

IN RE: PETITIONS FOR SPECIAL HEARING	*	BEFORE THE
AND VARIANCE		
(2399 North Point Boulevard)	*	OFFICE OF
15 th Election District		
7 th Council District	*	ADMINISTRATIVE HEARINGS
North Point Shopping Center, LLC and	*	FOR BALTIMORE COUNTY
Wal-Mart Real Estate Business Trust		
<i>Legal Owners</i>	*	Case No. 2018-0125-SPHA
Petitioners		
* * * * *		

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of North Point Shopping Center, LLC and Wal-Mart Real Estate Business Trust, legal owners (“Petitioners”). The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”) to amend prior zoning and development approvals with respect to the subject property.

In addition, a petition for variance seeks: (1) To permit eight (8) total wall-mounted enterprise signs along the front façade of the existing Wal-Mart store in lieu of the two (2) permitted along a single façade; (2) To permit eight (8) total wall-mounted enterprise signs on the existing Wal-Mart Store in lieu of the three (3) total permitted for a single premises; (3) To permit a second freestanding joint identification sign along the shopping center's North Point Road frontage instead of the one sign permitted along this frontage; and (4) To permit the expansion of an existing Wal-Mart store building that would result in a front yard setback of 44 ft. in lieu of the 143 ft. average front yard setback of adjacent properties. A site plan was marked and accepted into evidence as Petitioners’ Exhibit 1.

Joe Caloggero with The Traffic Group, Chris Carlson and Ray Stubblefield, both with LK Architecture, and Mark S. Stires with Bowman Consulting, appeared in support of the requests. Thomas C. Kleine, Esq. with Troutman Sanders LLP, represented the Petitioners. There were no

protestants or interested citizens in attendance. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (“DOP”) and the Bureau of Development Plans Review (“DPR”). Neither agency opposed the requests.

In this case Wal-Mart proposes to expand the footprint of its store to provide additional retail sales area. The parking area serving the Wal-Mart would be reconfigured, and the adjacent retail strip-center would have its footprint reduced, to accommodate additional parking for the Wal-Mart. The variance requests primarily concern signage for the Wal-Mart, and counsel noted the sign package would be similar to the one recently approved in Case No. 2018-0110-SPHA for the Randallstown Wal-Mart.

SPECIAL HEARING

The special hearing requests are essentially “housekeeping” measures, in that they request prior zoning and development approvals for this property to be amended to reflect the relief granted herein. Such requests are often included at the behest of the Office of Zoning Review; that agency prefers to have an updated site plan for all commercial projects which reflects the current status of improvements on the property. This is a reasonable request, and the petition for special hearing will be granted.

VARIANCES

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).

Former Zoning Commissioner Wiseman found the property to be unique in a prior zoning case (Case No. 2010-0302-SPHA) and that finding is equally applicable in this matter. If the Regulations were strictly interpreted Petitioners would experience a practical difficulty because they would be unable to complete the proposed expansion of the store. Finally, I find that the variance can be granted in harmony with the spirit and intent of the BCZR, and in such manner as to grant relief without injury to the public health, safety and general welfare. This is demonstrated by the lack of Baltimore County and community opposition.

As noted in the DOP’s ZAC comment, there is some confusion concerning the number of proposed wall-mounted signs. The confusion stems from whether the Wal-Mart sign with “spark” logo on the front façade counts as one or two signs, and whether an “Auto Center” sign on the western wall of the building is exempt from the sign regulations. As to the latter issue, former Zoning Commissioner Wiseman recognized the existing auto center sign is not visible from the highway. See Order in Case No. 2010-0302-SPHA, page 5, note 4. As such it is exempt from the sign regulations. BCZR § 450.2.C. As noted in Case No. 2018-0110-SPHA, I believe the Wal-Mart sign and “spark” logo, even though spaced more than 1 ft. apart, should count as one sign. Thus, the front façade of the building would have seven (7) wall-mounted signs in lieu of the permitted three (3) signs for a single premises, as follows:

- Wal-Mart and “spark” = 1
- Subway = 1
- Auto Center (with arrow) = 1
- Grocery = 1
- Pickup and “spark” = 1
- Home and Pharmacy = 1
- Lawn and Garden = 1

THEREFORE, IT IS ORDERED this 30th day of **January, 2018**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations (“BCZR”), to approve a modification of the Development Plan approved in a prior case (Case Nos. XV-688 and 97-354-X) and a site plan approved in Case No. 2010-0302-SPHA, to reflect the relief granted herein, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance: (1) To permit seven (7) total wall-mounted enterprise signs (as shown on the “Proposed Building Signage” exhibit marked and admitted herein as Petitioners’ Exhibit 2) along the front façade of the existing Wal-Mart store in lieu of the two (2) permitted along a single façade; (2) To permit seven (7) total wall-mounted enterprise signs on the existing Wal-Mart Store in lieu of the three (3) total permitted for a single premises; (3) To permit a second freestanding joint identification sign along the shopping center’s North Point Road frontage instead of the one sign permitted along this frontage; and (4) To permit the expansion of an existing Wal-Mart store building that would result in a front yard setback of 44 ft. in lieu of the 143 ft. average front yard setback of adjacent properties, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are 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, Petitioners would be required to return the subject property to its original condition.
2. Petitioners must submit for approval by Baltimore County landscape and lighting plans for the site.
3. Prior to issuance of permits, Petitioners must remove from the premises all temporary signage erected without permit(s) and any shipping containers on the site.

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

Signed
JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw