

Zoning Board of Appeals
December 15, 2020
Approved Minutes

**GENOA CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
DECEMBER 15, 2020 - 6:30 PM
Via ZOOM**

MINUTES

Call to Order: Chairman Rassel called the regular meeting of the Zoning Board of Appeals to order at 6:36 pm. The members and staff of the Zoning Board of Appeals were present as follows: Greg Rassel, Michele Kreutzberg, Jean Ledford, Marianne McCreary, Bill Rockwell, and Amy Ruthig, Zoning Official.

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 Rockwell, to approve the agenda as presented. **The motion carried unanimously.**

Call to the Public:

The call to the public was made at 6:39 pm with no response.

1. 20-27...A request by Todd Krebs, 4222 Bauer Road, for a rear yard setback variance, size variance and a height variance to demolish an existing detached accessory structure and construct a new detached accessory structure.

Mr. Todd Krebs stated they have owned this property for six years and would like to add a detached garage. The lot is narrow and the existing home and outbuilding are non-conforming. He is proposing to remove the square footage variance request so they are only seeking the rear setback and building height variances. The building will be 900 square feet or less.

The property has a large slope toward the back so the building will be placed at a lower grade than the home and the road. He feels that allowing him to have a two-car garage would be substantial justice. He stated that they will comply with the two conditions suggested by staff in their report.

Board Members and Mr. Krebs discussed the slope of the property and any grading that will be done.

Board Member McCreary questioned the hardship for the height variance. Mr. Krebs stated that if he built an attached garage, it would be allowed to be 35 feet tall and they are not able to

install a detached garage due to the narrowness of the lot. Because of the 11 foot difference in the slope of his property, it would not be an eyesore to the neighbors.

Board Member Rockwell asked for the specific reasons why the building is being requested to be so tall. Mr. Krebs stated he does cabinetry work and would like to have his workshop in the building.

Chairman Rassel asked what the height of the accessory structure will be in relation to the height of the rear of the home. Will the building be higher than the home? Mr. Krebs stated it will not be higher than the home; however, he does not have that exact information. He would be agreeable to that being a condition of approval.

The call to the public was made at 7:08 pm.

Mr. John Moretti of 4242 Bauer Road asked Mr. Krebs if he plans on filling in the grade with dirt or will there be a retaining wall, which would increase the height of the building. Mr. Krebs stated he will be using dirt.

The call to the public was closed at 7:12 pm.

Board Member McCreary is not convinced there is a hardship for the applicant to be granted a height variance. The slope of the property is not a hardship. Mr. Krebs stated the hardship is the narrowness of the lot, which is not allowing him to build an attached two-car attached garage.

Moved by Board Member McCreary, seconded by Board Member Ledford, to deny the height variance and approve the rear yard setback variance of six feet from the required ten feet for a four-foot rear yard setback for Case #20-07 located at 4222 Bauer Road, to construct an accessory structure and remove and existing detached accessories, due to the following findings of fact:

- Strict compliance would not prevent use of the property. Granting a size and height variance would not be necessary for preservation and enjoyment of substantial rights possessed by others.
- Granting the rear variance would give substantial justice as is afforded to others with similar zoned properties in the areas. Due to the setbacks and lot configuration total compliance with regulations would prevent the use of a detached structure.
- The extraordinary circumstances are the location of the home on the lot and the topography. The need for size and height variance would be self-created.
- There is no supporting hardship with the property to justify height and size. The rear setback variance would be the least amount necessary.

- The granting of the variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, comfort, morals or welfare of the inhabitants of the Township of Genoa.
- The granting of these variances will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, comfort, morals or welfare of the inhabitants of the Township of Genoa.

This approval is conditioned upon the following:

1. The existing detached accessory will be removed prior to Certificate of Occupancy issuance.
2. The detached accessory structure must follow Sec. 03.03.02 of the Zoning Ordinance as it pertains to Home Occupations.

