

**GENOA CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
October 16, 2019 - 6:30 PM**

MINUTES

Call to Order: Chairman Rassel called the regular meeting of the Zoning Board of Appeals to order at 6:30 pm at the Genoa Charter Township Hall. The members and staff of the Zoning Board of Appeals were present as follows: Greg Rassel, Marianne McCreary, Jean Ledford, Bill Rockwell, Michelle Kreuzberg, and Kelly VanMarter, Community Development Director/Assistant Township Manager.

Pledge of Allegiance: The Pledge of Allegiance was recited.

Introduction: The members of the Board introduced themselves.

Approval of the Agenda:

It was noted that Item #2, Case #19-34 needs to be corrected to “Section 23.02.01” instead of “Section 23.02.11”.

Chairman Rassel noted that Agenda Item #5, Case #19-38, was requested to be tabled this evening. **Moved** by Board Member McCreary, seconded by Board Member to Rockwell, to postpone Case #19-38 until the November 19, 2019 ZBA meeting at the applicant’s request.

Moved by Board Member McCreary, seconded by Board Member Rockwell, to approve the agenda as amended. **The motion carried unanimously.**

Call to the Public:

The call to the public was made at 6:33 pm with no response.

Old Business:

1. 19-19...A request by Edward Koss, 4930 Brighton Oaks Trail, for a fence height and an impervious percentage variance to allow an existing 6 foot in height and 100% impervious fence.

Mr. Roger Myers, the attorney representing the applicant, was present. Mr. Koss was not able to attend this evening’s meeting. He provided a review of the request and noted that most of the discussion at the previous meeting was the location of the fence and centered around the

fact that this property has two front yards. There is a significant drop in elevation from Brighton Road to Mr. Koss' property. If there was a fence constructed on the Brighton Road side of the property, where it would be allowed to be located with a variance, it would be much more visible from Brighton Road than what the applicant is proposing. Due to the uniqueness of the property and the topography, they do not believe that Brighton Road should be considered a front yard. The applicant would like to have the fence to keep their dogs in their yard as well as keep deer and other animals off of their property. He noted that Mr. Koss would be agreeable to have evergreen trees planted to provide screening for the fence when the deciduous trees lose their leaves in the winter.

He noted that there have been letters submitted to the Township from neighbors who are in support of granting the variance for the fence.

Ms. VanMarter noted that an email of support from the neighbors and photographs taken by the applicant of other properties along Brighton Road that have fences were received this afternoon.

Lisa Miller, whose son-in-law is the applicant and who lives at 4930 Brighton Oaks Trail reviewed the pictures that were submitted of the fences of properties on Brighton Road. She also showed a picture taken from the yard of her home, denoting the drop in elevation and the distance between the fence and Brighton Road.

Board Member McCreary requested that Ms. VanMarter explain how a front yard is determined. Ms. VanMarter stated that the front yard is determined as the closest point of the house to the Road Right-of-Way (ROW). The ordinance is specific in that it could be a private road or public road ROW; however, shared driveways do not apply. Brighton Road definitely meets the criteria of a front lot line. The part of the home that is closest to the Road ROW is considered the front yard, which in this case is Brighton Road. Board Member McCreary asked why the fence shown in red on the plan is permitted. Ms. VanMarter stated that if the house is outside of the setback, you are allowed to erect a ten-foot impervious fence, which is the area of the fence shown in red.

Board Member McCreary stated that Ms. Miller's reason for the fence is to keep out the wildlife and the fact that she owns dogs is not a hardship.

Mr. Myers reiterated that the fence would be seen more if it was placed where it is allowed. He reiterated that the hardship is that this property is on an easement and not a private road and the yard is considered Brighton Road.

Board Member Rockwell agrees that there would be less of the fence visible as it is now, than if it is placed where it is allowed without a variance.

The call the public was made at 7:09 pm.

Dr. Charles Grasseley of 7979 Brighton Oaks Trail has lived there for 25 years and the Kosses have made a lot of improvements to the property. The fence is very low from the road and serves a very useful purpose and none of the neighbors have an objection. It does not distract from the property value; it adds to it.

Ms. Karlene Shafer, owner of Landscape Design & Associates of 4939 Timber View Drive, Howell, has been a resident of Genoa Township for 18 years and is currently working on this property. This property is a nice asset. She noted that the applicant has offered to plant an evergreen barrier and there are areas where they can be planted.

Mr. Richard Miller, of 4930 Brighton Oaks Trail, wants this fence for protection for his grandchildren. There is water that pools in the back corner of their property and the fence will protect them from it.

Ms. Tara Brown of 5123 Pine Hill Circle is a friend of the Kosses and Millers. She said the position of the home, the topography of the land as well as the two front yards pose unique features and challenges for this property.

The call to the public was closed at 7:17 pm.

Board Member McCreary asked if the applicant would be willing to place a lower fence in this area. Mr. Myers stated a four-foot fence would be allowed and at that height, because of the drop off of the property from Brighton Road, it would allow an animal to enter onto the property from the road.

