

THE REGULAR MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY, JANUARY 17, 2019 AT VILLAGE HALL. CHAIRMAN GITTENS CALLED AN EXECUTIVE SESSION AT 7:35 PM. EXECUTIVE SESSION ADJOURNED AT 7:55 PM AND 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

**Manhattan Beer Distributors, c/o Andrew Berger AIA—Public Hearing continued
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.

Present were Mike McCarthy, Senior VP of Operations for Manhattan Beer, and the applicant's architect Andrew Berger of di Domenico & Partners LLP. Chairman Gittens acknowledged for the record two new submissions to include a GML review from Rockland County Planning Department dated January 2, 2019, and a letter from the Rockland County Sewer District dated January 7, 2019 addressed to the Planning Board and distributed to the ZBA as well. Mr. Berger offered a brief overview of the project and addressed any lingering issues raised by the Rockland County Sewer District, specifically explaining that there will be no permanent structure built over the sewer easement. He then noted the revised summary showing the force main, and not the sewer line, runs under the railroad right-of-way on Dunnigan Drive.

Chairman Gittens opened the public hearing.

Jeff Peattie, 21 Stage Street, Airmont, New York said his property is adjacent to the tracks and described a list of disturbances that adversely affect the quality of his and his family's lives. These include lights glaring into his home from Manhattan Beer property, dumped garbage from truck drivers and most of all, the frequency and odd hours the trains have been running. The trains, he said, often come late at night or in the very early morning hours, sometimes as frequently as five

times per week. The night before, he continued, the train blew its horn for a sustained amount of time and woke his young children. Mr. Peattie expressed his concern that the new platform will increase the train deliveries and asked if the proposed rail spurs will have any impact on the sewer line. To that end, Mr. Berger showed Mr. Peattie that the sewer line will not be affected as it is not on Manhattan Beer property. Mr. Peattie said that he wants Manhattan Beer and the Norfolk Southern Railroad to acknowledge that he lives there.

Mr. McCarthy acknowledged that Manhattan Beer maintains the garage on Dunnigan drive but that there are many external tractor trailer drivers that have nothing to do with Manhattan Beer and use Dunnigan Drive as a stop off the Thruway and said that they are also cleaning their garbage from their property. Noting that he received photos taken of the lights from Mr. Peattie's residence, Mr. McCarthy promised to put shields on all the lights so the lumens stay on Manhattan Beer property. Mr. Peattie asked when he could expect that to be done, and Mr. McCarthy said he will get a timeline for that. He then explained that Manhattan Beer has no control over the train delivery frequency and that they are at the mercy of the freight tariffs. Once a freight delivery is made however, the hours of unloading the freight are strictly between 7 a.m. and 6 p.m., once per day, he said.

Mr. Peattie maintained that nonetheless, trucks are delivering to Manhattan Beer and that they idle on Dunnigan Drive waiting for the gates to open, sometimes all night long and his house often smells of diesel fuel by morning. Chairman Gittens said the trucks are a law enforcement issue and that the police should be called.

Member Gigante asked what is done with freight deliveries arriving in the middle of the night. Mr. McCarthy said that the cars detach, the engine leaves and the freight is unloaded the next day during hours of operation.

Mr. Peattie said his quality of life has gone downhill in recent years because the train that used to come a couple of times per month now comes on average five days per week. Further, he added, he has never witnessed anyone at Manhattan Beer cleaning up garbage on their own property.

Member Diaz asked Mr. Peattie if he ever contacted Norfolk Southern Railroad about the timing of their trains. Mr. Peattie said he tries constantly. Chairman Gittens asked Mr. McCarthy if their goal with this proposal is to reduce the number of tractor trailers, to which Mr. McCarthy replied yes, there will be less truck deliveries. Member Diaz asked Mr. McCarthy if he could prove this proposal will not increase the frequency of trains. Mr. McCarthy said anything they do has no bearing on train frequency. The difference here is that they will allow the engine to push more train cars onto the property thereby eliminating some truck deliveries. The cars will be unloaded outside the warehouse instead of inside, but again, only during the day, he said. Unloading is a separate issue and is within our power to control, but we cannot control when Norfolk Southern sends trains, he said.

