

THE REGULAR MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY, FEBRUARY 15, 2018 AT THE DR. JEFFREY OPPENHEIM COMMUNITY CENTER. THE MEETING WAS CALLED TO ORDER AT 7:45 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

Present:	Rodney Gittens	Chairman
	Janet Gigante	Member
	Jack Barbera	Member
	Carl Wanderman	Member
	Elizabeth Dugandzic	Ad Hoc

Others Present:	Warren Berbit	Village Attorney
	Martin Spence	Village Engineer
	Regina Rivera	Planning & Zoning Clerk

Absent:	Samuel Diaz	Member
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Member Gigante made a motion to approve the minutes of January 18, 2018, seconded by Member Barbera. Upon vote, the motion carried unanimously.

Westrock Industries, Inc. – Public Hearing continued
5 Wilbur Road
40.16-2-8

Application of Westrock Industries, Inc., 21 North Middletown Road, Nanuet, New York 10954 on behalf of David Rubinstein, 5 Wilbur Road, Montebello, New York 10901 which was submitted to the Village of Montebello Zoning Board of Appeals for Area Variances; Side Yard (to patio) [Required 25 Feet; Proposed: 10 Feet], and Side Yard (to pool) [Required: 35 Feet; Proposed: 14.3 Feet], column 8 of the Bulk Table, Section 195-13 Use Group h, and Section 195-57 of the Zoning Code of the Village of Montebello, to permit construction, maintenance and use of an in-ground swimming pool on a single-family dwelling. The Property is located on the Northeast side of Wilbur Road, approximately 320 feet from the intersection of Haverstraw Road in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 40.16, Block 2, Lot 8 in an RR-50 Zone.

In attendance were Applicant's attorney Ms. Amy Mele, Robert Ball, founder and president of Westrock Pool & Spa, and Zoe Shively, Landscape Architect with Yost Design.

Mr. Ball explained that, as discussed at the previous meeting, the pool will be moved toward Wilbur Road, and moved up 5 ½ feet, maintaining the angle of the pool and allowing for a 20-foot side yard. Additionally, the seepage pits were moved to make more room for the pool.

Ms. Shively added that the landscaping plan was adjusted to match the scale of the pool plans, and proposes to take down 12 or 13 trees, replacing them with evergreens around the entire pool, with the addition of 8' to 10' foot spruces along the back edge of the pool area.

Mr. Ball also explained that since the grade was raised by 1.9 feet, there will be one less step leading down to the pool.

Mr. Spence summarized his review dated February 9, 2018 (attached), explaining that he compared the engineering plans with the planting plans and noted that the landscape plan proposes and expansion of the rear patio while the engineering plans do not. The patio expansion will not require any variances, but whatever this Board approves will be reviewed in the field. Additionally, more hardscape will cause more runoff, he continued, and although Mr. Gdansky's plans have a surplus capacity, we will need to verify that the drainage requirements are the same. Out in the field, the engineering plans are what drive the construction, therefore the Engineering plans should be updated, he cautioned.

Ms. Mele offered that if the Board granted the variances on condition the engineering be updated, they are happy to do that. She then assured that the engineering plans will be revised to ensure there is no problem with excess runoff capacity.

Chairman Gittens said he was concerned about development coverage given the patio expansion. Mr. Spence said it was a very small increase and would not surpass the allotted 20% development coverage. Ms. Mele asked if they could stick with the plans before the Board tonight and do field changes instead. Mr. Spence advised that the engineering plans should be updated prior to construction so that they are correct if/when a permit is issued.

Mr. Spence then noted that the fence location differs on the engineering and landscaping plans. The Engineering plans indicate the fence is one foot in from the property line while the landscaping plans show it at 6' feet in. The fence is better situated closer to the property line, he said, and reiterated that final engineering plans and landscaping plans should be updated and should match prior to construction.

Referring to S-5 of Mr. Spence's memo, Member Wanderman asked at what point escrow is established. Mr. Spence said the Engineer, with cooperation from the Building Department, establishes the escrow fee prior to issuance of the building permit. It is part of the permitting processes, he added.

Chairman Gittens said he was concerned about drainage and wants to be sure it is correct vis a vis the paver area and fence location prior to the building permit application. Ms. Mele suggested that issuance of the permit can be made conditional upon meeting all engineering requirements as outlined in Mr. Spence's memo. We are asking for variances, this is not a site plan review and as such we are here seeking relief from the provisions of the zoning code, she said. There are no risks. Member Gigante reiterated that she does not like the idea of conditions and would rather the plans be complete at the time of the building permit application.

