

**TOWN OF GILMANTON**  
**ZONING BOARD OF ADJUSTMENT**  
**THURSDAY, NOVEMBER 15, 2012 – 7 PM.**  
**ACADEMY BUILDING**  
**MINUTES**

Chair Elizabeth Hackett called the meeting to order at 7PM  
Members attending: Elizabeth Hackett, Paul Levesque, Perry Onion, Mike Teunessen & Nate Abbott.

Also in attendance: Annette Andreozzi, Land Use Clerk.

The Chair made introductions and explained the ZBA procedures.

NEW BUSINESS

**Public Hearing Case #2012-00010 – Xiaoyu Chen & Amy McCann, owners:**

requests a variance from ZBA decision case# 15-97 & Zoning Ordinance Article IV Table 2 to extend a deck that is 25' from the lake and 15' from the property line. Zoning ordinance requires 75' setback from lake and 20' from property line. Property is .18 acres located at 256 Hemlock Dr., Map/Lot# 121/54, in the Residential Lake Zone.

Mr. Dow, representing the owners, said the existing 10' x 10' deck was removed to put in the septic. The owner wants to increase the size of the deck to the corner of the porch deck, when it is replaced. This would make the open deck 10' x 20'.

Ms. Hackett said she is a stickler for measurements. On the septic plan the porch measured 8' x 22', which was the size granted by the previous variance. The assessment card indicated it is 10' x 22'. If the assessment card was correct, the porch deck was 23' from the water.

Mr. Dow said he measured in the field a couple of weeks ago, and the deck was 27' from the water. The extended deck will not encroach any closer to the water or side setback than the existing decks.

Ms. Hackett suggested that the owners should get the figures corrected.

Mr. Dow said he measured and the porch deck was 10' x 22', and the new open deck would be 10' x 20'.

There was a discussion about lake water level. It was established that the state sets the high water mark, which is where measurements are supposed to start.

Ms. Hackett asked if the intent was to have an open deck.

Mr. Dow said the intent was for an open deck. The owners didn't have much room to open the door or put any chairs on the deck.

Ms. Hackett asked if the owners would have a problem with a condition on an approval that the deck remain open.

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Mr. Dow said no.

Mr. Teunessen asked if railings are required on the deck.

Ms. Hackett stated that was according to the building code.

**Mr. Teunessen moved to close Public Hearing Case #2012-00010 – Xiaoyu Chen & Amy McCann, owners. Seconded by Mr. Levesque.**  
**Motion passed unanimously.**

DELIBERATIVE SESSION:

**Case #2012-00010 – Xiaoyu Chen & Amy McCann, owners**

Mr. Levesque stated that with the discussion that already had taken place it seemed cut & dry, and the proposal fit the bill.

Mr. Abbott said he had no objection; it would improve the property without increasing the burden for which the restrictions where made. The hardship was the existing placement of the house.

Mr. Teunessen said it was an upgrade from what was there before.

**MOTION:**

**Mr. Abbott moved to grant a variance in Case #2012 -00010 – Xiaoyu Chen & Amy McCann, owners: from ZBA decision Case# 15-97 & Zoning Ordinance Article IV Table 2 to extend a deck to the edge of the existing enclosed porch deck which will be 25' from the lake and 15' from the property line. Property is .18 acres located at 256 Hemlock Dr., Map/Lot# 121/54, in the Residential Lake Zone.**

- a. The granting of the variance would not be contrary to the public interest because there has been no stated objection, and there is no perceived disadvantage by the board;**
- b. The spirit of the Ordinance is observed because its effect is not diminished by granting the variance;**
- c. By the granting of the variance, substantial justice will be done because the residents will live more comfortably and safely and legally in their home without increased burden on the land;**
- d. There was no evidence presented that granting the variance, would create**

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- diminution of value to the surrounding properties;
- e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owner, owing to the property preexisting the ordinance establishing the setbacks within which it sets, within which it sets, which distinguishes it from other properties in the area;
    - i. no fair & substantial relationship exists between the general public purposes of the ordinance provision & the specific application to this property because no harm is done for which the ordinance was designed to prevent;
- AND**
- ii. the proposed use is a reasonable one because it improves the safety of the dwelling and the condition of the neighborhood.

- CONDITIONS:**
1. No part of the existing deck or new deck may be enclosed or used for living space.
  2. All improvements must remain level with the main floor level of the house.
  3. The new deck may not extend closer to the lake than the existing porch deck nor closer to the side setback than the existing deck.

Mr. Teunessen seconded.

There was discussion about the stair placement. Ms. Hackett said they will be replaced in the place that they were previously located.

**Motion passed unanimously.**

Mr. Dow stated that the stairs to the deck would be placed exactly where they were before.

APPROVAL OF MINUTES

**MOTION: Mr. Abbott moved to approve the minutes of the August 16, 2012 meeting as amended.** Seconded by Mr. Levesque.  
Mr. Onion & Mr. Teunessen abstained. **Motion passed unanimously.**

OTHER BUSINESS

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The ZBA schedule of meetings for 2013 was passed out.

Ms. Hackett gave copies of info she had gathered at the LGC conference on state building & fire codes. If the building code board of appeals is not active the ZBA would hear appeals of decisions made by the fire chief or building inspector.

ID Badges are needed by ZBA members. The clerk has inquired at the PD. Officer Brennan has been put in charge of the badges and has been working the late shift. Ms. Hackett stated the badges are needed before the next meeting; if that can't happen Mr. Warren needs to contact Ms. Hackett.

Board members can not meet and go together on any property because that would be considered a meeting under state rules.

Mr. Teunessen asked about the ZBA being sued. Ms. Hackett said the town employs an attorney.

Ms. Hackett said the ZBA may have a meeting with the fire chief and the building code inspector.

ADJOURNMENT: Motion made by Mr. Levesque and seconded by Mr. Teunessen to adjourn, vote passed unanimously. Meeting adjourned at 7:50 PM

Respectfully submitted,

Annette Andreozzi, Land Use Clerk