

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
N/S Martin Boulevard, 60' E of	*	ZONING COMMISSIONER
Windlass Drive		
(1420 Martin Boulevard)	*	OF
15 th Election District	*	BALTIMORE COUNTY
6 th Council District		
	*	
Martin Financial Associates, LLLP & Martin		
Financial Associated Limited Partnership,	*	Case No. 2010-0007-SPHA
<i>Legal Owners</i>		
Kohl's Department Stores, Inc., <i>Contract Lessee</i>	*	
<i>Petitioners</i>		

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Variance or, in the alternative, Special Hearing relief, filed by the Owners of the subject property, Martin Financial Associated Limited Partnership and Martin Financial Associates, LLLP and the Contract Lessee, Kohl's Department Store, Inc. (Petitioners), by their attorney, Charles B. Marek III, Esquire. The Petitioners request a variance from Section 450.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to (i) permit one additional freestanding enterprise sign in a multi-occupant non-residential development, (ii) permit a freestanding enterprise sign with a maximum height of 29 feet in lieu of 25 feet, and (iii) to permit a freestanding sign to have a face with a maximum area of 168 square feet in lieu of the permitted 100 square feet. In the alternative, Petitioners seek Special Hearing relief to permit three freestanding enterprise signs along Martin Boulevard. At the onset of the hearing, a motion was made without objection to amend the variance petition to allow a wall mounted sign, which was shown and marked on Page 2 of Petitioner's *site plan and sign calculations* as having a 239.1 sq. ft. face area to more accurately reflect a total face area (reduction) of 195 sq. ft. in lieu of the

maximum 150 sq. ft. face area permitted. The subject property and requested relief are more fully described on the two-page site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the requests were Eric Borkenhagen, a corporate representative of Kohl's Department Stores, Joshua Sharon and Tom Wolfe of Morris & Ritchie Associates, Inc., the consultants who prepared the site plan and sign package for this property, and Charles B. Marek III, Esquire, attorney for the Petitioners. There were no Protestants or other interested persons present nor were there any adverse Zoning Advisory Committee (ZAC) comments by any of the County reviewing agencies.

Testimony and evidence presented at the hearing revealed that the subject property is Martin's Plaza, a longstanding retail center on the east side of Baltimore County in Middle River. The Property is approximately 25 acres in size and is zoned Business Major (B.M.) with a Community Conservation Core (C.C.C.) overlay. The Property abuts three roads, Martin Boulevard, Middle River Road and Windlass Drive. Although the Property has significant frontage along Martin Boulevard, the entrances to the plaza are located along Middle River Road and Windlass Drive. The retail uses in the plaza include a "Target" as well as several smaller stores and pad sites. There are currently two existing freestanding enterprise signs along Martin Boulevard, a Target sign and the iconic and emblematic Martin's Plaza sign. (*See* Petitioners' photographic Exhibits 2 & 3). There previously existed a Popeye's fast food restaurant with a freestanding enterprise sign along Martin Boulevard; however, this sign has recently been removed.

The Property has been used as the Martin's Plaza retail center since at least the 1950's and is important to the economic revitalization of the area. This is not the first hearing that has

dealt with Martin's Plaza, as I previously had an opportunity to evaluate the site in Case No. 05-103-A. In that prior case, the special economic importance of the plaza was testified to in great detail by Mr. Christopher McCullom of the Baltimore County Department of Economic Development. This importance was demonstrated fiscally when public funds were expended and public lands were utilized for certain stormwater management improvements that serve the shopping center.

In addition to the economic circumstances, the property, from a zoning perspective, can best be described as being an irregular shaped parcel that has significant width, as the tract has over 2,000 linear feet of frontage along Martin Boulevard. In spite of this exposure, there are several factors unique to the property that coalesce to limit visual perception of the plaza and create a practical difficulty for Kohl's. As can be seen from photographic evidence submitted at the hearing,¹ the much trafficked Martin Boulevard is heavily vegetated and considerably limits visual penetration into the center. The proposed Kohl's store itself is set back a distance of 401 feet from Martin Boulevard, further diminishing potential patron's recognition. It was explained that grade changes or topography factor into the uniqueness of the site as well.

Counsel for Petitioners demonstrated that these factors can be seen working together by examining what an average driver would see heading east and/or west along Martin Boulevard. When heading west along Martin Boulevard, the site lines are blocked by a significant grade change from the road (approximately 29 feet of elevation) by a steep embankment on neighboring properties measuring approximately 46 feet in elevation.² Once this hurdle is passed, a location along Martin Boulevard roughly 250 feet from its intersection with Middle

¹ Petitioners' Exhibit 2 is a series of photos displaying the view of a driver headed eastbound along Martin Boulevard. Petitioners' Exhibit 3 is a series of photos displaying the westbound view.

