

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, and Eduardo Freire. Alternate present was Frank Tomasello. Also present was Robert J. Campbell, Jr., Solicitor; Marc Shuster of Bach Associates, Zoning Board Planner; James Mott, Zoning Board Engineer; Arnold Garonzik of Litwornia & Associates, Zoning Board Traffic Consultant; J. Adamson, Landscape Consultant; and Steven Maimon, Zoning Officer.

The Statement of Compliance was read.

Approval of Minutes – Mr. Cain moved, seconded by Mr. Freire, to approve the minutes of the July 28, 2008 Zoning Board of Adjustment meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”, NO “NAY”, ONE “ABSTAIN”.

Announcements – Ms. deVecchis, Board Secretary, reminded Members to notify her no later than September 3rd, if they wish to attend the League of Municipalities Conference in November. She also informed the Board that the mandatory training course for Zoning Board Members who are not yet certified would be given during the Convention, and she would pass on the information regarding this as soon as it becomes available.

Glenn F. Bintz – Solicitor, Robert J. Campbell, verified that the proof package has been executed properly, and marked it as Exhibit A 1. Applicant, Glenn Bintz, was present, as well as his son, Steven Bintz. Mr. Bintz presented five photographs of his property for the Board to view, and Mr. Campbell marked them into evidence as Exhibits A2 - A6.

Mr. Bintz informed the Board that he is requesting Variances for front, side, and rear yard setbacks, as well as lot coverage, to allow the construction of a 16' X 24' attached addition to his single family dwelling on 2019 High Bank Road, Block 222, Lot 22, in an FA-70 zone.

Mr. Bintz testified that his existing home is very small, and due to his poor health, he requires a lot of help and would like more room. Mr. Bintz stated he purchased the property in 1979.

Mr. Campbell, Sr. commented that the Board received substantial documentation pertaining to the application which was prepared by Thomas Darcy and signed by Mr. Bintz, noting the information appears to be well documented. Mr. Cain commented that the document prepared states that the lot coverage regarding the addition should not create any drainage impact for the applicant or surrounding properties. Mr. Cain asked Mr. Bintz to confirm that no additional clearing of the existing tree line along the road would occur. Mr. Bintz replied that is correct – no additional clearing would occur. Mr. Bintz stated that he also submitted to the Board documentation from the N. J. D.E.P. that a Waterfront Development Permit would not be required.

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

Mr. Choyce stated he visited the site and he is in agreement with all the documentation presented in their package. He stated that where the addition is being proposed will not add any negative impact, in his opinion. He noted there is a nice existing buffer across the front of the property, as well. He stated that Mr. Bintz's neighbor is currently constructing a large accessory structure that is only 38' from the property line, and Mr. Bintz's addition is over 50' away.

Mr. Choyce moved, seconded by Mr. Cain, to grant Variances to Glenn F. Bintz, Block 222, Lot 22, App.# 20-08, to allow the construction of a 16' X 24' attached addition to an existing single family dwelling, as follows: lot area; front yard setback of 68' +/- 1'; rear yard setback of 48' +/- 1'; side yard setbacks of 10.6' +/- 1' & 50' +/- 1'; & lot coverage not to exceed 10%, conditioned upon the applicant obtaining required building permits & approvals, if necessary, from any other agency exercising jurisdiction.

ROLL CALL VOTE ON THE ABOVE MOTION:

MR. CAIN – AYE

MR. FREIRE – AYE

MR. TOMASELLO – AYE

MR. CHOYCE – 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. Tomasello – Yes, based on the information provided in Mr. Darcy's memo regarding the irregular shaped lot and the existing tree line. I do not feel this addition will have any Negative impact on the site.

Mr. Campbell, Sr. – Yes, due to the topography of the lot, and I feel this application meets this hardship and the applicants's request is in line with the character of the neighborhood.

Joseph M. Duberson & Rosemary D. Lamkin – Applicants, Joseph M. Duberson & Rosemary D. Lamkin, were both present and informed the Board they are requesting a favorable Interpretation from the Zoning Board in determining that the continued use of their existing rental cottages was never abandoned and there was never any intent to abandon, on 225 Lenape Avenue, Block 730, Lot 19.

