

PART II – GENERAL LEGISLATION

Chapter 148 – Moratoria – Reserved

[This chapter has not yet been adopted. It is inserted here to allow for its review by the Board of Trustees and its possible enactment, as well as integration into the Code as Ch. 148]

Article I Moratorium

Sections 148-1 – 148-9

Article I Moratorium

Section 148-1 – Intent and Findings

a. The Village of Marcellus wishes to use incorporate into its Zoning Code a zoning tool that will enable the Village to control 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. The Comprehensive Plan addresses a variety of issues and problems, including projected population growth, anticipated water and sewer service needs, availability of adequate housing for different income groups, transportation problems, hazards associated with development on hillsides and in flood plains and other critical areas, and the protection of various natural resources, including clean water, clean air, open spaces and farmland. In order to be able more definitely to consider what might be desirable for the Village in the future, and more clearly to understand what has been happening in Marcellus in the past, it is often necessary to obtain as much information as possible about existing conditions throughout the Village, and the trends of growth or other change now operating in the Town of Marcellus and the County of Onondaga of which it is a part. Given the complexity of this task, the Village continues to have an overriding need for adequate time to plan and solve these problems free from development pressures. The Comprehensive Plan is a rational document, developed from a thorough investigation of the facts, trends and vision local citizens have for their community, and it needs to be developed with comprehensive community involvement. Its underlying purpose will be to control land uses for the benefit of the whole community and it is intended to be the guiding document for all future zoning and land use decisions throughout the entire Village. In order to keep the Comprehensive Plan updated, the Village Board has determined to identify and study, among other things, the present and future development needs of the entire Village, with respect to the appropriateness of the existing zoning district classifications including, but not limited to, considerations of traffic congestion, existing surrounding development, visual and other environmental impacts, preservation of agricultural districts and operations, and the Village's present and future needs for residential and commercial development throughout the entire community. The Village must continue to fashion the Comprehensive Plan to address problems of significant concern and find the most effective, long-term solutions.

b. The Village will continue to experience significant pressure to permit development within the Village, which will, in all likelihood, further exacerbate and intensify adverse

conditions that affect traffic along major streets and the use of local streets as an alternative routes, degradation of cultural and historical features in the area, loss of natural trees and other vegetation, loss of open space, and impairment of wetlands, streams and other environmentally sensitive areas. If not restricted, further development could frustrate or undermine the intended purposes of, as well as the implementation of any solutions proposed by, the Comprehensive Plan. At times, appropriate measures must be taken for an interim period to protect the public's health, safety, welfare and general interest pending completion of studies, any update to the Comprehensive Plan and the subsequent enactment by the Village Board of appropriate legislation. Accordingly, the Village Board finds that it is necessary and appropriate, at times, to establish a temporary moratorium on the granting of "Development Approvals." For the purposes of the Zoning Code, the term "Development Approvals" is defined as approvals by the appropriate boards, as specified in the Code of the Village of Marcellus, of:

- (1) special use permits,
- (2) site plans,
- (3) subdivisions,
- (4) parking plans, and
- (5) lot size or area variances for the stated purpose, or which would have the effect, of creating a building lot from a lot which otherwise would lack sufficient area to qualify as or constitute a valid building lot.

For the foregoing reasons, the Village Board is able to enact a local moratorium law that is necessary and appropriate in order to protect the public interest, including the health, safety and welfare of residents, businesses and property owners of the Village of Marcellus.

Section 148-2 – Scope and Duration

a. Designated Area – The area affected by this moratorium is the entire area of the Village of Marcellus.

b. Duration – The moratorium period shall commence on the effective date of the passage of the local law and shall continue for a period of two hundred seventy (270) days thereafter. If the Village Board, in its sole discretion, shall determine that the intent and purposes of the local law have been fully satisfied sooner, then the Board may terminate the moratorium sooner. If the Village Board shall determine that the intent and purpose of the local law have not been satisfied within the two hundred seventy (270) day period, then the Board may extend the moratorium.

c. Scope – Except as otherwise set forth below, during the moratorium period, no Development Approvals will be permitted within the Designated Area.

d. Exceptions or Exemption –

(1) All Development Approvals, both residential and nonresidential, within the Designated Area which have been granted final approval by the appropriate board, agency or department of the Village of Marcellus having jurisdiction thereof prior to the effective date of the moratorium shall, during the pendency of this moratorium, be permitted to proceed and may

receive any necessary permits, continuations, extensions and renewals the same as if this moratorium had not been enacted.