Chairman Gittens noted that Manhattan Beer's operations will change because now the trains will be delivering outside the building, and Member Gigante said that noise generated from unloading the cars will increase. Mr. McCarthy said only during the daytime and promised to address any problems that may arise as a result. Chairman Gittens asked if measures could be taken to buffer

the unloading noise. Mr. Berger said the noise is buffered by the train car and explained that the activity will be on the building side away from any residences. Chairman Gittens suggested that the applicant explore some noise mitigating measures that could be presented to the Planning Board for site plan approval.

No one else wishing to speak, Member Gigante made a motion to close the public hearing, seconded by Member Wanderman. Upon vote, all were in favor.

Chairman Gittens polled the Board on the application. Member Diaz said he empathized with Mr. Peattie but that this proposal will in no way exacerbate the issues of train frequency and truck garbage. Member Wanderman said he had no issues with the application and that he hoped the Planning Board will ask for noise attenuation. Member Gigante said she took issue with the fact that they are building over the force main, and that a permanent concrete platform will be installed over the public storm drain. Chairman Gittens reminded her that the drain belongs to Manhattan Beer and connects to the public storm drain, and that the sewer line is in the right of way and will not be encroached by the platform. Member Gigante, regarding sound attenuation, suggested that the applicant install a landscaped buffer for noise reduction. Mr. McCarthy was amenable to the idea and suggested evergreen hedges, adding that they will plant anything that is requested by either Board. Ms. Terhune said this Board could require the applicant to submit a landscaping plan that provides for sound mitigation as a condition of this approval, which would in turn be overseen by the Planning Board. Member Wanderman asked if lighting and hours of operation could be made part of the conditions, to which Ms. Terhune replied they could. Member Dugandzic said she was also amenable to the proposal as long as Manhattan Beer's hours of operation do not change.

Chairman Gittens agreed with these conditions, and noted that nothing in this application is substantial, that there is no impact to the environment, and though there is a slight impact on the community, those impacts are mostly out of the applicant's control. Ms. Terhune asked the applicant to find out if the railroad can perhaps muffle their blaring horns. Mr. McCarthy said there are probably standards and laws by which they operate but that he would try to work with the rail company to lessen the noise.

Ms. Terhune suggested the Board override item 2 of the January 2, 2019 GML review since they are now satisfied that the project will have no impact on the sewer line and that this Board could approve the variances on the following conditions: The Building lights will be shielded and controlled so they are not shining on adjacent properties; hours of unloading will take place only between the hours of 7 a.m. and 6 p.m.; the applicant will plant evergreens and trees with at least a 3.5 inch caliper and eight to ten feet high to buffer unloading noises; the applicant will request the freight company to muffle the train horns; and should the variances be granted, a copy of the resolution will be included in the site plans as a separate sheet so the Planning Board and others will see them.

Member Wanderman made a motion to approve the application and grant the variances, seconded by Member Gigante. Upon vote, the motion carried unanimously.

**VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS**

**IN RE: APPLICATION OF MAHATTAN BEEF DISTRIBUTORS
CALENDAR CASE NO. 1170**

**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO ZONING LAW FOR
THE PURPOSE OF RECONFIGURING RAILROAD TRACKS LOCATED ON PRIVATE
PROPERTY AND ADD A LOADING PLATFORM AND CANOPY TO THE EXISTING
BUILDING**

The property location and zoning district. The subject property is located at 20 Dunnigan Drive, Village of Montebello, County of Rockland, State of New York (the “Property”). The Property is identified on the Tax Map as Section 55.07, Block 1, Lot 12, and is governed by the Zoning Law of the Village of Montebello, specifically the use regulations applicable to the Planned Industry District (“PI”), wherein the Property is located and bulk regulations set forth in Section 195-13 Bulk Table, Use Group K. On or about November 18, 2018, application was made to the Montebello Planning Board for, as relevant here, site plan approval to construct new double railroad track siding and loading platform with a permanent canopy along the south side of the existing building, relocation of the driveway entrance to the west parking lot, and fence removal and landscaping in front of the railroad siding along Dunnigan Drive. By letter dated November 30, 2018, the Building Inspector for the Village of Montebello informed the Applicant that the bulk requirements have not been met and noted that the application could be referred to the Zoning Board of Appeals (hereinafter, the “Board”).

