

A SPECIAL MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY JULY 28, 2022, ON ZOOM. THE MEETING WAS CALLED TO ORDER AT 7:00 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

Present:	Rodney Gittens	Chairman
	Janet Gigante	Member
	Carl Wanderman	Member
	Elizabeth Dugandzic	Member
	Ezra Bryan	Member
Others Present:	Jody Cross	Village Counsel
	Regina Rivera	Planning & Zoning Clerk
Absent:	Alyse Terhune	Assistant Village Attorney

Member Wanderman made a motion to approve the meeting minutes of the June 16, 2022, Zoning Board of Appeals seconded by Member Gigante and upon vote, all were in favor.

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 0.155] 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.

Chairman Gittens read the application and the most recent submissions into the record. Present were the Applicants Sheldon and Reyce Krause. Mr. Krause said that he submitted drawings that delineated the FAR calculations, including the exterior walls as requested by this Board at the last meeting. Chairman Gittens noted that the submissions include all that was asked and that the calculations now add up. Mr. Krause wanted to be sure that the Board understood that the numbers round up to 1.56 (from 1.559).

Members Wanderman and Dugandzic expressed their appreciation for all the work that went into substantially decreasing the FAR variance. Members Gigante and Bryan were also satisfied and had no further comments.

No one present having anything to say, Member Gigante made a motion to close the public hearing, seconded by Member Wanderman and upon vote, all were in favor.

Chairman Gittens noted that the Applicants have appeared before the Board several times and have worked to make changes that lowered the FAR request. After The Chairman summarized the criteria by which variances are considered, the Board was ready to vote. Member Wanderman made a motion to approve the requested variance seconded by Member Gigante. Upon vote, the motion passed unanimously.

X

In the Matter of the Application of
6 Rose Hill Road

**VARIANCE DECISION FOR
PROPERTY IDENTIFIED ON
THE VILLAGE OF
MONTEBELLO TAX MAP AS
Section 41.17, Block 1, Lot 60.3**

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 "h," column 14,
maximum allowed floor area ratio.

X

**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO
ZONING LAW FOR THE PURPOSE OF CONSTRUCTING A SINGLE-FAMILY
HOME EXCEEDING THE MINIMUM FLOOR AREA RATIO BULK
REQUIREMENT**

The property location, zoning district and proposed project. The subject property is located at 6 Rose Hill Road, Village of Montebello, County of Rockland, State of New York, identified on the Tax Map as Section 41.17, Block 1, Lot 60.3 (the "Parcel"). The Parcel is located in the Rural Residential District ("RR-50") zoning district and is currently vacant. Uses in the RR-50 district are governed by § 195-9, the Table of General Use Requirements, which permits single-family home residential use as-of-right. Bulk regulations are governed by §195-13, the Table of Bulk Requirements, Use Group "h." Minimum lot area in the RR-50 district is 50,000 square feet. The Parcel contains 48,747 sq. ft. (1.119 acre), having obtained a lot area variance in 2011.¹ Maximum Floor Area Ratio ("FAR") is .15%. Thus, a single-family home constructed on the Parcel may not exceed 7,213 square feet in the absence of an area variance.

The Parcel is owned by Reyce and Sheldon Krause (together, the "Applicants"), who propose the construction of a single-family home on the Parcel.

The application for variances. On February 22, 2022, application was filed with the Montebello Zoning Board of Appeals (the "Board") requesting a 42% variance in FAR from the required .15% to .213% for the purpose of constructing a 10,170 sq. ft. single-family home. After deliberation with the Board, during which the Board noted, among other things,

¹ By Determination No. 115A dated July 21, 2011, the ZBA granted a 2.5% variance (2,253 sq. ft.) from the minimum required lot area of 50,000 sq. ft. to 48,747 47 sq. ft.

that the lot was already undersized and that the proposed house was far larger than comparable houses in the neighborhood, the Applicants reduced their requested variance from .213% to .156%, a 3.66667% increase in FAR. Such a variance, if granted, would allow the Applicants to construct a 7,312 sq. ft., house, representing an additional 227 square feet.

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 February 24, 2022; and
2. Submission to the Zoning Board by the Applicants, including:
 - a. Application and narrative received February 23, 2022; and
 - b. Supplement narratives dated April 28, 2022, and May 31, 2022; and
 - c. Site Plan, titled “SMK – ROSE HILL,” prepared by Jay A. Greenwell, PLS, LLC, dated February 18, 2022, last revised July 6, 2022; and
 - d. Elevations entitled “6 Rose Hill,” prepared by Robert Zampolin A.I.A., Zampolin & Associates, dated February 2, 2022, last revised June 21, 2022, containing 3 sheets, A1.1, A2 and A3, showing all sides of the house; and
 - e. Elevations entitled “Krause Residence” dated April 13, 2022, 4 pages showing all sides of the house by Robert Zampolin A.I.A., Architect.
1. Hereinafter, submission ‘a’ through ‘e’ shall be known together as the “PLAN”; and
3. Memorandum and comments of Village Engineer Martin Spence, dated May 17, 2022, containing technical comments.