Ms. Lamkin testified that the two existing cottage buildings with two livable spaces in each for a total of four livable units were built and operated since 1955 (pre-zoning). She stated her parents, J. Harold & Carmelia Duberson operated the units as summer rentals, and after the death of her father in 1971, she and her two brothers helped, noting that their brother, Michael Duberson, now deceased, resided at the property and assisted their mother with the rentals. She stated the cottage units were rented out to mainly to Atlantic City Race Track employees, officials, etc. She noted she has provided documentation, photos, receipts, etc. for the Board to view. She stated there was never any intent to abandon the use.

Mr. Joseph Duberson testified that these cottages have always been maintained and they have brought two witnesses to testify to that effect. He stated there has never been any problems of any kind at the site, including never any noise issues, complaints, or police presence of any kind.

Ms. Duberson presented additional photos, etc., and Mr. Campbell marked them into evidence as follows:

- Exhibit A1 – A12 - Photographs
- Exhibit A13 - Business Card
- Exhibit A14 - Receipt Payment from 1997
- Exhibit A15 - Payment of Taxes
- Exhibit A16- A18 Photographs of Parking

Mr. Freire stated he visited the site and it very well maintained. He stated the entire site including the existing home, cottages, yard, and landscaping has been very nicely maintained. Mr. Choyce commented agreed with Mr. Freire, noting it is very well maintained and always has been.

Ms. Lamkin stated that their mother stopped renting because it became too much for her due to her age and declining health, noting that when their brother, Michael, was alive, he would do a lot of the maintenance and bookkeeping when she could no longer do it.

Mr. Campbell, Sr. opened the hearing to public comment. Ms. Aline Dix was present and commented that she resides around the corner of the Duberson home, noting the Duberson family moved in near us in back in 1947. Ms. Dix explained the history of the family and the property, noting she has a life-long relationship with this family and their site. She testified there was never any activity that would upset the neighborhood in any way, and they always maintained a quiet and laid back atmosphere. She noted there has been activity as well as cars present since 1997, perhaps for family gatherings.

Mr. Richard McGonigle was present and commented that he, too, grew up in that neighborhood and knows the Duberson property very well. He stated he recalls the summer, seasonal rentals, noting the cottages were always occupied as long as he can remember, and always in a very nice manner.

With no further public comment, Mr. Cain 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".

Mr. Campbell, Sr. called upon Zoning Board Planner, Marc Shuster, to testify regarding his report. Mr. Friere raised the question about the possibility of a new owner wanting to change the way the business operates such as seasonal use, etc. Mr. Shuster explained the times of operation for the units are currently May through October, noting that or any expansion of units in size or the type of use could not occur without the applicant returning to the Board for an expansion of the nonconforming use. Mr. Shuster commented that would not involve general upkeep such as replacement of roof, windows, doors, paint, siding, etc. Mr. Shuster asked Ms. Duberson if they are requesting a Certificate of a Continued Use of Nonconformity, and she replied, "yes".

Mr. Shuster explained that the Board is looking at the issue of abandonment, and if efforts have been made to attempt to rent it, even if the applicant did not rent it for over a year, that is not abandonment. He noted the applicant is looking for a favorable interpretation that there was never an intent to abandon the use, and also the Issuance of a Certificate of Nonconforming Use which would give the site legal nonconforming use status, so that the owners of the property could pass on the certificate to subsequent owners. Mr. Shuster stated that conditions could be included if the Board wishes to do so.

Mr. Duberson testified that their family members have stayed in the units almost every Holiday since 1997. He noted that his stepson, Scott Davis and his two grandsons have stayed; his nephews, Stephen & David Lamkin have stayed on weekends; as well as a stepdaughter, Michele Lundquist from California, have stayed there on occasion for a week or so. He stated the units were utilized on Memorial Day, as well, in the last year. Mr. Duberson stated utilities are always on and the cottage units are always ready.

Some discussion ensued. Mr. Cain commented that this site has been a source of pride for the Township. Mr. Choyce commented that the property has always been very well maintained and family members have continued to utilize the cottages, and feels it has not been abandoned. Board Members, Mr. Freire, Mr. Tomasello, and Mr. Campbell, Sr. stated that they all concur.

ROLL CALL VOTE THAT THERE HAS BEEN NO INTENT OF ABANDONMENT OF USE OF COTTAGE UNITS:

MR. CAIN – AYE MR. FREIRE – AYE
MR. CHOYCE – AYE MR. TOMASELLO – AYE MR. CAMPBELL, SR. – AYE

SAID MOTION CARRIED.