Chairman Gittens opened the Public Hearing:

Loren Ware, 10 Wilbur Road, Montebello said he was concerned because this is an awfully big pool and wants to be sure that the homeowner is building it for his own personal use and not for profit and revenue. He said he was also concerned about filling the pool since all the houses on Wilbur rely on well water and asked if they were considering connecting to the water line on Route 202.

Mr. Ball explained that it is a gunite pool with a plaster finish and can be filled immediately and to that end, about 20,000 - 35,000 gallons are trucked in initially in many cases,

particularly when there is a lot of iron in the water as there is around here. Mr. Spence said that there are water drop-down levels in pools at the end of the season, but the pools are never fully drained and drop to only 6 inches to 1 foot below the tile. What Mr. Ball is describing is typical, he added. Mr. Berbit said that unless there is an impervious surface in the pool, it will fill up during the winter and will probably need to be drained.

Regarding the renting the home out, Ms. Mele stated for the record that that issue has nothing to do with this ZBA application and said that her client has assured her that it is for the express use of the Applicant and his family and friends. She then assured Member Gigante that any conditional approvals can be handled by the Village professionals.

Chairman Gittens asked about the plantings on the east side that will buffer the pool from the neighbors and asked if the plantings will be replaced should they die. Mr. Spence said that there could be a bond for the trees if they die which can be noted on the plans, but that it's not a big issue. Ms. Shively said they can get a 3-year warranty on the plantings, so they will be replaced if they die. Mr. Berbit said that the Applicant would likely be inclined to replace any dead trees considering his need for screening.

Chairman Gittens reiterated that the conditions should include moving the location of the fence so both plans match, changing the survey to show the paver patio already shown on the landscaping plan, and making some clarifications in the landscaping plan. He then polled the Board on this application.

Member Barbera made a motion to approve the application, seconded by member Wanderman. Upon vote, the motion carried.

IN RE: APPLICATION OF DAVID RUBINSTEIN, 5 Wilbur Road, Montebello, NY
CALENDAR CASE NO. 1169

Before the Board of Appeals of the Village of Montebello, at a public hearing held at The Dr. Jeffrey Oppenheim Community Center, Montebello, New York, on January 18, 2018 and February 15, 2018 for variances from the provisions of Section 195-Attachment 2, Table of Bulk Requirements, Use Group h, Column 8; Article IV Section 195-13—Side yard to patio, and Article X Section 195-57D—Side yard to pool, of the Zoning Code of the Village of Montebello to permit the construction, maintenance, and use of an in-ground swimming pool to an existing single family dwelling.

The premises which are the subject of this application is located at 5 Wilbur Road, on the northeast side of Wilbur Road, approximately 320 feet from the intersection of Haverstraw Road in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 40.16, Block 2, Lot 8 in an RR-50 Zone.

The Board, upon motion, duly made by Member Barbera, and seconded by Member Wanderman, resolved:

WHEREAS the applicant was represented by Amy Mele, Esq. and the following documents were placed into the record and duly considered:

Application; Short Environmental Assessment Form; Narrative by Amy Mele, Esq.; Pool Plan dated October 1, 2017 and revised on January 19, 2018 as prepared by Paul

Gdanski P.E., PPLC; A Planting Plan, Layout Plan and Lighting Plan dated January 26, 2018 as prepared by Blythe M. Yost ASLA, Landscape Architect; Building Inspector's Denial Letter dated October 27, 2017 by Larry Picarello; Review Letters dated November 6, 2017 and February 9, 2018 by Martin K. Spence, P.E., Village Engineer; A review letter from the Rockland County Drainage Sewer District #1 dated January 18, 2018; and

WHEREAS, the proposed action is a Type II action under the regulation requiring no further environmental review promulgated pursuant to the New York State Environmental Quality Review Act; and

WHEREAS, a public hearing was held on January 18, 2018 and continued on February 15, 2018, and testimony of the following persons was duly considered: Amy Mele, Esq., Robert Ball of Westrock Industries, the applicant Mr. David Rubinstein, and Mr. Loren Ware of 10 Wilbur Road, Montebello; and

WHEREAS, all the evidence and testimony were carefully considered, and the Zoning Board of Appeals has made the following findings of fact:

-the applicant is seeking variances in its last revised plans as follows:

Side Yard (to patio): Required: 25 feet Proposed: 15 feet
Side yard (to pool): Required: 35 feet Proposed: 20 feet

-the applicant is the owner of the subject premises which is located on the northeast side of Wilbur Road,

-the property is 64,000 square feet, or 1.46 acres, and is located in the RR-50 Zone and contains a single-family dwelling,

-as triggered by the Engineer's report, the subject parcel is almost 1.5 acres allowing placement of the pool complex behind the house or at other locations eliminating the need for variances or reducing the necessary variances,

-the applicant states that the premises are to be utilized as his personal retreat primarily on the weekends,

-the applicant is locating the pool in an isolated way and proposing an elaborate planting plan such that the pool will not be visible from the house to protect the modesty of the men and women who use it separately due to cultural and religious reasons,

- the Village Engineer and Board Members expressed concern for the safety of the children since the pool cannot be seen from the house at the proposed location and is further obscured by elaborate vegetative screening; upon hearing such concerns, the applicant assured the Board that the children will always be supervised when in the pool, and toward this end, Mr. Rubinstein's team emphasized the automatic closing pool cover, surface alarm, lighting and fence that would further ensure the safety of the children,

- that other stated reasons not to locate the pool complex behind the house are that the back-yard area is limited in size, it is the ideal grassy place for the children to play being

visible from the house, and placing the pool there would necessitate the loss of large, mature trees (vs. the side yard area),

-that a swimming pool is a permitted accessory use to the use of a residence by the owner, not by outside parties, and the applicant directly confirmed, himself, that intent, as well as via his attorney; and

WHEREAS, this Board has examined the written documentation and reviewed the testimony of the witnesses with respect to the Applicant's request for variances, and, pursuant to the requirements of section 7-712-b (3) of the Village Law, has made the following determinations:

- (1) "whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created granting of the area variance":

The proposed pool location will be surrounded by a fence and dense vegetative screening and will not be seen from the road or by neighbors on abutting properties. Further, the back yard will remain grassy, treed and pristine. Based on the foregoing, it is apparent that the variances will not create an undesirable change in the character of the neighborhood nor a detriment to nearby properties.

- (2) "whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than a side-yard variance":

Though the property is nearly 1.5 Acres, the house is set back such that the rear yard is relatively small. Were the pool to be located in the rear, the children would not have a safe place in which to play. For modesty and religious reasons, men and women must separately have complete privacy when using the pool and should not be seen from any window in the house. Further, locating the pool to the north side of the property would bring it too close to the neighbor's property.

- (3) "whether the requested variances are substantial":

The variances could be considered substantial, but the applicant has reduced the variances by moving the pool four feet closer to the house, raising the elevation of the pool to be flush with the backyard and resulting in an increased side yard to 20 feet to the pool (orig. 14.3 feet proposed), and 15 feet to the patio (orig. 10 feet proposed), and given that they are area variances, and that the pool would be well-screened from the abutting house, such mitigates their substantial mathematical variance from the requirement.

- (4) "whether the proposed variances will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district":

The proposed variances seek only to isolate the pool for privacy and to keep the backyard open for recreation which will, in turn, preserve several mature trees in the back yard, and will therefore have no adverse effects or impacts on the physical environmental conditions in the neighborhood, the nearest home being a significant distance away (235 feet approximately).

- (5) "whether the alleged difficulty was self-created":

The need for the variances, as in most instances, is self-created to the extent that the alternative would be not to pursue the installation of a swimming pool or to install in such a way as to not comply with the applicant's religious customs of modesty and desire to preserve a grassy play area and to save older, mature trees. Under the circumstances presented here, the fact that the need for variances is self-created does not, standing alone, operate to balance against the granting of the variances.

WHEREAS, in answer to Mr. Loren Ware, 10 Wilbur Road, Montebello, regarding concern for the water supply in the area, Mr. Ball explained that, for various reasons pertaining to it being a gunite pool, most of the water to fill the pool initially will be delivered by tanker truck; and

WHEREAS, no one else choosing to speak at or around 8:20 p.m., the Chairman ascertained that Member Wanderman, who was absent at the first meeting dated January 18, 2018 had read all the documents and the minutes and was fully familiar with the matter. The Board then deliberated and voted as follows;

NOW, THEREFORE, BE IT RESOLVED, that the application of David Rubinstein for variances from the provisions of Section 195-Attachment 2, Table of Bulk Requirements, Use Group h, Column 8, Article IV Section 195-13 of the Zoning Local Law of the Village of Montebello from required Side Yard of 25 feet to the proposed 15 feet, and Article X section 195-57D of the Zoning Local Law of the Village of Montebello from the required Side Yard of 35 feet to the proposed 20 feet, to permit the construction, maintenance and use of an in-ground pool to an existing single family dwelling as set forth in the application submitted herein, is hereby approved, subject to the following conditions:

