

THE REGULAR MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY, MAY 19, 2022, ON ZOOM. THE MEETING WAS CALLED TO ORDER AT 7:03 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

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

**Meeting minutes approvals:**

Member Wanderman made a motion to approve the March 17, 2022, meeting minutes, seconded by Member Gigante and upon vote, all were in favor.

Chairman Gittens announced that the meeting will end precisely at 9:30 p.m. and that any application not heard will be adjourned the to the following meeting.

**MSC of Montebello  
PUBLIC HEARING  
34 Montebello Road  
48.19-1-42**

Application of MSC of Montebello, 34 Montebello Road, Montebello, NY 10901 which was submitted to the Village of Montebello Zoning Board of Appeals. The Applicant appeals the written determination made by the Building Inspector of the Village of Montebello dated March 14, 2022, pursuant to Section 195-108A. of the Village code. The parcel is located on the south side of Montebello Road approximately 50 feet west of the intersection of Mile Road in the Village of Montebello, which is designated on the Ramapo Tax Map as Section 48.19 Block 1 Lot 42 in the LO-C /RR-50 Zones.

Chairman Gittens read the application and submission materials into the record. Present was the Applicant’s attorney Paul Baum, Esq. who noted that he did not have several memos from the building inspector or the GML review from Rockland County Planning but was corrected that he did indeed have the memos, particularly since he was appealing the decision within them. He said that he did not see the GML review dated April 7, 2022, from Rockland County Planning, and Ms. Terhune said she would forward that letter, noting that it applied to their Planning Board application.

Mr. Baum explained that his clients recently purchased the synagogue at 34-36 Montebello Road, formerly Montebello Jewish Center. This synagogue received site plan approval in 1998 from the Village for a house of worship with accessory classrooms for up to 136 students. The Applicant seeks to change the accessory use to a primary use through a Special Permit from the Planning Board. However, he continued, the CDRC determined that the two primary uses—one for a house of worship, the other for a school of general instruction—require an aggregated lot area of 10.6 acres which we find extreme. The building inspector’s March 14, 2022, memo and his subsequent memo dated May 12, 2022, rendering this determination is what we are now appealing, he said.

Mr. Baum explained that the use of the synagogue itself comprises 6,148 square feet and will only be used on weekends, evenings and holidays when school is not in session, and that the school will use the entire 10,992 square feet, with the synagogue use ancillary to their instruction. Mr. Baum stated that there will be only one use at any given time, that Village code requires five acres for the Community Place of Worship and 4.6 acres for the school and that the Building Inspector determined that both uses requires 9.6 acres in total. We are

here because we do not agree with that assessment since the two uses will never take place concurrently. The determination is unreasonable and unprecedented in the village of Montebello, and tantamount to requiring two separate buildings for each use, he said. He argued further that the Village considers the synagogue, at 11,000+ square feet, to be a Community Place of Worship requiring 5 acres of land. Mr. Baum noted that no such distinction among places of worship, residential, neighborhood and community, each with its own bulk requirements, was codified in 1998.

Regarding the issue of dual primary uses, Mr. Baum drew comparisons with the NS (Neighborhood Shopping) Zone in which Indian Rock Plaza lies. That district permits several primary uses: Local office business, local convenience commercial, and retail shops, including clothing, pet and jewelry stores. By the Building Inspector's logic, he continued, each separate use would require an aggregate bulk of 400,000 square feet. This is an unreasonable determination that led us here with a request to overturn the Building Inspector's interpretation. Mr. Baum asked the Board to overturn the determination to find that the lot area does not have to be aggregated, especially since the uses are not mutually exclusive, and to issue a decision that the building be classified as a Neighborhood House of Worship and not as a Community House of Worship because less than 10,000 square feet of area is being used within the building.