The application for variances. By application to the Board received November 30, 2018, the Applicant requested relief from the bulk requirements in the form of one (1) front yard area variance of 31 feet from the required 75 feet to 44 feet for the purpose of constructing a 16-foot wide concrete platform and canopy addition along the south façade of the building to facilitate the unloading of freight trains. The Applicant also requested a side-yard variance of 17 feet from the required 20 feet to +/- 3 feet for the pre-existing nonconforming condition at the west parking lot.

Submissions. The following material was submitted to the Board, which materials are incorporated into and made a part of this Decision and upon which this Board relied during its deliberations:

1. Letter from the Village of Montebello Building Inspector, dated November 30, 2018 to Mr. Andrew Berger, AIA, representative of the applicant, identifying the variances that would be required to meet the Village’s bulk regulations and referring the Applicant to the Zoning Board of Appeals; and
2. Letter of Transmittal and Narrative to the Zoning Board of Appeals prepared by di Domenico + Partners LLP, dated November 29, 2018, with the following enclosures:

1. Application, dated November 2, 2018, seeking a front-yard setback area variance of 31 feet from the required 75 feet to 44 feet;
2. Survey of the property located at 20 Dunnigan Drive prepared by Jay A. Greenwell, PLS, LLC, dated October 10, 2018;
3. Plan drawings, dated November 27, 2018, prepared by di Domenico + Partners LLP, consisting of sheets A-100 (existing/removals site plan), A-101 (proposed site plan), A-110 (partial plans and elevation), A-200 (sections), S-001 and S-002 (neighborhood site plan) and T-001 (plot plan and drawing list).

General Municipal Law § 239-m. On December 3, 2018, the application was duly referred to the Rockland County Planning Department pursuant to GML § 239-m, which Department responded on January 2, 2019. Rockland County issued a recommendation with six (6) modifications. Each modification was considered by the Board. Modifications 1, 2, 3, and 4 concluded that the application should be referred to the Village of Airmont, Rockland County Sewer District No. 1, the NYS Thruway Authority and Orange and Rockland Utilities, respectively, which the application was referred to those agencies and utility for comment. Modifications 5 and 6 recommended additional notes to be added to the site plan and a correction in the name of the water company that would supply water to the site. The applicant shall adhere to those requirements as a condition of this Resolution of Approval.

Public Hearing. A duly noticed public hearing was convened on January 17, 2019, at which time the Board heard testimony from the Applicant and all those wishing to address the Board on the matter. Members of the public appeared and voiced concern about the lights shining into residential neighborhoods, noise, frequency and timing of train deliveries (trains delivery goods during the night), as well as the noise of unloading the trains and trucks. After hearing all comments from the public, the hearing was closed.

The Board considered the comments from the public and concluded that certain conditions would be imposed upon the Applicant to the extent that the Applicant had authority to address the public's concern. However, the Applicant stated, and the Board accepted, that it could not control the timing of train deliveries. However, the Applicant could control the time when trains would be unloaded by its employees and agreed to limit such unloading to between 7:00 AM and 6:00 PM.

In addition, the Applicant represented that it would substitute lights for beepers from its unloading machines and would reach out to Norfolk and Southern Rail Road to request that the trains buffer their horns. In addition, the Applicant represented that it would shield existing lights and any new lights that were added as a result of the proposed modification so as to eliminate lights shining into neighborhoods.

State Environmental Quality Review Act (SEQRA). The Board determined that the relief requested was in the nature of an lot line variance that constituted a Type II Action pursuant to 6 NYCRR Part 617.5(c)(16) of the SEQRA regulations and that no further review was necessary.

FINDINGS

The zoning law. Warehousing is a use permitted “as-of-right” in the Planned Industry zoning district. Therefore, the use complies with the Montebello Zoning Law.

The zoning law applied to the application. The Applicant requested relief from Section 195-13 Bulk Table, Use Group K in the form of one (1) front yard area variance of 31 feet from the required 75 feet to 44 feet for the purpose of constructing a 16-foot wide concrete platform and canopy addition along the south façade of the building to facilitate the unloading of freight trains.

