

THE REGULAR MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY, DECEMBER 20, 2018 AT THE DR. JEFFREY OPPENHEIM COMMUNITY CENTER. THE MEETING WAS CALLED TO ORDER AT 7:50 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

Present:	Rodney Gittens	Chairman
	Janet Gigante	Member
	Samuel Diaz	Member
	Elizabeth Dugandzic	Member
	Carl Wanderman	Member
Others Present:	Alyse Terhune	Asst. Village Attorney
	Regina Rivera	Planning & Zoning Clerk
Absent:	Jack Barbera	Member

Member Gigante made a motion to approve the minutes of September 20, 2018, seconded by Member Dugandzic. Upon vote, the motion carried unanimously.

Sander Gerber – Public Hearing
556 and 558 Haverstraw Road
40.19-1-34/33

Application of Sander Gerber, 556 and 558 Haverstraw Road, Montebello, New York 10901 which was submitted to the Village of Montebello Zoning Board of Appeals for Area Variances for Lot 33, Front Yard [required 50 feet; proposed 0 feet], Side yard [required 25 feet, proposed 0 feet], and Development Coverage [required 20%, proposed 61.6%]; for Lot 34 Rear Yard [required 25 feet, proposed 0 feet], Side Yard [required 25 feet, proposed 0 feet] and Development Coverage [required 20%, proposed 30.8%]; and for both lots 33 and 34 for a 10-foot proposed fence at tennis court as per Sec. 195-19C of the Zoning code of the village of Montebello. The application proposes the installation, maintenance and use of a tennis court and circular driveway on both lots. The properties are located on the northwest side of Haverstraw Road, approximately 200 feet from Bayard Lane in the village of Montebello and designated on the Ramapo Tax map as Section 40.19, Block 1, Lots 34 and 33 in the RR-50 Zone.

Present were the attorney for the application Amy Mele, his engineers Glenn McCreedy and Zach Kamm of Civil Design Works, LLC, and landscape architect Michael Vigonia of Kelly Varnell Virgonia, Inc. Chairman Gittens asked if there was anything new submitted regarding this application. The Zoning Clerk handed him the letter from Linda Weckerly of 562 Haverstraw Road (copy on file). Mr. Gittens noted the GML review from Rockland County Planning dated December 6th, received December 10th, and a memo from Assistant Village Attorney Elizabeth Cassidy dated December 17, 2018 (attached).

Amy Mele, referring to Ms. Cassidy's memo, explained that this application can move forward without any SEQR declaration since this is ultimately a Type II action, and gave an overview of the Gerber family, their love for tennis and their desire to have both lots function as a family compound. Many weeks were spent reworking the plans to minimize the number of variances requested and mitigate any impact on surrounding neighbors. These include the installation of a

robust drainage system, a lot line shift so the tennis court is on one lot and further away from the abutting property line, a shifting of the driveway to minimize the side yard variance, the removal of one curb cut on Haverstraw Road, and, because a number of neighbors expressed concerns, the removal of the lighting plan for the tennis court. Additionally, she said, two sheds close to the neighbor's property will be removed, the swing set that encroaches the easement will be relocated, and the stone pillars encroaching into the right of way will be removed. All things, considered, the neighbors are satisfied, and the variances requested here are not substantial as they relate largely to aesthetic improvements, she said.

Ms. Mele spoke to the ZBA criteria of whether this is a self-created need, stating that all ZBA needs are self-created, adding that these requested variances are related to aesthetic improvements. On that note, she said, in order to accomplish their aesthetic visions, a very expensive and robust drainage system is proposed that will improve drainage for this and the surrounding properties.

Mr. McCreedy noted that the focus of the new plans will bring all development inward into the center of both lots, and after extensive re-grading, the two lots will be more integrated and will have only one access point from Haverstraw Road to each property. He then showed the Board renderings from Coe Farm Road and looking north on Haverstraw Road.

Chairman Gittens asked to hear from the landscape architect. Mr. Virgonia said that the goal is to soften the hardscapes such as driveways, walls and fencing, and to heavily plant the parameter of the front property with evergreens and deciduous plants for privacy. Currently it is mostly open with little vegetation at eye-level, he added. Along the frontage a 6-foot cedar solid deer fence will be added and set back further from the property line in compliance with Village Code, and the rest of the property will also be surrounded by a fencing. The backyard will remain the same save for some terracing, and finally, he explained, in keeping with the applicants' wish to turn this into a verdant oasis, a vegetable garden will be planted between the two house and a double layer of vegetation will be installed between the road and the tennis court.

