

(DPED)



City of Bowie

2614 Kenhill Drive
Bowie, Maryland 20715

MEMORANDUM

TO: City Council

FROM: David J. Deutsch, *DJD* City Manager

SUBJECT: Commercial Code Review

DATE: September 6, 2007

Staff was asked to prepare a presentation on regulation of commercial property in the City, particularly in relation to outdoor storage and display of merchandise. The Department of Planning and Economic Development has begun compiling a comprehensive listing of commercial property restrictions in effect for all commercial land in the City. However, because of the amount of research necessary, the listing will not be complete until later this year. Once it is available, copies will be provided to Council, and the Department of Community Services will use this information in ongoing code compliance activities.

The degree of regulation of commercial property in the City can be summarized in the following four (4) categories:

- (1) "By right" development governed by the regulations for the respective zone found in the Prince George's County Zoning Ordinance;
- (2) Development subject to site-specific zoning approvals and/or conditions. These would include rezonings, special exceptions, Comprehensive Design Zones (Basic Plan, Comprehensive Design Plan, Specific Design Plan), variances/departures or Detailed Site Plans. (Preliminary Plans of subdivision often include approval conditions; however, they do not typically regulate or affect the use of a commercial property);
- (3) Development within the Development District Overlay Zone (DDOZ) in Old Town Bowie; and,
- (4) Legally binding restrictions on a specific property enacted as part of a development covenant or agreement.

Memo re: Commercial Code

Staff offers discussion of each of these categories in the sections below. In some instances, commercial properties are affected by several of these levels of restriction.

The City Council has frequently expressed a desire to address the issue of outdoor storage or display of merchandise on commercial properties. In the past, efforts were made to coordinate the treatment of several large retailers' outdoor garden merchandise. The attached memorandum summarizes the City's restrictions imposed on the Lowe's, Target and Wal-Mart garden centers. The rules affecting these commercial sites will be discussed in the sections below.

1. "By Right" Development

Numerous "by right", or Euclidean, zoning categories exist in the City. The commercial zones include the C-S-C (Commercial Shopping Center), C-O (Commercial Office), and C-M (Commercial Miscellaneous) zones. Development in these zones is subject to County building permit review but is not normally subjected to any other site plan review processes. The term "Euclidean" refers to conventional zoning categories that simply list the permitted uses and the regulations that apply to them. The terminology originated as a result of a landmark court case decided in 1926 involving the City of Euclid, Ohio. In the *Euclid v. Ambler Realty Company* case, the US Supreme Court upheld the right of local governments to regulate property through zoning. Within the City, the commercial properties zoned this way include the convenience store at Race Track Road/Old Chapel Road, the Whitehall office building, Bowie Plaza shopping center, West Bowie Village, Bowie Marketplace shopping center, businesses on Superior Lane, Free State shopping center, Hilltop Plaza shopping center, the Elder Oaks medical office building, Mitchellville Professional Center, and the Pointer Ridge activity center (shopping center and office parcels).

In the Zoning Ordinance, the outdoor display of merchandise for sale is listed as a specific use in the C-S-C and C-M zones. In the C-S-C zone, such uses may not occur more than six (6) feet from the main building without approval of a special exception.

2. Development Affected by Zoning Approvals/Conditions

There are many commercial developments that have been approved as part of a County zoning process such as a rezoning or special exception. These types of approvals often include the approval of a site development plan. Rezoning of property to a Comprehensive Design Zone (CDZ), for example, involves a three-step review process. The Basic Plan establishes the uses and development levels for the site. The Comprehensive Design Plan (CDP) sets the specific location of land uses and their relationships, major access points and public facilities requirements. The Specific Design Plan (SDP) is the equivalent of a site plan that specifies the exact details of the development site, such as parking, building dimensions, landscaping, etc. The site must be developed and operated only with uses allowed under the Basic Plan and must function exactly as shown on the SDP.

Memo re: Commercial Code

In other instances, zoning approvals may require submission of a Conceptual Site Plan to show proposed land uses and circulations systems in a conceptual way. These are typically followed by a Detailed Site Plan review. A Detailed Site Plan is similar to a Specific Design Plan, in that it shows the exact location of all proposed uses and other details of the development site. The site must be developed and operated exactly as shown on the DSP. Review of a Detailed Site Plan is frequently recommended as a condition of Preliminary Plan approval.

