

**TOWN OF LEESBURG
NOTICE OF PUBLIC HEARING**

Pursuant to Section 15.2-2299 and 15.2-2301 of the Code of Virginia, 1950, as amended, and Town of Leesburg Zoning Ordinance Section 3.15, 2003, as amended, the **LEESBURG TOWN COUNCIL** will hold a public hearing on **TUESDAY, AUGUST 9, 2016 at 7:30 p.m.** in the Town Council Chambers in the Leesburg Town Hall, 25 W. Market Street, Leesburg, Virginia to hear the following item:

Case number TLAP-2016-0001 – Mr. Kevin Ash has submitted an appeal of the July 22, 2016 Zoning Administrator’s determination which held that a use proposed by MVB Financial Corporation constitutes a bank and is prohibited by Proffer #2 of TLZM-2010-0001 Leesburg Central.

The property subject to this appeal application is approximately 0.68 acres in size and is zoned B-1, Community (Downtown) Business District and H-1, Old and Historic Overlay District. The property is further subject to the proffers of TLZM-201-0001 Leesburg Central. The property is located at the southeast quadrant of the intersection of Loudoun Street and Harrison Street and is more particularly described as Parcel Identification Numbers (PIN) 231-39-0103, 231-39-0909 and 231-29-0797.

Full and complete copies of the above-referenced appeal application and related documents may be examined at the Department of Planning and Zoning located on the second floor of the Leesburg Town Hall, 25 W. Market Street, during normal business hours (Monday - Friday, 8:30 a.m. to 5:00 p.m.) or by calling (703) 771-2765 and asking for Christopher Murphy, Zoning Administrator. This proffer appeal application is identified as case number TLAP-2016-0001.

At this hearing, all persons desiring to express their views regarding this matter will be heard. Persons requiring special accommodations should contact the Clerk of Council at (703)771-2733, three days in advance of the meeting. For TTY/TDD service, use the Virginia Relay Center by dialing 711.

Ad to run: 7/27 and 8/3



Date of Council Meeting: August 9, 2016

**TOWN OF LEESBURG
TOWN COUNCIL PUBLIC HEARING**

Subject: Proffer Interpretation Appeal TLAP-2016-0001 – Leesburg Central

Staff Contact: Christopher Murphy, AICP, Zoning Administrator

Council Action Requested: Consider appeal of Zoning Administrator’s Proffer Interpretation TLZC-2016-0014 and determine if that interpretation is correct pursuant to TLZO Sec. 3.15 Appeals of Proffer Interpretations

Staff Recommendation: Staff recommends that the Town Council uphold the Zoning Administrator’s interpretation and find that he correctly held that a proposed use is a “bank” and not an “office” per Proffer #7 of TLZM-2010-0001 Leesburg Central.

Date Filed: July 21, 2016

Hearing Date: August 9, 2016

Action Required by: September 7, 2016 (within 30 days of conclusion of the public hearing) unless an extension is granted by the Appellant.

Appellant: Kevin Ash
A&W Leesburg Central, LLC
116 Edwards Ferry Road, N.E., #E
Leesburg, VA 20176-2301

Owner of Record: Same as Appellant

Location: 106 Harrison Street, S.E. at the southeast quadrant of the intersection of Loudoun Street and Harrison Street.

Tax Map Parcels: 231390909; 231390103; 231290797

Zoning: B-1 (Community/Downtown Business) subject to proffers per TLZM-2010-0001 and H-1 (Overlay, Old and Historic District)

Appeal Summary: In accordance with Sec. 15.2-2301 of the 1950 Code of Virginia, as

amended and Zoning Ordinance Sec. 3.15, the Appellant Kevin Ash has appealed the decision of the Zoning Administrator rendered in writing on July 25, 2016 (**Attachment 1**) that a proposed use to be located in an existing building at 106 Harrison Street, S.E. is a bank and is therefore prohibited by Proffer #7 Uses Prohibited of TLZM-2010-2001 which limits nonresidential uses to “office only”. The Appellant contends that the proposed use is “office” within the meaning of Proffer #7 and is therefore permitted.

Appeal Regulations:

When a party has a question regarding the meaning of a certain proffer or a concept plan, TLZO Sec. 3.15 Appeals of Proffer Interpretations (**Attachment 2**) explains they have the right to ask the Zoning Administrator for an official interpretation. The Zoning Administrator examines the evidence and issues a written interpretation in response to the question posed. In addition, the parties are informed that they may appeal to the Town Council to evaluate if there was an error in the conclusion presented in the interpretation.

Council Approval Criteria:

In accordance with Zoning Ordinance Sec. 3.15.7 Approval Criteria; Findings of Fact, (**Attachment 2**) an appeal shall be sustained only if the Town Council finds the Zoning Administrator erred. The decision shall be accompanied by specific, written findings of fact and conclusions clearly stating the reason for the decision.

Council Options:

In accordance with Zoning Ordinance Sec. 3.115.6 Town Council Review and Decision (**Attachment 2**), the Council may:

- reverse the decision of the Zoning Administrator, or
- affirm, wholly or partly, the decision of the Zoning Administrator or
- modify the decision being appealed.

Background/Chronology:

March 23, 2004 - The subject property was part of rezoning TLZM-2003-0006 Leesburg Central approved on March 23, 2004. Proffer #8 Uses Prohibited restricted uses in the nonresidential portion to “Office”. The reason for the restriction was concern over the lack of parking for the new development and the fact that the applicant’s plan required the purchase of 18 parking spaces using the payment-in-lieu option of TLZO Sec. 11.4.3. These spaces were paid for on October 10, 2007 in the amount of \$54,000.

