

**GENOA CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
NOVEMBER 17, 2020 - 8:00 PM**

MINUTES

Call to Order: Chairman Rassel called the regular meeting of the Zoning Board of Appeals to order at 8:00 pm. The members and staff of the Zoning Board of Appeals were present as follows: Greg Rassel, Michele Kreutzberg, Jean Ledford, Marianne McCreary, Craig Fons, and Amy Ruthig, Zoning Official. Absent was Bill Rockwell.

Pledge of Allegiance: The Pledge of Allegiance was recited.

Introduction: The members of the Board introduced themselves.

Approval of the Agenda:

Moved by Board Member Ledford, seconded by Board Member Kreutzberg, to approve the agenda as presented. **The motion carried unanimously.**

Call to the Public:

The call to the public was made at 8:01 pm with no response.

1. Request by Township Manager for interpretation of sections 11.04.03, 11.01.04, and 11.04.05 of the Township Zoning Ordinance as it applies to waterfront yards in accordance with Section 23.02.03 of the Township Zoning Ordinance.
 - A. Interpretations of Section 11.04.03 and 11.04.05 as it relates to swimming pools in the required waterfront yard.
 - B. Interpretation of Section 11.01.04 and 11.04.05 as it relates to retaining walls and terraces in the required waterfront yard.

Chairman Rassel advised that the Township Manager asked the Zoning Board of Appeals to make two determinations. One is with regard to swimming pools in the front yard and the second is regarding retaining walls and terraces in the required waterfront yard.

The call to the public was made at 8:03 pm.

Mr. Brandon Bertrang of Ventures Design stated that Ordinance Sections 11.04.03 and 11.04.05 state that only one gazebo, dock, or deck are allowed in a waterfront yard. This would mean that that all of the other items would not be allowed, such as landscaping would not be allowed, which would be grass, sod, plants, trees, patios, shrubs, fire pits, flag poles; literally

anything other than a gazebo, dock, and a deck. It is Venture Design's opinion that it was never intended to trump any of the other Sections of the ordinance. It has never been used to allow only a deck, dock or gazebo. He read the definition of landscaping in Section 25 of the Ordinance. Section 11.04.03 has a section regarding setbacks for pools, which is 10 feet from any property line when it's three feet or less from grade (deep) and they are not allowed in the front yard. If Section 11.04.05 supersedes all other projections, then everything would be eliminated except the three items listed.

Mr. Bob Pettengill of 3540 Pineridge Lane stated that Section 11.04.039(c) - swimming pools says "construction shall not be located in any front yard. He does not agree with Mr. Archinal's letter regarding Section 11.04.05(a) - waterfront structures, which states that only the following structures and appurtenances, docks, mooring apparatus and decks shall be allowed, but it does not include pools. In reading the zoning ordinance, he does not believe that a pool would be allowed so there would be no basis for approving the variance request.

Mr. Doug Brown of 3420 Pineridge Lane suggested that Ordinance Section 11.04.04(c) be referenced in this interpretation, which states "...fences, walls, or screens located in the rear yard should not exceed a height of four feet". He disagrees with having the call to the public before the Board discussed this item this evening.

Mr. Bertrang stated that Section 11.04.04(c) pertains to fences and walls, which are considered above-grade features and they are proposing a below grade wall, which is made with landscaping and boulders. When a term is specifically defined, such as front yard, waterfront, they cannot be combined. Front yard is its own definition and separate from waterfront.

The call to the public was closed at 8:16 pm.

Board Member McCreary read Section 11.04.03, items (a), (b) and (c), specifically in regards to swimming pools, fences and heights and setbacks and restrictions from the front yard. Her understanding of the front yard as it applies to a waterfront property is the front that faces the road. This only applies to pools not being allowed roadside. Section 11.04.05 as it relates to swimming pools is under the accessory buildings and structures portion of the description and says "waterfront structures and appurtenances are permitted structures on waterfront property subject to the requirements of this section". The only structures that can be permitted in the waterfront yard are gazebo, dock, or deck, but if you define an accessory building, the definition of a structure or a building is a detached structure on the same lot and subordination to a principal structure....." In Section 11.04.01(g) - setbacks from the shoreline- detached accessory buildings shall be set back at least 50 feet from....., except in the lakeshore resort zoning district where they shall meet the shoreline setback requirements. Her interpretation is that pools are allowed on the waterfront, but must comply with the shoreline setback requirement.

