

PART II – GENERAL LEGISLATION

Chapter 250 – Zoning

[Adopted by Ordinance May 26, 1969, Amended and Adopted as Zoning Ordinance of 1972]
 [Amended and Adopted, December 27, 2012, as the Zoning Ordinance, Chapter 250 of the Code]

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Article I – Title and Purpose

Section 250-1 – Title – This chapter shall be known and may be cited as the “Zoning Code of the Village of Marcellus, New York” and shall consist of two (2) parts – this text and the official zoning map/atlas of the Village of Marcellus.*

*Note – The zoning map/atlas is not included herein, but is on file and available for inspection in the office of the Village Clerk.

Section 250-2 – Purpose – This chapter is enacted pursuant to the Village Law of the State of New York, Chapter 64 of the Consolidated Laws, Article 7, to protect and promote public health, safety, morals, comfort, convenience, economy, aesthetics and the general welfare; to promote and effectuate the orderly development of the Village of Marcellus; to encourage the most appropriate use of land in the Village in order to conserve and enhance the value of property; to provide adequate and suitably located commercial facilities; to protect and enhance existing historic areas, scenic areas and waterways; to control development within the Village of Marcellus; to realize a development plan properly designed to conserve land and the cost of municipal services; to assure privacy for residences and freedom from nuisances and things harmful to the senses; to protect the Village and its inhabitants against unsightly, obtrusive and noisome land uses and operations; and for the other purposes herein specified.

Article II – Word Usage and Definitions

Section 250-3 – In General – except where specifically defined herein, all words and terms used in this chapter are intended to be construed according to their ordinary and customary meaning. Words used in the present tense shall include the future, words used in the single number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.

Section 250-4 – Words, Phrases and Terms

1. The word “shall” is always mandatory. The word “may” is permissive
2. The word “building” or “structure” includes any part thereof. The word “lot” includes the word “plot” or “parcel.”
3. The phrase “used for” includes “arranged for,” “designed for,” “maintained for” and “occupied for.”

4. The word "person" includes an individual person, a firm, a corporation, a partnership, an association, a company or any other agency of voluntary action or organization of any kind.
5. The term "front" or "face" of a building shall mean the outer surface of a building which is visible from any private or public street or highway.
6. The term "illuminated," with reference to a sign, shall mean any sign illuminated by electricity, gas or other artificial light, including reflective or phosphorescent light.
7. The term "lighting device," with reference to a sign, shall mean any light, string of lights, or group of lights located or arranged so as to cast illumination on a sign.

Section 250-5 – Definitions – as used in this chapter and other chapters of the Village Code, the following terms shall have the meanings indicated:

Accessory Facility: A structure or piece of equipment that serves the principal use; is subordinate in area, extent, and purpose to the principal use; and is located on the same lot as the principal use. Examples of such facilities include transmission equipment, detached garages and storage sheds. (See also, Secondary Structure)

Accessory Use: A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building. Examples include tool shed, garage, car port, greenhouse, patio extension, swimming pool, playhouse, arbors, flagpoles, barbecue stoves, statuary, trellises, fences, walls, hedges, home occupations.

Alterations: As applied to a building or structure, means a change or rearrangement in the structural parts or in the exit facilities or an enlargement, whether by extending on a side or by increasing in height; or the moving from one location or position to another.

Alterations, Structural: Any change in the supporting members of a building such as bearing walls, columns, beams or girders.

Antenna: A system of electrical conductors that transmit or receive radio frequency waves. Such waves shall include, but not be limited to, radio-navigation, radio, television, wireless, and microwave communications. The frequency of these waves generally ranges from 10 hertz to 300,000 megahertz.

Basement: That portion of a building that is partly or completely below grade.

Bed and Breakfast: An owner-occupied residence, resulting from the conversion of a one-family dwelling, used for providing overnight accommodations and a morning meal to not more than ten (1) transient lodgers, and containing not more than five (5) bedrooms for such lodgers.

Building: Any structure having a roof supported by columns or by walls and intended for the shelter, housing or enclosure of persons, animals or chattels.

Building, Accessory: A building, the use of which is customarily incidental to that of the main or principal building which is located on the same lot as the principal building.

Building Area: The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings exclusive of uncovered porches, terraces and steps.

Building, Front Line of: The line of that face of the building nearest the front line of the lot. This face includes sun parlors, porches, and decks, whether enclosed or unenclosed but does not include steps.

Building, Height of: The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs; to the deck line of mansard roofs; and to the mean height between eaves and ridge for garble, hip and gambrel roofs.

Building Permit: The written authorization from the Codes Enforcement Officer required before commencing construction or other improvement, removal, relocation or demolition of any building or structure and before the installation of heating equipment or wood burning devices. A permit gives approval for the construction or use, subject to the conditions set forth in Chapter 44 of the Code.

Building, Principal: A building in which is conducted the main or principal use of the lot on which said building is situated.

Care Home: A facility occupied as a temporary or permanent residence by three or more persons, and designed primarily as housing for persons in need of care or supervision for reasons of chronic illness, handicap, age, senility, or convalescence. Facilities shall include, for example, nursing homes, rest homes, homes for prenatal care, and convalescent homes, but shall exclude medical care facilities.

Certificate of Occupancy or Compliance: A written statement from the Codes Enforcement Officer or other properly authorized person that the construction or use proposed under the same numbered permit, is completed and complies with the existing regulations of the Zoning Ordinance. A Certificate of Occupancy serves as authorization to occupy the facility. A Certificate of Compliance confirms that the improvements meet all conditions of the permit.

Church: A structure (including a synagogue, mosque, or temple) used for worship or religious instruction, together with social and administrative rooms accessory thereto.

Code Enforcement Officer: A person employed by the Village of Marcellus to enforce the provisions of this ordinance and the Uniform Code. May also be referred to as Zoning Officer.

Dissemination: The transfer of possession, custody, control or ownership of or the exhibition or presentation of any performance to a person, customer, member of the public or business invitee of any material distinguished or characterized by an emphasis on matter depicting, describing or relating to "Specified Sexual Activities" or "Specified Anatomical Activities."

Dwelling: A building designed or used exclusively as the living quarters for one or more families.

Dwelling Area: See Floor Area.

Dwelling, One Family: A detached building designed for or occupied exclusively by one family.

Dwelling, Two-Family: A building designed for or occupied exclusively by two families living independently of each other.

Dwelling, Multiple: A building used or designed as a residence for three or more families living independently of each other.

Dwelling Unit: A dwelling or portion thereof providing complete living facilities for one family.

Family: One or more persons occupying the premises and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house, club fraternity or hotel.

Family Day Care: Consistent with Section 390 of NYS Social Services Law, a program caring for three to six children in a residential dwelling, for more than three hours per day, but not more than twenty four hours per day. Such a program may include an additional one or two school-age children if those children receive care primarily before or after school.

Farm: Any parcel of land containing at least five acres, which is used for gain in the raising of agricultural products, livestock, poultry and/or dairy products. It includes necessary farm structures within the prescribed limits, and storage of equipment used. It excludes the raising of furbearing animals, riding academies, livery or boarding stables and dog kennels.

Floor Area: The sum of the gross horizontal areas of all floors of a building measured from the exterior faces of exterior walls excluding attic space with less than 7 feet of headroom, basements, garages, terraces, breezeways, and parking ports.

Garage, Private: A garage used for storage purposes only and having a capacity of not more than three automobiles or not more than one automobile per family housed in the building to which such a garage is accessory, whichever is greater.

Garage, Public: Any garage other than a private garage, available to the public, which may be operated for gain, and which is used for storage, repair, rental, greasing, washing, servicing, adjusting or equipping of automobiles or other motor vehicles.

Hotel/Inn: A building or group of buildings containing rooms that is to be used, rented, or hired out to be occupied as temporary lodging for sleeping purposes. Kitchens, dining rooms, meeting rooms, and other facilities intended for the accommodation of its patrons may be provided within the building or in an accessory building. A Bed & Breakfast is not considered a hotel.

Kennel: A structure used for the harboring of more than four (4) dogs that are more than six months old, regardless of whether or not for profit.

Lot: Land occupied or capable of being occupied by a building and its accessory buildings, together with such open spaces as are required, created in accordance with Town ordinances, having not less than the minimum area, width, and depth required in the zone in which said land is located, as well as required lot width on a public street.

Lot Area: A lot expressed in square units of measure derived by viewing the lot as a level surface.

Lot, Corner: A parcel of land at the junction of and fronting on two or more intersecting streets or proposed public rights-of-way.

Lot Coverage: That percentage of the lot covered by the area of all buildings and structures.

Lot Depth: The mean horizontal distance between the front and rear lot lines, measured in the general direction of its side lot lines.

Lot, Interior: A lot other than a corner lot.

Lot Line: Any line dividing one lot from another.

Lot Line, Front: A boundary coincidental with a contiguous street line.

Lot Line, Rear: A boundary connecting and situated between side lot lines other than the front lot line.

Lot Line, Side: A boundary extending from the front lot line to a terminal point.

Lot Width: The distance between side lot lines measured at the street line.

Medical Care Facility: A facility where medical care is offered to persons on an in-patient or out-patient basis by one or more licensed members of the medical profession, including hospital, clinic, physicians' office, but not including Home Occupations, or nursing and convalescent homes (see Care Home).

Mixed Use: A single structure with a minimum of two different and distinct uses. Mixed uses may include some combination of residential, retail, restaurant, dining, family entertainment, commercial office, professional office, hotel, grocery and civic uses.

Nonconforming Elements: A use, structure, secondary structure, accessory structure, unit, lot, yard or any other activity or component relating to the use of land, and the improvement hereon, which does not comply with the applicable district or general or special regulations contained in this ordinance, but which existed and did comply at its inception.

Outdoor Storage: The use of land for the outdoor storage of equipment, materials, supplies, vehicles, or merchandise. Such uses include, by illustration, lumber, building supplies, equipment, automobiles, and contractors' storage, but exclude junkyards, waste, or scrap products.

Parking Space: An off-street space used for the temporary parking of one licensed motor vehicle, not including access driveway, and having direct access to a public street.

Person: An individual or group of individuals, corporation, association, partnership, or other entity.

Road: See Street.

Service Station: Any area of land, including structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for polishing, greasing, washing, spraying, dry cleaning, or otherwise cleaning or servicing such motor vehicles.

Setback: The minimum prescribed distance between a lot line and a structure, accessory structure or secondary structure.

Secondary Structure: A physical improvement to land associated with the use of the property (for example: fence, television antenna, swimming pool, flagpole).

Sidewalk: A path for pedestrians, usually paved, along the side of a street

Sign: Any structure or part thereof attached thereto or painted or represented thereon, either temporary or permanent, which shall display or include any letter, word, model, banner, flag, pennant, insignia, device or representation used as, or which is in the nature of an announcement, direction or advertisement. The word "sign" includes the word "billboard", but does not include the flag, pennant or insignia of any nation, state, city or other political unit, or of any political, educational, charitable, philanthropic, civic, professional, and religious or like campaign, drive, movement, or event.