All properties approved through the special exception process have site plans associated with them. The special exception site plan governs how a site can be used and operated. Gas stations in the C-S-C zone are the most commonly occurring example. Only those uses shown on the site plan are permitted to occur on the site. Similarly, if a commercial property is the subject of a zoning variance or departure approval, site development must adhere to the site plan submitted in support of the variance or departure application.

Where authorized by the Zoning Ordinance (or Basic Plan in the case of Comprehensive Design Zones), outdoor storage or display of merchandise may be included on a Specific Design Plan, Detailed Site Plan or special exception site plan. The following major commercial sites fall into this category and are controlled by site plan restrictions:

<u>Commercial Site</u>	<u>Type of Site Plan</u>
Highbridge Park	Specific Design Plan
Maryland Science and Technology Center	Detailed Site Plan
Carrabba's	Detailed Site Plan
Home Depot/BJ's	Detailed Site Plan
Bowie Gateway Center	Detailed Site Plan
Bowie Crossing	Detailed Site Plan
Bowie Town Center	Specific Design Plan
Wal-Mart/Ruby Tuesday	Detailed Site Plan
North Oak Office Park	Detailed Site Plan
Mount Oak Plaza	Detailed Site Plan

Site plans approved in conjunction with variances or departures from design standards are illustrative in nature and only regulate the specific subject matter included in the waiver request. For example, a commercial sign that received approval of a departure from sign design standards is governed only by the site plan restrictions pertaining to the sign.

3. Old Town Bowie Development District Overlay Zone (DDOZ)

The 2006 Bowie and Vicinity Area Master Plan and Sectional Map Amendment imposed an overlay zone on the commercial and industrial areas of Old Town Bowie.

Memo re: Commercial Code

The DDOZ greatly restricted the list of permitted uses in the M-U-I (Mixed Use Infill) and I-1 (Light Industrial) zones. The DDOZ requires site plan review for existing uses when an expansion of greater than 15% or 750 square feet is proposed or for any new nonresidential, multi-family or mixed use building, proposed special exception uses, new parking areas that add 11 or more spaces or new signage for a use requiring site plan approval. No proposals for development have come forward in the Old Town Bowie DDOZ since approval of the Master Plan so there is no track record of experience with this regulation of commercial property. To provide an example, however, the more conservative zoning use requirements might limit the amount and type of new industrial development on Zug Road.

4. City Covenants or Agreements

Some commercial properties were annexed into the City limits in the past. Many annexations with developers include annexation agreements that stipulate certain limitations or conditions related to site development. In some cases, restrictive covenants are recorded. Restrictive covenants and/or agreements give the City the legal right to enforce the limitations or conditions contained in those documents. This occurs outside of the public zoning process, where the City exercises its rights as a municipal corporation under contract law. Covenants and agreements are typically recorded in the County Land Records usually run with the land, binding the property owner, its successors and assigns. The annexation agreement and covenants for the Maryland Science and Technology Center are an example of such restrictions.

The City has limited enforcement capability. If a complaint is received, the City's commercial code officer will respond and assess the situation. If the complaint is verified, the officer will speak to the property manager on site and send follow up correspondence as required. If the complaint is about an issue outside the City's jurisdiction, the officer will contact the County Department of Environmental Resources (DER) inspectors and ask them to investigate.

Attachment




City of Bowie

2614 Kenhill Drive
Bowie, Maryland 20715

MEMORANDUM

To: City Council

From:  David J. Deutsch
City Manager

Subject: Outdoor Display of Landscaping/Gardening Merchandise
"Lowe's", "Target" and "Wal-Mart"

Date: January 16, 1998

I. Background

In the past several years, "Lowe's", "Target" and "Wal-Mart" have each attempted the outdoor display of landscaping and gardening-related merchandise. During that time, staff has been working with each of these stores to address issues relating to the outdoor display of this merchandise.

Covenants between the City and Lowe's executed in March, 1993 prohibit the display of merchandise beyond the exterior walls of the garden center.