Chairman Rassel does not believe that anyone who wrote this ordinance intended to deny anyone to put a pool on their property on the waterfront. He agrees that they must be within the non-required lakeshore setback requirement.

Ms. Ruthig advised that Section 11.04.01(g) could not be applied to the request from Ventures Design because it speaks to buildings, and buildings have a roof. That section was not used when determining if a pool was allowed and requiring the applicant to seek a variance. Section 11.04.05 was used.

She agrees with Board Member McCreary as the ordinance states that a front yard is a yard that abuts a public or private road right of way.

Board Member Fons believes that Section 11.04.03 should be referenced for swimming pools and not Section 11.04.05, so a pool would be allowed in the lakefront as long as it meets the setback requirements.

Board Member McCreary stated that Ordinance Section 105 - Conflicting Regulations - if there are conflicting regulations "the provision or standard which is more restrictive shall prevail".

All commissioners agree that a swimming pool can be put in a waterfront yard and not in the front yard, and if it is the waterfront, it has to be within the shoreline building setbacks (non-required waterfront yard).

The Board then discussed determining which of Sections 11.01.04 and 11.04.05 should be used when determining retaining walls.

Ms. Ruthig advised there is no definition for retaining walls in the ordinance so staff uses the requirements for fences and walls. She noted that retaining walls will be addressed in the next ordinance update.

The Board discussed how retaining walls are often needed when homes are being built.

Chairman Rassel has toured the properties around this lake and allowing a retaining wall for the applicant would provide them substantial justice. The Board must decide if the Township will allow retaining walls and have them addressed at a staff level. Ms. Ruthig stated that parameters would have to be put in place for retaining walls if it is determined that they are allowed. Board Member Fons believes that Section 11.04.05 would be used for retaining walls, where it speaks to fences and walls. Ms. Ruthig stated that fences are not allowed in the required waterfront. The Board interpreted that fences and walls are different from each other.

The consensus of the Board was that retaining walls are only allowed within the shoreline building setbacks. A variance would need to be requested and decided on a case-by-case basis. (non-required waterfront yard)

Board Member McCreary requested that the Township Manager respond to their interpretations that he requested.

2. 20-18 ... A request by Ventures Design, 3470 Pineridge Lane, for a variance to allow a swimming pool in the required waterfront yard and a variance to construct retaining walls in the required waterfront yard.

Mr. Loch Durrant and Mr. Brandon Bertrang from Ventures Designs were present. They believe that they no longer require a variance for their proposed pool and its location based on the interpretation of the Board and the ordinance requirements for a pool.

The Board stated that the interpretation was for the “required shoreline setbacks” and since this is more restrictive than the section regarding pools, a variance would be needed because the requested pool is within the required shoreline setbacks.

Mr. Bertrang questioned why the neighbors and Township are opposed to the pool. It doesn't block anyone's view. What would be the difference if there was a concrete patio or a pool in this location? He showed a photograph of a home on Highcrest Drive that was built with the same features and setbacks as what they are requesting. He showed additional photos of homes on the lake that have terraces, retaining walls, pools, swim spas, fire pits, etc.

They requested to have their item tabled until the December meeting to review the determinations that were made by the Board this evening.

The call to the public was made at 9:53 pm.

Mr. Doug Brown of 3420 Pineridge Lane stated that he was a member of the Planning Commission when the ordinance was written. The intent was not to have pools lakeside.

Chairman Rassel stated that letters of opposition were received from Robert Musch of 3500 Pineridge Lane and Dr. Donnie Bettles of 3430 Pineridge Lane.

The call to the public was closed at 9:54 pm.

Moved by Board Member McCreary, seconded by Board Member Ledford, to table Case #20-18 from Ventures Design at 3470 Pineridge Lane, for a variance to allow a swimming pool in the required waterfront yard and a variance to construct retaining walls in the required waterfront

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yard, until the December 15, 2020 Zoning Board of Appeals Meeting. **The motion carried unanimously.**

Administrative Business:

1. Member Discussion - There were no items to discuss this evening.

2. Adjournment

Moved by Board Member McCreary, seconded by Board Member Kreutzberg, to adjourn the meeting at 9:56 pm. **The motion carried unanimously.**

Respectfully submitted:

Patty Thomas, Recording Secretary