

APPLICANT:
JMJ Fallston Properties LLC

**REQUEST: Expansion of a non-conforming
Integrated Community Shopping Center**

HEARING DATE: June 23, 2004

**BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5418**

ZONING HEARING EXAMINER'S DECISION

APPLICANT: JMJ Fallston Properties LLC

LOCATION: southeast quadrant of Bel Air Road (US Route 1) and
Mountain Road (MD Route 152)
Tax Map: 55 / Grid: 3D / Parcel: 523
Third Election District

ZONING: B2/Community Business and AG/Agricultural Districts

REQUEST: A request pursuant to Sections 267-19, 267-20, and 267-21 of the Harford County Code, to allow an extension of an existing Integrated Community Shopping Center and enlargement of an existing non-conforming use and buildings in a B2 and Agricultural District

TESTIMONY AND EVIDENCE OF RECORD:

JMJ Fallston Properties, LLC (hereinafter sometimes referred to as the "Applicant") is the owner of 13.77 acres of land located at the intersection of Bel Air Road and Maryland Route 152. The subject property is improved by four structures, consisting of a strip retail center and two pad sites, and is known as the "Fallston Shopping Center". The center was approved before the enactment of Section of the Harford County Zoning Code which regulates integrated community shopping centers.

For the Applicant first testified David Martin, who identified himself as Director of land planning for G.W. Stephens and Associates. Mr. Martin was offered, and accepted, as a professional land planner and landscape architect.

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Mr. Martin identified the Fallston Shopping Center, as being located at the southeast corner of intersection Maryland Route 152 and Bel Air Road. Mr. Martin explained that the Applicant was proposing a 20,000 square foot addition to the Acme Supermarket, which is the largest tenant on the subject property. Further, the Applicant is proposing a smaller addition to the Western Auto store, located on the northeastern part of the property, nearest the intersection of MD Route 152 and Bel Air Road. Additionally, the Applicant is proposing to open up what is now a covered section of the Center. This will allow additional parking and increase pedestrian and vehicle movement on site.

Mr. Martin stated that, in his opinion, the site is a non-conforming integrated community shopping center, one approved prior to the institution of the ICSC regulations.

Mr. Martin explained that an unusual feature of the site is that it is zoned Agricultural in part and B2 in part. Two of the existing retail buildings are slightly impacted by the Agricultural District, which covers a portion of the southerly part of the subject property.

The Applicant is proposing an expansion of the Western Auto and Acme Supermarket stores. Additional parking will be added as well. The additional parking results primarily from the demolition of the space which is now enclosed by an archway, which Mr. Martin identified as being a poorly designed element of the Center.

Mr. Martin explained that the request fully meets all of the Harford County Code requirements. He discussed in detail the elements of Section 267-9I and found that the proposal fully complies with each factor of that section.

Mr. Martin believes that the expansion and remodeling of the site would be good for the neighborhood. It is a good revitalization of a tired center. The proposed work would add to the County tax base, and would be fully consistent with principles of Smart Growth. Harford County parking requirements would be met. He believes there would be no impact on parking or traffic flow. There would be no change in the presently configured access/egress to Bel Air Road and MD Route 152.

Mr. Martin believes that the impact of the proposed changes should be positive only, and he sees no adverse impact.

Mr. Martin was cross-examined by Bill Topper, a concerned neighbor who resides at 2307 Edinburg Drive.

In response to Mr. Topper's questions, Mr. Martin indicated that he, Mr. Martin, was aware of the existing agreement between the surrounding Community Association and the Applicant.

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Next for the Applicant testified Brendan Glass, a design associate of Brasher Design. Mr. Glass stated that his firm had been asked by the Applicant to revitalize the Fallston Shopping Center. Mr. Glass stated that the Center suffers from a lack of curb appeal, a lack of visibility and a lack of good access. Mr. Glass and his firm found that the part of the Center lying to its rear of the site is virtually inaccessible. Shops that are located in that area have poor visibility, and shoppers have a difficult time accessing that area. Mr. Glass identified the shops located in the rear of the Center, or to the south side of the Center, as being in real difficulty.

