



# TOWN OF AMENIA

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## ZONING BOARD OF APPEALS MEETING MONDAY, JUNE 17, 2013 7:00 P.M. - 2<sup>ND</sup> FLOOR

PRESENT: Chairman Leo Blackman  
Kevin Cassone  
David Menegat  
Terry Metcalfe  
Paula Pelosi  
David Everett, Attorney

MOTION TO OPEN THE ZONING BOARD OF APPEALS MEETING was made by Leo Blackman, seconded by Terry Metcalfe

Chairman Blackman first welcomed the two new members to the ZBA Terry Metcalfe and Paula Pelosi. He was very happy they had volunteered and he thanked them.

The meeting date for the Zoning Board of Appeals meeting will be changed to the fourth Monday of the month.

MOTION TO CHANGE THE MEETING DATE TO THE FOURTH MONDAY OF THE MONTH was made by Leo Blackman, seconded by Kevin Cassone

ALL IN FAVOR - MOTION CARRIED

**SUBMISSION DEADLINES:** The Board discussed guidelines for submission of materials for the Board to go over before the meeting. It was suggested a deadline three (3) weeks before the meeting. Dave Everett read from the Town Code, stating all applications for variances shall be submitted to the Code Enforcement Officer at least 10 days before the meeting, which is for the initial submission. Other submissions for the ZBA should be a 3 week time period before the meeting. This gives the Board enough time to look over the applications. The Board felt that the 10 day time frame was not enough time for the procedures that take place before the application can be sent out to the Board for their review. Chairman Blackman will investigate what the options are. Dave Everett stated that there were changes that were being proposed to the Zoning Law. Ms. Peek is working on those changes.

## **Continued Public Hearings:**

**Boyd**

**Area Variance**

**Route 22  
Town of Amenia**

Chairman Blackman opened the continued Public Hearing for the Boyd's. He stated the Board asked Mr. Everett to look at the Zoning Code and see if there is something that has not been yet discussed as it seems the same issues are gone over and there has been no conclusion.

Mr. Blackman summarized for the new members on the Board the history of the Boyd's application.

Mr. Everett looked over the Zoning Code and went over the Boyd file, which goes back a number of years, to see if there are other options the Board may consider. The Boyd's appealed the Code Enforcement Officers denial of the project and they are seeking a variance under the Code to allow two single family structures on one acre. Mr. Fenton felt it needed 2 acres required under the Zoning Code. The ZBA has all the powers of the Code Enforcement Officer on this appeal and can make any determination they think he ought to have made. In looking over the file and the Code, Mr. Everett feels that the mobile home qualifies as an accessory apartment. This is a valid permitted use without any further approval. This was taken from Section 121-12- C of the Code. The accessory apartment is not counted as a residential unit for the purpose of determining density. The definition of an accessory apartment is a dwelling unit no larger than 1000 square feet located in an accessory structure on an owner occupied property. The mobile home is 840 square feet and is an accessory structure. The Code Enforcement and the ZBA were looking at Section 121-12-D which talks about multiple residences on the same lot. They were looking in the wrong place. If the Board agrees with this, Mr. Everett felt the Boyd's should file an application to update their Certificate of Occupancy so this would be deemed an accessory apartment. It was suggested they provide a survey showing where the buildings are on the site. It needs to be determined whether or not they meet all of the requirements in the dimensional table – lot coverage, set-backs, etc.

Mr. Rapplyea, the Boyd's attorney spoke to the Board stating his letter of June 10, 2013 outlined the area variance standards. He updated the new Board members stating in the past when Ms. Brusie indicated there was a violation, the Boyd's addressed it. It was centered on the mobile home and the issue of the septic. Mr. Fenton issued a violation on 121-12-D which was originally a use variance. It was determined to be an area variance. All neighbors surrounding the Boyd's have no concerns. Mr. Rapplyea then presented to the Board six signatures from the surrounding neighbors stating no objections to the Boyd's for the record/file. Mr. Everett's analysis is the easiest to get the Boyd's the relief they are seeking. At the April meeting, Mr. LaRobadier felt that Boyd's septic might affect his property. Shortly after that meeting, Mr. Rapplyea sent a fax to Mr. LaRobadier's attorney, with a copy of the site plan, when

Mr. LaRobadier applied for an area variance to create a two acre lot; on the map it states proposed drive. He circled on the map and asked if this is where he wanted to dig to find the leach fields and if so go ahead and dig. There has been no digging to date.