Chairman Gittens said that since he did not receive the May 12, 2022, memo until recently, he was not sure he and the Board were apprised enough of the appeal to make an informed decision at this meeting and suggested an adjournment to the next available meeting. Ms. Terhune said that Mr. Baum was asking for a reconsideration of the March 14th memo and that the May 12<sup>th</sup> memo issued the same determination but in more detail. However, the Board does need to read and understand before it can make a reasonable determination, she added. She then said that this is a public hearing and that anyone wishing to speak should do so with the understanding that this will be on the next meeting's agenda.

Ms. Terhune asked Mr. Baum if he wished to file a separate appeal of the May 12<sup>th</sup> memo or if he prefers to combine both. Mr. Baum said that the May 12<sup>th</sup> memo adds the issue of the classification of the type of house of worship which was not in the previous memo. He stated that while the latter memo simply elaborates the building inspector's decisions, he had no problem amending his appeal on the record. Ms. Terhune stated that the Applicant has requested to amend their appeal to include both the March 14, 2022, and the May 12, 2022, memos from Village Building Inspector Adam Gordon, and so it is amended on the record. She then recommended that the Application be adjourned to the next meeting.

Member Bryan asked the capacity of the Synagogue and whether there were egress plans. Mr. Baum said the synagogue has 225 seats, has a Certificate of Occupancy, meets all building and fire codes, and undergoes an annual fire inspection. Mr. Bryan again asked if they have an egress plan. Mr. Baum said the uses are not being segregated, that they were not putting up any walls and there are and always have been ingress/egress through the front and side doors. Mr. Bryan said he wanted to know if the doors meet all load requirements and Mr. Baum said they do. Mr. Bryan said he didn't see any information on the floor plans and asked for the delineation of each use. Mr. Baum said the classrooms and library are for school use only, and that everything else is for worship.

Chairman Gittens asked what use group from the zoning code applied, and Mr. Baum said Use Group N applies to a school of general instruction, and the Community House of Worship was Use Group O, which requires five acres. He noted that the Neighborhood House of Worship is Use group k and requires only 2 acres. Chairman Gittens asked if both the school and the synagogue were under the same ownership. Mr. Baum said that MSC of Montebello, LLC, a non-profit religious organization, owns the entire building. Chairman Gittens asked about the basement, and Mr. Baum said that there is no access from within the building and that it can only be accessed from the exterior. Chairman Gittens requested that the basement plan be submitted for the next meeting.

No one else haven any comments, Member Gigante made a motion to open the public hearing, seconded by Member Dugandzic and upon vote, all were in favor.

No members of the public having any comments, Member Dugandzic made a motion to adjourn the Application and the public hearing to the next meeting, seconded by Member Wanderman and upon vote, all were in favor.

**Samuel Roth**

**PUBLIC HEARING**

**4 Caddy Lane, Montebello, NY**

**48.20-1-69**

Application of Samuel Roth of 4 Caddy Lane, Montebello, New York 10901 which was submitted to the Village of Montebello Zoning Board of Appeals for an area variance for: Floor Area Ratio [maximum 0.15%, proposed 0.16%] per Section 195-13 Bulk Table, use group m, column 14 of the Zoning Code of the Village of Montebello to permit the construction, maintenance and use of an addition to an existing single-family home. The property is located on the east side of Caddy Lane at the intersection of Senator Levy Drive in the Village of Montebello, which is designated on the Ramapo Tax Map as Section 48.20 Block 1 Lot 69 in the RR-50 Zone.

Present was the Applicant's architect Mr. Eliezar Fried of William Bateman Architects. Chairman Gittens read the application submissions into the record and noted that the Applicant was last before the Board in March. Mr. Fried explained that his client has eight children, that they keep a kosher kitchen and would like to extend the kitchen and dining room to host his family on Shabbos and high holidays. They propose an addition of 300 square feet on the main level, including the basement which added another 300 square feet, pushing the FAR to .17% Mr. Fried noted that at the last meeting, the Board asked them explore ways to reduce the variance which they have, by creating a crawl space in the basement, and by adding collar ties to the attic. Both changes eliminate those spaces from FAR calculations as reflected in the floor plans submitted for this meeting. The new FAR variance requested is .16. Mr. Fried stressed the fact that there are similarly sized houses in the immediate neighborhood and that the proposed addition will in no way change the aesthetic character of the neighborhood. He acknowledged that most homes in the Pines subdivision are on an acre or more of land and Mr. Roth's property is only 40,00 square feet, but said he hoped the Board will vote in his favor.

