GENOA TOWNSHIP
BOARD OF ZONING APPEALS
SEPTEMBER 25, 2012

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

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

RE: BZA 2012-09, 5064 Red Bank Rd.
    BZA 2012-10, 7744 Milford Ave.

Mr. Goussetis called the meeting to order at 7:01 p.m.

OLD BUSINESS

Minutes – 6/26/12

Mr. Harmon moved to approve the Minutes from June 26, 2012, as corrected. Motion was seconded by Mr. Williams. Roll call: Mr. Williams, aye; Mr. Antonetz, aye; Ms. Smith, abstain; Mr. Harmon, aye; Mr. Goussetis, aye. Motion carried.

The corrections to the minutes were as follows:

Page 4, paragraph 2, sentence 1:

Mr. Harmon was present at the second-reading meeting after the lights were modified and...

NEW BUSINESS

BZA 2012-09 (5064 Red Bank Rd.)(HEAT/Thomas)

This hearing began at 7:03 p.m.

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

RON THOMAS aka HEAT TOTAL FACILITY SOLUTIONS,
REQUESTING A SUBSTITUTION OF NONCONFORMING USE FOR A
PORTION OF THE EXISTING BUILDING IN ACCORDANCE WITH §2506 OF THE GENOA TOWNSHIP ZONING RESOLUTION TO ALLOW OPERATION OF AN INTERNET-BASED BUSINESS FOR THE SALE OF CAR PARTS, ON PROPERTY LOCATED AT 5064 RED BANK 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 9/25/12
Exhibit “E” – Documents provided by Ms. Evenson, dated 9/25/2012
Exhibit “F” – Documents provided by Ms. Wafer
Exhibit “G” – Documents provided by Attorney Lawrence

Lisa Wafer, Attorney for Mr. Thomas, appeared and presented the application to the Board. Mr. Thomas also appeared and assisted in the presentation. Ms. Wafer stated that Mr. Thomas is not seeking to sell automobiles out of the facility nor are there any restoration services being performed on site. Mr. Thomas stated that he recently bought the Porsche business from a friend who had passed away and wants to continue to supply car parts, via the internet, to his customers. There will not be an inventory at this address; the majority of the parts are shipped from the supplier directly to the customer. He testified that the cars advertised on the website are his personal vehicles and those of his friends. He reiterated that those vehicles are not being sold on the premises. Mr. Thomas also stated that any restoration work is done at a facility in Marengo, Ohio.

Mr. Thomas testified that the principal business at this location is the HVAC business that he originally obtained approval for in 2011 from the Board. The majority of the Porsche business at this location is limited to use of the computer and telephone. He stated that he invested $295,000 in renovation and landscaping of the building and does not believe that the additional computer-based business will intensify the use of the building. Mr. Thomas stated that he has not received any negative feedback from the adjacent neighbors with respect to either of his businesses being conducted at this address.

Mr. Clase briefly reviewed the staff report previously submitted to the Board along with the history of the property. He stated that the Township received a complaint on June 29, 2011, with respect to the operation of the Porsche parts and restoration shop, at which time Mr. Thomas was notified of said complaint. Mr. Thomas then met with staff on-site to discuss the violation; after which time, Mr. Thomas filed the above-
referenced application. Staff believes that if certain safeguards are put in place, it could meet the qualifications for approval.

Public Comment:

**Chris Evenson** (5000 Red Bank Rd.)

Ms. Evenson submitted additional documents to the Board (Exhibit “E”), which she obtained from the internet. Ms. Evenson reviewed those documents, showing that Mr. Thomas does, in fact, have cars for sale at the property. She also believes, that after viewing Mr. Thomas’ website, that he encourages the public to visit the property. Ms. Evenson does not believe the Board should allow two businesses in a building that is located within a residential district, citing a loss of property value.

**Rod Lawrence**

Mr. Lawrence, attorney representing Mr. and Mrs. Evenson, reiterated Ms. Evenson’s concerns and stated that allowing the requested business would substantially increase the use of Mr. Thomas’ building and, for that reason, the Board should not approve Mr. Thomas’ request.

**Dave Buser** (5161 Red Bank Rd.)

Mr. Buser stated that he has been inside of Mr. Thomas’ warehouse and testified that it holds a substantial amount of Porsche car parts along with many vehicles. Mr. Buser believes that this is more than just an internet business as Mr. Thomas states and will substantially increase the use of the building.

**Bob Evenson** (5000 Red Bank Rd.)

Mr. Evenson stated that if Mr. Thomas is allowed to continue having the Porsche business inside his building, he anticipates that it will continue to grow into a larger commercial company which would be detrimental to the adjacent residents.

**Kim Kharazi** (9845 Windale Farms Cr.)

Ms. Kharazi stated that even with an internet business more people and more traffic are generated. The addition of a car museum with extended hours is much more than Mr. Thomas’ original business was permitted to do.

Mr. Goussetis asked Mr. Thomas if, within the last 90 days if any vehicles were being repaired or otherwise restored. Mr. Thomas testified that only his personal vehicle was repaired in the last 90 days at this facility. Mr. Thomas reiterated that the museum is not open to the public, but is only visited by friends and acquaintances, who are in the Porsche Club, and that he is not running a car dealership on the property.
Mr. Goussetis reviewed the criteria for approving a substitution of non-conforming use with the Board, per §2506 of the Genoa Township Zoning Resolution.