Dennis Johnson, Mr. LaRobadier's attorney felt there was a new direction being taken with the accessory apartment. This still does not answer the question of whether the septic is capable of withstanding the onslaught of 200% of what it was designed for. The septic system is located on Town Land located outside of the Boyd's property. The site plan usually would have where the septic leach fields are. Since Mr. LaRobadier has a right of way over a portion of this land for the proposed driveway, the Board should look at 121-12-C. They should also look at the septic system, which was not engineered properly to deal with the load. Mr. Johnson felt the Board should ask for a full site plan and BOH approval.

Kevin Cassone felt that if the case for the accessory apartment that Mr. Everett laid out is clear cut, then does the Board need to do anything. Leo Blackman interjected that there are no drawings when this was built that document two structures on the property. If the Board is looking at this as an accessory apartment, permitted by the Code, then the Board can establish conditions to update the CO. Mr. Everett stated you would not be granting a variance but just modifying John Fenton's decision. Mr. Everett also felt in regards to the septic that two engineers have concluded that it is operating properly. There are two 1000 gallon septic tanks with the system. DOH has looked at this and stated they don't have an issue. This seems that the septic system has been adequately evaluated. In the interpretation, the environmental impacts under SEQRA are not considered. Since this would be a Type 2 action, it would be exempt from SEQRA. Under the Zoning interpretation, the ZBA does not need to get to the septic issue. The question is whether or not the mobile home is a valid use. Ms. Pelosi asked where the septic was. There is no evidence that the septic is not on the Boyd's property. Mr. Johnson was not sure where the leach fields were. Mr. Rapplyea stated Mr. LaRobadier states he has a right of way. Mr. Rapplyea does not believe he does. If you look at the April 24, 2013 minutes the Boyd's had no objection to Mr. LaRobadier digging in the drive to ensure that the Boyd's septic lines were not in that area. There was no digging. Mr. Johnson responded his client should not have to spend thousands of dollars to find and locate an illegally buried septic system.

Chairman Blackman stated because there were no drawings filed with this information when the house was built. This is why we have questions. It would be our right when the CO is updated that the location of the leach field be part of what would be put on the survey. All the information of where the town property is, the Boyd's property is Mr. LaRobadier's property and where the leach fields and set backs are, etc. The Town was not careful about their practices when this application was done. Mr. Rapplyea stated Mrs. Boyd could go back to Mr. Fenton and file a building permit application as built, put together a plan that has details on it that locates the

mobile home and he could approve that. Unless a variance was needed it would never come back to the ZBA. Chairman Blackman asked if Mr. Rapplyea was still claiming that it is possible to have two primary residences on 1.1 acre parcel, you are wrong. The accessory apartment interpretation is very generous to your client.

Mr. Everett asked if DOT investigated where the septic was on DOT right of way. Was this resolved? Mr. Johnson stated DOT sent him a copy of a map dated 1947 which indicated the roadway had been abandoned therefore became Town property. Basically DOT didn't care.

Mr. LaRobadier addressed the Board telling them that when he subdivided his 9 acre lot he would need to enter the new lot over Town of Amenia land. He went to the Planning Board and was told there was not enough frontage, so would need to go to the ZBA to get a variance. The variance was approved by the ZBA and was told he needed 2 ½ acres. He felt the current case was a different set of rules. The Planning Board required a full site plan complete with pump up system for the septic with BOH approval. The neighbors told him the Boyd's leach fields were under the driveway.

Mrs. Boyd told the Board the septic was done in 1998 and Mr. LaRobadier's septic was done in 2007. The laws changed in 2007 and Mr. LaRobadier is trying to make the Boyd's comply with the new laws instead of the one that was in effect in 1998. He made a poor business decision and that is not the Boyd's fault.

Kevin Cassone added that the ZBA may have asked for 2 ½ acres not only because of the frontage but also due to the slope of the land.

Leo Blackman felt that a motion was needed to follow the legal interpretation set forth by Mr. Everett to look at the mobile home as an accessory apartment with a condition to get a complete property survey including set-backs, septic and drawings of the two dwellings.

Mr. Rapplyea asked if Mrs. Boyd could speak with John Fenton about the degree to which a site plan or map can be done as she already has an existing survey. If Mr. Fenton agrees that she can locate everything and draw it and he can check the measurements and this would save the Boyd's considerable money. Chairman Blackman felt this would not work; the issue is the Board does not have the same information that we would have from another applicant. He felt the set-backs, the trailer and leach fields need to be on the survey. Terry Metcalfe asked if that was necessary if the Board accepts that this is an accessory apartment. There are questions about the accessory apartment that have not been answered. If the Board could itemize and resolve those questions concerning the accessory apartment then the survey may not be necessary. Chairman Blackman stated that if the information on the survey doesn't seem complete it could drag out another month. Mr. Everett stated that the issue with survey's and applicants drawing on them, The applicant feels it is in one location and it is not. You need a professional to determine where the

property line is and make those calculations. If the original surveyor can be determined, he could come back and put the necessary information on the original survey to update it. This should not cost nearly as much. Mr. Everett continued the Board would need to impose a condition to identify where the septic system is located on the property.

Chairman Blackman felt that because the trailer remained after the house was built that the issue of the septic, even though it has been looked at by engineer's, was never identified or located. If Mrs. Boyd would go back to the original surveyor and add those pieces to the survey that would satisfy the Zoning and Building issues that were never property dealt with. David Menegat felt the Boyd's ascertain where the leach fields are to the septic and this should please Mr. LaRobadier. Mr. LaRobadier would like to see BOH approval. Kevin Cassone stated the Board can't get BOH approval, however could probably tell Mr. LaRobadier where the septic is located. Mr. Everett stated when you find out where the septic is located then if it is not satisfactory then Mr. LaRobadier can go to the DOH and it will be their problem. Mr. Rapplyea stated that the Board has no authority over the septic issue. Mr. Everett continued as far as the set-backs and zoning issues that should be put on the survey map, as far as the septic and where it is located he felt the Board did not need that to make a determination. Terry Metcalfe agreed with Mr. Everett that the septic was not necessary.

Chairman Blackman stated the Board can resolve at this meeting that this should be treated as an accessory apartment and would like to get an updated survey of the property so the Board can determine if there are any other issues with having an accessory apartment on the property. If the survey can be completed before the next meeting, that should allow us to make a decision at that point. Dave Everett asked if the survey was limited to just zoning or is the Board looking for septic/leach field placement. Terry Metcalfe felt just the zoning. Chairman Blackman felt it should include septic/leach field placement. David Menegat added the only problem to do it to just satisfy the ZBA, if it goes to another branch of Amenia government then it will be more months before the issue is resolved. Mr. Everett stated if it is determined to be an accessory apartment and it complies with the requirements of zoning, then they will receive an updated CO and it will be closed.

Terry Metcalfe asked is it within our pervue to worry about where the septic system is. Is that a zoning requirement? Chairman Blackman stated it is not. Mr. Metcalfe stated if it is not then it is a moot issue. Mr. Rapplyea asked if the Boyd's would locate the septic and if it was not near Mr. LaRobadier's driveway, would he be satisfied. Mr. Johnson stated no, there is an issue of the Boyd's going off their property to bury the leach fields. There has been no admission that the septic is off their property. Mr. Rapplyea stated if the septic is located where we say on the rough map provided and an engineer shows it is not in the bed of the driveway, will Mr. LaRobadier accept this and that will be the end of this matter before the Board? Mr. Johnson felt there is a violation. Mr. Rapplyea stated then it won't matter what we show.