General Municipal Law § 239-m. The Application was referred to Rockland County Planning Department (“RCPD”) pursuant to GML § 239-m. By letter dated April 5, 2022, RCPD responded with six (6) comments including the first comment regarding the original 42% variance as concerning due to potential precedential effect. In partial response to RCPD and as a result of its own deliberations, the Board required the Applicants to substantially reduce the requested variance to be in line with other houses in the neighborhood. The Board complied with comments 2-5 and the Applicants were apprised of the requirement to adhere to comment 6

Agency Referrals. The Application was duly referred to the Rockland County Highway Department, which responded by letter dated June 6, 2022, and the Rockland County Health Department, which responded by letter dated June 10, 2022. The Applicants will comply with all requirements therein.

Public Hearing. A duly noticed public hearing was convened on March 17, 2022, and adjourned to all subsequent meetings wherein the Applicants appeared. During the public hearings, the Zoning Board heard testimony from the Applicants, their representatives

and all those wishing to address the Board on the matter. After hearing all comments from the public, the hearing was closed on July 28, 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 on an approved. No further environmental review was required.

FINDINGS

The zoning law. The Parcel area and residential use comply with the Montebello Zoning Law.

The zoning law applied to the application for a variance. The Applicant applied to the Board for relief from Section 195-13, “Table of Bulk Requirements,” Use Group “h,” to exceed FAR in the form of one variance of 3.6667% from the required maximum FAR of .15% for the purpose of constructing a 7,312 sq. ft. single-family home.

The Board’s Findings. When considering whether to grant area variances, the Board must consider, and did consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) 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 area variance.

In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Any area variance so granted by the Board must be the minimum variance that it deems necessary and adequate. During its deliberations, the Board noted that it reviews all applications to increase FAR in light of the overarching goal of the Village of Montebello’s Comprehensive Plan, which is to maintain the existing scale of the residential housing in the Village. The Board of Trustees enacted the FAR zoning regulations to achieve that goal and the Zoning Board is charged with that mission as well.

The Board made the following findings:

1. The Board considered whether the requested variance would produce an undesirable change in the character of the neighborhood and, more particularly, in the Village, if the variance, as requested, was granted. The Board noted that the Applicants had twice reduced the original variance request of .213% FAR to .1713% and, finally, to .1555% in a good-faith effort to address the concerns of the Board. Such reduction results in a house substantially consistent with other houses in the neighborhood and would not, therefore produce an undesirable change.
2. The Board considered whether the benefit sought by the Applicant could be achieved by some method, feasible for the Applicants to pursue, other than an area variance and decided that through their diligent effort to reduce the size of the house including alternative floor designs, were sufficient to conclude that in this case the benefit to the applicant outweighed the detriment to the neighborhood and the community.
3. The Board considered whether the requested area variance was substantial and determined that the original request for .213% and the revised request for .1713% were substantial, especially where, as here, the lot was already undersized. The Board also noted that any expansion of FAR was *ipso facto* substantial in that maximum FAR and maximum lot coverage together were intended to maintain a particular residential scale as stated in the Comprehensive Plan. However, the Applicant's good-faith effort to reduce the variance to an increase of 227 square feet mitigated against any negative impact to the goals of the Village Board as set forth in the Comprehensive Plan.
4. The Board determined that reducing the variance request from 42% to 3.6667% reduced the scale and massing of the house and reduced the carbon footprint. Therefore, granting the reduced variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
5. Finally, the Board noted that, barring extraordinary circumstances, the need for a variance is always self-created. While that is relevant to the deliberations, however, it does not preclude granting the variance where other factors weigh in favor of the Applicant. Here, the Board was satisfied that the Applicants worked with the Board to reduce the variance and that expanding the size of the house by 227 square feet represented a reasonable accommodation between the needs of the Applicant as weighed against the Village's desire to maintain a particular residential character.

Applicant's burden. The Zoning Board of Appeals hereby finds and determines that the Applicants have sustained their 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 grants relief from Section 195-13, "Table of Bulk Requirements," Use Group "h," in the form of a variance from the required .15% FAR to .1555% for the purpose of constructing a single-family home on the subject Parcel located at 6 Rose Hill

Road, Village of Montebello, County of Rockland, State of New York, identified on the Tax Map as Section 41.17, Block 1, Lot 60.3.

