

**GENOA CHARTER TOWNSHIP
ZONING BOARD OF APPEALS
FEBRUARY 16, 2021 - 6:30 PM
Via ZOOM**

MINUTES

Call to Order: Chairman Rassel called the regular meeting of the Zoning Board of Appeals to order at 6:34 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, Kelly VanMarter, Community Development Director/Assistant Township Manager, Amy Ruthig, Zoning Official, and Joseph Seward, Township Attorney.

Pledge of Allegiance: The Pledge of Allegiance was recited.

Introduction: The members of the Board and staff introduced themselves, including their locations.

Election of Officers:

Moved by Board Member Ledford, seconded by Board Member Rockwell, to nominate Greg Rassel as Chairman. **The motion carried unanimously.**

Moved by Board Member Ledford, seconded by Board Member Kreutzberg, to nominate Marianne McCreary as Vice-chairperson. **The motion carried unanimously.**

Approval of the Agenda:

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

Call to the Public:

The call to the public was made at 6:40 pm with no response.

1. 21-02... A request by Lawrence Zalewski, 4480 Golf Club Road, for a side yard setback variance to construct an addition to an existing single family home.

Mr. Zalewski is the builder for the owner. They would like to add a bedroom and bathroom to the southeast corner of the home. The addition will be in line with the side of the existing home. They are not going any further toward the property line.

Board Member McCreary asked for clarification that the addition will be straight off the existing side line setback and then further back. Mr. Zalewski stated, "yes".

Board Member Kreutzberg asked if this is the only location where the addition can be placed. Mr. Zalewski stated that due to the elevations of the floor of the existing home, this is the only location where this can be placed without having to be put in three steps.

Board Member Ledford asked for the square footage of the addition. Mr. Zalewski stated it is approximately 100 square feet.

The call to the public was made at 6:47 pm with no response.

Moved by Board Member Rockwell, seconded by Board Member Kreutzberg, to approve Case #21-02 by Lawrence Zalewski at 4480 Golf Club Road for a side-yard variance of 2 feet, 6 inches from the required side-yard setback of 30 feet for a 27 foot, 6 inch side-yard setback for construction of an addition to an existing single-family home, based on the following findings of fact:

- Strict compliance with the side yard setback would prevent the applicant from constructing the addition in the proposed location. The variance does seem to provide substantial justice for there are some homes in the surrounding area with non-conforming side yard setbacks due to being located on a narrow lot same as the applicant.
- The exceptional or extraordinary condition of the property is the existing location of the home, the narrowness of the lot and the location of the septic field. It appears to be the least amount necessary and is not self-created.
- 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 proposed 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.

2. 21-03...A request by Jeffrey A. Andersen, 1627 Greenmeadow Drive, for side, front and rear yard setback variances to construct a new home.

Mr. and Mrs. Andersen were present. Ms. Andersen stated they are requesting to replace a 1965 mobile home. They would like to move back to the Brighton area. The existing home is only 625 square feet. Their new home will be 1,003 square feet. The rear and one side yard setback will be the same, but the other side and the front will be closer to the property lines.

Board Member McCreary asked how many bedrooms are in the existing home. Ms. Andersen stated there are two in the current home and there will be two in the new one. Ms. McCreary

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wants to make sure the health department has approved the septic. Ms. Andersen stated they have received approval for the existing well, septic, and drain field.

She asked what kind of foundation will the new home be placed on. Ms. Andersen stated it will be the same foundation, which is piers, so it will not be permanent. Board Member McCreary noted that the application states they are only asking for a side yard setback variance, but there are side, rear, and front yard variances in the agenda item. Chairman Russel confirmed that there are three variances being requested.

Board Member Kreutzberg asked if the existing home is non-conforming per the subdivision. Ms. Andersen confirmed that is correct.

Board Member Rockwell questioned if the well pit is considered a structure and is there anything that needs to be addressed by the Township or the ZBA. Ms. Ruthig stated this will be handled through the Livingston County Health Department and will be addressed during the building permit process.

The call to the public was made at 6:59 pm with no response.

