

IN THE MATTER OF
ROSEDALE FEDERAL SAVINGS AND LOAN
ASSOCIATION
9616 AND 9618 BELAIR ROAD

11th Election District
5th Councilmanic District

* BEFORE THE
* BOARD OF APPEALS
* FOR BALTIMORE COUNTY
* Case No. 2016-0219-X
* and 2016-0063-SPH
*

* * * * *

OPINION

This matter came before the Board of Appeals on September 20, 2016 as a de novo appeal from the November 20, 2015 and June 1, 2016 decisions of the Office of Administrative Hearings in which the requested Special Hearing to permit accessory parking in a residential (RO) zone to support a commercial use in a commercial (BL) zone (Case No. 2016-063-SPH) and the requested Special Exception to permit a Class B Office Building in the RO zone (Case No. 2016-0219-X) were approved and denied, respectively. The cases were consolidated before the Board of Appeals. A public deliberation was held by the Board on November 3, 2016.

BACKGROUND

The property involved in this appeal is a 2.77 acre BL and RO split-zoned parcel located at 9616 and 9618 Belair Road, on the northwest corner of the intersection of Belair Road and Baker Lane in Baltimore County, Maryland (the "Property"). The headquarters for Rosedale Federal Savings and Loan ("Rosedale") is located on the Property and includes a bank branch, an office building and accessory parking. On account of Rosedale's recent growth, it is seeking approval to construct an addition to the office building with accessory parking on the Property. The proposal calls for the office building to be constructed partly in the RO-zoned portion of the Property and partly in the BL-zoned portion of the Property, as depicted in the site plan (Petitioner's Exhibit 8).

The parking is located in both the BL and RO-zoned portions of the Property. Section 409.8.B of the Baltimore County Zoning Regulations (“BCZR”) permits business parking in a residential zone.

Section 204.3.B.2 of the BCZR permits the type of office proposed here as a Special Exception in the RO zone.

The Administrative Law Judge granted the Special Hearing for the parking in the residential zone and denied the Special Exception for the office use.

HEARING

The consolidated relief sought before the Board was (1) a Petition for Special Hearing pursuant the BCZR § 409.8.B to permit business parking in a residential zone, and (2) a Petition for Special Exception pursuant to BCZR § 204.3.B.2 to permit a Class B Office in a residential zone.

Linda Muffoletto, Matt Bishop, and Chris Lester appeared before the Board in support of the combined Petitions for Special Hearing and Special Exception. Adam Baker, Esquire represented Rosedale Federal Savings and Loan Association (the “Petitioner”). Also appearing before the Board were Carole Demilio, Esquire, People’s Counsel for Baltimore County, and Pat Keller, on behalf of the Perry Hall Improvement Association (“PHIA”).

The Petitioner proceeded by means of a modified proffer. The Petitioner’s first witness was Chris Lester, a professional architect and President and Design Principal of GVA Architecture and Interior Design. Mr. Lester was offered and accepted by the Board as an expert in the field of architecture and presented the plans for the proposed addition which included renderings of the building (Petitioner’s Exhibit 2), floor plans (Petitioner’s Exhibit 3), aerial photographs of the Property (Petitioner’s Exhibit 3), and the original and modified rendered site plans (Petitioner’s

Exhibits 5 and 6, respectively)¹. Mr. Lester expressed his opinion that the proposed building was complementary to the existing building in size, scale and materials.

The next witness called by the Petitioner was Matt Bishop, a professional Landscape Architect with Morris and Ritchie Associates, Inc. Mr. Bishop was offered and accepted by the Board as an expert in the fields of planning, zoning and landscape architecture. Mr. Bishop prepared the Plan B site plan (Petitioner's Exhibit 8) and described the site's zoning, existing conditions, the surrounding area, and the proposed office addition. Mr. Bishop also described the prominent differences between the original Plan A and the proposed Plan B. Mr. Bishop stated and explained the basis for his opinion that the proposed business parking in the residential zone meets the requirements of BCZR § 409.8.B.2. Mr. Bishop's conclusion was that the proposed parking scheme is consistent with other business uses in the surrounding area, that it would have a minimal impact on the surrounding area, and that it meets all of the requirements of the BCZR. With regard to the special exception, Mr. Bishop stated that he was familiar with the requirements of BCZR § 502.1 for approving a special exception request in Baltimore County as well as the seminal cases in Maryland governing special exceptions. Mr. Bishop concluded that the proposed office use meets all of the requirements of BCZR § 502.1 and the special exception jurisprudence of Maryland.