In granting these variances, the Zoning Board relied on the testimony of the Applicants and the submissions identified herein and made a part of this Decision as if attached hereto. This variance is granted in reliance on its individual purpose as shown on the referenced application materials, as modified by the reductions in the size of the proposed single-family home and is specific to the PLAN presented to the Zoning Board of Appeals upon which this variance is based. Deviation of any kind from the variance granted by this Board, or from the PLAN relied thereon shall invalidate this Decision and render the variance null and void by operation of law.

BE IT FURTHER RESOLVED, that this variance shall expire by operation of law if a building permit has not been issued within one year of the date the Decision was filed with the Village Clerk pursuant to Village of Montebello Zoning Law § 195-108F. This variance shall also expire if said building permit is not timely acted upon as set forth in Village of Montebello Zoning Law § 195-97.

BE IT FURTHER RESOLVED, that this variance is granted pursuant to the following conditions:

1. The addition of a note on plan stating that the addition is for the construction of a single-family-home to be used for residential use by a family and for no other purpose.
2. The addition of a note to the plan that the square-footage of the basement shall not be increased.
3. The addition of a note to the plan that no occupancy of the attic area is permitted due to height restriction.
4. Full compliance with, Note 28 of the Subdivision Plan known as “Subdivision of Property for SMK-Rose Hill,” granted in 2013, which note requires, “[s]tone wall along perimeter of entire site plan shall remain with the exception of areas for driveway and utility connections along Rose Hill Road as shown on approved Grading Plan...”.
5. Final plans submitted for building permit construction purposes shall comply with engineering comments S-1 through S-14, of the memorandum and comments of Village Engineer Martin Spence, dated May 17, 2022.
6. Full compliance with the Rockland County Department of Planning letter dated April 5, 2022, as set forth herein, Rockland County Highway Department letter dated June 6, 2022, and the Rockland County Health Department letter dated June 10, 2022.
7. The Building Inspector is hereby directed to conform the plans submitted for construction to the relief granted herein.
8. Payment of all fees due and owing to the Village of Montebello in connection with this application and approval.

On a motion by Member Wanderman, seconded by Member Gigante, the within relief from the Village of Montebello Zoning Law was granted on a roll-call vote as follows:

	Yea	Nay	Abstain	Absent
Rodney Gittens, Chairman	[√]	[]	[]	[]
Carl Wanderman, Member	[√]	[]	[]	[]
Janet Gigante, Member	[√]	[]	[]	[]
Elizabeth Dugandzic, Member	[√]	[]	[]	[]
Ezra Bryan, Member	[√]	[]	[]	[]

**Wojceich Sveitek
PUBLIC HEARING
26 Orchard Street**

Present was the Applicant Wojceich Sveitek, who said that he submitted an at-a-glance FAR calculation chart which now includes the detached garage, and some comps of nearby homes as he was asked at the last meeting. He also staked out the footprint of the addition, noting that several Board members visited the site for perspective.

Chairman Gittens asked if the nearby properties and houses are similar in size. Mr. Sveitek said that his and his neighbors' parcels are 114 and 115 square feet on average. The houses are similar in size, but Mr. Sveitek's house is smaller than the rest since, unlike the abutting houses, an addition was never constructed. Chairman Gittens asked if there were other factors that set the house apart from the others. Mr. Sveitek said the house is in poor condition but noted that it has a lot of potential. In 100 years, no one has made any improvements, he said, and he wishes to preserve the landmark character of the home while updating the interior for modern living. Unlike the other houses, my idea is to keep the same color and exterior design because it is important for the preservation of the community, he added.

Chairman Gittens asked the Applicant why he is requesting a variance when he can add a first-floor addition without any variances. Mr. Sveitek said the house was built to different standards over 100 years ago and that he'd like to bring it up to today's living standards with higher ceilings, larger rooms and more living space. The Chairman asked the Board if they had any questions. No one wishing to comment, he opened the public hearing.

Elizabeth Kaylor, 27 Orchard Street, Montebello, New York was sworn in and spoke in favor of the project. She said that she appreciates that Mr. Sveitek will restore the house because it will improve the neighborhood.

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

Chairman Gittens summarized the ZBA criteria noting that the house is very small and that the variance, while seemingly substantial, would be allowable had the lot been larger, and that though the variance is a substantial impact on FAR, there is little impact on the neighborhood. Member Wanderman said that he drives down Orchard Street nearly every day and that it is a lovely neighborhood of well-kept homes and this project will improve the neighborhood further. He added that the addition is consistent with the surroundings and that he

would vote to approve the request. Member Dugandzic agreed and said the lots are very small but that and addition to the back of the house won't impact the view from the street. Member Gigante agreed with her colleagues' assessments. Member Bryan said that after evaluating the zoning map, reviewing the drawings, and studying comparisons with nearby homes, he felt that the project is in alignment with the neighborhood, and since the rear of the property is densely treed, there will be minimal impact to the neighbors.

