

The Town of Marcellus Zoning Board of Appeals

**24 East Main Street
Marcellus, New York 13108**

May 7, 2012

Present: Chairperson Michelle Bingham, Gerard Wickett, Bob Ciota, Chris Christensen
Michelle Bingham, Robert Oliver
Town Counsel: Jim Gascon of Costello, Cooney, and Fearon
Town Engineer: Jason Kantak of TDK Engineering
Codes Officer: William Reagan

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 May 7, 2012, at 7:00pm.

Michael VanBeveren, 4640 Crannapple Drive – special permit

A public hearing was held for a special permit to allow a 16' X 10' storage shed on his property. He would like to store pool supplies and yard equipment in it. It will have electricity but no water. The secretary, Karen Cotter, read the legal notice into the minutes. The Chair, Michelle Bingham asked if anyone would like to speak in favor or in opposition to the project and there were none. Jerry Wickett made a motion to close the public testimony and the public hearing and Chris Christensen seconded. The motion was carried with the following vote:

Bob Ciota - aye
Chris Christensen - aye
Robert Oliver - aye
Jerry Wickett - aye
Michele Bingham - aye

Jerry Wickett moved to approve the project as presented as the project will meet all setback requirements, it fits the character of the neighborhood and a public hearing was held and there was no opposition and no business shall be run from it. Chris Christensen seconded and the motion carried with the following vote:

Bob Ciota - aye
Chris Christensen - aye
Robert Oliver - aye
Jerry Wickett - aye
Michele Bingham - aye

The request of Michael VanBeveren for a special permit in a R1 zone to allow him to construct a 10' X 16' shed at his residence at 4640 Cranapple Drive, Marcellus, New York.

The Zoning Board of Appeals of the Town of Marcellus met in Regular Session in the Town Hall of the Town of Marcellus, 24 E. Main Street, Marcellus, NY, on May 7, 2012 commencing at 7:00pm, local time at which time and place the following Resolution was moved, seconded and passed.

WHEREAS: The applicant is located in a R1 district: and

WHEREAS: There will be no undesirable change in the character of the neighborhood or detriment to nearby properties: and

WHEREAS: The use shall be consistent with and subordinate to the principal use and may not be carried on independently of the principal residential use: and

WHEREAS: The special permit is used for the use specified on the application. Any change of use is subject to approval by the Zoning Board of Appeals: and

WHEREAS: The special permit conforms to side yard, front and rear setbacks.

THEREFORE BE IT RESOLVED that said special permit be granted upon the following condition:

1. Applicant must apply for a building permit that grants permission for construction.
2. The shed is for personal use only and no business shall be operated from it.

Martin and Maria Fishkin, 2661 Falls Road – special permit

A public hearing was held for a special permit to allow a 20' X 18' storage shed on their property. They would like to store yard equipment in it. It will have electricity but no water. The secretary, Karen Cotter, read the legal notice into the minutes. The Chair, Michelle Bingham, asked if anyone would like to speak in favor or in opposition to the project and there were none. Jerry Wickett made a motion to close the public testimony and the public hearing and Chris Christensen seconded. The motion was carried with the following vote:

Bob Ciota - aye
Chris Christensen - aye
Robert Oliver - aye
Jerry Wickett - aye
Michele Bingham - aye

Chris Christensen moved to approve the project as presented as the project will meet all setback requirements, it fits the character of the neighborhood and a public hearing was held and there was no opposition, and no business shall be run from it. Michelle Bingham seconded and the motion carried with the following vote:

Bob Ciota - aye
Chris Christensen - aye
Robert Oliver - aye
Jerry Wickett - aye
Michele Bingham - aye

The request of Martin and Maria Fishkin for a special permit in a R1 zone to allow him to construct a 20' X 18' shed at their residence at 2661 Falls Road, Marcellus, New York.

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WHEREAS: The applicant is located in a R1 district: and

WHEREAS: There will be no undesirable change in the character of the neighborhood or detriment to nearby properties: and

WHEREAS: The use shall be consistent with and subordinate to the principal use and may not be carried on independently of the principal residential use: and

WHEREAS: The special permit is used for the use specified on the application. Any change of use is subject to approval by the Zoning Board of Appeals: and

WHEREAS: The special permit conforms to side yard, front and rear setbacks.

THEREFORE BE IT RESOLVED that said special permit be granted upon the following condition:

1. Applicant must apply for a building permit that grants permission for construction.
2. The shed is for personal use only and no business shall be operated from it.

Daniel Falge, 4343 Chilmark Street – special permit

A public hearing was held for a special permit to allow a 20' X 14' storage shed on their property. He would like to store his tractor and garden tools in it. It will not have electricity or water. The secretary, Karen Cotter, read the legal notice into the minutes. The Chair, Michelle Bingham, asked if anyone would like to speak in favor or in opposition to the project and there were none. Jerry Wickett made a motion to close the public testimony and the public hearing and Chris Christensen seconded. The motion was carried with the following vote:

Bob Ciota - aye
Chris Christensen - aye
Robert Oliver - aye
Jerry Wickett - aye
Michele Bingham - aye

Chris Christensen moved to approve the project as presented as the project will meet all setback requirements, it fits the character of the neighborhood and a public hearing was held and there was no opposition, and no business shall be run from it. Chris Christensen seconded and the motion carried with the following vote:

Bob Ciota - aye
Chris Christensen - aye
Robert Oliver - aye
Jerry Wickett - aye
Michele Bingham - aye

The request of Daniel Falge for a special permit in a R1 zone to allow him to construct a 20' X 14' shed at their residence at 24343 Chilmark Street, Marcellus, New York.

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WHEREAS: The applicant is located in a R1 district: and

WHEREAS: There will be no undesirable change in the character of the neighborhood or detriment to nearby properties: and

WHEREAS: The use shall be consistent with and subordinate to the principal use and may not be carried on independently of the principal residential use: and

WHEREAS: The special permit is used for the use specified on the application. Any change of use is subject to approval by the Zoning Board of Appeals: and

WHEREAS: The special permit conforms to side yard, front and rear setbacks.

THEREFORE BE IT RESOLVED that said special permit be granted upon the following condition:

1. Applicant must apply for a building permit that grants permission for construction.
2. The shed is for personal use only and no business shall be operated from it.

Johnny and Eileen DeZenzio, 3809 Southeast Townline Road – area variance

A public hearing was held for a front yard area variance with a 3' reduction from 35' to 32' to allow construction of an 8' X 26' deck in their front yard. The secretary, Karen Cotter, read the legal notice into the minutes and advised certified mailing receipts are on file. The Chair, Michelle Bingham, asked if anyone would like to speak in favor or in opposition to the project and there were none. There will be one (1) step down off of the deck. Jerry Wickett made a motion to close the public testimony and the public hearing and Chris Christensen seconded. The motion was carried with the following vote:

Bob Ciota - aye
Chris Christensen - aye
Robert Oliver - aye
Jerry Wickett - aye
Michele Bingham - aye

Jerry Wickett made a motion to approve the project as presented as this is a very low traffic area with a minimal chance of the road width to change, it is consistent with other front decks that exist in the neighborhood. Chris Christensen seconded. The motion was carried with the following vote:

Bob Ciota - aye
Chris Christensen - aye
Robert Oliver - aye
Jerry Wickett - aye
Michele Bingham - aye

The appeal of Johnny and Eileen DeZenzio for a front yard reduction of 3' from 35' to 32' in a R1 zone to allow a deck at their residence on 3809 Southeast Townline Road, Marcellus, New York.

The Zoning Board of Appeals of the Town of Marcellus met in Regular Session in the Town Hall of the Town of Marcellus, 24 E. Main Street, Marcellus, NY, on May 7, 2012 commencing at 7:00pm. local time at which time and place the following Resolution was moved, seconded and passed.

WHEREAS, notice of public hearing for the above captioned project was duly published in the official newspaper of the Town of Marcellus at least five (5) days prior to the date of such public hearing, and an affidavit of such publication was produced at the beginning of said public hearing and was ordered to be filed: and

WHEREAS, all additional notice thereof was given as required by Section 267 of the Town Law and Marcellus Zoning Ordinance: and

WHEREAS, the ZBA duly held the public hearing thereon at the time and place aforesaid and all persons desiring to be heard having been heard; and

WHEREAS, all Zoning Board of Appeals members had due notice of said public hearing and meeting, and, that pursuant to Section 94 of the Public Officers Law (Public Meetings Law), said meeting was open to the general public and due and proper notice of the time and place thereof was duly given as required by law.

NOW THEREFORE BE IT RESOLVED that upon the application and upon the proofs and proceedings offered at the public hearing, which was or is hereby closed, the ZBA hereby makes the following:

FINDINGS OF FACT:

1. The subject premises are located at 3809 Southeast Townline Rd, Marcellus, New York
2. The subject premises are zoned R1 district, pursuant to the zoning map, which is part of the Zoning Ordinance of the Town of Marcellus.
3. The relief sought is: Section 6a to allow a front yard variance for a deck
4. No one appeared in favor or in opposition to the variance.

