

A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY JANUARY 19, 2022, AT THE DR. JEFFREY OPPENHEIM COMMUNITY CENTER, 350 HAVERSTRAW ROAD, MONTEBELLO, NY 10901. THE MEETING WAS CALLED TO ORDER AT 7:00 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

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

Absent:

Member Bryan made a motion to approve the meeting minutes of November 17, 2022, seconded by Member Dugandzic and upon vote, the motion passed unanimously.

38 Coe Farm Road – PUBLIC HEARING

Naftali Brachfeld

48.07-1-8.3

Application of Naftali Brachfeld, 38 Coe Farm Road, Montebello, NY which was submitted to the Village of Montebello Zoning Board of Appeals for variances for: Side yard [required 25 feet, proposed 14.5 feet]; and Pool side yard [required 25+10 feet, proposed 34.2 feet] as per Sec. 195-13 Bulk Table, Use Group h, column 8 and Sec. 195-57D of the zoning code of the Village of Montebello. The Applicant has installed a pool and patio pavers that encroach into the required side yard. The parcel is located at 38 Coe Farm Road in the Village of Montebello, which is designated on the Ramapo Tax Map as Section 48.07 Block 1 Lot 8.3 in the RR-50 Zone.

Present were the Applicant’s contractor Hershy Fischer and his attorney Amy Mele. Ms. Mele recapped the application for the side yard variance which was short by two feet of the required 35 feet, and the other for side yard encroachment by the patio bump-out to accommodate the pergola. Ms. Mele reminded the Board that “lovely” photos of the of the pool, pergola and patio were submitted at the last meeting and wondered how this would ever negatively affect the neighborhood. She then read a letter from Mr. Jacob Beigel of 47 Coe Farm Road in Montebello in support of granting the variances because the work is a pleasing improvement to the home and the neighborhood at large.

Ms. Mele said that they corrected the typo on the application as requested, measured the distance from the side yard fence to the shed, which does not need a variance, and included the other accessories structures, the shed, trampoline and swing set, on the site plan as requested.

Ms. Mele then proceeded to go through the criteria for consideration and stated the following: The variances do not present an undesirable change detrimental to the neighborhood since the improvements are decorative and cannot be seen from the street. The benefit cannot be achieved in any other way since the Applicant is hoping they do not have to tear up the patio and the pergola. There is no adverse effect on the environment or the neighborhood as these are minor decorative landscaping changes with no significant impact on pervious surfaces. The variances are not substantial, one encroachment is a mere few inches and the other less than ten feet. The need for the variances is self-created but only because it was a mistake.

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

No one from the public wishing to speak, Member Wanderman motioned to close the public hearing. Member Dugandzic seconded the motion and upon vote the motion passed unanimously.

Chairman Gittens mostly agreed with Ms. Mele's criteria assessments and asked the Board to opine on the application.

Member Dugandzic said she appreciated that no one from the public spoke against granting the variances and that there were actually two public comments in favor, adding that she would feel comfortable granting the variances.

Member Wanderman said that while he was in favor of granting the variances, he was concerned that a precedent for granting variances for "mistakes" was being set. In this case, however, he said he believed it was an honest mistake.

Member Gigante agreed with Members Wanderman and Dugandzic.

Member Bryan agreed the work is in no way a detriment to the character of the neighborhood but cautioned the builder that he should have included the pergola in the permitting process and agreed with Member Wanderman's overall assessment.

No one having further comments, the Board put the matter to a vote. Member Wanderman made a motion to grant the two area variances, seconded by Member Dugandzic. Upon Vote, the motion passed unanimously.

8 Rose Hill Road

Aufgang Architects on behalf of Konstantino and Dina Terranova

41.17-1-60.2

Application of Ariel Aufgang, Architect, 74 Lafayette Avenue, #301, Suffern, NY which was submitted to the Village of Montebello Zoning Board of Appeals for variance for: Development Coverage [required 20%, proposed 21.67%] as per Section 195, attachment 2, row h, column 13 of the zoning code of the Village of Montebello. The parcel is located on the south side of Rose Hill Road 488 feet west of Spook Rock Road in Zone RR-50.

Chairman Gittens read the application and submissions into the record and swore Mr. Aufgang in. Mr. Aufgang explained that the one-story farmhouse was built in the late 1800s on a large lot. There is a lot of coverage but not a lot of square footage, and as his clients have four children, they are running out of space.

Ms. Terranova was sworn in and explained that the house convinced them to move here from New York City and that the proposed changes will afford them more room for their growing family while maintaining its beauty and charm.