Mr. Choyce commented that conditions such as only seasonal use; no expansion of the buildings or the use itself; no permanent residence in the cottage units; limited to the amount of cars the existing driveway accommodates; all of which could be part of the favorable interpretation.

Some discussion ensued regarding a time limit determined as part of the conditions pertaining to a possible abandonment of the use in the future. The Board determined that a period of four years would be reasonable.

Mr. Freire moved, seconded by Mr. Cain, to grant a favorable Interpretation to Joseph M. Duberson & Rosemary D. Lamkin, Block 730, Lot 19, App.# 19-08, determining that the use of existing rental cottages was never abandoned, as well as the granting a Certification of Nonconforming Use giving the site legal existing nonconforming status which could be passed on to subsequent owners, with a presumptive establishment of a time limit of four years from the date of memorialization of the Decision & Resolution regarding the possible future abandonment of the existing use, conditioned upon the following: the rental of the existing cottage units shall be seasonal only – from May 1st to October 31st, with utilities turned off during off-season time, as testified to by the applicants; no permanent residence in the cottage units; parking shall be limited to the number of vehicles that fit reasonably and safely in the existing driveway to assure good ingress and egress; there shall be no expansion of the cottage buildings or the existing use of them, other than the necessary general upkeep such as roof repair or replacement, windows, doors, siding, paint, etc.; based upon substantial documentation submitted to the Board, a report submitted by the Zoning Board Planner; and testimony provided by the applicants.

ROLL CALL ON THE ABOVE MOTION:

MR. CAIN – AYE MR. FREIRE – AYE
MR. CHOYCE – AYE MR. TOMASELLO – AYE MR. CAMPBELL, SR. – AYE

SAID MOTION CARRIED.

Newco Services Co., LLC (Taco Bell Restaurant) - Stephen Nehmad of Nehmad, Perillo, & Davis, attorney for the applicant, was present, as well as applicant, Craig Spicer of Newco Services; Thomas Roesch of Duffy, Dolcy, McManus, & Roesch, Planner/Engineer; and Salvatore Lauro, Architect. Mr. Nehmad informed the Board they are present this evening in order to continue the process of obtaining Amended Site Plan Approval with sign variances to allow the construction of a Taco Bell Restaurant to be located on a previously approved pad site in the existing Wrangleboro Consumer Square Shopping Center on Block 1319, Lot 2. Mr. Nehmad testified that the applicant received a Use Variance from this Board last month at the July 28th Zoning Board meeting.

Mr. Nehmad presented several Exhibits for the Board to view, and Solicitor, Robert Campbell, Jr. marked them as follows:

- A-1 - Floor/Seating Plan
- A-2 - Right Side Elevations
- A-3 - Left/Front/Rear Elevations
- A-4 - Colored Renderings

- A-5 - Aerial Photo – Township Shopping Area
- A-6 - Aerial Photo - Consumer Square
- A-7 - Colored Site Plan
- A-8 - Tax/Notices

Mr. Nehmad called upon Thomas Roesch to testify. Mr. Roesch stated he prepared the site plan before the Board this evening, noting their office originally designed the shopping center back in the 1990's, as well. He stated this pad site was approved back then, noting it is located in front of the existing Old County Buffet Restaurant facing Wrangleboro Road. He testified the center is 845,000 square feet on 85 acres and the proposed Taco Bell building they are proposing is only 4,000 square feet in size. He noted the pad site was originally approved for a bank or a retail sales facility.

Mr. Roesch testified that they have submitted a revised site plan in which they have moved the building closer to Wrangleboro Road and provided a side access drive to the shopping center, upon the recommendations of the Zoning Board Professionals at the last Board meeting.

He testified the applicant is asking for some complete waivers such as the key map, and are requesting a variance for a free-standing monument sign, noting they do not wish to remove any trees at this site. He stated this sign will be similar to other signs in the Center such as Applebee's.

Mr. Nehmad called upon Salvatore Lauro, Architect, to testify. Mr. Lauro presented Exhibits A-3, which depicted all sides of the proposed building, as well as the colors and signage. He stated the signage on the building is very attractive – not your typical fast food sign. He noted the signage will be done on three sides of the building which is important to do with this type of site for safety purposes, as well. He stated it will consist of six signs - three "bells" and three signs.