Ms. Mele requested an override of #8 of the GML review from Rockland County Planning dated December 6, 2018 (copy on file) stating that the village will not give credit for pervious pavers, and in any case, they will not reduce the maximum development coverage as they tend to become impervious over time. Regarding #7 and the pool cabana, Ms. Mele explained that her narrative states they are not seeking approval for it at this time and that it is only shown on the plans should they decide to build it in the future. The application otherwise in compliance or will comply with all other directives by the County, she added. Chairman Gittens said there is some merit to pervious pavers as they serve dual functions by lowering lot development coverage and relieving drainage issues. Mr. McCreedy said they did originally present the suggested pavers as they assumed all walkways would be impervious. However, he explained, alternate methods will be used to accomplish the same end such as block pavers with gravel between and pea stone walkways.

Chairman Gittens asked Mr. McCreedy to elaborate on the drainage proposal. Mr. McCreedy referred to page C105 showing the drainage system and gave a detailed overview of the very robust proposal that, together with the new driveway, will channel stormwater to the system and ultimately produce 0 net runoff. After further discussion of the drainage system, it was then discovered that the ZBA Members were not issued the latest revision of the plans. Ms. Terhune said that no decisions could be made until Board members have the most up-to-date maps. Mr. McCreedy said he would get the latest revision to the Board before the next meeting.

Member Wanderman asked the total number of parking spaces. Mr. McCreedy said that since this is a residential property there are no demarcated spaces, but there are areas that are earmarked for parking, and the curbs are mountable in case the need for more parking arises, for example, if the Gerbers were having a party.

Member Wanderman asked at what point the lot line would change. Mr. McCreedy said before any work begins. Once the variances and the site plan approval are granted, the easements will be crafted, the surveyor will recreate the subdivision plat to be filed with the county clerk's office with the easements, which will be recorded and sent to the tax assessor. Ms. Mele reminded the Board that there are several agencies that need to grant approval before they could file anything with the county.

Member Gigante asked Mr. McCreedy to explain what variances are being requested in visual terms. Mr. McCreedy said the variances are requested for the side-yard, the fencing that crosses the two property lines, the tennis court fencing that straddles the line, the driveway that crosses the lot lines, and parking within the front yard of the rear lot. Regarding the parking, he said, this last is an add-on feature that will provide access to the front of the dwelling in the rear lot. Ms. Mele said that they removed many proposed parking areas near the property lines out of deference to the neighbors' concerns that the headlights would shine through their windows.

Member Gigante asked if they could do without the parking in the front yard of the rear lot. Ms. Mele said that was one of the things that her client's really want as parking is difficult now. Respectfully, she said, it is just a variance from Gerber to Gerber, and as it is technically the front yard of the flag lot, it will not be seen from the road.

Member Diaz said that he was very uncomfortable with entire project because it feels too commercial and he hasn't heard viable answers to any ZBA criteria, particularly a need, upon which variances are granted. Further, the parking is ample and akin to that of a commercial property, he said. Ms. Mele countered that the majority of people coming before the ZBA are there because of want and not need. This is the furthest thing from a commercial property, she said. It is Mr. Gerber's summer and weekend home, he has seven children who are avid tennis players, friends and family will visit during the warmer months and as such he would like to turn his two properties into a cohesive welcoming family compound and make it prettier while he's at it. Ms. Mele then suggested that this Board make a site visit for perspective.

Member Diaz said that he would rather not set a precedent for this type of use because they are two separate lots and should remain as such. Ms. Mele said that nothing the Board does will set a precedent because every variance is different. This proposal, she explained, has been before the CDRC at least four times, has been reviewed extensively by Village consultants, and still more work is needed before it goes to the Planning Board. County and state agencies must be satisfied as well, and because the property is in the Scenic and Historic Road District, a certificate of appropriateness must be issued by the Village Historical Preservation Society. Mr. Gerber is prepared to do this work. But for the tennis court, he could have just re-landscaped and reconfigured the driveway with a simple Land Disturbance permit and without any other permissions from this Village, she said. Mr. Virgonia pointed out that the materials chosen are not commercial in nature, for example, the asphalt driveway will be topped with pea-gravel. The aesthetic isn't commercial or even suburban, but rural.

Ms. Terhune stated that each application this Board reviews is very much individualized to the property, and each is unique. Should there be a similar application in the future, this Board will look at the same five factors, she said, adding that Mr. Gerber has every right to buy a second home

and to make improvements to benefit his family, and advised that the Board go on a site visit to better assess what they will be granting.

Member Gigante asked what measures will be put in place should the property be sold. Ms. Mele said there will be easements and covenants in place to turn it back to a two-lot condition. Ms. Mele then asked that, if the Board is inclined to adjourn for a site visit, they try and make the visits between now and the next board meeting.