Site Plan: A rendering, drawing, or sketch showing the arrangement, layout and design of the proposed use of a single parcel of land to include the following elements in summary: parking, means of access, screening, signs, landscaping, architectural features, location and dimensions of buildings, design of such buildings, adjacent land uses and physical features meant to protect adjacent land uses (See Village Law: 7-725-2). The above elements are hereafter set forth more in specific detail in Chapter 204, Site Plan Review.

Special Use: A use that is deemed allowable within a given zone, but which is potentially incompatible with other uses, and therefore, is subject to special standards and conditions set forth for such use subject to approval by the Zoning Board of Appeals.

Street: A public thoroughfare, which affords the principal means of access to abutting property.

Street Line: The edge of the highway right-of-way.

Structure: A combination of materials, including a building as defined herein, to form a construction that is safe and stable and includes among other things, stadiums, platforms, radio towers, sheds, storage bins, fences, and display signs.

Swimming Pool: Any structure intended for swimming or recreational bathing that contains water over 24 inches deep. This includes in-ground, above-ground, and on-ground swimming pools, hot tubs, and spas.

Telecommunications Tower: A structure on which transmitting and/or receiving antennae are located.

Trailer: A vehicle designed to be towed for the purpose of transporting goods, wares, or merchandise.

Uniform Code: New York State Uniform Fire Prevention and Building Code effective January 1, 1984 and as subsequently revised and/or amended.

Unit: An area within a structure designed to accommodate a use together with such uses as are accessory thereto, if any.

Use: The specific purpose, for which land, building, or other structure is designed, intended, arranged, utilized, or maintained.

Use, Accessory: See Accessory Use

Yard, Front: An open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the street line and the front of the building projected to the side lines of the lot. The depth of the front yard shall be measured between the front line of the building and the street line. Porches and decks, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required front yard.

Yard, Rear: An open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot. The depth of the rear yard shall be measured between the rear line of the lot, or the center line of the alley if there be an alley, and the rear line of the building.

Yard, Side: An open unoccupied space on the same lot with a main building, situated between the side line of the building and the adjacent side line of the lot and extending from the rear line of front yard to the front line of the rear yard. If no front yard is required, the front boundary of the side yard shall be the front line of the lot and if no rear yard is required the rear boundary of the side yard shall be the rear line of the lot.

Zoning Permit: The written authorization from the Codes Enforcement Officer, other than a Building Permit, that the construction or use proposed is in accord with the regulations of the Zoning Ordinance. A permit gives approval for the construction or use, subject to conditions set forth in Chapter 44 of the Code.

Article III – Establishment of Districts – For the purpose of promoting the public health, safety, morals and general welfare of the community, all land in the Village of Marcellus is hereby placed, or authorized to be placed, in the following types of districts:

- Residential District Class RA – single family
- Residential District Class RB – two family
- Residential District Class RC – multiple family

Residential District Class RS – senior citizen
 Planned Development District (PD)
 Village Center District (VC)
 Commercial District (C)
 Open Land District (OL)

Section 250-6 – Site Plan Review – The Village Planning Board shall be required to conduct site plan review for development in any district, except Resident District Class RA, single family.

Section 250-7 – Zoning Districts – Said districts are and shall be bounded and defined on a map or series of maps entitled “Zoning Maps of the Village of Marcellus.” Said map or maps are hereby made a part of this chapter.

Article IV – Rules For Interpretation

Section 250-8 – Uncertainty – When uncertainty exists with respect to the boundaries of any of the aforesaid districts as shown on the zoning maps, the following rules shall apply:

1. Where district boundaries are indicated as approximately following the center lines of streets or highways, street lines, or highway right-of-way lines, such center lines, street lines, or highway right-of-way lines shall be construed to be such boundaries.
2. Where district boundaries are so indicated that they approximately follow the lot line, such lot lines shall be construed to be said boundaries.
3. Where district boundaries are so indicated that they are approximately parallel to the center line of street or highways, or street lines or highway right-of-way lines, such district boundaries shall be construed as being parallel thereto and at such distance therefrom as indicated on the zoning map. If no distance is given, such dimension shall be determined by the use of the scale shown on said zoning map.
4. Where the boundary of a district follows Nine Mile Creek or other body of water, said boundary line shall be deemed to be at the centerline of Nine Mile Creek or other body of water unless otherwise indicated.

Section 250-9 – Application of Regulations – Except as hereinafter provided:

1. No structure of any kind or land shall hereafter be used or occupied and no portion thereof shall be erected, moved, or altered unless in conformity with the regulations specified for the district in which it is located.
2. No part of a yard or other open space required about any structure for the purpose of complying with the provisions of this ordinance shall be included as a part of a yard or other open space required for another structure.

3. Unless otherwise expressly permitted herein no lot shall be improved with more than one structure together with such accessory structures as may be necessary thereto.
 4. No secondary structure may be located within the front yard.
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Article V – Residential District Class RA – The following shall apply in RA Districts:

Section 250-10 – Permitted Uses - Permitted uses include:

1. One-family dwelling to be occupied by a family as defined herein.
2. Only one one-family dwelling per lot is permitted.

Section 250-11 – Permitted Accessory Uses – Permitted accessory uses include:

1. Accessory buildings or uses provided such are incidental to the principal use.
2. Off-street parking pursuant to Article XIV of this chapter, provided no garage exceeds a maximum of three (3) automobiles.
3. Home occupations in compliance with Chapter 133 of the Village Code.
4. Private swimming pools in accordance with Chapter 225 of the Village Code.
5. Bed and Breakfast dwellings

Section 250-12 – Lot, Setback, and Size Requirements – The lot, setback and size requirements are on file in the Village Office.

Article VI – Residential District Class RB – The following shall apply in RB Districts:

Section 250-13 – Permitted Uses – Subject to site plan review by the Village Planning Board, permitted uses include:

1. One-family dwelling to be occupied by one family.
2. Two-family dwelling (one only per lot), to be occupied by two (2) families.

Section 250-14 – Permitted Accessory Uses – Subject to site plan review by the Village Planning Board, permitted accessory uses include:

1. Accessory buildings or uses provided such are incidental to the principal use.
2. Off-street parking pursuant to Article XIV of this chapter, provided no garage exceeds a maximum of three (3) automobiles.
3. Home occupations in compliance with Chapter 133 of the Village Code.
4. Private swimming pools in accordance with Chapter 225 of the Village Code.
5. Bed and Breakfast dwellings.

Section 250-15 – Lot, Setback, and Size Requirements – The lot, setback and size requirements are on file in the Village Office.

Article VII – Residential District Class RC (RC) – The following shall apply in RC Districts:

Section 250-16 – Permitted Uses – Subject to site plan review by the Village Planning Board, permitted uses include:

1. One-family dwelling to be occupied by one family.
2. Two-family dwelling (one only per lot), to be occupied by two (2) families.
3. Multiple dwellings provided a special use permit is obtained pursuant to Article XV of this chapter. In the event that the acreage to be utilized for such development exceeds two (2) acres, the Board of Trustees, in its discretion, may permit an area of two thousand five hundred (2,500) square feet of land per unit.

Section 250-17 – Permitted Accessory Uses – Subject to site plan review by the Village Planning Board, permitted uses include:

1. Accessory buildings or uses provided such are incidental to the principal use.
2. Off-street parking pursuant to Article XIV of this chapter, provided no garage exceeds a maximum of three (3) automobiles.
3. Home occupations in compliance with Chapter 133 of the Village Code.
4. Private swimming pools in accordance with Chapter 225 of the Village Code.
5. Bed and Breakfast Dwelling

Section 250-18 – Building and Lot Requirements – Building and lot requirements for Multiple Dwellings include:

- | | |
|---|---------|
| 1. Maximum lot coverage | 25% |
| 2. Maximum building height | 30 feet |
| 3. Minimum distance between buildings | 30 feet |
| 4. Minimum distance of buildings from property line | 45 feet |
| 5. Maximum number of units per acre | 20 |

Section 250-19 – Minimum Living Area Requirements – Minimum living area requirements for one, two, and three bedroom apartments in multiple dwellings shall be as follows:

- | | |
|---------------|------------|
| One bedroom | 650 sq ft |
| Two bedroom | 900 sq ft |
| Three bedroom | 1150 sq ft |

Section 250-20 – Lot, Setback, and Size Requirements – The lot, setback and size requirements are on file in the Village Office.

Article VIII – Residential District Class RS – The following shall apply in RS Districts:

Section 250-21 – Intent – The RS, Residential Senior Citizen District, is established to expand housing opportunities for senior citizens in the Village of Marcellus. The Village Board recognizes that there is a community need to provide housing facilities for senior citizens who do not need skilled nursing care and who are capable of providing for their ordinary routine necessities of life. It is the intent of this district to encourage the development of moderately priced multiple dwelling units for senior citizens, to insure that such developments provide the basic services and facilities to accommodate residents' needs, and to minimize detrimental effects on neighboring properties.

Section 250-22 – Permitted Uses – Subject to Site Plan Review by the Village Planning Board, permitted uses include:

1. Multiple dwellings provided such dwellings are arranged as individual dwelling units for the occupancy of senior citizens and their immediate families. Specifically excluded are nursing homes, group residences and rooming or boarding houses.
2. Exceptions: Notwithstanding the provisions of paragraph (1) above, one unit may be occupied by a project superintendent or manager and his or her family
3. Accessory Structures/Uses
 - a. Any facilities necessary to meet the proper maintenance, security, storage and utility needs of the development.
 - b. Signs, subject to Village Planning Board review for placement and design.

Allowable signs include those listed in Chapter 202 of the Village Code and such directional and other traffic control signs as the Village Planning Board may allow.

Section 250-23 – Parking Requirements

1. General. Off-street parking shall be provided on the same lot as the multiple dwelling. Parking areas shall be adequately illuminated, located in reasonable proximity to building entrances, properly drained, paved with asphalt or other similar surface inclusive of necessary curbing, striped and meet all other reasonable requirements as determined by the Village Planning Board during site plan review.
2. Parking spaces shall be provided at the ratio of one (1) space per each dwelling unit, plus one (1) additional space for every employee of the citizen housing who does not live on the one (1) additional space for every employee of the senior citizen housing who does not live on the premises.
3. Handicap parking spaces shall be provided in the ratio of one (1) handicap space per each 25 units plus one space for every unit designated for handicap occupancy. Each handicap space shall be 16' wide by 20' long, suitably marked by the international handicap designation and placed as close to the principal entrance of the building(s) as practical.
4. Notwithstanding the provisions listed above, the Planning Board during its site plan review may increase or decrease the number of required parking spaces by no more than 25% if it finds special circumstances of the proposed development warrant a change in parking requirements. For any reduction of spaces, the parking area exempted

by the Village Planning Board shall be planted with grass with the condition that additional spaces up to the original requirements can be paved if the Planning Board finds that, within one year of issuance of all certificates of occupancy for such units, such spaces are necessary.

5. Such special circumstances include availability of mass transit, income mix of residents, experience of developer in a similar project or other special considerations.

Section 250-24 – Geometric Requirements

1. Lot

- a. Minimum Area: one acre
- b. Maximum Coverage: 35%
- c. Maximum number of units per acre: 20
- d. Maximum impervious surface area: 40% of lot area.

