

THE REGULAR MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY, JANUARY 20, 2022, ON ZOOM. THE MEETING WAS CALLED TO ORDER AT 7:00 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

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

Absent:

Herman Schwarcz
PUBLIC HEARING
2 Chip Circle, Montebello, NY
48.19-1-53

Application of Herman Schwarcz, 2 Chip Circle, Montebello, New York 10901 which was submitted to the Village of Montebello Zoning Board of Appeals for area variances: Front Yard [required 50', proposed 44']; Front Setback [required 50', proposed 44'] per Section 195-13 and Section 195 Attachment 2, Use Group m, Columns 5 and 4 of the code of the Village of Montebello. The Applicant proposes the construction of a 946 square foot addition to the existing home at 2 Chip Circle, Montebello, NY. The property is located on the west side of Chip Circle at the intersection of Birdie Drive in the Village of Montebello, which is designated on the Ramapo Tax Map as Section 48.19 Block 1 Lot 53 in the RR-50 Zone.

Present on behalf of the Applicant was Mr. Alex Goldberger, the Applicant Mr. Herman Schwarcz and his wife Dina Schwarcz. Mr. Goldberger recapped the application and noted that if this were not a corner lot the variances wouldn't be needed because both the side yard and the side setback require variances.

No one from the public being present, Member Wanderman made a motion to close the public hearing, seconded by Member Dugandzic and upon vote, all were in favor.

Chairman Gittens acknowledged that the requested variances were minor, but asked about the basement plan, and opined that the proposal of an office, Passover kitchen, two bedrooms, two bathrooms and a rear entrance could easily lend itself to a second dwelling. Mr. Goldberger said that the kitchen will be used for up to ten days per year for Passover only and the guest rooms offer a comfortable and private space for he and his wife and for Mr. Schwarcz's parents in which to stay during Shabbos and Passover. He explained that the walkout to the rear yard will give access for a pool which they plan to install in the future, and the second bathroom will be available for those using the pool.

Chairman Gittens questioned the location of the basement door and Mr. Goldberger said that, with the extension, the rear of the house is the most logical place. Member Dugandzic noted that the Applicant assured the Board at the last meeting that this will only be a single-family dwelling and said that she thought a walk-out basement is a nice feature.

Chairman Gittens asked the Board to review the letter from Rockland County Sewer District #1 dated January 5, 2022. Mr. Goldberger said that the sewer district letter is a typical form letter and that there are no issues. The rest of the board read the letter and had no comments.

Chairman Gittens reiterated his concerns that the basement could be used as secondary dwelling unit, and Member Bryan shared that concern. Ms. Terhune said that the Applicant stated on the record affirmatively that this will not be a secondary residential dwelling unit and that it will be used only by the family on occasion. That language can be memorialized in any decision that this Board writes and if, in the future, there is evidence the basement is used as a second residence of any kind, it would be a violation of the zoning code. In any case, she continued, the Sewer District letter is moot because two units on one lot are prohibited in the village. Chairman Gittens said that specific language in the resolution would assuage his concerns. Ms. Terhune asked the Applicant to confirm that they accept language to this effect in an approval, and Mr. Goldberger said he was amenable to the arrangement.

Member Bryan asked if this condition could be memorialized in the site plan as well. Ms. Terhune said she sometimes requires the conditions and resolution added as a separate sheet to the site plan so there is never any confusion out in the field. Member Gigante asked if they could condition their approval on removing the basement door, but Ms. Terhune advised against this you cannot have a basement of that size with bedrooms without another egress. Chairman Gittens said that an alternative would be egress windows.

Mr. Goldberger said that he was before this Board to request two variances, not to discuss egress from the basement. There is nothing in the code that does not allow a walkout basement, he said, and assured the Board that it will never become a secondary residence and that he is very much in favor of adding the resolution to the site plan. Ms. Terhune said that a note could be added to the site plan stating that any violation would result in the revocation of the Certificate of Occupancy and no one had any objections.

Member Gigante asked if the Sewer District requirements can also be placed as a condition in the resolution for future homeowners. Ms. Terhune said that the variances, if granted, would run with the land and that as the zoning law changes, other uses in this letter might be permitted. The Sewer District letter is part of the record and can be referenced if necessary, but this Board should rely on the Applicant's word and the conditions as stated in the resolution. If this Board is leaning towards granting the variances, she continued, the application can be adjourned so the Board has time to review the draft decision and adopt it at the next Board meeting. Mr. Wanderman said that the concern relates only to a theoretical future use of the property, and if that's part of the decision, it is entered into the record and the plan, and the Board has served its purpose.