Board Member McCreary understands the hardships the applicant is stating for their request for the fence; however, she knows that granting a variance sets a precedent. The reasons for granting a variance must be a hardship with the property and not the house, the homeowner, etc.

Board Member Ledford noted that the Township Planner, Mr. Borden, explained how the Brighton Road side is considered the front yard. She agreed with Board Member McCreary on setting a precedent. A lot of work is done to develop the Township Ordinance and there are reasons why the ordinance is in place. She added that the Board cannot take into consideration that someone has grandchildren or dogs as a reason for granting a variance.

Mr. Myers stated that Mr. Borden was not giving an opinion on the granting of the variance. He was simply outlining the reason why Brighton Road was deemed to be the front yard line. Also, he does not believe that granting this variance would set a precedent for other properties in the area as the uniqueness of this lot is its topography. The justification for the six foot instead of four foot is because of the topography of the lot and that the extra height would help to keep the deer out.

Chairman Rassel stated there are four criteria that must be met when the Zoning Board of Appeals grants a variance.

Ms. VanMarter stated that the pictures showed this evening of fences at Oak Point are in the rear yard.

Moved by Board Member McCreary, seconded by Board Member Ledford, to deny case #19-19 for 4930 Brighton Oaks Trail for a fence height and impervious percentage variance to allow an existing non-conforming fence to remain based on the following findings of fact:

- Genoa Township Ordinance does not permit this type of fence in the front yard.
- The need for the variance is self-created.
- There is a practical difficulty in that there are two front roads on this property
- It is not a Circumstance that would be consistent with surrounding properties.

This denial contains the following conditions:

1. The existing fence must be removed or brought into compliance within 90 days of Zoning Board of Appeals decision.
2. The applicant may apply for a land use permit for any section of the fence that will remain.

The motion carried (Rassel - no; Rockwell - no; Ledford - yes; McCreary - yes; Kreutzberg - yes)

2. 19-34...A request by Edward Koss, 4930 Brighton Oaks Trail, for an appeal of an administrative decision per Section 23.02.01 and use permit for a fence that was denied.

Mr. Myers, representing Mr. Koss, stated the applicant would like the ZBA to make an interpretation that Brighton Road should not be considered the front yard. It is unlike other properties that have frontage on a private or public road at the same grade and is the reason that this type of fence would not be allowed.

The call to the public was made at 8:02 pm

Mr. Miller of 4930 Brighton Oaks Trail is concerned that he has to remove his fence and there is a possibility that the ordinance could change, which would allow him to have this fence. Chairman Rassel is not aware of any proposed changes to the Ordinance. Ms. VanMarter stated that the applicant cannot reapply for a variance within a year after a denial. She is working on zoning amendments that would allow six foot fences in the rear yard only. She is not proposing that six-foot fences be allowed in the front yard.

The call to the public was closed at 8:05 pm.

Ms. VanMater wanted to clarify that this is not a request for the ZBA to determine if Brighton Road should be considered a front yard. It is a request to determine if the Township Staff interpreted the ordinance incorrectly. Staff interpreted the ordinance text a certain way, and the

applicant is asking the ZBA to determine if staff made an incorrect interpretation. Staff interpreted Brighton Road as a front lot line so the question before the ZABA is, did staff make an incorrect interpretation of the ordinance when making that decision.

Moved by Board Member McCreary, seconded by Board Member Ledford, that the ZBA finds that concerning Case #19-34, Township staff's ability to review and correctly determine the front lot line that they correctly applied the zoning regulations with regard to fences and height and front yard. **The motion carried unanimously.**

New Business:

3. 19-36... A request by Ventures Design, 4501 Oak Pointe Drive, island located on Crooked Lake, for a waterfront setback variance to construct a detached accessory structure.

Mr. Lock Durrant of Ventures Design was present representing the applicant. They are requesting a variance to install an accessory structure. The special circumstances are due to the location of the septic field. There is no other place on the island where an accessory structure could be placed. The setback of the accessory structure would be seven feet less than the existing home. He noted that the other two islands on the lake have similar construction and one is closer to the lake than what they are proposing. There are no adjacent properties and there are no sight issues. This would not have a negative impact on any adjacent properties.

Board Member McCreary questioned how the location of the septic field was determined. Mr. Durrant stated he has documentation from the Livingston County Health Department. Board Member McCreary stated the information from the Health Department was not based on their confirmation. It was provided by the previous homeowner. Ms. McCreary does not have proof of there being a septic tank or field. Mr. Durrant stated there will be no water or sewer needed for the accessory structure.

Board Member Ledford lives on the lake and the previous owner of that island placed a large septic drum in the ground; however, she is not aware if it is still there. If this request is approved, she would like to include a condition that the septic field be located.

Board Member McCreary asked if the applicant has put fire safety precautions in place with the addition of the grill and fireplace. This being on an island, it is very difficult for the fire department to get to. Mr. Durrant stated all of those requirements would be determined by the building department and they will follow all of the regulations.

The call to the public was made at 8:36 pm with no response.

