



TOWN OF NORTHBOROUGH Zoning Board of Appeals

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DECISION

ZBA CASE NO. 13-03

PROPERTY LOCATION: 200 Otis Street

PETITIONER & PROPERTY OWNER: Wal-Mart Real Stores, Inc.

RECORDED WITH WORCESTER DISTRICT REGISTRY OF DEEDS: Bk: 18789 Pg: 314

This document is the DECISION of the Northborough Zoning Board of Appeals on the petition of Wal-Mart Real Stores, Inc. for a Variance to allow wall signs and a Pylon sign to be illuminated between the hours of 12:00 am and 6:00 am on the property located at 200 Otis Street, Map 110, Parcel 3.

APPLICATION

1. On March 15, 2013, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Variance from Section 7-09-040D(5) of the Northborough Zoning Bylaw, to allow wall signs on the Wal-Mart store and a Pylon sign at the entrance of the site to be illuminated between the hours of 12:00 am and 6:00 am on the property located at 200 Otis Street.
2. Notice of the public hearing was duly published in "THE WORCESTER TELEGRAM & GAZETTE" on April 29, 2013 and May 6, 2013, and was mailed to abutters and other parties in interest on April 18, 2013.

EXHIBITS

Submitted for the Board's deliberation were the following exhibits:

1. Application for Hearing before the Zoning Board of Appeals including:
 - a. A document entitled "Memorandum of Project Information and Variance, Questions 1 and A(1) (2) (3) and (4)";
 - b. A certified abutters list for parcels 300 feet from 200 Otis Street, including a cover sheet signed by Mary E. Carey, for the Town of Northborough Board of Assessors, dated February 20, 2013 and a Northborough, MA GIS Viewer map entitled "200 Otis Street, Northborough", dated 2/19/13;
 - c. Three 8.5" x 11" color renderings for WalMart, entitled "Northborough, MA #2158 - Expansion", prepared by pb2 Architecture & Engineering and identified as follows: Overall Perspective, dated September 12, 2012; Signage Calculations, dated January 04, 2012; and Site Signage, September 12, 2012;
 - d. An 8.5" x 11" plan entitled "Site Development Plans for Walmart", Sheet Title C-1, prepared by M.D. Smith, Bohler Engineering, dated 15, 2011; and
 - e. A Quitclaim Deed for Turnpike Road, Northboro, recorded at the Worcester District Registry of Deeds on April 30, 1997, Book 18789, Page 314.

HEARING

Attorney Mark Donahue, representing the Applicant, Wal-Mart Real Estate Trust, presented the Application at a duly noticed public hearing of the Board on May 14, 2013, in Conference Room B of the Northborough Town Office, 63 Main Street, Northborough, MA 01532. Voting members Richard Rand, Dick Kane, Robert Berger, Jeffrey Cayer, and Brad Blanchette were present throughout the proceedings.

Mr. Donahue explained the Wal-Mart store at 200 Otis Street, off Route 9 (Belmont Street), has gone through a renovation and expansion and the Applicant is now seeking a Variance to allow the wall signs and a Pylon sign to be illuminated between the hours of 12am and 6am. When the renovation/expansion is complete and the store is fully operational, Wal-Mart intends to be open 24-hours a day, possibly all year-round, but at least during the Thanksgiving and Christmas holidays and before school starts in the Fall. He noted the Wal-Mart store on the site is permitted to be open on a 24-hour basis.

Mr. Donahue stated the illumination of the signs is important given the location of the store on a hill and the location of two retail stores between the Wal-Mart store and Route 9. In order for the store to be recognized by drivers traveling on Route 9, Wal-Mart's signage needs to be illuminated all the time. The illuminated wall signs will serve the purpose of notifying shoppers where they would enter the store based upon the items for which they are shopping. The Pylon sign at the entrance of the site will attract and direct customers to the store.

No one present spoke in opposition to the project and the Board received no letters in opposition to the project.

The hearing was closed on May 14, 2013.

FINDINGS OF FACT

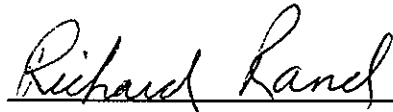
1. The subject site at 200 Otis Street, on which the renovated and expanded Wal-Mart store is located, is off Route 9 (Belmont Street) in the Highway Business District and Groundwater Protection Overlay District Area 3.
2. The Applicant is proposing to illuminate the new wall signs and the existing Pylon sign at the entrance to the Wal-Mart store, from 12am to 6am, which requires a Variance from Section 7-09-040D(5) Signs, Basic Requirements, of the Northborough Zoning Bylaw.
3. The site at 200 Otis Street is significantly higher in elevation than Route 9 (Belmont Street) and a significant distance from the frontage of Route 9 (Belmont Street). In addition, two buildings for retail use (a former "Friendly's" and an existing "McDonalds"), are located in between the Wal-Mart store and Route 9. Therefore, the illuminated signs will be important for drivers on Route 9 to be able to identify the Wal-Mart store and without the illuminated signs, it would give the impression the business was closed during the hours of 12am and 6am.
4. Due to circumstances relating to the topography of the subject site, which is at a significantly higher elevation than the major state highway, Route 9 (Belmont Street), and the location of other retail structures between the subject Wal-Mart store and Route 9, affecting the subject lot but not necessarily other lots in the zoning district, a literal enforcement of the application of the Zoning Bylaw would involve substantial hardship the Applicant.
5. The subject site is in the Highway Business district. It is abutted by two other retail uses that are located in Westborough along Route 9, and which are not limited as to their hours of illumination. The only other property owners in the area are those of Fountainhead Apartment Homes and TeamWorks Northborough. Given the distance both of these facilities are from the proposed illuminated signs, and the illumination from the parking areas of both these facilities, the proposed illumination of Wal-Mart signs between 12am and 6am will not cause any detriment to the surrounding area or to the public good.

6. Illumination in the Highway Business District, along busy Route 9, and particularly in an area that involves other retail operations such as McDonalds and 24-hour grocery stores, is different than purposes intended to provide limitations on illumination. The Route 9 corridor is significantly different in character than other areas in Northborough. Therefore, the requested relief of illuminated signs on the site during the hours of 12am and 6am will not nullify or substantially derogate from the intent and purpose of the Zoning Bylaw.

DECISION

1. On May 14, 2013, after due consideration of the Application, the Board voted unanimously to **GRANT** a **VARIANCE** from Section 7-09-040D(5) of the Northborough Zoning Bylaw, to allow wall signs on the Wal-Mart store, and a Pylon sign at the entrance of the site, to be illuminated between 12am and 6am only when the Wal-Mart store is open for business during 12am and 6am.
2. Appeals, if any, from this decision shall be made pursuant to Massachusetts General Laws, Ch. 40A, Sec. 17 and shall be filed within twenty (20) days after the date of filing of this decision in the office of the Town Clerk.
3. The **VARIANCE** shall not take effect until a copy of the decision bearing the certificate of the Town Clerk is recorded with the Worcester District Registry of Deeds in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 11 and 15 stating that "twenty (20) days have elapsed after the decision has been filed in the office of the Town Clerk and no appeal has been filed, or if such appeal has been filed it has been dismissed or denied."
4. If the rights authorized by the **VARIANCE** are not exercised within one year from the time of granting, it shall lapse in accordance with the provisions of Massachusetts General Laws, Ch. 40A, Sec. 10.

TOWN OF NORTHBOROUGH, MASSACHUSETTS ZONING BOARD OF APPEALS

A handwritten signature in cursive script, reading "Richard Rand", is written over a horizontal line.

RICHARD RAND, CHAIRMAN