

Mr. Rapplyea stated this was not a stall tactic, however the Boyd's have a right to an appeal. Chairman Blackman asked if there was anything in the old codes that identify that property having two houses on one acre? Mr. Rapplyea stated in the last code a two family dwelling is a permitted use in that zoning district. Mr. Blackman asked two single family houses? He continued there is a difference between a two family house and two single family houses. Mr. Rapplyea stated when the former Building Inspector issued the CO for this site she told them to join the two structures with a pergola and they did. Chairman Blackman felt that was illegal. The difference between two single family houses and a two family house is not the same, a pergola does not change this. The ZBA must make this decision based on the Zoning Code at the time. Mr. Rapplyea stated there is a CO at present for the house. Mr. Blackman stated it is all well documented, however what should be learned is there anything in the old code that would allow two one family dwellings on a 1.1 acre parcel. Attorney MacDonald added two one family dwellings on one lot is currently allowed in the current Code, however there are dimensional requirements, stating at least 1 acre per structure. Mr. Fenton stated he originally cited the violation from the current Zoning Law, then when Ms. Boyd pointed out the CO was issued in 2001, he went back to October 16, 1984 where the Use and Area Table was very similar to the current code. The district was different. Mr. Rapplyea asked what sections he looked at that were very similar. Mr. Fenton stated he would need to get them from his office.

Kevin Cassone asked if the pergola was ever built? Ms. Boyd stated it was built then the Building Inspector (at that time) the following year told them it could be taken down. When they came to give CO for the pergola they were told the law had changed that it was an accessory and should be taken down. They stated the date was after 2007. Kevin Cassone asked Mr. Rapplyea what zone he determined the Boyd's house to be in pre-2007, under the old Code? Mr. Rapplyea answered RM – Residential Medium density. It is now in the SR – Suburban Residential. Mr. Fenton stated the January 2002 Zoning Law, Schedule 2, Area Zoning Map, dated 1984 nothing changed until the 2007 chart. Chairman Blackman felt RM seems to have a minimum lot area of 43,560 square feet – 1 acre. Attorney MacDonald stated in the current code 121-12 states you can have two houses on one lot as long as they meet the dimensional requirements. There should be the same in the old code. Mr. Rapplyea stated he could not find it in the old code and felt this should come under the old law.

Chairman Blackman stated to understand how this all came about, the documents for the original building permit and the references immediately after indicate there was a permit to replace one building with another. Why the original building was not torn down or removed from the property when the house was completed. Ms. Boyd stated that a house was ordered in 1998 and it fell through. In 2000 they were able to purchase a different house so the permit was renewed. Originally the first house was to be put where the trailer stands, however the second house was put on cleared land behind the trailer. In 2005 there was a violation stating the trailer should not be on the lot. Chairman Blackman read the definition of a building accessory from the Code. Mr. Rapplyea felt it was not defined in the Code and felt if it is not defined in the Code then you must err on the side of the property owner. He continued under Schedule I of the permitted uses under the old Code states two family dwellings – 121-79 at the bottom of the page. Both density regulations for the RM district – minimum lot dimensions of 40,000 square feet – this means to conduct a principal use in that zoning district you must have 40,000 square feet. In Schedule I, Principal Permitted Use – is two family dwellings. This is not an accessory structure. Mr. Fenton went on to say when he went to the property, it is clearly two single family homes – separate. Attorney MacDonald stated whether the Code at the time the CO was issued, permitted two principal dwellings are allowed on the same lot, what dimensional requirements were in effect, if any at that time. Kevin Cassone and Mr. Fenton went out to look at the property. They felt it was two single

family dwellings. A two family dwelling is connected, however this is clearly two one family dwellings. Mr. Rapplyea asked if they were connected would they would qualify. Chairman Blackman stated not if they were connected by a pergola. Mr. Rapplyea felt whether the two units were connected or not there still would be the same number of occupants. Mr. Blackman went on stating that the original building application was clear that one single family house (trailer) was to replace the new (modular) single family house. The trailer never went away. Mr. Rapplyea stated that is what should have happened, but did not. If it had been problematic with the Building Department, they would never have issued the CO. Mr. LaRobadier had his complaints – the State DOT, the Dutchess County Department of Health and the Amenia Building Department have all visited the site. Ms. Brusie came out and stated this can't be done and tells the Boyd's how to fix the problem (build a pergola between the two structures) and then another CO was given with the pergola built. Then the Boyd's finance their property, they have a CO and the mortgage document states they can't make changes to the property. Mr. Cassone asked if they have a mortgage with the two structures on it. Mr. Rapplyea stated yes and if the trailer is removed, then the mortgage could become due in full. David Menegat stated if the trailer is removed, it would lower the property value.

