

ORDINANCE NO. 17 - 05

**AN ORDINANCE APPROVING A PLANNED UNIT DEVELOPMENT
FOR A NEW AUTOMOBILE PARTS AND SUPPLY STORE
(375 Lake Marian Road)**

WHEREAS, Wal-Mart Real Estate Business Trust ("**Owner**") is the record title owner of that certain property in the Village located in the C-2 General Commercial Zoning District ("**C-2 District**"), consisting of approximately 1.061 acres, commonly known as 375 Lake Marian Road and legally described in **Exhibit A** attached to and, by this reference, made a part of this Ordinance ("**Property**"); and

WHEREAS, the Property is currently vacant; and

WHEREAS, East End Property Group, LLC ("**Applicant**"), the contract purchaser of the Property, desires to construct and maintain an approximately 7,225-square-foot retail building to be used for an automobile parts and supply store ("**Proposed Building**"), along with an off-street parking lot (collectively, the "**Proposed Development**"); and

WHEREAS, pursuant to Section 16.46.020.A.5 of the "Carpentersville Municipal Code," as amended ("**Village Code**"), the Applicant must obtain planned unit development approval for the Proposed Development because the proposed development is on a lot with an area of 21,780 square feet or greater; and

WHEREAS, in order to permit the construction and use of the Proposed Development on the Property, the Applicant, with the consent of the Owner, has filed an application for a planned unit development permit ("**Requested Relief**"); and

WHEREAS, pursuant to Section 16.46.050.B of the Village Code, a public hearing of the Planning and Zoning Commission of the Village of Carpentersville ("**PZC**") to consider approval of the Requested Relief was duly advertised in the Daily Herald on February 1, 2017, and was held on February 16, 2017; and

WHEREAS, on February 16, 2017, the PZC voted (4 aye, 0 nay, 3 absent) to approve findings of fact and a recommendation to the President and Board of Trustees in support of the Requested Relief, subject to specified conditions; and

WHEREAS, the Village President and Board of Trustees have considered the findings of fact and recommendation of the PZC, and have determined that the Requested Relief meets the standards for a planned unit development permit, as set forth in Section 16.46.030 of the Village Code; and

WHEREAS, the President and Board of Trustees have determined that it will serve and be in the best interests of the Village to grant the Requested Relief to the Applicant, subject to the conditions, restrictions, and provisions of this Ordinance;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Carpentersville, Kane County, Illinois, as follows:

SECTION 1: RECITALS.

The foregoing recitals are incorporated into, and made a part of, this Ordinance as the findings of the Village President and Board of Trustees.

SECTION 2: APPROVAL OF PLANNED UNIT DEVELOPMENT.

Subject to, and contingent upon, the conditions, restrictions, and provisions set forth in Section 3 of this Ordinance, a planned unit development permit to allow the development of the Proposed Development on the Property is hereby granted to the Applicant pursuant to Chapter 16.46 of the Village Code and the home rule powers of the Village.

SECTION 3: CONDITIONS.

Notwithstanding any use or development right that may be applicable or available pursuant to the provisions of the Village Code, the approval granted pursuant to Section 2 of this Ordinance is hereby expressly subject to, and contingent upon, the development, use, and maintenance of the Property in compliance with each and all of the following conditions:

- A. Compliance with Regulations. Except to the extent specifically provided otherwise in this Ordinance, the development, use, operation, and maintenance of the Property and the Proposed Development must comply at all times with all applicable Village codes and ordinances, as the same have been or may be amended from time to time.
- B. Compliance with Plans. Except for minor changes and site work approved by the Community Development Director or the Public Works Director (for matters within their respective permitting authorities) in accordance with all applicable Village standards, the development, use, operation, and maintenance of the Property must comply with the following plans (collectively, the "***Plans***");
 - 1. The preliminary civil engineering plans, prepared by Manhard Consulting, Ltd., consisting of 10 sheets, with a latest revision date of January 27, 2017, copies of which are attached to and, by this reference, made a part of this Ordinance as **Exhibit B ("*Preliminary Engineering Plans*")**;
 - 2. The landscape plan, prepared by David R. McCallum Associates, Inc., consisting of 1 sheet, with a latest revision date of February 2, 2017, a copy of which is attached to and, by this reference, made a part of this Ordinance as **Exhibit C ("*Landscape Plan*")**;
 - 3. The preliminary photometric lighting plan, prepared by U.S. Architectural & Sun Valley Lighting, consisting of 1 sheet, with a date of December 20, 2016, a copy of which is attached to and, by this reference, made a part of this Ordinance as **Exhibit D**;
 - 4. The exterior elevation plans, prepared by KMA & Associates, Inc., consisting of 2 sheets, with a latest revision date of January 31, 2017, copies of which are attached to and, by this reference, made a part of this Ordinance as **Exhibit E ("*Exterior Elevation Plans*")**;

