

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

June 5, 2017

Present: Chairperson Michelle Bingham, Jerry Wickett,
Chris Christensen, Ron Schneider, Kathy Carroll

Absent:

Town Counsel: James Gascon of Costello, Cooney, and Fearon

Town Engineer: Jason Kantak of TDK Engineering (absent)

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 May 1, 2017 at 7:00pm.

Edward & Gina LaPlant, 3671 Slate Hill Road – special permit

A continuation of a public hearing was held to request construction of an accessory building. The ZBA is holding a meeting on June 17, 2017 to discuss accessory buildings and Mr. LaPlant advised that he would wait for a decision on his project until after that meeting.

**Richard and Pauline Herald, 2691 Slate Hill Road – front yard variance/
special permit**

A continuation of a public hearing was held for a front yard variance and special permit. The secretary, Karen Cotter, read the legal notices into the minutes and advised that mailing labels are on file. The Chair, Michelle Bingham, read the OCPB resolution, and dated May 31, 2017, #Z-17-200, into the minutes. Michelle Bingham then asked if anyone would like to speak in favor of or in opposition to the project and there were none. Jerry Wickett made a motion to close the public hearings and Chris Christensen seconded.

The motion carried with the following vote:

Jerry Wickett - aye
Michele Bingham – aye
Chris Christensen - aye
Ron Schneider – aye
Kathy Carroll – aye

Area Variance –

Jerry Wickett made a motion to approve the front yard area variance as a public hearing was held and there was no opposition; it is in keeping with the neighborhood; and is requested due to the unique nature of the lot and the location of the existing swale. Chris Christensen seconded and the motion carried with the following vote:

Jerry Wickett - aye
Michele Bingham – aye
Chris Christensen - aye
Ron Schneider – aye
Kathy Carroll – aye

The appeal of Richard and Pauline Herold for a front yard reduction of 28’ from 35’ to 13’ in a R1 zone to allow a garage at their residence on 2691 Slate Hill 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 June 5, 2017 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 2691 Slate Hill 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 garage
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. No construction shall begin without an approved building permit
2. Approval of the special permit for a 32' X 38' garage is required.

Special Permit -

Jerry Wickett made a motion to approve the project as presented as a public hearing was held and there was no opposition to the project and it is consistent

with the neighborhood. Ron Schneider seconded and the motion carried with the following vote:

Jerry Wickett - aye
Michele Bingham – aye
Chris Christensen - aye
Ron Schneider – aye
Kathy Carroll – aye

The request of Richard and Pauline Herald for a special permit in a Residential 1 zone to allow him to construct a 32' X 38'.

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 June 5, 2017, 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 Residential 1 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 and rear setbacks.

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

1. Applicant must apply for a building permit that grants permission for construction.
2. The building is for personal use only.
3. Approval of the front yard variance

Barbara Coleman, 4655 Cranapple Dr. – area variance

A public hearing was held to replace a 29' X 56' deck. The secretary, Karen Cotter, read the legal notice into the minutes. Mrs. Coleman advised that she purchased the house in August, 2016 and there was an existing pool and deck. She discovered the deck was unsafe and would need to be replaced and it did not meet the rear yard setback requirement. The Chair, Michelle Bingham, asked if anyone would like to speak in favor or in opposition to the project and there were none. Kathy Carroll made a motion to close the public hearing and Jerry Wickett seconded. The motion carried with the following vote:

Jerry Wickett - aye
Michele Bingham – aye
Chris Christensen - aye
Ron Schneider – aye
Kathy Carroll – aye

Kathy Carroll moved to approve the project as presented as a public hearing was held and there was no opposition; the applicant is rectifying an existing setback issue; and there is no detriment to the neighborhood. Jerry Wickett seconded and the motion passed with the following vote:

Jerry Wickett - aye
Michele Bingham – aye
Chris Christensen - aye
Ron Schneider – aye
Kathy Carroll – aye

The appeal of Barbara Coleman for a rear yard reduction of 10' from 35' to 25' in a R4 zone to allow a pool deck at her residence on 4655 Cranapple Dr, 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 June 5, 2017 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 4655 Cranapple Dr. Marcellus, New York
2. The subject premises are zoned R4 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 rear yard variance for a pool deck
4. No one appeared in favor or in opposition to the variance.

CONCLUSIONS OF LAW:

1. The project will comply with front 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. No construction shall begin without an approved building permit

Bishop Hill Ventures, 3995 Bishop Hill Rd. – zoning interpretation

A public hearing was held for a zoning interpretation to decide if the gravel bed has continued as an active non-conforming use. The secretary, Karen Cotter, read the legal notice into the minutes. As discussed at the May meeting, questions were submitted to the applicant today and we will ask to receive a response no later than 20 days from today. They would like to mine and reclaim this property. Town Attorney, Jim Gascon, explained this process, if approved would be two (2) parts.

1. Permit aspect
2. Reclamation – they would need to submit a plan to the DEC and to this Board showing the slope and vegetation and how they are going to bring this property to a safe place.

The Chair, Michelle Bingham, asked if anyone would like to speak in favor of the project and there was none. She then asked if anyone would like to speak in opposition and the following spoke:

1. William and Julie Spencer, 3871 New Seneca Turnpike –concerned about all of the additional truck traffic on the surrounding roads
2. Bill Branson, 2103 Lawrence Rd. – He stated that this property has been farmed for a number of years and wondered what the municipal code was for when a non-conforming business stops and is no longer allowed. It has been a number of years since they have hauled any stone off of that property. Concerned with truck traffic – existing starts at 6:15 AM with existing working mine and there are approximately 30-40 trucks daily.
3. Kay and Tim Fenlon, 2142 Lawrence Road – Concerned about additional truck traffic – wondered why it hasn't been reclaimed before. He stated he walks and there are between 5-12 trucks an hour and the corner of Lawrence/Bishop Hill is a virtual blind view. Dangerous with the soccer fields so close.

Letters from the following people have been received who are in opposition to the project:

- Christopher and Shelly Peters, 2359 Lawrence Rd.
- Kristina Kostine, 3805 Bishop Hill Rd.
- Judith Pearson and Timothy Pearson, Bishop Hill Rd
- William and Julie Spencer, 3871 New Seneca Turnpike
- Dennis Breh, 3829 Bishop Hill Rd.

- Timothy and Kaye Fenlon, 2142 Lawrence Rd.
- Vladimir Horyl, 2351 Lawrence Rd
- Lawrence Abrahamson, 2350 Lawrence Rd.

Michelle Bingham made a motion to adjourn the public hearing until the July 6, 2017 meeting. Jerry Wickett seconded and the motion carried with the following vote:

Jerry Wickett - aye
Michele Bingham – aye
Chris Christensen - aye
Ron Schneider – aye
Kathy Carroll – aye

Charles & Laurie Stevens, 2200 Coon Hill Road – special permit /site plan

A public hearing was held for a special permit to allow a dog kennel business on this site. 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 and there were none. The applicant explained that they would need to construct a 45' X 45' pole barn and would house a maximum of 16 dogs in the kennel. The proposed building will meet all setbacks and will have electricity. They will have water delivered. Hearing no further questions, Jerry Wickett made a motion to close the public hearing and Chris Christensen seconded. The motion carried with the following vote:

Jerry Wickett - aye
Michele Bingham – aye
Chris Christensen - aye
Ron Schneider – aye
Kathy Carroll – aye

Jerry Wickett made a motion to approve the 45' X 45' building that will have a dog kennel business as a public hearing was held and there was no opposition and it is a permitted use within this zone.

Chris Christensen seconded and the motion carried with the following vote:

Jerry Wickett - aye
Michele Bingham – aye
Chris Christensen - aye
Ron Schneider – aye
Kathy Carroll – aye

The request of Charles and Laurie Stevens for a special permit in an Agricultural Zone to allow them to construct 45' X 45' barn to operate a dog kennel business at 200 Coon Hill Road, Skaneateles, 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 June 5, 2017, 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 an Agricultural 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 and rear setbacks and an area variance was approved for a front yard setback in conjunction with the special permit.

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 special permit must incorporate all of the contingencies of the approved site plan.

David and Jennifer Gardner, 2866 Rose Hill Road – front yard variance – front porch

The applicant was not present but explained to the ZBA secretary, Karen Cotter, that they would like to place a front porch onto their house. They have provided pictures of the surrounding neighborhood showing that several homes are closer to the road than what they are requesting. This project will be sent to OCPB for review and to a public hearing at the July meeting.

Matt Abbott, 3739 Bishop Hill Road – zoning interpretation/site plan modification

There was much discussion between the ZBA, Town Attorney, Jim Gascon, and Matt Abbott regarding his timber operation as to what is allowed in the agricultural zone and on this property. Mr. Abbot stated that firewood falls under an agricultural use and that per Ags and Market he has a right to cut firewood. He stated that if he is not allowed to do so we are destroying 20-30% of his business. He advised the Board that he has recently planted over \$3000 worth of nursery stock on this property. Mr. Gascon stated that if the primary purpose of the property was farming and he was in the business of farming and could meet all of the regulations, the timber operation could possibly become secondary or a supplement to the farming business. However, Mr. Abbott is not a farmer and in addition he is harvesting and storing timber not grown on site. In Mr. Gascon's opinion and the opinion of his colleagues this does not fall under the right to farm law. Mr. Abbott has a site plan approval to operate a nursery business from this location. A nursery would be the growing of stock on the property and this is not being done. He is operating a landscaping business from this property and this is not an allowable use in this zone and therefore he is in violation of his site plan. Mr. Gascon advised that based on what our laws are he is giving his interpretation of our regulations and that is what he was asked to do by the ZBA. Mr. Abbott strongly disagrees with the interpretation and stated that he would be getting an attorney and that he would have someone from Ags and Market attend our meeting. Mr. Gascon advised that he is welcome to do that and they can contact him.