Mr. Metcalfe went on to say the Board of Health has stated they do not want to get involved in the matter. Mr. Johnson stated the BOH does not know if the leach fields are off the property. If the Town does not issue a violation for having a septic system off premises, then Mr. LaRobadier must decide what he will do. Mr. LaRobadier stated there is information in the files from the BOH; they are not an enforcement agency. The BOH has put it back on the Town stating the Town should require BOH approval. Mr. Everett stated again in listening to the conversation it is all about the Department of Health and what do they think of the septic system. That is beyond the purview of the ZBA. We are not the septic police. John Fenton's suggestion is a good suggestion. It does not seem as if the two parties want to work together. That should not be put on the Zoning Board. Mr. Rappleyea suggested that the Board not make the requirement of the septic system and stay with the Zoning Code. Mr. Johnson once again stated this is not going to solve the problem as there is no BOH approval. Mr. Metcalfe asked who did the septic. Mrs. Boyd could not remember.

MOTION TO CLOSE THE PUBLIC HEARING was made by Chairman Blackman, seconded by Terry Metcalfe

VOTE TAKEN - MOTION CARRIED

Chairman Blackman felt that an updated survey was needed. He continued it doesn't make sense to just allow this to be treated as an accessory apartment without having the information that this decision would be based on. Kevin Cassone stated when the original flawed building permit was issued and they were going to keep the second structure, shouldn't there have been a more stringent review? Terry Metcalfe felt from what is in the zoning laws it doesn't seem that would be necessary. Chairman Blackman said it is not required for an accessory apartment but they did not file for an accessory apartment. They filed for a building and taking down the mobile home. Kevin Cassone felt it was an original flawed building permit. Mr. Blackman stated this was not done legally. Terry Metcalfe stated you can't go back and change something that was not done. Look at how it can be rectified and in this case make it an accessory apartment and this solves the issue.

MOTION TO TREAT THIS AS AN ACCESSORY APARTMENT WITH THE CONDITION THAT REQUIRES A SURVEY THAT SHOWS ALL BUILDINGS ON THE PROPERTY AND THE SET BACKS AND ALL INFORMATION THAT IS NEEDED TO COMPLY WITH THE REQUIREMENTS OF THE ZONING CODE was made by Leo Blackman, seconded by Kevin Cassone

VOTE TAKEN - MOTION CARRIED

Mr. Rapplyea stated that he wants Mrs. Boyd to check with John Fenton, telling him what she is doing and making sure that this is the right approach and check with both Mr. Everett and Chairman Blackman. When this is done it will be satisfactory. Chairman Blackman asked for Mrs. Boyd to produce an updated survey before the next meeting.

**Wassaic Auction Barn**

**Sign Variance**

**Route 22  
Wassaic, NY**

Chairman Blackman recused himself due to a conflict of interest with the Wassaic Auction Barn. Kevin Cassone filled in for the Chairman.

Kevin Cassone opened the continued Public Hearing for the Wassaic Auction Barn. Shannon Finnegan represented the Wassaic Project. She stated that Tony Zunino had written a letter to the Board dated May 22<sup>nd</sup>, 2013 in which he appealed the denial of the Sign Permit and asked for a determination and ruling of John Fenton's denial letter and stated three reasons why he was seeking an area variance to permit the existing sign. (Letter Attached) She then asked if the Board had any questions.

**Sharon Kroger** spoke to the Board stating that she runs the general store in Wassaic. She was the founder of the Wassaic Historical Agricultural Crossroads which was a not for profit organization that purchased the Maxon Mills building and owned it for five years. It was on the State registry before Mr. Zunino bought the building. Mr. Zunino has bought other buildings in the hamlet and one concern that the W.H.A.C. has is that we like to see creative use of the old buildings and that they are all sustained. The footprint of the hamlet is special. When the Comprehensive Plan was being created a Historic Business District was looked at. The idea was to give maximum opportunity for creative economic development. The sign in question was put up in 1959. All the buildings in this hamlet are different. There could be a Board for the Historic Business District, however we opted not to do that. We do have the designation of State Historic Business District and this designation you have agricultural industrial next door to precious 19<sup>th</sup> century structures. You can't tell the owners of the agricultural industrial that you can't have a sign because it is too big if it is an authentic sign. For example Maxon Mills had a huge sign outside which they took down and put inside the building, however, he has the right to put that sign back up on the outside if he chooses. In regards to the Auction Barn, one of the parts of that property is that sign. In the absence of a Commission that sets forth guidelines and criteria very specifically, he has the right and doesn't need the variance to maintain that sign. He could maintain it in two ways; maintain the sign the way it used to be or modify the sign. It is important not to confuse a district like this with definite boundaries to it with routine code enforcement in the Town. The Code Enforcement Officer needs to understand that a unique situation is not governed by the same language that he would have to be using every day.

Supervisor Flood wanted to see the new plans. Ms. Finnegan stated that the sign will be restored. Mr. Cassone stated that the law does not currently allow putting back up a sign like the one Ms. Kroger stated for Maxon Mills. People in the town are still thinking that the grandfather clause still exists. In this zoning code it does not. Kevin Cassone felt that Ms. Kroger was right in stating the whole historic overlay leaves it out. In a historic district one must keep up all the historic buildings and all the historic features and when they are falling down, recreate them. However, none of that is stated in the Code. When does the historic district supersede the Code.

Dave Everett told the Board for the new members there is a provision in the Town sign law that deals with non-conforming signs. He read the code which stated signs that were in place in 2007 would be allowed until July 1, 2012 at which time they must be replaced by conforming signs that have valid permits or be removed. The sign at the Wassaic Auction Barn that has been there is not grandfathered. This is a significant variance. There are five factors in the variance analysis that must be gone through and balance those to determine if the Board feels they are entitled to the variance.

Mr. Cassone felt there will be commercial people coming to the Board asking why they can't keep their signs. He continued there are different classes of real estate, commercial, residential and non-profit. Usually historic districts usually trump everything else. The sign wanted is between 50 to 75% larger than what is allowed. Ms. Finnegan stated that is what is outlined in Mr. Zunino's letter. Supervisor Flood stated that this was a unique piece of property and we may need to revisit the Zoning Code to address some of these issues. This brings money to the town.

Mr. Everett read the Standards for Area Variance factors to the Board and also looked over the requirements for the Historic Overlay District. Ms. Pelosi asked if there were any way that the applicant could photo shop with colors, the sign and send it to the Board. Ms. Finnegan felt they could however she wanted to let the Board know the biggest event of the year is August 2-4 and to be able to advertise this event as it is important to the organization and the health of the hamlet. If no decision is to be made tonight then could we discuss a temporary sign permit. Kevin Cassone stated that there are restrictions on temporary signs that must be looked at. Terry Metcalfe stated it looks like the current size of the sign not in compliance is approximately 340 square feet. Supervisor Flood stated the Board has the right to give the variance. Mr. Everett stated one of the factors is whether it is substantial. The courts have stated determining whether it is substantial you must weigh and balance all the factors. While it may be substantial, if it is not going to have an impact on the community and all the other factors comply with, then they would be entitled to the variance. The Town Law allows for temporary signs for not for profits. These temporary signs shall not be more than 24 square feet and shall not be displayed for more than 30 days.

Kevin Cassone asked if anyone on the Board was against the first drawing of the proposed sign from the Wassaic Project. Terry Metcalfe stated he would like to see it smaller but not as small as what is in the code. Ms. Pelosi stated that the drawings are not something that she could visualize on the road. David Menegat felt the sign was too large and the arrow looks tacky. He liked the outline of the building. Paula Pelosi felt if they could bring the size of the sign down a bit to the height requirements and make it smaller. Kevin Cassone felt that they should have an oversized sign. Terry Metcalfe suggested about 150 square feet, however is it staying with the historic nature of the district. Ms. Pelosi asked if the sign would be up year round.

Ms. Finnegan said yes there is a year round residency program and there is something going on in the hamlet year round. The project has been around for 6 years and is here to stay. Leo Blackman felt the Board might consider allowing a temporary sign that is beyond the allowable size while working on the permanent sign. It could be 48 or 50 square foot sign so its 100% beyond what is allowed for a temporary sign and also the maximum allowable permanent sign to advertise multiple things; the Wassaic Festival, the Lantern Inn and the Wassaic Project Studios. Mr. Everett felt this was needed as it would be referred to the County, Planning Board for their recommendation, site plan approval from the Planning Board because it is in the historic overlay district and comply with SEQRA. He felt the temporary banner idea was a good one.