Moved by Board Member Kreutzberg, seconded by Board Member Ledford, to approve Case #21-03 for Jeffrey A. Andersen for a front-yard variance of 11 feet from the required 35 feet for a front-yard setback of 24 feet, a side-yard variance of 3.5 feet from the required 10 feet for a side-yard setback of 6.5 feet, and a rear-yard variance of 5 feet from the required 40 feet for a rear-yard setback of 35 feet to replace or construct a new conforming home, based on the following findings of fact:

- Strict compliance with the setbacks would unreasonably restrict use of the property.
- Granting the variances will provide substantial justice in granting the applicant the same rights as similar properties in the neighborhood as there are many homes in the surrounding area with non-conforming setbacks. The need for the variances is not self-created.
- The extraordinary circumstances being the location of the accessory structure and the septic field.
- These variances are the least necessary and would make the property consistent with other properties and homes in the area.
- Granting the variances will not impair an adequate supply of light and air to adjacent properties, would not increase congestion or increase the danger of fire or threaten public safety and welfare.
- The proposed variances would have little or no impact on the appropriate development continued use or value of adjacent properties and the surrounding neighborhood.

This approval is conditioned upon the following:

1. The structure must be guttered with downspouts.

2. The applicant shall be required to completely remove the detached accessory structure once the existing home is removed under the following conditions:
 - a. If a permit to construct a new principal residence is not issued within six months of the ZBA decision; and/or
 - b. If the applicant fails to obtain final occupancy certification from the Livingston County Building Department within one year of Land Use permit issuance;
 - c. Township staff shall have discretion to approve extensions to the above deadlines under proven special or extenuating circumstances but in no case shall that extension exceed 6 months for Item (a) or 12 months for Item (b).
3. If improvements are requested for the expansion of the current accessory building, they shall comply with Section 24.04.06 of the zoning ordinance.

The motion carried unanimously.

3. A request by Ralph Slider, 3470 Pineridge Lane, for an appeal of an administrative decision per Section 23.02.01 determining required waterfront setbacks.

Mr. Seward stated this is an appeal by Mr. Slider of a decision made by the Zoning Administrator to deny the Land Use permit and advise they needed to seek a variance.

Section 23.02.01 of the Ordinance allows for appeals before the ZBA. The Sliders have to meet at least one of four criteria per 23.05.02 of the ordinance, which are:

1. Was the decision by the zoning administrator arbitrary or capricious
2. Was the decision based on an erroneous finding of material fact
3. Constituted an abuse of discretion
4. Was based on an erroneous interpretation of the zoning ordinance or zoning law

He has received a letter from Mr. Andrew Babnik, the Slider's attorney, which follows two paths. Their first issue is that the decision was arbitrary and capricious and the second is that the zoning administrator made an error in the interpretation of the zoning ordinance.

The slider argument is that Section 11.04.05 says what can be waterfront accessory structures, and it applies to what are permitted, but they are limited to docks and mooring apparatus, decks, and no more than one gazebo. They have done a survey of the lake and there are a number of flagpoles, fire pits, and steps that are found in the waterfront yard, and if the ordinance was strictly construed, then those would constitute structures under the ordinance and by not enforcing the ordinance for these other property owners the zoning official is being arbitrary and capricious by not affording the same permission as the Slider's request.

In Mr. Seward's letter, he cited case law that says that a Township is not prohibited from enforcing its ordinances even though there have been past situations where the ordinance wasn't enforced the same way it is now. The Board does not need to follow this case law, but if the Board believes the decision by the zoning administrator was not arbitrary and capricious,

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the law does not require a different decision; however, the Board can find that this decision was arbitrary and capricious. It is up to this body to make that decision.

The second item that the Slider's state is that the zoning ordinance was improperly interpreted. They provided a long analysis and there is a fundamental disagreement as to their interpretation. When deciding what was the applicability of the ordinance he wants the members to see Section 1.05.01 that states that if there is a conflict between provisions in the zoning ordinance, the provisions or standards that are more restrictive or limiting shall govern.

The Slider's position is that because Section 11.04.0(g), the general dimensional standards are set forth, the ordinance only specifically speaks to detached accessory buildings when speaking of the setbacks from the shoreline. They say that the word "structure" is not in Section 11.04.01(g) and was purposeful not to include anything but a building and pool, by definition in Chapter 25 of the ordinance, does not fit the definition of a building. It does not have a roof.

