GENOA TOWNSHIP
BOARD OF ZONING APPEALS
JULY 26, 2011

Present:    Harry Goussetis, Chair
            David Blair
            Cybele Smith
            Curtis Williams
            Sara Walsh, Alternate

Also Present: Joe Clase, Director of Development & Zoning
              Mark Harmon, Alternate

RE:        BZA 2011-09 through BZA 2011-11

Mr. Goussetis called the meeting to order at 7:02 p.m.

OLD BUSINESS

Minutes – 6/28/11

Ms. Smith moved to approve the Minutes from June 28, 2011, as written. Motion was seconded by Mr. Williams. Roll call: Ms. Walsh, aye; Mr. Blair, aye; Ms. Smith, aye; Mr. Williams, aye, Mr. Goussetis, aye. Motion carried.

NEW BUSINESS

BZA 2011-09 (A&B) (7357 Linder Way - Abrams)

This hearing began at 7:03 p.m.

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

JASON AND JEANNINE ABRAMS, REQUESTING A VARIANCE TO §1609.01(A) OF THE GENOA TOWNSHIP ZONING RESOLUTION TO ALLOW CONSTRUCTION OF TWO ACCESSORY STRUCTURES TO ENCROACH INTO THE REQUIRED FRONT YARD ON LOT 4570 OF THE PLUM ESTATES SUBDIVISION, 7357 LINDER WAY, A RURAL RESIDENTIAL (RR) ZONING DISTRICT.

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

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

Mr. Abrams attended and presented his application to the Board. Mr. Abrams stated that they are proposing to construct two structures on their property which would require variances. The first proposed structure is a detached garage, and the second structure is a small bus stop building for the local children to wait in for their school bus. Mr. Abrams stated that it is a very busy intersection and believes the structure would not only keep the children out of the elements, but would keep them safe from the local traffic. Mr. Abrams also stated that both buildings would be composed of exterior materials to match the existing house on the property.

Mr. Goussetis asked if the proposed bus stop structure would be encroaching into any setbacks. Mr. Abrams testified that, at this time, he is uncertain of the exact placement of the structure due to the fact that he still needs to contact the Delaware County Engineer’s Office to make sure they have no issues with the placement with line of sight or right-of-way. He confirmed that he would be diligent in working with the Engineer’s Office and the Township to assure the best possible placement of the bus stop.

Joe Clase, Director of Development & Zoning, briefly reviewed the Staff Report previously submitted to the Board. Mr. Clase stated that the house was built in 2002 and is located in a Rural Residential Zoning District. That the applicant also has a home occupation located on the property and Mr. Clase confirmed that all aspects of the property are currently compliant with the Genoa Township Zoning Resolution. Mr. Clase advised the Board that applicant has two separate applications and urged them to consider each application independently. Mr. Clase testified that the Genoa Township Fire Department does not have any issues with either of the proposed structures. The proposed bus stop will be subject to utility approvals which the applicant will be required to obtain. If those approvals are not obtained, applicant will be relocate the proposed bus stop structure a minimum of 30 feet from Rome Corners and a minimum 15 feet from the edge of Linder Way.

The Board discussed different scenarios in the placement of the proposed structures but, after a brief discussion, applicant believes the proposed locations designated on his application are the best choice. However, due to the potential safety issue involved with the proposed bus stop structure, the Board believes it would be more appropriate to locate it within the required setbacks on the property.

Public Comment:

None.
Board Comment

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

(BZA 2011-09(A))

(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, but noted that the structure will not be in direct view of the adjacent neighbors.*

(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 character of the neighborhood would not be substantially altered nor would the adjoining properties 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 delivery of governmental services would not be adversely affected.*

(e) Whether the property owner purchased the property with knowledge of the zoning restriction. *The Board deemed that the property owner did not have knowledge of the zoning restriction when he purchased the property.*

(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 be feasibly obviated through some 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.*

(BZA 2011-09(B))

(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, but the structure would not only add a decorative appearance to the neighborhood, but offer a functional use as well.
(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 character of the neighborhood would not be substantially altered nor would the adjoining properties 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 determined that the delivery of governmental services would not be adversely affected.
(e) Whether the property owner purchased the property with knowledge of the zoning restriction. The Board deemed that the property owner did not have knowledge of the zoning restriction when he purchased the property.
(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 be feasibly obviated through some 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.

