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Office of Zoning Administration
Joe Varrone
Acting Zoning Administrator

Notice of Decision

Case # ZA-994
Permit # 06-0315

Variance Request: For a variance from the minimum required number of parking spaces required for expansion of the Wal-Mart store at 2212 Brodbeck Road, Hampstead, MD, in Election District 08. The property owner is HM Mall Associates, and the applicant is Wal-Mart Real Estate Business Trust.

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

Decision: Granted

Basis for Decision: In making this determination, I find the following criteria provided in Section 223-191 of the Carroll County Code are applicable, and that:

- Traffic conditions and facilities would not be negatively impacted.
- The proposed expansion is in accordance with the orderly growth of the community.

The applicants were represented at the hearing by Isaac Menasche. Testifying on behalf of the applicants, HM Mall Associates, were Glenn Weinberg, Charles Garcia, an engineer, and Brandon Nevers, a traffic engineer.

The applicant seeks a variance from the minimum number of required parking spaces for an expansion project. To grant the variance the applicant must prove two things:

1. The unusual physical characteristics of the property at the time of the enactment would result in exceptional hardship; and
2. The hardship was not due to the personal circumstances of the property owner.

While not set forth in its application, the applicant presented a second argument at the hearing, specifically, that the requested variance was not required. The primary basis for this argument appears to be the reliance upon a former County employee's representation that the County used a different calculation than the one set forth in § 103-24. The applicant submitted an affidavit from Mr. Stephen A. Ford, who served as the Development Review Supervisor until June 3, 2005, and attached emails between Mr. Ford and Mr. Charles Garcia, a civil engineer working on the Wal-Mart expansion, regarding the parking requirements. The affidavit and emails indicate that Mr. Ford advised the applicant that 5.5 spaces were required for each 1,000 square feet of net retail space. However, § 103-24 requires that planned business centers require 5.5 parking spaces for every 1,000 square feet of floor area.

I disagree with the applicant's argument and find that a variance is required in this case. Additionally, I am troubled by the submittal of Mr. Ford's affidavit, as it could be viewed a violation of § 18-8 of Carroll County's Ethics Code. Specifically, § 18-8H states, "Carroll County officials and employees will not: use or disclose confidential information acquired in the their

official County position for their own benefit or that of another. This prohibition also applies to a former employee or official."

In support of the variance request, the applicant submitted nine exhibits, and provided testimony from Mr. Brandon Nevers, Mr. Garcia and Mr. Glenn Weinberg. Some of the exhibits included maps, parking lot photographs, aerial photographs, a parking lot survey, and written correspondence. Mr. Weinberg, who manages the center, provided some history regarding the current location. Mr. Weinberg testified that the County insisted that Brodbeck Road be relocated to its current location. He said he had not been in favor of this road relocation, but the County was adamant, and gave him a small amount of money as compensation, then required him to construct the road. Mr. Weinberg stated that the shopping center also gave the Town of Hampstead land to place a water tank to serve the Town and access to the tank.

As a direct result of the relocation of Brodbeck Road and the provision of land to Hampstead for its water tank, the applicant lost land that otherwise may have been used as parking. Mr. Weinberg stated that had he known of the need for a future variance at the time of the road relocation, the applicant would have put up a stronger fight against it, and the applicant would also not have given land to Hampstead.

Mr. Garcia testified regarding the number of required spaces needed and provided 2 separate calculations: one based upon Mr. Ford's emails; and one based upon § 103-24. If the former was used a variance was not needed, whereas the latter required a variance. The proposed expansion would provide 1252 spaces, which is approximately 307 short of the required spaces required under § 103-24. The location presently has 1038 spaces.

Mr. Nevers, P.E., P.T.O.E. of Kittleson & Associates, Inc., testified regarding the results of a parking study he performed at the Hampstead Wal-Mart location in February 2006. The purpose of the study was to determine the peak parking demand for that store based on current conditions and the proposed expansion. Mr. Nevers indicated his estimates were based upon industry standards (see the Institute of Transportation Engineers publication *Parking Generation, 3rd Edition*). Mr. Nevers testified regarding the current parking situation at the shopping center and a parking utilization study he completed for this project. He stated that on average, only 44% of the shopping centers' parking spaces are utilized during peak hours, and during the holiday (December), this percentage only increased to 62%. Mr. Nevers testified that if the proposed expansion is approved that on the busiest hour of the busiest day of the year, the parking lot will only utilize 81% of the proposed 1252 spaces. Mr. Nevers stated that his projection probably overestimates the amount of new parking spaces needed.

In deciding this case the Acting Zoning Administrator has focused on the guidelines offered in the decision in Cromwell v. Ward, *102 MD. App. 691, 651 A.2d 424 (1995).* This case provides the fundamental case law on the issue of variances. This case cites a two-prong requirement for variances in Maryland – that being a substantiation that the property whereon structures are to be placed is unique and unusual in a manner different from the nature of the surrounding properties and that an unreasonable hardship (or practical difficulty) resulting from the disproportionate impact of the ordinance caused by the property's uniqueness exists. Both prongs of the test must be met for a variance to be approved

First, I find that the property satisfies the uniqueness element. Brodbeck Road runs directly through the shopping center and it appears, based upon the evidence presented, that the applicant had little choice in the relocation of this road. This road significantly impacts the amount of land that could otherwise have been used to satisfy the County's parking requirements. Additionally, the applicant gave land to Hampstead to locate its water tower, and,

similar to the relocation of the road, further restricted the potential land available to meet the parking requirements of the expansion.

Next, I find that the applicant will suffer unreasonable hardship if the variance is not approved. The applicant detrimentally relied upon a former County's employee's incorrect representation regarding the parking requirement. As previously stated, I do not believe this reliance excuses the need for a variance, but it does provide justification for a hardship.

I further find that the requested variance will have little, if any, impact on the current conditions at the shopping center. Mr. Nevers indicated that even in a worst case scenario, only 81% of the 1252 spots would be used.

I also note that no parties appeared in opposition to the request, or submitted letters in opposition prior to the hearing opposing the request.

Based on the evidence and testimony as described above, the variance request, specifically a reduction in the amount of required parking from 1,559 parking spaces to 1,252 parking spaces, is approved.

13 March 2006

Joseph Varrone
Acting 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.