

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

**October 5, 2015**

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

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 October 5, 2015 at 7:00pm.

**James & Elizabeth Kinney, 3144 Falls Rd – side yard variance**

A public hearing was held for a side yard variance to allow the applicant to construct a garage. The secretary, Karen Cotter, read the legal notice and advised that the certified mailing receipts are on file. Mrs. Kinney explained that they do not have a garage on the property and they would like to construct a two (2) car garage. They are requesting a 9' reduction from 15' to 6'. There was discussion if it could be located in another location without a variance and due to the economics and location of the driveway this would be the best location. It is for private use only and no business shall be operated from it. There will be no heat but it will have power. The Chair, Michelle Bingham, asked if anyone would like to speak in favor and DJ VanKueren, 2368 East Rocky Top, Aurora, CO advised that he was in favor and there was no opposition. Hearing no further questions Bob Ciota made a motion to close the public hearing and Jerry Wickett second. The motion carried with the following vote:

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

Bob Ciota made a motion to approve the side yard area variance for an 18' X 24' garage as a public hearing was held and there was 1 person who spoke in favor of the project, it conforms to other structures and is not a detriment to the neighborhood. Jerry Wickett second and the motion carried with the following vote:

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

The appeal of James and Elizabeth Kinney for a side yard reduction of 9' from 15' to 6' in a R1 zone to allow a garage at their residence on 3144 Falls Rd, 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 October 5, 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 3144 Falls Road, 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 side yard variance for a garage
4. One appeared in favor and no opposition to the variance.

CONCLUSIONS OF LAW:

1. The project will comply with front, rear, and 1 sideyard 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 shall be constructed without a building permit.

**Reinald Smith, 4158 New Seneca Turnpike – special permit**

A public hearing was held to allow Mr. Smith to install solar panels in his yard. This is the first time the Board has had this request and there is nothing in our zoning regulations specifically for solar panels. We are, therefore, following the regulations similar to an accessory building. The Chair, Michelle Bingham asked if anyone would like to speak in favor of the project and DJ VanKueren, 2368 East Rocky Top, Aurora, CO advised that he was in favor and there was no opposition. Hearing no further questions Chris Christensen made a motion to close the public hearing and Bob Ciota second. The motion carried with the following vote:

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

Bob Ciota made a motion to approve the installation of ground base solar panels that are 10' X 28' X 13' located in the back yard and will not be visible to the neighbors; the project will meet all setback requirements; a public hearing was held and there was one person in favor and no opposition. Chris Christensen seconded and the motion carried with the following vote:

Bob Ciota - aye

Chris Christensen - aye

Jerry Wickett - aye

Michele Bingham – aye

Robert Oliver – aye

The request of Reinald Smith for a special permit in a R1 zone to allow him to construct solar panels at his residence at 4158 New Seneca Turnpike, 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 October 5, 2015, 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.

**Ronald Togni, 4426 Limerick Street – side yard variance**

The applicant would like to add a bedroom addition and is requesting a 1' reduction on a side yard variance from 15' to 14'. The front porch and steps will remain the same. The property has an existing approved non-conforming variance and they are not increasing the non-conformity. Hearing no questions from the ZBA, the project will be sent to a public hearing for the November meeting.

**Marcellus Golf Course, West Seneca Turnpike – Special Permit Modification**

DJ Van Kueren was present to discuss his request, dated September 23, 2015 to allow the golf course and restaurant to be open year round. He advised they would have a golf simulator, pitch leagues, dart leagues, cross country skiing and snow shoeing as well as meetings held at the site. Jerry Wickett stated that before we could move forward with the request, we have an issue with this property as it is different than what the tax records show and was sold without benefit of subdivision. Historically we have not increase activities to an illegally created lot and our regulations state this must be completed. Jim Gascon stated that a portion of this property was sold off without approval of the Town, creating an illegal subdivision. It is financially impossible to bring this property into compliance and this applicant did not create the problem. Bob Ciota feels the responsibility of the subdivision falls on past owner and as a Board we should try and come to a resolution to fix the issue. The questions arose as to who has the legal authority to correct this. If the owner of the other lot came before our Board we would not approve anything without going through the subdivision process. The person who is benefiting from this would be the person who *owns*\* the newly created illegal parcel of property – the golf course doesn't benefit. Chris Christensen stated there is also the issue with what was sold off to create the 10 acres and the fact that some of the golf course's drainage exists on the other lot. Jim Gascon stated that this is a very unique situation. Mr. Van Kueren advised the Board that without this property becoming a year round facility it is not financially feasible for him to keep it open. Chris Christensen tried to explain that this facility is in a R1 zone and when it was originally before the Board there was a great deal discussion and objections from the neighbors. The hours of operation for the facility are from dawn to one hour after dusk and they would be open until December 26 to allow holiday parties. The restaurant is ancillary to the golf course and not a separate entity. A restaurant is not an allowable use in a Residential 1 zone. Mr. Van

Kueren became angry and agitated when discussing the additional sign, (permit was denied), what the hours for different events were going to be and what additional plans he had. There was also discussion that the request for a revised special permit needed to go to a public hearing. Mr. Van Kueren was yelling and swearing at the PB and Bob Oliver left the meeting. Mr. Van Kueren stated that the PB did not have the best interest of the Town and they didn't know what they were talking about. He also stated that he was done with the PB and would not attend the public hearing or any other meetings. Jim Gascon's advised we send this to a public hearing with the extended hours through January, February, and March and see if we receive any complaints from the public regarding the new hours of operation and/or traffic. This would give the applicant a chance to regroup. Bob Ciota advised DJ that he needed to calm down and see that we are trying to move past some of the obstacles involved with this project and see what is best for both the community and the business. Mr. Van Kuren also needs to be willing to answer additional questions regarding the plan he has submitted. The PB has to be able to work within the confines of the zoning regulations and so does the applicant. Michelle Bingham stated that she is a member of the golf course, spends money there and does not appreciate how this Board was treated. Per the advice of Council, the project will be sent to a public hearing at the November meeting. Chris Christensen thanked Bob Ciota for his comments to the applicant and to the Board.

### **Marcellus Airport, Limeledge Rd. – discussion**

Kirk and Debbie Mills, owner of the airport were present to discuss a call they received from John Houser the Codes Officer. Mr. Houser had a complaint about model/radio control airplanes. They have been flying from that location since 1990. We need to see if this is a pre-existing, non-conforming use that would be permitted under a recreational use in a Residential 1 zone with limitations. Jim Gascon will research the property and complaint and advise the Board how to move forward or if anything needs to be done on this.

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The September minutes stand as distributed

-pg7-ZBA  
October 5, 2015

The meeting was adjourned at 10:00 PM.

Respectfully submitted,

Karen Cotter  
Secretary

*\*Corrected at the November 2, 2015 meeting*