

THE REGULAR MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY, JUNE 17, 2021 ON ZOOM. THE MEETING WAS CALLED TO ORDER AT 7:00 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

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

Absent:

### **Minutes Approval**

Member Wanderman made a motion to approve the minutes of May 20, 2021, seconded by member Gigante and upon vote, all were in favor.

### **Danita O'Connor, 2 Orchard Street, Montebello, NY 10901—PUBLIC HEARING**

Application of Danita O'Connor, 2 Orchard Street, Montebello, New York 10901 which was submitted to the Village of Montebello Zoning Board of Appeals for Area Variances; Side Yard and Rear Yard of the requirements of Section 195-57D of the Zoning Code of the Village of Montebello to permit the installation, maintenance, and use of an above-ground swimming pool for a single-family dwelling. The total acreage for the parcel is 0.15 acres. The property is located on the northeast side of Orchard Street, approximately 100 feet from the intersection of Haverstraw Road in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 48.13, Block 2, Lot 58 in an R-15 Zone.

Danita O'Connor, the Applicant, was present.

Chairman Gittens read the application, established that the posting and mailing were completed, and read the materials into the record which included the application dated May 25, 2021, a letter from the Building Inspector dated June 7, 2021, and a survey of the property and pool location dated May 14, 2021.

Member Barbera made a motion to open the public hearing, seconded by Member Wanderman and upon vote, all were in favor.

Chairman Gittens swore the Applicant in. Ms. O'Connor explained that she wished to install an above-ground pool in her back yard but the lot is very small. Even though there exists the required 10 feet from the rear and side property lines, a technicality in the code requires an extra 10' feet for both, which she does not have. Ms. O'Connor said that all she wants is a small piece of paradise for her and her family.

Chairman Gittens was pleased that there is ample distance from the house to the pool but noted the shed in the yard to right of the pool and suggested it could be moved. Ms. O'Connor clarified that it is a garage. Member Wanderman asked if the yard is fenced in, citing concerns for the

safety of small children. Ms. O'Connor said the yard isn't entirely fenced in, but that the pool is 54" high, the stairs will be removed when the pool is not in use, and there will be a pool surface alarm installed. As a registered pediatric nurse, Ms. O'Connor said she was well-aware of the danger that pools pose to children.

Member Dugandzic wondered if the pool could be oriented differently to avoid the need for variances. Ms. O'Connor said that no matter which way the pool is shifted a variance will be needed and explained that she worked with the Building Inspector to find a better location to no avail, especially since there is a swing set in the yard. Member Dugandzic said she understood the dilemma.

No other Board members had any questions or comments, and Chairman Gittens opened the hearing to the public. No one 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 summarized the criteria for granting variances, noting that the location chosen for the pool allows them the most use of their yard, and the pool will not be detrimental to the neighborhood, cannot be achieved by any other method, does not require substantial variances and will have no adverse effects on the environment. Chairman Gittens said the need for the variances is self-created, as is every ZBA application, but here the homeowner's lot is so narrow there is no other recourse. Personally, he continued, he felt the pool would increase the quality of life for Ms. O'Connor's family and was leaning toward approving the application.

Member Wanderman made a motion to approve the variances as requested, seconded by Member Gigante. Upon vote, the motion passed unanimously.

Ms. Terhune clarified that the Board has granted a 10-foot side yard variance and a 10-foot rear yard variance and asked that the Applicant keep in mind the drainage requirements as issued by the Rockland County Sewer District in their June 14, 2021 letter to the Zoning Clerk.

Member Wanderman made a motion to adjourn the meeting at 7:22 p.m. seconded by member Dugandzic and upon vote, all were in favor.

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

X

In the Matter of the Application of  
2 ORCHARD STREET

**VARIANCE DECISION FOR  
PROPERTY IDENTIFIED ON THE  
VILLAGE OF MONTEBELLO TAX  
MAP AS  
Section 43.13, Block 2, Lot 58**

for relief from the Village of Montebello Zoning Law Section 195-57D, "Swimming Pool," which requires minimum required setbacks to be measured beginning ten feet from the edge of the pool and Section 195-13, "Table of Bulk Requirements," minimum rear and side yard setback.

X

**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO ZONING LAW  
FOR THE PURPOSE OF LOCATING AN ABOVE-GROUND POOL IN THE REQUIRED  
BACK AND SIDE YARD**

**The property location, zoning district and proposed project.** The subject property is located at 2 Orchard Street, Village of Montebello, County of Rockland, State of New York, identified on the Tax Map as Section 43.13, Block 2, Lot 58 (the "Parcel"). The Parcel contains 0.15 gross acres and is located in the Medium-Density Residential District-15 ("R-15") zoning district (15,000 square feet per lot). Uses in the R-15 district are governed by § 195-9, the Table of General Use Requirements. Bulk regulations are governed by §195-13, the Table of Bulk Requirements, Use Group x.1, which requires minimum rear yard and side yard setbacks of 20 feet respectively, as modified by §195-57D, "Swimming pools."

The Parcel is improved with a single-family home owned by Danita O'Connor (the "Applicant"), who wishes to place a 12-foot by 24-foot above-ground swimming pool in the rear yard of the Parcel. Although swimming pools are a permitted accessory use to single- and two-family homes in the R-15 district, §195-57D requires setbacks from lot lines to be measured from a point beginning 10 feet from the edge of the pool. Here, the Applicant seeks to place the pool 10 feet from the rear lot line and 10 feet from the side lot line where 20 feet is required as measured from the

edges of the pool. Thus, the Building Inspector referred the application to the Zoning Board of Appeals.

