

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

Date: April 19, 2017

Present: Ronald Jordan (Chair), George Christian, Rick Otto, Samuel Clayton, Denise Manning, Dawn Jordan (Town Board Liaison), Tim Lippert (Zoning and Building Administrator), Kathy Brown (Secretary) and other interested citizens.

Mr. Jordan called the meeting to order at 7:00 PM.

Public Hearing:

Froman/Smith Area Variance – Willsie Rd., SBL #102.-2-12.100: Catherine Froman is seeking a 238' variance from the 300' road frontage requirement for a lot in an RAF zone. Ms. Froman passed out a 1975 map to Board members and reviewed the history of the property. She said the original lot was divided into five smaller lots in 1975. Two lots were sold in 1987 and another in 1989. She said the remaining "two" lots weren't contiguous, the taxes were incorrect and that the lots had the same SBL number. She also stated that before the zoning code in Berne was adopted in 1988, the lots had already been created. Ms. Froman would like to have a driveway to the smaller piece of the lot to allow for a single-family residence. She also said that the Albany County Dept. of Public Works conducted a site-distance assessment for the proposed driveway, and determined that the site distance was adequate. She said that every lot has the right to access a road and that the lot in question was created prior to Berne adopting its zoning regulations.

Mr. Christian said he had visited the site and found the sight distance not good and that there was no indication of a current driveway.

Lorie Robinson stated that her property map shows a "right of way" that may have been an old access road.

Philip Willsie said that there is no access road to the property, only a right-of-way.

Mr. Christian asked Mike Vincent, a member of the Berne Planning Board, about whether the lot was "grandfathered in" considering it was created before the zoning regulations were adopted by the Town. Mr. Vincent said that the PB made its decision on the Town's zoning ordinance and information provided by the applicant. He also said that several PB members said the sight distance was poor and that the variance requested was excessive. Ms. Froman stated that she never said that there was a right-of-way on the property and that 62' was wide enough for a driveway.

Tim Lippert reminded the Board that the lot is fragmented with another part included in the SBL # exceeding the minimum standard road frontage. He also said that Ms. Froman is seeking a subsequent subdivision of the lot should the variance be approved.

Ms. Robinson said she is concerned that 62' is too narrow for large equipment to access the lot

and that the lot is mostly swamp.

Thomas Ames said he is concerned about limited sight distance especially in winter with snow banks along the road and that the lot is not conducive to building upon. He suggested it be donated to the Nature Conservancy.

The Board adjourned while Mr. Lippert looked up dates concerning subdivision or change in ownership of the lot in question. The Board reconvened and Mr. Lippert stated that the lot that splits Ms. Froman's lot (SBL# 102.-2-12.400) was subdivided out and filed with Albany County in 2012. Ms. Froman said that the lot changed hands in 2012 but was originally created and filed in 1987. Ms. Robinson said she has owned it since 1999.

Mr. Christian said he was uncomfortable making a decision at the time and that more information is needed from the applicant and assessors. Mr. Jordan suggested the applicant provide a copy of the deed to the lot including any right-of-way and proof of when it was originally subdivided.

Mr. Christian moved to table (keep public hearing open) through till the next ZBA meeting on May 17th. Mr. Otto seconded and the motion passed, 5-0.

Public Hearing:

Area Variance: Robert, 65 Betts Lane, East Berne, SBL #70.13-1-34. The applicants are asking that a 7'6" height variance be granted for an existing accessory building which is 27'6" tall. Erika Robert gave the Board a brief history of the building and variance process through the Planning Board. She said the building as it stands doesn't negatively impact the surrounding neighbors, and that removing 7'6" from the roof would make the building less aesthetically pleasing.

Robert Stout, an attorney for the Roberts, said that if modified it would be unappealing. He said that the current height would be in keeping with the proportionality of the planned house. He stated there was no other feasible method of maintaining the height of the building other than seeking a variance. Mr. Stout said that the variance requested was 37% and not substantial and that the variance would have no adverse physical or environmental impact. He said that had the building was deemed "accessory" after being built but that the test for a "self-created need" for a variance doesn't stand alone as a reason for denial and that the building is a benefit to the community and the applicant.

Mr. Christian questioned whether anyone from the PB had measured the height of the building.

Mr. Jordan asked Mr. Robert whether there were any plans for increasing the height of the building beyond 27'6". Mr. Robert said a steel chimney would go up another 1' which Mr. Stout said Town code allows.

Mike Reuk spoke in favor of granting the variance.

Kimberly Conway spoke in favor of granting the variance.

Mike Merwin spoke in favor of granting the variance.

Kerwin Lavelle spoke in favor of granting the variance.

There was a brief discussion of the history of the building permitting process.

Mr. Lippert said the building is in keeping with the neighboring buildings and that the distance between the structure and the planned house is 78-80' which makes proportionality less of an issue.

There was discussion about whether the variance was a Type I or Type II action under NYS SEQRA. The Board agreed that the variance request is considered exempt from SEQRA and would not

need additional review.

Mr. Jordan closed the public hearing at 8:15 p.m.

Regular Meeting:

Mr. Jordan moved to approve the area variance at 27'6" with the condition that no other piece of equipment (other than the existing chimney), including but not limited to antenna and satellite dishes which would raise the height of the structure above the roofline not be allowed. Mr. Otto seconded and the motion was approved, 5-0.

Review of Minutes: The Board reviewed the minutes from the January 18, 2016 ZBA meeting. Mr. Christian moved to approve the minutes. Mr. Otto seconded and the motion passed 5-0.

Other Business:

Mr. Jordan adjourned the meeting at 8:25 p.m.

Next meeting to be held on May 17, 2017.

Respectfully submitted,

Kathy Brown