The Board again discussed their safety concerns with respect to the proposed bus stop structure being located outside of the required setbacks on the property.

Ms. Smith moved, incorporating Exhibits “A” through “E” into evidence, to approve a variance for BZA 2011-09(A), to allow Jason and Jeannine Abrams, to construct an accessory structure which would encroach into the required front yard, pursuant to §1609.01(A) of the Genoa Township Zoning Resolution, as represented on the above-mentioned application, dated July 6, 2011, on Lot #4570 of the Plum Estates subdivision, 7357 Linder Way, 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 sixty percent (60%) 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 not 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. Walsh. Roll call: Ms. Walsh, aye; Mr. Williams, aye; Mr. Blair, nay; Ms. Smith, aye; Mr. Goussetis, aye. Motion carried.

Ms. Smith moved, incorporating Exhibits “A” through “E” into evidence, to approve a variance for BZA 2011-09(B), to allow Jason and Jeannine Abrams, to construct a covered bus stop accessory structure which would encroach into the required front yard, pursuant to §1609.01(A) of the Genoa Township Zoning Resolution, as represented on the above-mentioned application dated July 6, 2011, on Lot #4570 of the Plum Estates subdivision, 7357 Linder Way, 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 one hundred percent (100%) 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 not 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.

Approval of the variance is subject to the owner’s agreement to the following conditions stated in Staff Report recommendations:

1. Any construction of a permanent foundation within the utility easement shall be subject to approval of all utilities with rights to use the easement. Construction of the bus stop on skids may be found more permissive in this area, but utilities should still be consulted prior to issuance of a zoning permit.
2. The Delaware County Engineer's Office shall submit approval of site distance at the intersection prior to zoning permits being issued for the bus stop.

3. Construction details should be provided for the bus stop, due to its planned location and that it will be an entrance feature for Linder Way.

4. The Big Walnut Local School District should provide approval of the location of the proposed bus stop prior to issuance of a zoning permit.

5. The applicant should ensure the proposed structures do not exceed the twenty-two feet (22”) in height permitted by the Zoning Resolution.

6. The applicants should ensure the proposed structures are at least fifteen feet (15”) from the rear and side property lines and the existing house.

Motion was seconded by Ms. Walsh. Roll call: Ms. Walsh, aye; Mr. Williams, nay; Mr. Blair, nay; Ms. Smith, aye; Mr. Goussetis, aye. Motion carried.

This hearing ended at 7:58 p.m.

BZA 2011-10 (3576 Worthington Rd. – McCann)

This hearing began at 7:59 p.m.

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

JAMES AND JENNIFER MCCANN, REQUESTING A VARIANCE TO §602.01 OF THE GENOA TOWNSHIP ZONING RESOLUTION TO REDUCE THE REQUIRED MINIMUM LOT SIZE ON LOT 4556 IN THE PLUM ESTATES SUBDIVISION, 3576 WORTHINGTON ROAD, A RURAL RESIDENTIAL (RR) ZONING DISTRICT.

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

Mr. Goussetis marked the following as Exhibits:

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

Terry Kelsey appeared on behalf of the applicant and presented the application to the Board. Mr. Kelsey stated that he is the proposed buyer of .176 acres of applicant's property which is located directly behind Mr. Kelsey's property. The purpose of the proposed purchase is to provide Mr. Kelsey with a back yard. When he built his existing house, he was required by Delaware County to construct his home at the
extreme rear of his property. Without a back yard, Mr. Kelsey feels that the value of his home would be greatly decreased were he to sell the property.

Mr. Kelsey stated that both lots at issue are currently non-conforming lots in the Rural Residential Zoning District. Although Mr. Kelsey's lot will increase in size and Ms. McCann's lot will decrease in size, both lots will remain non-conforming with the current Zoning Resolution. Mr. Kelsey testified that he is not proposing any structures on the piece of property he will be purchasing from Ms. McCann.

Mr. Clase briefly reviewed the Staff Report previously submitted to the Board. He stated that this property is located in a Rural Resident Zoning District, and in the current Zoning Resolution, rural residential properties are to be a minimum of two acres. He reiterated Mr. Kelsey's comments with respect to both lots remaining non-conforming with the respect to the proposed sale of land.

