

**TOWN OF GILMANTON**  
**ZONING BOARD OF ADJUSTMENT**  
**THURSDAY NOVEMBER 21, 2019 – 7 PM.**  
**ACADEMY BUILDING**  
**MINUTES**

Chair Elizabeth Hackett called the meeting to order at 7:02 PM.

Members attending: Elizabeth Hackett, Perry Onion, Mike Teunessen, Nate Abbott, Zannah Richards, and alternate member Leslie Smith.

Also in attendance: Annette Andreozzi, Land Use Administrator

The Chair made introductions and explained the ZBA procedures.

Three positive votes would be needed for any decision to pass. She explained about 3 cases for one applicant, and indicated the hearing for all would be together.

**Public Hearing Case # 2019-22 Ernest & Shelley Zintel, owner applicants:**

request a variance from Zoning Article VII-C-1a to build a non-conforming house on a non-conforming lot on a private road. Property is .14 acres located at 6 Chestnut Avenue, Map/Lot #119/72 in the Residential Lake zone.

**Public Hearing Case # 2019-23 Ernest & Shelley Zintel, owner applicants:**

request a variance from Zoning Article VII-C-1b to build a 40' x 26.5' house with 5' x 3' side entry & 26.5' x 6' porch plus steps, into both side setbacks & the front setback. Property is .14 acres located at 6 Chestnut Avenue, Map/Lot #119/72 in the Residential Lake zone.

**Public Hearing Case # 2019-24 Ernest & Shelley Zintel, owner applicants:**

request a variance from Zoning Article VII-C-1c to build a non-conforming 40' x 26.5' house on a non-conforming lot with a septic system that requires waivers from DES. Property is .14 acres located at 6 Chestnut Avenue, Map/Lot #119/72 in the Residential Lake zone.

Ms. Zintel explained they purchased the damaged house, and decided it needed to come down.

Mr. Zintel said that he didn't note at the time he made the drawing for the application, that the porch extended into the front setback. It doesn't need to be there. There have been some corrections of information on the septic plan that he submitted to the ZBA.

Ms. Hackett said the steps on the side of the house were 3 more feet into the setback.

The porch is 6' deep and with steps it goes into the front setback.

Mr. Zintel said there would be 4 steps toward the road from the porch. He was originally going to fix the house, but because it had been left for a year it will be better if it is taken down and a new one put up.

Ms. Hackett said the new house will be a 2 bedroom. When a house that has been in a disaster goes more than one year without being fixed, the property owner has to start as

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if there were no building on the lot.

Mr. Abbott said he noticed there was an inspection report dated September 2018. He asked about the trees with flags.

Mr. Zintel said the flagging was for taking down trees.

Ms. Zintel said some of those trees were on the neighbor's property.

Mr. Abbott paced off the current house at about 36'.

Mr. Zintel wanted another 5 to 6 feet of space, but doesn't need to do it that way. He could stay with the current footprint.

Ms. Richards asked if additional time extends to new owners. The septic plan says three-season use only. When a foundation is put in, she thought it was considered a year-round residence and needed a septic system to match.

Mr. Zintel said the former owners lived there year-round.

Staff indicated that they weren't legally living there full-time.

Mr. Onion said the new septic indicates it will be 3-season.

Ms. Zintel said he was not aware of that.

Ms. Richards said that when a foundation is put in a building the use tends to be year-round.

Mr. Abbott asked if the applicant would have any objection to a condition of a year-round septic approval being needed.

Ms. Zintel said he had no objection.

Mr. Onion told the applicant he would need to go back to his septic designer. The Board would be reluctant to approved a house with a 3-season septic, because if it was sold the new owner may use it year-round.

Ms. Zintel said they didn't plan to use it year-round. They would go to DES and get a 4-season plan.

Ms. Hackett asked about the application reference of a lot line adjustment.

Mr. Zintel said there would not be one.

Mr. Abbott said the application was well written.

Mr. Onion said first the Board needs to determine if the applicants can build something on the lot. Second, can they build in the setbacks. Third is how the septic plan will relate to the project. He asked if the applicant needed a variance to demolish the existing building after one year past the act of nature.

Staff said no.

Mr. Abbott stated that setting aside the septic a variance is needed because a year has gone by. The common practice is to build on the same footprint.

Mr. Zintel said that if he built on the same footprint he would have to go up. He didn't want to do that because he might block someone's view.

Ms. Hackett said the new house design isn't substantially bigger than the existing. The proposed height of the house is 20'.

