GENOA TOWNSHIP BOARD OF ZONING APPEALS MEETING MINUTES

DATE: November 18, 2014
TIME: 7:00 PM
LOCATION: Genoa Township Hall, 5111 S. Old 3C Hwy., Westerville, Ohio 43082
AGENDA ITEMS: BZA 2014-13  David & Penny Roberts – conditional use permit
BZA 2014-12  Richard & Kathleen Ball – variances for side yard setback

CALL TO ORDER
Harry Goussettis called the meeting to order at 7:00 p.m.

ROLL CALL
MEMBERS PRESENT
Harry Goussettis, Chair
Mark Harmon
Cybele Smith

MEMBERS ABSENT
Sara Walsh
Teresa Yu, Alt.

David Dunn, Vice-Chair
Mark Antonetz, Alt

MINUTES
The board reviewed meeting minutes presented by the Genoa Township Development and Zoning Department for meetings held on July 22, 2014; August 26, 2014; September 23, 2014; and October 28, 2014.

July 22, 2014: Mark Harmon moved to approve the meeting minutes from July 22, 2014 as written. Motion was seconded by Sara Walsh. Roll call: Sara Walsh, yes; Teresa Yu, yes; Cybele Smith, abstain; Mark Harmon, yes; Harry Goussettis, yes. Motion carried.

August 26, 2014: Mark Harmon moved to approve the meeting minutes from August 26, 2014 as written. Motion was seconded by Sara Walsh. Roll call: Sara Walsh, yes; Teresa Yu, yes; Cybele Smith, yes; Mark Harmon, yes; Harry Goussettis, yes. Motion carried.

September 23, 2014: Mark Harmon moved to approve the meeting minutes from September 23, 2014 written. Motion was seconded by Sara Walsh. Roll call: Sara Walsh, yes; Teresa Yu, yes; Cybele Smith, yes; Mark Harmon, yes; Harry Goussettis, yes. Motion carried.

October 28, 2014: Mark Harmon moved to approve the meeting minutes from October 28, 2014 written. Motion was seconded by Sara Walsh. Roll call: Sara Walsh, yes; Teresa Yu, yes; Cybele Smith, yes; Mark Harmon, yes; Harry Goussettis, yes. Motion carried.

PUBLIC HEARING
Harry Goussettis called the following hearing to order at 7:03 p.m., read the legal notice and asked everyone who wished to speak to this matter to sign-in and to stand. Those standing were sworn-in.

DAVID R. AND PENNY L. ROBERTS REQUESTING A CONDITIONAL USE PERMIT IN ACCORDANCE WITH SECTION 1609.01 (F) OF THE GENOA TOWNSHIP ZONING RESOLUTION TO ALLOW HUMAN OCCUPANCY OF AN ACCESSORY STRUCTURE ON 6427 BRAYMORE DRIVE, ZONED PLANNED RESIDENTIAL (PRD) ZONING DISTRICT (BZA 2014-13).
The following were marked as exhibits “A” – “D”.
Exhibit “A” – Legal Notice
Exhibit “B” – Sign-in Sheet
Exhibit “C” – Application
Exhibit “D” – Staff Report, dated 11/18/2014

APPLICANTS' PRESENTATION: David and Penny Roberts indicated they have a three bedroom ranch home of approximately 4100 square feet. Their daughter and son-in-law live with them and another daughter visits frequently. They are hoping to add additional space for everyone’s comfort and privacy. Mr. Roberts indicated this would not increase traffic, nor would he need to bring in their motor home to accommodate additional family members if this is approved. The entire accessory structure building is 45 x 72 feet; a 35 x 45 foot portion of this already houses some of their living space, including a kitchen/dinette, a bathroom and a bedroom. Several family members currently use this as living space.

STAFF REPORT: Susan Dorsch, on behalf of the Genoa Township Development and Zoning Department, reviewed the staff report. She indicated this is part of the platted Mansard Estates subdivision, but the property is not part of the Homeowners’ Association. It is part of a planned residential district with larger lots to the north and east and subdivision lots to the west and south. The Zoning Resolution allows for a conditional use accessory building to be used for living space and the location of the accessory building is compliant with the zoning resolution. When asked if “human occupancy” is defined in the code, Ms. Dorsch responded it is not, however accessory buildings used by people are generally a pool house, workshop, etc., not a permanent living space. Mr. Gousettis indicated there were letters from six homeowners and Ms. Dorsch noted there was one additional call asking to clarify if an additional accessory structure was going to be built. The Board clarified that the accessory structure is compliant and that the hearing tonight was for a conditional use permit to allow human occupancy.

PUBLIC COMMENTS: Harry Gousettis asked any individuals who were properly sworn-in to share their comments.

