

A meeting of the Township of Hamilton Zoning Board of Adjustment was held on the above date with Chairperson Robert J. Campbell, Sr. presiding. Members present were Charles Cain, Wayne Choyce, Eduardo Freire, Kim Melton, and Werner Raff. Alternates present were Joseph Mattia III, and Frank Tomasello. Also present was Robert Cooper Esq., Acting Solicitor; Mark Shuster of Bach Associates, Zoning Board Planner; and Steven Maimon, Zoning Officer.

The Statement of Compliance was read.

Announcements – Mr. Campbell, Sr. reviewed a letter received from Robert Watkins of Mott Associates to the Zoning Board, addressing the issue of lot coverage in residential developments and P.U.R.D.'s previously approved by the Planning Board. Mr. Campbell, Sr. stated that the Zoning Board had requested that the Planner discuss this issue with the Planning Board in order to help resolve or clarify the situations that arise when our homeowners must come before our Zoning Board for variances to obtain approval for pool, decks, additions, etc.

Mr. Campbell read Mr. Watkins' letter to the Board, noting he is not happy with the answer received. Mr. Campbell noted that we will just have to take each application as they come in front of our Board. Mr. Cain commented that with future developments approved by the Planning Board, people should be made aware of any restrictions. More discussion ensued. Mr. Choyce stated that he was in attendance at the Planning Board meeting, and Mr. Watkins' letter to us does not address all of the comments made by the Board Members. Mr. Campbell stated that with the Board's authorization, another letter should be sent to the Planning Board. Mr. Cain agreed. Mr. Freire commented that the Planning Board's decisions put the Zoning Board in a position of not allowing people to put in a deck or pool on their property. Mr. Campbell stated he would like to form a sub-committee to discuss this situation, and appointed Board Members, Werner Raff; Ed Freire; and Charles Cain as the sub-committee.

Approval of Minutes – Mr. Mattia moved, seconded by Ms. Melton, to approve the minutes of the April 28, 2008 Zoning Board meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Memorialization of Resolutions – Resolutions prepared by the Solicitor for the following applications were accepted by those Members voting "AYE", NO "NAY", ONE "ABSTAIN":

Christopher Stuart – Block 1030.02, Lot 9; App.# 11-08
Scott W. Trythall – Block 1144.06, Lot 13; App.# 8-08
Michael P. Kelly (Site Plan Approval) – Block 792, Lot 3; App.# 33-07SP

Sissy M. & Ricardo Nivar – Solicitor, Robert A. Cooper, verified that the proof package has been executed properly. Sissy and Robert Nivar were present and informed the Board they are requesting a variance to allow the installation of a 15' X 15' above-ground swimming pool on a parcel containing their existing single family dwelling, located on 91 Knights Bridge Way, Block 1030.02, Lot 23, in a Planned Unit Residential Development (P.U.R.D.)

Mrs. Nivar presented three photographs of their property for the Board to view, and Mr. Cooper marked them into evidence as Exhibits A1 – A3. Mr. Nivar stated that they have submitted a letter from an engineer stating that the proposed pool will pose no detriment to the site or cause any drainage impact to their property or the property of their neighbors. Mr. Cooper commented he does not feel the applicant needs this document in this particular application, noting they are not exceeding lot coverage.

Mr. Maimon, Zoning Officer, testified that the property is located in a P.U.R.D., and that is the only reason they are before this Board. He stated the proposed pool would meet all zoning setback requirements, as well as lot coverage.

Mrs. Nivar testified that they have three children and there is no recreation area or pool in this development for children to play in. She stated there is not even a community pool available to children during the summer months.

Mr. Campbell, Sr. opened the hearing to public comment, and there was no response. Mr. Mattia moved, seconded by Mr. Choyce, to close the public portion of the hearing. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Some discussion ensued regarding the letter from an engineer addressing lot coverage, submitted by the applicants. It was noted the letter appeared to be from an electrical engineer, and not a civil engineer. Mr. Cain commented that he feels this letter should not be considered in this application.

Mr. Cooper commented that he does not feel this type of document is even necessary in this particular application, since they do not require any setback variances or a lot coverage variance, and he does see any problem with the Board granting approval.

Ms. Melton moved, seconded by Mattia, to grant a Variance to Sissi M. & Ricardo Nivar, Block 1030.02, Lot 23, App.# 14-08, to allow the installation of an above ground swimming pool which would meet all setback requirements, as well as lot coverage, on a parcel containing an existing single family dwelling, located in a Planned Unit Residential Development (P.U.R.D.), conditioned upon the applicant obtaining all required building permits.

ROLL CALL VOTE ON THE ABOVE MOTION:

MR. CAIN – <i>NAY</i>	MR. FREIRE – AYE	MR. RAFF – AYE
MR. CHOYCE – AYE	MS. MELTON – AYE	MR. MATTIA – AYE
		MR. CAMPBELL, SR.- AYE

SAID MOTION CARRIED.