Chairman Gittens agreed, reviewed the criteria for granting variances, and stated that he was inclined to approve the variances on the condition that it will remain a single-family residence with no secondary dwelling unit. Member Wanderman made a motion to grant the variances as requested and subject to the conditions as set forth and discussed, seconded by Member Gigante. 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
2 Chip Circle

**VARIANCE DECISION FOR
PROPERTY IDENTIFIED ON
THE VILLAGE OF
MONTEBELLO TAX MAP AS
Section 48.19, Block 1, Lot 53**

for relief from the Village of Montebello Zoning Law
Article IV, Section 195-13, "Table of Bulk Requirements,"
and Section 195, Attachment 2, use group "m," minimum
front yard and minimum front yard setback.

X

**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO
ZONING LAW FOR THE PURPOSE OF CONSTRUCTING AN ADDITION
TO A SINGLE-FAMILY HOME**

The property location, zoning district and proposed project. The subject property is located at 2 Chip Circle, Village of Montebello, County of Rockland, State of New York, identified on the Tax Map as Section 48.19, Block 1, Lot 53 (the "Parcel"). The Parcel is improved with a single-family home owned by Dina and Herman Schwarcz (together, the "Applicant") and is located in the Rural Residential District ("RR-50") zoning district (50,000 square feet per lot). The Parcel contains 48,750 square feet (1.12 acre). Uses in the RR-50 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 "m," which requires minimum required front yard of 50 feet and minimum front-yard setback of 50 feet. Because the Parcel is a corner lot, it must meet minimum front-yard requirements for each lot line that abuts a street.

The application for variances. On November 29, 2021, application was filed with the Montebello Zoning Board of Appeals (the "Board") for relief from the zoning law for the purpose of constructing a 946 square-foot extension to the existing single-family home. Approximately 500 square feet will be an expansion of the first floor to expand the kitchen, dining room and living room. The remaining square footage will be a basement addition to add a small Passover kitchen, a guest bedroom and guest bathroom. A door will be

added for ingress and egress to the basement where the property slopes down. The Applicant explained that a pool may be added in the future in the “pie-shaped” area of the property and the basement will be the logical access to that area. In order to expand the house toward Birdie Drive and comply with zoning, the following two variances from Use Group “m” contained in Section 195-13, “Table of Bulk Requirements,” were requested:

1. A variance of 6 feet from the 50-foot minimum required front yard to 44 feet.
2. A variance of 6 feet from the required 50-foot front yard setback to 44 feet.

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 November 29, 2021, and
 2. Application received November 29, 2021; and
 3. Narrative prepared by the Schwarcz family, dated November 22, 2021; and
 4. Survey prepared by Steven Michael Sparaco, P.E., dated October 6, 2021; and
 5. Floor plans and renderings prepared by Hartman Design, dated August 7, 2021, consisting of title sheet, and sheets EX-01, A-101 through A-105, and A-201.
- 2.

General Municipal Law § 239-m. The Parcel lies within 500 feet of Montebello Road, a County Highway, and was therefore referred to Rockland County Planning Department (“RCPD”) pursuant to GML § 239-m. By letter dated December 23, 2021, RCPD “approved” the application.

Public Hearing. A duly noticed public hearing was convened on December 16, 2021 and adjourned to January 20, 2022. 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 January 20, 2022.

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 environmental review was required.

FINDINGS

The zoning law. The Parcel area complies with the Montebello Zoning Law.

The zoning law applied to the application for variances. Because the Parcel is located on a corner lot, it has two front yards, Birdie Drive and Chip Circle, instead of only one front yard on Chip Circle. Each must meet minimum front yard requirements pursuant to the bulk table. The proposed expansion encroaches into the required front yard facing Birdie Drive by 6-feet and, therefore, either the expansion must be reduced or the Applicant must seek area variances. Thus, the Applicant applied to the Board for relief from Section 195-13, "Table of Bulk Requirements," Use Group "m," in the form of: (1) a variance of 6 feet from the 50-foot minimum required front yard to 44 feet, and (2) a variance of 6 feet from the required 50-foot front yard setback to 44 feet.

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 Applicants stated that their religious practice requires them keep a kosher kitchen. The current kitchen is too small to be Kosher and, therefore, it must be expanded. The additional living space on the first floor will also allow more room for family. The placement of the new, second, Passover kitchen is directly below the existing kitchen and, therefore, is the best placement for it. In addition, the Applicants affirmatively stated that the additional bedroom and bathroom in the basement will be used only for visiting guests and family and will not be used for an additional apartment dwelling, which would be in contravention of the zoning law.
2. The Board considered whether the variances are substantial in relation to the zoning code and determined that they are not. The variances requested are each relatively minor at 12%. The Board further noted that except for the fact that the property is a corner lot, the lot line abutting Birdie Drive

would be considered a side yard and the proposed construction would not require a variance from the 25-foot side yard setback required under the Code.

3. The Board determined that the variance will not result in an undesirable change in the character of the neighborhood or a detriment to nearby properties, finding that the area to be utilized is reasonably well screened by mature growth trees. The Board also determined the larger single-family home as requested will be in keeping with the size of the other houses in the neighborhood.
4. The Board finds that the benefit sought by the applicant cannot be achieved in some other method that is feasible for the applicant to pursue but which would not require a variance. Because this is a corner lot, the zoning law imposes two front yard setback requirements of 50 feet from each street, instead of a 50-foot front yard and 25-foot side yard setback. Also, the Board noted that while all variances are to some degree self-created, the corner lot configuration creates and added burden to meet 2 front yard bulk requirements. Furthermore, expanding the house along the side facing Birdie is logical given that the existing kitchen is located on that side of the house.
5. The Board finds and determines that granting the variance will not affect the health, safety or welfare of the neighborhood or have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. 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 the 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 Wanderman, 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 constructing an addition to the subject Parcel located at 2 Chip Circle, identified on the Tax Map as Section 48.19, Block 1, Lot 53:

1. Relief from Section 195-13 and Section 195 Attachment 2, Use Group "m" Columns 4 in the form of a variance of 6 feet from the 50-foot minimum front yard setback to 44 feet.
2. Relief from Section 195-13 and Section 195 Attachment 2, Use Group "m" Columns 5 in the form of a variance A variance of 6 feet from the 50-foot minimum required front yard to 44 feet.
- 3.

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 void the variances granted thereby by operation of law.

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

1. Compliance with the comments contained in the letter dated January 5, 2022, from the Rockland County Sewer District No. 1 issued pursuant to General Municipal Law § 239 review.
2. The addition of a note on plan stating that the addition is for the expansion of a single-family-home and for no other purpose including, but not limited to, the use of the addition for a second residential dwelling unit of any kind.
3. 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	[√]	[]	[]	[]

Jonathan Abenaim
PUBLIC HEARING
1 Coe Farm Road, Montebello, NY
40.20-1-30

Application of Jonathan Abenaim, 1 Coe Farm Road, Montebello, New York 10901 which was submitted to the Village of Montebello Zoning Board of Appeals for area variances: Front Yard (Grandview Avenue) [required 50', proposed 38.4']; Front Setback (Grandview Avenue) [required 50', proposed 38.4']; Development Coverage [maximum 20%, proposed 24.6%]; Floor Area Ratio [maximum 15%, proposed 21.3%] per Section 195-13 and 195 Attachment 2, Use Group h, Columns 5, 4, 13 and 14 of the code of the Village of Montebello. The Applicant proposes the construction of a 2-story 3,225 square foot addition to the existing home at 1 Coe Farm Road, Montebello, NY. The property is located

on the east side of Coe Farm Road at the intersection of Grandview Avenue in the Village of Montebello, which is designated on the Ramapo Tax Map as Section 40.20 Block 1 Lot 30 in the RR-50 Zone.

Present were the Applicants Mr. & Mrs. Abenaim, their attorney Kevin Conway and engineer Paul Gdanski. Chairman Gittens read the application into the record and noted that this is the Applicant's first appearance before the Board and established the posting and the mailing of the public hearing.

Mr. Conway said that the Applicant seeks to construct a two-story addition to the existing house which sits on a large lot of 1.71 acres. Mr. & Mrs. Abenaim and their four children find that they have outgrown the existing living space, especially regarding extended visits by their respective parents and out of town friends and other family members. As such, the proposed layout of the first floor includes two bedrooms meant to accommodate Mr. & Mrs. Abenaim's parents who are older and may have trouble with the staircase, and four additional guest rooms are proposed for the second floor of the addition.

Mr. Conway said that variances are needed for the side and front yard setbacks because the house sits on a corner lot, which is large and can accommodate the addition. The Grandview Road side of the house was chosen because it is well-screened by many mature trees and because the rear and opposite side yard are taken up by the pool and the macadam driveway respectively. He then stated that the property behind the house is owned by SUEZ Water of New York and the house to the left are far away from the property line so there will be little impact to any neighbors.

Mr. Conway explained that since the property is so large, the requested variances are minor in comparison, for example maximum FAR is 15% and 21.3% is proposed, and maximum development coverage is 20% with only 24% proposed. He asked the Board to consider that these variances would be a lot higher on a smaller lot and that everything else on the lot is fully compliant with the bulk table.