The Board’s additional Findings. When considering whether to grant an area variance, the Board must consider, and did consider, (1) whether the requested variance is the minimum necessary to relieve the practical difficulty or economic injury; (2) whether the variance is substantial in relation to the zoning code; (3) whether the variance will produce a change in the character of the neighborhood or a substantial detriment to adjoining property owners; (4) whether the alleged practical difficulty or economic injury be overcome by some other method; (5) whether granting the said will affect the health, safety or welfare of the neighborhood or community; (6) whether granting the variance will have any effect on government facilities or services. Any area variance so granted by the Board must be the minimum variance that it deems necessary and adequate.

The Board made the following findings:

1. The Board considered whether the requested variance is the minimum necessary to relieve the practical difficulty or economic injury the Applicant would sustain if denied and determined that it is. In order for the Applicant to increase the number of train cars delivering goods, and thereby substantially reduce the number of truck deliveries, additional tracks would be required to be placed along the building facing Dunnigan Drive, since the train would not be able to make a sharp turn to allow delivery at the sides or back of the building.
2. The Board considered whether the variance was substantial in relation to the zoning code. Although a variance of 31 feet from the required 75 feet to 44 feet could be considered substantial, the Board noted that the building was already nonconforming with a front yard setback of 60 feet. The Board also noted that multiple buildings along Dunnigan Drive were also nonconforming to a greater degree than Manhattan Beer.
3. The Board finds that while there will not be a substantial change in the neighborhood if the variance is granted, the Board acknowledged that homeowners in the neighboring Village of Airmont, directly across Dunnigan Drive may experience a greater level of noise if the variance is granted. Therefore, the Board concluded that the variance should be conditioned on certain noise abatement efforts.
4. The Board finds that the practical difficulty or economic injury cannot be overcome by some other method. As noted earlier, the only location where

trains cars can be physically delivered and unloaded is the front of the building along Dunnigan Drive.

5. The Board finds and determines that granting this variance will not affect the health, safety or welfare of the neighborhood because of the existing industrial/warehousing use along Dunnigan Drive. The Applicant has represented that no hazardous materials will be delivered to its warehouse.
6. The Board finds that the variance will not affect any government facility or service. The Board analyzed and the Applicant identified specifically on the site plan the location of the sewer line and utility easement along Dunnigan Drive and affirmatively represented and that the repositioning of the rail tracks will not interfere with either the sewer lines or the utility easement. The new tracks will be laid on property wholly owned by Manhattan Beer and the location of the existing rail spur will remain the same.

Applicant's burden. The Zoning Board of Appeals hereby finds and determines that the Applicant has sustained its burden of proof as required by New York State Village Law and Village of Montebello Zoning Law as to the need for the requested variance.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Village of Montebello Zoning Board of Appeals hereby renders the following decision:

On a Motion by Member Wanderman, Seconded by Member Gigante, on a roll-call vote as set forth below, the Board grants the requested relief from the bulk requirements to Manhattan Beer Distributors, Inc., for the property located at 20 Dunnigan Drive, Village of Montebello, County of Rockland, State of New York, identified on the Tax Map as Section 55.07, Block 1, Lot 12 in the form of one (1) front yard area variance of 31 feet from the required 75 feet to 44 feet for the express purpose of constructing a 16-foot wide concrete platform and canopy addition along the south façade of the building to facilitate the unloading of freight trains. The Board also grants a side-yard variance of 17 feet from the required 20 feet to +/- 3 feet for the pre-existing nonconforming condition at the west parking lot for the purpose of parking only and not for any other purpose. In granting these variances, the Board relied on the testimony and representations of the Applicant and the plan drawings, dated November 27, 2018, prepared by di Domenico + Partners LLP, consisting of sheets A-100 (existing/removals site plan), A-1 01 (proposed site plan), A-110 (partial plans and elevation), A-200 (sections), S-001 and S-002 (neighborhood site plan) and T-001 (plot plan and drawing list). The plan drawings cited herein are made of part of this Decision as if fully attached hereto. These variances are granted in reliance on their individual purposes as shown on the referenced Sheets and for no other purpose. Deviation from the variances granted by this Board shall invalidate this Decision and the variances granted thereby by operation of law.

