

A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY SEPTEMBER 15, 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:	Alyse Terhune	Assistant Village Attorney
	Regina Rivera	Planning & Zoning Clerk

Absent:

Member Wanderman made a motion to approve the meeting minutes of August 18, 2022, seconded by Member Gigante. Upon vote, the motion passed unanimously.

Morris Klein—Public Hearing continued
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. In the alternative, the Applicant seeks a reinstatement and/or re-approval of the variances previously granted in 1998 permitting a development coverage of 25.1% and a floor area ration of 0.20. The subject parcel is located on the east side of Wes 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.

The Chairman read the application into the record and established that the hearing was properly posted, mailed and published. He then read the submissions into the record which included the following:

- Architectural drawings by Robert E. Zampolin, AIA of Zampolin & Associates dated August 19, 2022, pages A-1 through A-6
- Plot Plan for Klein by Paul Gdanski, PLLC, dated August 26, 2021, latest revised August 29, 2022, pages 1 and 2.
- Excerpt from the Village of Montebello Zoning Ordinance on the Definition of Gross Floor Area.

Present were the Applicant Morris Klein, his attorney Adam Kurland, and his Architects Robert Zampolin and Michael Zampolin. Mr. Kurland said that his client wishes to build his dream home on this vacant property and was encouraged to do so on the advice of the then-building inspector Larry Picarello, a municipal employee, which was memorialized in a memo dated November 6, 2021. That memo was the basis on which Mr. Klein decided to buy the property, but once he submitted for a building permit, the new building inspector, Adam Gordon, referred him to the ZBA even though that Board granted these variances in 1998.

Mr. Kurland stated that the variances should be upheld because they are identical to the ones previously granted. Alternatively, there are factors to consider which were touched upon at the July meeting vis-à-vis

the square footage of Mr. Klein's proposed house. The Board requested new architectural plans with the floor-by-floor square footage clearly shown, which were submitted. He then invited Mr. Robert Zampolin to present.

Before he spoke, Ms. Terhune stated that Mr. Klein relied on Mr. Picarello's November 6, 2021 memo to buy the property because the house he planned to build would be the same size. However, she continued, Mr. Klein put forth an application for a much larger house with more and larger requested variances. Mr. Kurland said that was correct and that his client reconsidered and withdrew that application. Ms. Terhune thought it strange that Mr. Klein says he relied on the Building Inspector's interpretation while applying for a much larger house.

Also, she continued, the code itself places an expiration on ZBA approvals if a building permit is not issued. For the 1998 proposed house, two variances and a subsequently building permit were issued, for a particular house of a particular size with a particular layout. That Zoning Board based their decision upon that house, and although Sec. 195-108F of the Village code states that the area variances will expire if a building permit is not issued, the house was never built. This house is not the same house for which the permit was issued and therefore I'm not sure this Applicant can rely on a 1998 variance, she said.

Mr. Kurland reiterated that Mr. Klein would not have bought the property without Mr. Picarello's written assurances. Subsequently he decided the house he wanted to build exceeded what is allowed, but he pulled that application because he did not wish to endure the process of obtaining new zoning approvals. He resubmitted drawings in compliance with the 1998 variances and was surprised by the new building inspector's denial.

Ms. Terhune asked if Mr. Klein showed Mr. Picarello any plans at any of their consultations before or while he was under contract to purchase the property. Mr. Kurland said he did not. So that the Board fully understood the nuances of this application, Mr. Terhune gave an overview of the application to date, and stated that Mr. Klein alternatively is applying for the same variances should he lose the appeal of the decision. After some discussion regarding statues between the two attorneys, Ms. Terhune advised they have should have these legal discussions at another time. Mr. Kurland said that interest rates have risen and there are now real-life consequences for his client if he is not permitted to develop his property.

Mr. Robert Zampolin then presented, stating that the Kleins engaged his services two years ago and that the drawings date from July of 2021 and somewhat follow the same layout as the [former ZBA Application] Krause Residence. The house has a total square footage of 12,108 which includes garages, covered terraces and anything else under a roof. The second floor fits evenly over the first, except where the ceiling is vaulted. The basement, at 5,300 square-foot and its 500 square-foot mechanical have a ceiling height under 6'3" which does not count towards FAR, is not habitable, and is therefore considered to be a "cellar" rather than a basement. Likewise, the attic, with its decorative dormers, has a low ceiling height and no stair access.

Mr. Zampolin described in detail the layout and square footage of the house, which is designed in the tradition of a French Manor home, albeit stripped of some aesthetic details, and finished in limestone or precast concrete stained to resemble limestone, and a slate roof.