Mr. Aufgang said that to accomplish this, a portion of the house will be demolished and replaced with a two-story addition with a basement, at roughly 1000 square feet per floor. Steps were taken to ensure the addition cannot be seen from the street and to keep the chimneys code-compliant while the flat-roofed

addition remains behind the house. The orientation is in line with the existing house, which is perpendicular to the road. The parcel is subject to a subdivision from 2011 which cut the original 4 acres in half. Once complete, he continued, the house will be compliant with floor area ratio, required setbacks and maximum height and the only variance needed is for 1.67% of lot coverage.

Chairman Gittens asked what was calculated toward development coverage. Mr. Aufgang said all impervious surfaced including the driveway, patios, and the pool house are included in the calculations. We are aware of the letter from Rockland County Planning regarding the discrepancy in the proposed variance and the Building Inspector's denial letter¹. However, he explained, after the denial letter we reduced the variance further by using pea gravel for the walkways instead of impervious pavers.

The Chairman asked how much of the development coverage is new besides the addition. Mr. Aufgang said the only extra development coverage is the addition and nothing more. Member Dugandzic asked if a roof deck was proposed for the addition. Mr. Aufgang said it is a flat roof but there will be no access and that it is flat so that it is lower than the chimneys. Member Bryan said that the first page of the plans need to correspond with page C001 for consistency. Mr. Aufgang explained that the first page is the survey which includes all that was measured. Chairman Gittens noted that the survey was done before the reductions and shows existing conditions with the pavers. Mr. said that subsequent surveys will show the changes.

Ms. Terhune said that the home is right at the limit of FAR. Mr. Aufgang agreed and attributed that to the basement which is included in the calculations. Chairman Gittens asked if there will be an attic or covered balconies on the addition. Mr. Aufgang said there will be no attic but there will be a balcony off the master suite, which won't be covered but there will be an overhang from the eave.

No one having further comments, Member Dugandzic made a motion to set the public hearing for the next available meeting. The motion was seconded by Member Wanderman and upon vote, all were in favor.

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 ratio of 0.20. The subject parcel is located at 62 West Gate Road, 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 read the application into the record, noted that neither the Applicant nor his representative were present, and opened the public hearing.

Susan Shapiro, Esq., 75 Middletown Road, Nanuet, NY representing Robert Belisle of 3 Danielle Court, Montebello, NY in this matter, said she submitted a letter dated December 15, 2022 reiterating their concerns as stated in her September 15, 2022 letter, and asked that the Board reject Mr. Klein's requests for all the reasons stated and also because information was requested by this Board which Mr. Klein neglected to submit. The Chairman submitted the letter into the record (copy on file).

¹ The denial letter from the building inspector dated January 17, 2023, notes the proposed development coverage of 24.34% where the max. is 20%. The proposal was thereafter reduced to 21.67%.

Al Rubin, 16 Kings Gate Road, Montebello, NY said that this is a sensitive property because it is at a gateway to Kakiat Park. The development of the property to accommodate a very large house, a pool and a tennis court, theoretically invites frequent entertainment of many people at once, which will lead to a lot of traffic. And since there is so little parking proposed for the property, people will inevitably park at the entrance to the park thereby blocking the passage of any emergency vehicles. Mr. Rubin found this to be unacceptable because emergency vehicles are often called to the park for forest fires. He added that this project may have been approved in 1998 because the neighbors were also the parents of the Applicant. We are happy it was never built because it was too big for the property, with its wetlands and slopes, and did not conform to the rest of the neighborhood.

Jeremey Katz, 5 Kings Gate Road, Montebello, NY, said he moved here in July 2020 and feels that the number of people opposed to the proposal who showed up to this meeting speaks volumes.

John Belisle, 3 Danielle Court, Montebello, NY said he found it curious that the basement ceiling height is 6'3" [so that it is excluded from FAR calculations] while Mr. Klein himself is 6'5".

Joan Cox, 544 Haverstraw Road, Montebello, NY said that this property was part of her own property before she subdivided the land. Two or three times the Mahwah River flooded and the water climbed 15 feet onto the property beyond the 100-year flood plain, she said, and as such did not see the feasibility of building such a large house with accessory structures.

Shawn Bloom, 4 Danielle Ct., Montebello, NY said that the Rockland County GML review made many good points. It also made him realize that there are several agencies that need to weigh in on this proposal such as the county Drainage Agency, Health Department, and perhaps even the DEC and FEMA. He expressed his growing concern over the potential overdevelopment of the area, the impact on natural resources and wildlife, and the threat to his family's way of life, and asked the Board for a ruling to end this process.