Ms. Terhune asked if the square footage of 6,120 presented in the latest iteration of the plans includes the attic. Mr. Fried said it does not. Ms. Terhune asked the height of the ceilings and Mr. Fried said they are currently high enough to count toward FAR, but that the collar ties reflected in the current plans will eliminate the attic from the FAR calculations. Ms. Terhune asked how much additional square footage exists in the attic and Mr. Fried estimated 200 square feet and stated that there is no staircase leading to the attic and that Mr. Roth does not wish to utilize that space at all.

Chairman Gittens asked the existing FAR of the house. Mr. Fried calculated that the FAR is currently at .158. Chairman Gittens said that it is already non-compliant. A discussion ensued regarding the garage. Mr. Fried said that one of the garage bays will be converted to living space and the other two will remain as they are. Chairman Gittens asked Mr. Fried to submit clearer at-a-glance calculations that include the square footage of the entire garage before and after the interior renovations. He also requested that all the attic space be included, despite the note on the drawings, adding that the numbers are confusing and that clearer calculations are necessary, especially if the house is already non-complaint. Mr. Fried clarified that they are adding more to the FAR but are reducing the attic space and upon completion, FAR will be at .16.

Chairman Gittens and Mr. Friend then engaged in a lengthy discussion about utilizing existing space inside the home including adding a room over the vaulted entry way. Mr. Fried said if they did that, it would only add to the FAR. Chairman Gittens said that there are ways of utilizing exiting space thereby eliminating the

need for an addition, and suggested they extend the kitchen into the butler pantry. Mr. Fried said the pantry will serve as a warming kitchen for Shabbos and holidays and explained that a family with eight adult children and families of their own will need to have a kitchen free of crock pots and hot plates.

Chairman Gittens suggested they could expand into the living room and Mr. Fried said that would eliminate any quiet spaces for activities such as reading and studying, rooms that are necessary for large family gatherings. He further maintained that it would in no way render the house out of character for the neighborhood as all the houses are quite large.

Chairman Gittens said that the proposed study area could be located in the basement which, in his opinion, is not being used as effectively as possible. Mr. Fried suggested converting one of the basement bedrooms to a crawl space to lower the FAR but said they would rather keep the bedroom to comfortably accommodate the family.

Chairman Gittens said he remained unconvinced that the Applicant has done his due diligence to maintain the bulk or to mitigate the variance further. Ms. Cross clarified for the Applicant that the Board is required to grant the minimum variance necessary and that the onus is on the Applicant to show why reductions cannot achieve the sought-after benefits. Ms. Terhune added that the point of FAR is to fit the building to the lot size and to be consistent with the neighborhood as the Village Board envisioned via the comprehensive plan. The ZBA is tasked with granting variances for proven hardship specific to the land, not to allow everyone to achieve what they want, she said, and asked the Applicant to understand that the Board is not here to remake the zoning law.

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

No one wishing to speak, Chairman Gittens asked the Applicant to reduce the variances further and to utilize existing space. Member Dugandzic made a motion to adjourn the application and the public hearing to the next meeting. Member Gigante seconded the motion and upon vote, the motion passed unanimously.

Mr. Fried asked if the Board would be willing to approve a .16 FAR and Ms. Terhune corrected him by explaining that the Board is really asking for a better utilization of unused space to achieve the Applicant's needs.

**Reyce Krause**  
**PUBLIC HEARING**  
**6 Rose Hill Road**  
**41.17-1-60.3**

Application of Reyce Krause of 743 Passaic Avenue, Apt. 455, Clifton, NJ 07012 which was submitted to the Village of Montebello Zoning Board of Appeals for an area variance for: Floor Area Ratio [maximum 0.15, proposed 0.173] per Section 195-13 Bulk Table, use group h, column 14 of the Zoning code of the Village of Montebello to permit the construction, maintenance and use of a single-family dwelling. The property is located on the south side of Rose Hill Road, approximately 250 feet from the intersection of Spook Rock Road in the Village of Montebello, which is designated on the Ramapo Tax Map as Section 41.17 Block 1 Lot 60.3 in the RR-50 Zone.

Present were Mr. Sheldon Krause, Mrs. Reyce Krause and their contractor Jack Spaeth. Mr. Krause said that, in response to the ZBA's request at the last meeting for a reduced FAR, two basement bedrooms were eliminated and some of the rooms on the second floor were reduced to bring the FAR variance down from .213 to .173. The Chairman also requested sealed drawings and additional elevations, both of which were submitted for this meeting and which show the attic space to be below 6'3" eliminating it from the FAR

calculation. He also noted that some neighbors attended the last meeting and that they were supportive of the original drawings.

At that meeting, he continued, there was some discussion regarding the standards for granting variances, but there is nuance to proving undue hardship, and in light of all the standards, this variance request is insubstantial because it won't increase population density and is certainly in keeping with the large homes of the neighborhood. Mr. Krause said that, with a large family and aging parents all of whom visit on a regular basis, he cannot set aside his personal family needs. He said that he understands the concern for remaining within FAR but reminded everyone that the Village of Montebello ZBA granted FAR variances, for example, last year for an office building and in 2016 for a home at 2 Golf Course drive, although it is noted that the Chairman voted against the latter. This is what we need for our lives and our family, and we respectfully submit this reduced variance request and hope the board sees it favorably, he said.

Chairman Gittens asked why the mechanical room in the basement was so large. Mr. Krause said that his contractor chose the location of 300 square feet to accommodate several A/C and heating zones, water heaters and radiant heat at an external wall with exterior venting. Chairman Gittens opined that it was too large given that new mechanicals are now smaller and more energy-efficient, and said that, lacking mechanical contracting credentials, he was dubious. Mr. Spaeth said that as a builder for 25 years, he has done his due diligence on mechanical specs and that he chose the mechanicals for the home based on the homeowners' needs and for energy efficiency. There will be radiant heating in every room which requires several walls of circulation pumps, seven A/C units, five of which will be in the mechanical room, boilers for hot water for the two domestic tanks, and a wall will be set up away from the heating units to accommodate all the smart-home equipment. Chairman Gittens remained unconvinced that the mechanical room should be that large. Mr. Spaeth said the blowers that go inside the house are the largest pieces of equipment and require ductwork that take up a lot of space.

Still, the Chairman was reluctant to concede that 300 square feet is needed for a mechanical room and said that everything in the house seemed extra-large, and that there were some redundant rooms throughout which, if consolidated, would reduce the FAR further. There ensued a discussion about the basement and various scenarios of space utilization.

Mrs. Reyce Krause said she appreciated the Chairman's comments and explained that they are trying to accommodate three generations in one house, including her mother for whom the first-floor bedroom and ADA-compliant bathroom are designated. Additionally, they want to provide private space for each of their two adult unmarried daughters and for themselves. There is an abundance of children and grandchildren for whom space will be provided in the basement. We have taken away some basement bedrooms and decreased the size of others. We have decreased the size of the home to the limits of what is needed to make our family comfortable without sacrificing quality living space for everyone without redundancies, she said.

Chairman Gittens said he appreciated her points but that this Board's objective is to defend the Village zoning code, and that she has not satisfactorily presented a plan that also satisfies FAR. Mrs. Krause said their objective is to accommodate her large family comfortably and in accordance with their religious needs, which includes a dairy kitchen, a meat kitchen and a Passover kitchen. We have gone through considerable expense and showed good faith by tweaking the plans and removing some bedrooms, she said, and asked the Chairman to see that they are trying to work with the Board.