Mr. Campbell, Sr. called upon James Mott, Zoning Board Engineer, to testify. Mr. Mott reviewed his memo and stated he has only two issues. He stated one issue is the existing drainage basin in the shopping center which is not functioning properly. Mr. Mott stated that even though this Taco Bell site actually reduces impervious coverage than was originally approved, this Board could hold up the C.O. on this restaurant until this drainage basin is functioning properly. Mr. Mott stated their other issue is they are recommending the applicant provide new sidewalks from Wrangleboro Road to Timber Glen Drive. Mr. Choyce commented that he is in agreement with Mr. Mott. He stated the Township Planning Board has been trying to achieve sidewalks in that area. Mr. Tomasello questioned Mr. Mott about the drainage basin. Mr. Mott stated it has never functioned properly and there is always water in it.

Mr. Campbell, Sr. called upon Marc Shuster, Zoning Board Planner, to testify. Mr. Shuster, referring to his memo, testified that the applicant has addressed and satisfied almost all of the issues they raised. He noted they also had a sidewalk issue. He stated the applicant has reduced the size of the monument sign as we had recommended, and all of the proposed signs are very well done and go nicely with the architecture of the building. He noted he does not feel there is any negative impact with the signage.

Mr. Campbell, Sr. called upon Arnold Garonzik of Litwornia & Associates, Zoning Board Traffic Consultant, to testify. Mr. Garonzik reviewed his memo, noting the applicant has already satisfactorily addressed most of their recommendations such as the loading area in which they have requested a waiver, and they have eliminated buffer blocks and the overhang. He noted one area of concern is Item G on our report – the entrance with cars coming and going. He stated they are recommending some curbing which would provide some delineation in that area for safety purposes. Mr. Roesch commented they

will work with Mr. Litwornia to address this with possibly striping, etc. Mr. Garonzik stated they, too, will work with them to resolve the issue, since they need the 24' drive aisle they are proposing. Mr. Garonzik that no traffic study or off-tract contributions are required. He stated they do have a question about the lighting, and they are in the process of obtaining a new lighting plan and we are ok with that.

Mr. Campbell, Sr. called upon J. Adamson, Zoning Board Landscape Consultant, to testify. Mr. Adamson reviewed his memo and stated the applicant has done a good job incorporating what we needed to refine the landscaping plan. He stated that the issue of the trash enclosure and the recommendation of additional shade trees needs to be revised, noting we are recommending a nicer and more durable trash enclosure. Mr. Adamson and Mr. Garonzik agreed that additional lighting should be added in that 24' asphalt area.

Mr. Nehmad called upon Mr. Craig Spicer of Newco Services, to testify and address the three issues raised by the Zoning Board professionals. Mr. Spicer informed the Board he is the owner/operator of the proposed Taco Bell, and is renting the pad site from the owners of the shopping center. Mr. Spicer testified that, regarding the issue of the loading zone, their delivery trucks come between the hours of 2:00 A.M. and 10:00 A.M., two times a week, and at a time when there is little traffic and when customers are not at the site. He stated they are requesting a waiver of this because they mainly come at 2:00 or 3:00 in the morning. Mr. Spicer stated that regarding the drainage basins, Mr. Roesch has informed him that they have been working. Mr. Roesch commented that the facilities manager of the shopping center has done improvements to these basins to help infiltration and they are operating much better than in the past.

Mr. Spicer testified that he could not afford to address basin issues for whole shopping center. He stated that regarding the sidewalk issue, about 65% of our sales for the Taco Bell site will be from drive-thru, with cars driving through. Mr. Roesch commented that there are other costs involved besides just the sidewalks, and it could be very costly. Mr. Spicer testified this could cost more than \$10,000 and I could not construct the building and then take a chance that I could get a C.O. to open.

Mr. Freire asked if there could be a compromise and the applicant could do a pedestrian striping area? He stated if all of the basins have a problem, should this applicant be held responsible? Mr. Nehmad stated they are requesting a waiver for the loading area, and they are in agreement on almost everything else the Professionals have recommended, with the exception of the basin and the sidewalk issue. Mr. Choyce asked about the issue of the monument sign. Mr. Nehmad explained that this is a small monument sign, but it is very important to Taco Bell. Mr. Nehmad stated this is the last pad site and the sign has been reduced to Mr. Shuster's satisfaction.

