GENOA TOWNSHIP
BOARD OF ZONING APPEALS
JUNE 28, 2011

Present:  David Blair, Acting Chair
          Cybele Smith
          David Dunn
          Curtis Williams
          Mark Harmon

Also Present: Joe Clase, Director of Development & Zoning

RE:  BZA 2011-05 through BZA 2011-08

Mr. Blair called the meeting to order at 7:01 p.m.

OLD BUSINESS

Minutes – 4/26/11

Mr. Dunn moved to approve the Minutes from April 26, 2011, as written. Motion was seconded by Mr. Harmon. Roll call: Mr. Dunn, aye; Mr. Harmon, aye; Mr. Blair, aye. Abstentions by Ms. Smith and Mr. Williams who stated they were not present at that hearing. Motion carried.

NEW BUSINESS

BZA 2011-05 (6201 Maxtown Rd. – Diersing)

This hearing began at 7:03 p.m.

Mr. Blair read the legal notice for the record, as follows:

RONALD DIERSING, REQUESTING A VARIANCE TO §1304.03 OF THE GENOA TOWNSHIP ZONING RESOLUTION TO ALLOW THE SCREENING OF OUTSIDE STORAGE TO BE LESS THAN THE REQUIRED EIGHT FEET ON PROPERTY LOCATED AT 6201 MAXTOWN ROAD, A PLANNED INDUSTRIAL-WAREHOUSE (PD-3) ZONING DISTRICT.

Mr. Blair asked everyone to sign the sign-in sheet and directed those who wished to speak to be sworn in.
Mr. Blair marked the following as Exhibits:

Exhibit “A” – Legal Notice
Exhibit “B” – Sign-in Sheet
Exhibit “C” – Application
Exhibit “D” – Staff Report

Toby Ambrose, owner of Al’s Towing, appeared on behalf of Mr. Diersing, and presented the application to the Board. He stated that he is temporarily leasing a portion of Mr. Diersing’s property and hopes to be located at that property for approximately one year; however, his lease is open-ended and he could possibly stay until the property is sold. If the event of the sale of Mr. Diersing’s property, Mr. Ambrose stated that he would have three months to vacate the property. He is requesting that he be allowed to retain the existing six-foot fence (seven-foot, including the barbed wire on top of the metal fence) and not be required to increase it to the required eight-feet or provide required screening per the Zoning Resolution. He believes that the property is not highly visible and the existing fence should suffice. Mr. Ambrose submitted additional documents to the Board, which Mr. Blair marked as follows:

Exhibit “E” – Two photographs of the existing fences on the property
Exhibit “F” – Four photographs of the property

Mr. Ambrose stated that since his business has located to this property, they have cleaned up some of the property and are still in the process of doing so. A good portion of the debris is still on the Diersing property, but not in the area where Mr. Ambrose’s business is located. He stated that he is actively seeking other properties to relocate his business permanently, and hopes to not have to increase the screening when he is only proposing to be in that location temporarily.

Joe Clase, Genoa Township Development and Zoning Officer, reviewed the Staff Report previously presented to the Board. Mr. Clase concurred with the applicant that this is a temporary use; however, Shamrock Towing, which is located across the street from applicant’s property, was required to erect an eight-foot screening fence on their property. Mr. Clase testified that there will be a bigger and better use for the property at some point.

Public Comment:

Dennis Nealon (6400 Ridge Lake Ct.)

Mr. Nealon stated that he is opposed to the variance request and respectfully asked the Board to deny this variance and require the applicant to construct the required screening because the property is very visible from his neighborhood.
Mark Taylor (6393 Ridge Lake Ct.)

Mr. Taylor stated that although he agrees with the comments by Mr. Nealon, he is more concerned with the existing wood privacy fence that abuts his property. Mr. Taylor stated that the fence and the property east of the fence has not been maintained by Mr. Diersing. He stated that he and his neighbors have been doing their best to somewhat maintain it even though it isn't their property. Mr. Taylor asked the Board to take that into consideration when making their determination. Mr. Blair advised Mr. Taylor that although the privacy fence is not at issue with respect to this variance request, the Zoning Office would contact the property owner with respect to that matter.

Norm Miller (6405 Ridge Lake Ct.)

Mr. Miller stated that he bought his property knowing that the Diersing industrial property was there and has not had any issues with them since he has lived there. However, since Al's Towing has moved in, it has gotten very noisy on that property. Mr. Ambrose assured Mr. Miller that he would investigate the noise issues.