BE IT FURTHER RESOLVED, that the variances are granted pursuant to the following conditions:

1. All lights on the building or anywhere else on the property that face Dunnigan Drive shall be shielded to prevent light from shining toward residential neighborhoods.
2. Manhattan Beer shall only unload trains between the hours of 7:00 AM and 6:00 PM.
3. Manhattan Beer shall not use back-up beepers on its unloading trucks or skid-loaders or any other mechanized unloading vehicles. Lights or any other non-obtrusive safety devices may be used to protect employees.
4. A living landscape buffer shall be planted between the train tracks and Dunnigan Drive for the purpose of shielding activity and noise from the residential neighborhoods across Dunnigan Drive. The Board requires staggered line of evergreen trees of a size sufficient to provide insulation from the noise be planted; however, the Board will accept modifications to this scheme set forth by the Planning Board during its review of the site plan. However, a noise barrier of some type shall be required as a condition of this approval.
5. Compliance with Rockland County Sewer No. 1 letter dated December 20, 2018.
6. Manhattan Beer executives shall use their best efforts to negotiate with Norfolk-Southern Rail Road, or any other rail delivery company, to buffer or otherwise silence or reduce the blast of horns on the trains and request that trains be delivered during the day and not at all hours of the night and early morning.
7. A copy of this Decision shall be placed on a separate sheet of the Site Plan.
8. Payment of all fees due and owing to the Village of Montebello in connection with this application and approval.

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 applicant, Mr. Sander Gerber, his attorney Amy Mele, his engineer Glenn McCreedy of Civil Design Works, LLC and his landscape architect Michael Virginia of Kelly Varnell Virginia Inc. Chairman Gittens noted the public hearing was closed at the December 20, 2018 ZBA meeting. Ms. Mele introduced Mr. Gerber and noted the gravity and importance of this meeting because the entire project is hinged upon acquiring the variances.

Ms. Mele said she was pleased that so many Board members made a site visit and reminded them that previous iterations of the plans affected the neighbors, many of whom objected to the lighting proposed for the tennis court, which was subsequently withdrawn from the plans. We've worked very hard to minimize the number of variances needed and to keep them internal to the estate, and if the Board grants approval, this application can go back to the Planning Board for the lot line shift and amended site plan approvals, she said.

Ms. Mele stressed that Mr. Gerber is not looking to add square footage to either dwelling or even to build structures, rather, he is seeking to create a beautiful space for his family where they can relax and play tennis. She noted that at the last meeting, Member Diaz had concerns about the property looking a little too commercial and noted too that he did not make a site visit. Since then, she continued, this application went to the Historical Preservation Commission for a certificate of appropriateness and the feedback was extremely positive.

Ms. Mele said she was also asking for an override of comment #8 of the Rockland County Planning Department's GML review (copy on file) because plenty of pervious materials will be used throughout, and because pervious pavers will not reduce the extent of lot coverage because the Village does not take that into account. Further, she said, any pre-existing non-conforming conditions are being removed which will, in fact, reduce the development coverage on lot 34. She then reminded the Board that this application is enduring a high level of scrutiny from the Rockland County Drainage agency, and this proposal will improve drainage conditions by virtue of necessity due to the location on the Mahwah River.

Member Gigante asked how the drainage plan will improve the rear lot, which is much lower than the front lot. Mr. McCreedy detailed the robust drainage plan that includes drains throughout and a collection center that will discharge stormwater into the Mahwah River.

Member Gigante asked for clarification of the driveway materials. Mr. McCreedy said they were considering asphalt for the driveway with a top coat of gravel in an emulsifying agent to give it a rustic appeal.

Chairman Gittens asked how they plan to maintain the driveway given the proposed cosmetic treatment. Mr. McCreedy said more maintenance will be required on such a surface but explained that the property will primarily be used as a summer home and therefore snow plowing will not be an issue. Chairman Gittens asked why they won't consider pervious pavers as per the County's suggestion, especially since there will be more pervious surface throughout, including the driveway. Mr. McCreedy said there are opportunities to use pervious surfaces, but at this time, the driveway will always be asphalt, at least underneath. Mr. Silvestri added that they would not have a problem giving up the gravel epoxy on top of the asphalt and replacing it with pervious gravel if either Board desires it, but it would not be ideal particularly since Mr. Gerber would like his

children and grandchildren to ride bicycles on the properties. Chairman Gittens said he just wanted to fully address the County's concerns.