November 9, 2010 - The subject property was part of rezoning amendment TLZM-2010-0001 Leesburg Central approved on November 9, 2010. The amendment increased interior square footage on the site. This increased area required the purchase of an additional 10

parking spaces using the payment-in-lieu option paid for on February 28, 2012 in the amount of \$30,000. The additional square footage was limited to office use per Proffer #7 Uses Prohibited which repeated the restriction to office use only found in the earlier Proffer #8.

The prohibition against other commercial uses was based on the fact that some uses allowed in the B-1 District have higher parking requirements. For example, a restaurant requires twice the spaces of an office use. Given the deficit of proposed on-site parking and the lack of public parking in the area, the applicant proffered the use restriction.

Summer 2016 - Mr. Kevin Ash and Mr. James R. Nalls, president of MVB (Most Valuable Bank) had preliminary conversations with Zoning Administrator Christopher Murphy in 2016 regarding whether a proposed use was considered as "office" and therefore permissible on the site. Mr. Nalls, at the Zoning Administrator's request, sent in a written explanation of the proposed use (**Attachment 3**).

The Zoning Administrator spoke over the phone with Mr. Nalls to further clarify the nature of the proposed use and subsequently indicated to Mr. Nalls and Mr. Ash that the use was a bank within the meaning of the Zoning Ordinance and was therefore prohibited under Proffer #7 of TLZM-2010-0001.

July 15, 2015 - Mr. Kevin Ash requested by e-mail an official interpretation of whether a proposed use was considered as "office" and therefore permissible on the site.

July 21, 2015 - Based on his conversations with the Zoning Administrator, Mr. Ash filed an appeal of the verbal interpretation in a timely fashion and it was accepted by the Zoning Administrator.

July 25, 2016 - The Zoning Administrator issued his interpretation in writing.

Discussion:

The Zoning Administrator was asked to answer the following question: *Is the use proposed by Most Valuable Bank (MVB) a use that is permissible under the proffers?* To do this, he is bound to look at the Zoning Ordinance and any proffer that might limit uses. In this case, after considering all of the relevant factors, the Zoning Administrator held that the use proposed by MVB is considered to be a "bank" per the Town of Leesburg Zoning Ordinance (TLZO) and is therefore not permitted due to the use limitation set forth in TLZM-2010-0001, Proffer #7 Uses Prohibited (Proffer #7) which limits use on the property to "office" only.

Proffer #7 states: *"Use of the property shall be limited to Office, with the exception of the Bishop House, (see Proffer 2) which shall only be used for residential purposes. All other uses shall be prohibited"*. (**Attachment 4**) This limitation permits only "office" use as a

nonresidential use on the property. The Zoning Administrator first looked to see how the term "office" was defined when the rezoning was approved:

A building, room or group of rooms used for conducting the affairs of a business, profession, services or government. For the purpose of this Zoning Ordinance, an office shall not involve manufacturing, fabrication, production, processing, assembling, cleaning, testing or repair of materials, goods or products. (TLZO Sec. 18.1.121)

Next, the information supplied by the Appellant was considered to see if it could fit within this definition. MVB Financial Corporation proposes to locate a use approximately 1,400 square feet in area in the building located at 106 Harrison Street on property subject to Proffer #7. The use was described in a letter dated June 30, 2016 (**Attachment 3**) from Mr. James Nalls, Regional President of MVB, and a subsequent telephone conversation between Mr. Nalls and the Zoning Administrator on July 13, 2016. As a result of these communications, it was found the use will be characterized by the following features:

- An Automatic Teller Machine (ATM) is proposed to be installed on the facade of the building facing Harrison Street which will project into the public right-of-way for use any time of the day or night.
- A night deposit drop box is proposed to be installed on the facade of the building facing Harrison Street for customers to use after normal business hours. Normal business hour will be Monday-Friday 9:00 AM to 4:00 PM.
- Walk-in customers may open a checking or savings account, make withdrawals and deposits of money, and other financial transactions using teller kiosks which will be installed inside the business with the tellers actually located off-site (though floor staff will be present who can assist customers at the machines).
- Financial planning staff will be available on-site to help customers expected to be mostly by pre-arranged appointments. This can be personal financial strategies or for commercial lending opportunities.
- MVB has obtained a bank license from the Virginia State Corporation Commission to take deposits in Virginia.

As a result of this information, the Zoning Administrator noted that while some of the characteristics are similar to office use, many are akin to another principal use: a "bank" which is defined by TLZO Sec. 18.1.14 as:

Any establishment, including an unmanned bank teller machine(s), wherein the primary occupation is concerned with such State regulated businesses as banking, savings and loans, loan companies and investment companies...

The question for the Zoning Administrator is whether or not a use with the above features is a bank or an office within the context of Leesburg's Zoning Ordinance and thus the proffer. The Zoning Administrator acknowledged that the traditional bank is changing due to the rise of on-line banking, and this has led to a corresponding decrease in the amount of times customers actually enter their bank to transact business. As a result, many banks are reducing staff and moving away from the traditional "teller line" and "platform staff" towards a universal banker model where the staff can assist with financial planning or lending and teller functions. However, banks still provide for on-site customer service and these changes will not make them "office" within the context of the Zoning Ordinance definitions.

Previous Zoning Administrator determinations hold that financial planning and wealth management advisors uses such as a Merrill Lynch, Edward Jones, Raymond James, etc. are a type of office use and would be permitted on the subject property because they do not offer core banking features such as checking, cash deposits and withdrawals that cater to walk-in customers and which generate higher traffic and parking requirements. In the case of MVB, they propose to offer *all* of the traditional banking services, and are in effect a full service bank like BB&T or the Middleburg Bank. The definition of "bank" in TLZO Sec. 18.1.14 specifically lists "*an unmanned bank teller machine*" as a "bank". Appellant is proposing an ATM on the outside of the building and more teller kiosks on the inside.

