GENOA TOWNSHIP  
BOARD OF ZONING APPEALS  
APRIL 24, 2012

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

Also Present: Joe Clase, Director of Development & Zoning  
              Sara Walsh, Alternate  
              Mark Antonetz, Alternate  

RE:  BZA 2012-04, 5701 Sunbury Rd. (McGuire)

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

OLD BUSINESS

Minutes – 3/20/12

Mr. Williams moved to approve the Minutes from March 20, 2012, as written.  
Motion was seconded by Ms. Smith. Roll call: Ms. Smith, aye; Mr. Harmon, aye; Mr.  
Williams, aye; Mr. Goussetis, aye; Mr. Dunn, abstain since he was not present for that  
meeting.  Motion carried.

BZA 2012-04, 5701 Sunbury Rd. (McGuire)

This hearing began at 7:03 p.m.

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

JAMES AND SHAYLA MCGUIRE, 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 THIRTY INCHES BETWEEN THE STREET  
RIGHT-OF-WAY AND THE BUILDING SETBACK LINE, ON LOT 1337  
OF THE PLEASANT HILLS SUBDIVISION, 5701 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 incorporated the testimony and exhibits from the original hearing held March 20, 2012, and marked the following as new Exhibits:

Exhibit “E” – Legal Notice
Exhibit “F” – Sign-in Sheet
Exhibit “G” - Application
Exhibit “H” – Staff Report, dated 4/24/12

Mr. Clase reviewed the changes in applicant’s request since the previous hearing. Additional details from applicant which were inadvertently omitted from the packages previously distributed to the Board were attached to the Staff Report for the Board’s review. Since the original application, the proposed fence was reduced in height from 6’8” to 5’6”. The Genoa Township Fire Department will work with the applicant on the required width of the proposed gate.

Philip Hartmann, attorney for applicant, stated that the proposed location of the fence from the right-of-way line is 48 feet on one end to 35 feet on the other end. Summarizing the landscape plan, applicant is proposing 17 ornamental trees, 26 evergreens, 196 evergreen shrubs, 18 deciduous shrubs, 250 perennials and 2,000 plants of ground cover to help mitigate the appearance of the fence. Mr. Hartmann reiterated that the height of the proposed fence was reduced to five feet six inches. He also stated that the requested height of the fence is for privacy and security of the home.

Mr. Goussetis asked Mr. Hartmann what the practical difficulty is with respect to applicant’s property to justify an approval of the requested variance. Mr. Hartmann stated that there is a huge ditch in the front of the house causing a fluctuation in determining the road right-of-way; therefore, applicant’s house has a larger right-of-way than some of the other houses along Sunbury Road. He also stated that the applicants’ landscape architect believes this would be the best location for the fence due to the location of the existing plantings.

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 substantial since it is 120% more in height and a 42% encroachment than the Zoning Resolution allows. Applicant argued that the request for variance was not substantial.

(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 the 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 purchase the property with knowledge of the zoning restriction.

(f) Whether the property owner’s predicament feasibly can be obviated through some method other than a variance. The Board deemed that the property owner’s predicament can feasibly be obviated through some method other than a 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 “H” into evidence to approve a variance for BZA 2012-04, dated March 2, 2012, along with the additional documents submitted April 11, 2012 and April 24, 2012, to allow James and Shayla McGuire, to construct a five foot, six inch (5’6”) fence in excess of the maximum height of thirty (30) inches between the street right-of-way and the building setback line, pursuant to §2002.03 of the Genoa Township Zoning Resolution, on Lot No. 1337 of the Pleasant Hills subdivision, 5701 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 substantial since it is approximately one hundred twenty percent (120%) more in height and a forty-two percent (42%) encroachment 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 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 Ms. Smith. Roll call: Mr. Goussetis, nay; Mr. Harmon, nay; Ms. Smith, aye; Mr. Dunn, aye; Mr. Williams, nay. Motion denied by a 2-3 vote.

This hearing ended at 8:00 p.m.

OTHER BUSINESS

Mr. Dunn made a motion to nominate and elect Harry Goussetis for Chair of the Board of Zoning Appeals, for term ending March 31, 2013. Motion was seconded by Ms. Smith. Roll call: Mr. Dunn, aye; Ms. Smith, aye; Mr. Williams, aye; Mr. Harmon, aye; Mr. Goussetis, abstain. Motion carried.

Mr. Goussetis made a motion to nominate and elect David Dunn for Vice Chair of the Board of Zoning Appeals, for term ending March 31, 2013. Motion was seconded by Mr. Harmon. Roll call: Ms. Smith; aye; Mr. Williams, aye; Mr. Harmon, aye; Mr. Goussetis, aye; Mr. Dunn, abstain. Motion carried.

Mr. Dunn made a motion to adjourn this meeting. Motion was seconded by Mr. Williams. Roll call: all ayes. Meeting adjourned at 8:03 p.m.

Respectfully submitted,

Vicki L. Stainer
Zoning Secretary

Date Approved: 5/24/12

Harry Goussetis, Chair