**GENOA TOWNSHIP BOARD OF ZONING APPEALS MINUTES**

**DATE:** March 28, 2017  
**TIME:** 7:00 PM  
**LOCATION:** Genoa Township Hall, 5111 S. Old 3C Hwy., Westerville, Ohio 43082  
**AGENDA ITEMS:**  
- BZA (2017-02) Epcon – Conditional Use, Permanent ID sign, Whitetail Meadows  
- BZA (2017-03) Epcon – Variance, fence height  
- BZA (2017-04) Fischer Homes – Variance, Model Home parking lot  
- BZA (2017-05) Spencer – Variance, Fence in NBZ

**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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<tbody>
<tr>
<td>Mark Harmon, Chair</td>
<td>Dorothy Driskell, Alt.</td>
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<tr>
<td>Mark Phillips</td>
<td>David Buhn, Alt.</td>
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<tr>
<td>Teresa Yu</td>
<td>Cybele Smith</td>
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<td>Sara Walsh, Vice-Chair</td>
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**MINUTES**  
The board reviewed meeting minutes presented by the Genoa Township Development and Zoning Department for the hearings held on January 24, 2017.

**MOTION:** Mark Phillips moved to approve the January 24, meeting minutes, as presented.

Motion was seconded by Dorothy Driskell. Roll call: David Buhn, abstained; Dorothy Driskell, yes; Mark Phillips, yes; Teresa Yu, yes; Mark Harmon, yes. Motion carried. Minutes were approved.

**ANNOUNCEMENT**  
Mark Harmon announced that the first two applications on this evening agenda, BZA 2017-02 and BZA 2017-03, were continued from the January 24, 2017 meeting. On Monday, March 27, 2017, the Township received a request from the applicant’s representative, Todd Pomorski from Epcon Communities, to continue the application to the April 25, 2017 meeting.

The Board discussed the request and made the following motion to continue.

Dorothy Driskell moved, to continue BZA 2017-02 and BZA 2017-03 until April 25, 2017, giving the applicant an opportunity to prepare additional documents for consideration by the Board. Any additional materials to be reviewed by the Board will be due in the Genoa Township Development & Zoning Department by Friday, April 14, 2017 at 4 p.m.

Motion was seconded by Mark Phillips. Roll call: David Buhn, yes; Dorothy Driskell, yes; Mark Phillips, yes; Teresa Yu, yes; Mark Harmon, yes. Motion carried.

BZA 2017-02 and BZA 2017-03 were continued until April 25, 2017 at 7 p.m.
PUBLIC HEARING
Mark Harmon called the following hearing to order at 7:06 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.

"Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?"

FISCHER HOMES COLUMBUS, LP, ON BEHALF OF THE GLADE AT HIGHLAND LAKES, LLC, REQUESTING A VARIANCE FROM SECTION 1707.01 (C) OF THE GENOA TOWNSHIP ZONING RESOLUTION TO REMOVE THE REQUIREMENT FOR OFF-STREET PAVED PARKING FOR A MODEL HOME BEING PROPOSED ON LOT 7825 IN THE GLADE AT HIGHLAND LAKES SUBDIVISION, 5725 SEDGEWICK LANE, GALENA, OHIO 43021, ZONED PLANNED RESIDENTIAL (PRD) (BZA 2017-04).

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

Exhibit “A” – Legal Notice
Exhibit “B” – Sign-in Sheet
Exhibit “C” – Application
Exhibit “D” – Staff Memorandum, dated March 28, 2017

STAFF REPORT: Susan Dorsch, on behalf of the Genoa Township Development and Zoning Department, gave an overview of the staff report. Mrs. Dorsch stated that the Glade at Highland Lakes Subdivision is zoned Planned Residential. The Final Development Plan was approved by the Township Trustees in May 2015. The plat map for Section 1 of the Development was recorded in February 2017; Section 1 contains 23 lots. To date, five (5) zoning permits have been issued for new single family residences within the subdivision; including Zoning Permit #2017037 for the future model home.

