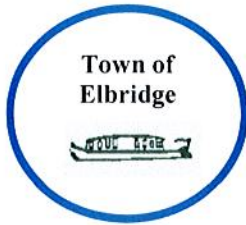


# Town Of Elbridge Zoning Board of Appeals



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## TOWN OF ELBRIDGE ZONING BOARD OF APPEALS Reorganizational Meeting Minutes February 17<sup>th</sup>, 2021

**MEMBERS PRESENT:** Chairman Tim Gannon, John Tambroni, Joanne Spoto Decker, Eric Matthews, Paige Boratko ZBA Secretary/Alternate, ZBA Attorney Joe Frateschi

Others Present: Lynee Hamm  
[Open meeting](#)

DETERMINATION OF QUORUM AND CALL TO ORDER – 7:00 PM EST

**Chairman Tim Gannon** called the meeting to order at 7:00 p.m. and after the Pledge of Allegiance, announced the first order of tonight's agenda to be the reorganization of the Town of Elbridge's Zoning Board of Appeals.

### **Reorganization:**

- The Town of Elbridge Zoning Board of Appeals will continue to meet on the third Wednesday of every month at 7:00 pm at the Town Hall located at 5 Rte 31, Jordan, NY 13080, and will continue in the consecutive years to follow unless otherwise stated.
- Baldwin, Sutphen & Frateschi, PLLC. Is appointed as the Town of Elbridge Zoning Board of Appeal's Attorney.
- Paige Boratko has been appointed by the Town of Elbridge Town Board as the ZBA secretary and also as an alternate voting member in a situation of conflict of interest or in the absence of regular board members to maintain a quorum
- Chairman Timothy Gannon hereby designates Mr. John Tambroni to be appointed Deputy Chairman.
- The first ZBA meeting in January of each calendar year is a reorganization meeting for the Town of Elbridge Zoning Board of Appeals.(1/20/22)

Chairman Timothy Gannon motioned to accept the reorganization of the Town of Elbridge Zoning Board of Appeals. John Tambroni seconded the motion followed by a unanimous vote.

A motion was made by Eric Matthews and seconded by John Tambroni to open the hearing for Jerry & Lynee Hamm/6607 River Rd in Jordan NY. Chairman Timothy Gannon read the legal notice that was posted in the Post Standard news publication on 01/21/2021.

## HEARING#1

### *Use Variance*

TM #030.-01-02.0

Jerry & Lynee Hamm

6607 River Rd

Elbridge, New York 13080

**Zoned – AG, GML-239- Required & submitted to OCPB 1/7/2021** due to the properties location which is within 500 feet of River Road, a county highway, the municipal boundary between the Town of Elbridge and Cayuga County. The property is also located within 500ft of a farm operation located in a NYS Agricultural District. Notice has been sent via email to the adjacent municipality of the Town of Brutus Town clerk and Code Enforcement Officer.

The Onondaga County Planning Board has determined that said referral will have no significant adverse inter-community or county-wide implications and may consequently be acted on solely by the referring board

**Requesting a use variance for a second primary structure to be located at 6607 River Rd. in Jordan, Town of Elbridge Zoning Laws Chapter 30section 30.26-A1 states:**

#### 30.26 Prohibited Buildings, Structures and Uses

A. The following buildings and structures are prohibited:

1. More than one principle use building per lot in all districts except in the Planned Commercial District, Planned Industrial District and a farm operation building in the Agriculture and Rural Residential Districts.

The applicant is requesting a use variance to allow a second primary structure on a 30.93-acre parcel in an Agricultural zoning district.

The property contains an existing house, detached garage, and a shed; there is an existing asphalt driveway onto River Road; there is an active farm field at the rear of the house and surrounding yard and a wooded area occupying the rear half of the site.

In 2019 the applicant obtained a Building permit for the second primary structure and it has already been constructed.

