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Office of Zoning Administration
Neil M. Ridgely
Zoning Administrator

Notice of Decision

Case # ZA-969
Permit # 05-3663

Variance Request: For a variance from the required minimum parking ratio of 5.5 for every 1,000 square feet of floor area to a ratio of 4.4 for every 1,000 square feet of floor area to allow for the expansion of the existing Wal Mart store at 2212 Brodbeck Rd, Hampstead, MD in Election District 08, by HM Mall Associates, LP.

Basis for Variance: § 103-24 and § 223-181 of the Carroll County Code of Public Local Laws and Ordinances.

Decision: Denied

Basis for Decision:

In making this determination, the Zoning Administrator finds that the following criteria provided in Section 223-191 of the Carroll County Code that:

- There would be a detrimental effect on the people working or residing in the area.
- There would be a negative impact on the orderly growth of the community.
- That such substantial relief of the parking requirements in § 130-24 of the Carroll County Code to the number of parking spaces requested would have a negative effect on traffic within the Planned Business Center.
- That the requested reduction in parking spaces is incompatible with the parking demands of a Planned Business Center.
- That the requested reduction in parking spaces in not in the best interestof public convenience and necessity.

Appearing before the Zoning Administrator as applicants were Mr. Charles Garcia of Freeland & Kauffman, engineers and architects, and Mr. Glenn Weinberg of HM Mall Associates.
The Hampstead Wal Mart store is located within the North Carroll Plaza Planned Business Center, a strip shopping center which has seen many changes over the past 30 years to its tenants and building facades, most recently with the addition of the Wal Mart store and a pad site development allowing for a fast food restaurant franchise.

The existing Wal Mart store is 103,072 square feet in size. Expansion of the store to a super center with grocery store would increase the floor area by 89,744 square feet to a total of 192, 816 square feet. The existing store is successful and the parking area for the centeris fully engaged during peak shopping seasons, save the North end of the Center where a former Ames store is currently vacant (it is currently being converted to a senior center). Additionally, the Wal Mart store occasionally utilizes some of its parking lot for shipping containers that essentially warehouse merchandise.

Initially, the developer provided a parking tabulation which indicated a "gross floor area" and a "sales floor area" to reconcile the parking tabulations; however, § 103-24 of the County Code does not recognize the "sales floor" terminology, specifying only "gross floor area". Itis important to note that the Planned Business Center distinction is used by Carroll County Government to

allow for a significant reduction in parking area required in calculating space requirements for each retail store and restaurant. This allowance is based on the assumption that the public will utilize only one parking space while visiting more than one business in the center. Therefore, the cumulative parking count is important to the overall operation of the center as one unit. For example, the public visiting the Wal Mart site may park in a space close to that store but leave their car there while dining at the Burger King or stopping by the pet store.

The Wal Mart expansion within the Planned Business center increases the overall parking requirement to 1,599. The Site Plan provides only 1,252 spaces, a deficit of 347 spaces from the requirement. A review of the plan indicates that more than a dozen of the spaces indicated among that 1,252 are of dubious practical use as they are shown in delivery areas and with turn ratios which would be difficult for drivers to navigate.

The applicants explained that HM Mall purchased the property with a future expansion of the Wal Mart in mind, though perhaps not of this size. The applicants testified that a county employee explained to them at the time they decided to expand the Wal Mart that the parking was based on the "net" square footage, which excluded storage areas, utility rooms etc. Using the "net" interpretation they submitted a site plan indicating the 1,252 spaces.

In my capacity as Zoning Administrator, after a review of the Site Plan, I informed Wal Mart, the engineer, and the developer on September 30, 2005 that they would have to meet the full parking requirement for Planned Business Centers as specified in the Carroll County Code. Hence the application for a variance.

Mr. Steve Nelson from the Bureau of Environment and Resource Protection telephoned me prior to the hearing to inform me he supported the variance as he felt it would decrease the amount of impervious surface on site and hence may result in less stormwater runoff into streams. Mr. Kenneth Bull, 2231 Hanover Pike, Hampstead MD, attended the hearing but basically wanted to address the developer about concerns he had with tractor trailers parking on the shopping center lot overnight; he did not oppose the variance. Mr. Brian O'Malley, a planner in the Bureau of Comprehensive Planning, spoke with me in opposition to the variance prior to the hearing; he believes that the full parking allowance for 1,599 spaces will be necessary and that a two story parking deck could be provided to provide the additional spaces if necessary.

The developer stated that Wal Mart may withdraw from the site altogether if they are not granted the variance or forced to provide the full amount of parking required by the County Code. The developer stated that a parking deck was not viable because the cost per space provided would run between $12,000 and $15,000 each.

The basis for variance decisions is found in Maryland case law in Cromwell v. Ward, Md. App. 691, 651 A.2d 424 (1995). The first step is a finding the subject property is in, and of itself, unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately. I do not believe the arguments made by the applicants on uniqueness to be persuasive. The site does not differ from constraints any more or less than the majority of Planned Business Center sites in the County. The biggest constraints are the amount of area needed to handle septage and the very size of the property itself. All business centers have to dedicate area to water and septic requirements – this site is at least served by municipal water rather than wells. Any business site has to limit its structures and uses to work within the confines of its boundaries. "Uniqueness" of a property for zoning purposes requires that the subject property have inherent characteristics not shared with other properties. *If indeed* the planned expansion just does not fit on the site, then it is a blivit – an attempt to put too much structure where there is too little land to support it.

Although the rule is such that if a finding in favor on the first step is not reached, the second step, one of determining whether an unreasonable hardship would result from a disproportionate

impact of the ordinance. It is not required but I wish to address the second prong as well.

The threat that a retailer would withdraw from the market area or not complete an expansion on a site which is proven profitable to it does not make a case for an unreasonable hardship. The Wal Mart store has been well received by Carroll County residents and I have no doubt that when the expansion / grocery store is built they will increase their patronage of the store. The developer purchased the property knowing full well it is recognized as a Planned Business Center by County standards and then immediately moved to utilize that designation when it constructed the Wal Mart and Burger King. The hardship, if any exists, is self-inflicted by the developers desire to expand the size of the major tenant's structure while side-stepping the parking requirements. Some concession can be made to achieve both the parking requirement and the 90,0000 square foot expansion by either adding a story to the original building, providing a parking deck or reducing the size of the expansion. None of those choices are foreign in such circumstances elsewhere in the State.

In summary, if the variance request were for but a few parking spaces, it may have received more consideration, but a reduction of over 300 parking spaces would likely have a very negative impact on the overall Planned Business Center, its tenants and the public. By no means can the basic criteria for a variance be stretched so far as to overcome the requirements in §103-24 of the Carroll County Code.

15 December 2005

Neil M. Ridgely
Zoning Administrator

Per Section 223-182 or the Carroll County Code of Public Local Laws and Ordinances, appeals of this decision must be made within 30 days of the date of the decision to the Board of Zoning Appeals pursuant to Section 223-188 of the Carroll County Code. Unless timely appealed, parties may not thereafter contest the Zoning Administrator's decision.