CONCLUSIONS OF LAW:

1. The project will comply with rear and side yard setback requirements according to the zoning ordinance
2. There will be no undesirable change in the character of the neighborhood or detriment to nearby properties.

NOW THEREFORE in consideration of the above, the applicant's request for an area variance is hereby granted with the following contingencies:

1. Applicant must apply for a building permit that grants permission for construction.

Verizon Wireless, 2748 Rose Hill Road – Crown Castle special permit modification

A continuation of the public hearing was held and Taylor Kline was present to represent the project. A letter from the B & L , dated May 4, 2012, was read into the minutes. Chris Christensen made a motion to close the public testimony and public hearing and Michelle Bingham seconded. The motion was carried with the following vote:

Bob Ciota - aye
Chris Christensen - aye
Robert Oliver - aye
Jerry Wickett - aye
Michele Bingham - aye

Chris Christensen made a motion to approve the modification of the existing special permit as it is consistent with the sharing of the tower with multiple users, we received an updated inspection report, the letter of credit is still on file, and the letter from B & L, dated May 4, 2012, stated that the load is still acceptable and all prior existing conditions on this tower apply. Michelle Bingham seconded and the motion carried with the following vote:

Bob Ciota - aye
Chris Christensen - aye
Robert Oliver - aye
Jerry Wickett - aye
Michele Bingham - aye

The Zoning Board of Appeals of the Town of Marcellus met in Regular Session in the Town Hall of the Town of Marcellus, 24 E. Main Street, Marcellus, NY, on May 7, 2012, commencing at 7:00pm, local time at which time and place the following Resolution was moved, seconded and passed.

WHEREAS: The applicant is located in a Agricultural district: and

WHEREAS: There will be no undesirable change in the character of the neighborhood or detriment to nearby properties.

WHEREAS: The use shall be consistent with and subordinate to the principal use and may not be carried on independently of the principal residential use.

WHEREAS: The amendment to the special permit is for the use specified on the application. Any change of use is subject to approval by the Zoning Board of Appeals.

THEREFORE BE IT RESOLVED that said amendment to the Crown Castle (originally Cellular One) special permit be granted upon the following conditions:

1. The Board must be notified prior to any changes that take place.
2. Updated inspection reports must be submitted annually
3. Applicant must apply for a building permit, which grants permission for construction.
4. All provisions/conditions of the original permit and subsequent modification approvals apply.

Verizon Wireless, 3050 West Seneca Turnpike – Crown Castle special permit modification

A continuation of the public hearing was held and Taylor Kline was present to represent the project. A letter from the B & L, dated May 4, 2012, was read into the minutes. There were several open items that were discussed:

- The PB wanted to make sure there was no reduction in coverage in Marcellus and we were advised that would not happen with the change
- Chris Christensen is concerned on how a report submitted at an earlier meeting stated that they are at 102% but with this report we go to 89% and are adding a slightly higher array. We are now told that the prior report was based on a three (3) part array but it has only two (2) parts. We approved the last modification based on what was presented with a specific array – we need to know exactly what is being installed on the towers. The information supplied for this project would modify what is existing – it must be understood that they can't put a three(3)-part array on the tower at this time. The change is contrary to what was approved.
- B & L review indicates that there is room on the tower for additional array – as presented by this applicant
- There is enough fall safety zone
- The report presented did not include the cables and/or weight of cables or take into consideration future weight from proposed construction

The Town Attorney will write a letter to the cell tower owner (Crown Castle) raising concerns generated from this application so we can avoid these issues in the future. Bob Ciota made a motion to close the public testimony/public hearing and Chris Christensen seconded. The motion carried with the following vote:

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

Chris Christensen made a motion to approve the modification of the Crown Castle special permit for Verizon as a public hearing was held and there was no opposition; all prior conditions on existing special permits remain in effect; the array is to be consistent with the existing conditions in the engineering report dated March 8, 2012; there shall be no modification of any tenant without a review and approval of the ZBA; this approval is intended to clean up the inconsistent prior applications and information submitted. Bob Ciota seconded and the motion carried with the following vote:

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

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WHEREAS: The applicant is located in a Agricultural district: and

WHEREAS: There will be no undesirable change in the character of the neighborhood or detriment to nearby properties.

WHEREAS: The use shall be consistent with and subordinate to the principal use and may not be carried on independently of the principal residential use.

WHEREAS: The amendment to the special permit is for the use specified on the application. Any change of use is subject to approval by the Zoning Board of Appeals.

THEREFORE BE IT RESOLVED that said amendment to the Crown Castle (originally Cellular One) special permit be granted upon the following conditions:

1. The Board must be notified prior to any changes that take place.
2. Updated inspection reports must be submitted annually

3. Applicant must apply for a building permit, which grants permission for construction.
4. All provisions/conditions of the original permit and subsequent modification approvals apply.
5. No modifying of any array for any current tenant without review and approval of the ZBA.

Joseph & Katherine Kalkbrenner, 3722 Bishop Hill Rd.

Bill Lang was present to represent the project. He advised that he has been to the Town Board and they see no issues with the zone change. Mr. Lang will put together a narrative and maps indicating all of the 68 acres and where the zone change is to be located. He will need a survey with meets and bounds for the Town Board. There is a gas easement on the property and Mr. Lang will see if there are any issues with this. It is also within the critical environmental area and that needs to be taken into consideration when making the change. Jason Kantak advised that we should look at the legal implications of the gas easement. The actual boundary will be set by the Town Board. Jerry Wickett made the motion to recommend to the Town Board to approve the zone change request. Bob Ciota seconded and the motion carried with the following vote:

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

A memo will be sent to the Town Board from the Zoning Board of Appeals.

S & B Millworks, 3704 Lee Mulroy Road – side/front yard variances

Bob Ciota advised the ZBA that he has a conflict of interest on this project as his son, Brian Ciota, is part owner of S & B Millworks. Bob Ciota will abstain from participating in this project. (See May Planning Board minutes for additional information)

A public hearing was held for an area variance. The secretary, Karen Cotter, read the legal notice and advised that mailing receipts were on file. For the small existing retail building, located on lot two (2), they are requesting a side yard reduction of 9' from 25' to 16' that results from the creation of the S & B subdivision. On this lot they also require a front yard variance reduction of 39' from 60' to 21'. On the existing large frame building (located on Lot 1) they are

requesting a front yard variance reduction of 48' from 60' to 12'. Both properties are located in a light industrial zone. Michelle Bingham read the OCPB resolution Z-12-152 dated April 18, 2012 into the minutes. Chris Christensen made a motion to close the public testimony and public hearing and Jerry Wickett seconded. The motion carried with the following vote:

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

Jerry Wickett made a motion to approve the area variances as presented as a public hearing was held and there was no opposition, the front yard variances are pre-existing and the side yard variance will have no impact on the approved subdivision. Chris Christensen seconded and the motion carried with the following vote:

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

The appeal of S & B Millworks for variances on lot two (2) for a side yard reduction of 9' from 25' to 16' and a front yard reduction of 39' from 60' to 21'. On lot one (1) a front yard variance reduction of 48' from 60' to 12' in a Light Industrial zone to legitimize existing buildings on their property at 3704 Lee Mulroy Road, Marcellus, New York.

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WHEREAS, notice of public hearing for the above captioned project was duly published in the official newspaper of the Town of Marcellus at least five (5) days prior to the date of such public hearing, and an affidavit of such publication was produced at the beginning of said public hearing and was ordered to be filed: and

WHEREAS, all additional notice thereof was given as required by Section 267 of the Town Law and Marcellus Zoning Ordinance: and

WHEREAS, the ZBA duly held the public hearing thereon at the time and place aforesaid and all persons desiring to be heard having been heard; and

WHEREAS, all Zoning Board of Appeals members had due notice of said public hearing and meeting, and, that pursuant to Section 94 of the Public Officers Law (Public Meetings Law), said meeting was open to the general public and due and proper notice of the time and place thereof was duly given as required by law.

NOW THEREFORE BE IT RESOLVED that upon the application and upon the proofs and proceedings offered at the public hearing, which was or is hereby closed, the ZBA hereby makes the following:

FINDINGS OF FACT:

1. The subject premises are located at 3704 Lee Mulroy Road, Marcellus, New York
2. The subject premises are zoned Light Industrial district, pursuant to the zoning map, which is part of the Zoning Ordinance of the Town of Marcellus.
3. The relief sought is: Section 6a to allow a front yard and side yard variance to legitimize existing buildings
4. No one appeared in favor or in opposition to the variance.

CONCLUSIONS OF LAW:

1. The project will comply with all other setback requirements according to the zoning ordinance
2. There will be no undesirable change in the character of the neighborhood or detriment to nearby properties.

NOW THEREFORE in consideration of the above, the applicant's request for an area variance is hereby granted with the following contingencies:

1. No building permit shall be issued until the original filing receipts are submitted to the Planning Board.

The minutes of the April meeting stand as distributed.

Meeting adjourned at 9:15pm

Respectfully submitted,

Karen Cotter
Secretary