

<b>IN RE: PETITIONS FOR SPECIAL HEARING</b>	*	BEFORE THE
<b>AND VARIANCE</b>		
W of Perry Hills Court; 126 feet S of the	*	DEPUTY ZONING
c/l of White Marsh Boulevard		
14 <sup>th</sup> Election District	*	COMMISSIONER
6 <sup>th</sup> Councilmanic District		
(8118 Perry Hills Court)	*	FOR BALTIMORE COUNTY
<b>Retail Trust I</b>	*	
<i>Legal Owners</i>		
<b>Wal-Mart Real Estate Business Trust,</b>	*	<b>Case No. 2010-0340-SPHA</b>
<b>Wal-Mart Stores, Inc.</b>		
<i>Lessees</i>	*	

\* \* \* \* \*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This matter comes before this Deputy Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by Thomas C. Kleine, Esquire, on behalf of the legal owners of the subject property, Retail Trust I, and the lessees, Wal-Mart Real Estate Business Trust and Wal-Mart Stores, Inc., hereinafter referred to collectively as “Petitioners.” Petitioners are requesting Special Hearing relief in accordance with Section 500.7 of the Baltimore County Zoning Regulations (“B.C.Z.R.”) to approve an amendment to the site plan and order approved in Case No. CR-90-179. Petitioners are also requesting Variance relief from Section 409.6 of the B.C.Z.R. to permit 722 parking spaces in lieu of the required 764 parking spaces.<sup>1</sup> The subject property and requested relief are more fully described on the site plan that was marked and accepted into evidence as Petitioners’ Exhibit 1.

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<sup>1</sup> The Petition for Variance was originally filed on June 3, 2010 to permit 719 parking spaces in lieu of 776 required; however, as indicated in the letter dated June 16, 2010 from Petitioners’ attorney to the Zoning Review Office which is contained in the case file, plans for the expansion and renovation of the subject Wal-Mart store were amended by Wal-Mart’s engineers and architects, resulting in a reduction in the size of the store expansion and thus resulting in fewer parking spaces required (776 to 764) and more parking spaces provided (722 instead of 719). The instant Petition for Variance dated June 22, 2010 reflects those changes.

Appearing at the requisite public hearing in support of the requested relief on behalf of Petitioners was Thomas C. Kleine, Esquire. Also appearing in support of the requested relief were Joe Caloggero with The Traffic Group and Mike Birkland with Bowman Consulting, the engineering firm that prepared the site plan. There were no Protestants or other interested citizens in attendance.

Testimony and evidence offered revealed that the subject property is irregularly shaped and consists of approximately 15.54 acres, more or less, zoned B.R. The property is located on the south side of White Marsh Boulevard (MD Route 43) at the southwest intersection of White Marsh Boulevard and Perry Hills Court, in the White Marsh area of Baltimore County. Access to the property is via the aforementioned intersection at the southern terminus of Perry Hills Court. The subject property is bordered to the south by a residential area zoned D.R. 5.5, to the west by the Apple Hill Apartment complex zoned D.R.16, and to the east by a storage facility zoned B.M. The property is improved with an existing Wal-Mart Store consisting of 136,084 square feet that was built in 1994 according the Real Property Data Search record contained in the case file. The existing parking plan provides for 715 spaces with a 5.25 spaces per 1,000 square feet ratio.

In the instant matter, Petitioners propose to renovate and expand the existing Wal-Mart store at the subject location in order to offer customers grocery and delicatessen services. This plan is in keeping with Wal-Mart's corporate strategy of building new "super" stores with these food products and services in addition to Wal-Mart's customary offerings, and of renovating and expanding its older stores where possible to include food products and services. In order to implement this plan at the subject site, Petitioner's attorney, Mr. Kleine, proffered that additional space at the back of the store is necessary for storage and warehousing, as well as some added

retail space. The planned building expansion would occur primarily at the rear of the primary structure at the southwest corner of the property, consisting of approximately 16,708 square feet. As indicated above, the proposed expansion is part of a comprehensive plan by Wal-Mart Stores, Inc. to update its older store locations across the nation. The updates at the subject location include adding grocery and delicatessen services, sprucing up the building's exterior with new paint and renovating the interior. In order to follow through with its plans, Petitioners require variance relief from the applicable parking Regulations so as to permit 722 parking spaces in lieu of the required 764 spaces. Moreover, in order to update and incorporate prior zoning approvals, Petitioners seek special hearing relief to amend the site plan and order approved in Case No. CR-90-170.

In support of the requested variance relief, Mr. Kleine explained that the site has many topographical peculiarities that render strict compliance with the parking regulations problematic. He noted the extremely steep grade of the property, which begins at Perry Hills Court and is accentuated by the massive retaining walls that at points exceed the height of the principal structure. A site grading and improvement plan was marked and accepted into evidence as Petitioners' Exhibit 5, depicting the extremely sharp slopes that surround the property. Michael Birkland, a professional engineer with Bowman Consulting Group, Ltd., the land use development firm that drafted the site plan for the subject property, stated that the sharp, steep grading of the site makes creating additional parking almost impossible and certainly impractical. Mr. Birkland's resume was marked and accepted into evidence as Petitioner's Exhibit 2. Photographs of the subject property showing the unique topography and the extensive retaining walls were marked and accepted into evidence as Petitioner's Exhibits 6A through 6F.