Mr. Zintel said he bought a house on a non-conforming lot, and asked the neighbor to buy the abutting corner lot. He was told it was a conforming lot, which confused him.

Ms. Hackett said that the abutter has a non-conforming lot, and if they want to build on

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their lot, they would probably have to come to the ZBA for a variance.

Mr. Zintel said he spoke to neighbors, and no one around seems to have a problem with them building.

Mr. Currier said the septic will have to be bigger after September 1, per bedroom. A 3-season may be all they can get.

Ms. Hackett said the applicant says they want to tear down the existing house because it is cheaper to build new.

Mr. Teunessen said that there are a number of people living full time in 3-season homes.

Mr. Currier's belief was that there was no difference between a three and four-season septic.

**Mr. Onion moved to close Public Hearing Case # 2019-22, 23, & 24 Ernest & Shelley Zintel, owner applicants.**

Seconded by Mr. Teunessen.

**Motion passed unanimously.**

DELIBERATIVE SESSION:

**Case # 2019-22 Ernest & Shelley Zintel, owner applicants**

There was a discussion about roads in the Sawyer Lake District.

**MOTION:**

**Mr. Abbott moved to grant variance Case # 2019-22 Ernest & Shelley Zintel, owner applicants; requesting a variance from Zoning Article VII-C-1a to build a house on a private road. Property is .14 acres located at 6 Chestnut Ave., Map/Lot #119/72 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 no evidence presented that the health, safety, or welfare of the public would be threatened;**
- b. The spirit of the Ordinance is observed because the essential character of the neighborhood will not be altered;**
- c. By the granting of the variance substantial justice will be done because the Sawyer Lake District will be responsible for the road;**

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- d. The Board saw no evidence presented that granting the variance would create diminution of value to the surrounding properties;
  - e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking it owing to special conditions of the property that it has for many years had a residence on it distinguishing 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, the property cannot be reasonably used as it has been for many years, in strict conformance with the ordinance
- AND**
- ii. the proposed use is a reasonable one because there are other homes occupied on the private road.

**CONDITIONS:**

A signed/dated agreement from the Sawyer Lake District shall be filed in the building department stating they will be taking responsibility for Chestnut Avenue, before a building permit can be issued.

Mr. Onion seconded.

**Motion passed unanimously.**

**Case #2019-23 Ernest & Shelley Zintel, owner applicants.**

Ms. Richards said the steps are encroaching even more into the setback, so they could be designed differently.

Ms. Hackett said the front setback is encroached by 6' of porch, plus steps.

Mr. Abbott stated the applicant was willing to shorten the porch. It makes sense, designed the way it is.

Ms. Hackett said it would be 30' from the road with the sides about 13' from the property line. The sheds will be coming down after the is house built.

**MOTION:**

**Mr. Abbott moved to grant a variance in Case 2019-23 Ernest & Shelley Zintel, owner applicants: requesting a variance from Zoning Article VII-C-1b to build a 40' x 26.5' house with 5' x 3' side entry & 26.5' x 6' porch + steps, into both side setbacks & front setback. Property is .14 acres located at 6 Chestnut, Map/Lot #119/72 in the Residential Lake zone.**

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- a. The granting of the variance would not be contrary to the public interest because there has been no stated objection, and no evidence that the health, safety, or welfare of the public would be threatened;
  - b. The spirit of the Ordinance is observed because the essential character of the neighborhood will not be altered;
  - c. By the granting of the variance substantial justice will be done because the applicants will be allowed to improve their property;
  - d. The Board saw no evidence presented that granting the variance would create diminution of value to the surrounding properties;
  - e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking it owing to special conditions of the property that a preexisting structure was damaged and ruined in an undefined time frame that distinguish 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, the property cannot be reasonably used in strict conformance with the ordinance,
- AND**
- ii. the proposed use is a reasonable one because there are other comparable homes on the small lots on this private road.

**CONDITIONS:**

- 1. All other structures on the lot must be removed before occupancy.
- 2. No structures, other than the one described here, may be on lot.
- 3. There shall be no additions, decks, balconies, steps, etc. added to the building.

Mr. Onion seconded.

**Motion passed unanimously.**

**Case # 2019-24 Ernest & Shelley Zintel, owner applicants.**

Ms. Richards asked if the septic design had been corrected.  
Staff said not totally.

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**MOTION:**

Mr. Abbott moved to grant a variance in Case 2019-24 Ernest & Shelley Zintel, owner applicants: requesting a variance from Zoning Article VII-C-1c to build a non-conforming house on a non-conforming lot with a septic system that requires waivers from DES. Property is .14 acres located at 6 Chestnut Avenue, Map/Lot #119/72 in the Residential Lake zone.

