

<b>IN RE: PETITION FOR VARIANCE</b>	*	BEFORE THE
<b>(10300 Mill Run Circle)</b>		
4th Election District	*	OFFICE OF ADMINISTRATIVE
4 <sup>th</sup> Council District		
Owings Mills Mall, LLC	*	HEARINGS OF
Legal Owner	*	BALTIMORE COUNTY
<b>Petitioner</b>	*	<b>CASE NO: 2021-0114-A</b>
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**OPINION AND ORDER**

This matter comes before the Office of Administrative Hearings (“OAH”) as a Petition for Variance filed by Owings Mills Mall, LLC c/o Kimco Realty Corporation (the “Petitioner”) for the property located at 10300 Mill Run Circle, Owings Mills (the “Property”). The Petitioner is requesting variance relief from the Baltimore County Zoning Regulations (“BCZR”) §450.4 as follows: (1) Attachment 1.5 (A) to permit up to four (4) wall-mounted enterprise signs in lieu of the permitted three (3) such signs on premises (Sign A, Sign B, Sign C and Sign D); (2) Attachment 1.5 (D) to permit one wall-mounted enterprise sign on the rear of a multi-tenant building without a customer entrance (Sign G, Sign H, Sign I and Sign J); and (3) Attachment 1.5 (D) to permit one wall mounted enterprise sign on the side of a multi-tenant building without a customer entrance (Sign K).<sup>1</sup>

Due to the COVID-19 pandemic, a public WebEx hearing was conducted virtually in lieu of an in-person hearing. The Petition was properly advertised and posted. Gregory Reed, Vice President of Construction and Development, and Ryan McCoy, Tenant Coordinator, both with Kimco Realty, appeared in support of the Petition along with Michael J. Gesell, PE of Bohler

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<sup>1</sup> The Petition was amended at the OAH hearing in regard to Variance #3 to correct a typo error and reflect that the side of the multi-tenant building where the sign is needed does not have a customer entrance.

Engineering who prepared and sealed a site plan (the “Site Plan”). (Pet. Ex. 1). Zachary Wilkens, Esquire of Smith Gildea & Schmidt represented the Petitioner. There were no Protestants or interested citizens that appeared at the hearing.

Zoning Advisory Committee (“ZAC”) comments were received from the Department of Planning (“DOP”), Department of Environmental Protection and Sustainability (“DEPS”) and Bureau of Development Plans Review (“DPR”) which agencies did not oppose the requested relief.

The case proceeded by way of modified proffer by Mr. Wilkens. Michael J. Gesell, PE was admitted as an expert in civil engineering, zoning and development in Baltimore County. (Pet. Ex. 6). The Property was the site of the former Owings Mills Mall. It has been redeveloped with various commercial uses within a shopping center, having anchor stores such as Giant, Lowe’s and Costco in addition to various retail stores (the “Shopping Center”). (Pet. Exs. 2A, 2B, 2C). It is 77.65 acres +/- (3,382,497 sf.) is approximately 537,374 sf. and is zoned Business, Major-Commercial Town Center Core District (BM-CT). As reflected on the Site Plan, the Shopping Center is surrounded by Mill Run Circle, a four-lane roadway with several access points onto Red Run Blvd.

Mr. Wilkens explained that the Petitioner is developing two (2) vacant pad sites within the Shopping Center; the smaller pad site is intended for a bank (the “bank building”) and the larger pad site will have four (4) retail stores (the “retail building”). (Pet. Ex. 1, 3J-3L). Mr. Wilkens added that the pad sites are uniquely shaped; the retail pad site is triangular and the bank pad site is a small, irregular shape. While the front of both pad sites face the interior parking lot of the Shopping Center, the rear of the proposed buildings will be entirely visible from Mill Run Circle. (*Id.*).

The bank building is entitled to three (3) wall-mounted enterprise signs but the Petitioner

is requesting an additional sign on the rear (Sign C) in order that motorists can identify the bank. On the retail building, signs will be on the front of each retail store as well as on one (1) side. On that building, the Petitioner is also requesting an additional wall mounted sign on the rear of each individual store (Signs G, H, I, and J) and another one on the side (Sign K). (Pet. Exs. 1, 4). There are no customer entrances on the rear of the retail building and all customer parking is in the front parking lot. As an additional design element on the rear of both buildings, Petitioner is proposing to screen the utilities in order that they are not visible from the road. (Pet. Ex. 5).

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

*Cromwell v. Ward*, 102 Md. App. 691 (1995).

I find that both the pad sites to be developed are unique due to their shapes and sizes. The Site Plan confirms that no other pad sites within the Shopping Center are the same shape or size. The location of the pad sites is also peculiar in that each faces the interior parking lot of the Shopping Center and backs up to Mill Run Circle. As a result, each of the 4 sides of the proposed buildings are visible. I find that the Petitioner would suffer a practical difficulty and unreasonable hardship if the requested variance relief for the signs were not granted because the buildings will not be identifiable from the all visible sides. If the requested signs were not placed on the buildings as indicated on the Site Plan, I find it would be detrimental to the public and cause safety concerns for drivers on Mill Run Circle who are looking for those stores. Given the peculiar location of the pad sites within this Shopping Center, I also find that the requested variance relief can be granted in strict harmony with the spirit and intent of the BCZR and without injury to the health, safety or

general welfare, particularly in light of the lack of opposition.

THEREFORE, IT IS ORDERED, this **12th** day of **July 2021**, by the Administrative Law Judge for Baltimore County, that the Petition for variance relief from the Baltimore County Zoning Regulations (“BCZR”) §450.4 as follows: (1) Attachment 1.5 (A) to permit up to four (4) wall-mounted enterprise signs in lieu of the permitted three (3) such signs on premises (Sign A, Sign B, Sign C and Sign D); (2) Attachment 1.5 (D) to permit one wall-mounted enterprise sign on the rear of a multi-tenant building without a customer entrance (Sign G, Sign H, Sign I and Sign J); and (3) Attachment 1.5 (D) to permit one wall mounted enterprise sign on the side of a multi-tenant building without a customer entrance (Sign K) be, and they are each hereby **GRANTED**.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

2. Petitioner must comply with the DPR ZAC Comment dated June 17, 2021, a copy of which is attached hereto and make a part thereof.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

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Signed \_\_\_\_\_  
MAUREEN E. MURPHY  
Administrative Law Judge  
for Baltimore County

MEM/dlm