Then they go to Section 11.04.01(f), which speaks to pools this says pools have to be at least 10 feet from the principal building and at least 10 feet from a side lot line. What they are proposing would fit that definition. They say that the table in 3.04.02 does not apply to them. They add that even if Section 3.04.02 applies, that it sets forth a different and distinct setback for the principal structure as compared to an accessory structure. They agree that under Table 3.04.02 for the principal building, which is the house, it has to be 40 feet from the shore line or consistent with the setback of the adjacent principal buildings, whichever is greater.

On the other hand, when looking at the definition of "yard" and "front yard", in Chapter 25, they say that when it says "front yard", that the front yard is the minimum and so they go back to Table 3.04.02 and when they use the definition of "waterfront yard" and "the minimum", they only focus on those three words in the table, which is "a minimum of 40 feet". Additionally, the phrase "..or consistent with setbacks adjacent to principal buildings, whichever is greater" does not apply. That is their reason for the erroneous decision by the zoning administrator. Is it the intent of Table 3.04.02 and what the waterfront setback should be or is it 40 feet from the adjacent principal building, does that apply and also defining what the "waterfront setback" should be. Is it 40 feet or the adjacent principal building, whichever is greater? If so, then their pool encroaches upon the "required yard" and under Chapter 11, it is not a structure that is permitted to be in the waterfront yard.

Section 11.04.03(4) says that swimming pools shall not be located in any front yard. The definition in Chapter 25 of "yard" says "front yards... and the yard adjoining the shore line shall be considered the waterfront yard" so a waterfront property could have two front yards, and this could be another reason to say that a pool is not allowed in a front yard.

Mr. Andrew Babnik, Mr. Slider's attorney, stated that he wanted to address the argument of the

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Front yard, side yard, rear yard, issues. In November the ZBA found that the waterfront yard is not, by definition, the front yard. A waterfront yard would not have two front yards, and a pool could be placed in a waterfront yard and not a "required yard".

His client was asked to seek a variance to build based on a "required" vs "non-required" yard. This has very little to do with a pool. This is an issue of what can be built in the "required yard" and how it is defined. It is agreed that you cannot build in the "required yard" except for docks, mooring apparatus and a deck. The problem is the definition of the "required yard", which is where the erroneous decision and the arbitrary and capricious come into play.

The ZBA denied Mr. Slider the variance that he requested claiming he was building in the required waterfront yard. Additionally, one example of a pool was given and it was admitted by the Township that approval was issued in error; however, additional pools have been shown to be in the waterfront yard, as well as other multiple violations of non-conforming uses, such as flagpoles, fire pits, etc. that are deemed to be structures per the ordinance and are not allowed in the waterfront yard. He does not believe that his client is being singled out, but that would be the only reason why these other structures were allowed to be built.

The case law cited by Mr. Seward deals with a commercial use so he does not believe that is applicable to this issue.

This was a public hearing and the neighbors spoke up and did not want the pool. He was allowed to put in the retaining wall, but not the pool.

The ordinance states that if there are two restrictions in the ordinance, the more in the restrictive must take precedence, but the zoning administrator and the ZBA cannot create a conflict that does not exist. It has been said that the non-required yard or required yard needs to match the setback of the principal structure, but there is no support for that in the ordinance. In the December 5, 2020 ZBA meeting, it was stated that nothing can be built in the required year except, decks, mooring apparatus, and docks.

He stressed that this is not about a pool. While there are multiple examples of pools, a pool is not different from a fire pit. A pool is a structure, which is distinct from a building, and there are multiple examples of structures that have either been allowed by the zoning administrator or with a variance.

The definition of a "required yard" is "it corresponds to the minimum setback in the district". The administrator and the ZBA interpreted that the minimum setback is the same as the principal structure, and that is not in the ordinance. He agrees that if a conflict exists, the more restrictive takes precedence; however, there is no conflict. The zoning administrator has created a conflict by this interpretation. Not only the existing structures, but every future flagpole, fire pit, anything that is defined as a structure that appears in what is being defined as the required yard, which

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exceeds what is the minimum in the district, is going to need a variance. The proper interpretation is that the required yard setback for the LDR district mirrors the minimum setback for the district, which is 40 feet. Section 13.02.04 provides a minimum for the district, which is 25 feet from the waterfront.