The function of Mr. Glass and his firm was to redesign the Center, particularly the difficult rear area, in order to re-energize the facility, to upgrade its appearance and structure, to draw people into the facility and to create a better and more marketable image.

Mr. Glass also addressed the Western Auto facility. He stated that it, also, suffers from bad viability. The garage bays open out to route one side of the facility. Mr. Glass felt this should be corrected.

The proposed Western Auto expansion is intended to help alleviate these problems. The garage entrance will be moved around, with the newly designed building to be much more attractive to passers-by. The re-designed Western Auto store, will become much more visible to users of Route 1.

There will also be installed additional landscaping on site, with new site lighting. Included would be under canopy lighting, which is now lacking from the site.

Mr. Glass also testified that the existing signage is poor. New signage is proposed, which will be three new monumental type pylon signs. Two of the signs will be located in the same position as are the present signs. The circular sign currently next to Western Auto will be relocated to a position farther to the east and closer to Route 1.

Mr. Glass indicated that he had worked on similarly distressed shopping centers in the past. Those centers became more vital and more successful as a result of his firms' re-design efforts.

Mr. Glass was cross-examined by Patricia Dallam, a concerned resident of the area.

In response to Ms. Dallam's questions, Mr. Glass indicated that the parking lot lighting would be in approximately the same location as are the present fixtures. However, lighting would be directed onsite. A lighting study has not yet been performed, but Mr. Glass is of the opinion that the lights will be shielded, cut-off type fixtures, which will reduce stray elimination.

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Next testified Anthony McClune of the Harford County Department of Planning and Zoning. Mr. McClune testified that the Applicant can meet or exceed all applicable Code requirements. The proposed changes should make the Center a more efficient and popular Center, one which is more beneficial to the community. These changes should have no impact on the local road system. The Department views the changes as a minor expansion, which should be of better service to the surrounding community. Mr. McClune feels there will be no adverse impact to the surrounding community if the approval were granted. He stated the Center had substantially degraded over time and this proposal would be of great benefit to its users.

In response to a question by Bill Topper, Mr. McClune indicated that during the 1989 comprehensive zoning the boundary between the AG district and the B2 district was inadvertently moved northwards onto the subject property. As a result of this error, a small portion of a strip center is now located within the agricultural district.

Patricia Dallam than asked Mr. McClune about increased impervious surface coverage onsite. Mr. McClune indicated that the Department of Public Works would review this issue, along with other issues, during its review of the final site submission.

Mr. McClune was then asked about access and egress problems. He indicated that he knew of nothing that could be done to cure those problems. The State Highway Administration has jurisdiction over that issue, and while the State has the power to make changes, he feels that there is little that can practically be done.

Next in opposition testified Bill Topper. Mr. Topper identified himself as a resident of the area, and President of the Mountain Road/Wood Crest Stoneybook Community Association, Inc.

Mr. Topper indicated that the mall is in disrepair, and that it needs to be upgraded. Mr. Topper is looking forward to working with the developer in achieving a better Center for the Community. Mr. Topper expressed his hope and expectation that the Applicant would honor the existing agreement between the Applicant and the Community Association.

Next in opposition testified Ann Nesenkar, 2303 Edinburg Drive, Fallston. Ms. Nesenkar indicated no substantive objection to the proposed use. She expressed some concern about the access to the property from US Route 1 and MD Route 152. However, she indicated that the proposed project would be welcomed.

There was no other evidence received in opposition.