Mrs. Dorsch reviewed the Model Home requirements listed in Section 1701.01 of the Genoa Township Zoning Resolution. The Zoning Resolution requires a paved parking lot adjacent to a Model Home. 6 parking spaces are required; the driveway of the Model Home may be used for 2 of the required spaces. Mrs. Dorsch stated that the Applicant is requesting relief from this requirement. The driveway would be utilized for parking with additional parking across the street from the Model Home.

Mrs. Dorsch expressed staff's concerns with the safety of visitors to the model home who are unable to park in the model home's driveway. If on-street parking is utilized, visitors must cross Sedgewick Lane as parking is prohibited on the same side of the street as the model home site. Staff also has concerns with congestion within the driveway and visitors vehicles getting parked in by other visitor's vehicles. Also, as home construction increases within a residential development so does the likelihood of congestion form the increased number of visitors, employees, construction workers, delivery trucks, etc. who all need to park on the street.

APPLICANTS' PRESENTATION: Colleen Miedema, production Manager for Fischer Homes, and Bill O’Gorman, Fischer Homes, presented the variance request. Ms. Miedema stated that due to the size of the Development they did not want to take away one of the building site for use as a parking lot. Of their thirteen (13) model homes in the area, only one has an adjacent parking lot. Not having a parking lot for the model homes has not created a parking issue. In November 2016, Fischer Homes was granted a Variance by Berkshire Township for the same request in the Northstar Community. Ms. Miedema provided visitor statistics for two of their communities, Summerwood Lakes and Northstar, both average about 16 visitors per month/ 4 visits per week. She stated that most visits to the model home would be on the weekend when construction traffic would be greatly reduced.
Mr. O’Gorman stated that the model home will be constructed with a three (3) car garage so the area for parking cars will be greater than for a standard two (2) car garage. If a vehicle would be blocked in, it would be the sales person’s vehicle and they would not have the need to leave which the model home was open. When questioned, Mr. O’Gorman stated that the driveway would hold five (5) vehicles; one off to the side and two parked end to end. The likelihood of five (5) visitors being at the model home at one time is very slight. Mr. O’Gorman stated that if this parking arrangement didn’t work well in their other communities they would not be here asking for this variance.

The Board clarified that a paved parking lot is required. They also clarified that Sedgewick Lane was not a through street; someone entering the subdivision would exit at the same entrance.

PUBLIC COMMENTS: Mark Harmon asked any individuals who were properly sworn-in to share their comments. There were no comments from the public.

BOARD DISCUSSION/FINDINGS OF FACT:

The Board reviewed Duncan v. Middlefield, in regards to the variance requested to allow a Model Home without an adjacent parking lot as required under Section 1707.01 C) of the Genoa Township Zoning 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 determined that the applicant would have beneficial use of the property without the variance because the parking lot can be removed when the model home is closed and the lot sold.

(b) Whether the variance is substantial. The Board expressed that determining whether the variance is substantial is somewhat subjective since it is not a specific measurement. The Board determined that it is substantial since the applicant is requesting to eliminate the requirement for an adjacent parking lot.

(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 determined that the character of the neighborhood could be substantially altered during the time the model home is in use if the visitors to the model home must park on the street.

(d) Whether the variance would adversely affect the delivery of governmental services. The Board did not receive any evidence that the delivery of governmental services would be affected.

(e) Whether the property owner purchased the property with knowledge of the zoning restriction. The applicant stated that they were aware of the requirements.

(f) Whether the property owner’s predicament feasibly be obviated through a method other than the variance. The Board determined that the applicant has the ability to comply with the Zoning Resolution requirements.