Given the clear language, the Zoning Administrator wrote "I cannot logically make the determination that this use is anything other than a bank as defined by TLZO Sec. 18.1.14, nor can I identify anything that ~~MNB-MVB~~ offers that is dissimilar from a traditional bank [emphasis added]. For that reason, I find that the proposed use is not an "office" and is therefore prohibited by the terms of Proffer #7." (**Attachment 1**)

In an e-mail dated July 28, 2016 to Town Council (**Attachment 5**), Appellant alleges that MVB is not a "retail bank" but is similar to financial advisors such as Merrill Lynch. As evidence, he cites that the Zoning Administrator stated an unmanned bank teller machine makes a use a bank, but that places that are not licensed as a bank have ATMs, such as Rite Aid or ~~&-7-~~11. The Zoning Administrator notes the following factors that distinguish the Liberty, Rite Aid and 7-11 ATM use from the proposed MVB use:

- **License:** A license as a bank is evidence of a full service bank, but a license is not necessary to be considered a bank per the Zoning Ordinance definition where all that is necessary is an ATM unit. No other banking services besides the ATM are offered in the cases noted, unlike the proposed MVB use.
- **Zoning:** The Liberty gas station is zoned B-1, which is a mixed-use district that permits a wide variety of uses. TLZO Sec. 6.3.2 Use Regulations for the B-1 District includes a "Bank without drive-in facility" as a *permitted* (by-right) use. *Proffer #7 removed this and all other uses except office from*

locating on the subject property. Likewise, the Rite-Aid and 7-11 are zoned B-2, where TLZO Sec. 6.4.2 Use Regulations permits a "Bank without drive-in facility" as a by-right use. Those locations do not share the proffered prohibition for bank use that Leesburg Central is subject to.

- **Parking Shortfall:** Rite Aid is parked at a rate of 1 space per 200 gross square feet (g.s.f.); 7-11 and Liberty (convenience) at a rate of 1 space per 167 g.s.f. All of these exceed the parking requirement for bank use of 1 space per 250 g.s.f. As noted above, the subject property is short of on-site parking and purchased 28 spaces based on office use, which requires 1 space per 300 g.s.f. Bank and retail uses require more parking by ordinance and more spaces should have been purchased if a bank use was intended as an option under the proffers.
- **Multiple ATMs:** The Rite Aid, 7-11 and Liberty Gas Station all have a single ATM as an accessory use to their principal business. In this case, Appellant is proposing ATM machines inside the building as well as an ATM on the exterior of the building for walk-up traffic. The intensity of the traditional banking function is on a par with the financial services offered.

Draft Motions:

Affirm

I move that the Town Council affirm the Zoning Administrator's interpretation TLZC-2016-0014 about rezoning TLZM-2010-0001 Proffer #7 Prohibited Uses and find he correctly identified the proposed use as a bank instead of an office for the reasons set forth in the staff report dated August 4, 2016.

-Or-

Deny/Modify

I move that the Town Council overturn the Zoning Administrator's interpretation TLZC-2016-0014 about rezoning TLZM-2010-0001 Proffer #7 Prohibited Uses and find that he incorrectly identified the proposed use as a bank instead of an office for the following reasons: _____.

Attachments:

- (1) Proffer Interpretation dated July 25, 2016
- (2) Zoning Ordinance Section 3.15 Appeals of Proffer Interpretations
- (3) Letter from James R. Nalls dated June 30, 2016
- (4) Approved Proffers of TLZM-2010-0001 Leesburg Central
- (5) E-mail from Kevin Ash dated July 28, 2016

July 25, 2016

Mr. Kevin Ash, Managing Member
A&W Leesburg Central, LLC
116 Edwards Ferry Road, NE #E
Leesburg, Virginia 20176-2301

RE: Proffer Interpretation: TLZM-2010-0001 Leesburg Central – Uses Allowed
Location: Southeast Quadrant of the Intersection of Loudoun Street and Harrison Street
PIN: 231-39-0103-000, 231-39-0909-000 and 231-29-0797-000

Dear Mr. Ash:

In your e-mail dated July 15, 2016, you have asked me for a proffer determination regarding whether a particular use is permitted on the property known as Leesburg Central. The property is currently zoned B-1 Community (Downtown) Business District and is subject to the H-1 Old and Historic Overlay District and the proffers of TLZM-2010-0001 Leesburg Central which was approved by the Town Council on November 9, 2010 per Ordinance No. 2010-O-024. The question and my response are set forth below.

Question: Is the use proposed by Most Valuable Bank (MVB) a use that is permissible under the proffers?

Answer: No, the use proposed by MVB is considered to be a “bank” per the Town of Leesburg Zoning Ordinance (TLZO) and is therefore not permitted due to the use limitation set forth in TLZM-2010-0001, Proffer #7 Uses Prohibited (Proffer #7) which limits use on the property to “office” only. I relied on the facts set forth below to reach this conclusion. Proffer #7 states:

“Use of the property shall be limited to Office, with the exception of the Bishop House, (see Proffer 2) which shall only be used for residential purposes. All other uses shall be prohibited” (see Attachment 1).

This limitation permits only “office” uses on the property. The term “office” was defined by TLZO Sec. 18.1.121 when the rezoning was approved as:

“A building, room or group of rooms used for conducting the affairs of a business, profession, services or government. For the purpose of this Zoning Ordinance, an office shall not involve manufacturing, fabrication, production, processing, assembling, cleaning, testing or repair of materials, goods or products.”