5. The ground sign and trash enclosure plan, prepared by KMA & Associates, Inc., consisting of 1 sheet, with a latest revision date of January 31, 2017, a copy of which is attached to and, by this reference, made a part of this Ordinance as **Exhibit F**; and
 6. The site plan, prepared by KMA & Associates, Inc., consisting of 1 sheet, with a latest revision date of January 31, 2017, a copy of which is attached to and, by this reference, made a part of this Ordinance as **Exhibit G ("Site Plan")**.
- C. Structures. In accordance with Section 16.46.020.C of the Village Code, no structures may be constructed on the Property except as depicted in the Plans.
- D. Rooftop Screening. The parapet walls depicted on the Exterior Elevation Plans must be constructed around all sides of the Proposed Building at a height sufficient to screen all rooftop-mounted equipment, vents, and mechanical fixtures from view along all sides of the building. The height and materials of the parapet walls constructed pursuant to this Section 3.D must comply with Section 16.34.050 of the Village Code.
- E. Landscaping.
1. All landscaping on the Property must be installed and maintained in accordance with the Landscape Plan and with all applicable provisions of the Village Code, and is subject to final approval by the Village Community Development Department; and
 2. The electrical service entrance and pad-mounted transformer, as depicted on the Site Plan, must be screened from view along all sides of the building by evergreen planting. The evergreen plantings installed pursuant to this Section 3.E.2 must comply with Section 16.34.050.B.4 of the Village Code.
- F. Engineering Plans.
1. All engineering improvements on the Property must be constructed pursuant to final engineering plans approved in advance by the Village Engineer, which plans must: (1) comply with all applicable provisions of the Village Code and Village engineering standards; and (2) substantially conform to the Preliminary Engineering Plans; and
 2. The five-foot wide concrete sidewalk located along the east lot line of the Property, as depicted on the Preliminary Engineering Plans, must be extended in a westerly direction for a distance of at least 18 feet, which extended sidewalk must be constructed such that it is: (a) elevated at least six inches above the adjacent parking lot pavement; and (b) separated from the parking lot pavement by a concrete combination curb and gutter of type B-6.12.
- G. Signage Plans. All signs on the Property must be constructed pursuant to signage plans approved in advance by the Village Community Development

Department, which plans must comply with all applicable provisions of Chapter 16.40 of the Village Code. Notwithstanding anything to the contrary depicted on the Exterior Elevation Plans, no wall sign on the Proposed Building may have: (i) a total sign area for each sign that exceeds one and one-half times the lineal front footage for the applicable building wall; nor (ii) a total sign area for any single wall sign that exceeds 80 square feet.

- H. Commencement and Completion of Construction. Pursuant to Section 16.46.070 of the Village Code, the planned unit development permit approved pursuant to Section 2 of this Ordinance will be automatically null and void if the Applicant does not complete the following tasks within the deadlines set below, as may be extended by the Village Board pursuant to Section 16.46.070.H of the Village Code:
1. File an application for a building permit for the Proposed Development within nine months after the date of adoption of this Ordinance;
 2. Commence construction of the Proposed Development within 15 months after the date of adoption of this Ordinance; or
 3. Complete construction of the Proposed Development within 36 months after the date of adoption of this Ordinance.
- I. Continuation of Use. Pursuant to Section 16.46.070.I of the Village Code, the planned unit development permit approved pursuant to Section 2 of this Ordinance will be automatically null and void if the Proposed Development ceases operations for a consecutive period of one year.
- J. Reimbursement of Village Costs. In addition to any other costs, payments, fees, charges, contributions, or dedications required under applicable Village codes, ordinances, resolutions, rules, or regulations, the Applicant must pay to the Village, promptly upon presentation of a written demand or demands therefor, all legal fees, costs, and expenses incurred or accrued in connection with the review, negotiation, preparation, consideration, and review of this Ordinance. Payment of all such fees, costs, and expenses for which demand has been made must be made by a certified or cashier's check. Further, the Applicant is liable for, and must pay upon demand, all costs incurred by the Village for publications and recordings required in connection with the aforesaid matters.

