

The Planning Board of the Village of Montebello held a meeting on Tuesday, August 8, 2023, at the Dr. Jeffrey Oppenheim Community Center, 350 Haverstraw Road, Montebello, New York. Vice Chairman Shipley called the meeting to order at **7:00 p.m.** and led everyone in the Pledge of Allegiance.

PRESENT

Stan Shipley, Vice Chairman/Member
Marlo Dickman, Member
Joan Materna, Member
Ariel Aufgang, Member

OTHERS

Alyse Terhune, Asst. Village Attorney
Jonathan Lockman, Village Planner
Martin Spence, Village Engineer
Regina Rivera, Planning/Zoning Clerk

ABSENT

Anthony Caridi, Chairman
Nancy Doon, Ad Hoc

Meeting Minutes Approval

Member Dickman made a motion to approve the minutes of the July 11, 2023, Planning Board meeting seconded by Member Materna and upon vote, all were in favor.

David Fried and David Schwartz—PUBLIC HEARING

Subdivision lot line shift - 2 and 4 Belvedere Path, Montebello, NY

Joint application of David Schwartz and David Fried, property owners of 2 Belvedere Path and 4 Belvedere Path respectively, proposing a subdivision lot line shift that would convey 3,264 square feet from 2 to 4 Belvedere Path to bring the existing koi pond area entirely onto one property. The parcels are located on the north side of Belvedere Path west of the intersection of West Gate Road and are identified on the Ramapo Tax Map as Section 40.19 Block 1 Lots 61 and 50 in Zone RR-50.

Present were the co-applicants David Fried and David Schwartz. Mr. Fried presented and explained that he and Mr. Schwartz were seeking a lot line adjustment between their properties to convey fully Mr. Fried's landscaping and koi pond onto his own property. These gardens and landscaping features, dating back 40 years, were installed by the previous owner of Mr. Fried's home and encroach into Mr. Schwartz's property. He noted for the Board that an area variance was granted by the ZBA for non-conforming lot size on June 15, 2023.

Member Dickman said she had no objections to the lot line adjustment and that her comments are toward the memo from the Village Engineer dated August 6, 2023 and the GML Review dated July 26, 2023 regarding discrepancies of the lot sizes, and asked if these issues were addressed. Mr. Lockman said the GML stated that the area in questions was labeled 3,264 square feet in one place, and in another as 3,244. And on August 7th, the day before this meeting, [the applicant's engineer] Anthony Celentano addressed the GML comments and submitted a revised plan which corrected the lot numbers and the square footage labels. Mr. Lockman said that he will check it carefully to be sure that the engineer's and the County's comments are being addressed. He then gave an overview of his memo dated August 1, 2023, and noted that comments from his previous memo dated February 20, 2023 were already addressed.

Mr. Lockman said that comment no. 2 of the GML review directs the applicant to seek additional variances for rear and side setback for the koi pond. However, he continued, the February memo states that, according to Village Code, neither a pond nor a patio that is less than 4 feet from the ground is required to meet setbacks and advised that the Board should override that comment.

Mr. Lockman recommended that the Board declare lead agency and classify this application a Type II action under SEQR as there are no real environmental impacts or new construction. Once it is declared a Type II, no further action is needed.

Mr. Schwartz said that he had been trying to sell his home since March 2022, and that he now has a buyer who is eager to close before the end of August. Delaying this another month may put this sale in jeopardy, he said and asked if the Board could approve the application on the condition that Mr. Lockman's and the County's comments be addressed. Ms. Terhune said she didn't see a problem with that course of action.

Member Aufgang made a motion to open the public hearing, seconded by Member Materna and upon vote, all were in favor. Ms. Terhune stated for the record that the public hearing was duly noticed and posted. No one from the public having any comments, Member Materna made a motion to close the public hearing seconded by Member Dickman and upon vote all were in favor.

Member Dickman made a motion to declare lead agency for this Type II action under SEQR. Member Aufgang seconded the motion and upon vote, all were in favor.

Mr. Spence gave a summary of his August 5, 2023, memo in which he comments on the lot area discrepancies and the lot number labels, and which were already addressed. The calculations and any other issues will be picked up and addressed during check print review prior to the Chairman's signature, he added. Mr. Lockman pointed out that the new plan that was submitted last evening now has the correct area that matches the variance, but that he still needs to go through the plans very carefully.

Ms. Terhune went through each comment of the July 26, 2023, GML review and stated that she, Mr. Lockman and the Building Inspector all agree that the koi pond does not meet the description of something requiring variances per the code and recommended that the Board override comment no. 2. She then enumerated the remaining comments, all of which were either already corrected or will be corrected post-approval.

No one having further comments, Member Dickman made a motion to override comment no. 2 of the July 26, 2023, GML review, seconded by member Materna. Upon vote, all were in favor and the override passed with a super majority.