The B-1 Zoning District is a mixed-use district that permits a wide variety of uses, including residential. In 2010 TLZO Sec. 6.3.2 Use Regulations for the B-1 District included a “Bank without drive-in facility” as a permitted use. Proffer #7 removed this and all other uses except office from locating on the subject property. A “bank” was and remains defined by TLZO Sec. 18.1.14 as:

“Any establishment, including an unmanned bank teller machine(s), wherein the primary occupation is concerned with such State regulated businesses as banking, savings and loans, loan companies and investment companies ...”

MVB Financial Corporation proposes to locate a use approximately 1,400 square feet in area in the building located at 106 Harrison Street on property subject to Proffer #7. The use was described in a letter dated June 30, 2016 (Attachment 2) from Mr. James Nalls, Regional President of MVB, and a subsequent telephone conversation between Mr. Nalls and me on July 13, 2016. As a result of these communications I have understood that the use will be characterized by the following features:

- An Automatic Teller Machine (ATM) is proposed to be installed on the façade of the building facing Harrison Street which will project into the public right-of-way for use any time of the day or night. (Attachment 3)
- A night deposit drop box is proposed to be installed on the façade of the building facing Harrison Street for customers to use after normal business hours. (Attachment 3) Normal business hour will be Monday – Friday 9:00 AM to 4:00 PM.
- Walk-in customers may open a checking or savings account, make withdrawals and deposits of money and other financial transactions using teller kiosks which will be installed inside the business with the tellers actually located off-site (though floor staff will be present who can assist customers at the machines).
- Financial planning staff will be available on-site to help customers expected to be mostly by pre-arranged appointments. This can be personal financial strategies or for commercial lending opportunities.

The question for the Zoning Administrator is whether or not a use with the above features is a bank or an office within the context of Leesburg’s Zoning Ordinance and practice. The Zoning Administrator acknowledges that the traditional bank is changing due to the rise of on-line banking, and this has led to a corresponding decrease in the amount of times customers actually enter their bank to transact business. As a result, many banks are reducing staff and moving away from the traditional “teller line” and “platform staff” towards a universal banker model where the staff can assist with financial planning or lending and teller functions. However, banks still provide for on-site customer service.

Previous Zoning Administrator determinations hold that financial planning and wealth management advisors uses such as a Merrill Lynch, Edward Jones, Raymond James, etc. are a type of office use and would be permitted on the subject property because they do not offer core banking features such as checking, cash deposits and withdrawals that cater to walk-in customers with a higher traffic generator. In the case of MVB, they propose to offer *all* of the traditional banking services, including an ATM machine and a night deposit box. The definition of Bank in TLZO Sec. 18.1.14 specifically lists “*an unmanned bank teller machine*” as a “Bank”.

Given this clear language, I cannot logically make the determination that this use is anything other than a bank as defined by TLZO Sec. 18.1.14, nor can I identify anything that MNB offers that is dissimilar from a traditional bank. For that reason, I find that the proposed use is not an “office” and is therefore prohibited by the terms of Proffer #7.

For background purposes, I note that the reason Proffer #7 was established to prohibit other uses is based

TLZC-2016-0014
Proffer Determination – Uses Allowed
TLZM-2010-0001 Leesburg Central
July 25, 2016
Page 3 of 3

on parking generation concerns and the limitations on being able to physically accommodate required parking on site. Leesburg Central, as approved, provides 28 fewer parking spaces than the minimum required by ordinance for *office* use. Other uses, such as retail sales or a bank, have a higher parking ratio requirement. In order to avoid purchasing more parking spaces via the payment-in-lieu provision of TLZO Sec. 11.4.3, and to address Town Council concerns about the lack of parking, the applicant voluntarily proffered the “office only” use restriction to minimize parking demands on the property. A total of 28 required on-site parking spaces were subsequently purchased using the payment-in-lieu option.

Right to Appeal: Please be advised that because this letter serves as an interpretation with regard to proffers, §15.2-2301 of the Code of Virginia, 1950, as amended, and Zoning Ordinance Section 3.15 Appeals of Proffer Interpretations, provide you the opportunity to appeal this decision to the Town Council within thirty (30) days from the date of this written notice by filing the appeal with the Zoning Administrator and the Clerk of Council. This interpretation shall be final and unappealable if not appealed within thirty (30) days. To file an appeal you must (1) complete an application form available at the Department of Planning, Zoning and Development counter, second floor, 25 West Market Street, Leesburg, Virginia 20178; (2) include a copy of this notice; and (3) provide a written statement specifying the grounds for your appeal. **The appeal must be filed with the Zoning Administrator and the Clerk of the Town Council no later than thirty (30) days from the date of this written notice.**

Please do not hesitate to contact me by telephone at (703) 771-2765, or by email at cmurphy@leesburgva.gov if you have any questions about this interpretation.