(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 discussed their concerns with the safety of visitors who park on the street since the adjacent parking lot would not be available if the variance is granted.
MOTION: Teresa Yu moved, incorporating Exhibits A through D into evidence, to approve a Variance from Section 1707.01 (C) of the Genoa Township Zoning Resolution for BZA 2017-04, application received February 21, 2017, to allow a Model Home without an adjacent parking lot to be located in The Glade at Highland Lakes Subdivision on lot 7825, 5725 Sedgewick Lane, Galena, Ohio 43021, zoned Planned Residential Zoning District (PRD) 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 because there is an adjacent lot available to provide off-street parking.

(b) The variance is substantial because the Applicant is requesting to eliminate the off-street parking lot requirement.

(c) The essential character of the neighborhood would be substantially altered and the adjoining properties would suffer a substantial detriment as a result of the variance because visitors to the model home may need to park on the street taking up the space in front of occupied homes.

(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 because the model home requirements listed in the Zoning Resolution have not changed since Subdivision went through the Development process.

(f) The property owner’s predicament can feasibly be obviated through a method other than the variance because they have sufficient space to provide off-street parking.

(g) The spirit and intent behind the zoning requirement would not be observed and substantial justice would not be done by granting the variance because of the concerns discussed.

Motion was seconded by David Buhn.

There was no addition discussion by the Board.

Roll call: David Buhn, no; Dorothy Driskell, no; Mark Phillips, no; Teresa Yu, no; Mark Harmon, no.

Motion failed. The request for the Variance was denied.

Mark Harmon announced the hearing closed at 7:35 p.m.

Mark Harmon called the next hearing to order at 7:37 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.

"Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?"

ERIC AND ASHLEIGH SPENCER REQUESTING A VARIANCE FROM ARTICLE 4, DEFINITIONS (‘NO BUILD ZONE’) TO ALLOW A FENCE TO BE CONSTRUCTED WITHIN A NO BUILD ZONE AT THE REAR OF LOT

Genoa Township Board of Zoning Appeals Minutes – March 28, 2017
The following were marked as exhibits “A” – “D”.

Exhibit “A” – Legal Notice
Exhibit “B” – Sign-in Sheet
Exhibit “C” – Application
Exhibit “D” – Staff Memorandum, dated March 28, 2017

STAFF REPORT: Susan Dorsch, on behalf of the Genoa Township Development and Zoning Department, gave an overview of the staff report. Mrs. Dorsch stated that the Applicant is requesting relief to be allowed to construct a fence within the No Build Zone located along the southern portion of their lot. A ‘No Build Zone’ is defined in Article 4: Definitions section of the Zoning Resolution. Mrs. Dorsch explained that it is the language in this definition which prohibits structures of any type in a ‘No Build Zone’. The Zoning Resolution’s definition of a structure as anything includes fences.

The application was reviewed by the Genoa Township Police, Fire, and Maintenance Departments; they do not have concerns or comments.

Ms. Dorsch noted that the Development and Zoning Department was contacted by a member of the Sherbrook HOA board. He expressed concerns that the homeowners would also remove the existing trees within the ‘No Build Zone’. Mrs. Dorsch also noted that the department received several emails concerning the Variance Application for 6119 Grisham Street; all were forwarded on to the Board and paper copies of each were also provided to the Board tonight.
1. Gary and Suzanne Vincent, 6152 Grisham St. (received Saturday, March 25, 2017, 2:58 pm)
2. Katie Lesmerises, 6259 Wingstem St. (received Monday, March 27, 2017, 11:45 pm)
3. Joyce Petrucci, 6352 Andrews Dr. W. (received Tuesday, March 28, 2017, 8:01)

APPLICANTS’ PRESENTATION: The property owners, Eric and Ashleigh Spencer, presented their application to the Board. Mr. Spencer stated five (5) reasons why they are asking for the Variance.
1. The existing fence cut off over a third of their back yard so they do not currently use a third of their yard.
2. The fence is very important to us because we have two small children; ages 3 and 5. The children safety is very important and our house is located on a busier street so the fence is needed to contain them and protect them from going into the street.
3. We also have a small dog; we have seen coyotes in the neighborhood and the fence would help protect our dog as well.
4. The present location of the fence gives the appearance that the unfenced portion of our yard belongs to our adjacent neighbors. They are the ones enjoying our yard.
5. Being able to fence in our entire backyard would improve the value of the property by providing access to a larger portion of our yard.

