DATE: October 25, 2016
TIME: 7:00 PM
LOCATION: Genoa Township Hall, 5111 S. Old 3C Hwy., Westerville, Ohio 43082

AGENDA ITEMS: BZA 2016-09 Wyglendowski – Conditional Use Permit, Living space within an accessory building

CALL TO ORDER
Mark Harmon called the meeting to order at 7:00 p.m.

ROLL CALL

<table>
<thead>
<tr>
<th>MEMBERS PRESENT</th>
<th>MEMBERS ABSENT</th>
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<tr>
<td>Mark Harmon, Chair</td>
<td>Teresa Yu</td>
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<td>Sara Walsh, Vice-Chair</td>
<td>David Buhn, Alt.</td>
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<tr>
<td>Cybele Smith</td>
<td>Dorothy Driskell, Alt</td>
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MINUTES

The board reviewed meeting minutes presented by the Genoa Township Development and Zoning Department for the hearing held on September 27, 2016.

MOTION: Sara Walsh moved to approve the September 27, 2016 meeting minutes, as presented:

Motion was seconded by David Buhn. Roll call: Cybele Smith, abstain; Sara Walsh, yes; Teresa Yu, abstain; David Buhn, yes; Mark Harmon, yes. Motion carried.

PUBLIC HEARING

Mark Harmon called the following hearing to order at 7:04 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.

CHRISTIAN AND SARAH WYGLEDOWSKI REQUESTING A CONDITIONAL USE PERMIT PER SECTION 1609.01F TO ALLOW FOR LIVING SPACE IN AN EXISTING ACCESSORY BUILDING LOCATED ON PROPERTY AT 7470 RED BANK ROAD, WESTERVILLE, OHIO, PARCEL #317-444-01-043-000, A RURAL RESIDENTIAL (RR) ZONING DISTRICT (BZA 2016-09).

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 October 25, 2016
- Exhibit “E” – Statement(s) of Neighbor Concerns

STAFF REPORT: Susan Dorsch, on behalf of the Genoa Township Development and Zoning Department, gave an overview of the staff report. The application is for a five (5) acre parcel located in a Rural Residential (RR) district that was created from a larger parcel in 1992. There are three (3) buildings on the property; a house built in 1992, a pole barn built in 1997, and a detached garage also built in 1997. There were no zoning permits located for these structures so they could
have been built under an agricultural exemption. In September 2016, a contractor contacted the Zoning Office to determine if this property was zoned for the accessory building to be used as a guest house; Staff were unable to locate any previous conditional use approvals for this address. Subsequently, the property owner contacted the Zoning Office and questioned the process for obtaining a Conditional Use Permit; an application was received on September 30, 2016. The request is to allow Human Occupancy in an accessory structure per Section 1609.01F of the Zoning Resolution. Additionally, the applicant is requesting to allow use as a Bed and Breakfast or as a rental on Airbnb and VRBO. The application states the accessory building was previously used as housing for farm hands, but it has not been used as such for several years and is in a state of disrepair. Ms. Dorsch read the following into the record:

- Section 603.02, which states the use of an accessory building as housing for farm labor is allowed within the Rural Residential Zoning District as agricultural uses are typically exempt from zoning regulations under the Ohio Revised Code (ORC).
- Section 2503.07 of the Genoa Township Zoning Resolution states once the use is discontinued, any new, non-agricultural use must comply with the zoning regulations.
- Section 1609.01F of the Zoning Resolution prohibits human occupancy within an accessory building unless a Conditional Use permit is obtained.

It appears the required fifteen (15) foot side setback has been met. The Genoa Township Police and Maintenance Departments had no comments or concerns; Fire Marshall Skeel provided his comments to the Board and the applicant. Letters were mailed to adjacent property owners on October 11, 2016; the legal notice was published in the Delaware County Gazette on October 14, 2016; and a notification sign was placed on the subject property on October 13, 2016. Development and Zoning did not receive any calls concerning this application.

