

**GENOA CHARTER TOWNSHIP  
ZONING BOARD OF APPEALS  
APRIL 17, 2007  
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, Barbara Figurski, Steve Wildman, Kevin Brady and Joe Perri. Also present was Township staff member Adam Van Tassell and approximately 10 persons in the audience.

Chairman Brown gave a brief introduction of the board members and on why the Zoning Board of Appeals exists.

**Moved** by Figurski, supported by Wildman, to approve the agenda with the tabling of item #1, case# 06-34, T-Mobile per the petitioner's request. **Motion carried unanimously.**

**07-01...A request by John and Ellen Nowicki, Section 22, Vacant Sharp Drive, is for a waterfront variance to construct a new home.**

A call to the public was made with the following responses: Ellen Pearn, 5400 Sharp Drive, my husband and I have reviewed and understand the drawings that Mr. and Mrs. Nowicki are proposing and we recommend this be approved. Greg Davis- I live to the direct west of the Nowicki's, the houses on this street were built in the 1960 and that restrictions were put into effect after that to stop the degrading of the water on the lake. I have no problem with them building a house but why does he have to be so close to the lake. The hardship is due to the size of the house. When I went for the variance on my house, the board was concerned about the parking of the construction trucks and also they have not done any survey work in regards to see if the foundation is stable. There is a river the flows under their property. When the property was made to be a buildable lot, the setbacks were in place for that approval. The 70 feet on my house to the side and there is a lot more to Hanniford. If you draw a line from Hanniford's house and to my house to get your setback, he would not need a variance. Can they be allowed to put a deck on the house after this is approved? In accordance with the DEQ permit, their lot line is their property line not where the sea wall is constructed. The following Mr. Davis requested to staff that a portion of the DEQ permit be read into the minutes: Permit # 06-47-0071-P, Section 14- The placement of the riprap as proposed does not establish a new shoreline not shall it be construed to do so. The riprap is authorized as a protective structure placed for the explicit purpose of protecting the shoreline at the landward side of the riprap. Consideration of any future seawall construction shall be based on the shoreline existing prior to riprap placement as authorized by this permit.

Moved by Brady, supported by Perri, to approve case #07-01 for a waterfront variance of 13.05 feet with a setback of 62.50 feet. The house is to be guttered. The finding of fact is due to the narrowness of the lot and relative waterfront setbacks of the adjacent houses due to the nature of the cul-de-sac affecting these lots. Motion carried as follows: Ayes: Brady, Perri, Wildman, and Brown. Nay- Figurski.

**07-05...A request by Raymond Fillmore Trust, 724 S. Kellogg Road, for a variance to split property.**

A call to the public was made with the following response: Chairman Brown read the following letter into the record: Enclosed is your letter regarding the Fillmore Trust split request. As an owner of 10 vacant acres in the area I am fully in agreement with allowing this area to be rezoned from the present 10 acre minimum. Most of Genoa Township already allows smaller parcels, and I would also be desirous to split my parcel when the zoning permits smaller parcels. My 10 acres is approximately ¼ to ½ mile north of McClements Road on the east side being mostly wooded and rolling with about 300 feet of clearing the front. Tax I.D. # is 11-01-300-009. Thank You. I am retired and would like to sell this property when it can be split. Sincerely, Sheila Kniss for the Sheila Katherine Kniss-Knapp Trust.

**Moved** by Brady, supported by Perri, to approve case #07-05 for a 2 acre parcel with an 8 acre parcel variance for the Fillmore Trust. The finding of fact is the Focklers has occupied the home since a lengthy undetermined amount of time and the surrounding acreage has been put into a trust and will remain as a park. **Motion carried unanimously.**

**07-06...A request by Brian Spicher, 5031 Glenway, is for a side yard variance to construct an addition.**

A call to the public was made with Chairman Brown reading the following letter received from The Kizer Lawfirm by Mr. John Drury: “Janet Henry is our client. She is the owner of the property located at 5050 Kintyre Lane which is adjacent to the property for which the above-referenced zoning request has been made. On her behalf, please allow us to express our strong objection to the variance request.

Applicable here is Section 23.05.03 of the Genoa Township Zoning Ordinance. This Section of the Ordinance sets forth the criteria under which variance requests are allowed or denied. As you know, the applicant must produce evidence that all of these conditions have been met. These conditions appear as subparagraphs (a) through (d) under the Section. Please consider the following commentary with respect to these conditions:

- (a) Practical Difficulty/Substantial Justice. Here, there is a substantial home located on the property in an upscale neighborhood. The property is being used for a home occupation, a landscaping business. There is no need for an expanded garage other than to allow the owner to expand the home occupation. Thus there simply is no practical difficulty. The variance is not necessary for the preservation