In January of 2020 the applicant met with the TOE planning board for subdivision review and stated that the building is intended for limited, seasonal use (less than 100 days per year anticipated)

The structure is a 500sq ft. shed on stilts with plumbing and a bathroom, to be used as a dwelling.

The structure has an approved, and now constructed, septic system plan.

The property is served by an individual well. There are two septic systems now on the property.

On 11/16/2020 A Stop work order/OTR Violation was issued by the TOE Code Enforcement Officer Howard Tanner. (See attached letter from CEO Howard Tanner dated 11/16/2020)

Chairman Timothy Gannon requested Mrs. Lynee Hamm to come forward and explain to the board the reasons for this application.

**Chairman Tim Gannon:** I would like to make a note that Mr. Hamm is not physically present at this time but is present by telephone. It appears that the initial building permit was for a shed and it has since morphed into quite a bit more than that. To such that which brings us here tonight.

**Lynee Hamm:** My husband went to get the permit for the shed so we could at least get it up before winter came, with the intention of coming back and look at it to become a temporary dwelling. But with COVID and everything else that went on. It is still there as a temporary dwelling so it can be moved if we have to. That's where it stands at this point.

**Chairman Tim Gannon:** Howard would you like to speak a little bit to the timeline of the events?

**C.E.O. Howard Tanner:** Mr. Hamm came in on 8/20/2019. I issued him a building permit for a 500 ft.<sup>2</sup> shed. You can see by the cost it was quite costly. Some of these "She Sheds" can be quite costly. Along the way we had the discussion of a permanent dwelling on the same lot. Mr. Hamm was informed that he would not be permitted to have two primary structures on the same parcel. I informed him that he would have to subdivide. He would have to meet with the planning board. On 11/25/2019, Mr. Hamm submitted an application to the planning board. 12/30/19 – Our Office received a Health Dept. correspondence stating permission for new residential construction new sewer & hot water installation. Initially we thought it was for the new subdivision which was still at the Planning Board level. At that point I decided to do the inspection on the shed and noticed that there was a lot more to inspect there than just a shed. It's got 100 amps electrical service and its own plumbing and septic system. I stopped the subdivision process in the middle of the meeting because the shed wasn't on the drawing. You have a copy of the drawing up there. There's nothing in your code that allows two primary structures on the same lot. Having electric isn't the issue; it's when you put your own septic system into play. I believe the well is 1000 gallon tank and 48 feet of leach lines. This could've all been done if they follow the subdivision process properly.

**Chairman Tim Gannon:** Just to reiterate Chapter 30.26 says prohibited structures and uses states: 30.26 Prohibited Buildings, Structures and Uses

A. The following buildings and structures are prohibited:

1. More than one principle use building per lot in all districts except in the Planned Commercial District, Planned Industrial District and a farm operation building in the Agriculture and Rural Residential Districts.

It would also need to be on its own lot dimensional aspects of the code as far as setbacks, primary structure size etc.

**C.E.O. Howard Tanner:** you'll find in the file the subsequent stop work orders files violations and so forth. So right now we have this illegal structure and we need to figure out what to do with it. I looked at the subdivision lines and it's too close to the property line. There is a few things they could do variance wise to find a way to keep it but I don't really feel the need to go down that road yet. It's an illegal structure. They have a right to appeal and that's why we're here today.

The dwelling must have a perimeter supporting foundation and minimum house size. There's a letter that I attached and sent to Mr. Hamm that states all the violations and issues with the property.

**Chairman Tim Gannon:** so there was a discussion about a subdivision and were looking at 30+ acres for the lot.

**C.E.O. Howard Tanner:** if we met all the other parameters we could subdivide as it stands. If this board was to deny the use variance, you could add on to it to make it a 1200 ft.<sup>2</sup> dwelling but then we have to deal with the foundation issue as well as sideline and front yard setback issues and I would essentially have to send the applicant back for multiple variances to make this structure legal and the planning board could not move forward without all these variances.