(2) All other applications for Development Approvals for or affecting alteration, construction, development, improvement or modification of properties, both residential and nonresidential, within the Designated Area, which are pending on the effective date of the moratorium and all new applications submitted after the effective date of the moratorium may, at the request of an applicant, proceed and be considered by the appropriate boards, agencies and departments of the Village of Marcellus having jurisdiction thereof during the pendency of the moratorium on the condition that any such applications may not, and will not, receive or be granted final approval, if at all, until after the moratorium expires. Any applicant wishing to proceed under this paragraph must first acknowledge to the Village, in writing, that:

- (a) the applicant is proceeding at its own peril;
- (b) there are no guarantees or assurances, express or implied, that its application will be finally approved or granted;
- (c) zoning changes and code changes may occur which would prevent or prohibit final approval of its application;
- (d) all default-approval provisions of the Village Law, having been superseded by this moratorium, shall not affect the application;
- (e) all time limitations and deadlines under the State Environmental Quality Review Act (SEQRA) are tolled;
- (f) and the applicant will not be entitled to any indemnification or compensation in the event that its application is not finally approved or granted.

(3) The restrictions and provisions contained herein shall not apply to:

(a) Development Approvals for structural repairs, interior renovations, additions, alterations, accessory apartments, professional office uses and accessory structures to existing single-family residential structures.

(b) Development Approvals for alterations or additions (attached or detached) to existing non-residential structures in all zones, which alterations or additions comply with the Village of Marcellus Zoning Code in effect on the date of the local law, provided that:

(i) for sites less than or equal to five acres in size, the increase in area resulting from the alteration or addition shall not exceed 30% of the original size of the structure; and

(ii) for sites greater than five acres in size, the increase in area resulting from the alteration or addition shall not exceed 10% of the original size of the structure.

(c) Development Approvals for alterations or additions (attached or detached) to existing residential structures which may require amendment to the original development approval, but which do not increase density or unit count, do not increase parking requirement, and do not require alteration or construction of infrastructure as described and governed by the Zoning Code of the Village of Marcellus.

(d) The issuance of building permits for the total replacement of existing structures destroyed by an act of God, provided that such replacement does not result in any additional square footage or change in use.

(e) Applications for or pertaining to signs, awnings and canopies.

(f) Applications for or pertaining to special permits or variances for temporary and seasonal activities (e.g., carnivals, fairs, open-air markets, Christmas tree sales, Halloween haunted houses).

(g) Applications for or pertaining to day-care facilities, nursery schools and pre-schools.

(h) Applications for or pertaining to amendment of previously approved site plans involving changes of tenants in existing buildings where no expansion of or addition to the buildings is involved.

Section 148-3 – Appeal Provision

a. The Board of Trustees of the Village of Marcellus shall have the power to grant relief from the applicability of any provision of this local law if, based upon competent evidence, it shall determine either that relief from the strict application of the moratorium is necessary to avoid substantial hardship to the affected property owner or the affected property owner's contract vendee, tenant, or lessee and:

(1) the hardship is unique and does not apply to a substantial portion of the properties in the Designated Area;

(2) the alleged hardship has not been self-created;

(3) the relief requested is the minimum necessary to overcome the unique and substantial hardship which was the basis for requesting it; and

(4) the benefit, if the relief is granted, is not outweighed by the detriment to the health, safety and welfare of the community.

b. Persons seeking relief from the provisions of this local law shall submit to the Village Clerk a written application together with a non-refundable filing fee in the amount of \$250.00. The application shall set forth with specificity the basis for the appeal. In addition, the application must contain all materials, including a detailed plan of the proposed development, which would otherwise be required with respect to the development if the application were to be processed in the absence of this moratorium. Upon determining that the application is complete, the Village Clerk shall submit the application to the Board of Trustees. No application for relief may be filed unless and until the board having approval authority with respect to the application shall certify in writing that it has done everything necessary and proper in processing the application, that the application has reached the stage where nothing remains to be done but the vote for final approval by the said board and that the said board intends to grant its approval of the application if a waiver is granted by the Board of Trustees.

