GENOA TOWNSHIP
BOARD OF ZONING APPEALS
FEBRUARY 26, 2013

Present: Harry Goussetis, Chair
         Mark Harmon
         Cybele Smith
         David Dunn
         Sara Walsh, Alternate

Also Present: Joe Clase, Director of Development & Zoning

RE: BZA 2013-01, Romanelli & Hughes

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

OLD BUSINESS

Minutes – 12/26/12

Mr. Harmon moved to approve the Minutes from December 26, 2012, as written. Motion was seconded by Mr. Dunn. Roll call: Mr. Goussetis, aye; Ms. Smith, aye; Mr. Harmon, aye; Mr. Dunn, aye; Ms. Walsh, aye. Motion carried.

NEW BUSINESS

BZA 2013-01, Romanelli & Hughes

This hearing began at 7:03 p.m.

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

ROMANELLI AND HUGHES, REQUESTING A VARIANCE TO §919 OF THE GENOA TOWNSHIP ZONING RESOLUTION, TO ALLOW FOR CONSTRUCTION TO ENCROACH INTO THE REQUIRED FRONT SETBACK ON LOTS 1, 3, 7, 8, 9, 10, 11, 36, 37, 38, 39, 40, 41 AND 42 OF THE SORRENTO AT HIGHLAND LAKES SUBDIVISION, LOCATED AT 6599 WORTHINGTON ROAD, 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.

Mr. Goussetis marked the following as exhibits:

Exhibit “A” – Legal Notice
Exhibit “B” – Sign-in Sheet
Exhibit “C” – Application
Exhibit “D” – Staff Report, dated 2/26/13
Exhibit “E” – Applicant’s photographs

Joe Looby, representative for applicant, appeared on behalf of the applicant and presented the application to the Board. Steve Jones also appeared and assisted in the presentation. Mr. Looby stated that the rezoning and final development plan was approved for this proposed subdivision in 2006. Mr. Looby stated that 14 lots in the Sorrento at Highland Lakes subdivision back up to the perimeter 50-foot setback line. Due to the current housing market, the parties interested in building a home in this subdivision would like to be able to build a larger home. Due to the location of those 14 lots at issue, applicant believes the length of the proposed driveways on these lots will be too short with the existing required front setback in the event larger houses are constructed; therefore, applicant would like to reduce the front setback on these lots by approximately sixteen percent (16%) to accommodate a larger house and still be compliant with the driveway.

Mr. Goussetis asked why these lots were different from the others within the subdivision and why it was necessary to request this variance. Mr. Jones stated that the main purpose of this variance was to accommodate the public interested in these lots who want a three-car garage. Mr. Goussetis asked Mr. Looby why the applicant did not go back to the Zoning Commission for an amendment to the Final Development Plan. Mr. Looby deferred to Mr. Clase to answer this question.

Mr. Clase gave a brief background of the original rezoning and final development plan approval. Applicant has now broken ground on this development and is seeking a variance for the front setbacks on the above-referenced lots. Mr. Clase stated that since the development was approved several years ago, and applicant is just now beginning construction, several issues have arisen with the changing markets. All issues have been handled administratively except for the setback issue which requires a variance.

During a meeting with the applicant the question arose of how to make this request. Mr. Clase advised the applicant that they could seek a divergence through a Final Development Plan amendment or a variance, but that a variance would be the more appropriate method for hearing this issue since it involves a setback request. Legal counsel advised that either a variance or a development plan divergence could be appropriate for any development plan restriction if it’s an area-type variance. Mr. Clase testified that no negative comments with respect to this variance were received.
After extensive discussion between the Board and Mr. Clase with respect to the jurisdiction of this matter, Mr. Goussetis stated that he was not comfortable with the Board of Zoning Appeals making a determination on this matter. He believes the applicant needs to go before the Zoning Commission to ask for an amendment to the Final Development Plan.

Public Comment:

None.

Board Comment:

At this time, the Board reviewed the criteria in Duncan v. Middlefield, as follows:

(a) Whether the property in question would 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 16% less 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 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 not be observed and substantial justice would not be done by granting the variance.
Mr. Dunn moved, incorporating Exhibits “A” through “E” into evidence, to approve a variance for BZA 2013-01, dated February 11, 2013, to allow for construction to encroach five feet six inches (5'6") into the required front setback on Lots 1, 3, 7, 8, 9, 10, 11, 36, 37, 38, 39, 40, 41 and 42 of the Sorrento at Highland Lakes Subdivision, located at 6599 Worthington Road, 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 sixteen percent (16%) less 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 not be observed and substantial justice would not be done by granting the variance.

Motion was seconded by Mr. Harmon. Discussion: Mr. Dunn believes the applicant does not have a practical difficulty to be able to grant this requested variance. Mr. Harmon concurred. Mr. Gousetis stated that he does not believe that the Board of Zoning Appeals has jurisdiction to hear this application and recommended applicant go before the Zoning Commission for a Final Development Plan Amendment. Roll call: Mr. Gousetis, nay; Mr. Harmon, nay; Ms. Smith, nay; Mr. Dunn, nay; Ms. Walsh, aye. Motion denied.

This hearing ended at 7:52 p.m.

Mr. Dunn moved to adjourn at 7:52 p.m. Motion was seconded by Mr. Harmon. Vote: all ayes. Motion carried.

Respectfully submitted,

Vicki L. Stainer
Zoning Secretary

Date Approved: ____________________________

Harry Gousevis, Chair

Based on Sections 301.04, 307 and 923 in particular.