No one having further comments, Member Wanderman made a motion to approve the variance, seconded by Member Dugandzic. 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
26 Orchard Street

**VARIANCE DECISION FOR
PROPERTY IDENTIFIED ON
THE VILLAGE OF
MONTEBELLO TAX MAP AS
Section 48.17, Block 1, Lot 22**

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 "x.1," column 14,
maximum allowed floor area ratio.

_____X
**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO
ZONING LAW FOR THE PURPOSE OF RENOVATING AND ENLARGING A
SINGLE-FAMILY HOME EXCEEDING THE MINIMUM FLOOR AREA RATIO
BULK REQUIREMENT**

The property location, zoning district and proposed project. The subject property is located at 26 Orchard Street, Village of Montebello, County of Rockland, State of New York, identified on the Tax Map as Section 48.17, Block 1, Lot 22 (the "Parcel"). The Parcel is located in the Rural Residential District-15 ("RR-15") zoning district and is currently vacant. Uses in the RR-15 district are governed by § 195-9, the Table of General Use Requirements, which permits single-family home residential use as-of-right. Bulk regulations are governed by §195-13, the Table of Bulk Requirements, Use Group "x.1." Minimum lot area in the RR-15 district is 15,000 square feet. The Parcel contains 6,250 sq. ft. (.14 acre) and the maximum Floor Area Ratio ("FAR") is .25%. The lot is and improved with a 1,511.6 square foot single-family home constructed in 1910. The lot and the exiting house are pre-existing nonconforming as to the existing bulk requirements.

The Parcel is owned by Wojceich Swietek (the "Applicant"), who wishes to renovate and enlarge the existing house.

The application for variances. On March 17, 2022, application was filed with the Montebello Zoning Board of Appeals (the “Board”) requesting a 40% variance in FAR from the required .25% to .35% for the purpose of constructing a 938 sq. ft. two-story addition resulting in a house containing a total square footage of 2,449.6.

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:

4. Building Inspector letter of denial dated March 29, 2022, revised April 28, 2022; and
5. HPPC waiver of requirement for a Certificate of Appropriateness dated April 6, 2022; and
6. Submission to the Zoning Board by the Applicants, including:
 - a. Application dated March 14, 2022; and
 - b. Narrative, dated March 17, 2022; and
 - c. Site plan, first and second floor plans and elevations, titled, “Addition and Renovation to Existing Single-Family Dwelling” Plan, prepared by Christopher Juchnik, RA, dated February 2, 2022, consisting of sheets A-1, A-2, A-3, A-4, E-1 and S-1; and
 - d. FAR calculations chart prepared by Applicant.
2. Hereinafter, submission ‘a’ through ‘d’ shall be known together as the “PLAN.”
- 3.

General Municipal Law § 239-m. The Application was referred to Rockland County Planning Department (“RCPD”) pursuant to GML § 239-m. By letter dated May 26, 2022, RCPD responded with 7 comments, all of which were considered by the Zoning Board during its deliberations, specifically Comment 1, which the Board, by its unanimous approval, overrode. The application was revised per Comments 2 and 3.

Agency Referrals. The Application was duly referred to the Rockland County Sewer District No. 1, which responded by letter dated May 10, 2022; the Rockland County Highway Department, which responded by letter dated June 9, 2022; the Rockland County Drainage Agency, which responded by letter dated June 9, 2022; and with the Rockland County Department of Health, and the Village of Suffern, neither of which responded. The Applicants shall comply with all applicable requirements therein.

Public Hearing. A duly noticed public hearing was convened on May 19, 2022 and adjourned to all subsequent meetings wherein the Applicants appeared. During the public hearings, the Zoning Board heard testimony from the Applicants, their representatives and all those wishing to address the Board on the matter. After hearing all comments from the

public, consisting solely of a neighbor living across the street who was in favor of granting the variance, the hearing was closed on July 28, 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)(17), granting an area variance for a single-family, two-family or three-family residence. No further environmental review was required. (17)

FINDINGS

The zoning law. The residential use complies with the Montebello Zoning Law.

The zoning law applied to the application for a variance. The Applicant applied to the Board for relief from Section 195-13, “Table of Bulk Requirements,” Use Group “x.1,” to exceed FAR in the form of one variance of 40% from the required maximum FAR of .25% to 35% for the purpose of constructing a 938 sq. ft. addition to the existing single-family home.

The Board’s Findings. When considering whether to grant area variances, the Board must consider, and did consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) 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 area variance.