Ms. Terhune advised that the Board, if they are ready to act, can approve the application conditionally upon compliance with the County GML and with Mr. Spence's comments. Vice Chairman Shipley asked if the Board had any comments. Member Dickman said there were some spelling errors in plat notes 7, 8 and 14 that should be corrected. Member Aufgang asked who will oversee the aforementioned corrections and Mr. Spence said that he and Mr. Lockman will ensure the corrections are made during the post-approval check print process.

Member Aufgang made a motion to approve the subdivision as per the corrections discussed, seconded by Member Dickman. Upon vote, the motion passed unanimously.

**RESOLUTION PB05 OF 2023
VILLAGE OF MONTEBELLO PLANNING BOARD
GRANTING FINAL SUBDIVISION APPROVAL TO ADJUST THE LOT LINE BETWEEN
2 BELVEDERE PATH (SBL 40.19-1-61)
AND 4 BELVEDERE PATH (SBL 40.19-1-60)**

The property location, zoning district and proposed project. On December 27, 2022, the Planning Board received the joint application of adjoining property owners David Schwartz and David Fried (the “Applicants”) who each own one lot in the RR-50 zoning district. The Schwartz property is located at 2 Belvedere Path and is identified on the Ramapo Tax Map as Section 40.19 Block 1 Lot 61. The Fried property is located at 4 Belvedere Path and is identified on the Ramapo Tax Map as Section 40.19 Block 1 Lot 60. A koi (fish) pond owned by Fried is currently located entirely on the Schwartz property. To remedy the encroachment, a lot-line shift favoring Lot 60 was requested. Such a lot line shift requires subdivision approval by the Planning Board.

General Municipal Law § 239-m. The application was referred to the Rockland County Department of Planning (RCDP) pursuant to GML § 239-m. By letter dated July 26, 2023, RCDP recommended eight (8) modifications, all were accepted by the Planning Board except comment two (2), which stated that the bulk table indicates that lot 2 requires a side and rear yard variance because of the koi pond and requested the opportunity to review the variances (presumably upon resubmission to the Zoning Board). The Board first noted that RCDP’s response to the ZBA, dated June 8, 2023, made no mention of the bulk table variance notations. Nevertheless, the Board requested confirmation as to whether the location of the koi pond necessitated variances. By email dated August 8, 2023, and confirmed by formal memo dated August 11, 2023, the Montebello Building Inspector confirmed that because the koi pond is a landscaping feature that does not have a wall or hardscape feature exceeding 4 feet in height, it is allowed within the required side or rear yard, as well as the setback. Therefore, on a motion by Member Dickman, seconded by Member Materna, RCDP comment 2 was overridden by a supermajority vote. However, the Board noted that to the extent the bulk table indicates that variances are required for preexisting conditions which will not change, such as lot width, the bulk table must be revised to eliminate any cloud on the zoning board record.

Public Hearing. A duly noticed public hearing was convened on August 8, 2023. During the public hearing, the Board heard testimony from the Applicants and all those wishing to address the Board on the matter. After hearing all comments from the public, the hearing was closed.

State Environmental Quality Review Act (SEQRA). The Planning Board assumed Lead Agency for the purpose of complying with SEQRA and categorized the action as Type II pursuant to 6 NYCRR § 617.5(c)(16), as it involves a lot line adjustment, thus requiring no further environmental review.

Zoning Board of Appeals. On June 15, 2023, the Village of Montebello Zoning Board of Appeals granted relief from Section 195-13, “Table of Bulk Requirements,” Use Group “h,” to lots 60 and 61 in the form of one area variance allowing Lot 61 to convey 3,144.43 square feet of property to Lot 60, thus decreasing the preexisting lot area nonconformance of Lot 60 and increasing the nonconformance of Lot 61. The Zoning Board Decision is incorporated by reference as if fully set forth herein.

Submissions. The following submissions were considered by the Planning Board in making their decision and incorporated by reference as if fully set forth herein:

1. Joint application of adjoining property owners David Schwartz and David Fried, dated December 27, 2022;
2. Narrative, prepared by David M. Ascher, Esq., dated December 27, 2022, updated August 7, 2023;
3. Subdivision map prepared by Anthony R. Celentano, PLS., last revised August 7, 2023;
4. Engineering comments prepared by the Village’s engineering firm, Spence Engineering, last updated August 6, 2023;
5. Planning comments prepared by the Village’s planning consultants, Nelson Pope Voorhis, last updated August 1, 2023.

NOW, THEREFORE, BE IT RESOLVED, that in making its decision, the Planning Board has considered all relevant provisions of the Village of Montebello Zoning Law and Subdivision Law, the relief granted by the Zoning Board, RCDP comments, the determination made by the Village Building Inspector, the advice of its consulting engineer and planner as regards all materials submitted by the Applicants, and all public comments related to this application. After said deliberation, the Planning Board hereby determines that the Application for subdivision approval to effectuate a lot line adjustment is consistent with Village of Montebello Code as modified by the Zoning Board of Appeals through the issuance of the aforementioned variance.