Sincerely,



Christopher Murphy, AICP
Zoning Administrator

Attachments:

1. Proffer Statement TLZM-2010-0001
2. Letter dated June 30, 2016 from James R. Nalls
3. Proposed Elevation Drawings for 106 Harrison Street dated 7/1/2016 prepared by W.A. Brown Associates, P.C.

cc: file TLZC-2016-0014

The Town of
**Leesburg,
Virginia**

ATTACHMENT 1

PRESENTED: November 9, 2010

ORDINANCE NO. 2010-O-024

ADOPTED: November 9, 2010

AN ORDINANCE: APPROVING CONCEPT PLAN AND PROFFER AMENDMENT
TLZM-2010-0001 LEESBURG CENTRAL, AMENDING
TLZM-2003-0006, TO ALLOW AN INCREASE IN DENSITY AND
PHASED DEVELOPMENT OF THE PROPERTY

WHEREAS, application has been filed by Sarks Investments Group LLC, for a concept plan and proffer amendment to #TLZM-2003-0006 for Leesburg Central; and

WHEREAS, the "Property" consists of four parcels of land generally located at the southeast quadrant of the intersection of Loudoun and Harrison Street and having the following Loudoun County Parcel identification PIN numbers: 231-39-0411, 231-39-0909, 231-39-0103, and 231-39-0103; and

WHEREAS, a duly advertised Planning Commission public hearing was held on September 16, 2010; and

WHEREAS, at their regular meeting of September 16, 2010, the Planning Commission recommended approval of this application to the Town Council; and

WHEREAS, the Town Council held a duly advertised public hearing on this application on November 9, 2010; and

WHEREAS, staff recommended approval; and

WHEREAS, the Council has concluded that the approval of the application would be in the public interest and in accordance with sound zoning and planning principles.

The Council of the Town of Leesburg in Virginia hereby ordains:

SECTION I. That the Concept Plan and Proffer Amendment TLZM-2010-0001, Leesburg Central, is hereby approved, subject to the proffers dated November 9, 2010.

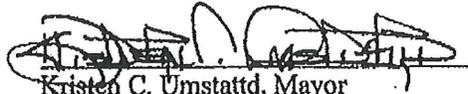
AN ORDINANCE: APPROVING CONCEPT PLAN AND PROFFER AMENDMENT
TLZM-2010-0001 LEESBURG CENTRAL, AMENDING
TLZM-2003-0006, TO ALLOW AN INCREASE IN DENSITY AND
PHASED DEVELOPMENT OF THE PROPERTY

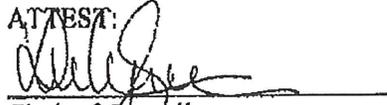
SECTION II. All prior ordinances in conflict herewith are hereby repealed.

SECTION III. Severability. If a court of competent jurisdiction declares any provision of this ordinance invalid, the decision shall not affect the validity of the ordinance as a whole or any remaining provisions of the Leesburg Town Code.

SECTION IV. This ordinance shall be effective upon its adoption.

PASSED this 9th day of November 2010.


Kristen C. Umstattd, Mayor
Town of Leesburg

ATTEST:

Clerk of Council

#TLZM 2010-0001 PROFFERS SUBMITTED BY SARKS INVESTMENT GROUP LLC IN CONNECTION WITH APPROVAL BY THE TOWN OF LEESBURG OF LEESBURG CENTRAL

(With revisions to February 27th, 2004)

Pursuant to Section 15.2-2303(G) of the Virginia State Code, 1950 as amended and Section 3.3.16 of the Zoning Ordinance of Town of Leesburg, Sarks Investment Group LLC who is the Applicant herein and who is the owner of approximately 0.77 acres of real property described as year 2003 Loudoun County PIN's 231-39-0411, 201 E. Loudoun Street, 231-29-0596 part of 206 Royal Street S.E., 231-29-0797 part of 206 Royal Street S.E. part of 231-39-0909 (203 Loudoun Street), and 231-39-1408 (205 Loudoun Street), the six parcels collectively referred to herein as the "Property", who is seeking approval by the Town of Leesburg (the "Town") of rezoning application #TLZM 2010-0001, hereby submit the following voluntarily proffers which are contingent upon Town approval of said rezoning application.

1. Concept Plan: Development of the property shall be in substantial conformance with the Rezoning Concept Plan prepared by A.S. & R. Consultants (hereinafter referred to as the "Rezoning Concept Plan"), which is attached to these proffers as Exhibit "A" and which shall control the use, layout and configuration of the Property, with reasonable allowance to be made for engineering and design alteration and to meet Town Zoning, subdivision and land development regulations.
2. Bishop House: The 1309 sq-ft existing building known as the Bishop House shall be preserved on the property and used solely for residential purposes. The building shall not have a driveway on Royal Street but shall have access, via a written ingress/egress easement to the common parking lot on the Property and depict on the Rezoning Concept Plan.
3. Retail Façade: The first floor of the 3-story building fronting on Loudoun and Harrison Streets shall exhibit a retail façade treatment in accordance with Historic District Guidelines with ultimate approval of the design by Board of Architectural Review (Subject to Virginia law) as part of its review.
4. Full frontage improvements Harrison/Loudoun Streets: Prior to the issuance of the first Zoning permit for occupancy of Building "1" in Phase "I", full frontage improvements of the property's frontage along Loudoun and Harrison Streets shall be constructed by the property owner at no cost to the Town. Frontage improvements shall be considered to be but not exclusive of the following: curb, gutter, brick sidewalk, street trees, streetlights, and any necessary dedication of public right of way.
5. Full frontage improvements on Royal Street: Prior to the issuance of the first Zoning permits for occupancy of Building "2" in Phase "II", full frontage

improvements of the property's frontage along Royal Street shall be constructed by the property owner at no cost to the Town. Frontage improvements shall consist of the following: Two (2) Nine (9) foot travel lanes with two (2) foot wide gutter pans, with curb on either side; a five (5) foot brick sidewalk on the north side of the street; dedication of an approximately seven (7) foot wide strip of the property along Royal street; street trees, streetlights.