Mr. Spencer stated that when they purchased the house we were aware that the ‘No Build Zone’ existed but we were not aware that a fence was prohibited in the ‘No Build Zone’

Mr. Spencer listed the following reasons why the Board should approve their variance request.

The fence post can be installed away from the trees to not damage the trees.
There are many other fences in treed areas within the Township (pictures provided)
PUBLIC COMMENTS: Mark Harmon asked any individuals who were properly sworn-in to share their comments.

1. Tobias Gordon, 6688 Colingwood Dr. Westerville, 43082. Mr. Gordon stated that he is representing the Sherbrook HOA. They feel that installing a fence within the ‘No Build Zone’ (N.B.Z.) would detract from the beauty of the area. The HOA Board has received feedback from a least six (6) household all of who oppose the installation of the fence within the N.B.Z. Mr. Gordon stated that the Sherbrook deed restrictions also prohibit structures within the N.B.Z. The HOA Board believes that a fence within the N.B.Z. would negatively affect the property values and restrict the movement of animals, such as deer, through the development. Currently, the view is down the tree line is completely unobstructed. The homeowners did not contact the HOA before submitting their request to the Township. To date, no application has been received by the HOA and no approvals granted. Mr. Gordon requested on behalf of the Sherbrook HOA that Genoa Township reject the applicant’s request for a variance.

2. Joyce Petrucci, 6352 Andrews Drive West, Westerville, 43082. Ms. Petrucci stated that she is also on the Sherbrook HOA. Other property owners have fences but they stop at the N.B.Z. The Board feels that the aesthetics.

3. Suzanne McConnaughey, 6139 Grisham Street. Ms. McConnaughey stated that she and her husband are neighbors of Ashleigh and Eric Spencer. She stated that she has lived in her current house in Sherbrook for sixteen (16) years. She agrees with all the items express by the HOA Board members. Ms. McConnaughey stated that she is a real estate agent and she believes that allowing the Spencer’s to build within the N.B.Z would open the door for others to do the same. She believes that this would decrease property values and block the natural path of the animals. When asked, Ms. McConnaughey stated that she believed that installation of fences within the N.B.Z. would have a negative effect on the trees and consequently on the property values as many homeowners’ value trees and are willing to pay more to have trees on their property.

APPLICANT’S RESPONSE: Mr. Spencer stated that they contacted Cathy at the property management company and she suggested that they wait to submit to the HOA until after the hearing with the Township. Mrs. Spencer stated that they did not have a real estate agent when they purchased the property because it was previously owned by her parents. Her parents purchased the house as a short sale and lived there for a short time. When questioned, Mrs. Spencer stated that the fence existed in its current location when her parents purchased the property.

The Board inquired if there were any structures within any of the existing ‘No Build Zones’ within the Sherbrook Subdivision. The H.O.A. Board members present stated that they were not of any structures within the N.B.Z. areas.

BOARD DISCUSSION/FINDINGS OF FACT:

The Board of Zoning Appeals clarified that even if they granted a Variance for the placement of the fence within the N.B.Z. the Sherbrook HOA could still deny the homeowners request based on the previsions of their deed restrictions.

The Board reviewed Duncan v. Middlefield, in regards to the variance requested to allow a fence to be install in a No Build Zone 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 determined that the property would yield a reasonable return because the fence existed when the property owners purchased the property.

(b) Whether the variance is substantial. Yes, because an additional third of the property would be affected and the look of the area would be changed.

(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 agreed that the essential character of the neighborhood would be altered and adjoining property may suffer detriment based on the testimony given.