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APPLICABLE LAW:

Section 267-19 of the Harford County Code provides:

- “A. *In any district, a principal use and customary accessory buildings, where permitted, may be erected on any nonconforming lot, provided that all of the following conditions are met:*
- (1) The front, side and rear yards shall conform to the regulations applicable at the time the lot was recorded, unless otherwise specified. [Amended by Bill No. 84-55*
 - (2) If the lot lacks the required road frontage as set forth in this Part 1, then the lot shall have an unrestricted right of access to a public road.*
- B. *Any lot reduced in area or yard dimensions failing to conform to the requirements of this Part 1, by reason of a realignment or dedication of any public road or by reason of a condemnation proceeding, shall be a nonconforming lot. This provision shall not apply to roads created as part of a subdivision.*
- C. *[Added by Bill No. 84-55] For lots existing as of December 5, 1957, the following shall apply: In any district where dwellings are permitted, a single-family dwelling may be located on any nonconforming lot or plot of official record as of December 5, 1957, irrespective of its area or width or the width of the road on which it fronts, subject to the following requirements:*
- (1) The sum of the side yard widths of any such lot or plot shall be thirty percent (30%) of the width of the lot, but in no case shall any one (1) side yard be less than ten percent (10%) of the width of the lot.*
 - (2) The depth of the rear yard of any such lot shall be twenty percent (20%) of the depth of the lot, but in no case shall it be less than ten (10) feet.*
 - (3) In case the right-of-way of the road on which the lot fronts is less than fifty (50) feet wide, the depth of the front yard shall be the setback requirement for the district plus twenty-five (25) feet and shall be measured from the center line of the road.”*

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Section 267-20 of the Harford County Code provides:

“Nonconforming buildings, structures or uses may be continued, subject to the following provisions:

- A. *No nonconforming use shall be changed to a use not permitted by this Part 1 in the particular district in which the building or structure is located, except:*
 - (1) *If no structural alterations are made, a nonconforming use of a building may be changed to a similar or more-restricted use of the same or lesser intensity.*
 - (2) *Whenever a nonconforming use has been changed to a more-restricted use, such use shall not thereafter revert to a less-restricted use.*
 - (3) *When authorized by the Board, one nonconforming use may be substituted for another nonconforming use.*

- B. *[Amended by Bill No. 84-55] Any residential use may be continued and may be enlarged without increasing the number of dwelling units therein, provided that no such addition shall extend closer to any lot line than existing building surfaces or the required yard dimensions for the district, whichever is less.*
 - (1) *Residential uses, when located in an industrial district, may be enlarged, provided that the enlargement does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the nonconformity. Expansion is permitted, provided that no such addition shall extend closer to any lot line than existing building surfaces or the required yard dimensions for the district, whichever is less.*
 - (2) *A mobile home located in a residential district may be replaced with one of a larger size, provided that the enlargement does not exceed fifty percent (50%) of the gross square footage of the mobile home in use at the time of the creation of the nonconformity.*

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- C. *In the event that a nonconforming use ceases for a period of one (1) year or more, then the nonconforming use shall be deemed abandoned, and compliance with this Part 1 shall be required. The casual, temporary or illegal use of land or structure does not establish the existence of a nonconforming use.*
- D. *Any nonconforming building or structure which is damaged by less than fifty percent (50%) of its replacement value may be reconstructed to its former dimensions on the same lot and with the same nonconforming use. Nothing in these regulations shall prevent the strengthening or restoring to a safe condition of any building or structure declared to be unsafe.*
- E. *An accessory structure located on a residential lot or agricultural parcel shall be considered a nonconforming structure subject to the provisions of this Article if it meets the following conditions:*
 - (1) *The accessory structure was located prior to September 1, 1982.*
 - (2) *An approved zoning certificate was not obtained for the location of such structure.*
 - (3) *The accessory structure otherwise conforms to the requirements of Ordinance No. 6 of 1957.”*

Section 267-21 of the Harford County Code provides:

“The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions, provided that:

- A. *The proposed extension or enlargement does not change to a less-restricted and more intensive use.*
- B. *The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the nonconformity.*
- C. *The enlargement or extension does not violate the height or coverage regulations for the district.*

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- D. *The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.*
- E. *The limitations, guides and standards set forth in Section 267-9I, Limitations, Guides and Standards, are considered by the Board.”*

Section 267-9I of the Harford County Code provides:

- “I. *Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:*
 - (1) *The number of persons living or working in the immediate area.*
 - (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*
 - (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.*
 - (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*
 - (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

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- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*
- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*
- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*
- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*
- (10) *The preservation of cultural and historic landmarks.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Testimony of both the Applicant, its representatives, and the neighbors supports a clear finding that the Fallston Shopping Center is distressed, a center which does not well serve the neighbors or the neighborhood, and one which may, economically, be in decline. The proposed changes to the site, including relocation of signage, installation of new lighting, enhancement of visibility, and enlargement and reconfiguration of the physical improvements, will be of benefit to its users, the neighbors, and the County as a whole.