**The application for variances.** On or about May 29, 2021, application was made to the Montebello Zoning Board of Appeals seeking two variances:

1. Relief from Section 195-57D, which requires minimum required setbacks to be measured beginning ten feet from the edge of the pool, and
2. Relief from Section 195-13, "Table of Bulk Requirements," Use Group x.1, in the form of a variance of 10 feet from the minimum rear yard and side yard setback from the required 20 feet (as modified by §195-57D) to 10 feet, and

1.

**Submissions.** The following materials were 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 of denial of building permit from the Village of Montebello Building Inspector, dated May 5, 2021; and
2. Application, received May 29, 2021, including a narrative description by the Applicant as to the reasons for seeking relief; and
3. Memorandum from Lawrence Picarello, Building Inspector, to the Zoning Board of Appeals, Dated June 7, 2021; and
4. Survey showing proposed pool, prepared by Stephen F. Hoppe, L.S., dated May 14, 2021.

2.

**General Municipal Law § 239-m.** The application was duly referred to the Rockland County Planning Department ("RCPD") pursuant to GML § 239-m, which Department responded by letter dated June 15, 2021, recommending approval.

**Agency referrals.** The application was duly referred to all agencies with jurisdiction. By letter dated June 14, 2021, Rockland County Sewer District No. 1 stated that the Zoning Board should advise the property owner that Section 902(B)(19) of the *Sewer Use Law* specifically prohibits the discharge of swimming pool drainage (not filter backwash) into the sanitary sewer system. A copy of the letter was provided the Applicant and the restriction was specifically mentioned to the Applicant during Zoning Board review.

**Public Hearing.** A duly noticed public hearing was convened on June 17, 2021. During the public hearings, the Zoning Board heard testimony from the

Applicant and all those wishing to address the Board on the matter. After hearing all comments from the public, the hearing was closed on June 17, 2021.

**State Environmental Quality Review Act (SEQRA).** The Zoning Board of Appeals determined that the application was a Type II Action pursuant to 6 NYCRR 617.5(c)(16), the granting of individual lot line variances and adjustments. No further action was required.

## **FINDINGS**

**The zoning law.** Swimming pools are permitted accessory uses to single-family homes in the R-15 district. Therefore, the accessory use complies with the Montebello Zoning Law.

**The zoning law applied to the application for variances.** Because the placement of the above ground swimming pool does not comply with bulk requirements contained in the Montebello Zoning Law, the Applicant requested two variances: (1) Relief from Section 195-57D, which requires minimum required yard setbacks to be measured beginning ten feet from the edge of the pool, and (2) relief from Section 195-13, "Table of Bulk Requirements," Use Group x.1, in the form of a variance of 10 feet from the minimum rear yard and side yard setback from the required 20 feet (as modified by §195-57D) to 10 feet respectively.

**The Board's Findings.** When considering whether to grant area variances, the Board must consider, and did consider: (1) whether the requested variances are the minimum necessary to relieve the practical difficulty or economic injury; (2) whether the variances are substantial in relation to the zoning code; (3) whether the variances 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 variances will affect the health, safety or welfare of the neighborhood or community; and (6) whether granting the variances 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 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 found and determined that given the small size of the lot, the existing garage, which further reduces the available area of the pool, the requested variances were the minimum necessary to place any accessory pool in the rear yard.
2. The Board considered whether the variances are substantial in relation to the zoning code and determined that they are not. As noted by the Building Inspector in his memorandum of June 7, 2021, §195-57D is unique to the Village of Montebello and although it works well with relatively large lots, the requirements are difficult to meet on small lots.
3. The Board finds that there will not be a substantial change in the neighborhood if the variances are granted. The Board noted that pools are allowed as accessory use and that the pool, as proposed, would have met the 10-foot required setbacks in the absence of §195-57D.
4. The Board finds that the practical difficulty or economic injury cannot be overcome by some other method. The Board determined that the placement of the pool was ideal for the Applicant's use and enjoyment of their back yard. Moreover, even if the pool had been positioned lengthwise and closer to the house, variances would have still been required and such placement would have greatly restricted use of the back yard.
5. The Board finds and determines that granting these variances will not affect the health, safety or welfare of the neighborhood. .
6. The Board finds that no government facility or service will be affected by granting the requested area variances.

**Applicant's burden.** The Zoning Board of Appeals hereby finds and determines that the Applicant has sustained her 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, that on a Motion by Member Barbera, Seconded by Member Gigante, on a roll-call vote as set forth below, the Village of Montebello Zoning Board of Appeals hereby grants the following variances to the Applicant for the purpose of placing a 12-foot by 24-foot above-ground swimming pool in the rear and side yard of the Parcel:

1. Relief from Section 195-57D, which requires minimum required setbacks to be measured beginning ten feet from the edge of the pool, and
2. Relief from Section 195-13, "Table of Bulk Requirements," Use Group x.1, in the form of a variance of 10 feet from the minimum rear yard and side yard setback from the required 20 feet (as modified by §195-57D) to 10 feet.

In granting these variances, the Zoning Board relied on the testimony of the Applicant and the submissions identified herein and made a part of this Decision as if attached hereto. These variances are granted in reliance on their individual purposes as shown on the referenced application and survey 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 these variances are granted pursuant to the following conditions: 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	[√]	[ ]	[ ]	[ ]
Carl Wanderman, Member	[√]	[ ]	[ ]	[ ]
Janet Gigante, Member	[√]	[ ]	[ ]	[ ]
Elizabeth Dugandzic, Member	[√]	[ ]	[ ]	[ ]
Jack Barbera, Member	[√]	[ ]	[ ]	[ ]