2. Principal Structure

- a. Maximum building height: 30 feet (from the highest finished grade)
- b. Minimum distance of buildings from a property line: 20 feet
- c. Minimum distance from buildings: 30 feet
- d. Maximum number of units per structure: 48 unless waived by the Village Planning Board during site plan review.

3. Accessory Structures/Uses

- a. Minimum front yard setback: 45 feet
- b. Minimum rear yard setback: 20 feet
- c. Minimum side yard setback: 12 feet
- d. Maximum height: 15 feet

Section 250-25 – Residential Occupancy

1. Allowable Units: Only one and two bedroom units will be allowed in this district.
2. Residential occupancy of dwelling units in a RS district shall be limited to the following individuals:
 - a. A single person who is 62 year or older
 - b. A physically handicapped person who is between the ages of 18 and 62.
 - c. A husband or wife under the age of 62 who is residing with his or her spouse who is either 62 years of age or over or physically handicapped.
 - d. One child or grandchild residing with their parents or grandparents where one (1) of parents or grandparents is 62 years of age or older or physically handicapped, providing that said child or grandchild is 18 years of age or over.
 - e. Surviving member or members of a family living with an eligible older or physically handicapped person in RS District housing at the time of his or her death.
 - f. Two or more elderly or physically handicapped persons living together.

Section 250-26 – Site Plan Review and Approval – see Chapter 204 – Site Plan Review

Article IX – Planned Development District (PD) – The following shall apply in a PD District

Section 250-27 – Introduction

1. Intent. Provision is included for Planned Development Districts to permit establishment of areas in which diverse uses may be brought together in a compatible and unified plan of development, which shall be in the interest of the general welfare of the public. In Planned Development Districts, land and structures may be used for any lawful purpose in accordance with the provisions set forth herein.
2. Procedure overview.
 - a. The classification of any property within the Planned Development (PD) District requires the undertaking of a two-step process involving the approval of both the Board of Trustees and the Village Planning Board.
 - b. In the first step, the Board of Trustees, in its legislative capacity, establishes the boundaries of the proposed PD District and sets the limits on the nature and range of uses, geometric and site controls and overall project planning. The Board of Trustees' action is in response to the applicant's submission of a general outline that discusses the contemplated development for the proposed PD District.
 - c. The Planning Board is delegated by the Board of Trustees the responsibility in the second step for ensuring that the general outline approved by the Board of Trustees is properly implemented. The Planning Board ensures compliance by reviewing and approving (if and when acceptable) the project plan submitted by the applicant. The project plan is the detailed narrative and graphic documentation for the development of the entire PD District.
 - d. It is understood that certain public benefit features will be required to ensure that the quality of design and amenity are sufficient to justify the departure from conventional zoning restrictions. Emphasis on the preservation of natural site attributes will be accomplished through design and placement of structures which complement rather than conflict with the natural terrain and other natural features such as trees and watercourses.
 - e. The Planned Development Zone District regulations shall not become effective nor shall the Official Zoning Map be amended with the new PD boundaries until the project plan has been approved by the Planning Board within 180 days of the Board of Trustees' authorization.

Section 250-28 – District Establishment by the Board of Trustees

1. Approval – all Planned Development (PD) Districts shall be established by the Board of Trustees in accordance with the procedures set forth herein.

2. Uses permitted – the Board of Trustees shall specify the uses permitted within the Planned Development District when such district is initially established, including specific uses for lots and sub areas within the PD District. Where residential uses are permitted, the Board of Trustees may establish the unit densities. If the Board of Trustees elects not to establish densities, then the provisions of Subsection 5(a) below shall apply.

3. Minimum area.

a. No PD District shall have a gross land area of less than three (3) acres, exclusive of areas to be dedicated to the Village for public purposes. Anything less will require an area variance from the Zoning Board of Appeals and application to the Planning Board.

b. Once established, a PD District may be enlarged to include other contiguous areas, regardless of their size. Such areas, if separated by a public right-of-way, may be considered contiguous if, in the opinion of the Board of Trustees, the continuity of development of the original PD District is maintained.

4. Phased development.

a. PD Subareas. The Board of Trustees may identify portions of a PD District as discrete geographic sub areas of the PD. Such designated sub areas may have land uses or standards different from the balance of the PD District, provided that such designated sub areas are fully integrated in the overall development for the entire PD District.

b. Project staging. The Board of Trustees may establish the sequence in which development of a PD District shall occur by specifying the order in which sub areas, sections or phases of a PD are to be developed.

c. Project plan approval. If a proposed PD District is to be undertaken in a staged development, the Board of Trustees may stagger the one-hundred-eighty-day project plan approval process correspond with the project staging.

5. Standards. Unless the Board of Trustees has established other controls or standards at the inception of the district, the following shall apply uniformly to the entire PD District or to the designated portion of the PD District:

a. Geometric controls.

1) Distance between buildings on one lot.

a) Residential. Front, rear and side yards for residential uses shall be designed so that a building is no closer than 20 feet to any other residential building and 50 feet to any nonresidential building.

b) Nonresidential. Front, rear and side yards for nonresidential uses shall be designed so that building is no closer than 40 feet to any other nonresidential building and 50 feet to any residential building.

c) For purposes of interpretation, a structure which contains both residential and nonresidential uses shall comply with the requirements of Subsection (b) above.

d) Accessory structures shall be no closer than 10 feet to the principal structure with which they are associated and no closer than 20 feet to any other principal structure and five feet to any other accessory structure.

2) Distance from lot lines. The minimum distance between any point on a building and the lot line shall not be less than the height of the building.

3) Density. Unless otherwise approved by the Board of Trustees, all residential development shall provide a density of 5,000 square feet per dwelling unit. (Commercial and industrial uses shall maintain a minimum of 20,000 square feet of land per each building).

4) Lot coverage. Maximum lot coverage for all development within a PO District shall not exceed 40% of the gross land area.

5) Height. The maximum height of all principal structures shall not exceed 35 feet for residential buildings, 40 feet for commercial or industrial buildings, and accessory structures shall not exceed 15 feet.

6) Parking/loading. The provisions of Article XIV of this Chapter 250 (the Zoning Code) shall apply to PD Districts. Shared parking and storage may be included in the calculation of the overall parking compliance.

b. Compliance. Except as provided above, PD Districts shall be subject to all applicable regulations as provided in this chapter.

6. Submission documents. In order to obtain the approval of the Board of Trustees for the establishment of a Planned Development District, the following data and information shall be submitted:

a. A written narrative outlining the applicant's overall concept for the proposed Planned Development District, which shall include but not be limited to discussion of the following: the range and mix of uses, housing density, building types, common or public facilities, broad financing picture, points of access, parking, open space/recreation areas, provision for public utilities and project phasing.

- b. A schematic plan of the site, drawn to scale, graphically depicting the elements addressed in the applicant's narrative statement.
- c. An environmental assessment in accordance with the New York State Environmental Quality Review Act (SEQR).
- d. Survey(s) of the property or properties proposed for inclusion in the PD District.

7. Procedure. A Planned Development District shall be established by the Board of Trustees pursuant to law and the following additional requirements:

- a. Upon receipt of a Planned Development District proposal, the Board of Trustees shall refer the PD District submission documents to the Planning Board for its advisory opinion on the establishment of the PD District. The Planning Board shall respond to the Board of Trustees with a written report of its findings and recommendations within a time period established by the Board of Trustees, to be not less than 30 days and not more than 90 days, unless modified by mutual agreement of the Board of Trustees and the Village Planning Board.
- b. The Board of Trustees is the lead agency for purposes of the New York State Environmental Quality Review Act (SEQR) and shall determine the environmental significance of the proposed PD zone pursuant to SEQR and make the appropriate notification or referrals to the applicable municipalities or other levels of government.
- c. The Board of Trustees may meet informally with the applicant, the Village Planning Board or other interested parties to discuss the PD District proposal.
- d. Upon public notice of at least 10 days, the Board of Trustees will hold a public hearing, after which and upon the consideration of the advice submitted by the Planning Board and other agencies it may vote upon the establishment of a Planned Development District.
- e. The Board of Trustees shall, by resolution, transfer the PD District to the review authority of the Village Planning Board for project plan approval and shall instruct the Village Planning Board of the specific uses, minimum area and geometric controls to be maintained in the PD District, designated sub-areas and may stipulate project phasing and a timetable of Planning Board review. The resolution shall include a copy of the approved schematic plan of the proposed PD zone.

Section 250-29 – Project Plan

1. Approval by the Village Planning Board

- a. The project plan is a detailed narrative and graphic documentation for the development of the entire land area or of designated sub-areas within the PD District and, unless otherwise specified, shall be approved with no modifications

or denied by the Planning Board within 180 days of the approval date of the PD District by the Board of Trustees.

b. The PD District regulations are effective, the Zoning Map is amended and permits may be issued only after the project plan has been approved by the Planning Board.

c. Failure to obtain project plan approval within the required time limits shall cause the original authorization of the Board of Trustees to lapse and the property or properties shall maintain the previous zoning classification.

d. The Planning Board shall evaluate the project plan in accordance with the authorizing resolution of the Board of Trustees establishing the district, the criteria and findings of the special permit/site plan review and all other applicable laws and regulations.

e. The Planning Board may, subject to constraints of the Board of Trustees' resolution, allow for the phased development of the PD District but shall approve the schedule and order of development.

2. Requirements.

a. The Planning Board may not specify uses not enumerated by the Board of Trustees.

b. The Planning Board shall ensure compliance with the minimum area and geometric controls specified in this section and the Board of Trustees' resolution establishing the PD District.

3. Submission documents.

a. Project plan submissions. Project plans must include maps, drawings and other materials that show:

1) Site plans for all construction for which building permits are being sought and all adjoining or adjacent structures, parking facilities or drives.

2) All landscaped open space, plazas, malls, courts and pedestrian ways within or immediately surrounding the proposed construction.

3) Grading plans using United States Geologic Survey (USGS) datum showing existing and proposed topographic contours within and surrounding the proposed construction.

4) Improvement plans showing existing and proposed drainage, water and sanitary sewer facilities, easements if any, within or affected by the proposed development.

5) Vehicular and pedestrian traffic circulation plans showing proposed streets, points of access, sidewalks, and off-street parking and loading to serve any proposed building or facilities.

6) Permanent landscaping within and surrounding the proposed construction.

7) Any signs to be included in the proposed construction.

8) General floor plans and building elevations of proposed structures.

9) Other items as determined by the Planning Board including, but not limited to, lighting, show storage, and signage.

10) Construction schedule, sequence of development, and project financing.

11) Designated area(s) reserved for parkland.

b. Supporting and explanatory material. The Planning Board may require the submission of additional material to explain and justify the project plan, which could include but is not limited to the following:

1) Information necessary to assure compatibility of the proposed project with adjoining existing uses and to the Village Comprehensive Plan.

2) An explanation of the manner in which all requirements of the overall plan and of other applicable regulations are to be met and in which adequate access for public and fire protection is to be maintained.

3) Payment-in-lieu-of-land for parklands

4) Bonding security for proposed public improvements.