The motion carried with a roll call vote (Ledford - yes; McCreary - Yes; no Michelle; Rockwell - yes; Rassel - yes)

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. Andrew Babnik, the attorney for the property owner, Mr. Slider, the property owner, and Brandon Bertrang of Venture Designs were present.

Chairman Rassel noted that no new information has been provided by the applicant.

Mr. Babnik stated they have two points to make this evening. Their first point is the variance is actually being requested under Ordinance Section 23.05.02. There was an erroneous and capricious interpretation of the ordinance. He has provided a letter to the Township Attorney. Article 23.05.02 defines the required yard as the open space between the lot line and the minimum setback. The required yard corresponds to the minimum setback for the district. The required yard corresponds to the minimum setback line and the main building. This is a very important distinction; minimum vs. required. The commission agrees that the swimming pool can be put in a waterfront yard and it has to be within the shoreline building setbacks. The Board's current interpretation of the ordinance creates ambiguity, but the proper interpretation is that the minimum setback is the 40 feet outlined within the ordinance. The setbacks are determined based on the other homes in the area.

He read the definition section of the ordinance for required setback. There is a distinction between minimum and required setbacks. In November the Board determined that a swimming pool could be placed in the waterfront yard but needs to be within the shoreline building setback. There is a clear distinction in the ordinance regarding accessory structures. This can

be seen throughout the lake. There are people who have accessory structures, fire pits, grills, fire rings, flag poles, gardens, etc. that are all within what the Board would describe as the required yard. The required setback is 40 feet in the ordinance.

If the Board does not want to change its position on the required yard, his client would be seeking a variance from Section 11.04.05 of the ordinance, which speaks to only docks, moorings, docks, apparatus, could be built within the required waterfront yard. which would be to allow an open space terrace and decorative boulder wall and swimming pool that are shown in the plans. He reiterated that there are other items within the waterfront yard on other properties and his client should be allowed the same.

He noted that 11.04.05 does not prohibit pools in the waterfront yard, which was affirmed by the Board at their November meeting. The practical difficulty is the pie shaped lot and the location of the home. The home could not be moved without requiring side yard setback variances as well as additional retaining walls for the walkout basement or eliminating the walkout basement. This was not self-created because of the severe topography of the property, which was already agreed upon by the Board at their September meeting.

Based on the interpretation by the Board, his client would not be able to have anything in his waterfront yard. This does not allow his client to have the same property rights and enjoyment of his property as others in the area.

He is requesting that the Board grant the variance to Article 11.04.05 or to adopt the proper interpretation of the required and non-required yard and find that the pool and retaining wall would be in the non-required yard.

Ms. Ruthig stated Mr. Babnik requested to have the Board interpretation of required vs non-required yard for a principal structure. That has not been published so the Board will need to determine if they want to discuss and vote on that this evening. Mr. Bertram stated that he spoke to Mr. Archinal and he was told he was able to ask the Board this evening and it does not have to be noticed or published. There is no application to ask the Board for an interpretation on an erroneous ruling as long as it does not change the requested variance.

Ms. Ruthig stated that she spoke to Mr. Archinal today and in order to appeal the decision of the zoning administrator and in order to do that, she would have to supply the Board with that information and the Board does not have that information this evening. Mr. Bertram asked what should be done at this time as he was given different information. Ms. Ruthig reviewed the ordinance and concluded that the Board can discuss and make a decision on the dimensional variances this evening, but nothing for the appeal of an administrative decision. Mr. Bertram stated they are not seeking a dimensional variance; they are requesting relief from Section 11.04.05.

Ms. VanMarter, the Community Development Director/Asst. Township Manager, entered the meeting. She was asked what the next steps are if the Board denies the variance request today. Can the applicant still submit an appeal to an administrative decision? She said it can still be heard as it would be a different request. The Appeal of an Administrative Decision is different than the dimensional variance request.

