

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

**February 7, 2022**

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

**Absent:**

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

**Town Engineer:** Joe Durand of TDK Engineering (absent)

**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 February 7, 2022 at 6:30pm.

**PUBLIC HEARING – SPECIAL PERMIT**

**Matthew Winters, 4426 Frank Gay Rd – 20' X 20' accessory building**

A public hearing was held for a special permit to allow construction of a 20' X 20' accessory building. The secretary, Karen Cotter, read the legal notice into the minutes. The following was discussed:

- This will be for personal storage only – no business will be operated from and/or in it.
- There will be no power/no electric/not lights
- Access will be along the north side of existing fence. There is a drivable area to reach the building.
- No new driveway is needed

The Chair, Jerry Wickett, asked if anyone would like to speak in favor or opposition to the project and there was none. Kathy Carroll made a motion to close the public hearing and Ron Schneider seconded.

The motion carried with the following vote:

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

Kathy Carroll made a motion to approve the project as presented as a public hearing was held and no one was in opposition to the project; there will be no new access and/or driveway needed; and it will be for personal storage only – no business will be operated from it or in the building. Ron Schneider seconded and the motion carried with the following vote:

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

The request of Matthew Winters for a special permit in a R1 zone to allow him to construct a 20' X 20' accessory building at his residence 4426 Frank Gay 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 February 7, 2022, commencing at 6:30 pm, 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.
2. The accessory structure is for personal use only and no business shall be operated from and/or in it.

**Peter Black, 2459 Lawrence Rd -Special permit/Rural Occupation**  
**Special Permit – 60’ X 80’ accessory bldg.**

A public hearing was held for a special permit to allow for a rural occupation and construction of a 60’ X 80’ accessory building. The secretary, Karen Cotter, read the legal notice into the minutes. Mr. Black explained that he has a commercial glass company with two (2) additional employees and he would like to construct a one (1) story warehouse/storage building. The following was discussed:

- There will be minimal activity level at this site
- 95% of the glass work is done on job sites and not at this location
- The building will be used as a warehouse for his glass business as well as for personal storage
- His two (2) employees will come to the building, pick up materials and then leave.
- No employees will be working in the warehouse – only Mr. Black
- Currently he leases a 60’ X 100’ building on Paul St. in Marcellus but that is no longer available to him
- He works with Syracuse Glass Company located in Syracuse and the majority of the fabrication work for his projects is done at that site
- Construction of the proposed building will be on slab with one (1) overhead door that is 12’ high and a man door

- He will meet all setbacks
- There will be no showroom or retail sales at this site
- No plumbing/No bathrooms
- No office located in the building
- There will be electricity and heat
- No outdoor storage
- Minimal Lighting on the outside of the building and it must be down lighting

The Chair, Jerry Wickett, asked if anyone would like to speak in favor or opposition to the projects and there was 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  
Chris Christensen - ay  
Ron Schneider – aye  
Scott Stearns – aye  
Kathy Carroll – aye

Kathy Carroll made a motion to approve the rural occupation as presented as a public hearing was held and no one was in opposition to the project; a portion of the building will be used as a warehouse for Mr. Black's commercial glass business and the other portion will be used for his personal storage; no office will be located in it; no employees shall be working in it; no retail sales from the building and any outdoor\*\* lighting must be down lighting. Ron Schneider seconded and the motion carried with the following vote:

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

Rural Occupation Resolution -

The request of Peter Black for a special permit for a rural occupation in an Agricultural Zone to allow him to operate a commercial glass business at his residence, 2459 Lawrence 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 February 7, 2022, commencing at 6:30 pm, 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: a public hearing was held by the Zoning Board of Appeals of the Town of Marcellus at the Town Hall of the Town of Marcellus, 24 E. Main Street, Marcellus, NY, on February 7, 2022; 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 and front setbacks; and

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

1. No excess storage – no outside storage of materials
2. No retail sales/no showroom
3. No sign for business
4. No employees shall work in the building other than transporting  
Items from the building to the workshop