NOTE: THE BOARD MEMBERS MADE THE FOLLOWING COMMENTS REGARDING THEIR VOTE ON THE ABOVE APPLICATION:

MR. CHOYCE – Setbacks were not an issue and lot coverage was not an issue. This is a small pool and lot coverage is not being violated.

MR. FREIRE – I agree with Mr. Choyce that the granting of this variance will not affect the zoning in this development. There is a hardship since this development has no recreation.

MS. MELTON – I agree with the statements made by Mr. Choyce and Mr. Freire.

MR. RAFF - I also agree, for the same reasons.

MR. MATTIA – I also agree, for the same reasons.

ROBERT J. CAMPBELL, SR. – I feel it fits in with the Ordinance and provides a place of recreation.

William Sumas % Village Supermarket & Constance Van Seeters (Appeal)
App.# 9-08 Block 1134, Lot 9 – Walmart Store Site.

William Sumas % Village Supermarket & Constance Van Seeters
(Interpretation) App. # 12-08 Block 1134, Lot 9 – Walmart Store Site.

Mr. Cooper verified that the proof packages on the above applications have been executed properly. Attorney, Ronald Gasiorowski, representing William Sumas % Village Supermarket & Constance Van Seeters, was present, as well as Marc Shuster, Zoning Board of Adjustment Planner. Also present was attorney, Stephen Nehmad of Nehmad, Perillo, & Davis, attorney for Walmart.

Mr. Gasiorowski informed the Board that in their Appeal Application, they are challenging the opinion of the Township Planning Board Solicitor, John Rosenberger, regarding the zoning ordinance in which Walmart filed an application for site plan approvals to construct an addition to their existing facility located on 4620 Black Horse Pike, Block 1134, Lot 9.

Mr. Campbell, Sr. stated the Board must first determine if the Zoning Board has the jurisdiction to hear the Appeal and agrees to move forward with the application.

Mr. Gasiorowski stated that in their Interpretation Application, they are seeking an Interpretation of the zoning ordinance that the existing Walmart Tire & Lube Center is a permitted use on this site, and also questions if a supermarket for the sale of food is a permitted use in the Design Commercial zone, located on 4620 Black Horse Pike, Block 1134, Lot 9. He noted the Planning Board would not have jurisdiction to hear the application if it requires a use variance.

Acting Zoning Board Solicitor, Robert Cooper, stated the Board must make a determination on whether they will move forward on either of the above applications.

Mr. Nehmad informed Mr. Campbell that these applications are very unusual and his client, Walmart, owns the property in question, and he would like to be heard. He stated he has submitted a letter regarding the appeal to Mr. Cooper. Mr. Gasiorowski commented that he has read Mr. Nehmad's letter. Mr. Campbell assured Mr. Nehmad that he will be heard. Mr. Campbell stated the Board also has their professional planner, Mr. Shuster, present and he will be heard, as well.

Mr. Cooper stated the issue of the Appeal application is whether or not it is in the proper forum to be before this Board. Mr. Gasiorowski discussed the municipal land use law, noting as an example, if the Zoning Officer allowed something to move forward which was not a permitted use, we would first file an Appeal of that decision, and then an Interpretation to the Zoning Board. He stated we feel that the Walmart Tire & Lube Center and the Supermarket are not permitted uses, and we can appeal this Board's decision to the Superior Court. He noted that if the Planning Board grants everything to Walmart, we still have the right to appeal that to the Court, as well.

Mr. Gasiorowski stated that Mr. Nehmad has presented no testimony how this Tire & Lube Center operates, and I feel this applicant should have to come before this Board for a use variance for a Tire & Lube Center.

Zoning Board Planner, Marc Shuster, testified that his opinion is that this use is permitted. Mr. Shuster stated that the Walmart facility – Phase I & Phase II were approved by the Planning Board in 1992 and only Phase I was completed at that time, and there is a new application now before the Planning Board for their addition. Mr. Shuster testified that he has been reviewing plans for large retail establishments such as Walmarts for many, many years. He noted that even if the Resolution never specifically mentions tire sales or garden centers for a Walmart or a Target, the nature of these types of

establishments normally sell this type of retail sales and services. He stated that Walmart made an application to the Planning Board to move forward with their addition, and the Planning Board made a decision to proceed in that manner. Mr. Shuster stated that, quite frankly, he feels more comfortable if the Planning Board be made to finish this business. He noted the Planning Board should continue with their application, and following their decision, Mr. Gasiorowski could go before Superior Court, if he wishes. Mr. Shuster stated that in his mind, these uses associated with Walmart are permitted. He stated that “retail sales and services” is a general category that no ordinance can keep up with. He testified that in Design Commercial shopping centers, Tire Centers are considered “retail sales” and Supermarkets, as well, are considered “retail sales”.

Mr. Campbell called upon Mr. Nehmad to testify. Mr. Nehmad stated that he represents the Walmart, owner of the property in question. He stated that it is his position that this Board does not have jurisdiction to hear this matter. He noted that they have filed an application for site plan approval with the Planning Board which is ongoing as we speak.