Chairman Gittens asked the average grade height to the roof. Mr. Zampolin said the height complies with the bulk table at 35 feet from the midpoint. Chairman Gittens asked for confirmation that the attic is not habitable and Mr. Zampolin said it was not, especially since there will be no staircase, only a hatch. Chairman Gittens said the numbers were overwhelming and that he would like to be certain that the calculations are correct. Mr. Zampolin said that as an Architect licensed in the State of New York with years of experience, he could testify that all the calculations are correct. Chairman Gittens said he wanted

measurements and calculations from exterior wall to exterior wall. Mr. Zampolin said those calculations were submitted and that he submitted the very same information that was asked of the Krauses.

After a brief discussion, Ms. Terhune stated that this is the direction in which the Board wishes to go and other applicants were required to submit same. Mr. Zampolin said he would furnish the Board with whatever pleases them but reiterated that all the numbers are real and correct and they included floor-by-floor totals as they were asked. Mr. Kurland suggested that any approvals could be conditioned upon submission of additional information as requested, but Ms. Terhune said this Board does not approve anything conditionally. It may condition its approvals on something else but looking at a plan and requirement more information on which to base their analysis and decisions is not cause for approval.

Mr. Klein was sworn in and introduced himself, explaining that he was uncomfortable with the direction in which the Board was heading and that he was feeling pushed around with these latest demands for information. He asked for a determination either way from the Board at this meeting because the process is causing anguish for him and his wife. Additionally, he continued, there is huge financial damage here. He explained that he and his wife are quiet people and that they wish to build a home where he and his family can live peacefully and comfortably and asked that the Board honor all that was presented up to this meeting and come to a determination.

The Chairman said that he sympathized with Mr. Klein but that the Board needs to be comfortable when making any decision. Given that this is such a large and complicated house, they must verify all that has been submitted to date, he added. Ms. Terhune offered to submit a memo with her legal analysis. She added that no one is entitled to variances and that the Applicant purchased the property based on the determination made in November of 2021. Building Inspector determinations, whether they are issued in error or not, are not binding, nor are they binding to any subsequent Building Inspectors. A decision was made in 1998 based on community character. That was twenty-four years ago. The Character is not the same today and this is not the same house, she said. She then stated that she would do some legal research into the questions and asked the Applicant to provide her with the analysis as request so she can advised the Board on the legal questions.

Member Bryan made a motion to direct the Board's counsel to draft a legal memo addressing all the legal facts of the questions before them. Member Wanderman seconded the motion and upon vote, all were in favor.

After questions from Member Bryan regarding the verification of the height of the elevations, the Chairman opened the public hearing. Before allowing the those present to speak, he read aloud each letter submitted in advance of the meeting from the following (copies available):

Rizaldi & Aimee Santiago, 31 West Gate Road, Montebello, NY dated September 13, 2022
Pamela and Middleton Floyd, 5 Babbling Brook Road, Montebello, NY dated September 8, 2022
Owen and Janelle Cosgrove, 1 Danielle Court, Montebello, NY dated September 13, 2022
Lynn and Robert Adams, 29 West Gate Road, Montebello, NY dated September 13, 2022
Dennis Cheeseman, 58 West Gate Road, Montebello, NY dated September 14, 2022

Except for Mr. Cheeseman's letter, all the writers said they do not wish the ZBA to uphold the appeal or allow the variances to remain because the house is too large, is out of character with the neighborhood and will cause parking and traffic problems. Mr. Cheeseman noted in his letter that the setback from the wall was measured incorrectly, but that was disproved by the Building Inspector earlier in the day.

Susan Shapiro, Esq., 75 Middletown Road, Nanuet, NY said she was hired by Robert Belisle of 3 Danielle Court, Montebello, NY to represent his and other neighbors' concerns over the character and safety issues related to building a large house at the end of the dead-end street at the foot of a Kakiat County Park. She

noted that she submitted a letter to the ZBA on behalf of her client dated September 15, 2022, just prior to the meeting and gave an overview of its contents. (Copy of letter on file.)

Ms. Shapiro said that these twenty-year-old variances were granted to the former owner primarily because he had a son with a significant injury requiring special accommodations and physical therapy. That was the reason, she said. Further, she continued, this is a completely different house, and quite frankly, Mr. Klein could have purchased a larger lot that would accommodate the size of the dream house he wishes to build. Ms. Shapiro enumerated other issues including the existing mapped floodplains, the clear cutting of all the trees, and potential parking issues on this narrow dead-end street, especially since the plans show only a two-car garage.