BE IT FURTHER RESOLVED, that the Planning Board of the Village of Montebello hereby grants final subdivision approval to the properties identified as 2 Belvedere Path (Section 40.19 Block 1 Lot 61) and 4 Belvedere Path (Section 40.19 Block 1 Lot 60) to effectuate a lot line adjustment to remediate a property encroachment.

BE IT FURTHER RESOLVED, that the aforesaid approval is granted pursuant to the following conditions:

1. Payment of all fees due and owing to the Village of Montebello as related to the project approval process.
2. Correction of the bulk table to identify only those variances required and approved by the Zoning Board.

3. Correction of spelling errors on the subdivision plat as noted by the Board during its deliberations.
4. Resolution of the lot area discrepancy identified in comment S-1 of the Spencer memorandum dated August 6, 2023.

On the Motion of Member Aufgang, seconded by Member Dickman, the Planning Board granted final subdivision approval on a roll-call vote of 4 yeas and 0 nays with 1 absentee as set forth herein:

MEMBERS PRESENT:	YEA	NAY	ABSENT
Anthony Caridi, Chairman	<u> </u>	<u> </u>	<u> X </u>
Stan Shipley, Member, Vice Chairman	<u> X </u>	<u> </u>	<u> </u>
Marlo Dickman, Member	<u> X </u>	<u> </u>	<u> </u>
Joan Materna, Member	<u> X </u>	<u> </u>	<u> </u>
Ariel Aufgang, Member	<u> X </u>	<u> </u>	<u> </u>

**Hemion Land Lease LLC
Site Plan and ARB—5 Hemion Road, Montebello, NY**

Application of Hemion Land Lease, LLC, 102 Norben Road, Monsey, NY 10952. The Applicant is proposing the construction of a 16,357 square foot, two-story raised office building with parking underneath and outside on 1.57 acres. The parcel is located at 5 Hemion Road on the west side of Hemion Road north of the intersection of Route 59 in the Village of Montebello, which is designated on the Ramapo Tax Map as Section 55.10 Block 1 Lot 5.2 in the NS Zone.

Present was Matthew Trainor of Brooker Engineering on behalf of the Applicant. Mr. Trainor said the comments in the June 18, 2023, GML review were addressed, a traffic impact study was submitted, and per the board members’ comments at the last meeting, two (2) electric vehicle charging stations were added to the site plan. Mr. Trainor said there were some major outstanding issues, chief among them the missing determination from the Building Inspector regarding the large FIVE address sign, the review from [village traffic engineer] Osman Barrie, and the minor encroachment into the conservation easement. And to Member Aufgang’s questions at the last meeting, Mr. Trainor said that the property owner will initially rent the building to tenants and will eventually take over the entire building.

Mr. Trainor said they had no issues with the GML comments except for comment no. 11 regarding the offset on the north side of the property. Per Village Code in the NS Zone, the side yard is restricted. The proposed setback of one foot is consistent with the previous approval, but if we are compelled to comply, we would prevent the underground footing encroachment into the neighbors’ property by shifting the building over, or otherwise get an underground easement for the footing.

Mr. Lockman said that this is an unusual comment from the County particularly since it didn’t come up the last time. He explained that the bulk table has a note that reads “no side setback is required, but if provided it must be at least 10 feet.” The GML interprets it to mean that no setback is required but if one is provided it must be 10 feet or more. This was not an issue the last time because there is an understanding that when you dig down the footing will protrude underground to the property line. Mr. Lockman advised that the Building Inspector should weigh in and if he disagrees with the County, the comment may be overridden.

Mr. Trainor requested that the Board set the public hearing for the following meeting. Member Dickman made a motion to set the public hearing for the September 12, 2023, meeting, seconded by Member Materna and upon vote all were in favor.

Mr. Spence reviewed his memo dated August 7th and asked Mr. Trainor if they received a willingness-to-serve letter from the Ramapo DPW. He had not and asked the clerk to follow up.

Discussion regarding the minor changes to the conservation easement ensued, after which Ms. Terhune said she would send a formal request to the Board of Trustees.

CDRC Update:

Mr. Lockman explained that ACG Acquisitions/100-300 Rella Blvd. attended the June CDRC for a two-lot subdivision, reminding the Board that this Board recently granted site plan, special permit and subdivision lot line disclaimer approval for a warehouse and a retail self-storage building. The applicant decided that they ought to have the self-storage building on a separate lot for tax purposes. However, the new lot line will trigger several variances. The CDRC directed them to the ZBA, but that Board is usually very concerned about FAR requests, and it seems this will be an uphill battle for them. Mr. Lockman offered another solution which is to forget about the self-storage building to make room on the one lot for the warehouse.

Member Materna made a motion to adjourn the meeting at 8:04 p.m., seconded by member Dickman and upon vote, all were in favor.