Board Comment

Ms. Smith stated that it appears the condition of the Diersing property has been an ongoing problem, and asked if there were any pending violations. Mr. Clase stated that there are no known outstanding violations on the property. He also stated that he has had individuals who are interested in possibly purchasing the property inquiring as to what uses are allowed on the property. Mr. Clase testified that the subject property is zoned industrial and believes that anyone interested in purchasing the property would probably want it to be used for that purpose.

At this time, Duncan v. Middlefield was reviewed by Mr. Dunn, as follows:

(a) Whether the property in question will 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 one hundred percent (100%) less than the Zoning Resolution requires.

(c) Whether the essential character of the neighborhood would be substantially altered or whether the adjoining properties would suffer a substantial detriment as a result of the variance. The Board deemed that 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.
(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 a method other than the 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 not be observed and substantial justice would not be done by granting the variance.

Mr. Dunn moved, incorporating Exhibits “A” through “F” into evidence, to approve a variance for BZA 2011-05, to allow Ronald Diersing, c/o Al's Towing, to allow the screening of outside storage to be less than the required eight feet, pursuant to §1304.03 of the past Genoa Township Zoning Resolution and §1502.03 of the newly adopted Genoa Township Zoning Resolution, as represented on the above-mentioned application dated May 12, 2011, on property located at 6201 Maxtown Road, a Planned-Industrial Warehouse (PD-3) 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%) of the fence height and one hundred percent (100%) of the screening, less than the Zoning Resolution allows.

(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.

(d) The variance would not adversely affect the delivery of governmental services.

(e) The property owner did not purchase the property with knowledge of the zoning restriction, yet said restriction was in effect when the lease was signed.

(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 not be observed and substantial justice would not be done by granting the variance.
Motion was seconded by Mr. Williams. Roll call: Mr. Harmon, nay; Mr. Williams, nay; Mr. Dunn, nay; Ms. Smith, nay; Mr. Blair, nay. Motion denied unanimously.

This hearing ended at 8:04 p.m.

BZA 2011-06 (4456 Sunbury Rd. – Orser)

This hearing began at 8:05 p.m.

Mr. Blair read the legal notice for the record, as follows:

ROBERT AND JUDITH ORSER, REQUESTING A VARIANCE TO §606.06 OF THE GENOA TOWNSHIP ZONING RESOLUTION, TO ALLOW AN ENCROACHMENT INTO THE MINIMUM 75-FOOT FRONT YARD SETBACK ON PROPERTY LOCATED AT 4456 SUNBURY ROAD, A RURAL RESIDENTIAL ZONING DISTRICT.

Mr. Blair asked everyone to sign the sign-in sheet and directed those who wished to speak to stand and be sworn in.

Mr. Blair marked the following as Exhibits:

Exhibit “A” – Legal Notice
Exhibit “B” – Sign-in Sheet
Exhibit “C” – Application
Exhibit “D” – Staff Report

Justin Collamore, Collamore Residential Design & Construction, appeared on behalf of the applicant and presented the application to the Board. Mr. Collamore stated that the applicant is requesting to build a 20x28 foot second floor addition on an existing one-story home. The existing building encroaches 25 feet into the 75-foot front yard setback. The new addition will not increase the existing encroachment or the footprint of the existing building. Applicant believes that the new construction would increase the value of the home and surrounding neighborhood.

Mr. Collamore testified that the house was built in the 1960’s and the right-of-way was widened at the time of the construction of Hoover Reservoir. The resident had no knowledge of the current encroachment prior to applying for the zoning permit for the new construction. The entire exterior of the house will be changed so that all materials match.

Mr. Clase reviewed the previously submitted staff report for the record. He stated that the property in question is a corner lot and confirmed that the setback change was created after the home was built. He reiterated that the requested variance
is due to the existing encroachment, and the new proposed construction would not increase that encroachment. The request is necessary because they are increasing an existing non-conformity. The proposed construction will comply with all other regulations of the Zoning Resolution.

Public Comment

None.