- and enjoyment of the use of the property which, as will be demonstrated at the hearing, has already been accomplished.
- (b) Extraordinary Circumstances. Extraordinary circumstances generally relate to inherent physical characteristics of the property that are different from neighboring properties. This is not the case. Furthermore, as noted, the need for the variance was absolutely self-created by the applicant inasmuch as it is for the expansion of his use of the property as a home occupation. There is already a three car garage on the property which is more than sufficient to address any of the allowed uses and a fourth bay on the garage is excessive as well as self-created. Also, there are no extraordinary circumstances other than those that are, again, self-created.
  - (c) Public Safety and Welfare. The granting of this variance will increase the use of the property as a home occupation/landscaping service. The naturally inherent characteristics of such a business operation require additional truck traffic as well as employees coming and going from the property which create obvious problems.
  - (d) Impact on Surrounding Neighborhood. If the variance is granted, it will most certainly affect the continuing use and value of not only our client's properties but others in the neighborhood as well. Complaints have been made to be the Michigan State Police regarding the vulgar and loud language that is utilized by the applicant as well as those of his employees who frequently appear on the property and park their vehicles.

We realize variances are granted only upon showing that all of the above criteria have been satisfactorily met. Again, we strongly believe they have not. But let us explore a history of the property use which we feel is important to consider during the decision making process.

As mentioned, the owner has continuously used loud and vulgar language. This creates an imposition and discomfort on our client as well as neighboring property owners.

In addition, it has come to our attention the owner has made substantial improvements to the property without obtaining the necessary permits either from the Township of the Livingston County Building Department. Substantial grading was done on the property to create a walkout basement to access, presumably a finished basement which also would have required the issuance of the appropriate permits which was not done. We feel these incidents should be considered in processing the application of the homeowner. They speak to the nature of the intent of the homeowner and serve also to illustrate the real intended use of the property should the variance be granted.

Often there are four or five vehicles parked on the property that belong to employees of the business. This most likely is in violation of Section 3.03.02(a) of the Genoa Township Zoning Ordinance. Similarly noise and fumes have been generated on the property as a result of its use as a landscape service occupational use. There have been incidents where equipment used in the landscaping business has been parked on the property such as a backhoe which often is started and allowed to run for several hours.

In general, it is our considered option that only reason the variance is being requested is to expand the business operations of the applicant. None of the criteria required by your Ordinance can be met by the applicant and any problems he may have are self created. It is not the business of the Township to reward such inappropriate use of the property which is in contravention of your Ordinances.

We will be in attendance at the hearing to further address our concerns. We will be more than willing to answer any questions that may come up during the course of meeting. Thank you for taking that time in giving this your serious consideration.” Chairman Brown addressed the complaints that were listed in the letter. Chairman Brown proceeded to read a letter that stated that the following people are opposed to the variance without stating a reason in their letter to address their opposition: William Kline, Russell Marker, Regina Smith, Allison Mitchinson, Monica Johnson, Jacqueline Marker, David Lyberg, Emil Cican, Mary Ann Parker, John Morrison, Donald LaCroix, Sandy Horgan, Stephen Zeller, Linda Ferrick, Robin Williams and Henry Zampa.

Mr. Glenn Matecun, representing Janet Henry, I think that this variance needs to be denied. In regards to the extraordinary circumstance, I do not think that the slope of his yard would make it stop him from using his property for preservation and enjoyment he is entitled. He is using the residence for a home occupation that is not approved. The think that he fails on the reasons listed in Sub A the letter. The denial of the variance will not prevent the use of the property. The employees are there on a regular basis. The fourth bay will be on the side that Janet Henry looks out and there will be additional noise created from the activities that take place at the residence.

Janet Henry, I have supplied pictures and as you can see the trucks are parked within 18 feet of my property line. I live on that side of the house and my guests occupy the other. He continues to operate his landscape business out of the home. He has parked a backhoe for two years and I have had to listen to it run and smell the exhaust from when the backhoe was running. I have to listen to cars starting up at 3 to 4 in the morning.

**Moved** by Perri, supported by Wildman, to approve case # 07-06 regarding Brian Spicher at 5031 Glenway for a side and front yard variance to construct an addition with a 14.1 ft variance with a 39’5” setback and a side yard variance of 5.83 with a setback of 24.17 ft. The finding of fact is the home has (2) front yards. The addition is to be guttered and additional landscaping to the buffer the home to the east. **Motion carried unanimously.**

**07-07...A request by Callaghan Homes, Section 11, 1670 Edwin Dr., is for a side yard and front yard variance to demolish and construct a new home.**

A call to the public was made with no response.

**Moved** by Figurski, supported by Wildman, to approve case# 07-07 for a variance to remove an existing home and replace with a new home with an 8 foot variance and a setback of 27 feet and on the north side a variance of 6 feet with a 4 foot setback. The

4-17-07 Approved ZBA Minutes

finding fact is the narrowness of the lot, house to be guttered and the shed to remain.  
**Motion carried unanimously.**

**Moved** by Figurski, supported by Brady to approve the March 20, 2007 Zoning Board of Appeals minutes. **Motion carried unanimously.**

Meeting adjourned at 8:55 p.m.

Respectfully submitted:

Amy Ruthig