c. Upon receiving any application for relief, the Board of Trustees may, at its discretion, refer such application to the Village Planning Board, Zoning Board and advisory boards for their respective review, comment and assistance in processing the application. Within thirty (30) days following receipt of such application, the Board of Trustees shall notify the applicant

of the date when a public hearing will be convened. Public notice of such hearing shall be given at least 10 days prior to the date set for the hearing in a newspaper having general circulation in the Village, at the applicant's expense. In addition, the applicant shall provide prior notice of such hearing to interested parties, including all neighbors. At said public hearing, the property owner, and any other parties wishing to present evidence with regard to the application, shall have an opportunity to be heard. The Board of Trustees may continue the public hearing from time to time as necessary, in its discretion.

d. Except as otherwise set forth herein, in considering the application the Board of Trustees shall follow the procedures set forth in the Zoning Code of the Village of Marcellus for review of variance applications by the Zoning Board of Appeals. Approval of any application shall require a majority vote of the Board of Trustees.

e. Within thirty (30) days after closing the public hearing, the Board of Trustees shall render its decision either granting, with or without conditions, or denying the application. In the event that Board of Trustees has not approved an application submitted pursuant to this section within thirty (30) days of the close of the public hearing, then the application shall be deemed denied. In which event, the applicant may file a new application.

f. Any application for relief from the provisions of a local moratorium law, which had been filed and was still pending on the date when said local law expired will be considered to have been filed under the terms hereof without the need for refiling hereunder, provided that within ten days of the effective date hereof the applicant shall have filed with the Village Clerk a written request for continuation of said relief application.

Section 148-4 – Penalties – Except as herein otherwise expressly provided, any person who shall construct, erect, enlarge or alter any building or structure within the affected area, or shall develop or use any affected property in violation of the provisions of a local moratorium law, shall be subject to a penalty of \$1,000.00 for each such violation, in addition to any other penalties which may be imposed pursuant to any applicable provisions of the Zoning Code of the Village of Marcellus. The continuation of a violation of the provisions of a local moratorium law shall constitute, for each day the violation is continued, a separate and distinct offense hereunder. In addition to any other penalty authorized by this section, any person convicted of violating any provisions of a local moratorium law shall be required to restore the affected site to the condition existing prior to commission of the violation. If such person shall fail to do so, then the Board of Trustees of the Village of Marcellus may cause the restoration to be performed and the cost thereof shall be assessed against the land or property in such manner as Village taxes are levied, and shall constitute a lien upon the land or property affected.

Section 148-5 – Additional Remedies – The Village of Marcellus may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with, or to restrain by injunction the violation of any provision of a local moratorium law.

Section 148-6 – Interpretation – Should questions or conflicts arise as to the meaning and application of the terms and provisions of a local moratorium law, the Village Attorney shall have the primary authority to make interpretations. Any person or persons jointly or severally aggrieved by any interpretation made by the Village Attorney may appeal to the Board of Trustees for a review of such interpretation. On review, the Board of Trustees may affirm, modify or overturn the Village Attorney’s interpretation. In the event that a majority of the Board of Trustees does not vote to modify or overturn the Village Attorney’s interpretation within fifteen days from the date the appeal is filed, the Village Attorney’s interpretation shall be deemed to be affirmed.

Section 148-7 – Severability – If any word, clause, sentence, paragraph, subdivision or part of a local moratorium law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof, but shall be limited in its application to the word, clause, sentence, paragraph, subdivision or part hereof directly involved in the controversy in which such judgment shall have been rendered.

Section 148-8 – Judicial Review – Review of decisions of the Board of Trustees with respect to any portion of a local moratorium law may be had by an action or suit commenced in Supreme Court of the State of New York, County of Onondaga, within thirty (30) days after such determination is filed in the Office of the Village Clerk pursuant to *Article 78 of the Civil Practice Law and Rules*.

Section 148-9 – Effective Date – A local moratorium law shall take effect immediately upon filing with the Office of the Secretary of State and shall remain in effect until midnight of the two hundred seventieth day following thereafter, or until otherwise terminated by the Board of Trustees pursuant hereto, whichever first occurs.