**ZBA Attorney Joe Frateschi:** Would it help you if I went through the criteria for the use variance so the board understands what exactly we are considering here and what New York State law requires to issue a use variance? Do you mind if I asked the applicant a few questions?

**Chairman Tim Gannon:** yes please do, the floor yours.

**ZBA Attorney Joe Frateschi:** Do you agree that you submitted an application for a building permit to the codes office for the shed only?

**Lynne Hamm:** The reason we asked for a shed permit is that we wanted to at least get the structure up with the intent of coming back for building permit for a cottage or a small she shed but with COVID happening and the lack of being able to meet and all that kind of stuff. My husband was more involved with it than I was.

**ZBA Attorney Joe Frateschi:** Do you agree that you jumped the gun a bit by making it more than a shed prior to get the necessary approvals?

**Lynne Hamm:** Without further explanation I would have to say yes.

**Jerry Hamm (via phone):** It was never meant to be a shed we just wanted to get it up before winter I didn't think it was going to be such great big deal trying to convert it into a dwelling permit.

**ZBA Attorney Joe Frateschi:** okay, but you do agree that as a result of what you did, is the cause of why we are here tonight? We are in this situation now because the building permit applied for was for a shed and actions were taken to convert it into more than a shed. That's why we are here now. Is that correct?

**Jerry Hamm (via phone):** that's what the town of Elbridge is trying to do. Yes.

**ZBA Attorney Joe Frateschi:** That's what the code states as well and I think it's hard to disagree with that statement. What I'm trying to do here is establish a record. To get a use variance under New York State law, four elements have to be met. One of those elements is the applicant must show that this is not a self-created hardship. Clearly what the applicant did was create more than a shed when they had applied for just a shed and that's why we're sitting here now. The fact that this is absolutely a self-created hardship absolutely bars the granting of the use variance. Under New York State law it's impossible to grant a use variance because the action of the applicant caused us to be here tonight. That's my reading of the New York State law. It is supported by case law and it's also supported by the statutes. I don't see how the applicant gets beyond that hurdle. There are three other factors that we can consider. One is whether this lot is unique. The other is whether or not the applicant can make a reasonable return on the property without the variance and the third is whether or not it's a detriment to the community. I think all those points are moot just because of the self-created hardship. I don't believe this applicant meets the criteria for a use variance. I'm here to guide you legally and make sure that you are operating within the parameters of New York State law. Given the testimony of the applicant; I don't think this falls within those parameters.

**Lynce Hamm:** I would like to say that in context of what we're dealing with, there was no blatant wanting to go ahead and do just what we wanted to do. We went in good faith for what was shared with us and explained what we were doing with the structure and so preceding that wasn't to go against the law or do any things we weren't supposed to do. Like I said it was done in good faith again for what we were shared with information wise.

**Chairman Tim Gannon:** what information was shared?

**Lynce Hamm:** given my understanding, explaining what we wanted to do, how big the structure was going to be, it was shared that there was a way out.

**Jerry Hamm (present on cell phone):** I initially went in to talk about and explain exactly what we want to do. It was all verbal. I was told that I was to initiate a by guidance of subdivision I asked him about certain requirements on the foundation. I was giving some information that it could be of my choosing.

**Lynce Hamm:** The intent was that it was not to be a permanent dwelling and it is not.

**Chairman Tim Gannon:** it's permanently hooked up to a septic system and has a 100 amp electric service hooked up to it. It's pretty permanent to me. A shed is just sitting on the ground on cinderblocks. A shed is to be used; as far as a definition of a shed, is a crude structure to be used for storage of property. You also referred to it in one of your planning board meetings is that it is a tourist home. I looked that up as well. A tourist home is actually rooms in your house that you would rent out. It was mentioned at the planning board meetings and is documented in the minutes.

**Jerry Hamm (present on cell phone):** I don't know of the legal lingo of New York in the definitions of homes, tourist homes, sheds it seems like there's all kinds of intricate definitions of different types of buildings around here I don't understand them all.