5. No bathroom facilities
6. No office located in the building

Accessory Building Resolution –

The request of Peter Black for a special permit in an agricultural zone to allow him to construct a 60' X 80' accessory building at his residence 2459 Lawrence 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 February 7, 2022, commencing at 6:30 pm, 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, 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.
2. The accessory structure is used for personal use and his commercial glass company.
3. Any lighting on the outside of the building must be down lighting

**Matthew Aupperle, 4577 Northeast Townline Rd – 40' X 60' accessory bldg.**

A public hearing was held for a special permit to allow construction of a 40' X 60' accessory building. The secretary, Karen Cotter, read the legal notice into the minutes. The following was discussed:

- This will be for personal storage only – no business will be operated from it or in it. He would like to store his camper and trailer there.
- The 60' portion of the building will go to the rear of the property
- No second floor – trusses only
- It will have electricity and possible heat
- Outdoor lighting – he was advised it must be down lighting as shown on the submitted drawing

The Chair, Jerry Wickett, asked if anyone would like to speak in favor or opposition to the project and there was none. Scott Stearns made a motion to close the public hearing and Ron Schneider seconded. The motion carried with the following vote:

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

Kathy Carroll made a motion to approve the project as presented as a public hearing was held and no one was in opposition to the project; any lighting must be down lighting; and it will be for personal storage only – no business will be operated from it or in the building.

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

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

The request of Matthew Aupperle for a special permit in a R1 zone to allow him to construct a 40' X 60' accessory building at his residence 4577 Northeast Townline 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 February 7, 2022, commencing at 6:30 pm, 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.



2. The accessory structure is for personal use only and no business shall be operated from or in it.
3. Any lighting on the outside of the building must be down lighting

## **ZONING INTERPRETATION –**

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

The Town Attorney advised that Mr. Cox had submitted the requested abstract and this had been reviewed. The following was discussed:

- Mr. Gascon and Chris Christensen reviewed the submitted deed and followed the meets and bounds along the two (2) parcels on his survey
  - This indicated one (1) smaller lot located in the Village of Marcelles that contains Mr. Cox's residence
  - The second (2<sup>nd</sup>) larger parcel straddles the Town and Village line
- The outbuilding is entirely on the larger parcel located in the Town without a principal residence

The conclusion of this interpretation is the Codes Enforcement Office is correct, that the parcel located within the Town does not contain a residence in it. A resolution was prepared by the Town Attorney indicating the Codes Office made the correct interpretation of the Zoning Board of Appeals regulations. The following exhibits were submitted:

1. Exhibit A – Town of Marcellus Compliance Order
2. Exhibit B – Town of Marcellus Zoning Board of Appeals Common Application – completed and submitted by applicant
3. Exhibit C – Letter submitted by Sarah and Randy Marciniak
4. Exhibit D – November 1, 2021 Zoning Board of Appeals minutes
5. Exhibit E – Warranty Deed

The Chair, Jerry Wickett, asked if anyone would like to make a motion and Chris Christensen moved to approve the decision and resolution as prepared and Scott Stearns seconded. Mr. Cox asked if there was any open discussion allowed and the Chair, Jerry Wickett, allowed him to speak. Mr. Cox argued that farm animals are allowed on vacant land and our zoning allows customary farming.

Town Attorney, Mr. Gascon, read from the regulations that stated in a R1 zone you must have a residence in town and Mr. Cox's residence is in the village. Mr. Wickett stated that this decision is consistent with past decisions and that based on the Town Attorney's advice they will move forward with the CEO's interpretation. Sara Marciniak stated the interpretation of health and safety issues hasn't even been discussed and that was part of the original compliance order.

