

July 19, 2007. Mr. Rapplyea gave the Board a letter signed by Ms. Boyd's neighbors – Goodchild, Fletcher and Petty – regarding the application before the Board – they have no objection in fact they support it. Chairman Blackman then gave a brief history of the Boyd application for our new attorney. Last meeting the Board was trying to understand if permission was given for the original mobile home to remain once the new home was built. Either the new Zoning Code or the old Zoning Code there is no allowance for two lots (homes) on one acre. Mr. Rapplyea did not agree with this conclusion of the old Zoning Code. Mr. Fenton found that the table was unchanged for the minimum lot size for a single family house. Attorney Everett asked how far away the two structures were. Ms. Boyd stated about 100 feet. Mr. Everett continued the Building Permit was issued in 2005 to construct a pergola to connect the two structures. This was a remedy as the house was built in 2000 and the first complaint was in 2001. Mr. Everett asked what determination from the Building Inspector were the Boyd's appealing. Mr. Rapplyea stated it was filed as a use variance, however Mr. Fenton qualified it as an area variance. It is more of a question of density on the lot. There is 1.11 acres for this property - .9 shy. This is why the Boyd's are seeking the area variance. Mr. Rapplyea pointed out that the use on site was there in 2005, the Code Mr. Fenton is relying for the violation on was adopted in 2007. Chair pointed out the Zoning Enforcement Officer believed that under the old code this was also a violation.

Mr. Rapplyea continued that the facts that are important in the area variance Mr. LaRobadier purchased 9 plus acres in 1996 from Ms. Boyd's father for \$27,000. The trailer was where it is still presently. In 2005, Ms. Brusie states in her records, case resolved. From 2005-2007 Mr. LaRobadier subdivided his lot making two lots. One lot sits above the Boyd property which is accessed from another road, the second lot adjacent to the Boyd's. In 2007 Mr. LaRobadier obtained an area variance for a driveway. The second lot adjacent to the Boyd's is vacant and has a for sale sign. Mr. LaRobadier's home is on the lot up the hill beyond the tree line, however there is an allegation the septic, which is not in violation by the Town, has somehow affected him. Mr. Rapplyea presented a map drawn by the Boyd's showing the septic system. The use is consistent with the neighborhood.

Kevin Cassone asked why Mr. LaRobadier needed an area variance. Mr. LaRobadier stated he wanted to make a building lot however he didn't have enough frontage. He went to the ZBA and they gave him a variance and he needed 2 ½ acres for the lot because of the frontage. Then he went to the Planning Board and gave them BOH approval and maps etc. The access from Route 22 is for the new 2 ½ acre lot. 125 feet is required, they only had 80 feet.

Mr. Everett asked if the Department of Health had looked at the septic. Mr. Rapplyea stated they had issued an email or letter to Mr. Fenton they had no issue with it until it failed. There are no violations including the Town on this matter. Mr. Rapplyea then read letter from Dutchess County DOH dated February 4, 2009 to Ms. Brusie and also February 24, 2009 from Daniel

Keeler, Dutchess County DOH. In the file also is a letter from the firm the Boyd's hired to look at the septic system and they also felt it was adequate. Chairman Blackman asked to back up to the BOH approval letter of February 4th 2009, the last sentence, "if it is confirmed that two dwellings are using the sewage disposal configuration on this lot approval from this department is required." Mr. Rapplyea continued it was confirmed that is what was happening. Chairman Blackman asked if they ever got an approval. Mr. Rapplyea stated they were never issued a violation from anyone. Mr. Blackman went on to ask for any documentation from the Town approving the two houses to use one septic system? Ms. Boyd stated there was another letter from the Town acknowledging the septic. In a letter of September 21, 2010 from Michael Mealy, LPE, and another letter October 14, 2010 to the Boyd's acknowledges receipt of the engineer's letter and states the Building and Zoning office consider this matter closed. Mr. Rapplyea read Attorney Everett the conclusion of the letter from the engineer.