6. Cash Proffer For Offsite Transportation Improvements: Applicant has satisfied the payment of \$20,000.00 in July of 2007 towards the approximately 22000 sq-ft of office space as a contribution toward the future costs of offsite transportation improvements in the Town of Leesburg, and Prior to the issuance of the Certificate of Occupancy for Building "1" in Phase "1" shall pay an additional \$2223.90 (Two Thousand two hundred and twenty three dollars and ninety cents) towards the 2471 sq-ft additional office space, as a contribution toward the future costs of offsite transportation improvements in the Town of Leesburg.
7. Uses Prohibited: Use of the property shall be limited to Office, with the exception of the Bishop House, (see Proffer2), which shall only be used for residential purposes. All other uses shall be prohibited.
8. Required extra parking: A total of 28 off-site parking spaces shall be purchased via fee-in-lieu, per TLZO SECTION 11.4.3 prior to the issuance of the first zoning permit for the occupancy of Building "1" in Phase "I".
9. Required tree replacement: Prior to the issuance of the certificate of occupancy for Building "2" in Phase "II", the owner shall install two replacement trees due to the loss of two public street trees during relocation of existing Dominion Power utility poles and overhead wires. The location of the two replacement trees shall be located along the Harrison Street side of 204 South Street, as approved by the Town's Urban Forester and Department of Public Works. The replacement trees shall be single stem Paperbark Maple, *Acer griseum*.

The Applicant agrees that approval of this rezoning does not express or imply any waiver or modification of the requirements set forth in the subdivision and Land Development Regulations, the Zoning Ordinance, or the Design and Construction Standards Manual, and that final plats development plans and construction drawings for development on the Property are subject to the applicable Town regulations.



Sanjeet S. Veen

On behalf of Sarks Investment Group LLC., as applicant and property owner.

10110 Molecular Dr. Suite 217
Rockville, Md. 20850

The Property Owner's covered under this Rezoning and associated proffers
Consent and Agree to all of the proffers and terms stated herein as evidenced by
their signature hereto:



Sanjeet S. Veen

Date 11/09/2010

Sworn and subscribed before me by Sanjeet S. Veen on the 9th day of
November 2010.



Yvonne Kuehn
Notary Public

Comm. Expires 9/9/2013

Date 11/09/2010

ATTACHMENT 2

June 30, 2016



Your Most Valuable Bank

Norman E. Corkhill
Potomac Real Estate Partners, LLC
12700 Sunrise Valley Drive, Suite 102
Reston VA 20191

Kevin Ash
Ellisdale Construction LLC
116 Edwards Ferry Road, Suite E
Leesburg VA 20176

Re: 106 Harrison Street, Leesburg, Virginia

Dear Sirs:

MVB Financial Corp. is a financial holding company headquartered in Fairmont, West Virginia. At the end of 2012, MVB acquired a Northern Virginia mortgage company called Potomac Mortgage Group which held locations in Reston, McLean, and Fairfax at that time. To complement the mortgage company acquisition, MVB established a financial service center location in Reston with a strong commercial lending team. We seek to establish a smaller scale version in the Town of Leesburg which would maintain four employees (Commercial Loan Officer, Business Development Officer, and two platform staffers). Our hours of operations would be Monday through Friday 9:00am to 4:00pm.

We have established a successful model in Reston, offering a variety of services with an emphasis on commercial and mortgage lending within the surrounding areas. We believe Leesburg will be an ideal second location to open in Northern Virginia following a similar model focusing on commercial lending opportunities within the boundaries of Leesburg. Most of our opportunities are discussed by pre-arranged appointments and we expect the same will transpire in our Leesburg location. We do provide an ATM at our locations as a convenience to our clients, however we currently experience a low volume of transactions on any given day.

Again, we strongly believe Leesburg is the right next step when considering our expansion in the Northern Virginia market due to the strong commercial companies seeking financial guidance and planning as they grow their companies.

Sincerely,



James R. Nalls
Regional President

Sec. 3.15 Appeals of Proffer Interpretations

3.15.1 Authority

In accordance with Section 15.2-2301 of the Code of Virginia, 1950, as amended, the Town Council shall be authorized to hear and decide appeals where it is alleged there is an error in any decision of the Zoning Administrator or any order, requirement, decision or determination made by an administrative official in the administration or enforcement of approved proffers associated with a zoning map amendment. In this capacity, the Town Council exercises appellate jurisdiction as a quasi-judicial body; its responsibility is to determine the intent of the proffered condition(s) when applied to a particular situation.

3.15.2 Right to Appeal

Appeals of administrative decisions pertaining to proffered conditions may be filed by any zoning applicant or any other person who is aggrieved by a decision of the Zoning Administrator made pursuant to the provisions of Section 15.2-2299 of the Code of Virginia, 1950, as amended.

3.15.3 Application Filing

- A. Appeal applications shall be filed with the Clerk of Council and the Zoning Administrator.
- B. The required application form must be completed and signed by the applicant and property owner.
- C. Appeals shall be filed within thirty (30) days from the date of the decision for which review is sought and shall specify the grounds upon which the petitioner is aggrieved.
- D. Upon receipt of an application, the Clerk of Council shall accept or reject the application within five (5) business days of the date of submission. Upon acceptance, the Clerk of Council shall transmit a copy of the completed application to the Town Council.

3.15.4 Record of Administrative Decision

The zoning administrator shall transmit to the Town Council all papers constituting the record upon which the action appealed is taken.

3.15.5 Public Hearing Notice

The Town Council shall hold a public hearing within thirty (30) days of the date of acceptance of the completed application. Notice of the public hearing shall be provided as required by Section 15.2-2204 of the Code of Virginia, 1950, as amended, and as set forth in Sec. 3.1.9. Any person may appear at the hearing in person or by an attorney at law.