Board Comment:

At this time, Duncan v. Middlefield, was reviewed by Mr. Dunn, as follows:

(a) Whether the property in question will 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 thirty-three percent (33%) 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 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) 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 cannot feasibly be obviated through a method other than the 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. Dunn moved incorporating Exhibits “A” through “D” into evidence, to approve a variance for BZA 2011-06, to allow Robert and Judith Orser to encroach into the required 75-foot minimum front yard setback, pursuant to §606.06 of the
Genoa Township Zoning Resolution, as presented on the above-mentioned application dated June 6, 2011, on property located at 4456 Sunbury Road, 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 thirty-three percent (33%) 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 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 Ms. Smith. Roll call: Mr. Harmon, aye; Mr. Williams, aye; Mr. Dunn, aye; Ms. Smith, aye; Mr. Blair, aye. Motion carried unanimously.

This hearing ended at 8:16 p.m.

BZA 2011-07 (7541 Milford Avenue – Pace)

This hearing began at 8:17 p.m.

Mr. Blair read the legal notice for the record, as follows:

GABRIEL AND APRIL PACE, REQUESTING A VARIANCE TO THE APPROVED FINAL DEVELOPMENT PLAN FOR THE HARVEST WIND SUBDIVISION, TO ALLOW AN ENCOACHMENT INTO THE REQUIRED MINIMUM 30-FOOT REAR SETBACK ON LOT #5746, 7541 MILFORD AVENUE, A PLANNED RESIDENTIAL (PD-1) ZONING DISTRICT.

Mr. Blair asked everyone to sign the sign-in sheet and directed those who wished to speak at this hearing to stand and be sworn in.

Mr. Blair marked the following as Exhibits:

Exhibit “A” – Legal Notice
Exhibit “B” – Sign-in Sheet
Mr. Pace appeared and presented his application to the Board. Mr. Pace stated that the purpose of the requested variance was to build a roof over an existing patio on the rear of his property. The patio currently encroaches approximately 15 feet into the rear yard setback. Mr. Pace stated that he has tried different scenarios to shield his patio from the sun, i.e., an awning and a gazebo, but they did not sustain the elements. Mr. Pace stated that he began construction of the roof without contacting the Township and, once he did, he discovered that he could not build the roof without applying for a variance. Mr. Pace testified that he has spoken with several of his neighbors and none of them expressed any negative feelings toward his proposal.

Mr. Clase stated that the Township received notice from Delaware County Code Compliance with respect to the new construction prompting the Development and Zoning Office to contact the applicant. In reviewing the new construction the encroachment was discovered hence the filing of this variance request. Mr. Clase briefly reviewed the staff report with respect to this application, along with a history of the property. Mr. Clase stated that the applicant would be permitted to build a pergola over the existing patio instead of a roof without having to request a variance.

**Public Comment:**

**Ed Kent (7760 Park Bend Dr.)**

Mr. Kent stated that he is a board member of the Harvest Wind Homeowners’ Association for the subdivision and, on behalf of the Homeowners’ Association, filed their objection to this variance request. Mr. Kent testified that Mr. Pace did not apply to the builder’s Architectural Review Board nor did he contact the Homeowners’ Association prior to construction. Mr. Kent does not want this variance request to set a precedent for all other residents in the subdivision. The Board assured Mr. Kent that they hear each request on a case by case basis and that no precedent would be set in the event this application is approved.

**Board Comment:**

Mr. Blair stated that he believes the proposed roof structure does not match the house’s construction and believes it could be better architecturally designed. He also noted that Mr. Pace did not demonstrate any practical difficulty in order for the Board to consider this variance request.

At this time, *Duncan v. Middlefield*, was reviewed by Mr. Dunn, as follows:

(a) Whether the property in question will 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 fifty percent (50%) 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 be substantially altered and the adjoining properties would 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 cannot feasibly be obviated through a 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. Dunn moved, incorporating Exhibits “A” through “D” into evidence, to approve a variance for BZA 2011-07, to allow Gabriel and April Pace, to encroach into the required minimum 30-foot rear setback requested on the above-reference application dated June 10, 2011, pursuant to the Final Development Plan for the Harvest Wind subdivision, on Lot #5746, 7541 Milford Avenue, Planned Residential (PD-1) 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 fifty percent (50%) more than the Zoning Resolution allows.
(c) The essential character of the neighborhood would be substantially altered but 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 Ms. Smith. Roll call: Mr. Harmon, nay; Mr. Williams, nay; Mr. Dunn, aye; Ms. Smith, aye; Mr. Blair, nay. Motion denied.

This hearing ended at 8:51 p.m.

