bank could support the installation of solar panels. Applicant's witness testified that they would investigate during land development if the roof of the bank could support solar panels.

30. Applicant retained Andreas Heinrich, P.E., a traffic engineer who prepared a Traffic Impact Assessment dated October 11, 2019 which was admitted into the record as Exhibit A-11 (the "TIA"). The TIA assessed the potential traffic impact of the proposed bank development on the immediately adjacent roadways, analyzed the safety of proposed access driveways, estimated the amount of traffic to be generated by the development and analyzed if any traffic improvements were necessary to accommodate the additional traffic.

31. Mr. Heinrich concluded that while there will be some increase in peak hour traffic delay as a result of the proposed development, there will be no change in levels of service at nearby studied intersections due to the addition of new traffic generated by the proposed bank.

32. Mr. Heinrich concluded that there will be 27 morning peak trips and 58 afternoon peak trips which represents a net increase of 19 morning peak trips and 38 afternoon peak trips.

33. Mr. Heinrich concluded that the proposed development does not warrant improvements to the abutting intersections or roads.

34. Applicant introduced as Exhibit A-12 a fire truck turning plan dated January 17, 2020 which depicted a firetruck accessing the Property from S. Bolmar St. and circulating around the rear of the building in the event of an emergency.

35. Exhibit A-12 demonstrates that a fire truck would not be able to access the western side of the building and would have to exit the property via E. Market St.

36. The Board introduced the following exhibits at the hearing:
- B-1: Conditional Use Application dated October 29, 2019 with cover letter from Louis J. Colagreco, Esquire, dated November 5, 2019
  - B-2: Amended Conditional Use Application with cover letter from Louis J. Colagreco, Esquire, dated November 20, 2019
  - B-3: Conditional Use Land Development Plan set prepared by D.L. Howell and Associates, Inc., consisting of 8 sheets, dated October 24, 2019
  - B-4: Aerial tax map
  - B-5: Proof of Publication in the *Daily Local News* on December 2, 2019 and December 9, 2019
  - B-6: Affidavit of Posting and mailing
  - B-7: Letter dated December 17, 2019 from Louis J. Colagreco, Jr., Esquire, granting extension of time
  - B-8: West Goshen Township Planning Commission Meeting Minutes dated January 14, 2020
  - B-9: Zoning Hearing Board Decision dated January 9, 2020
37. Applicant introduced the following exhibits at the hearing:
- A-1: Conditional Use Application and Enclosure Letter dated November 5, 2019
  - A-2: Correspondence to West Goshen Township dated November 20, 2019, amending Conditional Use Application to reflect approval from Section 84-32.N.(5)
  - A-3: West Goshen Township Zoning Ordinance of 1972, as amended (incorporated by reference)
  - A-4: Deed for 700 East Market Street and 11 South Bolmar Street, recorded March 4, 2019
  - A-5: Aerial View of 700 East Market Street and 11 South Bolmar Street

- A-6: Conditional Use Land Development Plan prepared by D.L. Howell & Associates, Inc., dated October 24, 2019, last revised January 21, 2020 (8 sheets)
- A-7: Building Rendering for TruMark Financial Credit Union prepared by KSM Architects
- A-8: Sidewalk Exhibit Plan prepared by D.L. Howell & Associates, Inc., dated January 17, 2020
- A-9: Environmental Impact Assessment Report prepared by D.L. Howell & Associates, Inc., dated October 2019
- A-10: Will Serve Letter from Aqua, dated September 26, 2019
- A-11: Traffic Impact Assessment prepared by Heinrich & Klein Associates, Inc., dated October 11, 2019
- A-12: Fire Truck Turning Plan Exhibit prepared by D.L. Howell & Associates, Inc. dated January 17, 2020
- A-13: C.V. of Joseph S. Russella, Jr.
- A-14: C.V. of Andreas Heinrich, P.E., P.T.O.E.

### **CONCLUSIONS OF LAW**

1. Applicant, as owner of the Property, has standing to file the Application.
2. The conditional use hearing was duly advertised in accordance with the provisions of the Pennsylvania Municipalities Planning Code ("MPC") and the Ordinance and the Property was posted in accordance with the requirements of the MPC. See Exhibits B-5 and B-6.
3. The Property is zoned C-5 General Highway Commercial District.
4. A bank or financial institution is permitted by conditional use in the C-5 District pursuant to Section 84-32.N(5) of the Ordinance.
5. Applicant has proven compliance with the criteria in Section 84-75 of the Ordinance.



