

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

October 2, 2017

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

Absent:

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 2, 2017 at 7:00pm.

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 letter, dated September 28, 2017, from Attorney Marc Malfitano was submitted into the minutes. He is representing William Branson, 2103 Lawrence Road, who is in opposition to the project. Mr. Malfitano stated that he would be happy to respond to any comments the Board may have. The Chair, Michelle Bingham, then asked if anyone was in favor of the project and Keith Severson, 2540 Platt Rd. stated that he is in favor of the project. The Chair, Michelle Bingham, then asked if anyone was in opposition to the project and William Branson, 2103 Lawrence Rd. stated he was in opposition of the project. Attorney, Andrew Leja, who is representing the applicant, Bishop Hill Mines, stated that the letter from Mr. Malfitano is incorrect and the Court of Appeals treats mining differently than other uses. Mr. Leja presented his case and Mr. Malfitano disagreed and stated that the lapse period does apply. He also advised that the DEC permit is subject to zoning and doesn't override the existing zoning regulations.

Chris Christensen stated that he and several other Board members, professionals and members of the community worked for over two (2) years on our Comprehensive Plan.

This plan states that mining is not a legal activity and around 2001 a list was put together for both active and inactive mines. The Board should proactively look at what is active and what is not.

Town Attorney, Jim Gascon, thanked the attorneys for their submissions regarding both sides to this project. He stated that the briefs were very well done and helpful to him. Mr. Gascon stated that there was a procedural issue raised as no action was done by the codes officer prior to the ZBA accepting the application of appeal to this situation. The applicant's appeal was trying to find out how to handle this situation prior to having to spend a large sum of money. Mr. Gascon felt under the circumstances an interpretation should be given by the ZBA pursuant to section 6(D) as the applicant would otherwise have to incur an extraordinary expense. Mr. Gascon does however believe the operation of the mine has timed out as the last time gravel was physically removed was 2001; in 2004 the DEC permit had expired; and in 2011 Elsie Harrison received information stating the mine had not been operational. The Town had received a copy of the mine permit and did not take any action however, that does not affect the outcome. The applicant did maintain insurance as required but the Town received no new maps or information that the applicant was contemplating restart of the mine. Mr. Gascon stated that in his legal opinion, after extensive research and reviewing all the submitted information, the mine did stop operation somewhere between 2001 and 2005 and hasn't operated for at least 10 years and the pre-existing status has ceased.

Chris Christensen made a motion to close the public hearing and Jerry Wickett seconded. The motion carried with the following vote:

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

The Chair, Michelle Bingham, then made a motion to accept the resolution, dated October 2, 2017, submitted to the Zoning Board of Appeals by Town Attorney, James Gascon, and adopted per Michelle Bingham.

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Jerry Wickett seconded the motion carried with the following vote:

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

**TOWN OF MARCELLUS
ZONING BOARD OF APPEALS
RESOLUTION
REGARDING BISHOP HILL VENTURES, LLC
APPLICATION FOR INTERPRETATION**

Dated: October 2, 2017

The Zoning Board of Appeals for the Town of Marcellus having met at a regularly scheduled Board meeting in the Town Hall for the Town of Marcellus and Michelle Bingham having moved the following resolution and said resolution having been seconded by Member Jerry Wickett, be it resolved as follows:

WHEREAS, the applicant Bishop Hill Ventures, LLC having applied to this Board for an interpretation of the Marcellus Zoning Law pursuant to Section 25(b) of said law; and

WHEREAS, said applicant more specifically requests the Zoning Board of Appeals to interpret the Town Zoning Law so as to render a determination as to

whether the mine owned by the applicant located at 3995 Bishop Hill Road still enjoys or benefits from a continuing non-conforming use status; and

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WHEREAS, the operation of the mine located at 3995 Bishop Hill Road did pre-exist the implementation of the Zoning Law of the Town of Marcellus and this pre-existing use was confirmed during the Town's inventory performed for review during the Comprehensive Plan last developed in approximately 2001; and

WHEREAS, the Town of Marcellus Zoning Law does not permit mining in any of the zones located within the Town and therefore the gravel pit mining that existed at said location did constitute a permissible non-conforming use as long as said operations continued without interruption; and

WHEREAS, Section 18(E) of the Town of Marcellus Zoning Law requires that said mining operations as a non-conforming use continue without interruption for a period of 30 days or more or lose its permitted non-conforming status; and

WHEREAS, the applicant has appeared before this Board on several occasions and through its legal counsel submitted numerous documents and legal memoranda in support of its position that it is entitled to a continued non-conforming permitted status; and

WHEREAS, a public hearing was opened on June 5, 2017 and has remained open wherein the Board has heard and received comments from neighbors of the applicant both in favor and opposed to said application and the Board having further received comments, communications and legal memoranda in further opposition thereto.