According to the covenants the City has on the Target property, temporary outdoor sales are prohibited. Further, pursuant to the Design Guidelines adopted as part of these covenants, outbuilding and accessory structures are not permitted in the front or side of the building.

As a result of site plan controls with Wal-Mart, attempts have been made to keep temporary outdoor storage to a minimum. These attempts resulted in Wal-Mart's filing of a suit against the City in Federal Court to overturn the City's site plan authority precluding temporary outdoor storage. The Court upheld the City's authority, and Wal-Mart and the City are currently in mediation to determine if there may be a compromise solution agreeable to both parties.

Section 27-461 of the Prince George's County Zoning Ordinance permits, by right in the C-M zone (Lowe's and Target) and the C-S-C zone (Wal-Mart), the outdoor display of merchandise for sale, provided it is not more than 6 feet from the main building and does not obstruct the normal flow of pedestrian and vehicular traffic.

Staff is attempting to approach the issue of temporary outdoor display of garden merchandise on a consistent basis with each of these retailers. To accomplish that, amendments to existing plans and documents will need to be made. Because of the court ordered mediation between the City and Wal-Mart, there is an assumption that the City will make a good faith effort to reach a reasonable solution.

MAYOR Gary G. Allen MAYOR PRO TEM Dennis Brady

COUNCIL William A. Aleshire ♦ Florence E. Burian ♦ Leo E. Green, Jr. ♦ Jack D. Jenkins ♦ Richard D. Padgett CITY MANAGER David J. Deutsch
City Hall (301) 262-6200 FAX (301) 809-2302 TDD (301) 262-5013 WEB www.cityofbowie.org

In discussing the issue of outdoor display with the City Attorney, it was agreed that it would be unreasonable and unequitable on the part of the City to agree with one retailer to permitting some level of outdoor storage, without also working with the others to find a method to legitimize the activity on their sites. Further, this point is reinforced by the fact that the City has, for the past two years, permitted Lowe's to engage in temporary outdoor storage. Therefore, staff has attempted to create a consistent method for the three stores. This also permits these stores, over which the City has some form of control, to compete with others over which the City has no control. The City Attorney has advised that a common and equitable approach be taken in dealing with each of the three retailers, i.e., all requests should be granted, subject to conditions, or all requests should be denied.

II. Proposals

Lowe's proposes to continue to locate its outdoor display of garden merchandise along the northern, eastern and western sides of the garden center, as has been done the previous two years (Attachment 1). The display areas north and east of the garden center walls have been enclosed with an 8-foot to 10-foot high chain link fence in the past.

Target is requesting the outdoor display of its garden merchandise along the front (eastern) elevation, adjacent to the building (Attachment 2). The sidewalk in this area ranges from 15 feet to 30 feet in width. Sufficient area exists for a display area adjacent to the building wall while continuing to allow for pedestrian movement.

Attachment 3 is a copy of the CSP for Wal-Mart, which depicts the proposal recently agreed to between staff and the store manager. The store manager has the authorization of the corporate headquarters to make the necessary commitments. The manager has been advised by corporate headquarters that there is no current plan to expand the existing store to accommodate a temporary situation. Therefore, they are attempting to seek a more permanent solution. Wal-Mart's proposal is as follows:

1. A sight-tight fence will be constructed on the north end of the building in the current loading area. This area currently contains temporary storage containers which are permitted in this loading area. These containers are used for storage of extra stock during the Christmas shopping season, and then removed. They are totally enclosed. The fenced area would be used to shield the majority of pallet goods, such as mulch and decorative stone, which will be stored during the gardening season.
2. The 15 parking spaces also located at the northern end of the building will be fenced off. Single pallets of goods will be removed from the enclosed storage area, and placed in this area to be sold individually. This will reduce the amount of area actually dedicated to the sales of bulk goods to approximately 7,300 square feet. This area is significantly less than the previous parking lot operation which occupied over 31,000 square feet.
3. Live nursery stock will be located on the south side of the store, atop an elevated portion of the site immediately behind the existing fenced garden center. This elevated area is behind a retaining wall, and is currently landscaped with evergreens and deciduous trees. There is an existing door at the rear of the garden center which would be used for access. Certain details would need to be worked out regarding customer pick-up of larger stock such as balled and bundled trees. This would provide approximately 3,600 square feet of storage area for live stock.