Public Comment

None.

Board Comment:

At this time, Duncan v. Middlefield, was reviewed by Ms. Smith, 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 not substantial since it is approximately nine point six percent (9.6%) 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 not 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.

Ms. Smith moved, incorporating Exhibits “A” through “D” into evidence, to approve a variance for BZA 2011-10, to allow James and Jennifer McCann to reduce the required minimum lot size, pursuant to §602.01 of the Genoa Township Zoning Resolution, as presented on the above-mentioned application dated July 8, 2011, on Lot No. 4556 of the Plum Estates subdivision, 3576 Worthington 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 not substantial since it is approximately nine point six percent (9.6%) 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 not 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. Walsh. Roll call: Ms. Walsh, aye; Mr. Williams, aye; Mr. Blair, aye; Mr. Williams, aye; Mr. Goussetis, aye. Motion carried.

This hearing ended at 8:07 p.m.

BZA 2011-11 (7541 Milford Avenue – Pace)

This hearing began at 8:08 p.m.

Mr. Goussetis 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 ENCROACHMENT INTO THE REQUIRED MINIMUM 30-FOOT REAR SETBACK ON LOT #5746, 7541 MILFORD AVENUE, A PLANNED RESIDENTIAL (PRD) ZONING DISTRICT.

Mr. Goussetis 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. Goussetis marked the following as Exhibits:

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

Mr. Pace stated that he is proposing to build a roof over his existing patio. He stated that he was unaware that he needed to obtain a zoning permit prior to the construction of the roof. He was contacted by the Development & Zoning Office notifying him of the correct procedure, at which time Mr. Pace ceased construction and applied for a permit. Upon his application for permit, he was notified by Staff that he would need to seek a variance in order to build the proposed roof due to the encroachment into the rear setback.

On June 28, 2011, his variance request was heard by the Genoa Township Board of Zoning Appeals, at which time the application was denied. Since that time, Mr. Pace has revised his request and submitted this new application to the Board. Mr. Goussetis asked Mr. Pace what the difference was in this application from the one previously heard by the Board. Mr. Pace stated that since the previous hearing, he has obtained approval from the Homeowners’ Association and obtained an engineer and architect to assist with the construction of the proposed roof as suggested by the Board. Mr. Pace also said that he has also been diligently working with the Development and Zoning Office to resolve this matter.

Mr. Goussetis asked what the uniqueness was with respect to Mr. Pace’s property to justify the requested variance. Mr. Pace stated that the rear of his house is located right on the thirty-foot setback line. He has tried several options to cover the existing patio, i.e., umbrella, awning, and all have failed due to the “wind tunnel” in his back yard. He believes his only option is a permanent roof to cover the existing patio because all temporary covers have lost to the elements.

Mr. Clase briefly reviewed Staff’s recommendation as was presented at the previous hearing and stated that it also stands for this hearing. Mr. Clase reiterated that Mr. Pace has taken the steps suggested by the Board at the previous hearing with respect to this variance request.
Public Comment:
None.

Board Comment:

At this time, *Duncan v. Middlefield*, was reviewed by Mr. Blair, 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 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 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.**

Ms. Smith moved, incorporating Exhibits “A” through “D” into evidence, to approve a variance for BZA 2011-11, to allow Gabriel and April Pace, to encroach into the required minimum 30-foot rear setback requested on the above-reference application dated July 11, 2011, pursuant to the Final Development Plan for the
Harvest Wind subdivision, on Lot #5746, 7541 Milford Avenue, a 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 substantial since it is approximately forty-eight percent (48%) more than the Zoning Resolution allows.
(c) The essential character of the neighborhood would not 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. Walsh. Roll call: Ms. Walsh, aye; Mr. Williams, aye; Mr. Blair, aye; Ms. Smith, aye; Mr. Goussetis, aye. Motion carried.

This hearing ended at 8:35 p.m.

Mr. Williams made a motion to adjourn this meeting. Motion was seconded by Ms. Smith. Vote: all ayes. Meeting adjourned at 8:35 p.m.

Respectfully submitted,

Vicki L. Stainer
Zoning Secretary

Date Approved: 8-23-11

Harry Goussetis, Chair

DAVID BLAIR, VICE CHAIR