Mr. Babnik stated that they would like to proceed tonight. He reiterated the grounds for the variance. Due to the unique shape and severe topography of the lot, and giving them the required or non-required yard space that others have in the surrounding area would be grounds to grant this variance and to have to go further and appeal on the erroneous interpretation of the required and non-required yard.

The call to the public was made at 7:42 pm.

Chairman Rassel noted that two neighbors submitted letters in opposition to the requests. One was from Robert Musch of 3500 Pineridge Lane and the other was from Donnie Bettes of 3430 Pineridge Lane.

Stewart of 3545 Pineridge Lane stated the applicant is building too much on a lot that is too small and to compare fire pits and flagpoles to a pool is a stretch.

Ms. Donnie Bettes of 3430 Pineridge read the letter that she submitted to the Township. I have been a resident of Genoa Township for 33 years. I recently ran for State Representative of District 42, which includes Genoa Township. Having just finished this campaign, I know how hard you all have worked to be here on this Zoning Board of Appeals tonight. I commend the board for meeting for the 4th time to deal with the Slider's petition. This petition asks to build structures closer to the lake than currently allowed, including a retaining wall and a swimming pool. The Slider's claim they have a hardship. This hardship, however, is self-imposed; due to where they chose to build on the lot, and the extensive excavation of the soil near the hillside. This excavation raised the height of the hillside, and now they want to construct a wall to contain the soil that they chose to move to begin with. While I was campaigning for State Representative in District 42, I observed numerous lakefront communities in Putnam, Green Oak, Hamburg, Brighton, and Genoa townships. Many of these lakefront areas are overcrowded, overbuilt, and unsightly, due to a lack of guidelines and planning. Genoa Township, however, is known for its natural beauty and open spaces. This is mainly due to our township's good stewardship and actively managing and enforcing zoning requirements. From all the meetings we have had on the Slider's petition, it seems the only ones to benefit from allowing it, is for the pool company to make a profit, then they will be gone, and the Slider's to build an obstructive wall closer to the lake than guidelines allow. All against the expressed desire of a majority of the neighbors who live within 300 feet. I ask the Zoning Board of Appeals to continue their good stewardship of our community and refuse the Slider's petition for once and for all.

Mr. Michael Balagna of 3450 Pineridge Lane stated the Sliders house is 20 feet in front of his house and already blocks his view and adding a wall and swimming pool where they added dirt and made higher will further block his view. It is a hardship to him and he does not want them to have a pool and would like them to move the excess dirt that is on the property and blocking his view. They already cut down the trees and cut down the natural wall that the neighbors had for 40 years. They created this hardship themselves. They could have built the home further from the lake if they wanted to put in a pool. They already have room in their existing courtyard for the pool.

The call to the public was closed at 7:46 pm

Mr. Bertram stated they are not seeking to change the existing grade. The grade was changed during construction and will be restored to the approved grade based on the plan once the construction is complete. There is a setback requirement for retaining walls, which is 10 feet from any lot line. They are not seeking a dimensional variance; they are seeking relief from 11.04.05, which prevents anything other than a dock, mooring apparatus and deck to be in the required yard, which have been approved in other cases throughout the neighborhood with and without ZBA approval. Most homes on the lake have things that are built outside of the principal structure setback.

Board Member McCreary stated there have been many hours and much thought put into this request. The number items that come up when a variance is being requested is what is the hardship with the property and was self-created. What did the property owner do to create the reason for asking for the variance? They asked to reconstruct a brand new house on a piece of property and were denied a variance two years ago because it did not show substantial justice; it was self-created, and was too close to the water. What is being requested today is not different than when the original request was made. She is not in favor of granting the variance.

Board Member Ledford agrees with Board Member McCreary and her judgement and will also be voting against this.

Moved by Board Member McCreary, seconded by Board Member Ledford, to deny the request for the property at 3470 Pineridge Lane, item # 20-18 for a front yard variance to install an inground swimming pool in the waterfront yard, based on the following findings of fact:

- Strict compliance with the ordinance would prevent the applicant from building an inground pool in the waterfront yard. This variance request is not necessary for the enjoyment of the rights possessed by other properties in the same zoning district and vicinity of the subject parcel.
- Ordinance Section 11.04.05 regarding waterfront accessory structures states only the following structures and appurtenances shall be permitted within the required waterfront yard are docks and mooring apparatus,. It does not say pools.

