

THE REGULAR MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY, FEBRUARY 18, 2021 ON ZOOM. THE MEETING WAS CALLED TO ORDER AT 7:03 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

Present:	Rodney Gittens	Chairman
	Jack Barbera	Member
	Elizabeth Dugandzic	Member
	Janet Gigante	Member
	Ezra Bryan	Ad Hoc
Others Present:	Alyse Terhune	Assistant Village Attorney
	Regina Rivera	Planning & Zoning Clerk
Absent:	Carl Wanderman	Member

### **January Minutes Approval**

Member Barbera made a motion to approve the minutes of January 21, 2021, seconded by Member Dugandzic and upon vote all were in favor.

### **Montebello Gateway, LLC, PO Box 782, Monsey, NY 10952 – PUBLIC HEARING 34 N. Airmont Road**

#### **55.07-1-3**

Application of Montebello Gateway, LLC, PO Box 782, Monsey, NY 10952 for 34 North Airmont Road, Montebello, New York 10901 which is submitted to the Village of Montebello Zoning Board of Appeals for area variances for: Buffer to Airmont Road [required 50 feet, proposed 23 feet]; Ingress/Egress within 300 feet of residential district [required 300 feet, proposed 99 feet]; Maximum Height [required 30 feet, proposed 36 feet]; Floor Area Ratio [required .20, proposed .26]; Front Setback [required 75 feet, proposed 56.8 feet]; and Development Coverage [required 50%, proposed 52.8%]; Floor area ratio [required 0.20 proposed 0.26]. per Sec. 195-87.3(A), Sec. 195-9 Use Table for LO-C District, Column G, and Sec. 195-13 Bulk table, Use Group L of the zoning code of the Village of Montebello. The Applicant is proposing the construction of a 3.5 story, 50,000 square foot medical office building with 253 parking spaces. The parcel is located at 34 North Airmont Road, on the northwest side of Airmont Road at the intersection of Montebello Road in the Village of Montebello, which is designated on the Ramapo Tax Map as Section 55.07 block 1 Lot 3 in the LO-C zone.

The applicant was last before this Board on October 15, 2020 and has requested an adjournment to the next Zoning Board of Appeals meeting.

### **Aron Bistrizky, 160 Spook Rock Road, Montebello, NY—PUBLIC HEARING 49.05-1-12**

Application of Aron Bistrizky of 160 Montebello Road, Montebello, New York 10901 which was submitted to the Village of Montebello Zoning Board of Appeals for variances for: Front yard [required 50 feet, proposed 23.2 feet]; Side setback [required 30 feet, proposed 25 feet]; Total side setback [required 75 feet, proposed 57.6 feet]; Side yard [required 25 feet, proposed 10 feet]; Development coverage [required 20%, proposed 35%]; Front yard [required 25, proposed 15.8 feet] as per Sec. 195-13 Bulk Table, Use Group h, columns 5, 6, 7, 8, 10, and 13, and Sec. 195-17 of the zoning code of the Village of

Montebello. The Applicant is proposing the construction of an addition to a single-family dwelling with a covered dining and lounge area, an in-ground pool, a sports court, and a parking area. The parcel is located at 160 Spook Rock Road in the Village of Montebello, which is designated on the Ramapo Tax Map as Section 49.05, Block 1, Lot 2 in the RR-50 Zone.

Present were the Applicant, Aron Bistritzky, his attorney, Paul Baum, Engineer Larry Torro of Civil Tec Engineers, PLLC and Landscape Architect Blythe Yost of Yost Design.

Chairman Gittens read the application into the record and established the new submittals. Mr. Baum said the Board requested at the January meeting to see the proposed landscaping, fence details and locations of the drywells and rain gardens. All the additional information has been submitted with one small change to the site plan which relocates the generator and pool equipment further away from the rear yard so it no longer requires that variance, he said, adding that everything else remains the same.