1. Compliance with Village Engineer's requirements S-1 through S-5 of his memo dated February 9, 2018, including the following:
 - a. The site plan shall be revised to reflect any proposed hardscape as shown on the landscape plan, and the bulk table and drainage shall be revised as applicable.
 - b. The fence location must be clarified as it differs on the site plan and the landscaping plan, and it shall be located closer to the property line (at approx. 1 foot).
 - c. Landscaping plan shall be revised to reflect the Village Engineer's comments S-3 and S-4 of his memo.
 - d. Soil percolation tests and inspection of relocated seepage pits shall be performed prior to construction to ensure proper runoff drainage, such system to be redesigned to Village Engineer's satisfaction should present design be inadequate in his judgement.
 - e. Engineering plan shall be updated to conform with planting plan.
2. The pool and its environs are for the personal use of the applicant and his family and their occasional guests, but not for lending out or leasing out to third parties for their use, or for use for any other purpose. (Any certificate of occupancy or use shall be so conditioned.)

MEMBERS PRESENT

YEA or NAY

Rodney Gittens, Chairman
Jack Barbera, Member
Janet Gigante, Member
Carl Wanderman, Member
Elizabeth Dugandzic, Ad Hoc

Yea
Yea
Yea
Yea
Yea

MEMBERS ABSENT:

Samuel Diaz

The Chairman declared the resolution approved and the application for variances mentioned herein granted.

Member Gigante made a motion to adjourn the meeting, seconded by Member Barbera. Upon vote the motion carried unanimously. The meeting adjourned at 8:30 p.m.

SE SPENCE ENGINEERING
CONSULTING & MUNICIPAL ENGINEERS

To: Village of Montebello Zoning Board

From: Martin K. Spence, PE Village Engineer

Martin K. Spence

Date: November 6, 2017

Re: **5 Wilbur Road Tax Map Section 40.16-2-8 Proposed Pool and Patio**

We have received and reviewed the following plan:

- Application Review Form
- Pool Plan, 1 sheet, as prepared by Paul Gdanski, PE dated 10/1/2017

The application consists of construction of a pool and patio within the side yard. The proposed pool location is SE of the existing home. The pool/patio dimensions are 25' X 64' (pool is 20' X 42'). The proposed location of the pool is at a lower grade and the site work includes steps and a retaining wall.

The applicant is seeking new variances as per the Building Inspector letter dated October 27, 2017.

We offer the following comments:

1. The applicant/owner in this matter is:
Mr. David Rubinstein
5 Wilbur Road
Montebello, NY 10901
2. The property is a rectangular lot and consists of 64,000 SF or 1.46 acres where a minimum 50,000 SF is required. Wilbur road ends in a cul-de-sac with no outlet.
3. The site improvements are shown SE of the existing dwelling and driveway. Twelve (12) trees are shown to be removed as part of the improvements.
4. The slope of the property grades down in a southerly direction.
5. The improved lot coverage is being increased 1,808 SF to 8,585 SF, reflecting a total 13.4% development coverage. The maximum development coverage permitted in the zone is 20%.
6. The applicant is proposing two (2) 6' X 6' seepage pit for the increase in runoff as a result of the new impervious coverage. The proposed drainage design is acceptable, subject to acceptable test pits for ground water elevations (the applicant may need to construct shallow seepage pits with a greater diameter in the event of high gwt).

7. Soil Erosion and Sediment Control Measures / Details have been provided on the Plan.
8. No proposed landscaping is shown, however a 6' high chain link fence is shown at the perimeter of the general pool/patio area.

The applicant should demonstrate to the Board the reasons of the proposed location as compared to other site locations which may comply with Zoning, such as NE of the existing home. Based on our review the NE location has less grading impacts and less number of trees to be removed. Pools are typically located at rear of homes where rear yard living occurs and has access to the main dwelling.

The proposed location offers minimal opportunity (10' + distance) of landscape screening between the pool use and the property to the south.

The following engineering comments/requirements are submitted:

- S-1. Prior to any construction, the applicant should perform test pits to determine seasonal high groundwater table to determine function of seepage pits. In the event of gwt conflicts, the design engineer may need to revise the seepage pit design to more shallow pits with a greater diameter. Additionally, no overflow from the pits is required. An additional slot drain shall be constructed along the South side of the patio/pool and connected to the seepage pits.
- S-2. If the Board is considering granting the variances, the Board may request to review proposed landscaping.

END OF REPORT