1. Emily Pelphrey (6181 Cupola Court) expressed concern about a property owner’s ability to construct an accessory building and then after the fact determine an alternate use. She expressed concern over this setting a precedent going forward. Additionally, she questioned the construction of two separate living structures on one property rather than adding on to the existing structure. Related to Duncan vs. Middlefield, she noted this is a substantial difference to the character of the neighborhood including the content of the building and the hours of use. She believes this would be detrimental to the surrounding properties. She also said the property owner knew of this when he began building the structure, but built it and approached the Zoning Office after the structure was completed and occupied. Should the property be sold in the future, the next owner may look at this second structure as a use beyond family potentially using it as a rental property. The Zoning Code allows one home per parcel, not two as is the case here. She asks that this application be denied. Mr. Gousettis clarified that this application is for a conditional use permit, not a variance as the speaker stated. As such, Duncan vs. Middlefield is not literally applicable but is always relevant.

2. Tim Miller (6268 Cupola Court) lives directly behind the applicant. He specifically noted Section 303.03 of the Zoning Code and indicated that the use of this appears to be more of an apartment style or rental property which he believes will have a detrimental impact on surrounding property value. Furthermore, he questioned the square footage and whether or not that was compliant with what is allowed in the Zoning Code.
3. William Berisford (6305 Cupola Court) is concerned about a decrease in surrounding property values due to the addition of an accessory structure being used as a residence. He noted the possibility of this setting a precedent within the Township, and noted that another homeowner in the area has already mentioned the option of bringing in an accessory building and using it as a rental property.

APPLICANT'S RESPONSE: Mr. Roberts reiterated that there will be no increase in traffic as a result of this conditional use as family members are already there. Although he sympathized with his neighbors concerns, he stated it was not his problem if they didn't check the zoning rules when they bought their homes. He indicated that running a business out of this would increase the traffic but this would not and he did not feel this was an unreasonable request.

BOARD DISCUSSION: The Board reviewed Section 303 of the Genoa Township Zoning Resolution, with respect to the Conditional Use Permit standards. They questioned Ms. Dorsch on the conditional use for a guest house as this request would be more in line with that concept. Ms. Dorsch indicated that in the past, the Board had set stipulations, such as it could not be rented, it must continue to use the same address, and utilities must use the same connections and address. Mr. Goussetis noted that if conditions are imposed they will follow the property for future owners. When asked, Ms. Dorsch indicated a Certificate of Compliance for this structure was issued in October, 2014. The applicant offered that a temporary permit was issued in early June, 2014, and that the last action was two weeks ago. The applicant indicated the accessory building is as complete as it is going to be for now, with drywall now being finished.

The Board expressed concern that Mansard and this property are both zoned PRD and they abut larger lots to the north and east. It was felt there is a difference between this and a commercial business. The Board clarified that decisions made here are based on the unique parcel and not as a precedent, per the Zoning Code. Furthermore, the Board noted this is appropriately sized on a large four acre property; since the structure already exists it is only a change of use. Board members felt it important to include stipulations in any motion so that neither the property rights of the owner nor the neighbors are hindered.

MOTION: Sara Walsh moved, incorporating Exhibits A through D into evidence, to approve a conditional use permit in accordance with 1609.01 (F) for BZA 2014-13, application received October 20, 2014, to allow human occupancy of an accessory structure on property located at 6427 Braymoore Drive, zoned Planned Residential (PRD) Zoning District based on the criteria reviewed in Section 303 of the Genoa Township Zoning Resolution.

Approval of this Conditional Use Permit is subject to the owner's agreement to the following conditions:

1. The accessory structure shall never become an income-producing property.
2. The accessory structure will maintain the same address as the main structure.
3. The accessory structure must maintain the same connecting utilities as the main structure without any sub-utilities being connected to the accessory structure.

Motion was seconded by Teresa Yu.

Discussion on Motion: The Board had no additional discussion.

Roll call: Teresa Yu, yes; Sara Walsh, yes; Cybele Smith, no; Mark Harmon, no; Harry Goussetis, yes. Motion carried.
Harry Goussetis announced the hearing closed at 7:46 p.m.

PUBLIC HEARING
Harry Goussetis called the following hearing to order at 7:48 p.m., read the legal notice and asked everyone who wished to speak to this matter to sign-in and to stand. Those standing were sworn-in.

**RICHARD A. & KATHLEEN E. BALL REQUESTING A VARIANCE FROM THE GENOA TOWNSHIP ZONING RESOLUTION (919) TO ALLOW FOR AN ADDITION TO ENCROACH INTO THE TEN FOOT SIDE YARD SETBACK AS REQUIRED IN THE WESTERVILLE RESERVE FINAL DEVELOPMENT PLAN, LOCATED ON 6917 REGENCY DRIVE, WESTERVILLE, ZONED PLANNED RESIDENTIAL (PRD) ZONING DISTRICT (BZA 2014-14).**

The following were marked as exhibits “A” – “D”.