Mr. Baum explained that this latest site plan decreased the magnitude of the variances by showing an increased side setback to 25 feet, an increased front yard to 23.2 feet and the elimination of the rear yard variance. The caveat is that the development coverage variance increased to 35%, but the drywells and rain gardens will adequately handle any runoff, he said. As for the GML review dated January 5, 2021, Mr. Baum said that he and his client have no objections to the County's comments and wish to comply with the Highway Department requirements as outlined in their letter dated January 12, 2021. (Copies on file)

Landscape architect Blythe Yost said that in light of the Board's comments about potential impact on the neighbors at the last meeting, a line of forsythia will be planted along the southern edge of the property. The sports court has been moved towards the garage to create a larger buffer to the property line to better shield from that neighbor's view, and any proposed changes to the east parking area have been eliminated. The patio and the overhang were shortened slightly on the south side and some fencing was added around the generator for enhanced noise mitigation and screening. Ms. Yost noted that an alternate location for the generator is proposed on the side of the house, but the homeowner prefers to keep it in the rear of the property. Either way, it works, she added.

No one having any questions, Chairman Gittens asked Engineer Larry Torro discuss the drainage. Mr. Torro explained that the proposed rain gardens on the north side of the property were replaced with seepage pits as requested by Village Engineer Martin Spence. A trench drain is proposed to handle the runoff by the pool and patio, and an extra rain garden was added to that area. Chairman Gittens noted that the Highway Department recommended that any drainage should be ten or more feet away from the property line. Mr. Torro said that the seepage pits are at least 11 feet away. Mr. Spence added that he requested the rain gardens be placed in the vicinity of the pool and patio because they will be highly visible in that location and therefore frequently maintained. Mr. Spence said that his memo dated February 12, 2021 states that all drainage and landscaping is now adequate.

No one having further questions and no one from the public in attendance, Member Gigante made a motion to close the public hearing seconded by Member Barbera. Upon vote, all were in favor.

Chairman Gittens walked the Board through Zoning Board criteria and all agreed with his assessments. Member Dugandzic made a motion to grant the requested variances, seconded by Member Gigante and upon vote, the motion passed unanimously.

VILLAGE OF MONTEBELLO  
ZONING BOARD OF APPEALS  
COUNTY OF ROCKLAND, STATE OF NEW YORK

X

In the Matter of the Application of  
ARON BISTRITZKY

**VARIANCE DECISION FOR  
PROPERTY IDENTIFIED ON THE  
VILLAGE OF MONTEBELLO TAX MAP  
AS  
Section 49.05, Block 1, Lot 12**

for relief from Section 195-13 Bulk Table, Use  
Group h and Section 195-17, Parking  
of the Village of Montebello Zoning Law.

X

**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO ZONING  
LAW FOR THE PURPOSE OF CONSTRUCTING AN ADDITION TO THE HOME  
AND OUTDOOR AMENITIES**

**The property location and zoning district.** The subject property is located at 160 Spook Rock Road, Village of Montebello, County of Rockland, State of New York (the “Property”). The Property is identified on the Tax Map as Section 49.05, Block 1, Lot 12. The Property is situated 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 is a pre-existing “flag” lot consisting of 1.44 acres.

**Application to the Zoning Board of Appeals.** Application was made to the Zoning Board of Appeals (the “Board”) by the property owner, Aron Bistritzky (the “Applicant”) seeking relief from the aforementioned bulk regulations for the purpose of constructing an addition to the northerly side of the home, a covered dining and lounge area on the southerly side of the house, and a sports court and a swimming pool with paver patio. The Applicant also seeks a variance to allow parking in a required front yard. The Applicant seeks the following variances:

1. Minimum required front yard variance of 26 feet, 8 inches from the required 50 feet to 23 feet, 2 inches;
2. Minimum side yard setback variance of 5 feet from the required 30 feet to 25 feet;
3. Minimum total side yard setback of 18 feet, 4 inches from the required 75 feet to 57 feet, 6 inches;
4. Minimum required side yard variance of 15 feet from the required 25 feet to 10 feet;
5. Maximum development coverage variance of 15% from the required maximum coverage of 20% to 35%.

The Applicant also seeks relief from Section 195-17, which prohibits parking in any required yard, to allow future parking in the required front yard in the form of a variance of 9 feet, 2 inches from the required 25 feet to 15 feet, 8 inches.

The requested variances are set forth on the “Building Permit Plan for 160 Spook Rock Road,” prepared by Civil Tec Engineering & Surveying C.P., dated July 24, 2020, as last revised February 4, 2021.

**General Municipal Law § 239-m.** The application was duly referred to the Rockland County Department of Planning (“RCDP”), which agency responded by letter dated January 5, 2021. All recommendations proposed by RCDP are hereby accepted by the Board and compliance with said recommendations are made a condition of this Decision.

**Agency referrals.** By letter dated January 12, 2021, Rockland County Highway Department (“RCHD”) recommended the preparation of a drainage report to demonstrate that the construction will result in no net increase in the peak rate of storm water discharge from the site, placing any storm water management system at least 10 feet away from the property line, and noted that a right of way permit must be secured from RCHD prior to starting any construction. All RCHD comments are hereby accepted by the Board and compliance with said recommendations are made a condition of this Decision. Rockland County Sewer District No. 1 (“RCSD”) commented by letter dated December 8, 2020, noting applicable regulations. All RCSD comments are hereby accepted by the Board and compliance with said recommendations are made.

**Public Hearing.** A duly noticed public hearing was convened on December 17, 2020 and adjourned to February 18, 2021, at which time the Board heard testimony from the Applicant and all those wishing to address the Board on the matter. 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 Applicant submitted a Short Environmental Assessment Form (“SEAF”) prepared by Civil Tec Engineering & Surveying, P.C., dated November 20, 2020. The Board determined that the relief requested 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 materials were submitted to the Board, which materials are incorporated into and made a part of this Decision by reference. These materials were relied upon by the Board during its deliberations:

1. Application to the Montebello Zoning Board of Appeals, dated November 18, 2020, seeking area variances for the property identified as Section 49.05, Block 1, Lot 12.
2. Narrative Summary prepared by Paul S. Baum, Esq., dated November 24, 2020.
3. Short Environment Assessment Form prepared by Civil Tec Engineering & Surveying, P.C., dated November 20, 2020.
4. Building Permit Plan for 160 Spook Rock Road, prepared by Civil Tec Engineering & Surveying C.P., dated July 24, 2020, as last revised February 4, 2021, consisting of two sheets.
5. Landscape plan prepared by Yost Design, Landscape Architecture, dated December 17, 2019, last revised February 5, 2021, consisting of sheet CP-101.
6. Letters of review from interested/involved agencies as set forth herein.
7. Technical memorandum prepared by Martin K. Spence, P.E., Village of Montebello Engineer, dated February 12, 2021.

#### **FINDINGS OF FACT**

**The zoning law applied to the application.** The accessory uses described in the application are permitted “as-of-right” in the RR-50 zoning district. Therefore, the proposed accessory uses comply with the Montebello Zoning Law. No use variance was required or requested. However, the proposed location of some of the improvements do not comply with the bulk regulations as set forth in Section 195-13 Bulk Table, Use Group h. Thus, the Applicant requested relief in the form six (6) area variances as set forth above.

**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 substantial in relation to the requirement; (2) the effect of any increased population density which may thus be produced upon available services and facilities is significant; (3) whether granting the request will result in a substantial change in the character of the neighborhood or a substantial detriment to adjoining properties; (4) whether the difficulty can be alleviated by some method feasible for the applicant to pursue, other than a variance; (5) whether in view of the manner in which the difficulty arose and considering all of the above factors, the interests of justice will be served by allowing the variance; (6) whether the variation would cause adverse aesthetic, environmental or ecological impacts on the property or on surrounding areas; and (7) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals but shall not