Further testimony was received from Joseph Caloggero, a professional traffic engineer with The Traffic Group, Inc. His resume was marked and accepted into evidence as Petitioners' Exhibit 3. His testimony focused on the impact the deficiency in parking would have on the interior and exterior of the property, and was based on the parking analysis marked and accepted into evidence as Petitioners' Exhibit 4. This included a parking comparison of similar stores in the Frederick, Aberdeen, and Ellicott City areas. In sum, Mr. Caloggero stated that the proposed parking configuration would adequately serve the site with minimal adverse impact. Petitioners' proposal calls for 722 parking spaces for the site, creating a ratio of 4.73 parking spaces per 1,000 square feet of gross floor area. Mr. Caloggero explained that the comparison conducted at the Frederick, Aberdeen, and Ellicott City Wal-Mart stores indicate that, at the most, there was an actual parking ratio of 2.82 spaces per 1,000 square feet of gross floor area during a peak Saturday. He opined that upon considering these studies it is apparent that the proposed ratio of 4.73 parking spaces per 1,000 square feet of gross floor area, while falling short of the 5 spaces per 1,000 square feet required, would nonetheless provide ample parking for customers even during the busiest hours. Mr. Caloggero added that a study titled "Evaluating Parking Demand and City Minimum Parking Requirements in College Station, Texas" found that a 3.0 spaces per 1,000 square feet of gross floor area parking ratio would be adequate even for the Christmas or Thanksgiving shopping seasons. Mr. Kleine added that not only would the slight parking deficiency be adequate for the site, but would also not cause a detriment to the surrounding community. He cited to the minimal visibility of the subject site due to the existence of a significant tree buffer and its height far above White Marsh Boulevard, thereby limiting observation of the sight from the roads and surrounding properties. Mr. Kleine concluded his

case by remarking that the related special hearing request is made merely to update the paper trail as to the previously approved zoning matters.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments received from the Office of Planning dated June 22, 2010 indicate that a landscape plan and enhanced screening should be provided for the revised loading area and rear addition and request upgrading the existing landscaping to conform with the approved landscape plan replacing any dead, dying or missing plant material. No other negative comments were received from County agencies.

The determination of a variance request from the Zoning Regulations is governed by Section 307.1 of the B.C.Z.R., as interpreted by the Court of Special Appeals of Maryland in *Cromwell v. Ward*, 102 Md. App. 691 (1995). The two-part variance test involves a determination of whether a property is unique and unusual and that if strict adherence to the regulations were required absent relief, an unreasonable hardship or practical difficulty would result. Self-inflicted or created hardship is not considered proper grounds for a variance. *Id.* at 707.

Based upon the testimony and evidence presented, I am persuaded to grant the request for variance relief. There is adequate evidence that the subject property is peculiar, unusual and unique in accordance with Section 307.1 of the B.C.Z.R. Factors such as environmental conditions, topography and lot configuration are indicators of a unique property. Further, a property owner has a common law right to use his property in a manner so as to realize its highest and best use. *See, Aspen Hill Venture v. Montgomery County Council*, 265 Md. 303 (1972). In the instant matter, I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Specifically, I find that the

steep grade of the property, extensive retaining walls and other topographical peculiarities resulting from the subject property's location combine to render the property unique in a zoning sense. Further, I find that strict compliance with the Zoning Regulations would create a hardship that would result in a denial of a reasonable and sufficient use of the property. *See, Belvoir Farms v. North* 355 Md. 259 (1999). Thus, refusing to grant the variance would result in unreasonable hardship and practical difficulty. Moreover, the parking analysis and the testimony of Petitioners' traffic and parking expert, Mr. Caloggero, indicate that the slight deficiency in parking spaces will still provide ample parking accommodations for the subject site. While a ratio of 4.73 parking spaces per 1,000 square feet of gross floor area is not in strict compliance with the Zoning Regulations, I am convinced that there will be only minimal, if any, adverse consequences as a result of this deficiency. Further, the significant tree buffer area provides screening from surrounding properties, thereby mitigating any detrimental effects the proposed expansion and parking plan may create. Accordingly, I also find this variance request can be granted in strict harmony with the spirit and intent of the Zoning Regulations, and in such a manner as to grant relief without injury to the public health, safety and general welfare. Moreover, I find that granting the special hearing relief to update and amend the previous site plan and order approved in Case No. CR-90-179 is appropriate and reasonable.

Pursuant to the advertisement, posting of the property and public hearing held, and after considering the testimony and evidence offered, I find that Petitioners' special hearing and variance requests should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 12<sup>th</sup> day of August, 2010 that Petitioners' Special Hearing request in accordance with Section 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve an

amendment to the site plan and order approved in Case No. CR-90-179 be and is hereby **GRANTED**; and

IT IS FURTHER ORDERED that Petitioners' Variance request from Section 409.6 of the B.C.Z.R. to permit 722 parking spaces in lieu of the required 764 parking spaces be and is hereby **GRANTED**.

The relief granted herein is subject to the following conditions:

1. Petitioners are advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioners are 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, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. As recommended by the Office of Planning, a landscape plan and enhanced screening shall be provided for the revised loading area and rear addition and Petitioner shall upgrade the existing landscaping to conform with the approved landscape plan by replacing any dead, dying or missing plant material.

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

\_\_\_\_SIGNED\_\_\_\_\_  
THOMAS H. BOSTWICK  
Deputy Zoning Commissioner  
for Baltimore County

THB:pz