

IN THE MATTER OF

: BEFORE THE

WALMART STORES INC.

: HOWARD COUNTY

: BOARD OF APPEALS

Petitioner

: HEARING EXAMINER

: BA Case No. 11-004S

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DECISION AND ORDER

On May 7, 2012, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Walmart Stores Inc. for variances of the Sign Code to erect (A) a 4.75'(H) x 20'(wide) 95-square foot freestanding pylon sign with a total height of 30 feet, 128.9' from the US 29 right-of-way (ROW), and (B) a 4.75'(H) x 20'(wide) 95-square foot freestanding monument sign with a total height of 7.9 feet, 28.16' from the North Ridge Road ROW in a B-2 (Business: General) Zoning District, filed pursuant to Section 3.513, Title 3, of the Howard County Code (the "Sign Code").

Petitioner certified to compliance with the notice of advertising and posting requirements of the Howard County Code.

The Hearing Examiner viewed the subject property as required by the Hearing Examiner Rules of Procedure.

Petitioner was represented by Thomas C. Kleine, Esq. Clifton Dayton and Jeff Suchan testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, the Hearing Examiner finds the following facts:

1. Property Identification. The subject property is located on the north side of North Ridge Road and east of US 40 and is also known as 3200 North Ridge Road (the "Property"). The Property is referenced as Tax Map 24, Parcel B/p/o TM 1085. The Walmart development was approved through SDP 96-11.

2. Property Description. The 18.36-acre, generally square Property is improved by a Walmart store, which is currently being renovated. According to the October 24, 2011 site plan submitted with the petition, the Walmart building as renovated will be located in the northerly portion of the property about 81 feet from the North Ridge Road ROW. To the front of the building is a large parking lot. Customers access the Property from a drive located in the southerly portion of the Property.

There is a grade change from the US Route 29 road elevation (380 feet) and the Walmart building escarpment elevation (411 feet). Between US 29 and the edge of the escarpment are multiple stands of deciduous trees. Owing to the presence of several commercial structures and a stand of trees on North Ridge Road, as well as the curve on North Ridge Road and an embankment along the easterly property line, the Walmart building and access drive is not visible until a short distance from the property line.

3. Vicinal Properties. The POR (Planned Office Research) zoned property to the north

is currently undeveloped. To the west is the US 29 ROW and across US 29, an area of single-family dwellings. To the south, the POR zoned property is improved with a four-story concrete parking garage. To the east, the R-A-15 (Residential: Apartments) properties are improved with multi-family and townhouse dwellings.

4. Speed Limit. The speed limit on North Ridge Road is 35 MPH and on US 29, 55 MPH.

5. The Sign Variance Requests. For Sign A, Petitioner is requesting a variance under Section 3.501.C of the Sign Code to erect a 4.75'(H) x 20'(wide) 95-square foot freestanding pylon sign 128.9' from the US 29 ROW, near the southwest side of the Property. The proposed black, freestanding pylon sign pole would be 25'3" high with a total sign height of 30 feet. For Sign B, Petitioner is requesting a 4.75'(H) x 20'(wide) 95-square foot freestanding monument sign with a total height of 7.9 feet, 28.16' from the North Ridge Road ROW, near the southwest side of the Property. The monument base will be brick.

Both signs would be double-faced, internally illuminated with automated dusk/dawn lighting cutoffs/controls. Each blue sign face would contain the word "WALMART" in white and next to it the Walmart logo in yellow.

6. The Technical Staff Report (TSR) notes that the existing Walmart sign located on the south side of the access drive is not visible to motorists until they are about 75 feet north of south of the entrance, owing to a long line of tall deciduous trees. Only a "small window of opportunity" exists to view the proposed pylon sign to be located on the south side of the Walmart building about 71 feet from the US 29 ROW owing to the stands of trees. For this

reason, the TSR requests that the Petitioner to consider attaching a sign similar to proposed Sign A to the HVAC equipment located on the northwest side of the Walmart roof because it would be about 5'6 feet higher and therefore more visible to motorists on US 29.

7. Mr. Suchan testified that the TSR's alternative proposed rooftop location for Sign A is not feasible based on wind loading and safety considerations.

CONCLUSIONS OF LAW

Section 3.513(b) of the Sign Code permits the Board of Appeals to grant variances from the provisions of the Sign Code where certain determinations are made. Based upon the foregoing Findings of Facts, I conclude as follows:

1. That there are unique physical conditions or exceptional topographical conditions peculiar to the property on which the proposed sign is to be located, including the location of existing buildings and other structures, irregularity, narrowness or shallowness of the lot, irregularity of the road right-of-way, location on a highway that has a dependency on nonlocal use, which conditions lead to practical difficulty and unnecessary hardship in complying strictly with the provisions of this subtitle.

Proposed Sign A would be located on a highway that has a dependency on nonlocal use in accordance with Section 3.513(b)(1). The curvature of North Ridge Road makes it difficult for motorists to view a complying sign safely. These conditions lead to practical difficulties and unnecessary hardships in complying strictly with the provisions of this subtitle.

2. Or, that there are obstructions, such as excessive grade, building interference, structures or landscaping on abutting property or properties which seriously interfere with the visibility of a proposed sign, resulting in practical difficulties and unnecessary hardship in complying strictly with the provisions of this subtitle.

Multiple stands of trees and the excessive change in grade from the US 29 highway

elevation and the Walmart store escarpment interfere with the visibility of complying signs, causing practical difficulties and unnecessary hardship in complying with this subtitle.

Petitioner did not create these conditions, in accordance with Section 3.513(b)(2).

3. Or, that there are historical, architectural, or aesthetic characteristics which shall be considered.

There are no historical, architectural, or aesthetic characteristics of the Property to be considered under section 3.513(b)(3).

4. That the variance, if granted, will not adversely affect the appropriate use or development of adjacent properties, nor result in a dangerous traffic condition.

There is no evidence that the granting of the variances would adversely affect the appropriate use of development of adjacent properties, nor result in a dangerous traffic condition.

5. That the requested variance is the minimum necessary to afford relief, and can be granted without substantial impairment of the intent, purpose and integrity of this subtitle.

The proposed signs are intended to comport with updated corporate signage requirements. The proposed signs are of a reasonable size to convey this information.

6. That such practical difficulties or hardships have not been created by the applicant; provided, however, that where required findings pursuant to section 3.513 are made, the purchase or lease of the property on which a proposed sign is to be located subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The practical difficulties are a result of unique Property conditions, vicinal obstructions, grade changes and highway conditions. The Petitioner did not create these conditions, in accordance with Section 3.513(b)(6).

ORDER

Based upon the foregoing, it is this **16th day of May 2012**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of Walmart Stores, Inc. to erect (A) a 4.75'(H) x 20'(wide) 95-square foot freestanding pylon sign with a total height of 30 feet, 128.9' from the US 29 right-of-way (ROW), and (B) a 4.75'(H) x 20'(wide) 95-square foot freestanding monument sign with a total height of 7.9 feet, 28.16' from the North Ridge Road ROW in a B-2 (Business: General) Zoning District is hereby **GRANTED;**

Provided, however, that:

1. The variances shall apply only to the uses and structures as described in the petition and plan submitted, and not to any other activities, uses, structures, or additions on the Property.
2. The Petitioner shall obtain all necessary permits.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.