3.15.6 Town Council Review and Decision

- A. The Town Council shall render a decision on the appeal within thirty (30) days of the conclusion of the public hearing.
- B. The Town Council may reverse or affirm wholly or in part or may modify the decision being appealed.

3.15.7 Approval Criteria; Findings of Fact

An appeal shall be sustained only if the Town Council finds that the Zoning Administrator erred. The decision of the Town Council shall be accompanied by specific, written findings of fact and conclusions clearly stating the reason for the decision. The Town Council shall file with the Zoning Administrator its findings with respect to the appeal. The Zoning Administrator shall serve a copy of the decision on the appellant and upon each other person who was a party of record at the hearing.

3.15.8 Appeals

Any person aggrieved by a decision of the Town Council may appeal said decision to the Circuit Court within thirty (30) days from the date of the Council's decision.

ATTACHMENT 3

June 30, 2016



Your Most Valuable Bank

Norman E. Corkhill
Potomac Real Estate Partners, LLC
12700 Sunrise Valley Drive, Suite 102
Reston VA 20191

Kevin Ash
Ellisdale Construction LLC
116 Edwards Ferry Road, Suite E
Leesburg VA 20176

Re: 106 Harrison Street, Leesburg, Virginia

Dear Sirs:

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Sincerely,



James R. Nalls
Regional President

The Town of
**Leesburg,
Virginia**

ATTACHMENT 4

PRESENTED: November 9, 2010

ORDINANCE NO. 2010-O-024

ADOPTED: November 9, 2010

AN ORDINANCE: APPROVING CONCEPT PLAN AND PROFFER AMENDMENT
TLZM-2010-0001 LEESBURG CENTRAL, AMENDING
TLZM-2003-0006, TO ALLOW AN INCREASE IN DENSITY AND
PHASED DEVELOPMENT OF THE PROPERTY

WHEREAS, application has been filed by Sarks Investments Group LLC, for a concept plan and proffer amendment to #TLZM-2003-0006 for Leesburg Central; and

WHEREAS, the "Property" consists of four parcels of land generally located at the southeast quadrant of the intersection of Loudoun and Harrison Street and having the following Loudoun County Parcel identification PIN numbers: 231-39-0411, 231-39-0909, 231-39-0103, and 231-39-0103; and

WHEREAS, a duly advertised Planning Commission public hearing was held on September 16, 2010; and

WHEREAS, at their regular meeting of September 16, 2010, the Planning Commission recommended approval of this application to the Town Council; and

WHEREAS, the Town Council held a duly advertised public hearing on this application on November 9, 2010; and

WHEREAS, staff recommended approval; and

WHEREAS, the Council has concluded that the approval of the application would be in the public interest and in accordance with sound zoning and planning principles.

The Council of the Town of Leesburg in Virginia hereby ordains:

SECTION I. That the Concept Plan and Proffer Amendment TLZM-2010-0001, Leesburg Central, is hereby approved, subject to the proffers dated November 9, 2010.

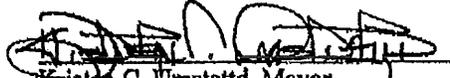
**AN ORDINANCE: APPROVING CONCEPT PLAN AND PROFFER AMENDMENT
TLZM-2010-0001 LEESBURG CENTRAL, AMENDING
TLZM-2003-0006, TO ALLOW AN INCREASE IN DENSITY AND
PHASED DEVELOPMENT OF THE PROPERTY**

SECTION II. All prior ordinances in conflict herewith are hereby repealed.

SECTION III. Severability. If a court of competent jurisdiction declares any provision of this ordinance invalid, the decision shall not affect the validity of the ordinance as a whole or any remaining provisions of the Leesburg Town Code.

SECTION IV. This ordinance shall be effective upon its adoption.

PASSED this 9th day of November 2010.


Kristen C. Umstatt, Mayor
Town of Leesburg

ATTEST:

Clerk of Council

#TLZM 2010-0001 PROFFERS SUBMITTED BY SARKS INVESTMENT GROUP LLC IN CONNECTION WITH APPROVAL BY THE TOWN OF LEESBURG OF LEESBURG CENTRAL

(With revisions to February 27th, 2004)

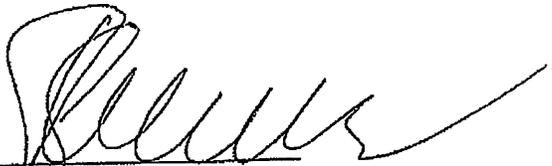
Pursuant to Section 15.2-2303(G) of the Virginia State Code, 1950 as amended and Section 3.3.16 of the Zoning Ordinance of Town of Leesburg, Sarks Investment Group LLC who is the Applicant herein and who is the owner of approximately 0.77 acres of real property described as year 2003 Loudoun County PIN's 231-39-0411, 201 E. Loudoun Street, 231-29-0596 part of 206 Royal Street S.E., 231-29-0797 part of 206 Royal Street S.E. part of 231-39-0909 (203 Loudoun Street), and 231-39-1408 (205 Loudoun Street), the six parcels collectively referred to herein as the "Property", who is seeking approval by the Town of Leesburg (the "Town") of rezoning application #TLZM 2010-0001, hereby submit the following voluntarily proffers which are contingent upon Town approval of said rezoning application.