Dennis Johnson, attorney for Mr. LaRobider spoke to the Board stating the Building permit that was issued in 2000 called for the replacement of a house without an updated septic system. There is now a double load on the septic system. The DC Department of Health states this is not to happen. The DOH relays on the Town's to enforce this. He stated he believed the septic system began to fail due to the extra load. The Boyd's went on to Town land and buried leach field on Town Land so the system could continue to operate. This leach field goes right across Mr. LaRobider's right of way to his property. This is an illegal septic system. Mr. Rapplyea stated the DC DOH is not going to do anything further and stated this is a closed issue with them. The DOT also came out on the site, didn't require the Boyd's to do anything and stated in the future you might require a DOT permit and if so this can be applied for. A copy of that letter is on file. Regarding the septic between the DOH and the Boyd's engineer, Mr. Fenton has the closeout documentation for that matter. Mr. Fenton has a letter in the file where the Department of Health is closing this matter and they will only get involved if the system fails.

Attorney Johnson stated there was a drawing that was attached to the permit for the building of the house which shows a septic leach system and is located below the house. Exhibit A is a diagram which shows that the trailer and septic system is located on the property line. If there is a septic leach system at all it must be off the Boyd's property and Town Code doesn't allow it. John Fenton stated that the septic is another separate issue. Attorney MacDonald stated that the septic was not an issue before the ZBA at this time. If there is a violation regarding the septic it is up to Mr. Fenton to issue a violation. Mr. Fenton stated there is no hard concrete evidence. Mr. MacDonald continued this matter is not in the application.

Chairman Blackman stated that it is clear that in 2001 there is a building permit for a modular house to replace a mobile home, the mobile home never went away. Why? Is there a copy of the original building permit? Mr. Rapplyea responded stating that when the CO was given for the new home, they inspected the property saw the new home and the old one. They should have had the old one removed right then before the CO was issued. Then two years go by and the Building Officer went out, told the Boyd's to put a pergola up, to solve the problem. At that point the Building Officer issued a CO however, did not issue any violation.

Chairman Blackman went through the file to review documentation. He concluded that there is no justification having both structures remain on the property when it was clearly stated a replacement

home. Ms. Boyd stated that originally the new home was going to be placed where the mobile home was positioned on the lot, however the new home was placed behind the existing mobile home. Chairman Blackman stated he still has not seen any documentation that states, erect 2nd home on same lot. If another home is to be placed on the property there should be drawings of that for the Building Office review. How could this be considered legal? Mr. Rapplyea stated that the use is a permissible use in that zoning district at that time. Attorney MacDonald continued that the current application is for a variance, it is an area variance not a use variance, however is not for an interpretation. Mr. Rapplyea stated Mr. Fenton issued a violation based on the post 2007 Code, I sent him a letter stating under the old Code this is a pre-existing, non-conforming use. Mr. Fenton must make a determination whether or not Mr. Rapplyea is wrong. Mr. Rapplyea will write a new letter to Mr. MacDonald and to Mr. Fenton.

MOTION TO ADJOURN THE PUBLIC HEARING UNTIL APRIL 17, 2013 MEETING was made by Leo Blackman, seconded by David Menegat

ALL IN FAVOR – MOTION CARRIED

MOTION TO APPROVE THE MINUTES OF NOVEMBER 28, 2012 was made by Leo Blackman, seconded by David Menegat

ALL IN FAVOR - MOTION CARRIED

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

ALL IN FAVOR - MOTION CARRIED

Respectfully submitted,

Susan M. Metcalfe
ZBA Secretary

The foregoing represents unapproved minutes of the Town of Amenia Zoning Board of Appeals from a meeting held on February 13, 2013 and are not to be construed as the final official minutes until so approved.

Approved as read

Approved with: deletions, corrections, and additions