In order to accomplish the Applicant’s plans it has requested permission to extend the Center which, under today’s Development Regulations, would be considered an integrated community shopping center. However, slightly complicating the Applicant’s situation is the characterization of the Center as a non-conforming use as it was constructed prior to the enactment of the integrated community shopping center provision of the Code. Furthermore, due to a mistake in mapping apparently made by the Harford County Department of Planning and Zoning, a small portion of the Center, including a portion improved by a portion of an existing building, is actually zoned agricultural.

Nevertheless, it is found that the Applicant fully complies with all applicable regulations, and that the Applicant’s request should be approved.

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To the extent that the subject property is considered a non-conforming lot under the Harford County Zoning Code, it is found that the existing and proposed use fully meets all applicable provisions of Section 267-19. While the Harford County Department of Planning and Zoning Staff Report addressed this Code provision in considerable detail, it appears that the only applicable restrictions on the use of a non-conforming lot for this particular use are that the Applicant meet all applicable setback and road frontage provisions. It is found that these provisions are fully met by the proposed design.

To the extent that the existing and expanded buildings would be considered non-conforming buildings or uses, it is further found that the proposal fully meets the requirements of Section 267-20. The proposed changes will not change the use of the site. Those changes will simply eliminate design defects which have plagued the Center since its construction and will, hopefully, enhance its appearance and usability. Accordingly, it is found that its proposed changes result in a use which is similar to that presently on the site.

It is further found that the proposed expansion of the Fallston Shopping Center will fully comply with Section 267-21 of the Code. As discussed above, the changes proposed will not change the essential character of the site. It will continue to function as a shopping center, although one that is more attractive to its users. The proposed expansion will not exceed fifty percent (50%) of the existing gross square footage in use at the time of the creation of the Center; the proposal will not exceed the impervious surface coverage, or height limitations of the Code; and the change will not affect adjacent properties, traffic patterns, or the surrounding neighborhood.

A review of Section 267-9I similarly finds the Applicant is fully able to meet with all applicable provisions:

- (1) *The number of persons living or working in the immediate area.*

As stated above, the proposed design change to the Center should do nothing more than enhance its appearance and ability to serve its population.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

The neighbors of the Center expressed concerns about the traffic conditions at the Center, particularly access and egress problems. However, it is found that the design changes should do nothing to exacerbate those conditions. Internal movement on site should be greatly facilitated due to the proposed changes.

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- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.*

The proposed changes are in keeping with the tentative Harford County Master Plan. There is no evidence that the proposed use would impact in any fashion the orderly growth of the neighborhood or community.

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

The proposed changes would not exacerbate, or create, any such conditions.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

The property is served by local law enforcement and volunteer fire departments. Trash and garbage collection is privately handled by the Applicant.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposal is consistent with accepted planning principles.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

No such structures have been identified.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

As discussed above, the proposed re-design of the subject property should have only positive affects upon the neighborhood and the orderly growth of the neighborhood and County.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

There will be no impact upon any such natural feature or any opportunity for recreation or open space.

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(10) *The preservation of cultural and historic landmarks.*

No cultural or historic landmarks have been identified.

CONCLUSION:

It is recommended that the proposed request be granted, based upon the following conditions:

1. The Applicant shall submit a site plan to be approved by the Department that will include building layout, parking, signage, lighting and landscaping. The site plan shall be in substantial compliance with the plan submitted as Attachment 3 to the Harford County Department of Planning and Zoning Staff Report.
2. The Applicant shall obtain all necessary permits and inspections for the additions and structural/facade changes to the existing buildings. These changes shall be in substantial compliance with the renderings shown on Attachment 19 to the Harford County Department of Planning and Zoning Staff Report.

Date: August 2, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner