

**The Town of Marcellus Zoning Board of Appeals
24 East Main Street
Marcellus, New York 13108**

January 3, 2011

Present: Chairperson Michelle Bingham, Gerard Wickett, Bob Ciota, Chris Christensen, Robert Oliver
Town Counsel: Jim Gascon of Costello, Cooney, and Fearon
Town Engineer: Jeffrey Nadge of Barton & Loguidice (absent)
Codes Officer: William Reagan (absent)

The Zoning Board of Appeals of the Town of Marcellus met in regular session in the Town Hall for the Town of Marcellus, located at 24 E. Main Street, Marcellus, New York, on January 3, 2011, at 7:00pm.

Richard Wright, 4809 North Street – front yard variance

A public hearing was held for a front yard variance of 12' reduction from 35' to 23' to allow construction of a garage. The secretary, Karen Cotter, read the legal notice into the minutes and advised that the certified mailing receipts were on file. The applicant was not present. The Chair, Jerry Wickett, read the OCPB resolution #Z-10-433, dated December 22, 2010, into the minutes. They would use the existing driveway. The Board questioned if the garage would be located in the road right-of way and if there was an existing permit from the NYSDOT. The applicant had advised, at the December meeting, that the building would be located above the flood plain. Chris Christensen said he would like to see the specific elevation indicated on the survey to make sure it is not located in the floodway. He would also like to see the exact location of the building and exact setbacks. Jerry Wickett made a motion to adjourn the public hearing and Bob Ciota seconded. The applicant must provide an approved permit from NYSDOT and a survey indicating the elevation and location on the garage.

Sandra Collins, 2493D Roman Ave – area variance

Thomas Eron, Attorney, and Mrs. Collins were present for additional discussion to allow her parcel to be considered a building lot as it does not have road frontage. Chris Christensen advised that he had spent several hours reviewing the files in the Town Hall. The following is the history of the project as explained by Mr. Christensen:

- 1985/1986 Ward Anderson wanted to create approximately 30 lots. Onondaga County advised that he must hook up to the sewer system and the village would not allow that.

PART 1

- Mr. Anderson requested two (2) parcels – called lots C and D. Mr. Anderson then modified his plan and created parcels A and B. They were sold in 1986 to one person. It was during the time that the subdivision regulations were under review and revision.

- During the creation of lots A & B a 60' piece of land was reserved for future road right of way. Rights to a portion of that land were added to lot B
- In November, 1986 the PB approved parcel A & B with the remaining lot held by Ward Anderson. Lots C & D did not exist.
- Lots A & B were sold in June and July and final subdivision was approved in February.
- Verbiage on a map indicates that there is a 60' ROW and easement for OCWA but this was not noted in the PB minutes. Lot A was issued building permits based upon the transfer of rights of a portion of the 60' ROW and Lot B was issued building permits based upon application and approval.

Part 2

- In 1987 the subdivision process started again and on September 16, 1987 lots C & D were approved.
- Both lots were sold to Bruce Pollock. Deed for lot C includes the 60' ROW in its entirety
- Lot D had rights to use the easement
- Mr. Anderson created a 30' easement on the west side and a 30' easement on the east side.

Mr. Christensen advised that he has spoken to PB members from that time period and it was always their intent to create the road but it was never indicated when it had to be created. He would like to see in any resolution proposed that the intent of the 60' ROW was clearly understood and it is still the intent that it is to be used to access the adjacent property. At the time of the original subdivision it was to be used as a future road. Chris Christensen wants to make it very clear in the verbiage that if the neighbors in the rear of these lots need this 60' row they can use it for access to their property. Jerry Wickett thanked Mr. Christensen for all his research. Mr. Wickett then made a motion to overrule the Codes Officer as lot D2493 Roman Ave is an approved building lot in accordance with prior actions of the previous Planning Board by evidence dated December 16, 1982 – map #6723. The property owners must meet all the stipulations of the original subdivision including the 60' ROW reserved for a future road. Chris Christensen seconded and added that after reviewing the history of the project it was the clear intent (of the original Planning Board) that the 60' right of way was intended for development. Mr. Wickett amended his resolution to include that addition. The motion was approved with the following vote:

Bob Ciota - aye
Chris Christensen - aye
Robert Oliver - aye
Jerry Wickett - aye
Michelle Bingham – aye

RESOLUTION
TOWN OF MARCELLUS ZONING BOARD OF APPEALS

At a regular meeting of the Town of Marcellus Zoning Board of Appeals held at the Town Hall, 24 East Main Street, in said Town, County of Onondaga, State of New York on January 3, 2011, at 7:00 p.m. There were:

