GENOA TOWNSHIP BOARD OF ZONING APPEALS MEETING MINUTES

DATE: April 25, 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

CALL TO ORDER
Mark Harmon called the meeting to order at 7:02 p.m.

ROLL CALL (00:01:05)

<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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<td>Mark Phillips</td>
<td>David Buhn, Alt.</td>
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<td>Cybele Smith</td>
<td>Teresa Yu</td>
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<td>Sara Walsh, Vice-Chair</td>
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ANNOUNCEMENT
Mark Harmon stated that the two applications on the agenda, BZA 2017-02 and BZA 2017-03, were originally heard on January 24, 2017 at which time the Board granted a continuance to the February 28, 2017. The Board subsequently granted continuances to March 28, 2017 and to tonight's meeting, April 25, 2017.

PUBLIC HEARING (00:01:57)
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.

EPICOM COMMUNITIES, ON BEHALF OF THE WHITETAIL LANE PROPERTY OWNERS, REQUESTING A CONDITIONAL USE PERMIT PER SECTION 1804.02 OF THE GENOA TOWNSHIP ZONING RESOLUTION TO ALLOW A PERMANENT FRESTANDING IDENTIFICATION SIGN FOR THE WHITETAIL MEADOWS SUBDIVISION. THE PROPOSED SIGNAGE WOULD BE LOCATED ON LOT 4671 AT THE ENTRANCE TO THE WHITETAIL MEADOWS SUBDIVISION, ZONED SUBURBAN RESIDENTIAL (SR) (BZA 2017-02).

The following were marked as exhibits “A” – “E”.
- Exhibit “A” – Legal Notice
- Exhibit “B” – Sign-in Sheet
- Exhibit “C” – Application
- Exhibit “D” – Staff Memorandum, dated January 24, 2017
- Exhibit “E” – Agreement between Epcon and Whitetail Lane residents

STAFF REPORT: Susan Dorsch, on behalf of the Genoa Township Development and Zoning Department, indicated that a new staff report was not written since the Applicant did not provide any new or revised information for review before the day of the meeting. Ms. Dorsch noted that, earlier in the day, the applicant provided a copy of the application form signed by the property owner and a signed Addendum to the License Agreement; it was noted that the Board was provided with a copy of each.
Ms. Dorsch reminded the Board that the 7' 10" height of the proposed sign exceeds the maximum 6 ft. height allowed per the Zoning Resolution.

APPLICANTS' PRESENTATION: Todd Pomorski, representing Epcon Communities, updated the Board on the progress he has made since the last hearing. He testified that he personally spoke to the property owner, Guido Ricevuto. Mr. Pomorski stated that Mr. Ricevuto understands that the maintenance of the sign and landscaping will be his responsibility. Mr. Pomorski also stated that Epcon sent a letter to all the residents on Whitetail Lane letting them know the status of the installation of the sign.

The Board discussed the non-compliant height of the proposed sign. Mr. Pomorski stated that if the Conditional Use for the installation of the sign is approved he will reduce the height of the sign to meet the zoning standards.

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

1. Brad Corbett (6871 Whitetail Lane) stated that he was the Whitetail Lane resident who went door to door to obtain the signatures in support of the signage, fence and maintenance. Mr. Corbett testified that 18 of the 22 residents signed the agreement. Mr. Corbett stated that the maintenance agreement is with the current homeowner and does not require a future owner to comply with the agreement.

2. Steve Juresich (6938 Whitetail Lane) spoke in support of the signage and fence, commenting that it was a great project by Epcon. Mr. Juresich stated that the fence makes the property look nice.

The Board discussed at length maintenance of the sign. As drafted, the agreement is between the current property owner and Epcon. Discussion occurred regarding how to ensure future maintenance if the current property owner were to move. The Board debated requiring a second addendum, to be recorded with the County Recorder, to ensure that the agreement will run with the land, address perpetual maintenance, and to include remedies if the property owner becomes non-compliant. The residents in attendance at the meeting feel that the majority of residents would be willing to maintain the fence.

BOARD DISCUSSION/FINDINGS OF FACT:

The Genoa Township Zoning Resolution Section 1804.02 Permanent Identification Signs for Residential Subdivisions states that "Recorded residential subdivisions may be permitted Freestanding Identification Signs as a Conditional Use subject to the following:

1804.02

A) Such signs shall be limited to one (1) to two (2) entrances along major thoroughfares and shall not obstruct the visibility at any intersection;

B) Such Signs shall contain only the name of the subdivision that they identify, shall not exceed six (6) feet in height, and shall be landscaped;

C) The applicant shall submit a plan for the perpetual maintenance of such Signs, identifying the responsibilities of the applicant, the public, the landowner, or other parties. Such plan shall be subject to approval by the Board of Zoning Appeals;
D) The Board of Zoning Appeals may limit the size of such Signs so as to ensure the scale of such Signs is compatible with the residential character of the area. The maximum size of such a Sign shall not exceed twenty (20) square feet per side.

Section 303 states that “Conditional Uses may be permitted provided that such Uses shall be found to comply with the requirements listed in Section 303.” The Board reviewed the application based on the requirements listed 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.

303.10 The Use is compatible with the standards, objectives, and policies of Genoa Township Comprehensive Plan as amended and any revisions thereof.

303.11 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.

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

Mr. Harmon’s main concern is with 303.06. His opinion is that there is a need for a legal, recordable document that would provide for perpetual responsibility for the property owner to maintain the sign. The Board members agreed.

MOTION: (00:49:46) Cybele Smith moved, incorporating Exhibits A through E into evidence, to approve a Conditional Use Permit in accordance with Section 1804.02 of the Genoa Township Zoning Resolution for BZA 2017-02, application received January 6, 2017, to allow a permanent freestanding
Identification sign to be located on Lot 4671 at the entrance to the Whitetail Meadows Subdivision, zoned Suburban Residential District (SR) 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. Sign will comply with Zoning Resolution (sign height will be reduced to 6 feet); and
2. Maintenance agreement will be properly recorded with the County Recorder and will be binding on future property owners.

Motion was seconded by Dorothy Driskell.

Discussion on Motion: The Board discussed a maintenance agreement and concluded that the neighborhood and township would benefit from it. They also questioned whether or not there was a need to put a time limit on it.

Roll call: David Buhn, yes; Dorothy Driskell, no; Mark Phillips, yes; Cybele Smith, yes; Mark Harmon, yes.
Motion carried.

The request for a Conditional Use for the installation of a sign at the entrance to Whitetail Meadows was granted.

Mark Harmon announced the hearing closed at 7:56 p.m.

PUBLIC HEARING (00:56:03)
Mark Harmon called the following hearing to order at 7:57 p.m., read the legal notice and concluded that everyone who wished to speak to this matter had already been sworn in.

EPCON COMMUNITIES, ON BEHALF OF WHITETAIL LANE PROPERTY OWNERS, REQUESTING A VARIANCE FROM SECTION 2002.03 OF THE GENOA TOWNSHIP ZONING RESOLUTION TO ALLOW A 48 INCH HIGH FENCE BETWEEN THE STREET RIGHT-OF-WAY AND THE BUILDING SETBACK LINE TO BE LOCATED ON LOT 4650 AND LOT 4671 ALONG THE ENTRANCE TO THE WHITETAIL MEADOWS SUBDIVISION, ZONED SUBURBAN RESIDENTIAL (SR) (BZA 2017-03).

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 January 24, 2017

STAFF REPORT: Susan Dorsch, on behalf of the Genoa Township Development and Zoning Department, indicated that there was no new information to add since the last meeting. The reason the applicant was seeking a variance was that the fence was installed without a permit and was not compliant with the zoning code because it exceeded the maximum allowed 30" height.

APPLICANTS' PRESENTATION: Todd Pomorski, representing Epcon Communities, explained that the reason the fence was installed without going through the proper permitting process was because he thought it was approved as part of the final development plan. Mr. Pomorski gave details of how he obtained signatures from the residents of Whitetail Lane on Exhibit E. He attempted to meet with
them as a group, and also went door to door asking for support of the adjacent Epcon development in exchange for providing a sign and fence for Whitetail Lane.

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

1. Brad Corbett (6871 Whitetail Lane) spoke about meeting with Epcon prior to the installation of the fence. He was under the impression that the fence was part of the Epcon final development plan. Mr. Corbett, speaking on behalf of the residents that signed the agreement, confirmed that they were in favor of the fence.

APPLICANT'S RESPONSE: There was a lengthy discussion between the Board and the Applicant concerning maintenance of the fence and the need for a perpetual agreement that would attach to the property.