In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. Any area variance so granted by the Board must be the minimum variance that it deems necessary and adequate. During its deliberations, the Board noted that it reviews all applications to increase FAR in light of the overarching goal of the Village of Montebello’s Comprehensive Plan, which is to maintain the existing scale of the residential housing in the Village. The Board of Trustees enacted the FAR zoning regulations to achieve that goal and the Zoning Board is charged with that mission as well.

The Board made the following findings:

6. The Board considered whether the requested variance would produce an undesirable change in the character of the neighborhood if the variance was granted. Several members of the Board visited the Parcel, which, as requested, had been staked to show the proposed addition. Members noted that the existing house is substantially smaller than houses in the neighborhood, which were likely built and/or enlarged before the existing FAR limitation, whereas this house has remained virtually unchanged since 1910. The Board also noted that the house has remained vacant over many years and, as such, has deteriorated causing substantial detriment to the neighboring homes. The Applicant intends to restore the house and maintain its unique character, which was commented on favorably by the neighbor. Also, noted was the fact that the addition would not be visible from the front street line and, more importantly, that the proposed enlargement would bring the existing very small house in line with the neighboring houses, which are larger. Such enlargement results in a house substantially consistent with other houses in the neighborhood and would not, therefore produce an undesirable change.
7. The Board considered whether the benefit sought by the Applicant could be achieved by some method, feasible for the Applicants to pursue, other than an area variance and decided that it could not. The existing house is quite small and not conducive to modern living. The Board concluded that given the unique facts and circumstances of this application, the benefit to the applicant outweighed any detriment to the neighborhood and the community.
8. The Board considered whether the requested area variance was substantial and determined that it was. However, after evaluating the zoning district maps, the application, the character of the neighborhood and the size of the neighboring houses, the Board concluded that when all the factors were weighed, enlarging the house within this particular neighborhood would not undermine the residential scale envisioned by the Village's Comprehensive Plan.
9. The Board determined that granting the variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
10. Finally, the Board noted that, barring extraordinary circumstances, the need for a variance is always self-created. While that is relevant to the Board's deliberations, it does not preclude granting the variance where other factors weigh in favor of the Applicant. Here, the Board was satisfied that enlarging the house to be consistent with other houses in the neighborhood, thus making the house a viable option for a family and providing the owner a reasonable financial incentive to restore the house so as to maintain its historic character a reasonable accommodation between the needs of the Applicant as weighed against the Village's desire to maintain the integrity of its FAR requirement.

Applicant's burden. The Zoning Board of Appeals hereby finds and determines that the Applicants have sustained their 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 grants relief from Section 195-13, "Table of Bulk Requirements," Use Group "x.1," in the form of a variance from the required .25% FAR to .35% for the purpose of for the purpose of constructing a 938 sq. ft. two-story addition on the subject Parcel located at 26 Orchard Street, Village of Montebello, County of Rockland, State of New York, identified on the Tax Map as Section 48.17, Block 1, Lot 22.

In granting this variance, 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. This variance is granted in reliance on its individual purpose as shown on the referenced application materials and is specific to the PLAN presented to the Zoning Board of Appeals upon which this variance is based. Deviation of any kind from the variance granted by this Board, or from the PLAN relied thereon shall invalidate this Decision and render this variance null and void by operation of law.

BE IT FURTHER RESOLVED, that this variance shall expire by operation of law if a building permit has not been issued within one year of the date the Decision was filed with the Village Clerk pursuant to Village of Montebello Zoning Law § 195-108F. This variance shall also expire if said building permit is not timely acted upon as set forth in Village of Montebello Zoning Law § 195-97.

BE IT FURTHER RESOLVED, that this variance is granted pursuant to the following conditions:

9. Compliance with all applicable comments from Rockland County Sewer District No. 1's letter dated May 10, 2022, Rockland County Highway Department's letter dated June 9, 2022, and the Rockland County Drainage Agency's letter dated June 9, 2022.
10. The Applicant will maintain the historic character of the house during renovation as stated during testimony before the Zoning Board.
11. The Building Inspector is hereby directed to conform the plans submitted for construction to the relief granted herein.
12. Payment of all fees due and owing to the Village of Montebello in connection with this application and approval.

On a motion by Member Wanderman, seconded by Member Dugandzic, the within relief from the Village of Montebello Zoning Law was granted on a roll-call vote as follows:

	<u>Yea</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
Rodney Gittens, Chairman	[√]	[]	[]	[]
Carl Wanderman, Member	[√]	[]	[]	[]
Janet Gigante, Member	[√]	[]	[]	[]
Elizabeth Dugandzic, Member	[√]	[]	[]	[]
Ezra Bryan, Member	[√]	[]	[]	[]

**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.

Present for the Applicants was attorney Paul Baum who was appearing before the Board a third time and once again gave an overview of the Application, explaining that he and his client disagree with the classification of the synagogue as a Community House of worship, which requires 5 acres of land, as opposed to a Neighborhood place of worship requiring just two acres, and with the required aggregated lot area of 10.6 acres to accommodate both the synagogue and the second primary use of a school of general instruction.