(d) Whether the variance would adversely affect the delivery of governmental services. Based on the reviews by the Genoa Township Police, Fire and Maintenance Departments, the Board agreed that the delivery of services would not be affected.

(e) Whether the property owner purchased the property with knowledge of the zoning restriction. The Board acknowledged that the property owners testified that they were not aware of the ‘No Build Zone’ restrictions before purchasing the property. The Board stated that the information was readily available from the Township and the recorded deed restrictions for the Sherbrook subdivision.

(f) Whether the property owner’s predicament feasibly be obviated through a method other than the variance. The Board determined that the predicament cannot be obviated through another method.

(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 determined that the spirit and intent of the ‘No Build Zone’ would not be served by granting the variance.

**MOTION:** Mark Phillips moved, Incorporating Exhibits A through D into evidence, to approve a Variance to allow a fence to be constructed within a No Build Zone, as defined in Article 4, Definitions, of the Genoa Township Zoning Resolution on lot 6097 in the Sherbrook Subdivision, 6119 Grisham Street, Westerville, Ohio 43082, zoned Planned Residential Zoning District (PRD) 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 because a portion of the yard is fenced and the remaining portion is still useable.

(b) The variance is substantial because the line of sight would be affected and the installation would affect a entire ‘No Build Zone’ area.

(c) The essential character of the neighborhood would be substantially altered and the adjoining properties would suffer a substantial detriment as a result of the variance because the line of sight would be greatly altered.

(d) No evidence has been provided to the Board that the variance would not adversely affect the delivery of governmental services.

(e) The property owners did purchase the property with knowledge of the zoning restriction because the ‘No Build Zone’ restrictions were readily available from the Township and in the written and recorded deed restrictions for the Sherbrook Subdivision.
(d) No evidence has been provided to the Board that the variance would not adversely affect the delivery of governmental services.

(e) The property owners did purchase the property with knowledge of the zoning restriction because the ‘No Build Zone’ restrictions were readily available from the Township and in the written and recorded deed restrictions for the Sherbrook Subdivision.

(f) The property owner’s predicament cannot feasibly be obviated through a method other than the variance because the limitation still exists.

(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 Dorothy Driskell.

Discussion on Motion: None

Roll call: David Buhm, no; Dorothy Driskel, no; Mark Phillips, no; Teresa Yu, yes; Mark Harmon, no.

Motion failed. The Variance was denied.

Mark Harmon announced the hearing closed at 8:09 p.m.

ADJOURNMENT

Mark Phillips moved to adjourn this meeting at 8:16 p.m. Motion was seconded by Teresa Yu. All voted yes. Motion carried.

Meeting was adjourned at 8:16 p.m.

PREPARED BY:

Susan Dorsch, Development and Zoning

BOARD OF ZONING APPEALS APPROVED:

Mark Harmon, Chair

Date Prepared

Date Approved by the Board of Zoning Appeals

PUBLICATION OF LEGAL NOTICE:

The legal notice for this meeting was printed and published on March 10, 2017, in the Delaware Gazette and posted at the Genoa Township Hall on March 8, 2017. Notice of this meeting was also mailed to the adjacent property owners and notification signs placed on the property.

OTHERS PRESENT AT MEETING

Susan Dorsch, Genoa Township Development & Zoning
Brooks Moose, 6128 Grisham St., 43082
Eric and Ashleigh Spencer, 6119 Grisham St., 43082
Debby Heninger, 2894 Sunbury Rd, 43021
Gary Vincent, 6152 Grisham St., 43082
Suzanne McConnaughey, 6139 Grisham St., 43082
Jana Mack, 6726 Hilmar Dr., 43082

Joyce Petrucci, 6352 Andrews Dr. W., 43082
Mark Kresge, 6352 Andrews Dr. W., 43082
Tobias Gordon, 6688 Collingwood Dr., 43082
Colleen Miedema, Fisher Homes
Bill O’Gorman, Fisher Homes
Kenneth Davis, 8343 Oxbow Rd., 43082