Mr. Everett asked Mr. Rapplyea if a lot is proposed to have two or more residential structures, Site Plan Approval shall be required. Is that your position that there are two principal residential structures? Mr. Rapplyea replied there was no Site Plan Approval. Mr. Everett asked what Mr. Rapplyea's position was on needing a Site Plan Approval? If someone issues a violation Mr. Rapplyea continued they would then cross that bridge. Mr. Everett felt that they were here to clean up all violations. Mr. Rapplyea stated that they will bypass the code enactment date and if it doesn't work out in the Boyd's favor on the area variance, it will need to be revisited. Mr. Everett felt it could be a legal challenge, the ZBA will need to decide if it grants the variance whether they want to impose a condition requiring Site Plan Approval. Mr. Cassone asked if they were to go by the new Zoning Code or the Code when the issue happened. Mr. Fenton looked and it was the same table in both the new and old Zoning Code – Section 121-12-D.

In 2005 the Building Inspector stated if you add a pergola it will correct the violation. The Boyd's added the pergola. Then Mr. Fenton in 2012 issued violation based on neighbor complaint. Mr. Cassone asked if there were any pictures of the pergola. Mr. Boyd stated the piers were still there. It was removed around 2007. Mr. Rapplyea gave the Board a set of loan documents. With what Ms. Brusie told the Boyd's, they refinanced in 2011. If there had been violations on the property they would not have been able to do a refinance. Mr. Rapplyea put into the record a number of parcels around the town where many multiple residences are on one parcel. He continued he felt there was no real dispute that the way the Boyd's maintain the property is consistent with the neighborhood. It is also difficult for any neighbor to suggest that they were not aware of what was there. The trailer is exactly where it was when it was purchased in 1997 as well as both structures were there in 2007. This is really about someone trying to sell his land. Mr. LaRobadier's lawyer has given a lengthy letter and there are a few factual inaccuracies in that letter. (1) The neighbor purchased 9 acres in 1997. (2) In 2007 he created two lots. (3) The purchase price for the 9 acres was \$27,000. (4) There is only one objecting neighbor. (5) The septic issue has never affected his property which is validated by

the Town's Zoning Enforcement Officer. A letter to Ms. Brusie September 17, 2008 from Mr. LaRobadier states over 14 months ago which would be 2007 that the Town was aware of an issue. Mr. Everett asked if Mr. Rapplyea had discussed with John Fenton if this can be characterized as a non-conforming use. These two buildings existed in 2005 and the Zoning Code was changed in July, 2007. Mr. Rapplyea stated if it was a legal use in 2005, then it remains a legal use in 2007. Any notices of violation had been corrected, however the problem is when this was brought up Mr. Fenton suggested that it was a law then, just stated differently. If it was a violation of the law then why did Ms. Brusie say it wasn't. The Boyds had a problem, they went to the ZEO and they solved the problem. Chairman Blackman asked if there is any approved plan showing two buildings on that property. Mr. Rapplyea stated that was correct, however have many letters from the Town's ZEO accepting what was done.

Mr. Everett asked about escrow as he felt he would need to go over the application. Mr. Rapplyea asked if the ZBA were inclined to vote on an area variance why couldn't they. Mr. Everett felt he was uncomfortable as he was just joining the Board and with the neighbor concerns and the Board is facing possible litigation from him. He felt he would need a full understanding of the situation. Mr. Rapplyea added this has been multiple years of multiple issues with the Boyds doing everything they were asked.

Dennis Johnson, attorney for Mr. LaRobadier addressed the Board. He began by stating he thought they were coming here to either transitioning from a use variance to an area variance and perhaps an interpretation and thought the Boyds were submitting some form of written alteration of their application. Nothing had been received from the Boyds as of late yesterday afternoon when I spoke with Mr. Fenton. He went on stating he was here tonight without any written opposition and wants the record to remain open so that I may have the opportunity to write that written opposition. Mr. Everett asked Mr. Rapplyea if he had an objection to filing a letter basically stating you are converting the use variance application to an area variance application. Mr. Rapplyea stated he had no objections to a conversion to an area variance.

Mr. LaRobadier main objection to the trailer remaining on the property is a septic issue that needs to be resolved. The reason Mr. LaRobadier began hounding the Building Department in 2007 and 2008 was because he subdivided his own property and was required to do a pump up system. Due to the fact the property is ledge and poor soil, he would need to fill and install a \$40,000-\$60,000 system. He looked into why he would need to do this when neighbors and found that there are issues with this trailer which is on the property but not on the assessment records. It was not granted a CO. Mr. Cassone asked wouldn't there been a CO for the trailer before the house was built? Mr. Johnson stated there was a CO for the new house but no CO for the trailer. The building permit at the time stated the trailer was to replace the new house and be removed. Going back to the 2005 permit of the pergola, it is uncertain why the ZEO came to the opinion this could be legal use connecting these two separate structures by a 100 foot pergola.

Mr. Everett asked if there was a CO for the trailer. The Boyd's did not have one however were sure there was one at one time. The trailer is currently vacant.

Mr. Johnson continued going back to the time when the permit was pulled for the house in 2000, the septic system would be used for the new house that once serviced the trailer. The subdivision maps when Mr. LaRobadier purchased the 9.5 acres were brought out. The septic tank for the trailer was a simple septic tank with no leach fields. This map shows the septic system in front of the trailer on the property line. The Boyd's go to the Building Inspector and ask that they be allowed to use this system and will knock down the trailer in order to use it. The engineer certifies that it is ok for that use. They don't tear down the trailer and now there is two units using the septic system. The Building Department in a letter (read earlier to the record) indicated that as long as only one unit is using the system they have no objection, however if there are two, approval would be necessary. It would seem they would need approval for using one septic system for two units. The reason why no violations have been issued as explained by Mr. Keeler is that the system has not failed. The Department of Health only handles urgent problems as their resources are stretched. He felt the Town's Building Department did nothing. Between 2001 and 2008 Mr. LaRobadier hears from his neighbors that the Boyd's have been doing a large amount of excavation between their property and Route 22, which is partially on Town property. They buried a drainage field in that area. Mr. Cassone asked Ms. Boyd if the trailer had been empty since the house was occupied. Ms. Boyd stated no. The Building Inspector and the Zoning Officer seem not to do anything. He then starts to the Town Supervisor and the Code Enforcement Officers in Albany and it seems no one can help. The Department of Health has nothing on record for the exact location of the septic system on the property. The map given by Mr. Johnson is approximately where the septic system is located. Mr. Rapplyea stated that the hand drawn map previously submitted that is where the septic system is and there was no work done on it in 2008. The work that was done was in 1998. The Board then compared both maps to make sure they were the same. Mr. LaRobadier stated he was going to either sell the lot or build on the lot. His concern was the Boyd's told him their leach field ran across town property in front of his property. Any cement truck crossing this will become a problem. Mr. Everett asked if this was part of the variance. How does this septic system relate to access to Mr. LaRobadier's property. Mr. Johnson stated if large cement trucks go over these lines they will be crushed. In 1947 when new Route 22 was done, old Route 22 land was given to the Town. When Mr. LaRobadier subdivided he needed Site Plan from the Planning Board, ZBA and Board of Health approval. His problem is everything had to be on his property. Mr. Johnson stated in siting his well and septic system one of the requirements from the DOH is able to determine the site of any other septic systems which may be close to where he is putting his well. The Boyd's deny there is a leach field there. On the subdivision, the house is marked where it will be placed on the map. The septic will be two 1250 tanks. ZBA approval made Mr. LaRobadier give up 2 acres instead of 1 acre as he only had 83' frontage. He needed to give 2 1/2 acres because the fields need to be a certain distance from the Boyd's and neighbor wells.

Mr. Johnson stated they needed to know where the leach field lies. During the site Plan approval the engineers look up the records. Mr. LaRobadier engineer asked him where the Boyd's septic was as there was no record. David Menegat asked if there was no objection to that 83' being an access way to the new Route 22. The issue of where the leach field lies becomes important to figuring out if the Boyd's have an approved septic system, whether it is going to present a danger to the rest of the Town. If this fails because of cement trucks going over them, there is a serious problem. In the September 21, 2010 letter from Mr. Meili, the engineer, he explains there is a drainage field. Any time prior to this there was none.