Mr. Campbell, Sr. opened the hearing to public comment. Mr. Daniel Kelly was present and commented that he does not feel the sidewalk and basins should be Taco Bell's responsibility. He stated the Township should step up and go after the "big guys" and not the "little guy". Mr. Kelly stated that he is in support of this Taco Bell restaurant.

With no further public comment, Mr. Tomasello moved, seconded by Mr. Cain, to close the public portion of the hearing. SAID MOTION CARRIED WITH ALL MEMBERS VOTING "AYE", NO "NAY", NO "ABSTAIN".

Mr. Freire moved, seconded by Mr. Tomasello, to deem the application of Newco Services Co., LLC (Taco Bell Restaurant), Block 1319, Lot 2, App.# 16-08, complete, and to grant Amended Site Plan Approvals with various Variances & Waivers, to allow the construction of a Taco Bell Restaurant with drive-thru facilities on a pad site in the Wrangleboro Consumer Square Shopping Center, as follows: Waiver granted for loading area; Waiver of additional sidewalk; Waiver of basin improvements & stormwater management plan & maintenance plan granted; Design Waiver granted; Eight additional Waivers granted as listed on Professional's reports; Variances granted for all

proposed signs; with other outstanding issues to be resolved by the applicant with the Zoning Board Professionals, and conditioned upon the applicant obtaining necessary permits and approvals from all other agencies exercising jurisdiction.

ROLL CALL VOTE ON THE ABOVE MOTION:

MR. CAIN – AYE MR. FREIRE – AYE
MR. CHOYCE – ~~NAY~~ MR. TOMASELLO – 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. CAIN - I feel the aesthetics of this restaurant are very nice, and although I respect our Engineer's comments regarding additional sidewalk and agree, I do not think it should be this applicant's responsibility and he should be held up.

MR. CHOYCE – I would like to compliment the applicant on all of their changes to satisfy the recommendations of our Professionals, and although I agree that the applicant should not be held up, I must vote “No” because sidewalk is a very critical issue.

MR. FREIRE – I respect Mr. Mott's comments, however, I realize that it is unfair to put the applicant in that position. I feel this is an asset to this Development and the Township Engineer needs to address the issue of the basins, and I do not think the additional sidewalk will be beneficial to this site.

MR. TOMASELLO – I do not feel the sidewalk and basins should be the responsibility of this applicant.

MR. CAMPBELL, SR. – I, too, respect Mr. Mott's comments, however, this site is a small facility and the issue of the basins and additional sidewalk should be the responsibility of the owner of the whole site, and not Taco Bell.

Board Discussion – Mr. Campbell, Sr. informed the Board that Solicitor, Robert J. Campbell, Jr., has received several letters from Mr. Gasiorowski, attorney representing William Sumas & Constance Van Seeters regarding the Wal-Mart matter. Mr. Campbell explained that Mr. Campbell, Jr. was not able to attend the June 23, 2008 Zoning due to a pre-planned vacation, and attorney, Robert Cooper, presided over that meeting. He stated that Mr. Cooper had determined that since the applications did not move forward that evening, no Resolution, publication, or memorialization of Decision was necessary, and Mr. Campbell, Jr. had concurred.

Mr. Campbell, Sr. stated that for the record, he would like the Board to formally make a motion and take a vote regarding this decision.

Mr. Freire moved, seconded by Mr. Cain, that this Zoning Board stands by Mr. Robert Cooper's and our regular Solicitor, Robert J. Campbell, Jr.'s decision that we do not prepare or memorialize a Resolution or publish a decision in the matter. 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 all Members voting “AYE”, NO “NAY”, ONE “ABSTAIN”:

Robert & Sandra Lincoln – Block 222, Lot 8; App.#15-08
Roseann Woods-Gruhler – Block 754, Lot 3; App.#13-08
James & Wendi Brown – Block 588, Lot 33; App.#18-08
Newco Services Co., LLC (Taco Bell Restaurant) – Use Variance
Block 1319, Lot 2; App.# 16-08

Adjournment – Mr. Tomasello moved, seconded by Mr. Choyce, to adjourn the Zoning Board of Adjustment meeting. SAID MOTION CARRIED WITH ALL MEMBERS VOTING “AYE”, NO”NAY”, ONE “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.