DECISION OF THE BOARD

With regard to the parking in the residential zone, BCZR § 409.8 provides a list of requirements which must be satisfied in order to permit such a parking facility. Essentially, the applicable test is that set forth in BCZR § 502.1: whether the use will be detrimental to the health,

¹ Over the course of this matter, the layout and design of the proposed office addition has changed. The modified design, referred to as "Plan B" by the Petitioners, is the plan for which the Petitioners are seeking approval before the Board. Plan B moves the proposed building closer to Belair Road than the original "Plan A" proposal and shifts some of the parking to the rear of the building. Plan B was the result of an agreement between the Petitioner and the PHIA.

safety or general welfare of the surrounding community. Based upon the evidence presented, the Board is of the opinion that the proposed parking meets the requirements of BCZR §§ 409.8 and 502.1.

With regard to the proposed office use, BCZR § 204.3.B.2 provides that such a use is permitted as a special exception in the RO zone. Section 502.1 of the BCZR sets forth the requirements which must be met in order for a special exception to be approved in Baltimore County. There is a presumption under Maryland Law that a special exception is in the general interest of the jurisdiction where it is located and therefore valid. In addition, when a legislative body deems a use to be permitted as a special exception, there is the presumption that the use is consistent with the Master Plan of the particular jurisdiction. People's Counsel for Balt. Cnty. v. Loyola College in Md., 406 Md. 54, 77, 956 A.2d 166 (2008). The Maryland Court of Appeals has recognized that:

a special exception is a valid zoning mechanism that delegates to an administrative board a limited authority to permit enumerated uses which the legislative body has determined can, *prima facie*, properly be allowed in a special use district, absent any fact or circumstance in a particular case which would change this presumptive finding.

Id., at 105-106 (quoting Montgomery Cnty. v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261 (1953)).

Special exception uses, by their very nature, have inherent adverse impacts. Loyola at 69. The Special Exception Test² exists to determine if the use and its inherent adverse characteristics are greater than or beyond those which one would ordinarily expect the use to have regardless of its location. Further, as the Court in Loyola discussed, the special exception ensures that there is appropriate oversight for uses which ensures that the surrounding community will not suffer real

and significant harm. If a use will actually significantly harm the community, then it follows that the use is impacting the community in a manner that is above that which one would expect the use to have. Where the impacts of a use are mere inconveniences (e.g. traffic, noise, typical operation and construction impacts), though, it cannot be said that the impacts are above that which are expected with the use because they do not actually significantly harm the community. Loyola, 406 Md. at 99-100.

In seeking special exception relief, the applicant bears both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted. Id. at 109. If evidence is presented that generates a genuine question of fact as to whether the grant of a special exception would violate the Special Exception Test, the applicant must “persuade the zoning authority by a preponderance of the evidence that the special exception will conform to all applicable requirements.” Id.

The Board finds that the evidence presented by the Petitioner satisfies the requirements of BCZR § 502.1. The Board also finds that there was no evidence presented which rebuts the presumption of the proposed use’s validity under the law. Therefore, under the law of special exceptions in Maryland, the Board determines that the Petitioner has met its burden of production and persuasion in satisfying the requirements of BCZR § 502.1 and grants the special exception subject to the conditions contained in the following Order.

ORDER

IT IS THEREFORE, this 27th day of December, 2016, by the Board of Appeals of Baltimore County

² The “Special Exception Test” as used herein shall mean BCZR § 502.1 as interpreted through the Maryland courts.

ORDERED that the Petition for Special Hearing pursuant to BCZR § 500.7 to approve accessory parking in a residential (RO) zone to support a commercial use in a commercial (BL) zone, be and is hereby GRANTED.

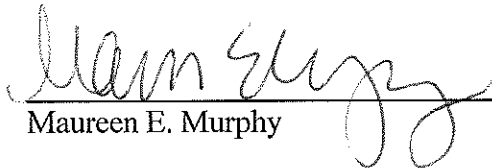
ORDERED that the Petition for Special Exception pursuant to BCZR § 502.1 to approve a Class B Office in the RO zone, be and is hereby GRANTED.