SECTION 4: RECORDATION; BINDING EFFECT.

A copy of this Ordinance will be recorded with the Kane County Recorder of Deeds. This Ordinance and the privileges, obligations, and provisions contained herein inures solely to the benefit of, and is binding upon, the Owner, the Applicant, and each of their respective heirs, representatives, successors, and assigns.

SECTION 5: FAILURE TO COMPLY WITH CONDITIONS.

Upon the failure or refusal of the Owner or the Applicant to comply with any or all of the conditions, restrictions, or provisions of this Ordinance, in addition to all other remedies available to the Village, the approval granted in Section 2 of this Ordinance will, at the sole

discretion of the President and Board of Trustees, by ordinance duly adopted, be revoked and become null and void; provided, however, that the President and Board of Trustees may not so revoke the approval granted in Section 2 of this Ordinance unless it first provides the Owner and the Applicant with two months advance written notice of the reasons for revocation and an opportunity to be heard at a regular meeting of the Board of Trustees. In the event of revocation, the development and use of the Property will be governed solely by the regulations of the zoning district in which the Property is located at the time of revocation and the applicable provisions of the Village Code, as the same may, from time to time, be amended. Further, in the event of such revocation, the Village Manager and Village Attorney are hereby authorized and directed to bring such zoning enforcement action as may be appropriate under the circumstances.

SECTION 6: AMENDMENTS.

Any amendments to the approval granted in Section 2 of this Ordinance that may be requested by the Owner or the Applicant after the effective date of this Ordinance may be granted only pursuant to the procedures, and subject to the standards and limitations, provided in the Village Code.

SECTION 7: SEVERABILITY.

If any provision of this Ordinance or part thereof is held invalid by a court of competent jurisdiction, the remaining provisions of this Ordinance are to remain in full force and effect, and are to be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Ordinance to the greatest extent permitted by applicable law.

SECTION 8: EFFECTIVE DATE.

- A. This Ordinance will be effective only upon the occurrence of all of the following events:
 - 1. Passage by the President and Board of Trustees in the manner required by law;
 - 2. Publication in pamphlet form in the manner required by law; and
 - 3. The filing by the Owner and the Applicant with the Village Clerk of an Unconditional Agreement and Consent, in the form of **Exhibit H** attached to and, by this reference, made a part of this Ordinance, to accept and abide by each and all of the terms, conditions, and limitations set forth in this Ordinance and to indemnify the Village for any claims that may arise in connection with the approval of this Ordinance.
- B. In the event the Owner or the Applicant do not file fully executed copies of the Unconditional Agreement and Consent, as required by Section 8.A.3 of this Ordinance, within 30 days after the date of final passage of this Ordinance, the President and Board of Trustees will have the right, in their sole discretion, to declare this Ordinance null and void and of no force or effect.

[SIGNATURE PAGE FOLLOWS]

Motion made by Trustee Stephens, seconded by Trustee Humpfer, that the Ordinance be passed.

ADOPTED BY THE PRESIDENT AND BOARD OF TRUSTEES of the Village of Carpentersville, Illinois at a regular meeting thereof held on the 7th day of March, 2017, pursuant to a roll call vote as follows:

AYES: 6 (Stephens, Humpfer, Sabbe, Rehberg, Schultz, & Burroway)

NAYS: 0

ABSENT: 0

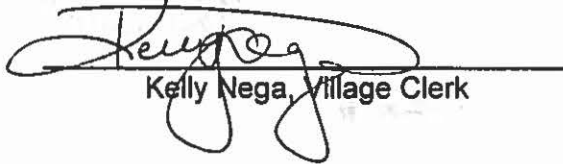
APPROVED by me this 7th day of March, 2017.



Ed Ritter, Village President

(SEAL)

ATTEST:



Kelly Nega, Village Clerk