Staff have no objection to the use of the Accessory Building as a guest house. Under Section 1609.01, Staff does not support the use of the Accessory Building as a Bed and Breakfast or a rental unit. Staff also discussed the use of the Accessory Building as a Bed and Breakfast for a rental unit with the Delaware County Prosecutor’s Office and their opinion was since neither a Bed and Breakfast or a rental use was listed as a permitted use in the Code for a Rural Residential district, it would not be allowed and the proposed use would not be in keeping with the principle use of the parcel which is for a single-family residence.

APPLICANTS’ PRESENTATION: Christian Wyglendowski, applicant, stated he and his wife purchased this home in October, 2015. He was surprised this structure was listed as a “garage” as it has no garage doors and in no way resembles a garage. He said when they purchased the property, they thought it had likely been used by someone caring for horses on the property as the pole barns contained horse stalls. Regardless, he learned this required some additional approvals and work to bring it out of a state of disrepair as it is currently a blight on the property. They wished to use this as a rental on Airbnb or VRBO for short-term rentals to help defray some of the repair costs, as Walt Mosley, their contractor, indicated to the applicant the repair costs could be substantial.

The Board questioned if there was a difference in the process if they repaired the existing structure or built something new; Ms. Dorsch responded the process would be the same in that they would need a Conditional Use Permit either way. Ms. Dorsch further explained that a rental property would be considered a Commercial Use and is not permitted in a Rural Residential (RR) District. A “Permitted Use” does not require Board approval, whereas a “Conditional Use” does. She further clarified the Prosecutor’s opinion that a Bed and Breakfast or Airbnb/VRBO rental is not a permitted use since it is not specified in the code and that the primary use of this property is for single-family. Using the accessory building as a rental changes the use from primarily single-family, whereas using it for family or guests does not generate income and is allowed. If this is pursued, the property
would need to be rezoned and the approval of that is highly unlikely as it would be “spot zoning”.
When asked about Fire Marshall Skeel’s comments regarding access concerns, the applicant
responded they are agreeable to meeting all requirements of the Fire Department, especially those
related to the driveway.

PUBLIC COMMENTS: Mark Harmon asked any individuals who were properly sworn-in to share their
comments.
1. Kenneth Davis (8343 Oxbow Road) stated he spoke with several people who agree with
his thoughts on this application, however, they were not present. He gave the Board
Exhibit E with neighbors’ concerns. He went on to state the following:
   a. He is opposed to use as a commercial property; but is okay with family/guest use.
   b. He stated this is not part of the commercial district located in the Southern end
      of the Township. As an advertised rental property, specifically a Bed and
      Breakfast or Airbnb/VRBO, it is both a “regional” and an “international” draw.
      Both conflict with the Comprehensive Plan and the Zoning Resolution.
   c. He stated that adding an additional residence could potentially open this
      property to use as a rental, possibly an “apartment”, and should this property be
      sold in the future, the Zoning Office might not be aware of a commercial
      operation happening.
   d. Mr. Davis noted a discrepancy in the application where the applicant stated
      Section 603.02 applied and later in the application indicated it did not apply.
   e. Mr. Davis questioned the number of buildings and the total square footage as
      noted on the Auditor’s site, stating he did not think it was compliant with the
      Code. He suggested building an addition on the house for their grandparents
      rather than a separate structure. Ms. Dorsch clarified that on a five (5) acre
      property there could be up to five (5) structures so the applicant is compliant,
      further noting they are also compliant with the total coverage allowed.
   f. He asked if the Conditional Use is granted for a money-making operation, would
      then open the door for future similar uses. The Board stated each case is
      reviewed on its own merit and does not set a precedent for future cases. Mr.
      Davis noted this on audio, thus his question.
   g. He asked if when something new happens on a property, is the entire property
      then subject to the current Code or is it just the item being addressed. Ms.
      Dorsch stated she is unaware of anything on the property that is not currently
      compliant, then added the Zoning Office looks at all applicable items related to
      each application.
   h. Mr. Davis asked is the accessory building and the primary residence were on
      septic and if so, were they on the same septic system. The applicant stated they
      are on septic but was not sure of the setup; this will be determined as part of the
      construction process.
   i. He questioned if the side yard setback was compliant with a commercial use; Ms.
      Dorsch stated the setback has been met.
   j. He questioned the number of employees and the hours of operation should this
      be approved as a rental. There was no response from the applicant.