NOW, THEREFORE, BE IT RESOLVED, the public comment and hearing portion of the proceedings is hereby closed; and it further

RESOLVED, that it is the Board's finding and interpretation that the applicant ceased receiving revenue from physically mining the subject property sometime in 2001 and further discontinued removal of any mining products as of 2004 or 2005 and further said mining operations did not resume within the 30 days required under Section 18(E) of the Town of Marcellus Zoning Law, but in fact ceased for at least 10 years; and it is further

RESOLVED, that the interruption in mining activities at 3995 Bishop Hill Road does terminate and void the applicant's prior non-conforming use and

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Therefore any mining activity which may be engaged in by the applicant, or any subsequent owner, will constitute a violation of the Town of Marcellus Zoning Law.

BE IT FURTHER RESOLVED, that this Resolution shall be effective as of the date of its filing with the Town Clerk, and

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

| | | | |
|---------------------------|--------------------|--------------|------------|
| Gerard E. Wickett | Chairperson | Voted | Yes |
| Michele A. Bingham | Member | Voted | Yes |
| Kathy Carroll | Member | Voted | Yes |
| Chris Christensen | Member | Voted | Yes |
| Ronald Schneider | Member | Voted | Yes |

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

A continuation of a public hearing was held for a special permit to allow a 30' X 40' accessory building. Mr. LaPlant submitted a revised application showing one (1) 16' door and one (1) 9' door in place of the original three (3) garage doors. The Chair, Michelle Bingham, asked if anyone would like to speak in favor or opposition to the project and there were none. Jerry Wickett made a motion to close the public hearing and Ron Schneider seconded. The motion carried with the following vote:

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

Kathy Carroll made a motion to approve the special permit as a public hearing was held and there was no opposition; the applicant revised his application as requested by the ZBA; the building will be used for personal storage only, no business shall

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be operated from it; and will have no undesirable change to the neighborhood.
Ron Schneider seconded and the motion carried with the following vote:

Jerry Wickett - aye
Michelle Bingham – aye
Chris Christensen - aye
Ron Schneider – aye
Kathy Carroll – 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 October 2, 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 Residential 1 zone: 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 front, 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. No business shall be operated from it.

Christopher Doshna, 4848 Route 174 – special permit

A public hearing was held for a special permit to allow a 40' X 50" garage. The secretary, Karen Cotter, read the legal notice into the minutes. The applicant explained that they have no garage and would like to construct a three (3) bay garage with a second story to be used to store children's' toys, lawn equipment, other personal items. No business shall be operated from it. It may have electric installed at a later date; there will be three (3) garage doors and a small 9' door on the backside to access lawn mower and equipment. 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
Michelle Bingham – aye
Chris Christensen - aye
Ron Schneider – aye
Kathy Carroll – aye

Jerry Wickett made a motion to approve the special permit as a public hearing was held and there was no opposition; the building will be used as a personal garage with three (3) garage doors; for personal storage only with no business being operated for it; and will have no undesirable change to the neighborhood. Kathy Carroll seconded and the motion carried with the following vote:

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

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October 2, 2017, commencing at 7:00pm, local time at which time and place the following Resolution was moved, seconded and passed.

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WHEREAS: The applicant is located in an Residential 1 zone: 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 front, 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. No business shall be operated from it.

Mark & Helen Fenlon, 2501 Falls Road – special permit

A public hearing was held for a special permit to allow a 24' X 32' accessory building. The secretary, Karen Cotter, read the legal notice into the minutes. The applicant advised that the building will be used to store an antique tractor and a camper. It will have one (1) garage door and one (1) man door with access from the lawn and no driveway will go to it. They will have power but no heat. The Chair, Michelle Bingham, asked if anyone would like to speak in favor or in opposition to the project and there were none. Chris Christen made a motion to close the public hearing and Ron Schneider seconded. The motion carried with the following vote:

Jerry Wickett - aye
Michelle Bingham – aye

Chris Christensen - aye
Ron Schneider – aye
Kathy Carroll – aye

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Jerry Wickett made a motion to approve the project as presented as it meets all setbacks; is consistent with the neighborhood and will be for personal use only – no business shall be operated from it. Chris Christensen seconded and the motion carried with the following vote:

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

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WHEREAS: The applicant is located in an Residential 1 zone: 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 front, 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. No business shall be operated from it

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Michael Rajkowski, 2825 West Seneca Turnpike – special permit

A public hearing was held for a special permit to allow a 14' X 28' accessory building. The secretary, Karen Cotter, read the legal notice into the minutes. The applicant advised that the building will be used to store lawn equipment. They will have no power and no heat. 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
Michelle Bingham – aye
Chris Christensen - aye
Ron Schneider – aye
Kathy Carroll – aye

Jerry Wickett made a motion to approve the project as presented as it meets all setbacks; is consistent with the neighborhood and will be for personal use only – no business shall be operated from it. Michelle Bingham seconded and the motion carried with the following vote:

Jerry Wickett - aye
Michelle Bingham – aye
Chris Christensen - aye
Ron Schneider – aye
Kathy Carroll – 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 October 2, 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 Residential 1 zone: and

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

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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 front, 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. No business shall be operated from it

John & Kimberly Farrell, 3005 Sevier Road – special permit

A public hearing was held for a special permit to allow a 30' X 50' accessory building. The secretary, Karen Cotter, read the legal notice into the minutes. The applicant advised that the building will be used to store antique boats – it is his personal hobby and not a business. They will have no power and no heat. The Chair, Michelle Bingham, asked if anyone would like to speak in favor or in opposition to the project and there were none. Chris Christensen made a motion to close the public hearing and Ron Schneider seconded. The motion carried with the following vote:

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

Jerry Wickett made a motion to approve the project as presented as it meets all setbacks; is consistent with the neighborhood and will be for personal use only – no business shall be operated from it.

