

**GENOA TOWNSHIP
ZONING BOARD OF APPEALS
APRIL 19, 2005**

MINUTES

Chairman Doug Brown called the regular meeting of the Zoning Board of appeals to order at 6:30 p.m. at the Genoa Township Hall. The Pledge of the Allegiance was then said. The following board members were present constituting a quorum for transaction of business: Doug Brown, Joe Perri, Jean Ledford and Kevin Brady. Also present was Township staff member Adam Van Tassell and approximately 25 persons in the audience.

Moved by Ledford, supported by Brady, to approve the agenda with the tabling of case #04-45 per the petitioner's request. The motion carried unanimously.

A call to the public was made with no response.

05-05...A request by Jay Hickman, Section 10, 1046 Hughes Road, for two side yard variances to construct a new home.

A call to the public was made with no response.

Moved by Brady, supported by Perri, to grant case #05-05 for a 2 foot setback with an 8 foot variance on the north side to construct a new home. The home is to be guttered. The practical difficulty is due to the narrowness of the lot. Motion carried unanimously.

05-07...A request by Robert Beher, Section 10, 5814 Glen Echo, for a height variance to construct an addition.

A call to the public was made with no response.

Moved by Ledford to grant petitioner's request case # 05-07 to allow a 2'1" height variance to construct a new addition. The practical difficulty is the topography and steep slope of the land at the site of the new addition. Motion failed due to lack of support.

Moved by Brady, supported by Perri, to deny petitioner's request for a height variance due to lack of practical difficulty for the landowner who can still build the home in conformance with the ordinance. Motion carried unanimously.

05-08...A request by Michael and Suzanne Dugas, Section 30, Vacant Brighton Road, for a variance to split property into two lots.

April 19, 2005 Zoning Board of Appeals Minutes Approved

A call to the public was made with the following responses: Mr. Nowacki (2005 Brighton Road)-“I own the property to the west. The two parcels are contiguous. If they get their property granted, can I split my property into three lots? The drive is an extension of Brighton Road and my driveway.” Mr. Brock (2037 Brighton Road) - I live directly to the west. We bought this property 8 years ago. The main reason we moved out here was for the privacy. If they were to build on this property they would be on our property line. The deer and turkeys also use the land. Mrs. Dugas- “We are not trying to impact their property or lifestyle. We are not going to make a big difference with one house.” Mr. Lyle Albrant (2155 Brighton Road) - I own 20 acres that is also a part of the acreage that these lots were created from. The road splits the applicant’s property and other properties also. The person requesting the variance also owns 18 acres on the lake. My point is there are others that have owned property here for over 20 years. If the board was to grant this variance then it would open the doors for others to request the same. The intent is to keep the property the way it is. The property is a unique spot in the Township. The Board would hopefully realize that and consider keeping it that way. The property also borders state land.” Mrs. Dugas’ response “I wish my neighbors would have come to me about these objections.” Mr. Mike Uzalec (2095 Brighton Road) - I bought this property 9 years ago and it was to enjoy the county estates. I appreciate what Mrs. Dugas is trying to do. In the past years the property in this area has appreciated rapidly. I do not support this petition and I hope that the board would deny it.

Chairman Brown stated that for the record letters were received by some of the neighbors. A letter from Mr. Bryon and Judy Rogers read as follows: “We are the owners of parcel #4711-30-300-013 (2.7 acres) which is located to the east of the parcel in question on the same private road which begins at Brighton Road and runs for a distance of approximately .4 of a mile. Our address is 2127 Brighton Road. We are not in favor of the requested variance for the following reasons:

- The Country Estate District was created after the adjacent 1.1-acre parcel was platted many years ago. The adjacent (010) lot is currently owned and occupied by Jim and Doris Brock. Our 2.7-acre lot was also platted before the zoning was changed to Country Estate. The obvious intent of rezoning was to limit the size of future building sites to at least five acres. As one can see from the drawings, the “character of the neighborhood” is certainly not one of one-acre lots. The property to the south (004), owned by Melvin and Virginia Laupher, contains about 38 acres.
- The east-west section of the private road was created in 1962. Both lots to the east of the parcel in question have property on both sides of the drive, which has not been an apparent problem for all these years. The lot in question is, therefore, not a unique circumstance. The parcel is not “divided” as to use. There is plenty of room to build on the north side of the private road. We do not see how a hardship could be legitimately claimed since the owners have 9.8 acres.