**Town of Marcellus  
Zoning Board of Appeals  
Resolution/Decision  
Regarding 23 Flower Lane**

At a regularly scheduled meeting of the Town of Marcellus Zoning Board of Appeals held on February 7, 2022, a motion was made by Board member Chris Christensen and seconded by Board member Scott Stearns to adopt the following resolution:

WHEREAS, following a complaint registered by the owners of 21 Flower Lane, the Town Code Officer John Houser conducted an inspection of 23 Flower Lane, and

WHEREAS, the inspection revealed that various farm animals, including a large number of chickens, were being raised on said property, and

WHEREAS, following the inspection as well as numerous meetings with the property owners of 21 & 23 Flower Lane the Code Officer issued the following citations:

Inspection violation dated 8/24/2021;  
Courtesy notice dated 8/24/2021;  
Meeting (violator/contractor) dated 8/31/2021;  
Extension request to remove violation dated 9/8/2021; and  
Compliance order dated 9/13/2021, and

WHEREAS, the compliance order cited Rim A Cox, owner of 23 Flower Lane as having committed violations of the Marcellus Town Codes § 235-A, E & F and § 235-26 G(1) & (2) for raising farm animals on vacant property as well as sound considered offensive and endangering the health, comfort, safety or welfare of any person, or which have a tendency to cause injury or damage to property, business or vegetation. A copy of said compliance order is attached hereto and incorporated in its entirety herein as Exhibit A, and

WHEREAS, said resident has filed an application to the Zoning Board of Appeals, appealing said Compliance Order and requesting an interpretation dated October 12, 2021. A copy of said application is attached hereto as Exhibit B, and

WHEREAS, the Zoning Board of Appeals conducted a hearing on the application on November 1, 2021 and received testimony from the applicant, the Code Officer John Houser and the complainants Sarah and Randy Marciniak residing at 21 Flower Lane, and

WHEREAS, a letter from the Marciniak's was received into the Board records and is attached hereto as Exhibit C, and

WHEREAS, the Town Code Officer John Houser testified that he personally observed a large number of chickens being raised at the 23 Flower Lane property including on a parcel that straddles the Town and Village line that does not have a residence, and he further testified as to the noise and health and safety issues resulting from this farming activity, and

WHEREAS, testimony was received from Sarah Marciniack who resides next door to the applicant at 21 Flower Lane and who testified that, among other things, she observed constant noise from the chickens and roosters; there was a terrible manure smell; the chickens were stripping the land and manure was being washed onto her property and the farming activity was adversely affecting her family's health and welfare. A copy of the minutes of the hearing are attached hereto and made a part hereof as Exhibit D, and

WHEREAS, the applicant, upon request of the Zoning Board of Appeals, having submitted as part of the record, a copy of the Abstract of Title which includes a copy of the applicant's deed to 23 Flower Lane. A copy of Applicant's deed is attached hereto as Exhibit E.

NOW, THEREFORE, based upon the foregoing and upon the record before it the Marcellus Zoning Board of Appeals makes the following decision:

**Decision**

RESOLVED, the deed to the applicant for 23 Flower Lane contains the conveyance of two separate and distinct parcels, and the larger parcel straddles the Town and Village line, and said parcel does not contain a principal residence. Therefore, the farming activities conducted on this parcel were conducted in violation of Section 235-6(E) of the Marcellus Town Code and applicant's appeal from this portion of the Compliance Order is hereby DENIED, and it is further

RESOLVED, the testimony and evidence received by the Zoning Board of Appeals reveals that the applicant's farming activity created sound that was offensive to the neighbors and created conditions that endangered the health, comfort, safety, and welfare of said neighbors in violation of §235-26G(1) and (2) of the Town of Marcellus Code and this portion of applicant's appeal is hereby DENIED.

The motion was put to a vote with the with the following result:

Jerry Wickett – aye  
Ron Schneider – aye  
Chris Christensen – aye  
Scott Sterns – aye  
Kathy Carroll – aye

DATED: February 7, 2022

**MINUTES -**

Jerry Wickett made a made a motion to waive the reading of the January minutes which stand as distributed. Chris Christensen seconded and the motion carried with the following vote:

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

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

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

The meeting was adjourned at 9:00 PM

Respectfully submitted,

Karen Cotter  
Secretary

\*\*The word *down* was removed