Mr. Everett asked did you raise this access issue with the Planning Board during the subdivision process. Mr. LaRobadier asked the driveway? Mr. Everett stated he felt Mr. LaRobadier's concern is that he did not know the precise location of the Boyd's septic system and is concerned that it may be blocking access to his lot. Mr. LaRobadier stated the engineer raised the question. During the subdivision approval process Mr. LaRobadier assumed the septic was in one spot, since then there is no information where the septic is and that raises an issue. Mr. Johnson stated the neighbors went to Mr. LaRobadier and told him the Boyd's had been installed a drainage system on the town property of Mr. LaRobadier's right of way. Mr. Everett asked the Boyd's if they did any work in 2008 and they stated they did not. Mr. Johnson asked if they ever put in a leach field, Ms. Boyd stated in 1998. Mr. Johnson continued in Exhibit M, when the Boyd's submitted a hand drawn map of their septic system when they filed for a building permit, which show the leach fields. Mr. LaRobadier asked if the septic system on the landowners (Boyd's) property there would not be an issue or if on town property or his property, there would be. David Menegat asked if there was an area variance issued for two dwellings on less than the proper acreage, that would not be an issue with Mr. LaRobadier it is more the septic affecting the property he has for sale. Mr. Johnson again asked what determination has been appealed from. To date I have not received an answer. There is a CO with no conditions on the new house. Mr. Everett felt it would be best if Mr. Fenton could attend these meetings on a regular basis.

PUBLIC COMMENT: There were no Public Comments.

The application was not sent to Dutchess County Planning. Area Variances are for the ZBA. Mr. Everett suggested there be Type 2 SEQRA review and both attorneys's agreed. Mr. Johnson felt that if the Board grants this variance it will make an illegal situation a permanent situation. If granted Mr. Johnson would ask full approval from the Board of Health with proper plan specs. Mr. Rapplyea gave the Board a copy of a 11/21/2011 letter from him to Mr. LaRobadier stating not to touch the Boyd's property. He gave the Board pictures. The use of the property in front of all of the properties is fuzzy. Does Mr. LaRobadier have an easement to get out to Route 22? There is no evidence in the record this is a legal right of way. The Boyd's drawing of the septic is nowhere near Mr. LaRobadier's drive. In the neighborhood, the houses are close together, in the area variance standards, chief considerations are the character of the neighborhood.

Mr. Everett asked counsel if they would have any objection to providing your positions as to whether or not this is a non-conforming use? Mr. Rapplyea said no. Mr. Everett continued under NYS Law the Board can step into the shoes of the Zoning Enforcement Officer and do whatever the Board thinks he ought to have done. Chairman Blackman stated that the Board had no additional questions. Kevin Cassone went over the pictures that were entered in the record. Mr. Everett asked Mr. LaRobadier if he had done any excavation on the driveway, looking for pipes or septic? Mr. LaRobadier stated he dug on his property looking for pipes. Mr. Rapplyea consented to have Mr. LaRobadier dig where his proposed driveway is going to be put in. Mr. Johnson felt this was good, however does not answer the septic question. Mr. Cassone felt solve one problem at least. Mr. Rapplyea stated there is a location of a septic system on the 1990 map from Mr. Tabor. Mr. Johnson is concerned it may be too close to where the well is to be drilled. Mr. Everett stated there is a neighbor, next door to Mr. LaRobadier's lot, and have you investigated where his septic system is? Mr. LaRobadier was told by Mr. Fletcher, now deceased, that the Boyd's were digging trenches.

In summary Mr. Everett stated the lawyers will send the Board their positions on non-conforming use and will get together and dig and find out if there are any septic lines within the area where Mr. LaRobadier's wants to put his driveway.