Chairman Gittens briefly went through the merits of this application according to ZBA criteria, noting that this proposal was done in the best way possible for minimal required variances with low impact on neighbors and the environment. Ms. Terhune added that this application is Type II under SEQRA and therefore no environmental study was necessary.

Member Dugandzic asked what would happen should Mr. Gerber sell the properties. Mr. McCreedy said there will be a driveway easement for the rear home, as well as easements for access to utilities.

Member Wanderman made a motion to grant the variances requested, seconded by Member Dugandzic. Upon vote, the motion carried unanimously.

Member Gigante made a motion to override item #8 of the county GML dated December 6, 2018, seconded by Member Dugandzic. With one abstention, the motion carried.

**VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS**

**IN RE: APPLICATION OF SANDER GERBER
CALENDAR CASE NO. 1171**

**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO ZONING LAW FOR
THE PURPOSE OF CONSTRUCTING A TENNIS COURT AND CIRCULAR DRIVEWAY ON
EACH LOT**

The property location and zoning district. The subject property is located at 556 AND 558 Old Haverstraw Road, Village of Montebello, County of Rockland, State of New York (the "Property"). The Property is identified on the Tax Map as Section 40.19, Block 1, Lot 33 and 34, which lots are contiguous. The Property is situate in the Rural Residential-50 zoning district ("RR-50"), a residential district with a minimum lot area requirement of 50,000. Applicable bulk regulations are set forth in Section 195-13 Bulk Table, Use Group "h." The Property consists of two contiguous lots owned by Sander Gerber, individually and as Trustee of the Haverstraw Trust (the "Applicant"). Each lot is currently improved with a single-family residential dwelling. In addition, a pool is located on lot 33, a barn is located on lot 34 and a gazebo is located on lot 33. Mr. Gerber desires to effectuate a boundary line change between lot 33 and lot 34 and construct a tennis court located wholly within the

newly enlarged lot 33. Should the lot line change be approved by the Planning Board, the resulting lots will each be in excess of the minimum lot area requirements.

Application to the Zoning Board of Appeals. As relevant here, The Applicant seeks approval of a lot line change from the Montebello Planning Board and to construct a tennis court wholly on lot 33 and newly configured driveway on both lots, as well as other site improvements. However, in order to construct the tennis court and driveway, which driveway traverses both lots, the Applicant will require area variances. Therefore, on or about August 28, 2018, application was made to the Montebello Zoning Board of Appeals (the “Board”) requesting fourteen (14) area variances:

Lot 33:

1. Front yard variance of 40.3 feet from the required 50 feet to 9.7 feet (parking);
2. Side yard variance of 8.7 feet from the required 25 feet to 16.3 feet for the existing gazebo;
3. Side yard variance of 25 feet from the required 25 feet to 0 feet (tennis court);
4. Internal side yard variance of 25 feet from the required 25 feet to 0 feet (driveway);
5. External side yard variance of 10 feet from the required 25 feet to 15 feet (driveway);
6. Maximum development coverage variance of 25.6% from the required maximum coverage of 20% to 45.6%.

Lot 34:

7. Side yard variance of 14.1 feet from the required 25 feet to 0 feet (gate);
8. Internal side yard variance of 25 feet from the required 25 feet to 0 feet (driveway);
9. Internal side yard variance of 25 feet from the required 25 feet to 0 feet (patio);
10. External side yard variance of 16.9 feet from the required 25 feet to 8.1 feet (driveway);
11. Rear yard variance of 25 feet from the required 25 feet to 0 feet (driveway);
12. Rear yard variance of 25 feet from the required 25 feet to 0 feet (walkway);
13. Maximum development coverage variance of 18.5% from the required maximum coverage of 20% to 38.5%.

Lots 33 and 34:

14. Relief from § 195-19C of the Zoning Law for the purpose of constructing an 8-foot high fence enclosing the proposed tennis court.