Ms. Shapiro refuted Mr. Klein's claims of financial hardship, stating that he actively purchases property elsewhere in the County and that he purchased this lot for \$330,000, which he could easily sell if this does not work out. It is not the responsibility of the ZBA to be concerned about the business decisions of an Applicant, she added.

After addressing the criteria by which all Zoning Boards must consider when making decisions, Ms. Shapiro asked the Board to provide covenant that runs with the land that prohibits any use variances for other uses, which prohibits short-term rentals and to mandate that all parking is screened by vegetation.

John Belisle, 3 Danielle Ct. Montebello, NY challenged the validity of the variances granted in 1998 because they were never properly posted or noticed at the time. After giving a detailed history of the property, he distributed copies of an email that was sent by Mrs. Klein to the residents stating that she wished to build a small, modest home.

Brandon Gottlieb, 44 West Gate Road, Montebello, NY said he was afraid an approval of this application would set a precedent of allowing [area] variances to run with the land, resulting in the proliferation of exceptionally large homes. If this is approved, it will be difficult to deny similar request, he added. Chairman Gittens said that each application is examined carefully and individually by this Board and decisions are made based on the merits unique to that application. No precedents are set here, he added .

Joan Cox, 544 Haverstraw Road, Montebello, NY said she sold the property to [former owners] the Cheeseman's, then explained that the village was incorporated to control zoning and to maintain the integrity of the community. New homes were being built at that time and this community wanted to keep its country, woody feel, so it's sad to see the McMansions springing up in Village. Mrs. Cox said her other concern was the flood plan on the property in question and on her own, noting that the last two major hurricanes caused the Mahwah River to overflow and flood the entire rear of her property and twenty-five feet into 62 West Gate Road. She acknowledged that the Kleins, having spoken with them, are genuinely nice people, but that she was unhappy about the huge house they wish to build.

Isabella Birkett Green, 2 Copeland Drive, Montebello, NY said she values the work that the Board is doing to protect the community and hopes they continue to do so. She said she attended the meeting because of the Mahwah River, which will surely flood more often with additional stormwater runoff from the amount of impervious surface being added to the lot. Ms. Green said that no matter what the Chairman said about the individuality of each case, precedents are indeed set.

Shawn Bloom, 4 Danielle Court, Montebello, NY said he moved here four years ago from the city after months of careful research. He chose this area for its proximity to nature and its bucolic aesthetics. He said he read the 2017 Comprehensive Plan of the village of Montebello cover to cover and concluded it was ignored here because a house such as this is not what is intended for this residential zone. Mr. Bloom that he purchased his home specifically because it is surrounded by other beautiful homes and trees and nature, all right next to a county park; But there are agencies that were not consulted for the application that should

have been due to the proximity of floodplains, endangered species, and a Harriman State Park. He said he does not object to someone building their dream home but believes that this gigantic home will ruin the whole neighborhood.

Maureen Danzig, 14 Babbling Brook Lane, Montebello, NY said she viewed the most recent plans and noticed that the house has the same footprint as the one submitted in 2021 for a 15,000 square foot house with larger requested variance. It is the same house, they just adjusted the ceiling and attic height, she said. The only difference is that the pool is gone. They were not being honest, she said, and expressed concerns over who would buy the house should the Kleins sell. Ms. Danzig wished the Kleins well and did not want to begrudge them of the opportunity to build their dream home but added that this was not the property for the house they want to build.

Rhonda Hack, 23 West Gate Road, Montebello, NY, said she heard the Applicant's attorney claim that houses are 5,000 square feet on average in the neighborhood, but that most homes here are actually 2500 square feet. This giant house, therefore, will be five times larger than the others and will ruin the neighborhood, she said.

Jacob Morales, 55 West Gate Road, Montebello, NY supported his neighbors' points of view and said the Kleins are welcome to the neighborhood provided they follow the zoning codes.

Gerald Barry, 45 West Gate Road, Montebello, NY said he went to the Village of Montebello website where the village is described throughout as a "rural community." The Characteristics of the community are important to us and this proposed house is not at all in the character or spirit of the community, he said.

No one else wishing to speak, the Chairman thanked everyone for sharing their comments and called for a motion. Member Wanderman made a motion to adjourn the public hearing to the next meeting in October, seconded by Member Dugandzic and upon vote, the motion passed unanimously.

The Board having no further comments or questions, Member Wanderman made a motion to adjourn the meeting at 8:52 p.m. Member Dugandzic seconded the motion and upon vote, all were in favor.