The Applicant's Engineer, Mr. Paul Gdanski, was sworn in and confirmed Mr. Conway presentation, and shared his screen so everyone could see the survey and architectural plans clearly. Chairman Gittens and Member Gigante asked about the downstairs bedrooms. Mr. Abenaim said that his father recently had knee replacement surgery and that his and Mrs. Abenaim's parents are aging and they would like them to stay there as much as possible. Member Wanderman noted that the six proposed bedrooms bring the total number of bedrooms to ten. Mr. Abenaim said his wife's family is from Montreal who, along with other friends and family members, frequently visit and they wish to accommodate everyone comfortably.

Chairman Gittens asked why the existing unfinished space on the second floor was not being utilized. Mr. Abenaim said the one big empty room over the garage provides recreational space for his children. Mr. Gittens noted the existing house is in full compliance and asked if other nearby homes were this big, or if the addition would render the house out of character with the rest of the neighborhood. Mr. Abenaim said that the house across has a similar addition, is quite large and does not seem out of character. He reminded the Chairman that there are no other houses immediately around his house, with SUEZ land behind, Grandview Avenue on one side and a large space to the abutting house on the left. Mr. Gdanski showed an aerial photo of the neighborhood to support Mr. Abenaim's argument.

Chairman Gittens said they must install adequate drainage and asked how many trees were to be removed. Mr. Conway said the Village has a zero net runoff policy and therefore drywells with roof leaders will be provided, and that no trees will be removed. Member Barbera asked why the proposed site of the house

contains no vegetation or plantings. Mr. Abenaim said that the dense trees in the area prevent sunlight from getting through preventing any growth in that spot.

Chairman Gittens noted that the house will be over 10,000 square feet with the addition and asked if it could be brought closer to compliance. Mr. Conway said the drawings had been through several iterations and the proposal that is now before the Board has been scaled back from the original concept while still accommodating their lifestyle. The fact that this is a corner lot makes compliance difficult, he said, and reiterate that the lot is quite large and the variances are small.

Member Bryan said it would be good to graphically see where the setbacks are in relation to the house and the trees as well as the proximity of the easement to the proposed addition. Chairman Gittens said he didn't think the Applicant tried hard enough to reduce the variances and suggested they build the addition on the opposite side of the house, which would eliminate the side yard setback variances. Mr. Abenaim said that he would have to rip up the driveway and put it on the other side of the house which is more structural work. Keeping the addition behind the trees where nothing grows and keeping everything else intact makes more sense, he said. Chairman Gittens said that zoning regulations exist to regulate and maintain the aesthetics of a neighborhood. Mrs. Abenaim argued in favor of keeping it in the location and said it is the best version of what they want and the most logical given the reason cited tonight. Mr. Gdanski noted that an addition on the other side of the house may still require a variance. Chairman Gittens maintained his stance and was sure the proposal could be smaller and that the Application would be more palatable if the FAR were reduced.

Ms. Terhune stated that this Board is charged with granting relief from the zoning code and with granting the minimum variances necessary to achieve the goal of the Applicant. It may not be possible to locate the addition on the opposite side of the house, but as the Chairman suggested, perhaps the addition could be smaller, she said.

Member Wanderman referred to the GML review from Rockland County Planning dated January 11, 2022 and noted that it raised the issue of impacts on the character of the neighborhood and asked if there were other houses in the neighborhood with ten bedrooms.

Mr. Abenaim stated that 38 Coe Farm Road just built an addition and is now almost 15,000 square feet, and that 17 Coe Farm Road also built a large addition like the one proposed here and now has ten or eleven bedrooms. The houses on Coe Farm Road are quite large and the inside of my house will not affect the character of the neighborhood, he said.

No one having further questions, Member Dugandzic made a motion to open the public hearing, seconded by Member Barbera and upon vote, all were in favor. No one from the public was present.

Ms. Terhune suggested the Board Members conduct a site visit or at the very least, drive by the property for perspective, and to ask the Applicant to stake the area of the proposed addition. All Members were amenable to this idea, and Member Bryan reiterated his request for setback graphics on the survey and requested also to see the aforementioned earlier iterations of the plans. Mr. Abenaim said the original plans would not help this application as it was quite elaborate with a basketball court in the back.

Chairman Gittens reiterated his request for smaller variances because the Board must do its due diligence. Member Wanderman asked for more information regarding the surrounding houses, adding that the Applicant stated the houses are similar in size and he would like to know that this is the case. Mr. Conway said comps will be provided. Chairman Gittens recapped the requested items to be submitted, including a

revised survey with additional graphics as discussed, proposed and alternate locations for the addition, comps and aerials of the neighborhood and a vicinity map.

Member Wanderman made a motion to adjourn the application and the meeting to the February 17, 2022, ZBA meeting seconded by Janet Gigante and upon vote, the motion passed unanimously.

The meeting ended at 8:45 p.m.