APPLICANT’S RESPONSE: The applicant had no additional comments.

BOARD DISCUSSION/FINDINGS OF FACT: The Board discussed the application, first questioning the
total square footage of the accessory building. The applicant responded it is two-stories and about
960 square feet; they do not intend to increase the size, but rather to stay within the current
confines of the structure. The Board asked for clarification of the location of Mr. Kenneth Davis’
property in relation to the applicant's property; Mr. Davis indicated he is on the west side of the Hoover Reservoir (Planning Area IV) and the applicant is on the east side of the Hoover Reservoir (Planning Area III). The Board asked what is located on the adjacent property; it appears to be vacant currently. They clarified that the question this evening is for occupancy, not the ability to fix up the accessory building. The location of the driveway was also pointed out by the applicant when asked by the Board. The Board asked if there would be additional requirements for the structure if it is used as a commercial property; Ms. Dorsch responded these requirements are set by the Fire Department, not the Zoning Office. The possible need for ADA compliance was mentioned by the Board should this become a rental property. The Board noted a specific concern that the County Prosecutor was not in favor of a revenue-creating source in a Rural Residential District, and that this is not currently allowed in the Zoning Code, further noting the need for compliance with all fire safety requirements to ensure safety of occupants, regardless of whether the occupants are family, guests, or renters. There consensus was there was no issue with private occupancy, however, the commercial endeavor is not something the Board is comfortable with, especially in a Rural Residential (RR) District. The Board then reviewed the following:

Under Section 603 of the Genoa Township Zoning Resolution accessory buildings, as regulated by Section 1609, are a permitted use with the Rural Residential District. Section 1609.01F states “No Accessory Building within any district shall be used for human occupancy except as a permitted Conditional Use if specified within a district”.

As stated in Section 303 “Conditional Uses may be permitted provided that such Uses shall be found to comply with the requirements listed in Section 303”. The Board’s review of the applicant’s request to allow for living space in an accessory building based on these requirements is as follows:

Section 303

303.01 The Use is so designed, located and proposed to be operated so that the public health safety, welfare and convenience will be protected.

303.02 The Use will not result in the destruction, loss or damage of natural, scenic, or historic features of major importance.

303.03 The Use will be designed, constructed, operated, and maintained so that it shall not cause substantial injury to the value of the property in the area or neighborhood where it is to be located.

303.04 The Use shall be compatible with adjoining development and the proposed character of the zoning District where it is to be located.

303.05 The Use will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools, or that the persons or agencies responsible for the establishment of the proposed Use shall be able to provide any such services adequately.

303.06 The Use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community. Public facilities and services include but are not limited to: fire and police protection or other emergency services, roadways, intersections, traffic lights, and sanitary and storm sewers.

303.07 Adequate Landscaping and screening are provided, as required under Article 20.

303.08 Adequate off street parking is provided, and ingress and egress is so designed as to cause minimal interference with traffic on abutting streets.

303.09 The Use conforms to all applicable regulations governing the District in which it is located.
The Use is compatible with the standards, objectives, and policies of Genoa Township Comprehensive Plan as amended and any revisions thereof.

The Use will not involve uses, activities, processes, materials, equipment and conditions of operation that will be detrimental to any persons, property, or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare, odors, or vibrations.

Any other supplementary requirements as prescribed by the Board of Zoning Appeals.

The applicant is also requesting to allow for the living space in the accessory building to be rented as a “Bed and Breakfast” and to also make it available for overnight accommodations on sites such as ‘Airbnb’ and ‘VRBO.