The variances requested and reviewed by the Board are set forth on the Subdivision Plat prepared by Civil Design Works, LLC, dated July 20, 2018, last revised December 14, 2018. **General Municipal Law § 239-m, -n.** On November 4, 2018, the application was duly

referred to the Rockland County Planning Department pursuant to GML § 239-m and n, which Department responded on December 6, 2018. Rockland County recommended nine (9) modifications. Each modification was considered by the Board and determined to be reasonable. However, the Applicant requested that the Board override recommendation number 8, which suggested the use of pervious pavers to reduce the extent of development coverage. The Board declined this recommendation noting that the Montebello Zoning Law does not credit the use of pervious pavers to lower maximum development coverage. The Board considered that pervious pavers, over time and if not maintained properly, do not remain pervious. However, the Board noted that the Planning Board may, as part of site plan review and in its discretion, choose to require a greater use of porous paving materials.

Agency referrals. The application was duly referred to the Rockland County Drainage Agency, Rockland County Sewer District No. 1, the NYS Department of Transportation, the Rockland County Department of Health and the Town of Ramapo.

Public Hearing. A duly noticed public hearing was convened on December 20, 2018, at which time the Board heard testimony from the Applicant and all those wishing to address the Board on the matter. A letter was read into the Record from Mrs. Weckerly regarding the proposed fence along her property line and its length. After considering all comments from the public and determining that no one wished to speak, the hearing was closed.

State Environmental Quality Review Act (SEQRA). The Board notes for the Record that a Short Environmental Assessment Form prepared by Amy Miele, Esq., dated May 9, 2017, was submitted to the Planning Board, and contained in the Record available to the Zoning Board of Appeals for review. The Board determined, however, that the relief requested was in the nature of an lot line variance that constituted a Type II Action pursuant to 6 NYCRR Part 617.5(c)(16) of the SEQRA Regulations. No further review was necessary.

Applicant submissions. The following material was submitted to the Board, which materials are incorporated into and made a part of this Decision and upon which this Board relied during its deliberations and determination:

3. Application to the Montebello Zoning Board of Appeals, dated August 28, 2018, seeking area variances for the property identified as Section 40.19, Block 1, Lot 33 and 34, which lots are contiguous.
4. Subdivision and site plan, prepared by Civil Design Works, LLC., and consisting of ten (10) sheets, labeled C-100.00 through C-110.00, last revised December 14, 2018. Of specific relevance to this Board Determination is sheet C-101.00, titled, "Subdivision Plat," and sheet C-102.00, titled, "Site Plan." Each sheet sets forth thereon the bulk table and variances requested. In addition, each sheet contains a drawing of the proposed improvements and identifies with specificity all variances requested.
5. Landscape plan prepared by architect Michael Vigonia, of Kelly Varnell Virgonia, Inc.
6. Letters of review from interested/involved agencies, including the Rockland County Department of Planning, dated December 6, 2018; Rockland County Drainage Agency, dated May 30, 2018. The application was duly referred to the Rockland County Sewer District No. 1, the NYS Department of Transportation, the Rockland County Department of Health and the Town of Ramapo.

FINDINGS OF FACT

The zoning law. Residential use is a permitted "as-of-right" in the RR-50 zoning district. Therefore, the use complies with the Montebello Zoning Law.

The zoning law applied to the application. The Applicant requested relief from Section 195-13 Bulk Table, Use Group "h" in the form fourteen (14) area variances, as set forth above, for the purpose of constructing a tennis court on lot 33, reconfigure a driveway traversing on both lots, and undertake other site improvements, as specifically shown on the Subdivision Plat.

The Board's additional Findings. When considering whether to grant an area variance, the Board must consider, and did consider, (1) whether the requested variance is the minimum necessary to relieve the practical difficulty or economic injury; (2)

whether the variance is substantial in relation to the zoning code; (3) whether the variance will produce a change in the character of the neighborhood or a substantial detriment to adjoining property owners; (4) whether the alleged practical difficulty or economic injury be overcome by some other method; (5) whether granting the said will affect the health, safety or welfare of the neighborhood or community; (6) whether granting the variance will have any effect on government facilities or services. Any area variance so granted by the Board must be the minimum variance that it deems necessary and adequate.

