

RE: PETITION FOR SPECIAL HEARING	*	BOARD OF APPEALS
502 & 504 Montclair Court: E/S Montclair Court,		
Mt. Clair Court, 1860 NW of York Road	*	FOR
7 th Election District		
3 rd Counsel Manic District	*	BALTIMORE COUNTY
Legal Owner: RREF II SB-MD, LLC		
	*	CASE NO: 17-113-SPH
Petitioner		
* * * * *		

OPINION

This case comes before the Baltimore County Board of Appeals as an appeal from Administrative Law Judge (“ALJ”) John E. Beverungen’s March 13, 2017 Order granting People’s Counsel Motion to Dismiss on grounds of *res judicata*. This Board convened arguments on People’s Counsel’s Motion to Dismiss and the Petitioner’s responses thereto on June 27, 2017. A deliberation was held on August 9, 2017. Protestant, M. V. Runkells, III, was represented by J. Carroll Holzer, Esquire. The Petitioner/Appellant was represented by Adam Baker, Esquire of Whiteford, Taylor & Preston, LLP. Peter Max Zimmerman appeared on behalf of the Office of the People’s Counsel.

BACKGROUND

The history of this matter starts on June 1, 2004, when, then hearing officer, John V. Murphy, approved a 16 lot development plan, named Montclair, with conditions (HOH Case #: VII-372). During the course of that case and based on the Planning Board referral recommendation, the developer modified the proposed plan, including a minimal front yard set back for lots 14 and 15. Hearing Officer Murphy added a one-story height limitation for these

lots. The reason for this height limitation is that these lots adjoined the property of Marion Runkells and the historic Wiseburg Inn and was meant to mitigate the adverse impact on his property. This decision was subsequently appealed to the Baltimore County Board of Appeals and to the Circuit Court for Baltimore County, which both affirmed hearing officer Murphy's decision.

PRESENT CASE

On October 21, 2017, Petitioner filed a Petition for Special Hearing relief. In this petition, the Petitioner asked for a modification for the conditions imposed in case number VII-372 to prevent the homes on lots 14 and 15 (502 and 504 Mt. Claire Court) to be greater in height than be one-story. Additionally, the Petitioner has requested a modification of the previous conditions for these lots reducing the required rear yard set back from 100 feet to 80 feet. Additionally, in the course of the prior proceedings, the Petitioner filed a revised site plan and added a request for variance from section 1A04.3-B.2 to permit a set back of 55 feet from the center of line of the road in lieu of the required 75 feet and to permit a set back from the western lot line for lot 14 of 30 feet in lieu of the required 50 feet.

In its motion filed with the ALJ, Peoples' Counsel asserted and argued that the *res judicata* doctrine barred the Petitioner's petition. ALJ John Beverungen granted the Motion to Dismiss finding that *res judicata* did apply and that he was precluded from amending the Planning Board's previous requirement from 100 feet to 80 feet due to the binding nature of the previous determination pursuant to B.C.C. § 32-4-232(f).

The Petitioners contend that *res judicata* does not apply in this matter due to their assertion that significant changes have occurred in the community at issue since the original 2004 hearing. Petitioner notes that nearly all the houses in the subdivision have been constructed and sold, and the trees from the landscaping required a 2004 Order are now fully grown, obscuring some of the views sought to be preserved by the Protestants. The Petitioner also contends that a large barn constructed in the rear of the Wiseburg Historic property, which also obscures the view shed that was sought to be preserved, constitutes a significant change in the community.

ANALYSIS

Under Maryland law, an agency determination affirmed on appeal is entitled to preclusive effect. *Seminary Galaria, LLC v. Dulaney Valley Improv. Ass'n Inc.*, 192 Md. App. 79, 736 (2010); *Esslinger v. Balto City*, 95 Md. App. 607, 621 (1993.) *Res judicata* will apply, unless there is a significant change in circumstances between the earlier and subsequent action. *See, e.g., Alvy v. Headin*, 243 Md. 334, 340 (1966). No legally significant change has occurred since the prior determination of the hearing officer imposing height and setback conditions on lots 14 and 15. Accordingly, *res judicata* bars the relief sought by Petitioner in this case.

ORDER


THEREFORE, IT IS, this 23rd day of April, 2018, by
the Board of Appeals for Baltimore County,

ORDERED, that People's Counsel's Motion to Dismiss, be and is hereby **GRANTED**.

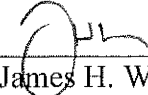
In the matter of: RREF II SB-MD, LLC.
Case No: 17-113-SPH

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**



Andrew M. Belt, Panel Chairman



James H. West

Meryl W. Rosen was a Board Member at the time of the hearing and public deliberation of the Board. She resigned from the Board in September 2017.



Board of Appeals of Baltimore County

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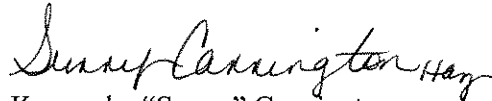
RE: In the Matter of: *RREF II SB-MD, LLC*
Case No.: 17-113-SPH

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,


Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Multiple Original Cover Letters

c: RREF II SB-MD, LLC
M. V. Runkles, III
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