necessarily preclude the granting of the variances. 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 variances are substantial in relation to the requirement and determined that while the number of variances are substantial and some are greater than 50%, the impact of granting the variances is not substantial.
2. The Board considered whether granting the relief would increase population density resulting in a substantial increase in stress on available services and facilities and determined that allowing permitted accessory uses in the form of leisure use and recreation would not increase population or stress on municipal services.
3. The Board considered whether granting the relief would result in a substantial change in the character of the neighborhood or a substantial detriment to adjoining properties and determined that it would not. The Board noted that although the westerly neighbor's house was located 200 feet or more from the proposed sports court and parking area, landscaping was added to further screen the improvements. The Applicant also modified the plan to increase the distance from the rear (easterly) property line and provided a wood fence enclosure to reduce noise.
4. The Board considered whether the difficulty could be alleviated by some method feasible for the applicant to pursue, other than a variance and determined that no feasible alternative was available to the Applicant other than seeking area variances. However, the Board also noted that the Applicant modified the site plan in order to reduce the number of variances required and repositioned the sports court to lessen its visibility to the adjoining neighbor.
5. The Board considered whether in view of the manner in which the difficulty arose and considering all of the above factors, the interests of justice will be served by granting the relief and determined that it would. The Board noted that the pre-existing flag lot resulted in a reduction in that portion of the remaining lot that could be used for the proposed family amenities.
6. The Board considered whether the variances, if granted, would cause adverse aesthetic, environmental or ecological impacts on the property or on surrounding areas and determined that the variances would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. As a threshold matter, the project is a Type II Action under SEQRA which is presumed to have no substantial environmental impact. Even so, the Board was cognizant that the area is susceptible to drainage problems. Therefore, the Board sought the advice of the Village Engineer, whose recommendations with regard to drainage were accepted by the Applicant and resulted in revisions to the plan.

7. The Board considered whether the alleged difficulty was self-created and determined that all variance requests could be considered self-created to a lesser or greater extent but that the benefit to the Applicant and the detriment to the neighborhood and community on balance favors the Applicant. The Applicant modified the plan to address concerns of the Board as well as the neighbors to achieve the goal requested while lessening the possibility of impinging on the neighbors' quiet enjoyment.

**Applicant's burden.** The Zoning Board of Appeals hereby finds and determines that the Applicant has sustained his 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 Dugandzic Seconded by Member Gigante, on a roll-call vote as set forth below, hereby grants relief from the Village of Montebello Zoning Law as shown on the "Building Permit Plan for 160 Spook Rock Road," prepared by Civil Tec Engineering & Surveying C.P., dated July 24, 2020, as last revised February 4, 2021. Specifically, five (5) area variances are granted from Section 195-13 Bulk Table, Use Group "h":

1. A required front yard variance of 26 feet, 8 inches from the required 50 feet to 23 feet, 2 inches;
2. A side yard setback variance of 5 feet from the required 30 feet to 25 feet;
3. A total side yard setback of 18 feet, 4 inches from the required 75 feet to 57 feet, 6 inches;
4. A required side yard variance of 15 feet from the required 25 feet to 10 feet;
5. A development coverage variance of 15% from the required maximum coverage of 20% to 35%.

In addition, the Board grants relief from Section 195-17 in the form of a required front yard variance of 9 feet, 2 inches from the required 25 feet to 15 feet, 8 inches for the purpose of allowing parking in the required yard.

In granting these variances, the Board relied on the testimony and representations of the Applicant and the "Building Permit Plan for 160 Spook Rock Road," prepared by Civil Tec Engineering & Surveying C.P., dated July 24, 2020, as last revised February 4, 2021, which Building Permit Plan is 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 Building

Permit Plan 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. Full compliance with the technical memorandum prepared by Martin K. Spence, P.E., Village of Montebello Engineer, last revised February 12, 2021.
2. Payment of all fees due and owing to the Village of Montebello in connection with this application and approval.

	Yea	Nay	Abstain	Absent
Rodney Gittens, Chairman	[ <input checked="" type="checkbox"/> ]	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]
Carl Wanderman, Member	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]	[ <input checked="" type="checkbox"/> ]
Janet Gigante, Member	[ <input checked="" type="checkbox"/> ]	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]
Elizabeth Dugandzic, Member	[ <input checked="" type="checkbox"/> ]	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]
Jack Barbera, Member	[ <input checked="" type="checkbox"/> ]	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]
Ezra Bryan, Ad Hoc Member	[ <input checked="" type="checkbox"/> ]	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]	[ <input type="checkbox"/> ]

Member Dugandzic made a motion to adjourn the meeting at 7:38 p.m. seconded by Member Gigante and upon vote, all were in favor.