The Board made the following findings:

7. The Board considered whether the requested variances are the minimum necessary to relieve the practical difficulty or economic injury the Applicant would sustain if denied and determined that they are. The Board noted that by seeking a lot line shift, the Applicant has substantially reduced the number of variances that would have been required.
8. The Board considered whether the variance was substantial in relation to the zoning code. The Board determined that 0-lot line variances are substantial. However, the variances apply to the tennis court and driveways or walkways and, except for the driveway, the 0-foot variances are from the internal boundary shared by lots 33 and 34, thus impacting only the Applicant.
9. The Board finds that while there will not be a substantial change in the neighborhood if the variances are granted, especially where the proposed tennis court lighting has been removed from the plan. The Board also noted that the Applicant removed proposed lighting on the tennis court, which had been a concern of neighbors, as well as removing proposed parking areas near the exterior side lot lines in deference to concerns by neighbors. In addition, the Board visited the Property and noted that the parking area located in roughly the center of the Property is slightly below grade and, therefore, will be somewhat naturally screened from view. The Board concluded that the proposed improvements will enhance the aesthesis of the Property.
10. The Board finds that the practical difficulty or economic injury cannot be overcome by some other method. While the need for variances is self-created, the Board recognizes and relies on the Applicant's affirmative testimony that he has a large family who particularly loves to play tennis. He and his wife intend to make these improvements for the exclusive use of his family and considers the two lots, together, a "family compound" for the use and enjoyment of his children and grandchildren.
11. The Board finds and determines that granting the variances will not affect the health, safety or welfare of the neighborhood.

12. The Board finds that the variance will not affect any government facility or service since there is no proposed change in the residential use of the property.

Applicant's burden. The Zoning Board of Appeals hereby finds and determines that the Applicant has sustained its burden of proof as required by New York State Village Law and Village of Montebello Zoning Law as to the need for the requested variances.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Village of Montebello Zoning Board of Appeals hereby renders the following decision:

On a Motion by Member Wanderman, Seconded by Member Dugandzic, on a roll-call vote as set forth below, hereby grants relief from the Village of Montebello Zoning Law, specifically § 195-13 Bulk Table, Use Group "h" in the form of fourteen (14) area variances as enumerated in the Section of this Decision, titled, "**Application to the Zoning Board of Appeals**" (together, the "Variances"). The Variances are granted to the property identified on the Tax Map as Section 40.19, Block 1, Lot 33 and 34, which lots are contiguous. In granting these variances, the Board relied on the testimony and representations of the Applicant and the subdivision and site plan prepared by Civil Design Works, LLC. consisting of ten (10) sheets, labeled C-100.00 through C-110.00, last revised December 14, 2018. Of specific relevance to this Decision is sheet C-101.00, titled, "Subdivision Plat," and sheet C-102.00, titled, "Site Plan." Sheets C-101.00 and C-102.00 are hereby made of part of this Decision as if fully set forth herein. These Variances are granted in reliance on their individual purposes as shown on the referenced Sheets and for no other purpose. Deviation from the Variances granted by this Board shall invalidate this Decision and the Variances granted thereby by operation of law.

BE IT FURTHER RESOLVED, that the variances are granted pursuant to the following conditions:

9. Recording of an easement in a form approved by the Zoning and Planning Attorney for the shared use and maintenance of the driveway, drainage facilities and utilities as between the two lots.

10. The Zoning Board notes that the Applicant presented a well-conceived landscape plan to screen, but not obscure, the Property from view. The Applicant asserted that the plan called for evergreen plantings such as juniper, arborvitae, spruces between 10 and 12-feet tall, and skip laurel, and less deciduous shrubs like spirea and viburnum as well as taller 5-inch caliper trees like Sugar Maple. The Zoning Board considered these representations when approving the variance application and conditions its approval on a substantially similar landscaping plan being approved by the Planning Board, in its discretion.
11. By this vote, the Zoning Board of Appeals overrides Rockland County Planning Department's recommendation to use pervious pavers because the stated purpose will not be achieved. However, the Zoning Board recognizes that its vote has no effect on the Planning Board's consideration of this recommendation and encourages the Planning Board to consider the use of pervious materials to the extent practicable.
12. Payment of all fees due and owing to the Village of Montebello in connection with this application and approval.

Member Diaz made a motion to adjourn the meeting at 9:54 p.m. seconded by Member Wanderman. Upon vote, all were in favor.