MOTION TO CONTINUE THE PUBLIC HEARING UNTIL TUESDAY, MAY 21ST was made by Leo Blackman, seconded by David Menegat

VOTE TAKEN - MOTION CARRIED

Wassaic Auction Barn	Use Variance	4280 Route 22 Wassaic, NY
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MOTION TO OPEN THE PUBLIC HEARING FOR THE WASSAIC AUCTION BARN, USE VARIANCE was made by Leo Blackman, seconded by Kevin Cassone

Jeff Barnett-Winsby addressed the ZBA in hopes they would approve the sign currently on Route 22 in the Village of Wassaic. The sign has been there a long time and it draws attention to the Town. This is an advertisement for the Wassaic Project. Chairman Blackman asked if he had gone through the Building Code with regards to the requirements for a sign. As part of the Master Plan there was a change for signs in 2007. Mr. Barnett-Winsby went on to say he felt they were doing a lot of good in the village of Wassaic and therefore we are willing to be flexible. This is an important way via the sign to tell people to come down the hill to the village. He spoke with John Fenton and Bill Flood and they agreed to let Mr. Barnett-Winsby obtain a temporary sign permit. David Menegat asked if the sign/banner was just put up for the summer. Mr. Barnett-Winsby said yes and then it was taken down. The physical structure is what needs

to be removed. Kenny Elliott, Deputy Fire Chief, Wassaic, stated the Wassaic Project has done a lot of good for the village and was in support of the project. History of the sign: it was put up in 1950 and refaced in 1965. Mr. Blackman stated the law was to preserve the rural nature of the town and there were limits put on the size of the signs. There was a 5 year grace period for the signs along Route 22 to come into compliance. There are ways to work with the Town to come up with satisfactory solutions. Is this a temporary sign to advertise the Wassaic Project, this would be less of an issue. Mr. Barnett-Winsby asked if this was a question because this is a billboard? Mr. Blackman responded a billboard is a permanent structure of a certain size. Mr. Barnett-Winsby asked about Jack's and The Pines? Mr. Blackman stated they all will be treated the same way. Mr. Everett told the ZBA by Law all signs must come into compliance by July, 2012. You are now appealing your letter from Mr. Fenton to the ZBA. Mr. Barnett-Winsby felt because they are non-profit, this will be a major cost to try to reconstruct the sign. Mr. Everett felt it sounded as if the Wassaic Project wanted a permanent sign not a temporary sign. Mr. Barnett-Winsby stated the structure still exists, there is no signage. Mr. Cassone has a problem with the Zoning Code when it deals with non-profits. Mr. Everett stated zoning relates to the use of the land it does not relate to who owns it. Mr. Cassone continued there are holes in the Zoning Code and recommendations have been sent to the Town Board. Mr. Elliott asked what the difference was between the Wassaic Project sign and the billboards that sit north on Route 22? Mr. Cassone stated they will need to go as well. We should make a recommendation to the Town Board to address this. The permanent sign does not address non-profit organizations. Mr. Everett asked if the Board wants to work with the existing code to figure out what variances they need or hand off to the Town Board and ask they make a text amendment to allow for this type of sign. There is an obligation to the Wassaic Project as they have an application pending. The legal issue is that when John Fenton issued the violation, they didn't apply within 60 days of that violation. Sit down with Mr. Fenton, work out a new sign and then Mr. Fenton will figure out what variances are needed. Mr. Elliott asked if a sign collapses it cannot be put back up, however if it is still standing wouldn't it be grandfathered? The Code states that after July 2012 all non-conforming signs are illegal.

MOTION TO ASK JEFF WINSBY-BARNETT MEET WITH JOHN FENTON TO SEE WHAT IS ALLOWED UNDER THE CODE AND COME BACK WITH A PROPOSAL FOR THIS SIGN was made by Leo Blackman, seconded by Kevin Cassone

VOTE TAKEN - MOTION CARRIED

MOTION TO CONTINUE THE PUBLIC HEARING FOR THE WASSAIC AUCTION BARN FOR THE MAY 21ST MEETING was made by Leo Blackman, seconded by Kevin Cassone

VOTE TAKEN - MOTION CARRIED

MOTION TO CLOSE THE ZBA MEETING was made by Leo Blackman, seconded by David Menegat.

VOTE TAKEN - MOTION CARRIED

Respectfully submitted,

Susan M. Metcalfe
Zoning Board of Appeals

The foregoing represents unapproved minutes of the Town of Amenia Zoning Board of Appeals from a meeting held on April 17, 2013 and are not to be construed as the final official minutes until so approved.

Approved as read 07-22-2013

Approved with: deletions, corrections, and additions