

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

Date: July 20, 2016

**Public Hearing:** Appeal of a building permit denial for Michael and Erika Robert, 61 Betts Lane, Berne, NY # 70.13-1-34

Present: Ronald Jordan (Chair), George Christian, Phyllis Johnson, Rick Otto, Wayne Emory (Town Board Liaison), Kathy Brown (Secretary), Tim Lippert (Building and Zoning Administrator) and other interested parties (see attached).

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

Erika Robert spoke regarding the history and future plans for the property and structure. In May 2011, she stated, the Roberts obtained a permit for a barn. But their plans changed, and she said they “exceeded the scope of the permit.” Several times within the following year, she said, the Roberts contacted the Town regarding their desire to build a house. In 2013, a septic system was begun but was halted due to a Town-issued violation for installing without a permit, according to Ms. Robert. Ms. Robert stated that a “reasonable” solution would be to change the permit for the existing structure from a “barn” to an “accessory structure.” She referenced a letter dated December 2013 from the Planning Board Chair, Alan Rockmore, stating that if the kitchen were removed it could be considered an “accessory building.” However, this spring, the Planning Board provided the Zoning Board of Appeals with an advisory opinion that the structure should be considered a “dwelling.” An application for a building permit for a house with an accessory building was submitted in June 2015. The permit was denied by the Town, said Ms. Robert. She stated that she and Michael have no intentions of using the structure in question as a dwelling, seasonal dwelling or living quarters. It would be used only for “short-term occupancy.”

Mr. Robert Stout, attorney for the Roberts, submitted to the Board a copy of the letter from Alan Rockmore of December 2013. He also referenced the Dyer property on Helderberg Trail where an accessory structure was permitted that included a kitchen. He stated that the existing structure meets all requirements of an accessory building and would be secondary to the main house. He said that the building’s primary use will not be living quarters and it will not be used seasonally for such purpose. Mr. Stout questioned the Town’s zoning which allowed multiple dwellings in one zone and not another, ie: allowed in RAF but not in MDR. He then referenced the ZBA Dyer hearing from 1998.

Ms. Johnson asked for the height of the originally proposed building. Mr. Stout responded that it was 27’ which exceeds the height limit of an accessory structure and that the Roberts would need to approach the Town for a height area variance should the permit be allowed.

Mr. Lippert gave a brief presentation regarding the timeline for the building. He stated that the original permit that was applied for and granted by the Town was for a wood shed. However, when he went to the site to see the building it appeared to be a home with a kitchen, bedrooms, living area and a garage. The Roberts agreed to a "conditional residential permit" and agreed to the conditions therein. But, according to Mr. Lippert, the conditions were not adhered to and the permit lapsed and was not renewed.

Ms. Robert said that the septic, which has been completed and approved by Albany County, is sufficient for four bedrooms.

The Board discussed flood zones and it was determined that the structure is not within a flood zone.

Mr. Christian noted a letter from Richard Sullivan regarding the application denial (see attached).

Mr. Jordan read into the record the Planning Board's opinion of June 2, 2016 (see attached) which stated that the Board advised the ZBA to deny the appeal. He also read into the record a letter dated February 28, 2013 from Alan Rockmore regarding a phone conversation he had with Mr. Robert (see attached). Discussion of the conditional residential permit followed. Mr. Lippert stated that most of the conditions of that permit were completed. Mr. Stout stated that completion of the existing structure as a house was not done as it might preclude the applicant from constructing a planned main house on the property.

The Board discussed the definition of a residence vs. accessory structure according to Town code and whether, if the permit appeal is granted, this would allow anyone within the Town to build similar accessory structures.

A resident asked whether the structure could be joined to the main house once it is built. Mr. Stout said he thought so, and that the Roberts would be open to such an option.

Debra Bajouwa, a member of the Planning Board, advised the Board regarding the basis for the Planning Board's decision as it pertained to the definition of an accessory structure.

Michael Finnerty stated his support for Mr. and Mrs. Robert.

A resident voiced concern regarding runoff from the lot into Thompson's Lake.

Mike Vincent, a member of the Planning Board, spoke about the drainage in and around the property. He also reviewed the Planning Board's opinion as it related to the Town's ordinances.

Kimberly Conway stated her support for Mr. and Mrs. Robert.

Kathy Newell stated that the current use and the original use, as stated in the permit, are inconsistent.

Kerwin Conway stated his support for Mr. and Mrs. Robert.

Greg Valenti stated he is against granting the appeal.

Mrs. Robert told the Board that she and Mr. Robert are willing to do "whatever it takes" to move forward with their hopes of building a home on the property; including possible subdivision or connecting the structure to a newly built house.

Mr. Christian said that the structure and characteristics of it, too closely resemble a dwelling to be considered an accessory structure. He suggested researching definition of "housekeeping."

Mr. Jordan asked the Roberts why they had not taken steps to change the structure so that it was in compliance with Town code and then begin construction on a house. Mr. Stout said that the Roberts considered it a “guest house” and had put a lot of pride into its creation.

Mr. Otto suggested that if the stove, sink and beds were removed, it couldn't be considered a dwelling.

Mr. Stout referenced the Rockmore letter of 2013 and asked if the Roberts removed characteristics of the building that made it suitable for independent living, would the Board allow the permit.

Mr. Jordan said he was concerned with setting precedent within the Town that might allow similar structures to be built.

Written public comments will be accepted by the Town until September 1, 2016.

Motion to adjourn at 8:30 by George Christian, 2<sup>nd</sup> by Rick Otto, motion passed 4-0.

Respectfully submitted,

Kathy Brown