GENOA TOWNSHIP
BOARD OF ZONING APPEALS
JANUARY 24, 2012

Present: Harry Goussetis, Chair
         Cybele Smith
         Curtis Williams
         David Dunn
         Mark Harmon, Alternate

Also Present: Joe Clase, Director of Development & Zoning

RE:  BZA 2012-01, 6019 Sunbury Rd. (Anderson)
     BZA 2012-02, 4780 Smothers Rd. (Hopper)

Mr. Goussetis called the meeting to order at 7:00 p.m.

OLD BUSINESS

Minutes – 9/27/11

Mr. Williams moved to approve the Minutes from September 27, 2011, as written. Motion was seconded by Ms. Smith. Roll call: Mr. Harmon, aye; Mr. Williams, aye; Mr. Goussetis, aye; Ms. Smith, aye; Mr. Dunn, abstain since he was not present for that meeting. Motion carried.

BZA 2012-01 (6019 Sunbury Rd. – Anderson)

This hearing began at 7:02 p.m.

Mr. Goussetis read the legal notice for the record, as follows:

STEVEN AND CHARLESSA ANDERSON, REQUESTING A VARIANCE TO §606.07 OF THE GENOA TOWNSHIP ZONING RESOLUTION TO ALLOW CONSTRUCTION OF AN ADDITION TO ENCROACH INTO THE REQUIRED SIDE YARD SETBACK ON LOT 108 OF THE FICHTELMAN SUBDIVISION, 6019 SUNBURY ROAD, A RURAL RESIDENTIAL (RR) ZONING DISTRICT.

Mr. Goussetis asked everyone to sign the sign-in sheet and directed those who wished to speak to stand and be sworn in.

Mr. Goussetis marked the following as Exhibits:
Gary Dunn, the contractor for the applicant, appeared on their behalf and presented the application to the Board. Mr. Dunn stated that applicant is proposing to construct an attached garage to the existing home. At this time, this property does not have a garage. Mr. Dunn stated that the property is serviced by septic and a well and the location of the proposed garage is due to the existing location of the well head along with several large trees that they do not want to disturb. Due to the proposed location for the new garage with the noted constraints, would encroach 2.4 feet into the required side yard setback.

Mr. Williams asked how far the proposed garage would be located from the adjacent home. Mr. Dunn stated that it would still be a substantial distance from the adjacent house. Mr. Goussetis asked if the applicant considered building a two-car garage instead of a three-car garage to alleviate the need for a variance. Mr. Dunn stated that a two car garage would not properly service applicants’ need.

Mr. Clase stated that applicant’s lot is a legally non-conforming lot in the Rural Residential Zoning District, due to the fact that it is slightly less than one acre. He gave a brief history of the property along with the orientation of the existing home. Mr. Clase confirmed that the property does not currently have a garage, stating that a prior owner converted the attached garage to living space prior to the requirement of the Zoning Code that all houses are to have an attached two-car garage. Mr. Clase stated that Staff has no objections to the requested variance subject to the resolution of the Genoa Township Fire Department concerns. Mr. Clase noted that the Township did not receive any negative comments as a result of the zoning sign being placed on the property prior to this hearing.

Public Comment:

None.

Board Comment:

At this time, Duncan v. Middlefield, was reviewed by Mr. Dunn, as follows:

(a) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance. The Board deemed that the property in question would yield a reasonable return and there can be beneficial use of the property without the variance.
(b) Whether the variance is substantial. The Board deemed that the variance is not substantial since it is approximately nine percent (9%) more than the Zoning Resolution allows.

(c) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance. The Board deemed that the essential character of the neighborhood would not be substantially altered nor would adjoining properties suffer a substantial detriment as a result of the variance.

(d) Whether the variance would adversely affect the delivery of governmental services, (i.e., water, sewage, garbage). The Board deemed that the variance would not adversely affect the delivery of governmental services.

(e) Whether the property owner purchased the property with knowledge of the zoning restriction. The Board deemed that the property owner did have knowledge of the zoning restriction at the time of the purchase of the property.

(f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance. The Board deemed that the owner's predicament cannot feasibly be obviated through a method other than the requested variance.

(g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. The Board deemed that the spirit and intent behind the zoning requirement would be observed and substantial justice would be done by granting the variance.