Supervisor Flood asked if anyone had reached out the Dutchess County Tourism to see how they handle these issues, or possible Dutchess County Planning. The Walkway over the Hudson has a big sign, the Culinary has a big sign. Mr. Everett stated there are two issues: the current application and a variance to put up a larger temporary sign. They need to give you what the temporary sign would be, how large it would be, what it would look like. Ms. Finnegan felt the temporary banner is about 200 square feet. Ms. Pelosi asked if the Board could let them use the existing portion of plywood for the banner. That is where the sign was last year. The temporary sign is only to be displayed for a period of 30 days. David Menegat felt that even the temporary sign was too big. Ms. Finnegan felt that the Wassaic Project would need to print up another sign with the new dates on it and could get this done in time to put it up for the event, about two weeks.

Mr. Everett reminded the Board that the Wassaic Project should not delay in making further submissions so the Board can make a determination in the near future so that they can put up their permanent sign. Terry Metcalfe reiterated that some of the sign could be open space – outlined. Paula Pelosi felt that it was important that this is done quickly as it is important to have the sign throughout the year. Terry Metcalfe added he didn't mind advertising the Wassaic Project Festival, however adding the pizza then it becomes a billboard. The Board directed the applicant to make the sign smaller and without the accessory signs hanging off the side. Ms. Pelosi asked if Ms. Finnegan had the regulations. Kevin Cassone felt Jeff had them. Mr. Everett added the bonus points do not apply for free standing signs. David Menegat reiterated what Terry Metcalfe stated, keeping the sign from last year but cover over the old dates with the new dates. Ms. Finnegan felt that the Board could approve a variance and she felt what Mr. Zunino had

outlined in his letter was what the Wassaic Project has done. This is a world class art organization that is here in Wassaic and part of the variance would acknowledge that.

Terry Metcalfe felt that the precedent piece could be mitigated with the thought that the present sign could cover the existing plywood and in the future anything that is existing would need to be looked at carefully. To deal with the precedent issue, to mitigate it, Mr. Everett stated you need to have a written resolution that distinguishes this rationale for why you are granting this variance. If someone else come in an says they want a variance because you gave a variance for the Wassaic Project then you can pull the resolution and say we gave them a variance for these specific reasons. You must document what the decision is, in a written resolution. He also reminded the Board that this needed to be referred to the County which takes a minimum of 30 days for turnaround. Kevin Cassone asked Mr. Everett to draw up a resolution for a temporary festival sign for the Wassaic Project and Ms. Finnegan will send him a picture with confirmed dimensions.

**MOTION TO DIRECT MR. EVERETT TO DRAW UP A RESOLUTION FOR A TEMPORARY FESTIVAL SIGN FOR THE WASSAIC PROJECT** was made by Terry Metcalfe, seconded by Paula Pelosi

**VOTE TAKEN - MOTION CARRIED**

The temporary sign is not approved until the resolution is signed. Mr. Everett stated the Public Hearing will be continued until the next meeting, the Wassaic Project should submit the materials on the temporary sign as soon as possible, the resolution will be drawn up and at the next meeting there can be public comments on the temporary sign, and then the Board can adopt the resolution.

Terry Metcalfe asked if they would break any laws if they painted the plywood and artistically announce the event. Mr. Everett stated it would still be a sign which is any bill board, sign board, etc. that is intended for outdoor viewing by the public as an advertisement, announcement, direction or for identification.

**MOTION TO CONTINUE THE PUBLIC HEARING FOR THE WASSAIC PROJECT PERMANENT SIGN FOR NEXT MONTH** was made by Kevin Cassone, seconded by Terry Metcalfe

**VOTE TAKEN - MOTION CARRIED**

**MOTION TO CLOSE THE MEETING** was made by David Menegat, seconded by Kevin Cassone

Respectfully submitted,

Susan M. Metcalfe  
Secretary, Zoning Board of Appeals

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

Approved as read 08-26-2013

Approved with: deletions, corrections, and additions