- Exhibit “A” – Legal Notice
- Exhibit “B” – Sign-in Sheet
- Exhibit “C” – Application
- Exhibit “D” – Staff Report, dated 11/18/2014

**APPLICANTS’ PRESENTATION:** Richard Ball, the applicant, showed how the required setback from the lot line was opposite of the line of the house such that when the line of the house was extended toward the rear yard, there was a point where the two lines crossed. The Ball’s want to extend the porch in keeping with the lines of the house, however that line extends beyond the required setback. At the rear edge of the porch, there is approximately a thirty (30) inch encroachment on the setback. Mr. Ball stated he had talked to his immediate neighbors and they were comfortable with this plan; the HOA has given their approval.

**STAFF REPORT:** Susan Dorsch, on behalf of the Genoa Township Development and Zoning Department, reviewed the staff report. She indicated the Zoning Office had denied the application due to the encroachment so the applicant is now seeking a variance.

**PUBLIC COMMENTS:** Harry Goussetis asked any individuals who were properly sworn-in to share their comments.

1. Robert Ricci (6933 Regency Drive) indicated is the neighbor to the south and has no concerns about this request.

The Board reviewed *Duncan v. Middlefield*, for the variance from Section 919 as follows:

(a) Whether the property in question would yield a reasonable return or whether there can be beneficial use of the property without the variance. The Board deemed that the property 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 this does not appear to be 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 applicant would not substantially alter the character of the neighborhood and the adjoining properties would not suffer a substantial detriment as a result of the variance.

(d) Whether the variance would adversely affect the delivery of governmental services. There was no evidence presented that any governmental services would be adversely affected.
(e) Whether the property owner purchased the property with knowledge of the zoning restriction. It appears the property owner purchased the property with knowledge of the zoning restriction that was in place at the time of the purchase.

(f) Whether the property owner's predicament feasibly be obviated through a method other than the variance. The property owner cannot encroach into the rear yard setback without obtaining a variance.

(g) Whether the spirit and intent behind the zoning requirement would be observed and substantial justice would be 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.

BOARD DISCUSSION: There was no additional discussion from the Board.

MOTION: Mark Harmon moved, incorporating Exhibits A through D into evidence, to approve a Variance to Section 919 of the Genoa Township Zoning Resolution for BZA 2014-14, application received October 31, 2014, to allow for construction of an addition to encroach into the minimum required ten (10) foot side yard setback for property located on 6917 Regency Drive, Westerville, zoned 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 not substantial since it is approximately 25% less than the Zoning Resolution requires.

(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.

Motion was seconded by Cybele Smith.

Discussion on Motion: The Board noted there are challenges with this irregular shaped lot and there was no objection from surrounding neighbors. Additionally, there is significant park space and screening to the rear of this property.

Roll call: Teresa Yu, yes; Sara Walsh, yes; Cybele Smith, yes; Mark Harmon, yes; Harry Goussetis, yes. Motion carried.

Harry Goussetis announced the hearing closed at 7:57 p.m.

ADJOURNMENT
Mark Harmon moved to adjourn the meeting at 7:57 p.m. Motion was seconded by Teresa Yu. All voted yes. Motion carried.

Meeting was adjourned at 7:57 p.m.

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PUBLICATION OF LEGAL NOTICE:

Genoa Township Board of Zoning Appeals Meeting Minutes – November 18, 2014
The legal notice for this meeting was printed and published on November 8, 2014 in the Delaware Gazette and posted at the Genoa Township Hall on November 5, 2014. Notice of this meeting was also mailed to the adjacent property owners and a notification sign was placed on the subject property.

PREPARED BY: 
Connie Goodman, 

DATE PREPARED: December 4, 2014

BOARD OF ZONING APPEALS APPROVED: 
Harry Goussetis, Chair

DATE APPROVED BY THE BOARD OF ZONING APPEALS: 11/27/15

<table>
<thead>
<tr>
<th>OTHERS PRESENT AT MEETING</th>
<th>ADDRESS</th>
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<tbody>
<tr>
<td>Susan Dorsch</td>
<td>Genoa Township Zoning and Development Office</td>
</tr>
<tr>
<td>Larry &amp; Julie King</td>
<td>5101 Cornice Court, Galena 43021</td>
</tr>
<tr>
<td>Bob Ricci</td>
<td>6933 Regency Drive, Westerville 43082</td>
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<tr>
<td>John &amp; Amanda Morsek</td>
<td>6296 Cupola Court, Galena 43021</td>
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<tr>
<td>Dave &amp; Penny Roberts</td>
<td>6427 Braymoore Drive, Westerville 43082</td>
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<tr>
<td>Amber Dyer</td>
<td>6422 Braymoore Drive, Westerville 43082</td>
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<tr>
<td>Emily Pelphrey</td>
<td>6181 Cupola Court, Galena 43021</td>
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<tr>
<td>Tom Miller</td>
<td>6268 Cupola Court, Galena 43021</td>
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<tr>
<td>William Berisford</td>
<td>6305 Cupola Court, Galena 43021</td>
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