

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

**November 1, 2021**

**Present:** Chairperson Jerry Wickett, Ron Schneider,  
Chris Christensen, Scott Stearns, Kathy Carroll

**Absent:**

**Town Counsel:** Jim Gascon of Costello, Cooney, and Fearon

**Town Engineer:** Joe Durand of TDK Engineering

**Codes Officer:** John Houser

The Zoning Board of Appeals of the Town of Marcellus met in regular session in the Marcellus Town Hall for the Town of Marcellus, located at 24 East Main St., Marcellus, New York, on November 1, 2021 at 7:00pm.

**PUBLIC HEARING – AREA VARIANCE –**

**Frederick (Fritz) Estlinbaum, Lee Mulroy Rd – side yard variance**

A public hearing was held for a side yard reduction of 15' from 25' to 10' to allow construction of a new building. The secretary, Karen Cotter, read the legal notice into the minutes and the certified mailings are on file. The applicant advised the variance was needed to allow access for his trucks caring steel and for a larger turn around radius to move his equipment. The Chair, Jerry Wickett, asked if anyone would like to speak in favor or in opposition and Stephen Knapp stated he was Executive Director of Maves, Lee Mulroy Rd., and they are in favor of the project. Hearing no questions from the Board, Jerry Wickett made a motion to close the public hearing and Kathy Carroll seconded. Kathy Carroll then made a motion to approve the area variance as presented as a public hearing was held and one (1) person was in favor of the project and there was no objection; it is consistent with the neighborhood; and the submitted site plan must be approved.

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

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

The appeal of Frederick Estlinbaum for a side yard reduction of 15’ from 25’ to 15’ in a Light Industrial zone to allow construction of a new building at Lee Mulroy 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 November 1, 2021 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 Lee Mulroy Rd., 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 side yard variance for construction of  
A new building
4. One person (representing Maves) appeared in favor and there was no opposition to the variance.

CONCLUSIONS OF LAW:

1. The project will comply with front, rear and one (1) 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 building permit shall be issued until the original filing receipts are submitted to the Planning Board.
2. Applicants must proceed to the Town Hall for a building permit and follow all Town Zoning Ordinance.
3. No use or occupancy is to be permitted until all conditions/and/or codes are complied with and a Certificate of Occupancy is issued by the CEO.
4. Submitted Site Plan must be approved
5. BE IT FURTHER RESOLVED that such approval is contingent upon compliance with: 1. Applicant complies with the Planning Board resolution of February 2, 1987 regarding runoff:

That in all developments in the Town of Marcellus, the peak runoff flow rate of discharge from a proposed site after development shall not exceed the peak runoff flow rate that prevailed prior to development. In general, this requirement will necessitate the design and construction of detention/retention facilities of various types. The design frequency should be that of a twenty-five-year storm with an overflow facility to handle a one-hundred-year storm with no erosion.

## **ZONING INTERPRETATION –**

### **Rim Cox, 23 Flower Lane**

The applicant's property is located both in the Village and Town of Marcellus. The residence is located in the Village and there is a barn located on the piece in the Town. The submitted survey seems to indicate that this property is one (1) lot. He is raising a large number of chickens that is not an allowable use in the Village and has been determined by the Codes Officer, John Houser, that they present a health and safety issue to the neighbors. Mr. Houser has issued Mr. Cox a citation/compliance order as there are farm animals on vacant land and concern with the health and welfare of other persons. On October 27, 2021 a complaint was submitted to our office by the neighbor, Sarah and Randy Marciniak, at 21 Flower Lane. They were also present at the meeting. The following was discussed:

- Mr. Christensen stated that he was only able to review deeds going back to 2000 which references one (1) deed and two (2) different tax numbers each time it has been sold.
- The Town Attorney, Jim Gascon, questioned the Codes Officer, John Houser, regarding the citation and Mr. Houser stated he has discussed the number of chickens with the applicant as there is no residence in the Town location of the parcel and he is concerned with the health and safety issue.
- The Town Attorney, Jim Gascon, asked the neighbor Sarah Marciniak what her concerns were and she stated the following:
  - Constant noise from chickens and rooster every day/all day
  - The manure smell is terrible as some of the chickens were kept in the applicant's garage not just the barn
  - The chickens are stripping the land – the manure is being washed onto their property
  - At one point there were goats and other small animals on this property which are not there now but are worried they will return
  - They are concerned with the effect of property values with all these chickens and animals
  - They have been in contact with the Village Mayor who has sent a letter to the Town Attorney stating that chickens are not allowed in the Village and there is no access to the Town portion of the lot without going through the Village.

Mr. Gascon stated that this property is located in a Residential 1 zone which has regulations regarding the location of manure and odorous substances. There are several concerns and questions that arise from this issue and Mr. Gascon does not feel he has sufficient information to advise the ZBA as to the law/regulations. Mr. Cox stated that he has a copy of his abstract and he will supply it to our office for the Board and Mr. Gascon to review. Mr. Gascon asked that he submit it to him no later than November 19, 2021 to allow time for review prior to our December meeting. Mr. Cox advised that he would do so. As additional information needs to be provided to the Town Attorney and to the Zoning Board of Appeals the interpretation request will be held over to the December meeting. John Houser stated that Mr. Cox has removed some animals but he still stands by his notice that this is health and safety issue effecting neighbors. The Chairperson, Jerry Wickett, stated that ultimately the Codes Officer makes the judgement. Jerry Wickett made the motion to carry this request over to the December meeting and Kathy Carroll seconded. The motion carried with the following vote:

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

**DISCUSSION -**

The Zoning Board of Appeals requested a meeting with Council at his request. Planning/Zoning Secretary Karen Cotter, Codes Enforcement Officer John Houser, and Town Supervisor were invited to stay for the discussion.

**MINUTES -**

Jerry Wickett made a made a motion to waive the reading of the October minutes which stand as distributed.

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

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

Jerry Wickett made a motion to adjourn the meeting and Ron Schneider seconded. The motion passed with the following vote:

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

The meeting was adjourned at 9:00 PM

Respectfully submitted,

Karen Cotter,  
Secretary