

# Retail Caps for Retail Glut

## Smart Growth Tools for Main Street



Main Street, Warrenton, Virginia



Big-Box Sprawl

# **Retail Caps**

## **Smart Growth Tools for Main Street**

Superstores, or “big-box” retailers, account for over half of all the new retail space being built in America today. These stores range in size from 90,000 to 250,000 square feet—two to five times the size of a football field—and are generally 20 to 50 times the size of a typical downtown retailer. While superstores are popular with consumers, when they create more retail space than the local economy can absorb, they may displace locally-owned small businesses and discourage new businesses from getting started. Superstores that are built in outlying locations often drain economic activity from downtown and place huge burdens on public infrastructure.

To protect the economic vitality of their downtowns, and to avoid such problems as retail glut and retail sprawl, many communities have enacted “retail caps,” or limits on the size of superstores. In some cases, these limits apply to the overall square-footage of the stores; in others, they apply to the “footprint” of stores. In the latter instance, the superstore may acquire as much retail space as is found in a one-level, sprawling superstore by adding a second story. This requirement to build up, rather than out, limits the store's consumption of land.

Zoning ordinances have long placed restrictions on the height and bulk of buildings. Like height limits, retail caps enacted to protect the public interest are a legitimate planning tool. It is, of course, essential that local governments follow procedural and other legal requirements designed to protect the rights of private property owners. Localities must also clearly state the public purposes being served by their retail-cap ordinances.

Alan C. Weinstein, a land-use expert and law professor at Cleveland State University, explains the legal basis for limits on the size of superstores:

The basic legal issue raised by an attempt to exclude a particular type of retail use would be whether the exclusion advanced a legitimate zoning purpose. In most jurisdictions, this question would be decided on substantive due process and equal protection grounds, and, since the exclusion does not involve a fundamental right or suspect classification, a court would normally be expected to rule in favor of the city if it offered a reasonable, planning-based rationale for its action...The smarter strategy for a community, however, is merely to limit retail uses to a maximum square footage, perhaps 50,000 or 60,000 sq. ft., which places the enactment squarely within traditional zoning restrictions on building heights and sizes so that it would most likely not even be seen as an exclusionary device [that is, as an exclusion of certain types of businesses].

Many retail caps establish limits that fall well below the square footage found in a typical superstore. **Skaneateles, New York** for instance, limits retail development to no more than 45,000 square feet and shopping center sites to no more than 15 acres to ensure that the town—and its small businesses—will not be overwhelmed by out-of-scale development projects. **Hailey, Idaho** limits the roof area of all retail stores to 36,000 square feet. **Westford, Massachusetts** bans retail stores larger than 60,000 square feet and requires a special review and permitting process for stores between 30,000 and 60,000 square feet. By limiting the footprint of commercial stores to 80,000 square feet, **Gaithersburg, Maryland** got the Target chain to build a two-level store instead of the typical, but more land-consumptive, one-story building.

While many towns have found retail caps to be effective in prohibiting inappropriate development locally, tools such as this may be considered on a regional level as well. Retail sprawl rejected in one community may very well find acceptance in the next town, where its effects will be just as detrimental. One approach to this problem is the establishment of a joint planning agency with the authority to review applications for developments that exceed a certain size or that have regional impacts.

One such agency is the **Cape Cod Commission** in Barnstable, Massachusetts. Established in 1990 by voters concerned about protecting the character of their communities, the Cape Cod Commission reviews all proposals for development which exceed 10,000 square feet and changes of use for commercial sites that exceed 40,000 square feet. With a view to preserving locally-owned businesses, the commission is directed to consider the potentially negative impact a proposed development might have on Cape Cod's economy. The guidelines for reviewing development applications are included in Cape Cod's Regional Policy Plan, which spells out the problems caused by inappropriate retail development:

Retail sprawl in general is inefficient and unsustainable. The standardized architecture and corporate signage tend to detract from Cape Cod's unique regional character. The surplus of retail operations both locally and nationally indicates that over-retailing does not add to the region's economic pie. It ends up hurting smaller, locally-owned businesses and creating blight when existing retail buildings are vacated.

### ***Other Communities with Retail Caps***

Listed below are examples of communities that have enacted retail caps or limits on the footprints of retail stores. To obtain copies of any of these ordinances, contact the city or town's planning department. It is important for local governments to base retail cap ordinances on local planning efforts, as opposed to simply copying a limit from some other jurisdiction with no real analysis of local conditions.

- Tolland, CT                      52,000 square-foot limit on size of retail businesses
- Wilton, CT                        30,000 square foot limit on size of retail businesses

- Clermont, FL 100,000 square foot limit on size of retail businesses
- Peachtree City, GA 32,000 square foot limit on size of commercial businesses
- Easton, MD 65,000 square-foot limit on size of retail stores;  
Ordinance also bars variances allowing larger stores
- Gaithersburg, MD 25,000-80,000 square-foot limit on size of commercial buildings  
within Washingtonian Center
- Rockville, MD 65,000 square-foot limit on size of retail stores;  
25,000 and over must comply with design guidelines
- Boxborough, MA 25,000 square-foot limit on size of retail stores
- Westford, MA 60,000 square-foot limit on gross floor area of retail stores
- Walpole, NH 40,000 square-foot limit on retail stores and restaurants
- Stratham, NH 80,000 square-foot limit on retail stores, light industrial  
uses and offices
- Taos, NM 30,000 square foot limit on size of retail businesses  
80,000 square ft. allowed with variance
- East Hampton, NY 25,000 square-foot limit on gross floor area supermarkets  
15,000 square-foot limit on gross floor area of retail stores
- North Elba, NY 40,000 square-foot limit on retail stores  
68,000 square-foot limit on shopping centers
- Skaneateles, NY 45,000 square-foot limit on retail stores  
15 acre limit on shopping centers
- Mount Joy, PA 100,000 square-foot limit on size of retail stores located in  
limited commercial districts
- Township of Warwick  
Lancaster County, PA 20,000 square-foot limit on gross floor area of retail stores;  
stores in excess of 20,000 require special permit
- Warrenton, VA 50,000 square-foot limit on gross floor area of retail stores;  
special permit required for larger stores
- Mequon, WI 20,000 square-foot limit on size of retail stores

*Note: To preserve the benefits derived from locally-owned stores, still other jurisdictions have set lower caps on the size of stores serving residential neighborhoods. For example, the North*

*Beach neighborhood in San Francisco and the Brookside neighborhood in Kansas City have also enacted retail caps to protect the character of neighborhood retail stores. These are 4,000 square feet and 10,000 square feet, respectively.*

### ***Resources***

Visit the web site of the *Institute for Local Self-Reliance*: [www.newrules.org](http://www.newrules.org). The Institute publishes a quarterly journal, *The New Rules*, and an electronic newsletter, *The Home Town Advantage Bulletin*. Subscribe to the electronic newsletter by sending a blank email to [home\\_town\\_advantage-subscribe@topica.com](mailto:home_town_advantage-subscribe@topica.com).

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