April 19, 2005 Zoning Board of Appeals Minutes Approved

- In order to comply with the minimum front and rear setbacks variances would be needed since the parcel is only 131.08 feet deep at the maximum dimension. The house would have to be located very near the private road as a result.
- The lot contains a low area adjacent to the private drive, which has standing water in the rainy season. Under the Wetlands Act it is suggested that consideration must be given to preserving this area.
- The argument that family living close to the applicants would be nice is acknowledged. However, the Dugas' already have a daughter and son-in-law who currently live on the north side of Pardee Lake, within eyesight of the location of their planned retirement home.
- Constructing a drive to access the private road would create a dangerous situation since there is a blind hill from the west on the private road. The additional traffic would also add to the maintenance of the road. I have maintained the private road for most of the forty plus years that it has been in existence. I grade the gravel, plow the snow and keep the vegetation trimmed. It is only one lane wide and, only two months ago; there was a head on collision on the drive due to slippery conditions. This occurred where the drive crosses the Dugas' property. Traffic related to the Dugas' retirement home would also have to be considered.

We trusted and welcomed the Township's decision to rezone the area to Country Estate several years ago. To allow a variance for less than five-acre lot sets precedence, which could open the option to others who own property in the District. We request that the ZBA not approve the request. Thank you for your consideration."

A letter from Michael and Katina Uzelac read as follows: "We support the recommendations outlined in the document sent by our neighbor - Barney Rogers. Our address is 2095 Brighton Road. We live adjacent to one of the parcels owned by the Dugas' family. While I know that being one of the highest residential tax payers in the county doesn't entitle me to more than one vote, I would hope that the commission would take notice of the fact that my SEV has gone up over 100% since moving here 9 years ago. I would suggest that making exceptions for lots smaller than those in the current zoning will no doubt diminish the value of my properties. We believe Mr. Rogers has correctly and accurately outlined significant objections to the zoning proposal and strongly support his comments."

A letter from Lenore Pacitto read as follows: "I live at 1967 Brighton Road, in Marion Township. I am not in favor of the requested variance for the following reason: The Township made a decision of a 5-acre minimum split on parcels. To allow a variance for less than a 5 acre parcel would set a precedence, which would then open the option to others who own property. I moved out here to live in a country atmosphere, free of pollutants and more peaceful. I request that the ZBA not approve the request. Thank you for your consideration."

Also, a letter from Virginia Lupfer read as follows: “Regarding a letter I received dated April 7, 2005. In reference to a proposed variance to split property into two lots in section 30, vacant Brighton Road, requested by Michael and Suzanne Dugas. As a property owner, that has land that borders the said mentioned property. I am very much against it being split and request that that variance to split the property be denied. Too much of our land is being over developed. Our wild life is suffering and so is our environment. We must start protecting our land, water and air, to protect Genoa Township for the future.”

Petitioner withdrew their request.

05-09...A request by John and Maricel Roberts, Section 22, 3805 Highcrest, for a 9 foot variance for a shoreline deck length, a side yard variance to construct a new deck and a height variance for a fence over 3 feet in the front yard.

A call to the public was made with the following responses: Ms. Jacqueline Blair- 3793 Highcrest- “As a homeowner I feel that the homeowner needs to comply with the ordinance. We ask at this time that the Township enforce this ordinance. Ms. Amy Schmidt- 3772 Highcrest- I would agree with Ms. Blair in that the Zoning Ordinance be enforced to stay 4 feet from the property line. Mr. Tom Crane- 3793 Highcrest- “I feel the same as my neighbors. They have already been approved 4 variances and should not receive variance on top of variance. Chairman Brown read into the record a letter from Zichi as follows: Please be advised that some of the co-owners of the adjacent parcel to the one at issue above have contacted me to represent them in requesting that the Township ZBA *deny* the requested variances.

I will be unable to attend your meeting due to a prior scheduling conflict (I serve on the Downtown Development Authority of the City of Williamston, which meets on Tuesday evenings) however, I would be happy to discuss this either before your meeting, or afterward should you decide to take this matter under advisement rather than issuing a decision on the 19th.

I am approaching this from the perspective of the directives of your Zoning Ordinance which requires that property owners comply with the building and use restrictions in the ordinance unless there is compelling proof that the application of those requirements would work an injustice *because of some unusual characteristic of this particular parcel of land*. In other words, a variance is appropriate if, and only if, application of the rules is inconsistent with the overall intent of the ordinance. Whether or not the addition would ‘look nice’ or ‘be a good addition to the property’ or any of the many other reasons people have for wanting to make an improvement to their property is irrelevant. In that context variances are rarely allowed.