What is the intent of the ordinance? Why is there a “required” and “non-required” yard? The ZBA stated that the purpose was to prevent sight line interference for the neighbors and protect waterfront views. This would prevent his client from having any yard where he would be able to put anything; not a flagpole, a pool, etc. If the intent of the ordinance is to not impede sight lines, and the ZBA has already approved a variance for a retaining wall, why is a pool different? The interpretation not only does not allow his client from putting in a pool, it also places dozens of other properties into non-compliance. The correct interpretation that he has noted brings everyone into compliance and creates no conflict.

He summarized his argument that his client is not looking for a technicality within the ordinance, he wants equal treatment. There is a conflict between the ZBA saying there is no substantial justice and that there is no issue here. The required yard is as it is defined by the administrator and therefore, nothing can be built within the required yard. He agrees that nothing can be built within the required yard without a variance, but the definition of required yard contradicts everything that the zoning administrator has done up until this point and what the ZBA up until this point.

No one has pointed out why the required yard would have to match the principal building setback. There is a clear difference between the definition of a building and a structure. He is asking the Board to find that the zoning administrator’s interpretation of what the required yard is was erroneous. This would bring all of the other properties into compliance and allow his client to build within the non-required yard, as long as he does not violate the required yard setback.

The call to the public was made at 7:34 pm with no response.

Board Member McCreary stated that she has reviewed the attorney’s letters and heard their presentations this evening and she continues to hold her position that she has had since the beginning of this issue.

Board Member Kreutzberg stated that all of the ZBA’s decisions were based on the parameters that they were given over these several months, which is what has led her to her conclusions.

Moved by Board Member McCreary, seconded by Board Member Ledford, to deny the request for an administrative appeal, based on the following:

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- The applicant is requesting an administrative appeal, which has the ability to reverse an order of an administrative official or the planning commission only if it finds that the action or decision appeal meets one or more of the following requirements.
 1. Was the decision by the zoning administrator arbitrary or capricious
 2. Was the decision based on an erroneous finding of material fact
 3. Does the decision constituted an abuse of discretion
 4. Was the decision based on an erroneous interpretation of the zoning ordinance or zoning law
- In an effort for the applicant to request their variances for both a pool and landscaping, the applicant, the applicants representatives, Township officials, the Township's council and the applicant's councils, as well as the Zoning Board of Appeals have spent an inordinate amount of time reviewing the request for variances of a pool and landscaping.
- Public comments have also been heard and considered in each occasion regarding the requests for variances.
- None of these meetings, dialogues or analysis of the requests have been taken lightly or discarded at any time by the Zoning Board and, for that matter, Township staff and officials. The ordinances in place are what we utilize as the tool to apply for variances that are not self-created, the least requested, and will not cause harm to the residents or the surrounding properties of the Township.
- Four meetings were held to discuss the variance requests.
- At the request of the Township manager, one entire meeting was held for the purposes of the ZBA to Interpret sections of the ordinance, specifically Section 11.04.03, Section 11.01.04, Section 11.04.05 and 23.02.03. This request was to identify how these sections related to swimming pools, required waterfront yards, required waterfront setbacks, and retaining wall setbacks.
- The outcome of the discussion resulted in the following. 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 cannot be in the required waterfront setbacks. Table 3.04.02 was used for this determination.
- As the members of the Zoning Board have, each time when calling for the vote, all identified that the variance for the pool is denied, I see no arbitrary or capricious nature as we have applied this to both the applicant and the definition of the way the ordinance is written.
- Further I see no correlation with any of the four criteria that would deem this appeal reversible.

The motion carried unanimously.

Administrative Business:

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1. Approval of minutes for the January 19, 2021 Zoning Board of Appeals meetings.

Needed corrections were noted.

Moved by Board Member Ledford, seconded by Board Member McCreary, to approve the minutes of the January 19, 2021 ZBA meeting as amended. **The motion carried unanimously.**

2. Correspondence - Ms. Ruthig stated there are two cases scheduled for the March 16 meeting.
3. Member Discussion - Chairman Rassel thanked Mr. Seward for attending tonight and for his assistance this evening.
4. Adjournment - **Moved** by Board Member Rockwell, seconded by Board Member Kreutzberg, to adjourn the meeting at 7:49 pm. **The motion carried unanimously.**

Respectfully submitted:

Patty Thomas, Recording Secretary