## **DISCUSSION**

Applicant seeks conditional use approval for a bank and financial institution. A conditional use is a permitted use, subject to an applicant's proof of compliance with all applicable conditions and criteria imposed by the Ordinance and reasonable conditions of approval imposed by the Board. A conditional use is not a use which the Board has the unfettered discretion to approve or deny. Rather, the Board is governed by the objective criteria and standards enunciated in the Ordinance when determining whether to grant an application. If the applicant can prove that it complies with the terms of the Ordinance authorizing a conditional use, the Board must grant the conditional use unless substantial evidence was presented to prove that the use will result in substantial injury to the public interest. Susquehanna Twp. Board of Commissioners v. Hardee's Food Systems, Inc., 59 Pa. Cmwlth. Ct. 479, 430 A.2d. 367 (1981; Appeal of Estate of Achey, 86 Pa. Cmwlth. Ct. 385, 484 A.2d. 874 (1984), aff'd 501 A.2d. 249 (Pa. 1985).

In granting a conditional use, the Board has the authority to impose reasonable conditions and safeguards in addition to those expressed in the Ordinance, if such conditions are necessary to implement the purposes of the Ordinance and to protect the health, safety and welfare of the surrounding property owners. See Pennsylvania Municipalities Planning Code, Section 603(c)(2), 53 P.S. §10603(c)(2).

There are no specific conditional use criteria in the Ordinance for a bank. Instead, Applicant had the burden of demonstrating compliance with the subjective standards in Section 84-75 of the Ordinance. Applicant has demonstrated compliance with the subjective criteria in Section 84-75 of the Ordinance. No evidence was presented to indicate that the proposed bank will result in injury or adverse impacts to the neighboring

property owners. The Board finds that the proposed redevelopment of the Property with one bank building, improved access driveways, installation of additional landscaping and sidewalks along the Property frontages is an improvement over the existing condition. The Board also recognizes that the proposed development of the Property will reduce existing nonconforming conditions which is a goal of the Zoning Ordinance.

Thus, the Board will vote to approve the conditional use subject to conditions listed herein below.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, upon consideration of the Application filed by Applicant, the Board votes to approve a conditional use pursuant to Section 84-32.N(5) of the Ordinance to allow the Property to be developed with a bank or financial institution subject to the conditions of approval stated below.

### **CONDITIONS OF APPROVAL**

1. The bank or financial institution shall be developed in substantial conformity with all evidence and testimony presented by Applicant, including but not limited to the Revised Plan which was admitted into the record as Exhibit A-6 and the Sidewalk Exhibit Plan which was admitted into the record as Exhibit A-8, as such plans are revised and approved by the Board as part of land development.
2. During land development, Applicant shall investigate if the roof structure of the proposed bank can support solar panels. If the proposed architectural design of the building can be designed to support the installation of solar panels, Applicant shall design the roof structure to accommodate such installation.

3. Applicant shall investigate if the Revised Plan can be further revised to provide a two-way access from S. Bolmar Street. If the Revised Plan can be designed to provide a two-way access from Bolmar Street and still meet all applicable zoning provisions, including off street parking, Applicant shall provide such two -way access.

4. Applicant shall adhere to all conditions imposed by the Zoning Hearing Board in its Decision and Order dated January 9, 2020.

5. As part of the land development process, Applicant shall inspect the existing stormwater facilities where stormwater from the Property will enter to make sure these facilities have sufficient capacity to handle the stormwater runoff from the Property. If the storm sewer system that the storm pipes on the Property will connect to do not have sufficient capacity to accommodate the flows from the Property as developed in accordance with the Revised Plans, Applicant shall make the necessary improvements to accommodate such capacity.

6. Applicant and its successors and assigns in interest to the Property shall be strictly bound by:

- 1) all of the representations, warranties and commitments made by or on behalf of the Applicant in the testimony, plans and other exhibits that were introduced into the record on these proceedings, whether or not express reference is made to said representations, warranties and commitments in this Decision; and
- 2) all of the foregoing conditions of approval.

7. Applicant shall accept the above conditions in writing addressed to the Board within fifteen (15) days of its receipt of this Decision. Failure to accept all of the conditions shall constitute a denial of this application as their acceptance is necessary to comply with the applicable sections of the Ordinance.

**ATTEST:**

**BOARD OF SUPERVISORS  
WEST GOSHEN TOWNSHIP**

\_\_\_\_\_  
Casey LaLonde, Secretary

BY: \_\_\_\_\_  
Robin Stuntebeck, Chair

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Shaun Walsh, Vice-Chair

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Ashley Gagné, Member

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John Hellman, Member

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Hugh J. Purnell, Jr., Member