4. Procedure. The project plan approval is an action distinct and separate from the Board of Trustees' establishment of the PD District and conducted in accordance with the procedures and requirements of this chapter applicable to site plan and special permit review, including New York State Municipal Law and SEQR. Separate environmental analysis of each project phase may be necessary to supplement the initial SEQR determination and findings made for establishing of the PD zone.

Section 250-30 – Modifications

1. Except as otherwise may be provided by the Board of Trustees or Planning Board, all land use activities situated within and in existence on the effective date of such classification or developed in accordance with an approved project plan as provided herein shall be subject to the issuance of a project plan amendment by the Planning Board in the event of the following:

a. A change in type or location of enumerated (approved) land uses.

- b. An increase in floor area in excess of 10% of a principal or accessory structure.
 - c. Demolition of a principal structure, except where mandated by the Codes Enforcement Officer in the interest of public safety.
 - d. The establishment or realignment of new streets or other public/common areas.
 - e. Any change to landscaping, open space, parking, public facilities, or other improvements addressed in the project plan.
 - f. Any change that may otherwise be regulated by the adoption of controls made specifically applicable to such district, either at its inception or subsequently.
2. District amendments. Except as otherwise provided, any modification not addressed by Subsection (1) above shall be reviewed and approved by the Board of Trustees.
3. It is the intent of the PD zone that no nonconforming elements will exist within the zone. The flexibility of the land use and geometric controls and review procedures should prevent the creation of any nonconforming element. In the event that nonconformity does exist, any subsequent changes shall conform to the zone controls and shall be subject to an issue of a project plan amendment by the Planning Board.

Article X – Village Center District (VC) – This VC provides the Village the ability to gradually plan, with great flexibility the redevelopment of the Village business area based upon interest in the development, the need for it, environmental aspects, the welfare of the community, and aesthetic and safety consideration. The following shall apply in the VC District:

Section 250-31 – Permitted Uses – Subject to site plan review by the Village Planning Board, permitted uses include:

- 1. Retail sales and services
- 2. Offices
- 3. Institutional (churches and associated buildings, schools, etc.)
- 4. Banks, however, a special use permit shall be required in the event of drive-through facilities pursuant to Article XV herein.
- 5. Restaurants, however, a special use permit shall be required in the event of drive-through facilities pursuant to Article XV herein.
- 6. Service stations, automotive repair shops and/or automotive car washes, which shall require a special use permit pursuant to Article XV herein.
- 7. Group homes (nursing home, rest home, etc.)

8. Multiple dwellings shall require a special use permit pursuant to Article XV herein.
9. Mixed Use
10. Hotel/Inn

Section 250-32 – Permitted Accessory Uses – Subject to site plan review by the Village Planning Board, permitted accessory uses include:

1. Accessory buildings or uses provided such are incidental to the principal use.
2. Parking as required by the Board of Trustees upon the granting of a building permit.
3. Signs as set forth pursuant to Chapter 202 of the Village Code.
4. Home occupations in compliance with Chapter 133 of the Village Code.
5. Bed and Breakfast dwellings.

Section 250-33 – Building, Setback and Size and Lot Requirements – Building, setback, size and lot requirements shall be regulated by the Board of Trustees upon the granting of a building permit and upon the recommendation of the Planning Board.

Sections 250-34 – 250-35 – Reserved

XI – Article XI – Commercial District (C) – The size and location of buildings together with provisions for off-street parking in the Commercial District shall be determined by the Board of Trustees, with the recommendation of the Planning Board. The following shall apply in the C District:

Section 250-36 – Permitted uses – Subject to site plan review by the Village Planning Board, permitted uses include:

1. Retail sales and services
2. Wholesale sales
3. Light manufacturing, providing a special use permit is issued pursuant to Article XV herein.
4. Offices
5. Banks, without drive-through facilities
6. Restaurants, however, a special use permit shall be required in the event of drive-through or carryout facilities pursuant to Article XV herein.
7. Service stations, automotive repair shops and/or automotive car washes, which shall require a special use permit pursuant to Article XV herein.
8. Personal service shops or radio and television repair shops
9. Warehousing facilities
10. Hotel/Inn

Section 250-37 – Permitted Accessory Uses – Subject to site plan review by the Village Planning Board, permitted accessory uses include:

1. Accessory buildings or uses provided such are incidental to the principal use.
2. Parking as required by the Board of Trustees upon the granting of a building permit and upon recommendation of the Planning Board, or, as specified by the Zoning Board of Appeals in the event of the granting of a variance.
3. Signs as set forth pursuant to Chapter 202 of the Village Code.

Section 250-38 – Building, Setback and Size and Lot Requirements – Building, setback, size and lot requirements shall be regulated by the Board of Trustees upon the granting of a building permit and upon the recommendation of the Planning Board, or, by the Zoning Board of Appeals in the event of the granting of a variance.

Sections 250-39 – 250-40 – Reserved

Article XII – Open Land District (OL) – The following shall apply in an OL District:

Section 250-41 – Permitted Uses – Subject to site plan review by the Village Planning Board, permitted uses include:

1. Churches, associated buildings and parking lots therefore.
2. Cemeteries.
3. Schools, associated buildings and parking lots therefore.
4. Parks and public walkways

Section 250-42 – Permitted Accessory Uses – Subject to site plan review by the Planning Board, permitted accessory uses include:

1. Accessory buildings or uses provided such are incidental to the principal use.
2. Signs as set forth pursuant to Chapter 202 of the Village Code.

Section 250-43 – Building, Setback and Size and Lot Requirements – Building, setback, size and lot requirements shall be regulated by the Board of Trustees upon the granting of a building permit and upon the recommendation of the Planning Board, or, by the Zoning Board of Appeals in the event of the granting of a variance.

Sections 250-44 – 250-45 – Reserved

Article XIII – Accessory Buildings, Facilities and Uses – Refer to definitions of Accessory Facility and Accessory Use.

Section 250-46 – Location of Accessory Buildings – The location of accessory buildings is governed by the following additional regulations:

1. In any district where a rear yard is required, any accessory building situated in the rear yard must be located at least three (3) feet from the rear lot line and three (3) feet from the side lot line.
2. If such accessory building is connected, it shall be considered part of the principal building. In the VC District, such distances shall be determined by the Board of Trustees upon the issuance of a building permit considering all relevant circumstances including but not limited to: use of property and adjoining property, zoning of adjoining property, safety, appearance and environmental factors.
3. Accessory Buildings cannot be constructed forward of the principal structure.

Section 250-47 – Satellite Dish Installation and Maintenance – see Chapter 233

Section 250-48 – Fences, Walls and Landscape Screens – see Chapter 86

Section 250-49 – Telecommunication Towers – see Chapter 231

Section 250-50 – Swimming Pools – see Chapter 225

Section 250-51 – Outdoor Storage – see Chapter 168

Section 250-52 – Home Occupations – see Chapter 133

Sections 250-53 – 250-55 – Reserved

Article XIV – Off-Street Parking – Off-street parking and garage space shall be provided and maintained on the same lot with every building pursuant to the following additional regulations governing particular zoning districts:

Section 250-56 – RA District – Two (2) spaces per unit at least one of which shall be enclosed within a garage. Existing structures in such district shall not require a garage and it shall not be consider a nonconforming element.

Section 250-57 – RB District – A minimum of two (2) automobile parking spaces in a one (1) family dwelling and three (3) automobile spaces in a two (2) family dwelling, to include garage space as applicable and maneuverable aisles to be provided as necessary.

Section 250-58 – RC Districts – A minimum of one and one-half (1½) automobile parking spaces for each residential unit to include garage space as applicable and maneuverable aisles

to be provided where necessary. Plans for curbing, surfacing and drainage of the parking area for proposed construction of multiple dwelling units shall be submitted with the application for a building permit to the board of trustees. Such plans shall be prepared by a licensed architect or surveyor to portray details of construction to include surface water drainage.

Section 250-59 – RS District – Off-street parking in this district shall be subject to the provisions of Article VIII of this chapter.

Section 250-60 – PD District – Off-street parking in this district shall be subject to the provisions of Article IX of this chapter.

Section 250-61 – VC and C District – Parking and/or loading space shall be required for new construction as determined by the Board of Trustees. Loading space for any commercial activity shall not be deemed to count as parking space. Off-street parking in these districts shall be determined by the Board of Trustee.

Section 250-62 – OL District – Off-street parking for any new construction shall be determined by the Board of Trustees on granting of a building permit based upon the expected occupancy and frequency of usage of the structure housing the permitted use.

Section 250-63 – Parking Space – A parking space shall be computed at ten (10) feet by twenty (20) feet.

Sections 250-64 – Parking Restrictions (added by Local Law No. 3 of 2013)

1. All vehicles must park in an established paved or graveled driveway or parking area in the front yard of any Village residence, being the area located between the residence and the public right-of-way. No vehicle may be parked on the landscaped portion of the yard.

2. The driveway or parking area may extend from the front edge of the property through the front yard to the side or rear of the residence. The maximum width of the driveway at the street line and within the front yard shall be 16 feet. In no case may more than 25% of any front yard area be paved or used for a driveway and off-street parking.

3. No more than 20% of a lot may be paved with impervious or pervious material for the parking of vehicles.

Sections 250-65 – 250-70 – Reserved

XV – ARTICLE XV – Zoning Relief

Section 250-71 – Non Conforming Uses – Zoning relief can be obtained by grandfathering certain uses, referred to as legal, non-conforming uses, including non-conforming use of land or buildings, non-conforming building, and non-conforming subdivision of land or lot of record

1. Intent

a. Within the districts set forth in this Zoning Code, or amendments that may later be adopted, there exist: lots, structures, uses of land and characteristics of use that were lawful before the original Zoning Ordinance was adopted in 1972, but which would be prohibited, regulated, or restricted under the terms of the Zoning Ordinance or the Zoning Code. It is the intent of this Zoning Code to permit these non-conformities to continue until they are removed, but not to encourage their survival; they run with the land and do not terminate on account of sale or conveyance. It is further the intent of this Zoning Code that non-conformities shall not be enlarged upon, expanded or extended, or be used as grounds for adding other structures or uses prohibited elsewhere in the same district.

b. Non-conforming uses are declared by this Zoning Code to be incompatible with permitted uses in the districts involved. A non-conforming use of a structure and land in combination shall not be extended or enlarged after passage of this Zoning Code by attachment or a building or premises of additional signs intended to be seen, from off the premises, or by the addition of other uses, nature which would be prohibited generally in district involved.

c. To avoid undue hardship, nothing in chapter shall be deemed to require a change in the plans, construction or designated use of any parcel of land on which actual or constructive construction was lawfully begun prior to effective date of adoption of this Zoning Code. (Constructive construction is hereby defined to include all proposed construction for which a building permit has been obtained from the Village of Marcellus. Actual construction is hereby defined to include the placing of construction materials in a permanent position and fastened permanent manner. Where excavation or demolition or removal of an existing building has substantially begun preparatory to rebuilding, excavation or demolition or removal shall be deemed to be actual construction, provided that work be carried on diligently and a building permit for such work has been obtained from the Village of Marcellus).