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

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

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WHEREAS: The applicant is located in a Agricultural zone: 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 front, 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. No business shall be operated from it

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

A continuation of a public hearing was held for a special permit and site plan to allow a 30,000 gallon propane tank to be placed on a concrete pad. The Town Engineer, Jason Kantak advised the following items were discussed with the applicant's engineer:

- Hydrant will be placed near the property across the street from the entrance. The hydrant can't be on high pressure pipe which is on the project side of the road. It must be on low pressure pipe which is located across the road. Glider Oil is paying for the hydrant to be installed
- A light plan was submitted and follows the Town code
- SOCPA reviews were addressed
- Proposed lease line is indicated on the map, not the property line
- A letter was received from the fire dept. indicating the tank would be on two (2) parcels not one (1)
- The fire dept has stated that the property was used for something similar several years ago as the property stands right now. Jim Gascon stated that no activity has taken place on this property in a number of years and you can't ignore lot lines. They either need to move the tank, move the lot line or combine the two (2) lots into one (1).
- Chris Christensen stated that the map that the applicant submitted indicated these are on two (2) separate deeds. They needed to either prove they were combined via subdivision or possibly combined prior to 1986.
- Kathy Carroll asked that since this is near the fire dept. should we have fire suppression. She was advised that a fence will be around the tank. Bob Brewer stated that everything will be done per the requirements of the federal regulations.
- Mr. Brewer asked if approval of the tank could be obtained prior to subdivision approval and the Board advised that it could not be approved.

Mr. Gascon stated that the original site plan map did not contain lot lines and if it had shown property lines this issue could have been discussed earlier. Chris Christensen brought the issue up in the beginning of the project when the map they submitted indicated two (2) separate book and page numbers.

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- Signs – dimensions were discussed at prior meeting and they will be less than the maximum in our code. Sign information needs to be submitted for review and approval.

The Chair, Michelle Bingham, asked if anyone would like to speak in favor of the special permit and/or site plan and there were none. He then asked if anyone would like to speak in opposition and the following spoke:

- Gail Shenfeld, owner of Marcellus Lanes and ice cream stand on Slate Hill Rd. is concerned with the safety of this project. She asked what the safety procedures would be and is there a plan in effect that she could look at. There is also the concern in how this would affect the resale of her property and increase her insurance rates. If there was an explosion what would the loss of business and money be and how that would affect her. Also concerned how this could affect the park and boy scout camp.
- Roger Trombley, Clark Terrace – he wants to know why this is even a consideration when a month ago they denied another business down the road. This is unsightly and wondered what benefit the tanks would bring to Marcellus. Mr. Wickett stated that this is an allowable use in this zone.
- Matt Abbott, Bishop Hill Rd – he stated that he was advised that his business is unsightly and this is even worse. Why was his business turned down and the Board is considering this. Mr. Abbott was advised this is an allowable use in this zone and he is located in a zone where his business is not allowed per our regulations.
- Joe LaPlant - Slate Hill Rd – asked if this is similar to what is located in Skaneateles and he was advised that it is.

Mr. Brewer stated that everything will be done according to the national safety guidelines for petroleum/propane tanks. The tank is tested prior to it being placed on site. There was additional discussion regarding safety figures; the life cycle of the tank and who controls the inspections. The installation is done by a licensed operator and NY State comes thru a does the inspection. Mr. Brewer will get the safety information and submit it to our Board for the next meeting.

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He advised that the guidelines have to be in place and approved by the state before the tank can be installed. This project is not designed for any retail sales and if there are any changes where it becomes retail they would need to come before the ZBA and PB for approval.

The Fire Dept. will make a decision on how they want to proceed with either moving the lot line or subdividing the two lots together. They were also advised that there is a five (5) year moratorium on subdivision.

Jerry Wickett made a motion to continue the public hearing, for the special permit, to our November ZBA meeting. Michelle Bingham seconded and the motion carried with the following vote:

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

Kathy Carroll made a motion to continue the public hearing, for site plan approval, to our November Planning Board meeting. Chris Christensen seconded and the motion carried with the following vote:

Jerry Wickett – aye
Michelle Bingham – aye
Chris Christensen – aye
Kathy Carroll – aye
Ron Schneider – aye
Scott Stearns - aye

The September minutes stand as distributed.
The meeting was adjourned at 10:00 PM

Respectfully submitted,

Karen Cotter, Secretary