² This is not remedied by the elevation of the property itself, which sits at an elevation of roughly 36 feet.

River Road, the line of site remains blocked by neighboring property obstructions. Therefore, a driver would have to cross over Middle River Road (from which entrance to the center lies) in order to catch a glimpse of the Kohl's Store. When a driver reaches a location where Kohl's is perceivable, a driver would have to look at an angle nearly perpendicular to the road in order to view Kohl's. Driving the other direction, the view of Kohl's is again obscured. After crossing Windlass Drive, there would be a brief view of the Kohl's building from approximately 1,000 feet away, and then the vegetation would obfuscate the building until a driver were near the existing Martin's Plaza sign. At this location an eastbound driver would have to turn their field of vision perpendicularly to the road and into the site, potentially creating dangerous driving conditions. This scenario, according to Mr. Wolfe, is exacerbated by the fact that Martin Boulevard is a high-speed thoroughfare with speeds up to 50 mph, leaving drivers with less time to take their eyes from the road to gander into the plaza.

The legal standards for granting a variance are set forth in *Trinity Assembly of God of Baltimore City v. People's Counsel for Baltimore County*, whereby the Court stated, that it involves essentially two things (1) uniqueness; and (2) practical difficulty. 407 Md. 53, 80, 962 A.2d 404, 420 (2008). For a property to be unique "a property must 'have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.'" *Id.* Practical difficulty is determined itself by looking at several factors including, (i) whether compliance with the strict letter of the restrictions would be unnecessarily burdensome, (ii) whether substantial justice is achieved for other property owners as well as the

applicant, and (iii) whether the spirit and intent of the regulation are observed. *Id.* at 83-84, 962 A.2d at 422.

I find that the uniqueness discussed herein creates a practical difficulty for Kohl's, who will be the second anchor store of an economically important center. Given the existing unique conditions of the site, it will be difficult for patrons to discern that there is a Kohl's store in the plaza. This decreased patronage would negatively impact not only Kohl's, but also the smaller retail uses of the entire center. The relief will alleviate the economic disadvantages, and allow the sign to assist and direct the flow of traffic without causing potential patron's eyes to wander too far from the road. The increased size of the sign will allow drivers more time to react on a high-speed road, and the additional height allows for the Martin's Plaza sign to remain unobstructed.

Likewise, I believe that the variance is in the spirit and intent of the B.C.Z.R. and does substantial justice to the surrounding property owners. The property directly across from Martin's Plaza and the proposed sign location is developed with a significant commercial center of its own and will not be adversely affected by the proposal. Also compelling is the fact that Martin's Plaza has over 2,000 linear feet of frontage and, including the proposed sign, would contain only three freestanding signs (one of which is the iconic and emblematic Martin's Plaza sign). This is not the type of sign proliferation sought to be controlled by the sign regulations. Lastly, due to the removal of the Popeye's freestanding enterprise sign, there is no net increase in signs along Martin Boulevard. I am convinced that allowing the requested variances would alleviate this condition while being both in the public interest as well as the spirit and intent of the B.C.Z.R. I find that the variance should be granted and that the Petitioners satisfy the requirements of Section 307.1 of the B.C.Z.R.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the Petition for Variance, as amended, shall be granted and the Petition for Special Hearing is therefore rendered moot and will be dismissed.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County, this 4th day of November, 2009, that the Petition for Variance seeking relief from Section 450.4 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an additional freestanding enterprise sign to be installed along Martin Boulevard, to permit a freestanding enterprise sign with a maximum height of 29 feet in lieu of the permitted 25 feet, to permit a freestanding enterprise sign to have a face with a maximum area of 168 square feet in lieu of the permitted 100 square feet, and to permit a wall mounted sign of 195 sq. ft. in lieu of the permitted 150 sq. ft., be and is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petition for Special Hearing seeking relief to permit three freestanding enterprise signs along Martin Boulevard in lieu of the approved two under Case No. 05-103-A, be and is hereby DISMISSED AS MOOT.

- The Petitioner(s) is advised that it may apply for any required sign permits and be granted same upon receipt of this Order; however, the Petitioner(s) is hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If for whatever reason, this Order is reversed, Petitioner(s) would be required to return, and be responsible for returning, said property to its original condition.

Any appeal of this Order shall be taken in accordance with Baltimore County Code (B.C.C.) Section 32-3-401.

____SIGNED_____
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County