2. Definitions – include the following:

a. A “nonconforming use” is a use of a structure or land, which was lawfully established and maintained prior to the adoption of this ordinance but which, under this ordinance, does not conform to the use regulations for the district in which it is located.

b. A “nonconforming structure” is a structure which was lawfully erected prior to the adoption of this ordinance but which, under this ordinance, does not

conform with the standards of coverage, yard spaces, height of structures or distance between structures prescribed in the regulations for the district in which the structure is located.

c. An "appraiser" is one who is trained and educated in the methods of determining the value of property through analysis of various factors that determine said value.

d. "Replacement cost" is the estimated cost to construct, at current prices as of the effective appraisal date, a building with utility equivalent to the building being appraised, using modern materials and current standards, design, and layout.

e. "Reproduction cost" is the estimated cost to construct, at current price as of the effective date of appraisal, an exact duplicate or replica of the building being appraised, using the same materials, construction standards, design, layout, and quality of workmanship and embodying all of the deficiencies, super adequacies and obsolescence of the subject building.

3. Nonconforming Lots of Record – In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record, or a lot or parcel described by metes and bounds or a lot in an unrecorded plat which was the subject of a contract to purchase or article of agreement executed prior to the effective date of the original Zoning Ordinance, notwithstanding limitations imposed by other provisions of the Zoning Ordinance. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district. Variance of yard requirements shall be obtained through action of the Board of Appeals. No existing lot or lands shall be sold or subdivided in any manner so as to create a substandard or dimensionally deficient lot.

4. Nonconforming Uses of Land (or land with minor structures only) – Where at the time of passage of the original Zoning Ordinance, lawful use of land exists which would not be permitted by the regulations imposed by the Zoning Ordinance and where such use involves no individual structure with a replacement cost, as distinguished from reproduction cost, exceeding \$1,000.00, the use may be continued so long as it remains otherwise lawful, provided:

- a. No such non-conforming use shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption of the Zoning Ordinance.
- b. No such non-conforming use shall be moved in whole or in part to any portion of the lot parcel other than that occupied by such use at the effective date of adoption of the Zoning Ordinance.
- c. If any such non-conforming use of land ceases for any reason for a period of more than sixty (60) days, any subsequent use of such land shall conform to the regulations specified by the Zoning Ordinance for the district in which such land located.

d. No additional structure not conforming to the requirements of the Zoning Ordinance shall be erected in connection with such non-conforming use of land.

5. Nonconforming structures – Where a lawful structure exists at the effective date of adoption of the original Zoning Ordinance by reason of restrictions of area, lot coverage, height, yards, its location on the lot or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

a. No such non-conforming structure may be enlarged or altered in any way that increases its non-conformity, but any structure or portion thereof may be altered or replaced to decrease its non-conformity.

b. Should such non-conforming structure or non-conforming portion of structure be destroyed by any means to an extent of more than 75 percent of its replacement cost, as determined by three (3) competent appraisers, at time of destruction, it shall not be reconstructed except to the exact or more conforming dimensions as it existed on the date of its destruction which reconstruction shall be commenced and completed with due diligence provided, however, if and when its principal place of residence of a citizen of the Village of Marcellus is destroyed by accidental fire hurricane, tornado, or other act of God, said home owner may rebuild said residence to original type and size of structure. The services of the three (3) appraisers shall be retained by the owner of the building or structure after the three (3) appraisers are mutually agreed upon by the Village and the owner of the building or structure.

c. Should such structure be moved for any reason to any district whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

6. Nonconforming use of structures or structures and premises in combination – If lawful use involving individual structures with a replacement cost of \$1,000.00 or more, or of structures and premises in combination exists at the effective date of adoption of the original Zoning Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

a. No existing structure devoted to a use not permitted by this Zoning Ordinance in the district which it is located shall be enlarged, extended, constructed, reconstructed, moved, or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located.

b. Any non-conforming use may be extended throughout any parts of a building that were manifestly arranged or designed for such use at the time of adoption of the original Zoning Ordinance, but no such use shall be extended to occupy any land outside such building.

c. If no structural alterations are made, any non-conforming use of a structure or structures and premises, may by way of interpretation be changed to another non-conforming use provided that the Board of Appeals shall make an interpretative ruling in the specific case, shall find that the proposed use is

equally appropriate or more appropriate to the district than the exist non-conforming use. In permitting such change, the Board of Appeals may require appropriate conditions and safeguards in accord with the provisions this Zoning Code

- d. Any structure, or structure and land in combination in or on which a non-conforming use was partially superseded by a permitted us, shall thereafter be permitted only after consideration of the plans and specifications for the same have been approved by the governing body or shall thereafter conform to the regulations for the district, and the non-conforming use may not thereafter be resumed.
- e. When a non-conforming use of a structure, or structure and premises in combination is discontinued or abandoned for six consecutive months during any three-year period (except when government action impedes access to the premises), the structure or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located.
- f. Where non-conforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the non-conforming status of the land. Destruction for the purpose of this sub-section is defined as damage to an extent of more than 75 percent of the replacement cost at the time of destruction.

7. Repairs and maintenance.

- a. On any non-conforming structure or portion of a structure containing a non-conforming use, work may be done in any period of twelve (12) consecutive months on ordinary repairs, or on repair or replacement of non-bearing walls, fixtures, wiring, or plumbing, to an extent non exceeding 25 percent of the current replacement cost of the non-conforming structure or non-conforming portion of the structure as the case may be provided that the cubic content existing when it became non-conforming shall not be increased.
- b. If a non-conforming structure or a portion of a structure containing a non-conforming use becomes physically unsafe or unlawful due to the lack of repairs and maintenance, and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, or rebuilt except in conformity with the regulations of the district in which it is located.
- c. Nothing in this Zoning Code shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

8. Uses under special permit, exception provisions not nonconforming uses. Any use which is permitted as a special use a district under the terms of this Zoning Code (other than a change through Board of Appeals action from a non-conforming use to

another use not generally permitted in the district) shall not be deemed non-conforming use in such district, but shall without further action be considered a conforming use.

9. Rezoning and Annexation. Whenever the boundaries of a zone shall be changed so as to transfer an area from one zone to another zone of a different classification, or for areas annexed into the Village of Marcellus, the foregoing provisions shall also apply to any nonconforming uses existing therein.

Section 250-72 – The Zoning Board of Appeals – The Zoning Board of Appeals can provide Zoning relief pursuant to the procedures set forth herein.

1. Appeals: Any person, fire or corporation who may be aggrieved by the refusal of a certificate of occupancy or building permit for changing the use or for the construction of or alteration of a building under the provisions of this ordinance may appeal to the Board of Zoning Appeals, pursuant to the procedure hereinafter described.

2. Board of Appeals: There is hereby established a Board of Zoning Appeals hereinafter referred to as the Board of Appeals, consisting of five (5) members to be appointed by the Village Board of Trustees; which Board of Appeals shall have all the powers and duties prescribed by law and this chapter. The administration powers and duties are summarized and more particularly specified as follows, provided that none of the following provisions shall be deemed to limit any power of the Board of Appeals conferred by the Village Law:

3. Administration.

a. The Board of Appeals shall consist of five (5) members, each appointed by the Village Board of Trustees for a term of five (5) years. No person who is a member of the Board of Trustees shall be eligible for membership on such Board of Appeals. The Board of Trustees shall have the power to remove any member of the Board for cause and after public hearing. Vacancies shall be filled for the unexpired term of the member whose place has become vacant on said Board of Appeals.

b. All meetings of the Board of Appeals shall be held at the call of the chairman and at such other times as such Board may determine. Such chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of such Board shall be open to the public. Such Board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of the examinations and other official actions.

c. Every rule, regulation, every amendment or repeal thereof, and every order, requirement decision or determination of the Board of Appeals shall immediately be filed in the office of the Board of Appeals or with the Village Clerk and shall be a public record.

4. Powers – The Board of Appeals is empowered to interpret the applicable sections of the Village Code and issue variances, as explained herein.

Section 250-73 –Variances – The Board of Appeals may provide zoning relief in the form of a variance (use or area) as follows:

1. Variance procedure. After a public hearing held pursuant to the provisions of Article XV, Section 250-73-2 as hereinafter described, the Board of Appeals shall have the power to hear and decide appeals from, and to review any order, requirement, decision or determination made by an administrative official charged with the enforcement of this Code, and, in passing upon appeals, shall have the power where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this ordinance, to vary or modify the application of any of the regulations or provisions of this zoning ordinance relating to the use, construction or alteration of buildings or structures, or the use of land, so that the spirit of the zoning ordinance of the Village of Marcellus shall be observed, and public safety and welfare secured and substantial justice done. No variance in the strict application of any provision of this ordinance shall be granted by the Board of Appeals unless it finds:

- a. If there are any special circumstances or conditions fully described in the findings of the Board, applying to the land and buildings for which the variance is sought, which circumstances or conditions are unique to such land or buildings and do not apply generally to land or buildings in the neighborhood, and have not resulted from any act of appellant or applicant subsequent to the adoption of this amendment to the zoning ordinance, whether in violation of the provisions hereof or not;
- b. That for reasons fully set forth in the findings of the Board, the aforesaid circumstances or conditions are such that the strict application of the provisions of this ordinance would deprive the appellant or applicant of the reasonable use of such land or building and the granting of the variance is necessary for the reasonable use of the land or building, and that the variance which is granted by the Board is the minimum variance that will accomplish this purpose; and
- c. That granting of the variance will be in harmony with the general purpose and intent of this ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare;
- d. In granting any variance, the Board of Appeals shall describe any appropriate safeguard and conditions applying thereto that it may deem to be necessary or desirable in the public interest, and such determination shall be recorded on the building permit or the certificate of occupancy, as the case may be, issued pursuant to such variance.

2. Filing, publication and other procedure.

- a. Such appeal shall be taken within thirty (30) days after the order, decision or determination of the appropriate administrative officer, by filing with said officer a notice of appeal, specifying the grounds thereof which notice shall be prescribed by the Board of Appeals. The officer from whom the appeal is taken

shall forthwith transmit to the Board of Appeals all of the papers constituting the record upon which the action appeal from was taken.

b. The Board of Appeals shall within a reasonable time thereafter fix a time for the hearing of the appeal, and shall cause to be published in the official newspaper of the Village of Marcellus, New York, a notice at least ten (10) days before said hearing, giving the time and place of such hearing. A written notice of any proposed change affecting property within five hundred (500) feet of the boundaries of any town, count, village or state property shall be given to the appropriate officer of said government subdivision having jurisdiction thereof, at least ten (10) days prior to the date of such hearing.

c. In case, however, of a protest against such a variance signed by the owners of fifty percent (50%) or more of the area land included in such proposed change, or of that immediately adjacent extending three hundred (300) feet from the street frontage of such opposite land, such a variance shall not become effective except by the favorable vote of the Board of Trustees of the Village of Marcellus. The cost of such publication of notice or notices shall be borne by the appellant or applicant, as the case may be.

d. Every decision of the Board of Appeals shall be by resolution with the vote thereon recorded on standard forms to be prescribed by said Board of Appeals and shall fully set for the circumstances of the case and the findings of the Board on which its decision is made. A certified copy of each such resolution shall be filed within ten (10) days after its adoption in the office of the Village Clerk, together with all documents pertaining thereto.