III. Analysis

With respect to Lowe's, the outdoor display of garden merchandise is permitted by the Zoning Ordinance where it has been occurring in the past two years--along the northern, eastern and western sides of the garden center. The materials have been placed in the past so as to not interfere with pedestrian or vehicular circulation. Approval of a site plan revision and an amendment to the covenants would be required to allow this limited outdoor display (of garden merchandise only) to continue. The location requested by Target, against the front of the building, along the sidewalk, would also comply with the Zoning Ordinance. However, approval a site plan revision and an amendment to the covenants would be required to permit the sidewalk to be used for this purpose.

There are several advantages to the current proposal by Wal-Mart. First, unlike their previous proposal, no large expanse of parking area is used for outdoor storage. Second, the actual storage areas are separated, thereby reducing the conspicuousness of the temporary storage. Third, each of the areas where storage will occur is either currently landscaped, or will be buffered by the sight-tight fencing. As with the Target site, approval of a site plan revision is necessary to allow the above.

It is staff's position that the common practice of temporary outdoor display of garden merchandise provides a service and benefit to the community. By extending a similar opportunity to each of the three main commercial entities over which the City has some level of control, the City is demonstrating fairness and reasonableness in its negotiations. Further, by permitting the temporary use, the City is also enabling these three retailers the opportunity to compete with those over which it has no control. By permitting the use where the City has authority to do so, the City is demonstrating to the business community that the City has identified the way it prefers the activity to be carried out. This will provide a high degree of control over the three sites included in this request, a guideline for future requests from other commercial sites over which the City may have some level of control, and examples to point to when negotiating with commercial operations over which the City has no control.

Under the following conditions, the City will have the ability to permit and police the site to ensure continuous compliance. The time frame in which the temporary use will be well established, and the location of the use will be fully identified. The criteria recommended by staff are as follows:

1. Temporary storage shall only be permitted in those locations and those methods identified on approved site plans or covenants.
2. Temporary storage of only garden supplies and related materials shall be stored in the approved locations, excluding electrical or gasoline powered equipment such as lawn mowers, barbecue grills, or other types of outdoor equipment.
3. Temporary storage shall only be authorized once a year, commencing not earlier than March 1, and shall not extend beyond June 30.
4. Temporary storage will be authorized by the City Manager annually, for the aforementioned time frame. This time frame shall include the time necessary to erect any temporary structures, fencing, landscaping, etc., the time necessary for the dismantling of those temporary improvements, and the removal of unsold materials to an approved permanent storage area, such as the interior of the store.

5. At the City Manager's discretion, the temporary authorization may be revoked if violations of his authorization or any approved plans or covenants are reported on three or more separate inspections of the sites during the span of the temporary authorization.
6. Violation of the City Managers authorization, or of the site plan approval, resulting in a revocation of permission to conduct temporary outdoor storage shall be remedied by legal action in a manner recommended by the City Attorney.
7. If the City Manager's authorization is revoked, the temporary outdoor display areas shall be dismantled within five days, or legal action will be commenced.

IV. Recommendation

It is recommended that the City Council authorize the staff to prepare the necessary amended plans and documents to permit temporary outdoor display of garden merchandise and supplies on the Lowe's, Target and Wal-Mart sites at the locations shown on Attachments 1, 2 and 3, and in accordance with the conditions cited above.

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A. Lowe's

In mid-April, 1996 staff visited the Lowe's, in response to concerns expressed by a City Council member regarding the exterior display of merchandise on the site. Staff observed an 8- to 10-foot high chain link fence in the northern portion of its site, in the driveway area between the garden center and Heritage Blvd. Within this area, seasonal landscaping materials (flowers, shrubs, bags of mulch, etc.), displayed for sale, were observed. Pursuant to the Declaration of Covenants between the City and Lowe's in March, 1993, the display or storage of merchandise outside the exterior walls of the building or garden center is prohibited.