**Chairman Tim Gannon:** you're looking to use it as a residence. Does it have a bathroom in?

**Lynce Hamm:** it does but it's not meant to be a permanent dwelling. Or lived in 24 seven

**Chairman Tim Gannon:** that's a residence, it's a dwelling. You'd be living in one and it's my understanding that you want to have your family living in the other house. Two separate primary structures on one lot. It's not a subdivided lot. It is one lot and per the law that's not allowed.

**Lynce Hamm:** did the surveyor send you the updated survey?

**C.E.O. Howard Tanner:** yes we have the new one with the structure added to it.

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**Chairman Timothy Gannon:** asked the following questions:  
Are there any other questions from the board?

*None*

Does the board have enough information to make a determination?

*Yes*

Is there any one to speak in favor of or in opposition?

*No one*

Chairman Timothy Gannon requested a motion to close the hearing.

Joanne Spoto Decker made a motion seconded by Erick Matthews to close the hearing for Jerry & Lynee Hamm. It passed with all in favor at 7:25 p.m.

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**ZBA DECISION VOTE: - Use Variance – 2<sup>nd</sup> primary structure**

**Requesting a use variance to be located at 6607 River Rd. in Jordan, Town of Elbridge Zoning Laws Chapter 30section 30.26-A1 states:**

30.26 Prohibited Buildings, Structures and Uses

A. The following buildings and structures are prohibited:

1. More than one principle use building per lot in all districts except in the Planned Commercial District, Planned Industrial District and a farm operation building in the Agriculture and Rural Residential Districts.

**Resolved:**

It is the decision of the Town of Elbridge Zoning Board of Appeals that with the evidence presented as set forth in the findings of facts and with the review of the use variance Criteria that the relief petitioned for by Jerry & Lynee Hamm be denied. The Town of Elbridge Zoning Board of Appeals found the hardship to be self-created.

Eric Matthews made a motion seconded by John Tambroni to:

   *Approve*    *Amend*    *XDeny*    *Special Permit*    *Area Variance*    *XUse Variance*    *Interpretation*

It passed with 0 Aye(s) and 4 Nay(s) at 7:35p.m.

**Recorded Vote:** (A = Aye, N = Nay)

**J. Spoto Decker N, Chairman T. Gannon N, J. Tambroni N, E. Matthews N,**

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**Approval of Minutes – 08/19/2020**

A motion to approve the August 19<sup>th</sup>, 2020 minutes with grammatical corrections was made by Chairman Timothy Gannon and seconded by Joanne Spoto Decker. It passed with all in favor at 7:45pm.

**DISCUSSIONS:**

**OLD BUSINESS:** *None*

ADJOURNMENT: With no further business on the agenda, a motion was made by Joanne Spoto Decker and seconded by John Tambroni to adjourn tonight's meeting. The meeting was adjourned with all in favor at 7:50 pm.

Respectfully Submitted

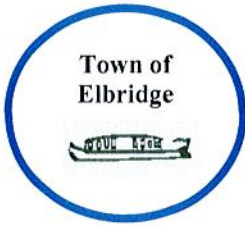
Paige Boratko- Secretary/Alt. member

TM #030.-01-02.0

Filed W/Town Clerk

Date \_\_\_\_\_

Signed \_\_\_\_\_



Town of Elbridge Zoning Board of Appeals

**NOTICE OF DECISION**

Hearing/Decision Date: 02/17/2021

Applicant:

Jerry & Lynee Hamm

**Use Variance—to be located at:**

TM #030.-01-02.0

6607 River Rd

Jordan, New York 13080

**Zoned – AG, GML-239- Required & submitted to OCPB 1/7/2021** due to the property being located within 500 feet of River Road, a county highway, the municipal boundary between the Town of Elbridge and Cayuga County and a farm operation located in a NYS Agricultural District. Notice has been sent via email to the adjacent municipality of the Town of Brutus Town clerk and Code Enforcement Officer.