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- A review as requested by the township manager to interpret Sections 11.04.03 and 11.04.05 of the ordinance as relates to swimming pools was discussed at the last ZBA meeting. The consensus was that pools are not allowed in the required shoreline setback. Section 11:04:03 states pools shall not be in the front or street yard
- It was further noted and agreed upon that in the absence of any conflicting regulations Section 1.05 states that the provision or standard which is more restrictive or limiting shall govern.
- The applicant was denied in 2019 by the Township Zoning board of Appeals for waterfront setback variance to construct a new home based on the findings of fact there was no hardship and there were NO extraordinary circumstances and need was self-created. A clearly established review and explanation at that time was given regarding waterfront variance.
- Although the applicant has provided examples of properties in the nearby area with same zoning noting inground pools the one property that is provided is not significant enough to note substantial justice when all other examples comply with the ordinance
- It is noted that the need for the variance is self-created and the applicant took action on this property to create a need for this variance by constructing a new home and creating the need for this variance request.

The motion carried unanimously with a roll call vote.

Administrative Business:

1. Approval of minutes for the November 17, 2020 Zoning Board of Appeals meetings.

Needed changes were noted.

Moved by Board Member Ledford, seconded by Board Member Kreutzberg, to approve the minutes of the November 17, 2020 - 6:30 pm ZBA meetings as corrected. **The motion carried unanimously.**

Moved by Board Member Kreutzberg, seconded by Board Member Ledford, to approve the minutes of the November 17, 2020 - 8:00 pm ZBA meetings as presented. **The motion carried unanimously.**

2. Correspondence - Ms. Ruthig stated the 2021 meeting schedule will be sent to the Board tomorrow. There is one case scheduled for the January 19 meeting.

3. Member Discussion

Board Member McCreary noted that a motion was not made for the retaining wall request. Ms. VanMarter suggested that the Board reopen Case #20-18 and vote on the retaining wall request. All Board Members agreed.

Chairman Rassel reopened case #20-18 at 8:07 pm.

Moved by Board Member Ledford, seconded by Board Member McCreary, to approve the retaining wall located in the required waterfront yard, due to the following findings of fact:

- Strict compliance with the required waterfront yard setback would prevent the installation of the retaining walls. The granting of the retaining walls in the required waterfront yard could provide substantial justice and may be necessary for the preservation and enjoyment of a substantial property right similar to that possessed by other properties in the vicinity. This property has historically had retaining walls and there are multiple properties in the area and around the subject lake with retaining walls in the required waterfront yard.
- Exceptional or extraordinary condition of the property is the topography of the lot; however, it appears that the property has had substantial grading since construction of the home, which included removal of an existing retaining wall.
- The granting of the variance will not impair an adequate supply of light and air to adjacent property or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, comfort, morals or welfare of the residents of Genoa Township.
- The proposed variance could have an impact on the adjacent neighbors in regards to the grading that has taken place on the parcel thus far.

This approval is conditioned upon the following:

- The applicant shall ensure that grading on site will not affect neighboring properties.
- The applicant must comply with Livingston County Drain Commissioner and the Livingston County Building Department regarding the final grading requirements.
- No railing shall be installed on the wall.
- The retaining wall shall not exceed the height shown in the submittal and shall be reviewed and approved by Township staff.

The motion carried with a roll call vote (Ledford - yes; McCreary - yes; Kreutzberg - yes; Rockwell - yes; Rassel - no)

4. Adjournment - **Moved** by Board Member Ledford, seconded by Board Member Rockwell, to adjourn the meeting at 8:20 pm. **The motion carried unanimously.**

Respectfully submitted:

Patty Thomas, Recording Secretary