Moved by Board Member Kreutzberg, seconded by Board Member Ledford, to approve Case #19-36 for Ventures Design, on behalf of the property owner at 4501 Oak Pointe Drive, for a waterfront setback variance of 42 feet, 4 inches, from the required 100 feet for a 57 foot, 8 inch setback to construct an 800 square foot detached structure, based on the following findings of fact:

- Strict compliance with the setback would unreasonably prevent/restrict use of the property or cause it to be unbuildable.
- Granting this variance would allow/provide substantial justice providing similar rights as other properties in the area.
- The exceptional or extraordinary condition of the property is being it is an island and the property is surrounded by water.
- The variance is the least necessary and would make the property consistent with other properties /homes in the area.
- The granting of the variance will not impair adequate light or air to adjacent properties, would not increase congestion or increase danger of fire or threaten public safety or welfare. The proposed variance would have little or no impact on the appropriate development, continued use or value of adjacent properties and the surrounding neighborhood.

The proposed conditions of this approval are:

1. Due to the proximity of the proposed structure to the 25 foot natural undisturbed wetland buffer, applicant must install a temporary barrier so no damage occurs in the wetland buffer.
2. The height cannot exceed 14 feet.
3. The entry paths located in the 25 foot natural undisturbed wetland buffer as shown on the site plan shall be a natural pervious surface.
4. No other entry paths will be allowed in the 25 foot natural undisturbed wetland buffer.
5. The use of the property shall remain single family residential in compliance with the intent of section 3.01.02 (a) through (1) of the Zoning Ordinance.
6. The use of the pavilion shall not be used for commercial events or charitable events.
7. The applicant shall locate and assure the position of the septic field.
8. The applicant shall consult with the Brighton Area Fire Authority that all precautions are taken.

The motion carried unanimously.

4. 19-37...A request by Marygrove Awning, Co., 4219 Homestead, for a waterfront yard variance to allow a covered deck.

Vince from Marygrove Awning was present to represent the applicants, Ms. Jackie Williams and Ms. Lynda Williams. They would like to build a 600 square foot patio. They reduced the size of the awning to the least amount necessary to allow a 120 square foot retractable awning. Their request is 104 square foot over what is allowed by the Township. He stated they will be staying within the footprint of the existing approved deck. He showed an aerial view of the area showing that this will not obstruction the views of the lake for any of the neighbors. This

awning will be replacing the current shade structure, which went out 10 feet. They are proposing to go out an additional four feet, for a total of 14 feet.

The call to the public was made at 8:53 pm

Ms. Lynda Williams, one of the homeowners, stated they are only replacing the existing retractable awning, and only going out as far as the existing deck.

The call to the public was closed at 8:54 pm.

Moved by Board Member Ledford, seconded by Board Member McCreary, to approve Case #19-37 for 4219 Homestead Drive for petitioners Jackie and Lynda Williams for a 28 foot waterfront setback variance from the required 40 feet for 12 foot waterfront setback in order to construct a 16x14 foot pergola with a louvered roof above an existing deck, which is attached to the existing structure, based on the following findings of fact:

- The deck is not able to be used during sunny, hot summer days by the property owner and will replace the existing retractable awning. The proposed pergola is designed to follow the sides of the existing deck without covering the entire deck in order to provide an appropriate amount of coverage from the elements, which is made from rotating louvers that close as needed.
- By granting this variance, substantial justice would be provided to the property owners and is necessary for the preservation and enjoyment of a substantial property right that is possessed by other property owners in the immediate vicinity.
- The granting of the variance will not impair an adequate supply of light and air to adjacent property owners or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger public safety, comfort, morals or welfare of the residents of the Township of Genoa.
- The granting of the variance would have little or no impact on the appropriate development, continued use, or value of adjacent properties and the surrounding neighborhood.

The motion carried unanimously.

Administrative Business:

1. Approval of the minutes for the September 17, 2019 Zoning Board of Appeals Meeting.

Needed changes were noted.

Moved by Board Member Ledford, seconded by Board Member Kreutzberg, to approve the September 17, 2019 Zoning Board of Appeals Meeting minutes with the changes noted. **The motion carried unanimously.**

2. Correspondence – Ms. VanMarter had nothing to report.

Zoning Board of Appeals Meeting
October 16, 2019 Approved Minutes

3. Township Board Representative Report - Board Member Ledford provided a review of the October 7, 2019 Board meeting.

4. Planning Commission Representative Report – Board Member McCreary provided a review of the October 15, 2019 Planning Commission meeting.

5. Zoning Official Report – Ms. VanMarter had nothing to report.

6. Member Discussion

Mr. Goble, who is the new owner of 4501 Oak Pointe Drive, introduced himself to the Board. He questioned the condition of the motion for his variance approval which states “The use of the pavilion shall not be used for commercial events or charitable events.” He and his wife sometimes hold fundraiser dinners for a non-profit to which they belong. He wants to ensure that he can have these. They are not large, public events.

Ms. VanMarter stated she will get an opinion from the attorney and will report back to the ZBA.

7. Adjournment - **Moved** by Board Member Ledford, seconded by Board Member Rockwell, to adjourn the meeting at 9:18 pm. **The motion carried unanimously.**

Respectfully submitted:

Patty Thomas, Recording Secretary