Section 250-74 – Special Use Permits – Zoning relief may be granted in the form of special use permits pursuant to the following regulations:

1. All special use permits shall be issued (on forms provided by the Village Clerk) by the Board of Trustees, unless otherwise provided in the Village Code. The application may be referred to the Village Planning Board for its recommendation.
2. Prior to the issuance of a special use permit, the Board of Trustees or other authorized board shall conduct a public hearing pursuant to the notice and hearing requirements for a variance in accordance with Article XV Section 250-73-2 of this chapter.
3. Each specific use for which a permit is sought shall be considered as an individual case and shall conform, in addition to all other applicable standards prescribed in these rules and regulations, to the detailed application of the following standards in a manner appropriate to the particular circumstances of such use:
 - a. The nature and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, its site layout, and its relation to streets giving access to it shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection with such use will not be hazardous or detrimental to the predominant character of the neighborhood or to the normal traffic of the neighborhood, taking into

consideration among other things, convenient routes of pedestrian traffic, particularly street intersections, vehicular turning movements in relation to routes and of traffic flow, site distances and adequacy of parking facilities.

b. The nature, locations, size, intensity and site layout of use shall be in harmony with the appropriate and orderly development of the area in which it is situated and that its operation shall not be detrimental by reason of dust, noise, odor, fumes, explosion, glare or otherwise.

c. The location and height of buildings, the location, nature and height of walls, fences and other structures, and the nature and extent of drainage and landscaping on the site shall be such that the use will not hinder or discourage the appropriate development and use of adjacent lands and buildings, nor impair the value thereof, nor cause any substantial inconvenience to adjoining or nearby properties.

d. Whether the structure, building or lot in or upon which the use requiring a special use permit will or presently does conform to all zoning requirements of the applicable district where situate pursuant to the requirements of this ordinance.

4. All applications submitted for special use permit review shall contain where applicable detailed plans, including site, elevations and plans of structures, and accessory use areas and landscaped development of the entire parcel devoted to special permit use, and such other documents and illustrations as shall be necessary to make the above review.

5. All uses of land or buildings, now in existence, which heretofore were permitted as of right and which would hereafter be required to obtain a special use permit shall be entitled to such special use permit without hearing, upon submission of site plans and elevations of structures drawn to scale, notwithstanding any failure to meet the requirements of this article or any other provisions of this ordinance.

6. No lands or building for which a special use permit has been issued, or is issuable shall be changed to another special use permit, nor shall any alteration, or enlargement, of any structure, facility or designated area necessary or incidental to such special use permit, be made without obtaining a new special use permit relating to such alteration, enlargement or change. All requests for such new permits shall be considered in the same manner and under the same criteria as an original request.

Sections 250-75 – Zoning Permits – a permit shall be required for the change in use of land and for any project not subject to a building permit that must comply with the provisions of this zoning law.

Sections 250-76 – 250-80 – Reserved

Article XVI – Zoning Techniques – The following techniques are designed to encourage and “market” the type of development and growth that the Village of Marcellus desires, more closely linking the Village of Marcellus Comprehensive Plan with the means to achieve it.

Section 250-81 – Design Overlay District – Reserved – *[This zoning technique is a reserved part of the Zoning Code, included here to allow for its possible integration upon its future enactment. The details of a Design Overlay District are outlined in Chapter 40, Architectural Design.]*

Section 250-82 – Environmental Protection Overlay Districts – Reserved – *[An environmental protection overlay district is a special zone that is drawn on a map outlining a significant resource (e.g. wetland, steep slope, woodland, scenic, etc.). The district is “overlaid” on the existing land use regulations e.g. subdivision requirements, site plan review, or zoning districts) and the overlay district then supplements these existing regulations. This approach could allow the Village of Marcellus to maintain or update current codes while addressing the special needs of particularly sensitive areas. In the Village of Marcellus, the environmental protection overlay districts are outlined in Chapter 73, Environmental Protection, along with the boundaries for each district and the permit application procedures.]*

Section 250-83 – The Floating Zone – Reserved – *[This zoning technique is a reserved part of the Zoning Code, included here to allow for its possible integration upon its future enactment. The details of a Floating Zoning technique are outlined in Chapter 128, Land Use and Development.]*

Section 250-84 – Historic Preservation Overlay District – Reserved – *[This zoning technique is a reserved part of the Zoning Code, included here to allow for its possible integration upon its future enactment. The details of an Historic Preservation Overlay District are outlined in Chapter 110, Historic Preservation.]*

Section 250-85 – Incentive Zoning – Reserved – *[The purpose of this section is to provide for a system of zoning incentives for the provision of amenities or benefits that advance the village's specific physical, cultural and social policies in accordance with the Comprehensive Plan and other village planning mechanisms and land use techniques, as provided in the Code of the Village of Marcellus, New York. In the Village of Marcellus, the details of the Incentive Zoning technique are outlined in Chapter 128, Land Use and Development.]*

Section 250-86 – Inclusionary Zoning – Reserved – *[This zoning technique is a reserved part of the Zoning Code, included here to allow for its possible integration upon its future enactment. The details of an Inclusionary Zoning technique are outlined in Chapter 128, Land Use and Development.]*

Section 250-87 – Performance Zoning – Reserved – *[This zoning technique is a reserved part of the Zoning Code, included here to allow for its possible integration upon its future enactment. The details of a Performance Zoning technique are outlined in Chapter 128, Land Use and Development.]*

Section 250-88 – Planned Development Districts (PD) – See this Chapter, Article IX – Planned Development District (PD).

Section 250-89 – Special Use Permits – See Article XV, Section 250-74, this Chapter.

Section 250-90 – Transfer of Development Rights (TDR) – Reserved – *[This zoning technique is a reserved part of the Zoning Code, included here to allow for its possible integration upon its future enactment. The details of a Transfer of Development Rights program are outlined in Chapter 128, Land Use and Development.]*

Sections 250-91 – 250-95 – Reserved

Article XVII – Special Zoning Control Tools –

Section 250-96 – Site Plan Review – see Chapter 204, Site Plan Review

Section 250-97 – Subdivision Review – see Chapter 223, Subdivision Review

Section 250-98 – Development Cost Charge (DCC) – see Chapter 84, Fees

Section 250-99 – Moratorium - see Chapter 148, Moratoria

Sections 250-100 – 250-105 – Reserved

Article XVIII – Zoning Enforcement

Section 250-106 – Local Boards – Powers and Duties

1. The Board of Trustees – The Board of Trustees plays a major role in zoning administration and enforcement (see also Ch 3, Administration).

- a. **Appointments and Approvals** – It is the Board of Trustees that appoints members of the Planning Board, the Zoning Board of Appeals (ZBA), and the Code Enforcement Officer (CEO). The Board of Trustees approves the by-laws, rules and regulations that govern these boards and officials, and also the procedures to be used in administering the law.
- b. **Special Permits** – The Board of Trustees is responsible for special permit approval, as

outlined in Article XV, Section 250-74, of this chapter. The Board of Trustees also has the power to revoke or suspend special permits.

(1) If the Board of Trustees of the Village of Marcellus shall find that any operation permitted hereunder by special permit is not conducted in accordance with the conditions as set forth in that special permit, a notice in writing shall be serve upon the holder of the permit directing that the conditions provided be remedied within ten days after the service or such notice. If said condition is not corrected or met after the expiration of said ten-day period, the Board of Trustees may cause a notice to be made in writing to the holder of said permit, requiring the holder of the permit to appear before the Board of Trustees at a time to be specified in such notice to show cause why said permit should not be revoked or suspended.

(2) The Board of Trustees may, after hearing the testimony of witnesses and the holder of the permit, revoke or suspend such permit if the Board of Trustees shall find that said operation is not being conducted in accordance with provisions of the Code or the conditions of said permit.

c. Site Plan and Subdivisions – The Board of Trustees is ultimately responsible for site plan review and subdivision approval, although in the Village of Marcellus, this authority has been delegated to the Planning Board.

d. Code Enforcement – The Board of Trustees is also responsible for code enforcement, although that authority has been delegated to the CEO.

e. Delegation of Powers – In delegating powers, the Board of Trustees cannot overrule a decision made by the ZBA, CEO, or Planning Board. It may appeal a decision, as may any other concerned citizen, but it cannot simply overrule one.

2. The Zoning Board of Appeals (ZBA) – The ZBA is appointed by the Board of Trustees (see also Article XV, this chapter). The powers of the ZBA are presented in Section 7-712 (1) of the Village Law. The basic power of the ZBA falls into two jurisdictional areas: original jurisdiction and appellate jurisdiction and in the Village of Marcellus, the Zoning Board of Appeals has only appellate jurisdiction.

a. Original jurisdiction comes from the enabling legislation, which states, “Unless otherwise provided by local law or ordinance, the jurisdiction of the board of appeals shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the administrative official charged with the enforcement of any ordinance or local law adopted pursuant to this article.” Examples of original jurisdiction would include special use permits and site plan review. However, the ZBA in Marcellus does not have *any* original jurisdiction.

b. Appellate jurisdiction or appeals jurisdiction is the power of the ZBA to review the application of a person who applied to the CEO for a zoning permit and was denied one. An “aggrieved” citizen can also appeal the decision of the CEO where a permit was granted. In both instances, the ZBA is the first level of appeal from a decision of the CEO. The two types of appeals are an interpretation of (1) the zoning law and (2) a

variance of the zoning regulations.

c. The variance power of the ZBA is needed to provide flexibility from the strictness of the zoning law when its literal interpretation would be unwarranted under the circumstances. There are two types of variances: an area variance and a use variance.

(1) An applicant for an area variance must meet the criteria set forth in Section 7-712-b (3) of the Village Law. With an area variance request, the ZBA must weigh the following five factors and weigh on balance, the potential benefit to the applicant against the potential burden to health, safety and welfare if the area variance is granted.:

- a) Whether an undesirable change to the character of the neighborhood will take place if the variance is granted.
- b) Whether the benefit sought can be achieved by some other method not requiring a variance.
- c) How substantial the variance request is.
- d) Whether the proposed variance would have an adverse impact on the physical or environmental conditions of the neighborhood.
- e) Whether the difficulty was self-created.

(2) With respect to a use variance, the test is unnecessary hardship. The test for this is found in Section 7-712-b (2) of Village Law. The applicant must satisfy *all four* of the following criteria in order to be entitled to a use variance. The use variance is much more stringent than the area variance and much harder to get. To be entitled to a use variance, the applicant must establish:

- a) That he cannot realize a reasonable return for any of the permitted uses. This requires dollars and cents proof.
- b) That the property is unique in that zoning district.
- c) That if granted, the variance would not change the essential character of the neighborhood.
- d) That the hardship has not been self-created.