Mr. Dunn moved, incorporating Exhibits “A” through “F” into evidence to approve a variance for BZA 2012-01, dated January 5, 2012, to allow Steven and Charlessa Anderson, to construct an addition which would encroach 2.2 feet into the required side yard setback pursuant to §606.07 of the Genoa Township Zoning Resolution, on Lot 108 of the Fichtelman subdivision, 6019 Sunbury Road, a Rural Residential (RR) Zoning District, based on the following findings of fact:

(a) The property in question would yield a reasonable return and there can be beneficial use of the property without the variance.

(b) The variance is not substantial since it is approximately nine percent (9%) more than the Zoning Resolution allows.

(c) The essential character of the neighborhood would not be substantially altered and the adjoining properties would not suffer a substantial detriment as a result of the variance.

(d) The variance would not adversely affect the delivery of governmental services.

(e) The property owner did purchase the property with knowledge of the zoning restriction.
(f) The property owner's predicament cannot feasibly be obviated through a method other than the variance.

(g) The spirit and intent behind the zoning requirement would be observed and substantial justice would be done by granting the variance.

Approval of this variance is subject to the owner's agreement to the following conditions:

1. Installation of one hour fire separation building materials between the garage and living space; and

2. Installation of a service door as directed by the Genoa Township Fire Department.

Motion was seconded by Ms. Smith. Roll call: Mr. Goussetis, aye; Mr. Dunn, aye; Ms. Smith, aye; Mr. Williams, aye; Mr. Harmon, aye. Motion carried.

This hearing ended at 7:23 p.m.

BZA 2012-02 (4780 Smothers Rd. – Hopper)

This hearing began at 7:24 p.m.

Mr. Goussetis read the legal notice for the record, as follows:

JEROLD AND CYNTHIA HOPPER, REQUESTING A VARIANCE TO §2002.03 OF THE GENOA TOWNSHIP ZONING RESOLUTION TO ALLOW CONSTRUCTION OF A FENCE IN EXCESS OF THE MAXIMUM HEIGHT OF EIGHT FEET ON PROPERTY LOCATED AT 4780 SMOTHERS ROAD, A RURAL RESIDENTIAL (RR) ZONING DISTRICT.

Mr. Goussetis asked everyone to sign the sign-in sheet and directed those who wished to speak to stand and be sworn in.

Mr. Goussetis marked the following as Exhibits:

Exhibit “A” – Legal Notice
Exhibit “B” – Sign-in Sheet
Exhibit “C” - Application
Exhibit “D” – Staff Report, dated 1/24/12
Exhibit “E” – Pictures of applicants’ property
Exhibit “F” – Drainage Easement
Exhibit “G” – Copies of emails from Delaware County
Exhibit “H” – Pictures of Mr. & Mrs. Bibler’s house
Brian Duncan, Attorney for applicants, appeared on their behalf and presented their application to the Board. Mr. Duncan stated that applicant is proposing to construct a 12-foot fence along the north end of their property for privacy and security reasons. Mr. Duncan stated that a new home is being built on the property to the north which has a significant grade elevation, applicants do not believe that an eight foot fence, as allowed by the Zoning Resolution will afford them their privacy and security from the adjoining property.

Mr. Duncan briefly explained the existing litigation between the applicants and the property owners to the north, stating that when the Biblers first began building their home, their contractor trespassed onto applicant’s property and destroyed several trees and crops. Also, due to the increased elevation of the Bibler property, applicants have suffered extensive drainage issues. Applicants are seeking restitution for the destruction on his property. Mr. Duncan clarified that this is a civil suit between property owners and that no government entities are involved in this litigation.

Mr. Williams asked what the distance was between applicants’ home and the new construction owned by the Biblers. Mr. Duncan stated that there is approximately 400-500 feet between the houses. Mr. Duncan noted for the Board that prior to construction of the Biblers’ home, dirt was hauled in to increase the grading of the property. Prior to that, it was level with applicants’ property.

Mr. Clase gave a brief history of applicants’ property along with the property now owned by the Biblers. Mr. Clase stated that applicants contacted the Township in December with a drainage complaint caused by the construction of the property to the north. He stated that the Township is currently working with that property owner to resolve that issue. Mr. Clase testified that the new construction is approximately four to five feet above grade, and noted that it is located approximately 25-30 feet from the property line.

In reviewing the application, Mr. Clase stated that the requested 12-foot fence would be a fifty percent (50%) variance from that allowed by the Zoning Resolution. The Genoa Township Fire Department review this application and does not have any concerns; however, the Township received several negative comments with respect to this variance request. Delaware County also submitted additional requirements that would need to be met with a fence structure over ten feet in height.