Mr. Baum said the Building Inspector’s interpretation unfairly restricts the use of this property and noted that a floor plan of this 11,000 square foot building was submitted to illustrate that 6,000 square feet will be used for Friday evening Shabbos services and the rest of the time the entire building will be used by the school. He emphasized that each primary use will never be used concurrently and reiterated his argument that the Indian Rock Shopping Plaza requires only 20,000 sf of the total 300,000+ square feet for multiple primary uses.

Chairman Gittens asked if the sanctuary will be used by the school when it is in session. Mr. Baum said the school uses the entire building including the synagogue when in session, but that the synagogue only uses the sanctuary, bathrooms and the rabbi’s office. Chairman Gittens asked how often school is in session and Mr. Baum said six days per week until 5 p.m. and on Fridays until 11 a.m. after which it is used by the Congregation through Saturday night for Shabbos and on high holy days when school is not in session.

Chairman Gittens said it was important to differentiate what and how each space is used, including the basement. Mr. Baum said that the basement is not habitable, that it is dedicated storage space and that the only means of egress and ingress is externally from the building. The CO explicitly states that the basement is for storage only, he added. Chairman Gittens wanted to know how high the ceiling was in the basement, and Mr. Baum said he was not sure but reiterated its use is limited by the site plan and the CO for storage only.

After some discussion, Mr. Baum maintained that the building inspector’s determination requiring aggregated land for both primary uses is unfair. Ms. Cross said there are definitions in the code that discuss aggregated

floor area for local convenience commercial zones which is not found in other provisions, adding that one cannot compare the definition that speaks to aggregated gross floor area requirements with unique provisions about separate principal uses. Mr. Baum argued that there are other commercial uses in the local convenient commercial zone that “shall not be deemed local convenience commercial” and which included restaurants, pharmacies and doctor’s offices. And still, he continued, they were not required to aggregate the area for all the other uses. Ms. Cross said that, according to the definition in the Village code, a shopping center is “A structure or structures and customary parking and loading areas providing for a variety of retail commercial establishments managed as a unit...” It is a managed unit which undermines your argument, she said. Mr. Baum countered that the school and synagogue are not a shopping center nor are they in the NS zone. Ms. Cross advised the Board members that they must decide whether there is a distinction between commercial and institutional uses in residential districts, noting that the language was expressly put into the code.

After further discussion, the Chairman asked Mr. Baum the nature of the alleged hardship. Mr. Baum said they were not seeking a variance, only appealing the determination of the Building Inspector. The ZBA is the safety valve and it is the Board’s job to step into the shoes of the Building Inspector to render a determination in his stead, and the Board has the power to say he was incorrect and to overrule his determination, he said.

Chairman Gittens opened the discussion to the rest of the Board. Member Bryan asked the total square footage of the building and whether there was a second floor in use. Mr. Baum said it is a single-story building of 10,992 square feet on main floor and a basement used for storage only. Chairman Gittens asked if it could be made habitable, to which Mr. Baum explained that it has never been used for habitation since it was built, that they have no intentions of using it for anything other than storage, and in any case, the Planning Board would reject any attempt at making the basement habitable.

Member Bryan asked if there is a separate structure on the lot. Mr. Baum said there is an existing house that will be used as the Rabbi’s residence. Member Bryan asked its square footage, and Ms. Cross said it is a permitted accessory structure to the house of worship. Member Bryan said he wanted to understand fully the reason for the inspector’s determination. Mr. Baum said the house is not part of the determination.

Chairman Gittens brought the discussion back to the basement stating that it may substantially add to the FAR. Mr. Baum clarified that although this building is 11,000 square feet, the house of worship will only use 6,148 square feet of that area. The fact that the building has greater floor area does not mean that it must all be attributed to the house of worship. Chairman Gittens said that he wanted to see the specified uses and area on the plans. Mr. Baum said that the Planning Board is reviewing the drawings submitted and they can condition any approvals for the special permit.

Mr. Joseph Altman who resides at 3 Glode Court in Airmont, New York and who is one of the Principals of MSC of Montebello said he wished to add some clarification. He was sworn in and said that the basement does not run under the entirety of the building and is only 1100 square feet and confirmed there is no access to the basement from within the building. Ms. Cross asked if there are separate entrances or any physical barriers that would prevent congregants from wandering into classrooms and other areas. Mr. Bruce Schwartz, 43 North County Road, Airmont New York, another Principal of MSC of Montebello was also sworn in and said that the school does not allow congregants to enter the school while in session. No outside people are allowed in the building while the school is in operation at all, he added.