PRESENT:	Michele Bingham	Chairperson
	Gerard Wickett	Board Member
	Bob Ciota	Board Member
	Chris Christensen	Board Member
	Robert Oliver	Board Member
	Town Counsel James Gascon of Costello, Cooney & Fearon, PLLC	
ABSENT:	Jeffrey Nadge of Barton Loguidice, Engineer	
	William Reagan, Codes Officer	

WHEREAS, Sandra Collins, as owner of 2493D Roman Avenue filed an application for a building permit on November 16, 2010; and

WHEREAS, Sandra Collins' application for a building permit was denied by the Town of Marcellus Code Enforcement Officer by determination dated November 29, 2010, on the basis that she did not own a proper building lot as the code enforcer determined the lot did not have sufficient road frontage; and

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WHEREAS, by application dated December 20, 2010, Sandra Collins sought an appeal to the Zoning Board of Appeals from the Code Enforcer's denial of a building permit and in addition, or in the alternative, for an area variance with respect to the road frontage requirement; and

WHEREAS, Mrs. Collins and her attorney Thomas Enon appeared on January 3, 2011 for additional discussion requesting that her parcel be considered a building lot even though it does not have sufficient road frontage; and

WHEREAS, Board Member Chris Christensen advised that he had spent several hours reviewing the files in the Town Hall. The following is the history of the project as explained by Mr. Christensen:

- 1985/1986 Ward Anderson wanted to create approximately 30 lots. Onondaga County advised that he must hook up to the sewer system and the village would not allow that.
- Mr. Anderson requested two (2) parcels – called lots C and D. Mr. Anderson then modified his plan and created parcels A and B. They were sold in 1986 to one person. One of the lots was then sold to another party. It was during the time that the subdivision regulations were under review and revision.
- During the creation of lots A and B, a 60' piece of land was reserved for future road right of way. Rights to a portion of that land were added to lot B; and

WHEREAS, Mr. Christensen further advised:

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- In November, 1986 the PB approved parcels A and B with the remaining lot held by Ward Anderson. Lots C and D did not exist yet.
- Lots A and B were sold in June and July and final subdivision was approved in February of the next year.
- Verbiage on a map indicates that there is a 60' ROW and easement for OCWA but this was not noted in the PB minutes. Lot B was issued building permits based upon the transfer of rights of a portion of the 60' ROW and Lot A was issued building permits based upon application and approval; and

WHEREAS, Mr. Christensen further advised his review revealed that:

- In 1987 the subdivision process started again and on September 16, 1987, lots C and D were approved.
- Both lots were sold to Bruce Pollock.
- Deed for Lot C includes the 60' ROW in its entirety.
- Lot D had rights to use the easement.
- Mr. Anderson created a 30' easement on the west side and a 30' easement on the east side; and

WHEREAS, Mr. Christensen advised that he has spoken to PB members from that time period and it was always their intent to create the road but it was never indicated when it had to be created. He would like to see in any resolution proposed that the intent of the 60' ROW was clearly understood and it is still the intent that it is to be used to access the adjacent property. At the time of the original subdivision, it was to be used as a future road. Chris Christensen wants

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to make it very clear in the verbiage that if the neighbors in the rear of these lots need this 60' ROW they can use it for access to their property; and

WHEREAS, Jerry Wickett thanks Mr. Christensen for all his research.

NOW, upon motion of Board Member Jerry Wickett, and seconded by Board Member Christensen, it is hereby

RESOLVED, that the determination of the Codes Officer is overruled and reversed as it is the determination of this Board that Lot 2493D Roman Avenue is already an approved building lot in accordance with prior actions of the Planning Board by evidence dated December 16, 1982 – Map #6723; and it is further

RESOLVED, the property owners must meet all of the stipulations of the original subdivision, including the 60 foot right of way reserved for a future road; and it is further

RESOLVED, that upon review of the history of this project it is this Board's determination that it was the clear intent of the original Planning Board, that the 60 foot right of way was intended for future development.

The question of the adoption of the foregoing resolution was duly put to a vote and the vote was as follows:

Bob Cioto – aye

Chris Christensen – aye

Robert Oliver – aye

Jerry Wickett – aye

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Michelle Bingham – aye

Resolution duly adopted.

Dated: January 3, 2011

Bob Ciota asked that a letter be sent to the Town Board requesting Mrs. Collins fee be refunded.

The minutes of the December meeting stand as distributed.

The meeting was adjourned at 8:10pm.

Respectfully submitted,

Karen Cotter
Secretary