Shortly thereafter, staff meet with the store manager and walked the site. Based on discussions at that time, the City and the store manager reached an agreement, whereby materials displayed on the sidewalk along the northern side of the garden center were to be moved to within the walls of the garden center within a week. Items along the northern curblin of the drive aisle along the garden center were to have been relocated onto the sidewalk abutting the northern side of the garden center. A temporary chain link fence enclosing this area was allowed to remain to not later than July 1st, the end of the peak season for the sale of landscape items. The driveway along the northern side of the garden center was to be used for customer loading and as second means of egress from the site. The store complied with these recommendations. Although the end result was temporary, it worked to the satisfaction of the City and Lowe's.

In April, 1997, the City contacted Lowe's for the purpose of re-establishing the use of criteria successfully used in 1996 in addressing the outdoor display of garden/landscaping merchandise. The City expressed its understanding that, due to the nature of Lowe's business, limited outdoor merchandise storage and display may be necessary. To that end, we communicated our willingness to work with Lowe's to establish parameters within which a permanent solution may be reached. The City requested to meet with the store manager in the fall of 1997 for the purpose of discussing and establishing a permanent solution.

In November, 1997, City staff met with the store manager. At that time, both parties expressed their satisfaction to which the practices regarding the display of garden merchandise had been working. The City indicated a permanent solution could only be recommended by the City Council, and that the covenants addressing this matter would have to be amended.

B. Target

The City expressed its understanding that Target wished to participate in the sale of garden and landscape merchandise, which in turn necessitated the need for a limited area for outdoor merchandise storage and display. Staff expressed its willingness to work with Target to establish parameters within which a permanent solution may be reached to best accommodate the needs of Target, as well as to address the City's concerns of the display and storage of garden/landscape merchandise, on-site vehicle circulation, customer safety and site aesthetics. We requested to meet with a representative of Target in the Fall of 1997 for the purpose of discussing and establishing a permanent solution to the outdoor display of garden merchandise. In mid-November of last year, staff met with two Target representatives, who requested the store be permitted an outdoor display area

adjacent to the front of the building, along the sidewalk, with no exterior structure (i.e., garden hut) for an 8 to 10 week period (approximately the beginning of April to mid-June). Again, staff indicated that covenants would have to be amended to allow this, and that that would be a function of the City Council.

Lowe's

N. HANSON



LANDICAPPED PROPOSED PER BOWIE STD.

EXISTING SEWER

PROP 4' SIDEWALK CONNECT TO EXISTING SIDEWALK

TR EX

HERITAGE BOULEVARD

(VARIABLE WIDTH R/W)

INSTALL 100 L.F. OF CONC. CURB TO MATCH EXISTING GRADE & LINE.