The Board had no further comments and Member Dugandzic made a motion to open the public hearing which was seconded by Member Wanderman. Upon vote, the motion passed unanimously.

Dolores Lublanezki, 32 Montebello Road, Montebello, New York asked how many students will attend the school of general instruction. Mr. Baum said the request is for up to 200 students. Ms. Lublanezki said that there are students being educated in the building currently and that she assumed this was allowed. She added that since the Applicant is appealing the Building Inspector’s decision when they clearly have enough bulk for

both uses, she is led to believe that they are working toward some unstated goal. She said she wishes to protect her way of life and to co-exist with all her neighbors and that she hopes that her peace will not be disturbed. Further, she added, converting from a Community to a Neighborhood house of worship would mean that she would lose the buffer currently in existence as per Sec. 195-71.3D of the Village code which protects her home from glaring headlights, noise and such.

Chairman Gittens thanked Ms. Lublanezki for her comments. No one else having anything further to say, the Chairman said he need some time to deliberate on the comments made this evening and to perhaps have an advice of counsel session because he does not wish this Board to make any rash decisions.

Mr. Baum said that the application began in May and was adjourned twice for deliberation. The longer we are here, the longer our Planning Board application is delayed, he said and added that if the Board decided to adjourn once more, he hopes the next meeting will be the final appearance. If not, then a hardship will be created for the school because they will not be able to go back into session.

Ms. Lublanezki said that she was confused because school is in session there six days per week currently, and that therefore Mr. Baum's statement is disingenuous. The Chairman asked Mr. Baum if he could verify this. Mr. Baum maintained that there is a school in session in the building for the children to study the Torah and to pray, not for general instruction. We went to court for this and the case was dismissed, he added.

No one from the public wanting to speak, The Chairman asked for a motion to adjourn the public hearing to the next meeting. Mr. Baum asked the Chairman to close the public hearing because the public has had three opportunities to speak and the Board has all the information they need at this point. The Chairman however said that there may be more people wishing to comment on the application. Ms. Cross said the only reason to leave the public hearing open is upon request of additional information and that it could be re-opened, but then it would need to be re-noticed. Chairman Gittens said he preferred to leave it open, which helps the Applicant avoid the administrative hassle of re-opening the hearing.

Member Bryan made a motion to adjourn the public hearing and the meeting to the August 18, 2022, Zoning Board meeting, seconded by member Wanderman. Upon vote, all were in favor.

Morris Klein
62 West Gate Road
40.19-1-36.2

Application of Morris Klein, 4 Rosmel Drive, Monsey, NY 10952 which was submitted to the Village of Montebello Zoning Board of Appeals. Pursuant to Section 195-108A of the Code of the Village of Montebello, the Applicant seeks an appeal of the Building Inspector's letter of May 12, 2022, and of his interpretation of the Zoning Code regarding area variances granted by the Zoning Board of Appeals on December 17, 1998, for the construction of a single-family dwelling on the vacant property. The subject parcel is located on the east side of West Gate Road at the intersection of Danielle Court in the Village of Montebello, which is designated on the Ramapo Tax Map as Section 40.19 Block 1 Lot 36.2 in the RR-50 Zone.

Chairman Gittens Rodney read the application into the record and established submittals which included the following:

- ZBA Application dated June 7, 2022
- Narrative summary "Klein Residence"
- Building Inspector Adam Gordon permit denial letter dated May 12, 2022
- Former Building Inspector Lawrence Picarello determination letter dated November 6, 2020
- ZBA Resolution No. 1057 – December 17, 1998

- Planning Board Resolution PB-14 of 1998
- Planning Board Resolution PB-02 of 1999

Present was the Applicant, Mr. Morris Klein, his Engineer Paul Gdanski, and Mr. Adam Kurland, attorney for Applicant, who explained that his client is the property owner of 62 West Gate Road and wishes to build a single-family home on the 1.39-acre parcel in the RR-50 Zone. This application is unique in that the same variances that Mr. Klein is seeking were applied for and granted by the ZBA of Montebello. On December of 1998 [Former owner] Mr. Cheeseman was granted A FAR variance of .20 (max .15) and a Development Coverage variance of 25.1% (req. 20%) to construct a single-family dwelling on this property and in 1999 Mr. Cheeseman applied for and received a building permit.

In 2020, Mr. Klein met several times with the [now former] Village Building Inspector Mr. Lawrence Picarello and the Building Clerk Ms. Regina Rivera to discuss the property prior to purchasing it. The Kleins were told that the variances granted in 1998 were valid and, based on that advice, they purchased the property. Mr. Kurland noted that the conversations and determination were memorialized in a memo dated November 6, 2020.

