

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

July 6, 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 July 6, 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. Mr. LaPlant did not attend the meeting. We will contact him to see how he would like to proceed.

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

A continuation of a public hearing was held for a zoning interpretation to decide if the gravel bed has continued as an active non-conforming use. A response (to our request, dated June 5, 2017) was received from the applicant's attorney, Andrew Leja and sent to the Town Attorney, Jim Gascon, dated June 26, 2017. This information was entered into the minutes. There was discussion from Board members as to what is going to be mined and if there is any reclamation plan or map. We have not received anything showing that information. Jim Gascon stated that we should focus on the interpretation of the non-conforming use and not site plan approval. Jerry Wickett stated that the applicant needs to prove there has been continuous activity at this location – there has been no evidence submitted showing that this has been a working mine. In reference to Response #6 when was the last time the Mine had gravel physically removed for a paying customer the answer was in 2001.

After 2004, gravel could not be removed without NYSDEC's permission. Chris Christensen asked if the owner met with the DEC for inspections and they did not. The last interview was in 2004

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 submitted a letter dated July 6, 2017
2. Kay and Tim Fenlon, 2142 Lawrence Road – They asked who would ultimately make the final determination, the ZBA or the DEC, regarding if the use was discontinued over a period of time

Jim Gascon stated the question before this Board is has the mine continued to actively exist? When the Zoning Laws were adopted mining was not an allowable use and mines existing prior to our zoning were considered preexisting. The main issue is when did the last activity, from this mine, take place and has it timed out according to our regulations. The applicant has requested an interpretation of our Zoning Law. Mr. Gascon would like to time to review the responses and information submitted and also have a private conference with the Board. He also advised that the applicant could submit case law and insurance details to him prior to our next meeting. Jerry Wickett made a motion to close the public testimony and the public hearing and Christ Christensen seconded. The motion carried with the following vote:

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

The project is carried over to the August meeting where the Town Attorney, James Gascon, will present a resolution for the ZBA to review and vote.

David & Jennifer Gardner, 2866 Rose Hill Road – area variance

A public hearing was held for a front yard area variance with a 10' reduction from 35' to 25' to allow them to build a front porch on their existing house. The secretary, Karen Cotter, read the legal notice into the minutes and advised the mailing receipts are on file. Mr. Gardner explained they would like the porch to add curb appeal but also to help with weather and add protection to the front door. The Chair, Michelle Bingham, asked if anyone would like to speak in favor or in opposition of the project. Karen Cotter, advised that our office had received a phone call from Jerry Wilcox, 2345 Coon Hill Road, advising he was unable to attend the meeting but is in favor of the project. There was no one in opposition. The Chair, Michelle Bingham, read the OCPB resolution #Z-17-235, dated June 21, 2017, into the minutes. Pictures of neighboring houses with similar porches as close or closer to the road were reviewed at the June meeting. Chris Christensen made a motion to close the public hearing and Ron Schneider seconded. The motion carried with the following vote:

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

Chris Christensen moved to approve the project as presented as a public hearing was held and there was no opposition and one (1) person was in favor of the project; the front yard variance is on a road that would have minimal road expansion and it is clearly in keeping with the character of the neighborhood. Ron Schneider 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 David and Jennifer Gardner for a front yard reduction of 10' from 35' to 25' in an Agricultural zone to allow a front porch at their residence on 2866 Rose Hill Road, Marietta, 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 July 6, 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 2866 Rose Hill Road Marietta, New York
2. The subject premises are zoned Agricultural 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 front porch
4. One (1) person stated they were in favor of 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

Jennifer Cruz, 3244 Brewer Road – special permit

A public hearing was held for a special permit to allow a 50' X 40' accessory building. The secretary, Karen Cotter, read the legal notice into the minutes. The applicant advised that she would like to use shipping containers to construct her building and it would be joined together by a fabric building. The following was discussed:

- The rear of the building will be open and the front will have sliding doors.
- The open space will be used to house her four (4) horses but there will not be individual stalls.
- The shipping units will store approximately 300-350 bales of hay and will have vents in them.
- She will meet all the requirements for the manure storage.
- The life span of the fabric is 15-25 years and allows quite a bit of light in for the horses.
- This would be for personal use only and she will not be operating a business from them or boarding additional horses.
- There was discussion on how snow would be removed and if the fabric could handle the amount of snow load that we receive. The Board asked her to provide additional information on that. She explained she would be going out and pulling it off the shipping containers with a snow rake or something similar.
- This is in the site line of neighbors but she would do some landscaping and paint the containers the same color as the house.

The Board would like her to provide additional information on how much snow the building and roof would be able to handle and how the snow will be removed. The project will continue to the August meeting.

Joseph & Doreen Nelipowitz, 3250 Route 174 – special permit

A public hearing was held for a special permit to allow the applicants to construct a 30' X 40' garage. The secretary, Karen Cotter, read the legal notice into the minutes. The applicant explained that the original garage was converted into living space and they would now like to construct a three (3) bay garage – with pole barn structure. The garage will meet all setbacks and have underground utilities for heat and electric. 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 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

Kathy Carroll then made a motion to approve the project as presented as a public hearing was held and there was no opposition and there is not an existing garage on the property. 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 Joseph & Doreen Nelipowitz for a special permit in a Residential 1 zone to allow them to construct a 30' X 40' garage.

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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 July 6, 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.

Jim & Gretchen Brown, 2592 Abend Point – area variance

Guy Donahoe, Architect, was present to represent this project. The original garage had been turned into living space , a loft and a full bath by the prior owner. The Brown's would like to add a two (2) car garage and reconfigure the space into a master suite. They are requesting a rear yard setback of 28' from 35' to 7'. This project will be sent to a public hearing in August. The applicant must also get subdivision approval on this property.

Discussion:

Glider Oil Co., Lee Mulroy Road – special permit/site plan

Glider Oil would like to lease property from the Marcellus Fire Dept. on Lee Mulroy and place a 30,000 gallon propane tank on the property. Bob Brewer from Glider Oil and John Rossiter from the Marcellus Fire Dept. were present for the discussion. The question is whether this is an allowable use in the Business zone. Jerry Wickett thought it might fall under the definition of warehouse/distribution. The following was discussed:

- They would meet all Federal regulations and guidelines.
- A special permit and site plan would be required
- The volume from October – May would be two (2) transport trucks per week and approximately 10 loads per week with smaller trucks – not sure of what time of day the trucks would be on site
- The volume would drop off thru the summer and there would be one (1) transport truck per week and three (3) delivery trucks.
- They would distribute the propane within a 52 mile radius
- No additional signage would be required
- The main tank would sit in the air on top of black top
- There was discussion regarding failure mode and the safety risks
- Mr. Rossiter advised that the Fire Dept would have a safety plan and be trained in case of an emergency
- The area would be fenced off around the tank with down lighting
- Jim Gascon advised Mr. Rossiter that this is a large parcel – if they are looking to lease to other business as well as Glider Oil they should discuss with their attorney

They will submit site plan application and special permit at the August meeting.

Horrigan Drainage issues – West Seneca Turnpike

John Houser advised that he has had two (2) complaints on the properties that have been cleared and leveled. The neighbors are having drainage problems with water running onto their properties. Mr. Houser is looking to start a dialog on what can

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be done to help the neighbors and prevent future problems. Mr. Gascon advised that unfortunately for the current neighbors this would be considered a civil matter and there isn't much that we can do to help them.

The June minutes stand as distributed.

The meeting was adjourned at 10:30 PM

Respectfully submitted,

Karen Cotter\
Secretary