Section 1708.02 states that a person may apply for a Conditional Use Permit for a Home Occupation that does not comply with the requirement of Section 1708.01. The criteria for the issuance of such a permit for a Home Occupation are as follows:

A) There shall be no more than two (2) non-residential employees or volunteers to be engaged in the proposed Use;
B) Sales of commodities not produced on the premises may be permitted provided that the commodities are specified in the application and are reasonably related to the Home Occupation;
C) Outside storage related to the Home Occupation may be permitted if totally screened from adjacent residential Lots, provided the application so specifies;
D) Not more than thirty percent (30%) of the gross Floor Area of any residence shall be devoted to the proposed Home Occupation;
E) The external appearance of the Structure in which the Use is to be conducted shall not be altered and not more than one (1) Sign no larger than two (2) square feet shall be mounted flush to the wall of the Structure;
F) Minor or moderate Alterations in accordance with other provisions of this Resolution may be permitted to accommodate the proposed Use but there shall be no substantial construction or reconstruction;
G) No equipment process, materials or chemicals shall be used which create offensive noise, vibration, smoke, dust, odor, heat, glare, x-rays, radiation or electrical disturbances; and
H) No more than two (2) additional parking places may be proposed in conjunction with the Home Occupation, which shall not be located in a required Front Yard.

MOTION: Cybele Smith moved, incorporating Exhibits A through E into evidence, to approve a Conditional Use in accordance with Section(s) 603 and 1708.02 of the Genoa Township Zoning Resolution for BZA (2016-09), application received September 30, 2016, to allow for use of property with a commercial use for bed and breakfast or for use as short-term “rental property” located on property at 7470 Red Bank Road, Westerville, Ohio, Parcel #317-444-01-043-000, zoned Rural Residential (RR), based on the standards listed in Section 303 of the Genoa Township Zoning Resolution.

Approval of the Conditional Use is subject to the owner’s agreement to the following conditions:

1. Property is brought up to Code per the Fire Marshall’s recommendations.

Motion was seconded by Sara Walsh.

Discussion on Motion: There was no additional discussion.
Roll call: Cybele Smith, No; Sara Walsh, No; Teresa Yu, No; David Buhn, No; Mark Harmon, No. Motion failed.

MOTION: Cybele Smith moved, incorporating Exhibits A through E into evidence, to approve a Conditional Use in accordance with Section 1609.01F of the Genoa Township Zoning Resolution for BZA (2016-09), application received September 30, 2016, to allow for living space in an existing accessory building located on property at 7470 Red Bank Road, Westerville, Ohio, Parcel #317-444-01-043-000, zoned Rural Residential (RR), based on the standards listed in Section 303 of the Genoa Township Zoning Resolution.

Approval of the Conditional Use is subject to the owner’s agreement to the following conditions:
1. living space in accessory building will not be a rental unit;
2. Genoa Township Fire Department comments will be addressed in full; and
3. living space is to be compliant and up to Code with proper utilities.

Motion was seconded by Sara Walsh.

Discussion on Motion: There was a brief discussion of the impact if the Zoning Resolution changes in the future to include Bed and Breakfast or Airbnb/VRBO. The new code would apply.

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

Mark Harmon announced the hearing closed at 8:03 p.m.

ADDITIONAL BUSINESS
The Board reviewed of proposed 2017 Board of Zoning Appeals Schedule. The timing of Spring Break was questioned, however, there are multiple school districts so this was not considered an issue.

Cybele Smith moved to adopt the proposed 2017 Board of Zoning Appeals Schedule as submitted. Motion seconded by Teresa Yu. All voted yes. Motion carried.

ADJOURNMENT
Sara Walsh moved to adjourn this meeting at 8:05 p.m. Motion was seconded by David Buhn. All voted yes. Motion carried.

Mark Harmon announced the hearing closed at 8:05 p.m.

PUBLICATION OF LEGAL NOTICE:
The legal notice for this meeting was printed and published on October 14, 2016, in the Delaware Gazette and posted at the Genoa Township Hall on October 11, 2016. Notice of this meeting was also mailed to the adjacent property owners.
### OTHERS PRESENT AT MEETING

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<tr>
<th>Name</th>
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<tbody>
<tr>
<td>Susan Dorsch</td>
<td>Genoa Township Zoning and Development Office</td>
</tr>
<tr>
<td>Kenneth Davis</td>
<td>8343 Oxbow Road, Westerville 43082</td>
</tr>
<tr>
<td>Christian Wyglendowski</td>
<td>7470 Red Bank Road, Westerville 43082</td>
</tr>
<tr>
<td>Sara Wyglendowski</td>
<td>7470 Red Bank Road, Westerville 43082</td>
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