3. The Planning Board – Village Law Section 7-718 authorizes the creation of the Planning Board, and successive sections govern the authority of the Board. The Planning Board has an advisory role and is aware of community needs and goals. They are development experts who assist in the formulation of growth policies and advise other local boards on matters that affect the community's development (see also Ch 23, Planning Board).

a. The Planning Board has been given review and approval authority for subdivisions, site plans, and other land use-related laws. Having been given this authority, the Planning Board has adopted appropriate regulations to govern its review and land use decisions. The administration of any or all of these land development laws are a major responsibility of the Planning Board.

b. To carry out its duties, the Planning Board has assisted in the preparation of a Comprehensive Plan for development, and makes investigations, maps, reports, and recommendations dealing with local planning and development. (Village Law Section 7-722).

4. The Code Enforcement Officer (CEO) – The CEO is the representative of the Village of Marcellus on land regulation and enforcement, and is the primary contact for all applicants.

a. The major duties of the CEO are to prepare or acquire forms necessary to properly administer the zoning law, issue zoning permits, conduct inspections and investigations, issue a zoning certificate of compliance or occupancy, maintain records of all administrative actions and papers, and enforce the zoning law through the various methods discussed in this report.

b. The actual powers and duties of the position of the CEO are spelled out in Chapter 44 of the Code.

c. The CEO's power is limited to enforcement of the law as it is written. The CEO has no power to modify or waive the zoning regulations even if he disagrees with a requirement of the regulation. When the CEO finds that certain requirements of the zoning are inappropriate and consistently create problems for applicants, then he can and should propose an amendment to the Board of Trustees. The Board of Trustees is the only board that has the authority to make a zoning amendment and this power cannot be delegated. In addition, the CEO must deny a permit whenever he is in doubt about a proposal's legality, or about how the zoning law applies to the particular case. An applicant who is denied a permit can appeal to the ZBA for an interpretation of the zoning regulation or for a variance.

d. The CEO must pursue all violations of the law equally or he will open himself to lawsuits for discriminatory enforcement.

5. The Violator – Enforcement action will be taken when a local law or ordinance is violated, or a condition attached to an approval granted by a municipal board is not met. While the landowner is always held responsible for a violation on his property, enforcement action may also be taken against other responsible parties, such as tenants and building contractors.

Section 250-107 – Zoning Enforcement Process – is as follows:

1. Report of Violation – The zoning enforcement process begins when the CEO becomes aware of a violation. The CEO may discover the violation himself, or a municipal official or local resident may report it to him. To improve the effectiveness of citizen involvement, the Village of Marcellus has an established system for taking citizen complaints.

a. Citizen Complaint Form requesting information about the supposed violation should be filed in the Village Clerk's office. Questions are often raised whether an investigation should be done of oral complaints or anonymous complaints. These should be taken seriously and investigated. Once the municipality is on notice of a potential violation, a duty might very well exist to investigate it, whether or not the complainant has identified himself.

b. Initial Follow-up Letter of Citizen Complaint should be sent, telling the citizen that the complaint has been received and that the CEO is handling the problem. Prior to writing this, the CEO will need to investigate the complaint so that he can determine whether a violation actually exists and what enforcement action will be required.

c. Final Follow-up Letter of Citizen Complaint should be sent, explaining the final results

of the enforcement action should also be sent to the citizen. If no action was taken, then an explanation of why should be presented.

2. Investigation – Once a possible violation has been observed or reported, the CEO is empowered to investigate the matter, make a preliminary determination of whether or not it constitutes a violation, and take the appropriate action in the enforcement process.

a. In emergency situations, the NYS Fire Protection and Building Code grants to the building inspector (CEO) the right to enter and inspect at any time any building, structure, or premises and to perform any other act necessary for the enforcement of such codes, ordinances, rules or regulations. Without the owner's consent in a non-emergency situation, a search warrant is required.

b. Any investigation should be logged by the CEO using an Enforcement Inspection Report regardless of the results. This creates a record of initial inspection, and the report can be referred to for further questions or problems with the project.

3. Notification To Remedy Violations and Administrative Actions – If a zoning violation does exist, then enforcement steps must be taken. The first step is to inform the property owner of the violation so that it can be corrected. Often zoning violations are an oversight on the owner's part, and simply advising him of the violation will resolve the problem. There are a variety of ways that a violator can be notified, and generally the situation will dictate the most appropriate method.

a. Usually the first attempt at notification is informal contact with the property owner to explain the violation and the potential of enforcement. A record of the contact and the results should be kept. If the owner is hard to contact, then another alternative is a letter requesting voluntary compliance sent to the property owner. The letter should clearly identify the violation and state that "...This is the only letter you will receive. If you do not correct the violation by [DATE] or contact this office and make arrangements for an extension from that date, we will begin enforcement action...." It is very important that this letter be sent by certified or registered mail with a return receipt requested. This will insure the owner receives it and provide proof that it was received.

b. Many local governments require that even informal contact with landowners be documented. While a "Notice of Apparent Violation" looks formal, it does not have any great legal significance. It is simply a way to inform the landowner that he may be in violation of the zoning law and that he needs to abate or correct the violation. The landowner can be given the opportunity to discuss the case with the enforcement officer. A second more formal letter, a "Notice of Violation - Order to Remedy," amounts to a determination by the CEO that a violation exists, and directs the landowner to take specific corrective action.

c. Generally speaking, there are four possible administrative actions that can and should be used in conjunction with notification to prevent the landowner from continuing the violation.

(1) The first is revocation or suspension of permits.

(2) New permits for construction, occupation or any other activities should be denied from the date on which the violation is first determined to exist until such violation is

removed or the matter resolved.

(3) A Stop Work Order or revocation of the building permit should be given to prevent additional investment on the part of the property owner until the matter is resolved. A Stop Work Order on construction projects must be authorized in the zoning law itself.

(4) A Cease and Desist Order may be given in an attempt to halt a continuing violation other than construction. A Stop Work Order is often used to stop construction.

d. It is important that the CEO keep a record of any administrative actions and any other enforcement actions that go beyond informal contact, and an enforcement action check list that can be used for record-keeping is a useful tool. The CEO must also keep the legislative body informed of all zoning violations and the administrative steps taken to remedy these violations.

4. The Violator's Alternatives – upon notification of the zoning violation, the landowner will hopefully revise his plans to conform to the zoning law. The landowner does have three other legal alternatives.

a. He can appeal the CEO's decision and apply to the ZBA for a zoning interpretation or variance, or he can apply to the legislative body for a zoning amendment. These alternatives provide a method for landowners to obtain relief from unreasonable restrictions of the zoning law.

b. The landowner may wish to apply for administrative relief, otherwise known as a zoning variance. The two types of zoning variances are a use variance and an area variance. A use variance involves a request for a use of land that is prohibited by the zoning law and requires proof of "unnecessary hardship." An area variance is a request to vary the dimensional standards, such as lot size, setbacks, sign area, number of parking spaces, etc. The test for an area variance is not as strict as the test for a use variance and requires "a balancing of interests." These tests are established in Village Law, Section 7-712-b. The landowner may have doubts about the CEO's interpretation of the zoning law. Even a well-written zoning law has areas that are questionable and open to interpretation. When this occurs, an appeal can be made to the ZBA for an interpretation of the zoning law. It should be noted that *only* the ZBA could interpret the zoning law. Neither the Village Board, the Planning Board, nor the CEO have the power to interpret the zoning law, nor does the village or town attorney.

c. Finally, the landowner may wish to apply for a zoning amendment. An amendment is a form of legislative relief and can only be approved by the town or village board. A public hearing must be held before formal adoption of a zoning amendment, and any amendment must be consistent with the comprehensive plan.

5. Judicial Enforcement – When attempts to abate a zoning violation using administrative powers have failed, then stronger enforcement methods can be used, such as the imposition of criminal penalties and civil penalties or sanctions that require abatement or removal of the violation. Judicial enforcement of land use controls is always available, but should be used only when the informal efforts and administrative remedies have failed. When a violation does require judicial enforcement, it is very important that the CEO contact the Board of Trustees to determine which enforcement procedure it wishes to pursue. The type of

violation and the circumstances involved will determine which method of enforcement is most appropriate.

a. Criminal Proceedings – In New York State, zoning violations and offenses are considered misdemeanors for jurisdictional purposes; therefore, criminal procedures apply. Enforcement actions can be taken to the local criminal court for zoning violations. The local court can impose fines or imprisonment consistent with the local zoning law.

(1) Village Law Section 20-2006 provides for fines of up to \$350.00 for a first violation, or a period of imprisonment of up to six months, or both, for a first offense. For a second offense within a five-year period, the statute provides for a fine of not less than \$350.00 nor more than \$700.00, or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense committed within a period of five years, a fine of not less than \$750.00 nor more than \$1,000.00, or imprisonment for a period not to exceed six months, or both. Although zoning violations and offenses are considered misdemeanors for jurisdictional purposes, they do not necessarily confer all the protections of misdemeanors, if the fines or imprisonment provisions are low enough to qualify for treatment as a violation. The principal distinction between being treated as a violation, as opposed to a misdemeanor, is that the offender is not entitled to a jury trial or the appointment of an assigned attorney if unable to afford one of his own. Where the fine would exceed \$250.00 for a single violation or imprisonment could exceed more than fifteen days for a single violation, then the misdemeanor protections of appointed counsel and jury trials will apply.

(2) To institute criminal proceedings against a violator, the CEO must file an Information and Supporting Deposition with the local justice. The Information contains three parts.

(a) The first part is an accusatory part that tells the defendant the date, time, and place that the violation took place, and what section of the law was violated.

(b) The second part is a factual part that outlines in detail the facts relied on for establishing that violation.

(c) The third part is the signature part, in which the CEO affirms the information under penalties of perjury or swears to it before a notary.

(3) The Supporting Deposition is meant to add more detail to what is in the Information. Where a CEO has not observed things directly, a Supporting Deposition should be taken from all persons with direct knowledge. The Supporting Deposition should be attached to the Information. Frequently, photographs or other documentary evidence may also be important and may be attached. The Information must, however, on its face, contain each and every element of what must be proven to establish the violation. To assist the CEO in determining what these elements are, the use of a Proof Chart is recommended. Once the Information and Supporting Depositions are obtained and properly signed, the local justice will then issue a Summons through the local police that will require the violator to appear in criminal court on a specified date. This process may take some time.

(4) One way to shorten the time period is to authorize the CEO to use an appearance ticket. The appearance ticket is a criminal process similar to a traffic citation that provides a quick and easy method for the CEO to bring a case to court. The CEO can issue an appearance

ticket to the violator immediately, and then file the information and complaint letter with the local justice. The legislative body can delegate to the CEO the authority to issue appearance tickets through either the zoning law or a separate local law, as specified in Municipal Home Rule Law, Article 2, Section 10 (4) (a) and Criminal Procedure Law, Section 150.20 (3).

(5) One problem with the use of criminal proceedings is that they require the “beyond a reasonable doubt” standard of proof. The CEO and the municipality represented should be prepared to provide such proof in a criminal court of law.