- a. The granting of the variance would not be contrary to the public interest because a new septic will be installed;
  - b. The spirit of the Ordinance is observed because the essential character of the neighborhood will not be altered;
  - c. By the granting of the variance substantial justice will be done because the applicant will be permitted to occupy a previously uninhabitable residence, and improve the quality of the septic system;
  - d. The Board saw no evidence presented that granting the variance would create diminution of value to the surrounding properties;
  - e. Literal enforcement of the ordinance could result in unnecessary hardship to the property owner seeking it owing to special conditions of the property in that the septic is of unknown age that distinguish it from other properties in the town,
    - i. no fair & substantial relationship exists between the general public purposes of the ordinance provision & the specific application to this property because, septic treatment will be improved as a result,
- AND**
- ii. the proposed use is a reasonable one because there are other comparable homes on the private road.

**CONDITIONS:**

1. The house shall not be a 4-season residence until DES issues an approval for operation of a 4-season septic.
2. The applicant shall submit a corrected septic design including, map/lot#, location map, and north arrow.

Ms. Richards seconded.

**Motion passed unanimously.**

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OTHER BUSINESS

**John Funk & Deborah Chase, owners, request a rehearing of Case # 2019-21:** John Funk & Deborah Chase, owners requesting a variance from Zoning Ordinance Article IV Table 2 to build a 14' x 20' addition 13.3' into the side setback, 1.7' into the road setback and 1.4' into the wetland setback. Property is .19 acres located on Cat Alley, Map/Lot# 127/47, in the Village zone.

Ms. Hackett stated that this was the case before the Board last month.

Mr. Abbott said there was a written request by the applicant. This is not a public hearing. The ZBA will be taking no public input. There is a need to make the decision tonight because of the time frame.

Mr. Teunessen asked if the full Board would make the decision or just the members that heard the case.

Mr. Abbott said the requested decision will be based on the applicant's statement, and the ZBA's decision and minutes, so it will be the full board.

Ms. Hackett indicated that a lot of people were concerned about the size of the property.

Mr. Teunessen asked staff what the concern was with the decision.

Staff indicated that there was a lack of rules backing the decision the ZBA made. Such as saying privacy was an issue, which is not a right in the Zoning Ordinance.

Mr. Onion stated that he had errored in making his motion by not specifically stating the privacy issue as diminishing the value of the next-door property. However, the discussion had made that point overtly, and the Board decision was based on it.

Mr. Abbott asked if abutting property values would it diminished if the house was built.

Mr. Onion said he thought they would diminish. With reference to the water problem he looked at it today, and it is obvious that there is a trough right in back of the shed. He thought that the abutter's water pipe couldn't be found without digging it up.

Ms. Richards said the lot may have been classed as unbuildable by the assessor, but the ZBA has found that those things change.

Ms. Hackett had an issue with testimony that was made up of unsupported personal opinion. She noted that in her recent training class, it was said that people may have knowledge of a property, but that knowledge needs to be backed up with evidence. She indicated that Dig Safe only marks a private property if they are paid by the owner. It was only someone's opinion that something could happen to the water line during construction.

Mr. Teunessen said the sizes of the houses in the Corners are all goodly sized. There are no small homes.

Mr. Abbott pointed out that up the road at Robin's Wood there is a cluster of small houses.

Mr. Onion said they were originally cottages.

Ms. Hackett asked if there was a reason the ZBA should look again at the case. Is there

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some information the Board should have had, or is there new information.

**MOTION**

**Mr. Abbott moved to grant a rehearing of Case # 2019-21 John Funk & Deborah Chase, owners, requesting a variance from Zoning Ordinance Article IV Table 2 to build a 14' x 20' addition 13.3' into the side setback, 1.7' into the road setback and 1.4' into the wetland setback. Property is .19 acres located on Cat Alley, Map/Lot# 127/47, in the Village zone. To be held at the next scheduled ZBA meeting on January 16, 2020 at 7PM.**

Ms. Hackett                seconded.

**Vote was two in favor, three against.  
Motion denied.**

APPROVAL OF MINUTES October 17, 2019

MOTION: Mr. Teunessen moved to approve the minutes of the October 17, 2019, meeting as amended. Seconded by Mr. Onion.  
Motion passed unanimously.

ADJOURNMENT: Meeting adjourned at 9:25 PM.

Respectfully submitted,

Annette Andreozzi, Land Use Administrator