The Onondaga County Planning Board has determined that said referral will have no significant adverse inter-community or county-wide implications and may consequently be acted on solely by the referring board.

**ZBA DECISION VOTE: - Second primary Structure**

**Requesting a use variance to be located at 6607 River Rd. in Jordan, Town of Elbridge Zoning Laws Chapter 30section 30.26-A1 states:**

**30.26 Prohibited Buildings, Structures and Uses**

A. The following buildings and structures are prohibited:

1. More than one principle use building per lot in all districts except in the Planned Commercial District, Planned Industrial District and a farm operation building in the Agriculture and Rural Residential Districts.

**Resolved:**

It is the decision of the Town of Elbridge Zoning Board of Appeals that with the evidence presented as set forth in the findings of facts and with the review of the use variance Criteria that the relief petitioned for by Jerry & Lynee Hamm be denied. The Town of Elbridge Zoning Board of Appeals found the hardship to be self-created.

Eric Matthews made a motion seconded by John Tambroni to:

   Approve    Amend    **X Deny**    Special Permit    Area Variance    **X Use Variance**    Interpretation

It passed with 0 Aye(s) and 4 Nay(s) at 7:35p.m.

**Recorded Vote:** (A = Aye, N = Nay)

**J. Spoto Decker N, Chairman T. Gannon N, J. Tambroni N, E. Matthews N,**

\_\_\_\_\_  
T.O.E. ZBA Secretary Signature

\_\_\_\_\_  
Date

## Time Line:

Spring of 2018 came into TOE codes office to ask about an apartment building. Spoke to CEO Bob Herrmann who informed him that he could not construct a second residential building on the property. Bob suggested he could do an attached in-law type apartment. A file had been started labeled "in-law apartment". Mr. Hamm stated that he wasn't sure now what he wanted to do and that he would be back after thinking about it more.

**8/29/2019** – Came into TOE Codes office for a B/P to construct a 500ft. shed.

**9/19/2019** - Mr. Hamm submitted plans/drawing for a sewage disposal system which was submitted to Onondaga Health dept. with an approved date of 9/19/2019

**11/23/2019**. Mr. Hamm submitted an application to the planning board for a subdivision and provided the plans/drawing for a sewage disposal system which was submitted to Onondaga Health dept. with an approved date of 9/19/2019. The map shows a labeled 1-bed efficiency apartment located to the rear and side of the garage. Onondaga County Health Dept.'s letter states 'approval for a one bedroom dwelling'.

TOE codes office thought the sewage plan was to be for the subdivided parcel to be broke off from the main parent parcel, not for shed.

**11/29/2019** A GML-239 was created for the subdivision Planning board application. He stated he would be out of town until the third week of December.

**12/30/19** – Health Dept. correspondence stating permission for new residential construction new sewer & hot water installation.

**1/14/2020** - Jerry Hamm met with the TOE planning board.

## PLANNING BOARD MINUTES -1/14/2020

CEO, Howard Tanner sent the GML 239 Referral Notice to SOCPA for review. Mr. Hamm would like to subdivide his existing 32 acre lot into two separate tax parcels. He wants to subdivide the existing house (Lot # 2) into a two acre lot and maintain the remaining 30 acres (Lot # 1) to build a small 500 square foot cabin. Mr. Hamm is concerned that the location he would like to build the cabin doesn't have the required 200 feet of road frontage to meet the zoning code requirements. Built 8/2019 and supposed to be a shed.

**3/10/2020** – OTR and Stop Work Order from TOE CEO Howard Tanner.

**4/1/2020** – Health Dept. Inspection

**4/13/2020** – Electrical Inspection

**6/9/2020** - (No PB meetings 3/2020, 4/2020, 5/2020 due to COVID-19) **PLANNING BOARD MINUTES**

SOCPA Resolution was reviewed at the last meeting. The applicants provided the Planning Board (PB) a copy of Onondaga County Department of Health (OCDOH) approval letter for the new septic of the proposed building. The PB stated approval of the septic system by the county doesn't mean that we have an approved building lot.