On February 8, 2021, he continued, the Kleins purchased the property and a few months later they submitted a building permit application with admittedly larger bulk requests than what was discussed. Mr. Picarello denied the permit application and Mr. Klein made an application to the ZBA. However, after filing and upon reflection, he withdrew his ZBA application and sought instead to build a house with the identical variances granted in 1998 in the belief that they ran with the land, as he was advised. Shortly after, Mr. Klein received a denial letter from the current Building Inspector Adam Gordon who referred him to the ZBA because the house proposed was not the same that was approved in 1998. Mr. Kurland noted that on May 31, 2022, the Village deposited Mr. Klein's check of \$32,000 for the permit fee in any case.

Mr. Picarello's earlier conclusion binds the Village and this Board, he said. Section 195-108F of the Montebello code deals with expiration of variances granted by the ZBA and states simply that if a building permit is not issued within one year, the variances expire. That did not happen here because in 1999 a building permit application was filed and a permit was issued. This is a legal analysis to be conducted by this Board and it does not matter that this house is different from the one proposed in 1998 because the variance calculations are identical, he said.

Mr. Kurland recognized that the ZBA in addition to interpreting decisions, addresses an application's five standards by which variances are granted, noting that the house does not present any detriment to nearby properties, is consistent with its surroundings, poses no adverse environmental effects, and that the desired results cannot be achieved by any other means. Regarding the issue of whether the alleged difficulty is self-created, Mr. Kurland stated that it was not self-created in 1998, as that ZBA resolution states: "*Although the applicant could have created a larger lot or build a smaller house, the setting warrants a home of the size proposed.*" Further, the hardship in this case is not self-created because Mr. Klein relied on Mr. Picarello's determination, he said.

The Applicant, Mr. Morris Klein of 4 Rosmel Drive, Monsey, New York was sworn in and gave a little more background. He said that speaking from the heart, he and his wife have wanted to build their dream home in which they can host their children and grandchildren in this beautiful village. It is for our personal use for our own family to live in and enjoy peacefully and quietly, he said.

Chairman Gittens asked if this is the same house proposed in 1998 by the former owners. Mr. Kurland said it is not the same house but that the design of the home is not the purview of this Board. The ZBA's function is strictly to consider the variances requested and added that the FAR is no different and has not changed. The Chairman said the Board will examine the plans to see that the FAR had been calculated correctly and noted as an example that the basement in the plans are labeled "not counted." Basement space is counted toward FAR in this Village, he said, and said that since the plans are not accurate there can be no conclusive or accurate

decisions made by this Board. He then mentioned that the attic was also not included in the calculations. Mr. Kurland said that if the ceiling is less than 6' 3" it is not habitable and therefore not included in FAR calculations. Mr. Klein said he specifically lowered the height of the attic for this purpose. Chairman Gittens said that he wanted the architect to verify this and that accurate drawings should be submitted. Apart from inaccuracies, he said, these are complicated construction drawings with extraneous information and requested the submission of simplified drawings that include all floors and all ceiling heights, and a FAR analysis showing what is required and what is proposed.

Member Bryan said he understood the Klein's desire for a larger space for their extended family, and that he understood too that the permit was issued based upon the approval the variances. If the details of the variances have changed, there should be new ZBA approvals issued, he said, adding that he did not agree that the variances are identical, especially since the approval was predicated on a specific design.

Mr. Kurland said he did not believe that the prior plans were ever submitted to the ZBA and that he submitted the current plans to show his client's intentions. Chairman Gittens repeated his request for clearer, more succinct drawings with accurate calculations. Mr. Kurland asked the engineer, Paul Gdanski, how he calculated the FAR numbers. Mr. Gdanski said that the development coverage was derived from all impervious surfaces and the FAR was given to him by the architect. Mr. Klein asked for guidance on what exactly the Board would like to see. Ms. Cross advised that he submit a site plan with a bulk table and drawings with exact calculations.

Ms. Cross advised that the public hearing be set for their next appearance. Mr. Klein questioned why there needs to be a hearing. Mr. Kurland noted his client's frustrations given that he purchased the property based on a Village employee's determination. Ms. Cross acknowledged this frustration and said that the law requires a public hearing for any action taken by the ZBA including determinations. Mr. Kurland asked if the Board could at least have an advice of counsel prior to his client's next appearance to consolidate and expedite the process. Ms. Cross said they could if the Board agrees.

Member Dugandzic made a motion to set the public hearing for the application for the next available ZBA meeting. Member Gigante seconded the motion and upon vote, the motion passed unanimously.

Member Wanderman made a motion to adjourn the meeting at 9:37 p.m. seconded by Member Gigante and upon vote, all were in favor.