The relief granted herein shall be subject to and conditioned upon the following:

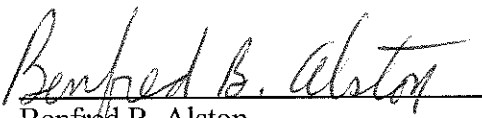
1. Upon expiration of the thirty (30) day appeal period following this Order with no appeals having been filed, the Petitioner shall record in the Land Records of Baltimore County an Amendment to the Restrictive Covenant Agreement between the Petitioner and the Perry Hall Improvement Association, a copy of which is attached hereto for reference.

Any Petition for Judicial Review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy


Meryl W. Rosen


Benfred B. Alston

AMENDMENT TO RESTRICTIVE COVENANT AGREEMENT

THIS AMENDMENT TO RESTRICTIVE COVENANT AGREEMENT ("Amendment"), dated ~~January~~ January 20th, 2016, is hereby made by and between ROSEDALE FEDERAL SAVINGS AND LOAN ASSOCIATION ("Rosedale") and the PERRY HALL IMPROVEMENT ASSOCIATION, INC. (the "PHIA").

WHEREAS, Rosedale and PHIA entered into that certain Restrictive Covenant Agreement, dated May 8, 2008, and attached hereto as Exhibit A (the "Agreement");

WHEREAS, Rosedale desires to expand the existing office building on its property located at 9616 and 9618 Belair Road in Baltimore County, Maryland (the "Property"). In order to accomplish this goal, the Rosedale has filed a zoning petition to permit a Class B Office building with accessory parking in the RO zone (the "Zoning Petition"). The Zoning Petition is currently before the Board of Appeals for Baltimore County for approval.

WHEREAS, the PHIA, has agreed to support the Zoning Petition on the condition that the parties enter into this Amendment;

WHEREAS, Rosedale and the PHIA desire to enter into this Amendment so as to update the Landscaping covenant from the Agreement as more particularly described below.

NOW, THEREFORE, in consideration of the support of the PHIA and the benefits derived from Rosedale, its successors and assigns, the parties hereby amend the Agreement as follows on the condition that the Zoning Petition be approved by the Board, with no appeals filed:

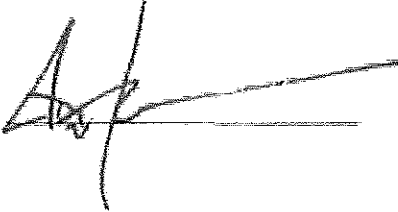
1. Landscaping. The Property shall be landscaped in a manner consistent with that depicted in **Exhibit B**. The landscaping shall include, but is not limited to, an appropriate buffer between the proposed parking and the neighboring residential community. Said buffer shall be designed in a manner that is in harmony with the existing landscaping, both onsite and in the surrounding community. Landscaping shall be sufficiently watered to assure growth during the first four (4) years after installation. This provision amends and replaces the Landscaping covenant contained in the Agreement.
2. Site Plan. The property shall be developed in accordance with the site plan depicted in **Exhibit B**.
3. Other Terms. Other than the foregoing, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect except as otherwise modified or amended by this Amendment.
4. Counterparts. This Amendment may be executed in several counterparts, each of which shall be deemed an original, but all which shall constitute one instrument.

[signatures appear on following page]

WITNESS the due execution of this Amendment to Restrictive Covenant Agreement by the parties hereto.

ATTEST/WITNESS:

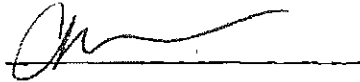
ROSEDALE FEDERAL SAVINGS AND
LOAN ASSOCIATION



By: Linda A. Muffoletto (SEAL)
Name: Linda A. Muffoletto
Title: Executive Vice President

ATTEST/WITNESS:

PERRY HALL IMPROVEMENT
ASSOCIATION, INC.



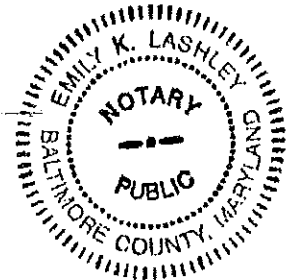
By: JPA (SEAL)
Name: John P. Amrhein (Jack)
Title: President

STATE OF MARYLAND, CITY/COUNTY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 20 day of September, 2016, before me, a Notary Public in and for the State and County aforesaid, personally appeared Linda Muffoletto, and that he/she as Executive Vice President being authorized to do so, executed the foregoing Amendment to Restrictive Covenant Agreement for the purposes therein contained, but signing the name of the Rosedale Federal Savings and Loan Association, Inc., by himself/herself as such Executive Vice President and IN MY PRESENCE SIGNED AND SEALED THE SAME.