Howard Tanner, CEO stated that according to the county it is an efficiency apartment. Mr. Hamm said it is like a tourist home. The town does not have a definition in our zoning for a tourist home. Originally the applicant stated it was a shed approximately 800 square feet. The dwelling structure is a shed on stilts with plumbing and a bathroom with fixtures. The applicants are not adding a driveway, but they are thinking of putting a loop in and they will park in the original driveway. Howard Tanner, CEO stated there is no provision for two dwellings on the same property. Mr. Hamm said that was a big concern of the town and they were told it had to be subdivided for it to be a separate dwelling. Mr. Hamm does not want to subdivide that lot.

Mr. Hamm received a building permit for a shed and it was constructed in September 2019. The plumbing and electric are already hooked up. He is actually building a structure that someone can live in. The PB requested Mr. Hamm to call his surveyor tomorrow and explain everything he is going to do with the structure explaining the plumbing, electric and the new septic system is already completed. Then ask his surveyor to call Howard Tanner, CEO suggested Mr. Hamm have his surveyor call Howard so he can explain what is needed on the survey.

The survey needs to show the original house and any other building structures, well and septic locations. The Site Plan needs to show the new building, new septic and utilities with all building dimensions with setbacks (distances from the property lines both from the road and side yards). The back yard setback is not needed due to the 30 acres behind it. The PB said it has to follow the town code. Chairman, Marc Macro will confer with Attorney Tim Frateschi regarding having a shed that has a septic, plumbing and electric (home) without a driveway.

Mr. Hamm will update his survey dated October 7, 2019 showing everything on this property on the site plan.

#### 11/10/2020 - PLANNING BOARD MINUTES

Chairman Macro asked Howard Tanner, CEO if he heard from Mr. Hamm; Howard met with him once and he has to meet with him again, he is going to send him to the ZBA first. Mr. Hamm can change some of the lines on the SD again, but until we get by the building being too small and the utilities on the other lot and no driveway, the applicant cannot move forward.

#### 11/16/2020 - Letter Correspondence from TOE CEO Howard Tanner

Jerry,

You currently have an illegal building on your lot. The shed you converted to living space has multiple issues as described in Order to Remedy # 20-0014 and Stop work Order #20-0013.as follows

1. Town of Elbridge Zoning Law section 30.26 A-1(more than one principle building on a lot)
2. Town of Elbridge Zoning law section 30.26 A-3(a single family dwelling of less than 1200 sq ft.)
3. Town of Elbridge Zoning law section 30.2 A-12(a dwelling unit must have a perimeter supporting foundation)
4. Article #19 part 1203.3 B-1(New York State building codes)all work required to be code compliant requires a building permit and inspection by the Authority

Having Jurisdiction.

- No building permit on file for conversion to living space
- No plans submitted for layout or conversion to living space
- No plans for plumbing or electric submitted
- No electrical inspection on file
- No insulation inspection was done
- No blower door test performed
- Windows do not meet egress requirements
- Certificate of Occupancy was not issued

The subdivision application you submitted cannot move forward until the above issues are addressed and the following issues on the site plan are corrected.

1. The proposed subdivision side yard setback must be 20 ft.
2. A driveway must be shown on the map for lot 1



3. The sewer location for lot 1 must be shown on the map
4. The utilities for lot 1 must be separate from lot 2

My suggestion would be to apply to the Zoning Board of Appeals on the issues above. You can stop in and fill out the ZBA application any time.

Howard Tanner  
Code Enforcement Officer

11/23/2020 – Application submitted to the ZBA.

12/28/2020 – Mr. Hamm came into the Codes office to pay for his application and sign the 809, application was then sent to OCPB for GML review.