We have town laws and have to uphold our laws – that is what our regulations stated. Mr. Abbott has approval for a nursery and nothing more is allowed. Mr. Gascon stated that in respect to the logging Mr. Abbott could ask the Codes Officer to not issue any new violations for 30 days while they remove the logs. In respect to the nursery operation there are no current complaints. Jerry Wickett made a motion to ask Jim Gascon to provide his interpretation for the timber/firewood business being operated by Matt Abbott. Chris Christensen seconded and the motion carried with the following roll call vote:

Jerry Wickett - aye
Michele Bingham – aye
Chris Christensen - aye
Ron Schneider – abstain as Mr. Abbott is a longtime personal friend
Kathy Carroll – aye

Jerry Wickett made a motion to accept the resolution provided by Town Attorney, James Gascon, to deny his zoning appeal interpretation. Chris Christensen seconded and the motion carried with the following roll call vote:

Jerry Wickett - aye
Michele Bingham – aye
Chris Christensen - aye
Ron Schneider – abstain as Mr. Abbott is a longtime personal friend
Kathy Carroll – aye

**TOWN OF MARCELLUS
ZONING BOARD OF APPEALS
RESOLUTION
PERTAINING TO THE APPLICATIONS OF MATTHEW ABBOTT,
3739 BISHOP HILL ROAD, MARCELLUS, NEW YORK**

Dated: June 5, 2017

At a regularly scheduled meeting of the Town of Marcellus Zoning Board of Appeals, the following motion was made by Jerry Wickett and seconded by Chris Christensen.

WHEREAS, Matthew J. Abbott has applied for an interpretation of the Marcellus Zoning Laws pursuant to §25(B)(1), said application being dated February 13, 2017; and

WHEREAS, the request for interpretation has been made as a result of the applicant having received a Notice of Violation dated February 3, 2017 from the Town of Marcellus Code Enforcement Officer which, among other things, alleges the applicant is in violation of the Town of Marcellus Zoning Regulations as a result of the production and sale of firewood and further for the operation of a landscape business both in violation as not being a permitted use within an Agricultural (A-1) district and further in violation of the previously approved site plan issued for this property; and

WHEREAS, Matthew J. Abbott has also applied for a modification to the existing site plan dated February 3, 2017; and

WHEREAS, this matter previously came before this Board at its regularly scheduled meetings on March 6, 2017 and April 3, 2017; and

WHEREAS, the applicant acknowledged and represented to this Board that he was engaged in the harvesting of wood at a different location than the property in question and converting said wood to firewood for the sale and distribution of same from the 3739 Bishop Hill Road property; and

WHEREAS, the applicant further acknowledged and represented to this Board that he was engaged in harvesting of wood at a different location than the property in question for timber and offering said timber for sale and distribution of same from the 3739 Bishop Hill Rd property; and

WHEREAS, other than the production or harvesting of the timber, the applicant is not otherwise engaged in the production for sale of crops, livestock, or livestock products on seven acres or more and of an annual gross sales of ten thousand dollars or more, therefore, the annual gross sales of the firewood and timber exceeds the annual gross sales of such crops, livestock or livestock products as required by the Agriculture and Markets Law to qualify as a timber operation covered by said law; and

WHEREAS, the applicant has further acknowledged and represented to this Board that the majority of the nursery stock stored, sold, and distributed from this location is not grown on the property; and

WHEREAS, it is noted by this Board that the existing site plan permits a nursery business and further that approval was not granted for a landscaping business.

NOW, THEREFORE, BE IT RESOLVED, it is the finding and interpretation of this Board that the storage, distribution, and production of timber or firewood is not a permitted activity at 3739 Bishop Hill Road as the same is not permitted within an Agricultural (A-1) zone as it does not constitute an approved timber operation under the Agricultural and Markets Law

| and as it does not supplement a traditional farming business, and that the application and appeal is denied; and it is further

RESOLVED, it is the finding and interpretation of this Board that storage, distribution, and sale of nursery stock that is not grown on the property does not qualify as a permissible “Rural Occupation” by the Marcellus Zoning Laws and further is not a permitted or allowed “customary agricultural operation” within an Agricultural (A-1) District, and further is in violation of the parameters of the existing site plan and that the application and appeal is denied.

Upon a canvass of the Board, the votes of its members upon the Resolution were as follows:

Michele A. Bingham	Chairperson	Voted	Yes/No
Chris Christensen	Member	Voted	Yes/No
Kathy Carroll	Member	Voted	Yes/No
Ronald Schneider	Member	Voted	Yes/No (abstain)
Gerard E. Wickett	Member	Voted	Yes/No

Chairperson Michele A. Bingham then declared the Resolution to be duly adopted.

The May minutes stand as distributed.

The meeting was adjourned at 9:30 PM

Respectfully submitted,

Karen Cotter
Secretary