1. Concept Plan: Development of the property shall be in substantial conformance with the Rezoning Concept Plan prepared by A.S. & R. Consultants (hereinafter referred to as the "Rezoning Concept Plan"), which is attached to these proffers as Exhibit "A" and which shall control the use, layout and configuration of the Property, with reasonable allowance to be made for engineering and design alteration and to meet Town Zoning, subdivision and land development regulations.
2. Bishop House: The 1309 sq-ft existing building known as the Bishop House shall be preserved on the property and used solely for residential purposes. The building shall not have a driveway on Royal Street but shall have access, via a written ingress/egress easement to the common parking lot on the Property and depict on the Rezoning Concept Plan.
3. Retail Façade: The first floor of the 3-story building fronting on Loudoun and Harrison Streets shall exhibit a retail façade treatment in accordance with Historic District Guidelines with ultimate approval of the design by Board of Architectural Review (Subject to Virginia law) as part of its review.
4. Full frontage improvements Harrison/Loudoun Streets: Prior to the issuance of the first Zoning permit for occupancy of Building "1" in Phase "I", full frontage improvements of the property's frontage along Loudoun and Harrison Streets shall be constructed by the property owner at no cost to the Town. Frontage improvements shall be considered to be but not exclusive of the following: curb, gutter, brick sidewalk, street trees, streetlights, and any necessary dedication of public right of way.
5. Full frontage improvements on Royal Street: Prior to the issuance of the first Zoning permits for occupancy of Building "2" in Phase "II", full frontage

improvements of the property's frontage along Royal Street shall be constructed by the property owner at no cost to the Town. Frontage improvements shall consist of the following: Two (2) Nine (9) foot travel lanes with two (2) foot wide gutter pans, with curb on either side; a five (5) foot brick sidewalk on the north side of the street; dedication of an approximately seven (7) foot wide strip of the property along Royal street; street trees, streetlights.

6. Cash Proffer For Offsite Transportation Improvements: Applicant has satisfied the payment of \$20,000.00 in July of 2007 towards the approximately 22000 sq-ft of office space as a contribution toward the future costs of offsite transportation improvements in the Town of Leesburg, and Prior to the issuance of the Certificate of Occupancy for Building "1" in Phase "1" shall pay an additional \$2223.90 (Two Thousand two hundred and twenty three dollars and ninety cents) towards the 2471 sq-ft additional office space, as a contribution toward the future costs of offsite transportation improvements in the Town of Leesburg.
7. Uses Prohibited: Use of the property shall be limited to Office, with the exception of the Bishop House, (see Proffer2), which shall only be used for residential purposes. All other uses shall be prohibited.
8. Required extra parking: A total of 28 off-site parking spaces shall be purchased via fee-in-lieu, per TLZO SECTION 11.4.3 prior to the issuance of the first zoning permit for the occupancy of Building "1" in Phase "1".
9. Required tree replacement: Prior to the issuance of the certificate of occupancy for Building "2" in Phase "II", the owner shall install two replacement trees due to the loss of two public street trees during relocation of existing Dominion Power utility poles and overhead wires. The location of the two replacement trees shall be located along the Harrison Street side of 204 South Street, as approved by the Town's Urban Forester and Department of Public Works. The replacement trees shall be single stem Paperbark Maple, *Acer griseum*.

The Applicant agrees that approval of this rezoning does not express or imply any waiver or modification of the requirements set forth in the subdivision and Land Development Regulations, the Zoning Ordinance, or the Design and Construction Standards Manual, and that final plats development plans and construction drawings for development on the Property are subject to the applicable Town regulations.



Sanjeet S. Veen

On behalf of Sarks Investment Group LLC., as applicant and property owner.

10110 Molecular Dr. Suite 217
Rockville, Md. 20850

The Property Owner's covered under this Rezoning and associated proffers
Consent and Agree to all of the proffers and terms stated herein as evidenced by
their signature hereto:



Sanjeet S. Veen

Date 11/09/2010

Sworn and subscribed before me by Sanjeet S. Veen on the 9th day of
November 2010.



Yvonne Kuehn
Notary Public

Comm. Expires 9/9/2013

Date 11/09/2010

From: Kevin Ash <kash@ellisdaleconstruction.com>

Sent: Thursday, July 28, 2016 12:55 PM

To: David S. Butler; Kelly Burk; Marty Martinez; Katie Sheldon Hammler; Suzanne Fox; Bruce Gemmill; Thomas Dunn, II

Cc: Marantha Edwards

Subject: 106 Harrison

Dear Council Members,

I am reaching out to each of you to see if you could provide me some of your time to discuss an appeal of a proffer interpretation I am seeking on August 9th. I have a 10 year lease agreed to with MVB financial services for the 1400 square foot space at 106 Harrison street first floor. (across from fireworks pizza)

I would like the opportunity to show each of you that MVB financial services is not a "Retail Bank" and that it is an office use. It is owned by a bank in WVa but that its services here in Leesburg and Reston (I have pictures of their Reston office to show the space and how it is used) are no different than Wells Fargo Advisors, who is also owned by a bank but is classified as a Business services occupations (office use) or Merrill Lynch who is classified as a Business services occupations (office use) and many other Financial Advisors here in the town.

A key component in the zoning administrators evaluation that MVB financial services is a retail bank was the request to add an unmanned bank teller machine (ATM). I would like to point out that liberty gas has an ATM and is not licensed as a bank, also Rite Aid has an ATM and is not licensed as a bank, also 7-11 has an ATM and is not licensed as a bank.

With a few minutes of discussion I hope to more clearly define who MVB Financial services is and how their operations work extremely well in 106 Harrison and what a great addition they would be to the town of Leesburg. I know all too well how sensitive parking is to the town and in this area of the town. If the first floor of Leesburg Central was to be Retail use the project is exactly 1 parking space short per Brian Boucher.

Thank you for your consideration and I look forward to meeting with each of you if you can. Otherwise I will see you in the 9th.

Take Care,

Kevin Ash