Mr. Nehmad testified that they have been before the Planning Board for six all-night meetings thus far, noting this Board is a voluntary Board that we have spent hours before it in fairness to everyone. He noted that Ms. Van Seeters, an added co-applicant on the Appeal and Interpretation applications before you this evening, has never shown up at the six Planning Board meetings, even though Planning Board Solicitor, John Rosenberger, issued a subpoena to have her appear. Mr. Nehmad stated Mr. Gasiorowski cannot appeal Mr. Rosenberger’s decision before this Zoning Board. Mr. Gasiorowski also filed an Interpretation regarding the use, and that is also improper. He noted he can file a summons with the Zoning Officer.

Mr. Nehmad stated that the present Walmart facility already sells a significant amount of food, as well as tire sales and service, and the 60,000 square foot proposed addition would add a wider array of food stuff which is “retail sales”.

Some discussion ensued regarding the presence of Ms. Van Seeters, co-applicant on the Appeal and Interpretation. Mr. Gasiorowski stated that Ms. Van Seeters chooses not to appear, and she has that right.

Mr. Cooper commented that his legal opinion regarding this “Appeal” is that it is not before the proper forum, and that this Zoning Board should deny hearing this application which challenges John Rosenberger, Planning Board Solicitor’s determination that the Walmart application submitted for site plan approvals be allowed to be heard by the Township Planning Board.

Mr. Raff moved, seconded by Mr. Freire, that the Zoning Board *deny* hearing the Appeal submitted by William Sumas % Village Supermarket & Constance Van Seeters, Appeal #12-08, regarding Block 1134, Lot 9, in that it is improperly before this Zoning Board, based upon the testimony heard this evening and the fact that there are other remedies that Mr. Gasiorowski and the applicants can pursue.

ROLL CALL VOTE ON ABOVE MOTION TO DENY:

MR. CAIN - AYE	MR. FREIRE – AYE	MR. RAFF – AYE
MR. CHOYCE – AYE	MS. MELTON – AYE	MR. MATTIA – AYE
		MR. CAMPBELL, SR. – AYE

SAID MOTION CARRIED.

NOTE: THE FOLLOWING BOARD MEMBERS MADE THE FOLLOWING COMMENTS REGARDING THEIR VOTE ON THE ABOVE APPLICATION:

MR. FREIRE – I feel this is not part of this Board’s jurisdiction.

MR. CAMPBELL, SR. – Based upon our Planner & Attorney’s advice, I agree.

Regarding the Interpretation application, Mr. Gasiorowski presented to the Board a List of Services advertised by Walmart which they provide at their facilities. Mr. Cooper marked it as Exhibit A-1.

Mr. Choyce asked Mr. Maimon, Zoning Officer, to comment regarding the Interpretation issue regarding permitted uses. Mr. Maimon testified by referring to the Land Use & Development Ordinance on Pages 203:126 & 127; Section #203-71, Under "Use," permitted pertaining to Regional or Design Commercial Shopping Centers in Design Commercial zones. Mr. Maimon read to the Board, "Any use of the same general character as any of the above permitted uses when so interpreted by the Planning Board."

Mr. Freire requested that the Zoning Board Solicitor and Zoning Board Planner give their comments to the Board regarding the Interpretation request presented by Mr. Gasiorowski.

Mr. Cooper commented that he has had an opportunity to review this application. He stated he has been a Zoning Board Solicitor for over 28 years, and he feels this is no appropriate to be before this Board. He stated he believes the Planning Board has the jurisdiction to hear this, and it is appropriately before the Planning Board. He noted that your own Zoning Board Planner has testified that it does not require a use variance.

Mr. Shuster, Zoning Board Planner commented that the entire crux of this matter is that Section of your Ordinance that Mr. Maimon refers to, and I feel it is properly before the Planning Board and they do not require a use variance.

Some discussion ensued by the Board Members regarding the absence of Ms. Van Seeters before the Boards. Mr. Gasiorowski was asked if he were to return before the Zoning Board, would he agree that Ms. Van Seeters appear. Mr. Gasiorowski replied that he could not say that she would appear.

Mr. Freire moved, seconded by Mr. Mattia, that this Zoning Board has the jurisdiction to hear this application regarding an Interpretation Application from William Sumas % Village Market & Constance Van Seeters, App.# 12-08, Block 1134, Lot 9, that the Tire & Lube center & sale of food are permitted uses for a Walmart facility, with the stipulation that applicant, Constance Van Seeters, be present during the hearing:

ROLL CALL VOTE ON THE ABOVE MOTION TO HEAR INTERPRETATION:

MR. CAIN – YES	MR. FREIRE – NAY	MR. RAFF – NAY
MR. CHOYCE – NAY	MS. MELTON – NAY	MR. MATTIA – NAY
		MR. CAMPBELL, SR. – YES

SAID MOTION CARRIED.

Adjournment – Mr. Raff moved, seconded by Mr. Choyce, to adjourn the Zoning Board of Adjustment meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Respectfully submitted,

Jeanne C. deVecchis, Secretary
Zoning Board of Adjustment

This entire meeting was taped. The tapes are on file in the Zoning Office and may be reviewed by interested persons during regular business hours.