AS WITNESS my hand and Notarial Seal.


NOTARY PUBLIC




My Commission Expires:

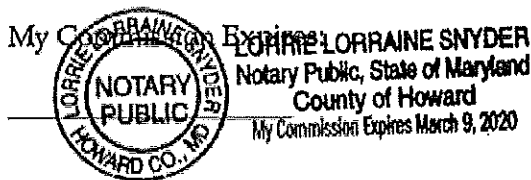
4/25/2019

STATE OF MARYLAND, CITY/COUNTY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 23rd day of September, 2016, before me, a Notary Public in and for the State and County aforesaid, personally appeared John Amrhein, and that he/she as President, being authorized to do so, executed the foregoing Amendment to Restrictive Covenant Agreement for the purposes therein contained, but signing the name of the Perry Hall Improvement Association, Inc. by himself/herself as such President, and IN MY PRESENCE SIGNED AND SEALED THE SAME.

AS WITNESS my hand and Notarial Seal.


NOTARY PUBLIC



This is to certify that the within instrument was prepared by an attorney admitted to practice before the Court of Appeals of Maryland.


Adam D. Baker, Esq.

RESTRICTIVE COVENANT AGREEMENT

THIS RESTRICTIVE COVENANT AGREEMENT ("Agreement"), dated May 3, 2008, is hereby made by and between ROSEDALE FEDERAL SAVINGS AND LOAN ASSOCIATION ("Rosedale") and the PERRY HALL IMPROVEMENT ASSOCIATION, INC. (the "PHIA").

WHEREAS, Rosedale is the owner in fee simple of all that property situate and lying in the 11th Election District of Baltimore County, Maryland, and more particularly described in a Deed dated February 16, 1961, and recorded in the Land Records of Baltimore County in Liber 3812, folio 1, from E. Scott Moore and Robert E. Carney, Jr. to Rosedale Federal Savings and Loan Association (the "Property").

WHEREAS, Rosedale desires to expand the existing office building located on the Property. In order to accomplish this goal, the Rosedale has petitioned to have a portion of the Property rezoned from 0.1 acres of RO and 0.9 acres of DR 5.5 to 1.0 acre of BL through the 2008 Comprehensive Zoning Map Process (the "Rosedale Application").

WHEREAS, the PHIA, has agreed to support the Rosedale Application on the condition that Rosedale will subject the Property to the restrictive covenants, hereinafter defined and set forth below, which are for the purpose of protecting the value and desirability of the Property and the surrounding area;

WHEREAS, in exchange for the support of the PHIA in connection with the Rosedale Application, Rosedale desires to subject the Property to the restrictive covenants set forth below, which are for the purpose of protecting the value and desirability of the Property and the surrounding area, for a period of fifteen (15) years from the start of construction;

WHEREAS, Rosedale hereby declares that the Property shall be held, sold, and conveyed for the next fifteen (15) years from the start of construction subject to the restrictive covenants set forth below on the condition that the Property be rezoned to BL based on the Rosedale Application.

NOW, THEREFORE, in consideration of the support of the PHIA and the benefits derived from Rosedale, its successors and assigns, Rosedale hereby declares that the Property shall be held, sold and conveyed subject to the following restrictive covenants for the period stated in this Agreement, which are for the purpose of protecting the value and desirability of the Property and the surrounding area, and agrees as follows on the condition that the Property be rezoned based on the Rosedale Application to BL:

1. Height Restriction. Any building erected on the Property shall not exceed two stories in height.
2. Building Exterior. Any building erected or any extension of an existing building on the Property shall be finished with brick.