BOARD DISCUSSION/FINDINGS OF FACT:

The Board reviewed Duncan v. Middlefield, in regard to the variance requested from Section 2002.03, to allow for a 48 inch high fence between the street right-of-way and the building setback line in a Suburban Residential (SR) Zoning District 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 there can be beneficial use without the variance.

(b) Whether the variance is substantial. The Board noted that at 60%, the variance is 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 determined that there is no evidence that the neighborhood would be substantially altered or suffer a substantial detriment as a result of the variance.

(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 Board thinks it is questionable as to whether the property with knowledge of the zoning restriction.

(f) Whether the property owner's predicament feasibly be obviated through a method other than the variance. The Board concluded that it would be feasible to remove the current fence and install one that meets the code.

(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 believes that justice would be done by granting the variance.

MOTION: (01:23:08) Cybele Smith moved, incorporating Exhibits A through E into evidence, to approve a Variance from Section 2002.03 of the Genoa Township Zoning Resolution for BZA 2017-03, application received January 6, 2017, to allow a 48 inch high fence between the street right-of-way and the building setback line to be located on lot 4650 and lot 4671, along the entrance to the...
Whitetail Meadows Subdivision, zoned Suburban Residential Zoning District (SR) 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 the fence could be replaced with a compliant one.
(b) The variance is substantial because it is 60% greater 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 have knowledge of the zoning restriction.
(f) The property owner’s predicament can be feasibly obviated through a method other than the variance because they could erect a compliant fence.
(g) The spirit and intent behind the zoning requirement would be observed and substantial justice would be done by granting the variance because the fence is already up and there have been no complaints.

Approval of the variance is subject to the owner’s agreement to the following conditions:
1. That there will be a maintenance agreement that runs with the property and be in perpetuity;
2. The agreement will be properly recorded with the County Recorder;
3. Remedies for non-compliance of the maintenance will be included in the agreement.

Motion was seconded by Dorothy Driskell.

Discussion on Motion: A short discussion took place regarding removal of the fence by a future owner, the maintenance agreement, and future owners’ rights.

Roll call: David Buhn, yes; Dorothy Driskell, yes; Mark Phillips, yes; Cybele Smith, yes; Mark Harmon, yes.

Motion carried.

Mark Harmon announced the hearing closed at 8:33 p.m.

ELECTION OF OFFICERS: (01:32:07)
Mark Harmon opened nominations for officers, noting that the term of office will begin at the close of this evening’s meeting.

CHAIR NOMINATION: Mark Phillips moved to nominate Mark Harmon as chair of the Board of Zoning Appeals for 2017-2018. Motion was seconded by Cybele Smith. Roll call: Mark Harmon, abstain; Cybele Smith, yes; Mark Phillips, yes; David Buhn, yes; Dorothy Driskell, yes. Motion carried.

VICE CHAIR NOMINATION: Mark Harmon moved to nominate Mark Phillips as vice chair of the Board of Zoning Appeals for 2017-2018. Motion was seconded by Cybele Smith. Roll call: Mark Harmon, yes; Cybele Smith, yes; Mark Phillips, abstained; David Buhn, yes; Dorothy Driskell yes. Motion carried.

ADJOURNMENT (01:35:54)
Dorothy Driskell moved to adjourn this meeting at 8:37 p.m. Motion was seconded by Mark Phillips. All voted yes. Motion carried.
Meeting was adjourned at 8:38 p.m.

PREPARED BY:  

Jennifer Elliott  
Zoning Secretary

BOARD OF ZONING APPEALS APPROVED:

Mark Harmon, Chair

October 18, 2017  
Date Prepared

10/24/2017  
Date Approved by the Board of Zoning Appeals

PUBLICATION OF LEGAL NOTICE:
The legal notice for this meeting was printed and published on January 11, 2017, in the Delaware Gazette and posted at the Genoa Township Hall on January 9, 2017, February 21, 2017 and March 29, 2017.

OTHERS PRESENT AT MEETING

Susan Dorsch  
Genoa Township Development and Zoning
Todd Pomorski  
Epcon Communities  
6938 Whitetail Lane
Steve Juresica  
6916 Whitetail Lane
Brian Uhl  
6871 Whitetail Lane
Brad Corbett

Genoa Township Board of Zoning Appeals Meeting Minutes – April 25, 2017