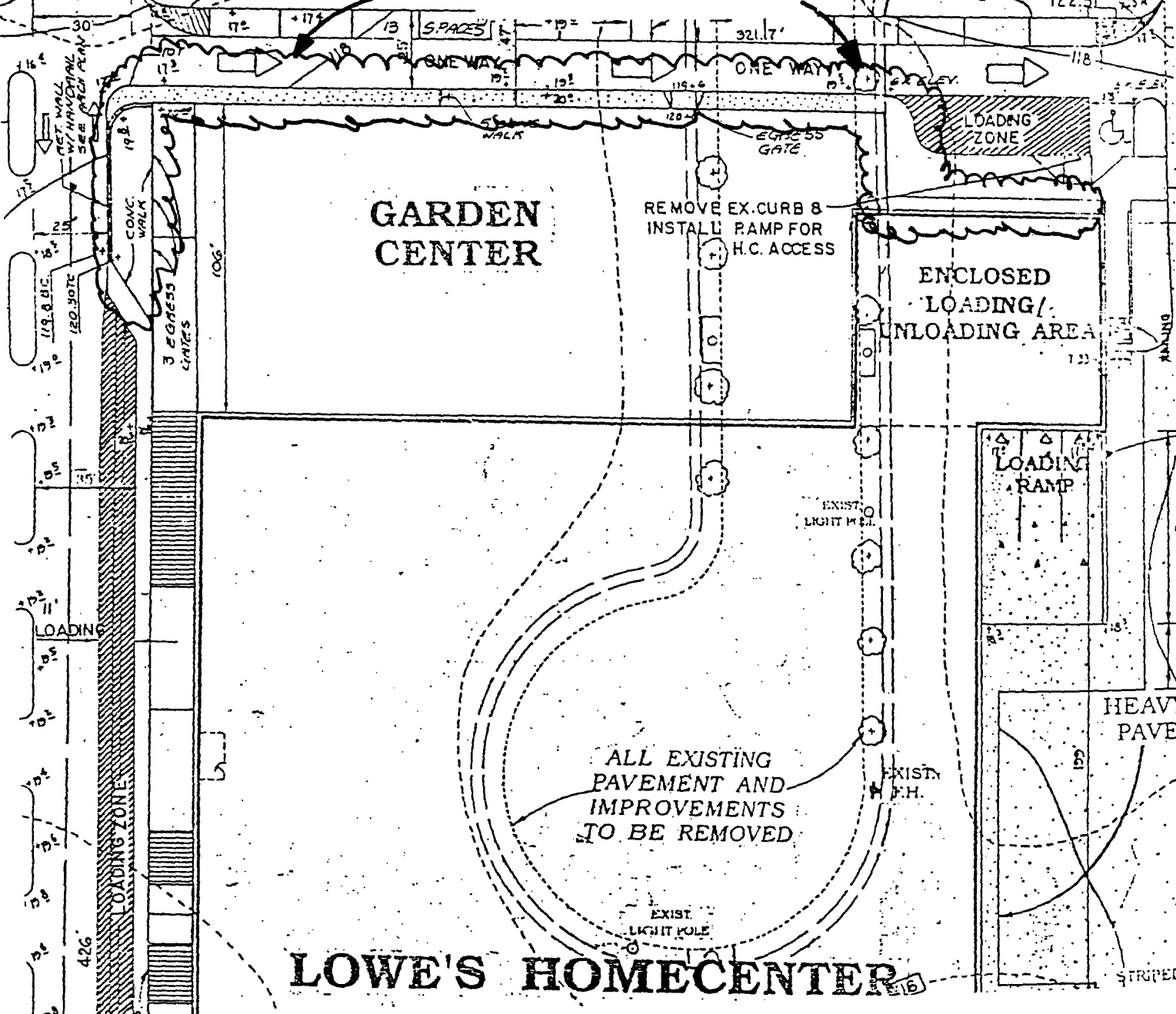
RELOCATE EXISTING STREET TREES

ONE-WAY SIGN

EXIST. LIGHT POLE

EXIST. LIGHT POLE

Proposed Display Area



GARDEN CENTER

REMOVE EX. CURB & INSTALL RAMP FOR H.C. ACCESS

ENCLOSED LOADING/ UNLOADING AREA

LOADING RAMP

ALL EXISTING PAVEMENT AND IMPROVEMENTS TO BE REMOVED

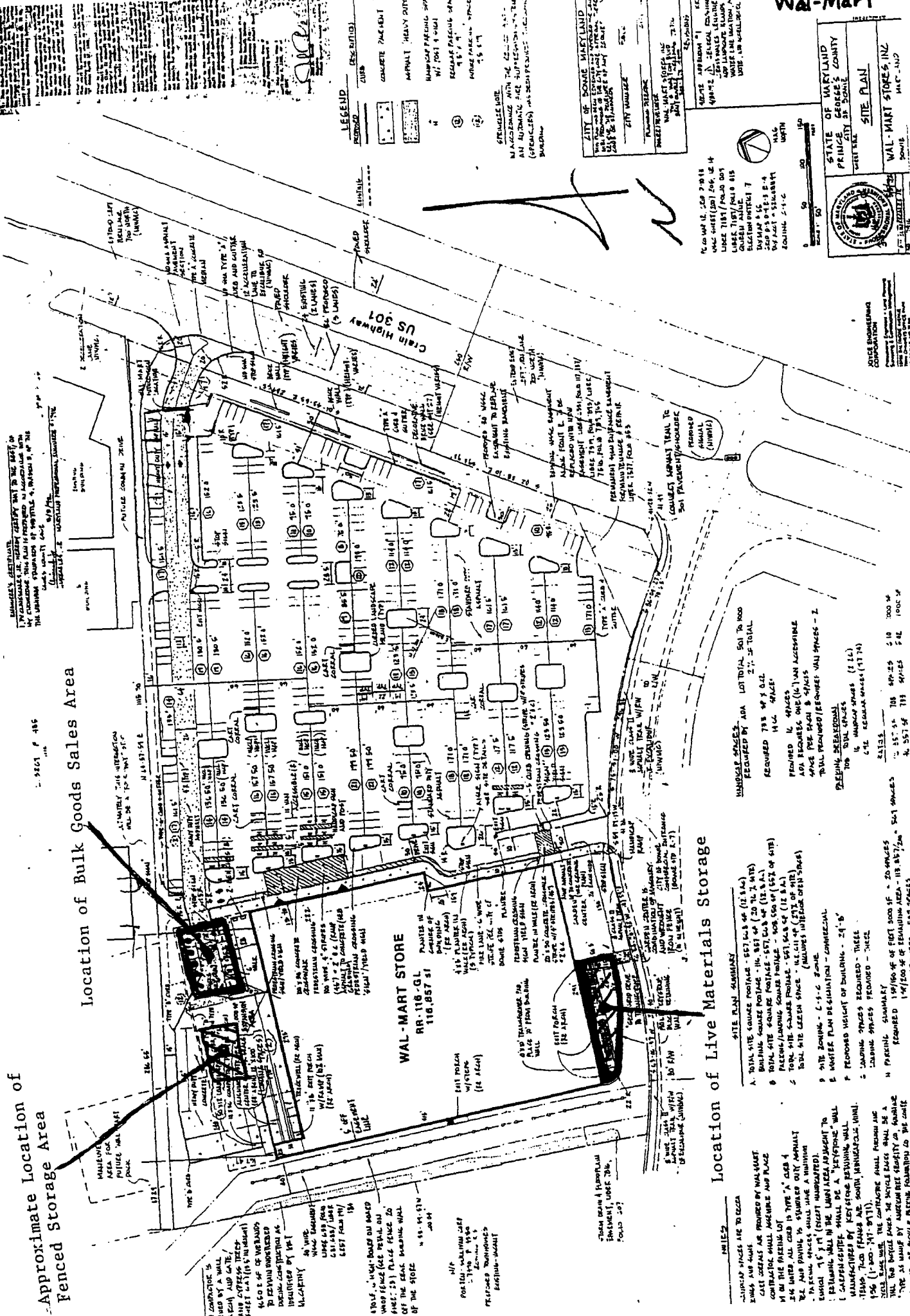
LOWE'S HOMECENTER

HEAVY PAVEMENT

STRIPED

Approximate Location of Fenced Storage Area

Location of Bulk Goods Sales Area



LEGEND

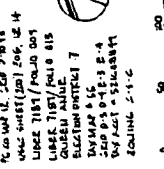
CONCRETE	CONCRETE
ASPHALT	ASPHALT
GRAVEL	GRAVEL
PAVEMENT	PAVEMENT
...	...

STRENGTH
 CONCRETE: 3000 PSI
 ASPHALT: 1000 PSI
 GRAVEL: 1000 PSI
 PAVEMENT: 1000 PSI

CITY OF BOWIE MARYLAND
 PLANNING DEPARTMENT
 400 WEST STREET, SUITE 200
 BOWIE, MARYLAND 21032

STATE OF MARYLAND
 PRINCE GEORGE'S COUNTY
 CITY OF BOWIE
 STREET TREE

WAL-MART STORES, INC.
 1000 WEST STREET
 BOWIE, MARYLAND 21032



WAL-MART STORES, INC.
 1000 WEST STREET
 BOWIE, MARYLAND 21032

APPROXIMATE LOCATION OF FENCED STORAGE AREA
 THIS PLAN IS FOR THE APPROXIMATE LOCATION OF THE STORAGE AREA. THE EXACT LOCATION WILL BE DETERMINED BY THE ENGINEER.

WAL-MART STORE
 RR-118-G/L
 118,857 SQ FT

LOCATION OF LIVE MATERIALS STORAGE

WAL-MART STORE
 RR-118-G/L
 118,857 SQ FT

LOCATION OF BULK GOODS SALES AREA

APPROXIMATE LOCATION OF FENCED STORAGE AREA

WAL-MART STORE
 RR-118-G/L
 118,857 SQ FT

WAL-MART STORES, INC.
 1000 WEST STREET
 BOWIE, MARYLAND 21032