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| IN RE: PETITIONS FOR SPECIAL HEARING * | BEFORE THE |
| AND VARIANCE | |
| S/S North Point Boulevard (MD Rte. 151) * | ZONING COMMISSIONER |
| 2,080' SE of c/line of Merrittt Boulevard | |
| (MD Rte. 157) * | OF |
| (2399 North Point Boulevard) | |
| | BALTIMORE COUNTY |
| 15 th Election District | |
| 7 th Council District * | |
| Wal-Mart Real Estate Business Trust | |
| (Store No. 2435) * | Case No. 2010-0302-SPHA |
| <i>Petitioner</i> | |

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the Petitioner, Wal-Mart Real Estate Business Trust (Wal-Mart), through its real estate design manager, Debbie Campbell, and Corporate Counsel Thomas C. Kleine, Esquire with Troutman Sanders, LLP. The Petitions were also signed by the adjacent property owner’s managing member William Fleischer on behalf of the North Point Shopping Center, LLC. Wal-Mart, pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), requests a special hearing for an interpretation as to whether its store will be considered a single or multi-tenant commercial building under the Zoning Regulations. This interpretation is necessary because the Petitioner currently leases space within the store building to a “Subway” restaurant (though Subway does not, and is not proposed to have any signage on the façade of the building). Following the above determination, variance relief is requested from B.C.Z.R. Section 450.4 to permit the following: **(a)** three (3) total wall-mounted enterprise signs along the front façade of the store, in lieu of the two (2) permitted along a single façade (if the store is considered a single-tenant commercial building), or the one (1) permitted (if the store is considered a multi-tenant commercial building); **(b)** if the store is considered a single-tenant

commercial building, a “Walmart” wall-mounted enterprise sign that is 158.39 square feet in area, instead of the 150 square feet permitted, (c) a freestanding enterprise sign 30 feet in height, in lieu of the 25 feet permitted, (d) a freestanding enterprise sign that identifies only one (1) commercial establishment in a shopping center, in lieu of the permitted joint identification sign that identifies multiple commercial establishments in a shopping center, (e) a freestanding enterprise sign containing 80 square feet in area, which is in addition to three (3) other existing freestanding signs serving other establishments in the shopping center that together exceed 150 square feet in area, in lieu of the 150 square feet of freestanding signage that is permitted for a shopping center, and (f) a second freestanding enterprise sign along the shopping center’s North Point Boulevard frontage, instead of the one (1) sign permitted along this frontage (there is an existing joint identification sign located at the main shopping center entrance along North Point Boulevard). The subject property and requested relief are more particularly described on the site plan and colorized sign package elevations, which were submitted into evidence and marked as Petitioner’s Exhibits 1 and 2 respectively.

Appearing at the requisite public hearing in support of the requests were Michael J. Birkland, licensed professional engineer with Bowman Consulting Group, Ltd., the firm responsible for the preparation of the site plan filed in this case and Thomas Kleine, Esquire, attorney for the Petitioner. There were no Protestants or other interested persons present.

An appreciation of the property’s past history and use is relevant and is briefly outlined. Wal-Mart has owned the property (8.68 acres, split-zoned B.L. [Business, Local] and B.L.-A.S. [Business, Local - Automotive Services District] since 1998¹. It has operated its approximate 140,000 square foot one-story retail store/Store No. 2435) in Dundalk at 2399 North Point

¹ This property is identified on Maryland Tax Map 96, Grid 24 as Parcels 230, 246, 248, 178, and 247, and is adjacent to Parcel Nos. 115, 116 and 120, and, if combined, form some 34.49 acres that are often referred to as the North Point Shopping Center premises.

Boulevard since that time. Wal-Mart had filed a request for development plan approval and a petition for special hearing in Case Nos. XV-688 & 97-354-X and obtained approval to do so on May 28, 1997 by then Zoning Commissioner Lawrence E. Schmidt. Specifically, he allowed the Wal-Mart store and service garage to operate as a “single business” as part of the North Point Plaza Shopping Center redevelopment.² Thereafter, Wal-Mart razed houses as well as an old movie theatre building and built its proposed store on the western side of the center. Vehicular access to the site was, and remains today, by way of two (2) arterial roads. To the north from Interstate 695 via North Point Boulevard, a major roadway in eastern Baltimore County. On the other side of the tract, to the south, the property abuts on North Point Road. As shown on Petitioner’s Exhibit 1, there were and still exist two (2) buildings on the North Point Shopping Center, LLC property known as 2317 and 2401 North Point Boulevard. The strip center at 2317 accommodates the following: Citifinancial, Bally’s (fitness center), ALDI (grocery store), Caldarazzo’s Pizzeria, Rent-A-Center, Equitable Trust Mortgage Corporation and Dollar Tree. The building at 2401 contains the North Point Flea Market and Green Room Billiards. In any event, it should be noted that the Wal-Mart store at this location has been a successful endeavor employing approximately 328 employees with sales revenue equal to or exceeding other larger Wal-Mart “super stores” in this region of the County. The store’s existing signage (372.22 square feet) approved under the old sign regulations and their locations are shown on the Harrison French Associates (HFA) sign package submittal (Petitioner’s Exhibit 2).

Wal-Mart has now totally renovated its Store No. 2435 both inside and out and comes before me for approval of its new signage that its architects and engineers believe will more closely reflect the spirit and intent of the current (B.C.Z.R. Section 450.4) regulations. Mr.

² The Order(s) of May 28, 1997 became final upon the Board of Appeals dismissal of an appeal filed by The Miller Family Limited Partnership on August 19, 1999 (*See* County Board of Appeals Case No. CBA-97-120). This creates a presumption of correctness as to Wal-Mart’s being a single business facility in the shopping center.

Kleine presented persuasive testimony and evidence that the new signage (249.97 square feet) will be compatible with this commercial corridor, reduce clutter and decrease existing signage by some 122 square feet. *See* Petitioner's Exhibit 2 – Sign Elevations.

Before applying a strict interpretation of the current Baltimore County's sign regulations via-a-vis this type of large retail store, it is necessary to consider the features of this commercial building, the uses taking place within, the components of a structure this size, customer access points and the retail services offered within. It is apparent that this Wal-Mart store and other large retail box stores represent a departure from the configuration of other retail centers found in Baltimore County, which have traditionally contained smaller store fronts each having an exterior entrance and therefore entitled to their own separate wall-mounted signs. In other words, the interpretation issues presented by way of the special hearing (multi or single tenant) requires an examination of the words contained in the regulations, the definitions provided, and facts and circumstances that are peculiar to this type of structure.

As is often the case with cases presenting difficult legal issues, the relevant facts are relatively simple and not in dispute. As noted above, Wal-Mart owns the subject property at 2399 North Point Boulevard consisting of 8.68 acres of area upon which its commercial building is built.³ Therefore, no lease agreement exists between Wal-Mart and a third party property owner. As illustrated on the site plan, there is only one (1) exterior customer entrance to the building. There is but one lease or tenant within the Wal-Mart store building – Subway – that provides restaurant services. It is clear that the space occupied by Subway does not share a common wall with any of the other Wal-Mart uses conducted in the building. Subway does not have nor is it proposed that they will have any signage on the building's façade. These factors

³ A small portion of the Wal-Mart store encroaches onto an adjacent parcel owned by North Point Shopping Center, LLC (which is also a party to this application) and is governed by a reciprocal easement agreement.

render a finding that this store is a single-tenant commercial building and therefore entitled to the signage set forth in the Table of Sign Regulations – Chart Attachment 1 of B.C.Z.R. Section 450.4. *See* particularly 450.4.1.5(a) - Wall-Mounted and 450.4.1.5(b) - Freestanding. In my view, this interpretation will not be detrimental to the health, safety or general welfare of the locale.

As to the zoning variances outlined above, two (2) relate to wall-mounted signs proposed on the building's front facade.⁴ The other four (4) relate to the reconfigured freestanding enterprise sign identifying Wal-Mart's establishment and located in the northwest corner on the south side of North Point Boulevard – (MD. Rte. 151) adjacent to I-695. This pylon sign is 30 feet high with a 4' x 20' (80 square feet) illuminated cabinet at the top that provides needed visibility, especially from I-695, to assist individuals interested in coming to the property. This sign has existed at this location for more than a decade and is at a height that protrudes over the top of the mature trees covering this portion of the site. Wal-Mart has freshened up the wording and current brand logo in conformity with its 2009 updated signage package. *See* Petitioner's Exhibit 2, Page 2. These final requests [(c) through (f)] recognize the need to bring the Wal-Mart store's existing freestanding signage into conformance with current B.C.Z.R. Section 450 standards. Several of North Point Shopping Center's signs were permitted or varianced under B.C.Z.R. Section 413 prior to October 19, 1977. The Office of Planning, in its Zoning Advisory Committee (ZAC) comment dated June 22, 2010, supports the sign variance requests and further indicates a desire that any future development of the larger site to be more pedestrian friendly

⁴ Wal-Mart requests three (3) wall-mounted signs on the front (southern) façade in lieu of the two (2) permitted. One sign is the word "Walmart" that is 5'-6⁷/₈" tall x 28'-7¹/₂" long (158.39 square feet); the second is a brand logo resembling a "yellow spark" - 7'-1¹/₂" x 8' (57 square feet). These two (2) signs will be placed over the main entrance doorways. The third sign is actually on the building's western wall behind the outside live goods display area. This is in the area of the Auto Center and the words "Tire & Lube" - 2' x 13'-6⁷/₈" (27.10 square feet) will be placed over the three (3) garage bay doors. This third sign for the auto center signage is arguably not currently visible from any "highway". It would therefore be exempt from the requirements of B.C.Z.R. Section 450. *See* 450.2.C – Exemptions.

and incorporate a mixed design of buildings “up to 5 stories in height”. It was obvious that the Office of Planning views the Wal-Mart store as part of the shopping center. This position is no doubt supported by the shared parking arrangement used on the center’s premises.

The legal standards for granting a sign 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.

Counsel for Petitioner discussed the three (3) wall-mounted signs proposed in addition to the existing, freestanding sign, which was approved but will become nonconforming and subject to the abatement provisions of B.C.Z.R. Section 450.8.D in 2012. In keeping with Wal-Mart’s 46-year history, the company’s architects freshen up signage packages and logos periodically. The “Walmart” and “spark” have been redesigned for this site in keeping with the new 2009 standards. In fact, as set forth above, there will be a reduction in sign clutter and a decrease of 122 square feet of signage from what previously existed at this location. Moreover, if the distance between the “Walmart lettering” and the new logo “spark” would have been less than 1’

rather than the 1'-6" as shown, than the entire signage would be counted as one (1) sign rather than two (2). The testimony further indicated that for proper identification of the store on this property and in connection with on-site vehicular circulation and surrounding off-site traffic patterns, the signage requested is necessary. A strict interpretation of the Zoning Regulations would allow only two (2) wall-mounted signs for the entire building which would make it difficult for Wal-Mart to identify its commercial use on its public road frontages and the surrounding vehicle access drives. To the north is North Point Boulevard and I-695 and to the south is North Point Road. The building sign variance relief pertains to a wall-mounted sign or a third sign for Wal-Mart's tire & lube operation (which arguably cannot be seen from the public road) and an additional 8.39 square feet of sign space in addition to the 150 square feet allowed that is needed to complete the word "Walmart" as designed by the architect. In my opinion, the Zoning Regulations did not take into account this type of large retail store and I find that these signs are not out of scale given their size and location on the property.

Likewise, I believe a variance for the freestanding pylon sign at a height of 30 feet is necessary. This height allows a driver to catch a glimpse of the Wal-Mart store location from I-695 and have time to safely cross over the three (3) lanes of traffic on North Point Boulevard to enter the site. The sign's square footage has been reduced by removing the "pill box" structure that used to say "Pharmacy-Optical". As shown on photographs, the five (5) feet of additional height is justifiable due to the mature trees that grow around the base and in the area of the sign that would have to be removed. *See, McLean v. Soley*, 270 Md. 208 (1973) - trees contribute to the greater public benefit and should be preserved. In this regard, the sign is not a detriment to the area and can't be seen by the closest neighbors residing some distance away on the south side of North Point Road. There is no increase in signs (or proliferation) along either North Point

Boulevard or North Point Road. I am convinced that allowing the requested variances would be in the public interest as well as within the spirit and intent of the controls and policies of the sign regulations. The Petitioner has satisfied the requirements of B.C.Z.R. Section 307.1.

Pursuant to the advertisement, posting of the property and public hearing on these Petitions held, and for the reasons set forth above, the existing store has been determined to be a single commercial building, and the variances shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 21st day of July 2010 that the Petition for Special Hearing requesting an interpretation as to whether the store located at 2399 North Point Boulevard is considered a single or multi-tenant commercial building, has, after consideration of the testimony and evidence offered, been adjudicated to be a single tenant commercial building; and

IT IS FURTHER ORDERED that the Petition for Variance, seeking relief from Sections 450.4.1.5(a) and 450.4.1.5(b) of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit: **(a)** three (3) total wall-mounted enterprise signs along the front façade of the store, in lieu of the two (2) permitted along a single facade; **(b)** a “Walmart” wall-mounted enterprise sign that is 158.39 square feet in area, instead of the 150 square feet permitted; **(c)** a freestanding enterprise sign 30 feet in height, in lieu of the 25 feet permitted; **(d)** a freestanding enterprise sign that identifies only one (1) commercial establishment in a shopping center, in lieu of the permitted joint identification sign that identifies multiple commercial establishments in a shopping center; **(e)** a freestanding enterprise sign containing 80 square feet in area, which is in addition to three (3) other existing freestanding signs serving other establishments in the shopping center that together exceed 150 square feet in area, in lieu of the 150 square feet of freestanding signage that is permitted for a shopping center, and **(f)** a second freestanding enterprise sign along the

shopping center's North Point Boulevard frontage, instead of the one (1) sign permitted along this frontage, in accordance with Petitioner's Exhibits 1 and 2, be and is hereby GRANTED, subject to the following restrictions:

1. 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.
2. No sub-tenant shall be allowed exterior wall signage without a public hearing and the granting of a variance to do so.

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

WJW:dlw

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