(6) Municipal Law provides that each week that a violation continues constitutes a new and separate offense. This raises the possibility that a violator may have successive fines imposed for each week that a violation continues. In order to obtain successive fines, a violator must be served with a new Information and Supporting Deposition and Criminal Summons for each and every week that a fine is sought. This will require repeated inspections of the property to assure that the violation still exists. It is possible to list more than one violation in the same Information. For example, if a CEO has been to the property on four or five occasions over a period of two months, trying to obtain voluntary compliance, and is now seeking court action because such voluntary compliance was not forthcoming, then all four incidents may be separately listed as separate counts within one Information. The ability to get successive fines is often a valuable deterrent in obtaining voluntary compliance after the start of a court action. Further, because of the high cost of going to court on such violations, local justices can help to offset some of this expense to a municipality by imposing a high fine.

(7) Because zoning law violations are treated as misdemeanors for jurisdictional purposes, it is the district attorney who has the primary responsibility for prosecution. Traditionally, district attorneys do not like to prosecute local code violations. Accordingly, district attorneys will delegate that responsibility to village and town attorneys. This should, however, be confirmed in writing, either by an annual letter from the district attorney with a blanket authorization for municipal code violations, or by asking for specific authorization when a specific violation is filed. Once authorized by the district attorney to prosecute the code violations, the village or town attorney in essence becomes an unpaid assistant district attorney - unpaid by the county, that is. The village or town attorney should file an oath of office with the county clerk as an assistant district attorney when this occurs.

b. Civil Proceedings – The standard zoning enabling act provides the authority for governments to bring actions to “prevent, restrain, correct, or abate” violations of zoning regulations. An injunction is the typical action used to accomplish this and is the final enforcement step for local governments.

(1) An injunction is a court order that prevents someone from doing something, such as violating the zoning law. Jail sentences and heavy fines can be imposed for willfully violating court orders. This threat provides a significant deterrent effect and is important to have in cases of willful and determined violators. The local government has no power to issue injunctions - they can only be issued by a state court. The forms and process of filing for an injunction can be difficult; therefore, the municipal attorney should be called in to institute the proper action.

(2) There are two types of injunctions that courts may impose: permanent and

preliminary. The preliminary injunction provides temporary relief before a trial, while a permanent injunction is a permanent order requiring a property owner to “abate” a violation. A permanent injunction could require that all or portions of a building in violation of zoning requirements be torn down. A preliminary injunction can be issued to restrain enforcement of the zoning law or to suspend use or construction of a building. The preliminary injunction is a drastic remedy and will only be issued if irreparable damage could result from continuing the questionable conduct.

(3) A violator who is issued an injunction must either comply, appeal the injunction to a higher court, or face strict penalties if the injunction is violated.

6. Conclusion – The purpose of zoning enforcement is to prevent or correct violations of the zoning law, which is established to protect the general health, safety and welfare of the municipality.

a. The zoning law is only as good as its enforcement, for without proper enforcement, the zoning law is merely words on paper. Therefore, care has been taken when drafting the enforcement section of the zoning law. The authority to enforce and the procedures for doing so has been clearly spelled out. The CEO has been given very specific guidelines on his powers and duties. This will alleviate unnecessary confusion and lead to greater consistency in the enforcement of the local law.

b. When a violation comes to the attention of the CEO, it is mandatory that the enforcement process begin. In most cases, the violation will be an oversight on the landowner's part and informal contact or a notice of violation is all that will be needed. If notification fails to remedy the situation, then the enforcement procedure provides for other administrative and judicial remedies to force the owner into compliance. These enforcement powers are provided for and used in cases of willful violation of the local law.

c. Written documentation and good record keeping are critical elements of the enforcement process. Documentation is best accomplished through standardized forms that the Board of Trustees has developed to meet the needs of the Village of Marcellus.

Section 250-108 – Cost of Review – see Chapter 84

Sections 250-109 – 250-110 – Reserved

Article XIX – Amendments

Section 250-111 – Authority to Amend – This chapter or any part thereof, may be amended, supplemented or repealed, from time to time, by the Village Board on its own motion or upon recommendation by the Planning Board or Board of Appeals or an application or petition by a property owner or owners with respect to the property they own.

Section 250-112 – Petition or Application – Any application or petition by a property owner or owners for an amendment or other change to this chapter shall be filed in writing with the Village Clerk on such form as may be required by the Board of Trustees and shall contain:

- (1) The names and addresses of the applicants or petitioners and the section, lot and block numbers and street address, if any, of those properties under their ownership with respect to which the amendment is sought.
- (2) A map drawn to a convenient scale showing lot lines, building locations and the section, lot and block numbers of all properties with respect to which the amendment is sought.
- (3) A complete description of the nature of the amendment requested, including the section and paragraph of this chapter, if any, sought to be changed, and of the reasons the request is made.
- (2) The application or petition shall be accompanied by a fee in the amount set by the Board of Trustees pursuant to Chapter 84 and Article XVII of this chapter.

Section 250-113 – Fee – Each petition for a zoning amendment shall be accompanied by a fee, adequate to cover the cost of processing said petition, payable to the Village Clerk upon the filing thereof. No fee shall be required for petitions filed in favor of or against any application. The fee shall be in an amount set by the Board of Trustees pursuant to Chapter 84 and Article XVII of this chapter.

Section 250-114 – Submission to Planning Board – Prior to the public hearing specified in Subsection F, every proposed amendment shall be referred by the Village Board to the Planning Board for a report, which shall be rendered within 62 days of such referral.

Section 250-115 – Report of the Planning Board – In making such report on a proposed amendment, the Planning Board shall make inquiry and determination concerning the items specified below:

- (1) Concerning a proposed amendment to or change in the text of this chapter:
 - (a) Whether such change is consistent with the aims and principles embodied in the law as to the particular districts concerned.
 - (b) Which areas, land uses, buildings and establishments in the Village will be directly affected by such change and in what way they will be affected.
 - (c) The indirect implications of such change in its effect on other regulations.
 - (d) Whether such proposed amendment is consistent with the aims of the Comprehensive Plan of the Village.
- (2) Concerning a proposed amendment involving a change in the Zoning Map:
 - (a) Whether the uses permitted by the proposed change would be appropriate in the area concerned.
 - (b) Whether adequate public school facilities and other public facilities and services, including roads, exist or can be reasonably expected to be created to

serve the needs of any additional dwellings or other uses likely to be constructed as a result of such change.

(c) Whether the proposed change is in accord with any existing or proposed plans in the vicinity.

(d) The effect of the proposed amendment upon the growth of the Village as envisaged by the Village of Marcellus Comprehensive Plan.

Section 250-116 – Public Hearing – By resolution adopted at a meeting of the Village Board, the Village Board shall fix the time and place of a public hearing on the proposed amendment, and cause notice thereof to be given in accordance with provisions of § 7-706 of Article VII of the Village Law. All notices of public hearing shall specify the nature of any proposed amendment; the land or district affected and the date when and the place where the public hearing will be held. At least 15 days notice of the time and place of such hearing shall be published in the official newspaper. When such proposed amendment reflects a change to the Zoning Map, the Village Clerk shall cause notice to be mailed at least 15 days before the hearing to all owners of properties that lie within 300 feet of the map change and to such other owners as the Village Board may deem advisable. The names of said owners shall be taken as they appear on the last completed tax roll of the Village.

Section 250-117 – Conditions – Should any proposed amendment consist of or include either of the two following conditions, the Village Clerk shall transmit to the designated office or official a copy of the official notice of the public hearing not later than 15 days prior to the date of hearing. The designated official for counties shall be the Clerk of the county legislature. In villages and towns, the designated official shall be the Clerk of the municipality.

- (1) Any change in the boundaries of any district, which change would occur within a distance of 500 feet of the boundary of any Village or town.
- (2) Any change in the regulations prescribed for any district, any portion of which is located within 500 feet of the boundary of any Village or town.

Section 250-118 – Other Conditions – prior to final action:

- (1) Should any proposed amendment consist of or include any of the following conditions listed under (2) below, the Village Clerk shall, prior to final action, refer the proposed amendment to the Onondaga County Planning Board.
- (2) Any change in the district classification of or the regulations applying to real property abutting:
 - (a) The boundary of any Village or town.
 - (b) The boundary of any state or county park or other recreation area.
 - (c) The right-of-way of any state parkway, thruway, expressway or other controlled-access highway or county road or parkway.
 - (d) The right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines.

(e) The boundary of any county or state-owned land on which a public building or institution is located.

Section 250-119 – Disapproval by County Planning Board – If the County Planning Board disapproves of the proposed amendment or other change, or recommends changes or modifications thereof, the Village shall not act contrary to that disapproval or recommendation except by adoption of a resolution by the Village Board of Trustees.

Section 250-120 – Protest – In the case of a protest against any amendment, such amendment shall not become effective except in accordance with the provisions of § 7-708 of Article VII of the Village Law.

Section 250-121 – Conformity to Comprehensive Plan – In all cases where the Board of Trustees shall approve an amendment to the Zoning Map, the Board shall find that, for reasons fully set forth in its findings, the amendment is in conformity with the Comprehensive Plan for the Village, as it may exist from time to time.

Section 250-122 – Compliance with SEQRA – In considering any amendment or change to this chapter, the Board of Trustees shall comply with the provisions of the State Environmental Quality Review Act and its implementing regulations.

Section 250-123 – Periodic review – From time to time, at intervals of not more than five (5) years, the Planning Board shall reexamine the provisions of this chapter, and the location of district boundary lines, and shall submit a report to the Board of Trustees recommending such changes or amendments, if any, which may be desirable in the interest of public safety, health, convenience, necessity or welfare.

Sections 250-124 – 250-125 – Reserved

Article XX – Violations and Penalties

Section 250-126 – Enforcement – It shall be the duty of the Code Enforcement Officer, and any duly authorized assistants to enforce the provisions of the Code and to enforce any determination of the Zoning Board of Appeals and/or the Planning Board.

Section 250-127 – Penalties for offenses – Any person violating any provision of this Zoning Law; or who shall violate or fail to comply with any order or regulation made hereunder; or who shall build in violation of any statement, specification or plan submitted hereunder; or who shall violate any permit or certificate of occupancy issued hereunder; or who shall continue to work upon any structure after service of notice in writing from the Code Enforcement Officer of the municipality to desist therefrom, shall be guilty of an offense, as defined in the Penal

Law of the State of New York, and shall, upon conviction thereof, be subject to a fine not to exceed \$250 or to imprisonment for a term not to exceed 15 days, or both, for each offense. Service of the notice shall be sufficient if directed to the owner, agent of the owner or the contractor and left at his or her last known place of business or residence, if within the municipality, and if no place of business or residence be found, then the notice shall be served by posting in a conspicuous place on the premises which are the subject of the violation.

Section 250-128 – Continued Violation – From the date of initial violation notice, each day of continued violation shall be considered a separate and distinct offence.

Section 250-129 – Other relief – Nothing contained in this chapter shall preclude the municipality or its agents from seeking such other relief as may be lawful in order to compel adherence to the terms of this chapter and otherwise enforce the same.

Sections 250-130 – 250-135 – Reserved

Article XXI – Severability – If any part of this ordinance or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part, provision or application directly involved in the controversy in which said judgment shall have been finally rendered and shall not affect or impair the validity of the remainder of this ordinance or the application thereof to other persons or circumstances.