BZA 2011-08 (5492 Slater Ridge Dr. – Munley)

This hearing began at 8:59 p.m.

Mr. Blair read the legal notice for the record, as follows:

TOM AND MARY MUNLEY, REQUESTING A VARIANCE TO THE APPROVED FINAL DEVELOPMENT PLAN FOR THE VILLAS AT WALNUT GROVE CONDOMINIUM SUBDIVISION, TO ALLOW AN ENCROACHMENT INTO THE NO BUILD ZONE ON LOT #51, 5492 SLATER RIDGE DRIVE, A PLANNED RESIDENTIAL (PD-1) ZONING DISTRICT.

Mr. Blair asked everyone to sign the sign-in sheet and directed those who wished to speak to stand and be sworn in.

Mr. Blair marked the following as Exhibits:

Exhibit “A” – Legal Notice
Exhibit “B” – Sign-in Sheet
Exhibit “C” – Application
Exhibit “D” – Staff Report

Tom Munley appeared and presented his application to the Board. Mr. Munley stated that they are requesting a variance to construct a raised paver patio which would encroach into the No Build Zone on their property. Mr. Munley stated that at the time of purchase he had an option to have a patio built, but chose not to do so. He testified that he was unaware of the No Build Zone on the property when he purchased his property. Mr. Munley also testified that in the construction of the proposed patio, no trees would be destroyed nor would there be any encroachment into the existing drainage swale. Mr. Munley stated that the Condominium Association has approved the construction of the patio pending the outcome of this hearing.

Joe Chiavaroli, Going Green Landscapes, also appeared and assisted in the presentation of this application. Mr. Chiavaroli stated that the proposed materials are
the exact materials used by the builder for other patios, walkways and driveways in the subdivision.

Mr. Clase briefly reviewed his staff report previously submitted to the Board. He also submitted a copy of Mr. Romanelli’s approval of the application for alteration and modification to the subject property. Mr. Clase stated that Mr. Romanelli still controls the Condominium Owners’ Association for the subdivision. Mr. Blair marked the approval of the application for alteration as Exhibit “E”.

Mr. Clase testified that the Development and Zoning Office was notified by OUPS of the construction, at which time staff contacted Mr. Munley regarding obtaining a permit for the construction of the patio. After learning of the No Build Zone Mr. Chiavaroli ceased construction pending the filing of the variance request.

Public Comment:

None.

Board Comment:

Mr. Blair is concerned that there may be other residents filing variance applications who also border the No Build Zone. He suggested that the developer file a Development Plan Amendment with the Genoa Township Zoning Commission to further review this area. Mr. Clase stated that he would approach the builder with respect to same.

At this time, *Duncan v. Middlefield* was reviewed by Mr. Dunn, as follows:

(a) Whether the property in question will 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 twenty-four percent (24%) 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 be substantially altered 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 (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 a method other than the 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. Dunn moved, incorporating Exhibits “A” through “E” into evidence, to approve a variance for BZA 2011-08, to allow Tom and Mary Munley, an encroachment into the No Build Zone, pursuant to the Final Development Plan for the Villas at Walnut Grove Condominium Subdivision, as represented on the above-mentioned application dated June 11, 2011, on Lot #51, 5492 Slater Ridge Drive, a Planned Residential (PD-1) 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-four percent (24%) more than the Zoning Resolution allows.

(c) The essential character of the neighborhood would 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 Ms. Smith. Roll call: Mark Harmon, aye; Curtis Williams, nay; David Dunn, aye; Cybele Smith, aye; David Blair, nay. Motion carried by a 3-2 vote.

This hearing ended at 9:37 p.m.
Election of Officers

Mr. Blair made a motion to elect Harry Gousettis as Chair of the Genoa Township Board of Zoning Appeals for term ending March 31, 2012. Motion was seconded by Mr. Dunn. Vote: all ayes. Motion carried.

Mr. Dunn made a motion to elect David Blair as Vice-Chair of the Genoa Township Board of Zoning Appeals for term ending March 31, 2012. Motion was seconded by Mr. Williams. Vote: all ayes. Motion carried.

Mr. Dunn made a motion to adjourn this meeting. Motion was seconded by Ms. Smith. Vote: all ayes. Meeting adjourned at 9:37 p.m.

Respectfully submitted,

Vicki L. Stainer
Zoning Secretary

Date Approved:

Harry Gousettis, Ch