3. Landscaping. The Property shall be landscaped in a manner consistent with that depicted in Exhibit A. The landscaping shall include, but is not limited to, an appropriate buffer between the proposed parking and the neighboring residential community. Said buffer shall be designed in a manner that is in harmony with the existing landscaping, both onsite and in the surrounding community. Landscaping shall be sufficiently watered to assure growth during the first four (4) years after installation.
4. Noise and Hours. The Property will not host outdoor events between 9:00PM and 7:00AM. Noise emitted by the Property shall not exceed the Maximum Allowable Noise Levels set forth in COMAR 26.02.03.03.
5. Term. The covenants numbered 1 through 4 above (the "Restrictive Covenants") shall run with and bind the Property and shall be enforceable against the Rosedale, or its successors and assigns, until the fifteenth (15th) anniversary of the date of the issuance of the building permit ("Expiration Date"). After the Expiration Date, this Agreement and the Restrictive Covenants contained herein shall no longer bind or run with the Property and shall become void and unenforceable.
6. Condition Precedent. These Restrictive Covenants are conditioned and shall only be applicable and enforceable upon the Rosedale Application being granted resulting in the Property being rezoned to BL allowing Rosedale the right to construct a new building or an extension of an existing building on the Property for Rosedale's commercial purposes. In the event Rosedale is for any reason prohibited from erecting such building or extension or chooses not to erect or extend a commercial building of this type, these Restrictive Covenants shall immediately become null and void ab initio.
7. Enforcement. Enforcement of the Restrictive Covenants shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, to restrain the violation.
8. Separable. The invalidity of any of the provisions of this Agreement shall not affect the validity of any of the other provisions, all of which shall remain in full force and effect.
9. Binding Nature. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns and shall touch and concern the Property thus running with and binding upon the Property.
10. Further Assurances. The parties hereto agree to act in good faith and with due diligence and to sign, seal, deliver and acknowledge all documents and take or cause to occur all actions necessary to effect the terms, intentions and conditions hereof.

[signatures appear on following page]

WITNESS the due execution of this Restrictive Covenant Agreement by the parties hereto.

ATTEST/WITNESS:

ROSEDALE FEDERAL SAVINGS AND LOAN ASSOCIATION

[Handwritten Signature]

By: [Handwritten Signature] (SEAL)
Name: THOMAS C. WITZ
Title: PRESIDENT

ATTEST/WITNESS:

PERRY HALL IMPROVEMENT ASSOCIATION, INC.

[Handwritten Signature]

By: [Handwritten Signature] (SEAL)
Name: DAVID MARAS
Title: PRESIDENT

STATE OF MARYLAND, CITY/COUNTY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 8th day of May, 2008, before me, a Notary Public in and for the State and County aforesaid, personally appeared Thomas S. Witz, and that he/she as President, being authorized to do so, executed the foregoing Restrictive Covenant Agreement for the purposes therein contained, but signing the name of the Rosedale Federal Savings and Loan Association, Inc., by himself/herself as such President, and IN MY PRESENCE SIGNED AND SEALED THE SAME.

AS WITNESS my hand and Notarial Seal.

[Handwritten Signature]
NOTARY PUBLIC

My Commission Expires:

7/1/2009

STATE OF MARYLAND, CITY/COUNTY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 8th day of May, 2008, before me, a Notary Public in and for the State and County aforesaid, personally appeared DAVID MANS, and that he/she as President, being authorized to do so, executed the foregoing Restrictive Covenant Agreement for the purposes therein contained, but signing the name of the Perry Hall Improvement Association, Inc. by himself/herself as such President, and IN MY PRESENCE SIGNED AND SEALED THE SAME.

AS WITNESS my hand and Notarial Seal.

Linnaea M. Galt
NOTARY PUBLIC

My Commission Expires:

7/1/2009

This is to certify that the within instrument was prepared by an attorney admitted to practice before the Court of Appeals of Maryland.

Adam B. Baker
Adam B. Baker, Esq.

LEGEND



DATE: MAY 8, 2000
N: 0

PLANT SPECIFICATIONS	
N	NO. OF PLANTS
A	ALTERNATE PLANTING
R	REPLACEMENT PLANTING
C	COUNTY PLANTING
L	LOCAL PLANTING
P	PARENT PLANTING
S	SUBSTITUTION PLANTING
X	NO. OF PLANTS