Chairman Gittens asked the ratio of evergreens to deciduous plantings and what the view will be like in the winter. Mr. Virginia said there will be more evergreens like juniper, arborvitae, spruces, and skip laurel, and less deciduous shrubs and trees like spirea and viburnum. The evergreen spruces will be 10 - 12 feet tall, and there will be some taller 5-inch caliper trees like sugar maples. The idea is to screen the property for privacy, but not obscure it. After some discussion about the amount of screening proposed, Ms. Terhune advised the Board that, because this is very discretionary, they can condition approvals on what was heard today so that they can affect the screening while granting variances. Mr. McCreedy reminded them that there will be a fence that will affect screening as well and that currently the property is wide-open.

Member Dugandzic said she had concerns about reverting to two lots should the properties be sold and ask how the rear lot would be accessed. Mr. McCreedy said that a defined easement for access would be reciprocally granted between the lots so they could share the driveway. This extends to utilities as well, he added. Alternately, Mr. Virginia said, the tennis court could be removed and the driveway re-installed. Mr. Wanderman reminded them that the new property line would remain. Chairman Gittens asked how the drainage system would be affected. Mr. McCreedy said that aside from piping, there would be easements for the drainage system too.

The Board then agreed to do a site visit either as a group or individually.

Chairman Gittens opened the public hearing and read the letter from Mrs. Weckerly into the record. Mr. McCreedy said that the letter was written and submitted for the November ZBA meeting which was cancelled due to inclement weather and that some of her concerns have since been addressed. She also spoke at the November Planning Board meeting and made her concerns about the proposed fence along her property line known to that Board as well. Ms. Mele wanted the Board to know that Mrs. Gerber reached out to all her neighbors to invite them over for coffee and to discuss this application. However, she said, the neighbors declined.

Member Wanderman asked how the Board can be assured that any conditions explicit in the approvals will be subject to enforcement. Ms. Terhune said that this proposal must go to the Planning Board as well and recommended that if this Board does grant some or all the variances, a sheet could be added to the plans for the Planning Board that shows the resolutions and the conditions on which the variances were granted. If the conditions are not met or are violated, she continued, the variances would no longer be valid which would, in turn, invalidate the site plan. The Planning Board may have their own conditions as well, she added. Member Wanderman asked if the Planning Board could override this Board's decision. Absolutely not, Ms. Terhune said, adding that they can't even act without the variances.

No one wishing to speak, Member Wanderman made a motion to close the public hearing seconded by Member Gigante. Upon vote the motion carried unanimously.

Ms. Mele reiterated her hope that the ZBA will make a site visit and said updated plans will be sent to each Member in the meantime.

Member Wanderman made a motion to adjourn the application to the January 17, 2019 ZBA meeting, seconded by Member Gigante. Upon vote, the motion carried unanimously.

**Manhattan Beer Distributors, c/o Andrew Berger AIA—Public Hearing
20 Dunnigan Drive
55.07-1-12**

Application of Manhattan Beer, 20 Dunnigan Drive, Montebello, New York 10901 which was submitted to the Village of Montebello Zoning Board of Appeals for area variances for side yard [required 20 feet, proposed +/- 3 feet] and front setback [required 75 feet, proposed 44 feet] per Sec. 195-13 bulk table, use group K of the zoning code of the Village of Montebello. The applicant proposes the relocation of the railroad track at the south property line and the construction of a loading deck and canopy.

Chairman Gittens established the materials submitted, including two recent submissions; a letter from the Rockland County Sewer District #1 dated December 20, 2018, and letter from Raymour & Flanigan at 30 Dunnigan Drive dated December 18, 2018 (both on file).

Present was Mike McCarthy, Senior VP of Operations for Manhattan Beer, and the applicant's architect Andrew Berger of di Domenico & Partners LLP. Mr. Berger explained that his client is seeking relief from the front yard setback from 75 to 44 feet and from the side yard setback from 20 feet to 3 feet. Mr. Berger noted that the current front yard setback is 60 feet which was an existing condition when Manhattan Beer purchased the building twelve years ago. Similarly, at the time of purchase, parking encroached into the western side yard. He then showed on an existing-conditions map that 2 Dunnigan Drive and 30 Dunnigan Drive are also not compliant with setbacks.

Member Diaz wanted to clarify that Raymour & Flanigan is the owner of 30 Dunnigan Drive next door, and not, as the survey map indicates, Par Pharmaceuticals. The Planning Clerk confirmed that Raymour & Flanigan are the owners of the building and that Par Pharmaceuticals share space within the building.

Mr. Berger explained that Manhattan Beer currently receives rail service for a portion of their deliveries. The rail service comes from the west and enters the warehouse of 20 Dunnigan Drive for unloading. Manhattan Beer is proposing a shift of the rail line that traverses their property, the addition of a second spur, the construction of a loading platform and a canopy above the platform. Mr. Berger explained that by adding more rail cars to a single delivery, truck traffic will be reduced.