Board Comment:

Mr. Harmon moved, incorporating Exhibits “A” through “G” into evidence, to approve Application BZA 2012-09, subject to staff's recommendations, listed below:

1. No structural alterations (except as required by enforcement of other codes or ordinances) are permitted to the Property, unless specifically approved by the BZA.
2. No customers are to be directed to visit this property in conjunction with the proposed use.
3. All products must be stored indoors.
4. Hours of operation shall be limited to between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday. Other activities on the property, including loading and unloading of vehicles, trash and snow removal also must occur within the hours of operation.
5. All deliveries, shipments and other business activities must occur within the hours of operation.
6. All persons and business activities must comply with the Genoa Township Noise Resolution #07-26. Signage should be conspicuously posted and maintained on-site to ensure individuals on the property are aware the Genoa Township Noise Resolution is in effect.
7. Outdoor storage shall be limited to the originally approved (BZA 2011-01) five (5) work trucks and four (4) small trailers.
8. Signage is limited to a two (2) square foot wall-mounted sign or similar based on what would be permitted with a home occupation in the area.
9. All vehicles involved in the business must turn around on-site.
10. Trash service is limited to pick-up and roll-off barrels or dumpsters with rubber lids and may only be serviced during regular business hours.
11. All exterior lights must be down-lighted and on motion detectors. No lighting shall be directed upon neighboring properties.
12. Fencing and landscaping shall be maintained.
13. No trucks will be left unattended or idling on the Property. No other fumes from Property or business will be permitted.
14. All garage doors must be kept closed except for loading or unloading.
15. No guard dogs will be permitted on the premises.

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

This hearing ended at 8:34 p.m.
This hearing began at 8:42 p.m.

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

BOB WEBB HARVEST WIND LLC AND STEVE AND CHERYL MCFADDEN, REQUESTING A VARIANCE TO §§ 1609.01(B) AND (C) OF THE GENOA TOWNSHIP ZONING RESOLUTION TO ALLOW CONSTRUCTION OF AN ACCESSORY BUILDING TO ENCROACH INTO THE MINIMUM SIDE SETBACK AND THE MINIMUM BUILDING SEPARATION, ON LOT 5717 OF THE HARVEST WIND SUBDIVISION, 7744 MILFORD AVENUE, A PLANNED RESIDENTIAL (PRD) 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.

Exhibit “A” – Legal Notice
Exhibit “B” – Sign-in Sheet
Exhibit “C” – Application
Exhibit “D” – Staff Report, dated 9/25/12
Exhibit “E” – Applicant’s Photos and Plans

Steve McFadden appeared and presented his application to the Board. Mr. McFadden stated that they are in the process of building their new home at 7744 Milford Avenue and are proposing to add a gazebo, which would encroach into the side setback and be located closer to the principal structure than what is allowed by the Zoning Resolution. After purchase of the property, applicant discovered that there was an electrical easement on the rear of the property which would prevent him from constructing the pool and gazebo in a compliant location as originally planned. Mr. McFadden testified that he spoke with several of his neighbors and all of them were in support of his proposal.

Mr. Clase briefly reviewed the staff report previously submitted to the Board along with a history of the property. Mr. Clase asked applicant what the laddered structure was to the rear of the pool as shown on applicant’s Exhibit “E”. Mr. McFadden stated that it was a waterfall feature along with a raised planter. Mr. Clase stated that the home is visible from Center Green Drive, but is separated by a retention basis.

Public Comment:
None.

Board Comment:
The Board reviewed *Duncan v. Middlefield*, 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 a 62% encroachment into the required building setback and 10% into the side yard setback 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 delivery of governmental services would be not adversely affected.

(e) Whether the property owner purchased the property with knowledge of the zoning restriction. The Board deemed that the property owner did not have knowledge of the zoning restriction when he purchased 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 property owner's predicament can feasibly be obviated through some 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 substantial justice would be done by granting the variance.

Ms. Smith moved, incorporating Exhibits “A” through “E” into evidence, to approve a variance for BZA 2012-10, dated September 5, 2012, to allow construction of an accessory building to encroach into the minimum side setback and the minimum building separation on property located at 7744 Milford Avenue, a Planned Residential (PRD) 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 sixty-two percent (62%) into the building separation and ten percent (10%) into the side setback 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 not purchase the property with knowledge of the zoning restriction.
(f) The property owners’ 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.

Approval of this variance is subject to the owners’ agreement to the following condition:

1. The gazebo structure will not include walls or other permanent screening to maintain the view of open spaces.

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

This hearing ended at 9:25 p.m.

Mr. Williams moved to adjourn at 9:30 p.m. Motion was seconded by Mr. Antonetz. Vote: all ayes. Motion carried.

Respectfully submitted,

Vicki L. Stainer  
Zoning Secretary

Date Approved: 10/31/12

Harry Goussetis, Chair

ACTING CHAIR MARK O'HARMON