CHANGED EXISTING PLANTING WITH A FEW ADDITIONAL TREES

PLANTING TO MATCH

PLANTING TO MATCH

PLANTING TO MATCH

PLANTING TO MATCH

BEAR ROAD

ROSDALE FEDERAL SAVINGS
& LOAN ASSOCIATION

REPAIR - ALL VANDLAGE

BAKER LANE

WORKS & INTERIOR ASSOCIATES, INC.
2015 W. BROADWAY, SUITE 100
DENVER, CO 80202

GVA
GARDEN VISUALIZATION ASSOCIATES, INC.
4000 W. BROADWAY, SUITE 100
DENVER, CO 80202

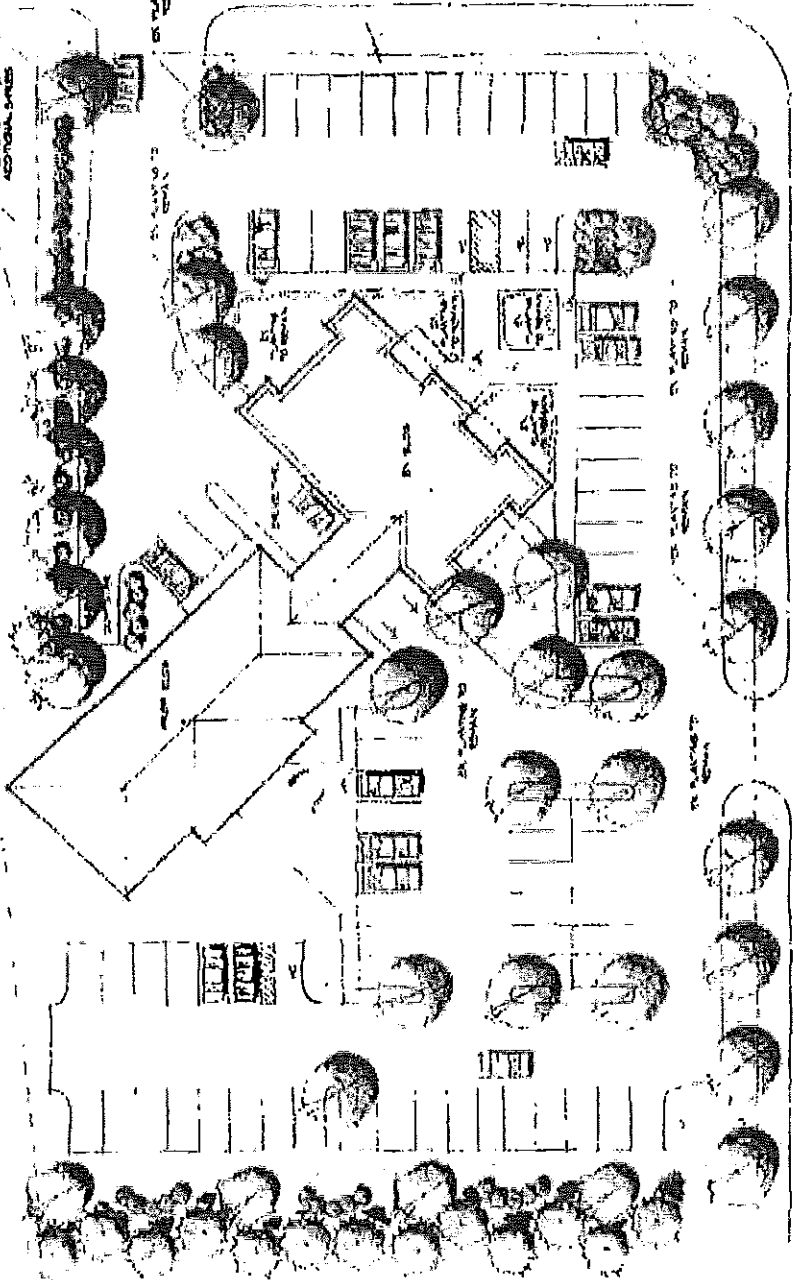
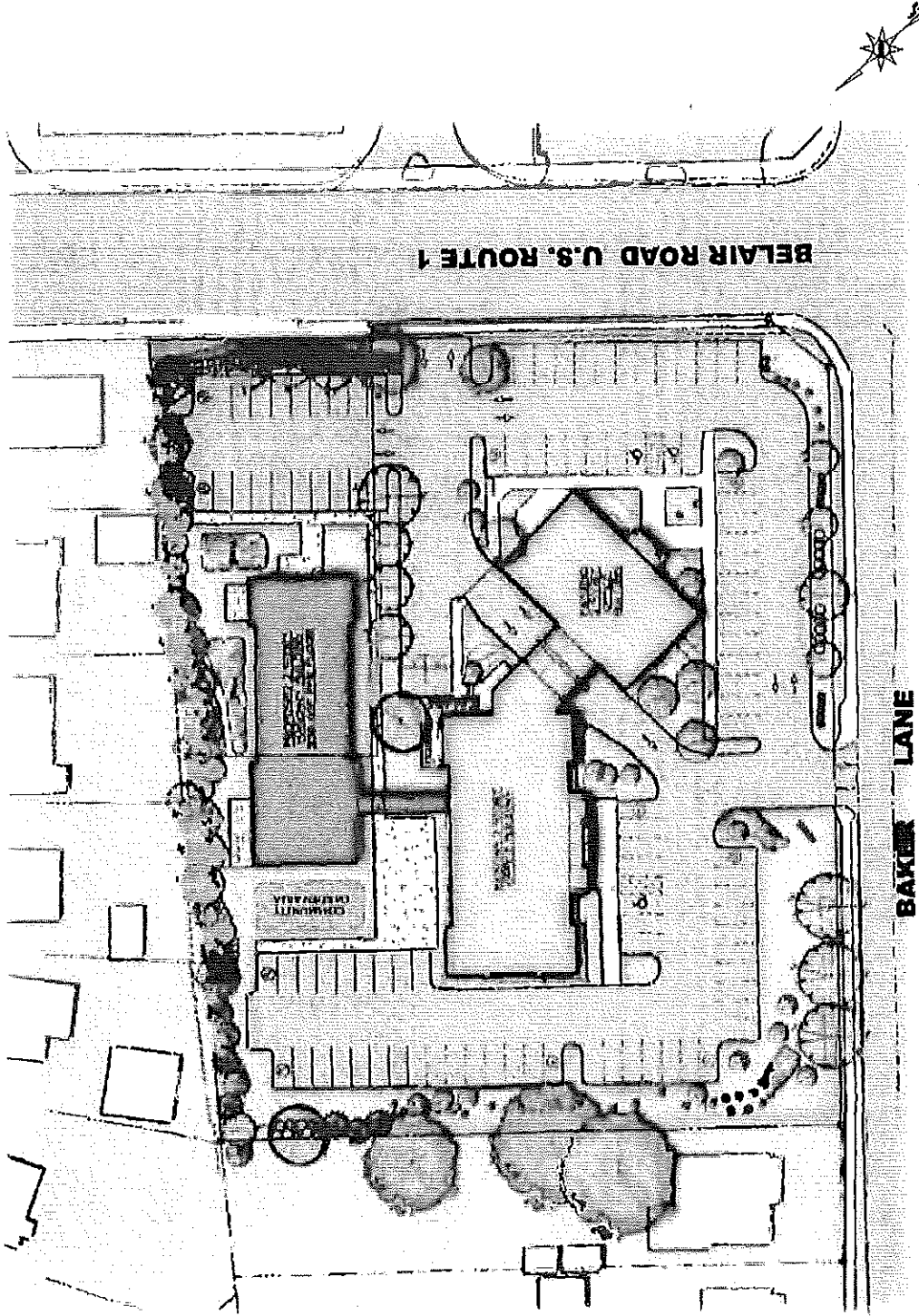


EXHIBIT B



MORRIS & RITCHIE ASSOCIATES, INC.
 ENGINEERS, ARCHITECTS, PLANNERS, SURVEYORS,
 AND LANDSCAPE ARCHITECTS

HEADQUARTERS ANNEX FOR ROSEDALE FEDERAL SAVINGS AND LOAN ASSOCIATION
 ILLUSTRATIVE SITE PLAN
 SCALE: 1"=20'

BAKER LANE

BLAIR ROAD U.S. ROUTE 1

PLAN B



Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

December 27, 2016

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

Adam D. Baker, Esquire
Whiteford, Taylor & Preston, LLP
1 W. Pennsylvania Avenue, Suite 300
Towson, Maryland 21204

RE: In the Matter of: *Rosedale Federal Savings and Loan Association*
Case Nos.: 16-063-SPH and 16-219-X

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington Horn".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Linda Muffoletto, Executive Vice President/Rosedale Federal Savings and Loan Association
Christopher R. Lester/George Vaeth Associates, Inc.
Matthew Bishop/Morris & Ritchie Associates, Inc.
John P. Amrhein, President/Perry Hall Improvement Association, Inc.
Pamela Hess
Stephen Davis
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law