Regarding the front yard, Ms. Terhune noted the side setback is a pre-existing non-conformance that the applicant is seeking to "normalize" by asking this Board to grant a side-yard variance, and right now, this pre-existing parking area on the west side is non-conforming and allowed to continue that way until it is changed. If it is ever changed, she continued, [Manhattan Beer] will have to conform to the setback requirements or request a variance. They are asking for the variance now, she said and suggested that if the variance is granted, it should be done specifically for this plan at this time so nothing hypothetically drastic could be done in the future.

Mr. Berger resumed his presentation, stating that the proposed platform is for unloading product and bringing it into the building, and the canopy will provide protection for the platform in inclement weather.

Member Diaz asked Mr. Berger to address the letter from Raymour & Flanigan regarding this projected and dated December 17, 2018. Mr. Berger said he spoke with Raymour & Flanigan's General Counsel Neil Rube and forwarded the plans to him. Mr. McCarthy, Sr. VP for Operations at Manhattan Beer, addressed the main concerns as outlined in the letter. Regarding the potential effects of increased rail usage and accessibility to and wear and tear on Dunnigan Drive, Mr. McCarthy noted that everything in the proposal is happening within the property and nothing in the right of way is changing. Trains run on the tracks so there will be no degradation of the asphalt he said, adding that the main intention of this proposal is to reduce truck traffic. Mr. Berger said that for every rail car, there will be 3 less tractor trailers making deliveries so the amount of traffic and physical impact on the road will be reduced. Regarding trucks idling and parking on Dunnigan Drive outside of Manhattan Beer's property, Mr. McCarthy reiterated that there will be less truck traffic and that trucks parked illegally on Dunnigan Drive is the purview of the Ramapo Police Department and not a Planning Board or ZBA issue.

Member Wanderman asked if there is indeed an encroachment into the sewer easement as per the letter from Rockland County Sewer District. Mr. Berger said that the platform will not be built in that easement and said he will send drawings to the Sewer District so they understand that there will be no encroachments. They are referring to something underneath the existing railroad, a force main, that is not on the property, he said. Member Wanderman asked how this can be resolved. Mr. Berger said they will include a new survey with those plans to the District that will show where the easement is exactly. Member Gigante said she would like a response from the Sewer District after they received the requested information and the new survey.

Chairman Gittens opened the public hearing. No one wishing to speak, Member Gigante made a motion to adjourn the public hearing to the January 17, 2019 meeting, seconded by Member Wanderman. Upon vote, the motion carried unanimously.

Member Gigante made a motion to adjourn the meeting at 10:00 p.m., seconded by Member Wanderman. Upon vote, the motion carried unanimously.

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December 17, 2018

MEMO

TO: Montebello Zoning Board of Appeals

CC: Warren Berbit, Village Attorney
Alyse Terhune, Assistant Village Attorney
Max Stach, Village Planner
Martin Spence, Village Engineer
Regina Rivera, Planning and Zoning Clerk
Glenn McCreedy, Applicant's Engineer
Amy Mele, Applicant's Attorney

FROM: Elizabeth K. Cassidy, Esq.

RE: Application of Gerber

This memorandum is at the request of the applicant to clarify the sequence of the State Environmental Quality Review Act.

The applicant is proposing a lot line change/subdivision for purposes of installing a tennis court, circular driveway and other landscaping features to create a "family compound." The applicant requires subdivision, site plan and a wetlands permit from the Planning Board as well as several area variances from the Zoning Board of Appeals.

The area variances presently before you are a Type II action under SEQR and no further environmental review is required. See 6 NYCRR 616.5 (16-17) & 6 NYCRR 617.6(a)(1)(i). The subdivision, site plan and wetlands permit are currently unlisted actions under SEQR.¹ The Planning Board has elected to conduct an uncoordinated review pursuant to SEQR. See 6 NYCRR 617.6(4) which states in relevant part:

(i) An agency conducting an uncoordinated review may proceed as if it were the only involved agency pursuant to subdivision (a) of this section unless and until it determines that an action may have a significant adverse impact on the environment.

(ii) If an agency determines that the action may have a significant adverse impact on the environment, it must then coordinate with other involved agencies.

(iii) At any time prior to its final decision an agency may have its negative declaration superseded by a positive declaration by any other involved agency.

¹The Planning Board anticipates that this discussion will be rendered moot when the SEQR regulations are amended effective January 1, 2019 as subdivisions will become Type II actions and not subject to environmental review

By virtue of that fact, the Zoning Board is free to act on the requested area variances without awaiting the Planning Board's declaration of lead agency.