GENOA TOWNSHIP
BOARD OF ZONING APPEALS
APRIL 23, 2013

Present: Harry Goussetis, Chair
Mark Harmon
Mark Antonetz, Alternate

Also Present: Joe Clase, Director of Development & Zoning
Susan Dorsch, Permit & Compliance Inspector

RE: BZA 2013-02 (10627 Sage Creek Dr.)

Mr. Goussetis called the meeting to order at 7:16 p.m.

OLD BUSINESS

Minutes – 2/26/13

Mr. Harmon moved to approve the Minutes from February 26, 2013, as amended. Motion was seconded by Mr. Antonetz. Roll call: Mr. Goussetis, aye; Mr. Harmon, aye; Mr. Antonetz, aye. Motion carried.

The amendment to the minutes was as follows:

Page 4, Paragraph 3, Sentence 4:

...Mr. Goussetis stated that, based on Sections 301.04, 307 and, in particular, 923, 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.

NEW BUSINESS

BZA 2013-02 (10627 Sage Creek Dr.)

This hearing began at 7:17 p.m.

Mr. Goussetis read the legal notice for the record, as follows:
MICHAEL AND ELIZABETH VERNE, REQUESTING A VARIANCE TO §606.08 OF THE GENOA TOWNSHIP ZONING RESOLUTION, TO ALLOW FOR CONSTRUCTION TO ENCROACH INTO THE REQUIRED REAR SETBACK ON LOT 6414 OF THE SAGE CREEK SUBDIVISION, LOCATED AT 10627 SAGE CREEK DRIVE, 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 advised the applicant that, since there were only three Board members in attendance for this hearing, that any determination made by the Board would need a unanimous vote. He gave applicant the option to either go forward with the hearing or continue their hearing until their application can be heard by a full Board. Applicant agreed to go forward with the hearing.

Mr. Goussetis marked the following as exhibits:

Exhibit “A” – Legal Notice
Exhibit “B” – Sign-in Sheet
Exhibit “C” – Application
Exhibit “D” – Staff Report, dated 4/23/13

Mrs. Verne stated that they are proposing to construct a family room off the existing kitchen to add more living space to their home. The addition would be constructed over the existing patio. She stated that when they purchased their home, they were under the impression that they had a 20-foot rear setback as stated on their building plans; therefore, they believed they had plenty of room to build the proposed addition. When they tried to obtain a permit, staff advised them that they, in fact, had a 50-foot required rear setback.

Mr. Verne stated that the original builder of their home would construct the new addition, therefore it would match the existing home, both structurally and exterior materials. Applicant does not believe the proposed addition would intrude on any of their adjacent neighbors, especially those to the rear due to the existing dense wooded area between the properties. Mr. Goussetis asked how far the proposed addition would encroach into the rear setback since it was not stated on their application. Mr. Verne stated that it would be an approximate 11-foot encroachment into the required rear setback. Mr. Goussetis asked what the square footage was for the existing house. Mrs. Verne testified that it was approximately 3,864 square feet. The proposed addition would add approximately an additional 300 square feet to the home.

Mr. Goussetis asked if applicant considered any other alternatives for locating the proposed addition which would be compliant with the Zoning Resolution and not require a variance. Mrs. Verne stated that the only alternatives which did not require a variance would be to either build off the front of their house or off the master bedroom. Applicants do not feel that either of those options are feasible or economical.
Ms. Dorsch briefly reviewed the history of the property along with the staff report previously submitted to the Board. She reiterated Mrs. Verne’s testimony that they were unaware of the 50-foot required rear setback on their property when they contacted the Township to inquire as to the process for applying for a zoning permit for the proposed addition. Staff scheduled an on-site visit with the applicant to discuss their proposal and advise them of the process for applying for a variance.

Ms. Dorsch testified that staff received one public inquiry with respect to the proposed application and subsequently received a letter from the management company for Sage Creek requesting the Board to deny the variance application. Staff recommended that, if the variance request is granted, the Board stipulate that the encroachment is a 25% encroachment (12.6 feet), instead of a 23% (11 feet) encroachment as stated earlier, to avoid the need for a foundation survey.

Public Comment:

Anthony Tempesta (Tempesta Builders)

Mr. Tempesta stated that he is the builder for the applicant and reiterated that applicant looked at several alternatives for the location of the proposed addition but, due to the required setback being 50 feet instead of the 20 feet that applicant believed they had, there are no feasible alternatives without the need for a variance.

Kristin Krejsa (2555 Sweet Clover)

Ms. Krejsa stated that she believes the proposed addition would be very intrusive to the privacy of her property. Even though there is a dense wooded area between the properties, she stated that area is very wet and believes that if the trees are not already dead, they will be soon. Ms. Krejsa does not believe the Board should grant the requested variance.

Mr. Verne stated that it should be less intrusive to Ms. Krejsa since they would be inside the home instead of outside on the existing patio. Ms. Verne stated that they would be willing to plant additional landscaping to help with the screening of their property if the Board so deemed.

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 25% 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 but that the adjoining properties could 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. Harmon moved, incorporating Exhibits “A” through “D” into evidence, to approve a variance for BZA 2013-02, dated April 5, 2013, to allow for construction to encroach twelve and a half feet (12’6”) into the required rear setback on Lot 6414 of the Sage Creek subdivision, located at 10627 Sage Creek Drive, 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 twenty-five percent (25%) 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 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. Antonetz.** Roll call: Mr. Goussetis, aye; Mr. Harmon, aye; Mr. Antonetz, aye. **Motion approved.**

This hearing ended at 7:46 p.m.

**ADDITIONAL BUSINESS**

**Election of Officers**

Mr. Harmon moved to nominate and elect Harry Goussetis as Chair and David Dunn as Vice Chair of the Board of Zoning Appeals, for terms ending March 31, 2014. **Motion was seconded by Mr. Antonetz.** Roll call: Mr. Goussetis, aye; Mr. Harmon, aye; Mr. Antonetz, aye. **Motion carried.**

**Administrative Discussion**

Mr. Clase briefly explained the new amendments to the Zoning Resolution, a copy of which was previously submitted to the Board. Mr. Clase also reviewed the four existing application forms with the Board along with the application process. Mr. Clase asked those who have not yet done it, to complete the community survey on the Township website and return to our office.

**Mr. Harmon moved to adjourn at 7:58 p.m. Motion was seconded by Mr. Antonetz.** Vote: all ayes. **Motion carried.**

Respectfully submitted,

Vicki L. Stainer
Zoning Secretary

Date Approved:

Harry Goussetis, Chair