

**Zoning Board of Appeals
Town of Berne
Berne, NY 12023**

Date: January 18, 2017

Present: Ronald Jordan (Chair), George Christian, Rick Otto, Terry Adams, William Conboy (Town Attorney), Karen Schimmer (Town Board Liaison), Kathy Brown (Secretary)

Guests: Debra Bajouwa, Michael Robert, Robert Stout, Catherine Froman

Mr. Jordan called the meeting to order at 7:03PM.

Review of Minutes: The Board reviewed the minutes from the September 21, 2016 ZBA meeting. Mr. Adams moved to approve the minutes. Mr. Christian seconded and the motion passed 3-0 with Mr. Otto abstaining. The Board reviewed the minutes from the November 16, 2016 ZBA meeting. Mr. Christian moved to approve the minutes. Mr. Jordan seconded and the motion was approved 2-0 with Mr. Otto and Mr. Adams abstaining.

Old Business:

Building permit denial appeal for Michael and Erika Robert, 61 Betts Lane, Berne, NY # 70.13-1-34: Mr. Stout submitted case law to Board members for review. He stated that the building in question be considered an “accessory structure” and support “overnight stays from time to time.” There was discussion as to whether a guest house is “customarily incidental” to the main house and therefore would be considered “subordinate.” Mr. Stout said that the term refers to structures and how they relate to each other on a given property, not to be compared with other properties and associated structures within the Town. The Board reviewed zoning of the property. Mr. Conboy said there was still ambiguity regarding the submitted case law. The Board considered a picture submitted by Mr. Robert of a nearby property with a building he said is being used for overnight stays that is not the main house.

Mr. Otto questioned why the appeal was not decided upon back in the summer. Mr. Jordan replied that there was additional information that he felt needed to be considered. Mr. Conboy agreed, stating that the definition of “dwelling unit” needed to be determined.

Mr. Christian stated that a “mini” version of the main house would not be a subordinate structure. The Board reviewed the Town’s definition of a dwelling. Mr. Stout said the applicant would be willing to get rid of the “kitchen” which would consist of removing a stove and, additionally, a washer and dryer. Mr. Stout reiterated the desire for his client to use the structure for overnight stays in “an accessory fashion.”

Mr. Jordan asked counsel what precedent would be set if the applicant were allowed use of the building as a guest house. Mr. Conboy responded that it would set a precedent for similar uses in the zone. The Board discussed issues of having more than one “guest house” on a property.

Ms. Bajouwa spoke regarding the Planning Board's determination to uphold the building permit appeal on the basis that allowing the building to be considered an "accessory structure" could permit property owners to construct more than one of these structures on their property. She also cited the percentage of accessory structure allowed on a lot compared to the main house.

Ms. Robert asked the Board to consider that she and Mr. Robert have spent their "life savings" to buy the land and will do what the Board asks to bring the structure/use to Town Code.

There was discussion of the building as a residence, dwelling or accessory structure and bringing the building up to NYS Residential Code. Ms. Bajouwa asked about the discretion the Code Enforcement Officer has over investigating accessory buildings.

The Board discussed using the structure as an accessory building without occupancy. Mr. Jordan said that his primary concern was allowing overnight stays in accessory structures and the precedent it could set. Mr. Otto suggested the Board consider the building as an "accessory structure" with no overnight stays allowed.

The Board discussed zoning district boundaries and RAF and MDR restrictions.

Mr. Otto moved to allow the building to be considered an acceptable accessory structure with sleeping quarters and kitchen removed.

The Board took a ten minute break while counsel conferred.

Mr. Otto moved to amend his motion to allow the building to be considered a permitted accessory structure/use with no sleeping quarters/overnight accommodations allowed and contingent upon the condition of the building being brought to NYS residential code, the Code Enforcement Officer issuing a building permit for an accessory structure and the height area variance being approved. After some discussion, Mr. Christian seconded the motion with the Board voting unanimously, 4-0, in favor of granting the appeal.

The Chair will instruct the Code Enforcement Officer to issue a building permit for the new main house within 30 days.

New Business:

Froman/Smith Area Variance – Willsey Rd.: Tabled until February 15, 2017.

Other Business:

Motion to adjourn by Mr. Adams, 2nd by Mr. Otto. Motion passed, 4-0.

Next meeting to be held on February 15, 2017.

Respectfully submitted,

Kathy Brown