Ms. Terhune noted the zoning in which the property lies and said that hardship needs to be proven for variances being requested for a house that hasn't yet been built. Mr. Krause agreed that every variance is a self-created difficulty, but the statute says that self-created difficulty alone is not a basis for denial and asked the Board to recognize that he and his family have needs requiring the proposed amount of space. Ms. Cross said that the benefits of the Applicant should not outweigh those of the community. Mr. Krause said that basement space below that cannot be seen has no impact on the community yet it is counted toward FAR.

Mr. Krause then reminded them of the large variance granted to 2 Golf Course Drive in 2016. There is no point in coming to the Board if it is not willing to consider any type of extenuating circumstance, he said.

Chairman Gittens said that the variance is substantial and that this Board's objective is to protect the character of the community and to adhere to the master plan by protecting the zoning laws. Mr. Krause said that they are now approaching practical difficulty as they seek relief. Mr. Spaeth said that they are utilizing part of the basement to avoid a larger footprint that may be out of character with the neighborhood. After some further discussion, it was decided that the Applicant would try to reduce the variance further and return to the next meeting.

Member Wanderman made a motion to adjourn the application and the public hearing to the next meeting seconded by Member Dugandzic. Upon vote, the motion passed unanimously.

**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 Sara and Jonathan Abenaim and their attorney Kevin Conway. After the Chairman read the submissions into the record, Mr. Conway gave an overview of the project which was now appearing before the Board a third time and reminded the Board that the Applicants have a large family that requires space for its varying needs. At the January 20<sup>th</sup> meeting, the Board requested an alternate proposal for an addition on the south side of the house, which was supplied at the subsequent meeting and which showed an increase in required variances with the addition of a front setback while requiring the relocation of the utilities, an additional hardship. That alternate addition was more visible from the street, impacting the aesthetics of the street more than the original plan would with its shaded trees on three sides.

Mr. Conway said the Applicant reduced the size of the addition by 36% which reduced the FAR variance from .24 originally requested to .19. The front setback was also reduced by 1.5 feet on both front yards, this being a corner lot. He stated that FAR and Development Coverage are not sacrosanct and asked the Board to be flexible and reminded them that the dynamics of the Village were changing and that larger families were now occupying these homes. The market is booming and it is now less expensive to add to an existing home than to buy, and the ZBA must keep abreast of these market dynamics, he said.

Applicant Sara Abenaim said they've been to the Board several times and that she wanted to share a personal detail that would further prove hardship, which is that she suffers from a debilitating chronic autoimmune disease that as of late has grown worse. She said that extra living space on the main floor is crucial to her well-being especially since she was having trouble breathing. The variances are therefore not a desire or want, but a need, and promised that they would be preserving the integrity of the neighborhood on the exterior. She said, however, that the Board neglects to consider the interior character of the home that allows her family and others like hers to live peacefully and happily and cautioned that the village is crossing a line in dictating how people ought to live. Interior, as well as exterior, aesthetics should be part of the criteria for deciding on variances, she added.

Ms. Terhune interrupted the proceedings to remind the Chairman that the meeting has a hard stop at 9:30 p.m. per his announcement at the start of the meeting, and that it was now 9:28 p.m. She advised adjourning this application to the top of the agenda at the next meeting.

Ms. Abenaim asked for some special consideration and some respect after several months and especially since she just divulged personal information. Ms. Terhune said that the Chairman, at the beginning of this meeting, announced that it would end at 9:30 p.m. without exception. Ms. Abenaim argued that since there were six applicants, time limits should have been placed on each and expressed her dismay over waiting two hours to speak only to have her time before the Board cut short. Chairman Gittens apologized for the abrupt cessation of the meeting but said that the application and the one following will be adjourned to the next meeting.

Ms. Abenaim said she didn't understand why the meeting wasn't organized properly, noting the additional delay to a resolution of her application.

Member Dugandzic made a motion to adjourn the application and the public hearing to the next available meeting, seconded by Member Bryan and upon vote the motion passed unanimously.

Member Dugandzic made a motion to adjourn the meeting at 9:32 p.m. seconded by Member Wanderman and upon vote all were in favor.