In this specific instance, a variance for the deck is inappropriate. (I believe the fence variance is also inappropriate, however, that does not impact the value of my clients’ property so I will leave it to others to address that requested variance.)

Permit me to elaborate. There is nothing unique about this property that would make application of the requirements of the Zoning Ordinance unfair to the land owners. In fact, the application for the variance itself is *defective* in that it fails to state any reason at all for the requested variance (Section 2 of the application is blank). In essence, the application requests to allow a larger deck than would otherwise be allowed by the Zoning Ordinance simply because the landowners wish to build a large deck.

This is not an appropriate reason for granting a variance under any Zoning Ordinance, let alone Genoa Township's! Set back and area requirements were made a part of the Genoa Zoning Ordinance to prevent over-development of land which would tend to decrease land values of adjoining properties. The requested variance would do exactly what the Ordinance was enacted to control and prevent.

There is no feature of the *land* at issue here which would imply that a proper setback would present a safety or practical issue in construction. To the contrary, common sense emphasizes that allowing construction of a structure within inches of a lot line will encourage trespass and diminish the value of adjacent parcels; increase neighborhood conflicts and generally diminish the quality of life for everyone in the area. In short, allowing this variance will directly contradict the standards under which the Township enacted the Zoning Ordinance in the first place.

I note with interest that in addition to providing absolutely no rationale for the request in their paperwork, the Roberts' also fail to provide a statement or show on their drawings the setback from the water for the adjacent homes as is required in the application. In short, the application is deficient, fails to state any articulable reason for granting the variance, and requests a variance that will detract from the value of surrounding properties.

(As a side issue, the Board should be aware that the applicants have failed to restore property to the condition it was in prior to the construction of their home consistent with the variances granted in 2003. I submit it might be appropriate for the Board to remind the applicants that they have not yet complied with prior variances as well as denying this additional request, in the hopes that it may forestall civil litigation between neighbors and/or the township. I would be happy to elaborate on these issues if you have questions.) In short, I urge you to deny the requested set-back variance both because:

- The application itself is defective in that:
 - 1 The applicant has failed to articulate *any* rationale why the variation from the Zoning Ordinance required setback is necessary; and/or
 - 2 The applicant has failed to provide the necessary data concerning set-backs from the water on adjacent properties

and/or

- The application is inappropriate in that:

April 19, 2005 Zoning Board of Appeals Minutes Approved

- 1 Variation from the Zoning Ordinance required setbacks is inappropriate in that there is no unusual topography or land orientation/shape present on this site that would require same; and/or
- 2 Allowing such a small set-back would create a financial detriment, and a nuisance to adjoining land both because of the required maintenance and construction of the proposed improvement.

Ms. Roberts stated that there is a letter from the Drain Commissioners office that state they approve of the site.

Moved by Perri, supported by Ledford, to deny petitioner's request case #05-09 due to lack of practical difficulty for the fence and deck. Motion carried unanimously.

05-10...A request by Edward Johnson, Section 15, Vacant Fishbeck Road, for a variance to split property into two lots.

A call to the public was made with the following responses: Mr. Van Allstine: I am the father of William Van Allstine and I think my son's concerns are that if the property is split and if the property is returned back to him it would not be the same. Chairman Brown read into record a letter from Bill and Carolyn Wiseman as follows: "We are against splitting the property on Fishbeck Road for this reason, if the property can be split. This area will soon be a subdivision.

Moved by Ledford, supported by Brady, to deny case 05-10 petitioner's request to split property into two lots of 3.41 acres and 6.32 acres due to the lack of practical difficulty. Motion carried unanimously.

05-11...A request by Mr. Enclosure (Jerry and Peggy Moyer) Section 25, 4519 Kingswood, for a side yard variance to enclose an existing deck.

A call to the public was made with no response.

Moved by Perri, supported by Brady, to grant case #05-11 for petitioner's request for a 3'2" side yard variance to construct a sunroom replacing the existing deck. The practical difficulty is the location of the existing structure on the lot. Motion carried unanimously.

Moved by Ledford, supported by Brady, to table the approval of the March 22, 2005 Zoning Board of Appeals minutes until next Zoning Board of Appeals meeting. Motion carried unanimously.

The meeting adjourned at 8:55 p.m.