Mr. Goussetis asked how visible the proposed fence would be to the surrounding properties. Mr. Clase stated that Mr. Goussetis’ question could more accurately be addressed by the surrounding property owners. Mr. Goussetis asked what type of fence is being proposed. Mr. Duncan stated that applicants' were proposing a privacy fence; however, they are unable to get a contractor to give them any ideas until the drainage issues are resolved.
Public Comment:

Teresa McConaghy (4700 Smothers Rd.)

Ms. McConaghy stated that she is concerned how visible the proposed fence would be from her property and is opposed to the granting of this variance.

Lindsey & Ryan Bibler (7860 Red Bank Rd.)

Ms. Bibler gave a brief background of the current litigation between them and the Hoppers, clarifying that the destruction of the trees on applicants’ property was accidental by their contractors and was not done intentionally. Mrs. Bibler also stated that they have engineered drainage plans, approved by Delaware County, which will resolve any current drainage issues created by the construction of their home. Mr. and Mrs. Bibler are strongly opposed to the construction of the proposed fence, citing that it will decrease their property value.

Steve Brandenberg

Mr. Brandenberg confirmed that there has been on ongoing drainage issue in the area. Although he believes he wouldn’t necessarily see the proposed fence from his property, he does not want to see a fence erected in such a natural area and believes the privacy issue could be more naturally resolved through the planting of additional trees.

Board Comment:

At this time, *Duncan v. Middlefield*, was reviewed by Mr. Dunn, as follows:

(a) Whether the property in question will yield a reasonable return or whether there can be any beneficial use of the property without the variance. **The Board deemed that the property in question would yield a reasonable return and there can be beneficial use of the property without the variance.**

(b) Whether the variance is substantial. **The Board deemed that the variance is substantial since it is approximately fifty percent (50%) more than the Zoning Resolution allows.**

(c) Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance. **The Board deemed that the essential character of the neighborhood would be substantially altered and the adjoining property owners would suffer a substantial detriment as a result of the variance.**

(d) Whether the variance would adversely affect the delivery of governmental services, (i.e., water, sewage, garbage). **The Board deemed that the**
variance would not adversely affect the delivery of governmental services.

(e) Whether the property owner purchased the property with knowledge of the zoning restriction. The Board deemed that the property owner did have knowledge of the zoning restriction at the time of the purchase of the property.

(f) Whether the property owner's predicament feasibly can be obviated through some method other than a variance. The Board deemed that the owner's predicament can feasibly be obviated through a method other than the requested variance.

(g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice done by granting the variance. The Board deemed that the spirit and intent behind the zoning requirement would be observed and substantial justice would be done by granting the variance.

Mr. Dunn shared his concerns with the requested variance, stating that he believes applicant should consider a more natural screening separation between the properties. Mr. Goussetis stated that although he shares Mr. Dunn's concerns, he believes the proposed fence would be an aesthetic detriment to the surrounding neighbors.

Mr. Dunn moves, incorporating Exhibits “A” through “H” into evidence, to approve a variance for BZA 2012-02, dated January 5, 2012, to allow Jerold and Cynthia Hopper, to construct a twelve (12) foot fence in excess of the maximum height of eight (8) feet allowed, pursuant to §2002.03 of the Genoa Township Zoning Resolution, on property located at 4780 Smothers Road, a Rural Residential (RR) Zoning District, based on the following findings of fact:

(a) The property in question would yield a reasonable return and there can be beneficial use of the property without the variance.

(b) The variance is substantial since it is approximately fifty percent (50%) more than the Zoning Resolution allows.

(c) The essential character of the neighborhood would be substantially altered and the adjoining properties would suffer a substantial detriment as a result of the variance.

(d) The variance would not adversely affect the delivery of governmental services.

(e) The property owner did purchase the property with knowledge of the zoning restriction.

(f) The property owner's predicament can feasibly be obviated through a method other than the variance.

(g) The spirit and intent behind the zoning requirement would be observed and substantial justice would be done by granting the variance.
Motion was seconded by Mr. Williams. Roll call: Mr. Gousetis, nay; Mr. Dunn, nay; Ms. Smith, nay; Mr. Williams, nay; Mr. Harmon, nay. Motion denied.

This hearing ended at 8:33 p.m.

Mr. Gousetis moved to adjourn. Motion was seconded by Ms. Smith. Vote: all ayes. Meeting adjourned at 8:34 p.m.

Respectfully submitted,

Vicki L. Stainer
Zoning Secretary

Date Approved:

Harry Gousetis, Chair