Manuel Jorge, 4 Belvedere Path, said he was from New York City and loves living here because it is quite and close to nature. There have recently been a lot of cars parked by the park entrance, however, which he hoped was not a harbinger of things to come. The fact that the Applicant is not here but all the neighbors showed up should tell you something, he said, adding that it is important to us because our quality of life is being threatened.

Isabella Birkett, 2 Copeland Drive, Montebello, NY said she respects the Board and appreciates all they do for the Village. The possibility of setting a precedent scared her the most, she said, but she was incredibly grateful for the rules and determinations made here by the Village on her and her neighbors' behalf and hoped that the Board will come to a decision in their favor this evening.

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

Ms. Terhune said that the Applicant is not here and requested in writing that the Board decide in his absence, and then laid out the procedure for the public's benefit as well as for the Board's explaining:

The Board has been asked two questions for discussion and answers. First, whether the May 12, 2022, determination by Building Inspector Adam Gordon should be upheld or reversed. The application wants you to reverse the determination that the 1998 variances have expired and cannot be relied upon. The building inspector noted in that letter that the plans approved in 1998 are not the plans submitted here. He also noted that, although the provision of the code stipulate that the variances expire if a building permit is not issued, and although a permit was indeed issued, it eventually expired and the house was never built.

This determination reversed that of the former building inspector who said that “a single-family dwelling may be constructed on the lot in conformance with the variances granted in 1998.”

Second, if you uphold the May 12, 2022, letter, the Applicant requested that you grant the variances anew. A village cannot be estopped from enforcing its own zoning law because of an error by any official, and we don't know what the former building inspector was looking at when he made his determination. Also noted for the record is the fact that the Applicant has stated that he bought the property reliant upon that initial determination, but instead applied to the ZBA with much greater variances than those of 1998.

Ms. Terhune said that, because this is such a complicated issue, the Board can either vote tonight, or discuss the matter further and direct her to draft a resolution, which will reflect on the record all that was discussed for formal adoption at the next meeting.

The Chairman said he felt that neither request by the Applicant has merit, and Member Dugandzic agreed. Member Wanderman said he unequivocally wished to uphold the current Building Inspector's decisions. Member Gigante also agreed, because the 1998 variances were granted for a different house. It's not apples to apples, but apples to oranges, she added. Member Bryan said it was important to note that the Applicant said he purchased the property based on the variances. Those drawings were not represented and if he is asking for something to be upheld, he should have presented what was approved. He was asked multiple times to consider and submit other configurations but failed comply and therefore Mr. Gordon's decision should be upheld.

Ms. Terhune said that, since the Board is unanimous in their determination, it should direct her to draft a resolution upholding the Building Inspector's decision. Member Wanderman made a motion to direct Ms. Terhune to prepare a draft resolution for review and formal acceptance at the next meeting. The motion was seconded by Member Bryan and upon vote, the motion passed unanimously.

Ms. Terhune said now that they chose to uphold the building inspector's determination, the Board must decide whether to grant the variances, one for 25.1% development coverage (20% is the maximum) and the other for a 0.21 FAR (.15 is the maximum) for a 15,000+ square-foot house.

Chairman Gittens went through the five Criteria and found them all lacking, especially considering climate change, and noted that the County GML expressed similar concerns. The environment in 1998 was very different and the removal of trees and increased vehicular traffic, along with more rain events, will be very detrimental the physical environment of the community.

Member Wanderman wanted the record to reflect that there were 21 members of the public were present, all of whom oppose the project. This reflects poorly on the proposal and is a clear indicator of how it would impact the neighborhood, he added. Member Gigante agreed and said that it was especially egregious since the occasional flooding will be made worse from the removal of the trees. Member Bryan said the character of the neighborhood is shaped by the laws of the Village and once those laws are transgressed, the community is impacted. He explained that he takes his position as a Zoning Board member seriously and that this application weighs heavily on him and he would not be comfortable approving the variances. Chairman Gittens said that the ZBA exists to help people by offering relief when necessary and reasonable, not for variances of this magnitude, especially since the Board is tasked with granting the minimum variance possible. Variance, when acted upon in a timely manner, generally run with the land. This is clearly not the case. Member Dugandzic agreed with the Chairman and noted that the proposed increased development coverage and FAR are substantial and will negatively impact the neighborhood and the environment in so many ways.

Ms. Terhune said the issue of whether the basement can be used for habitable space is concerning, and that the Building Inspector did note that the plans show two egress window, two doors and an elevator hoistway

door. It would be very easy and inexpensive to remove a drop ceiling to raise the headroom, and while the Board cannot speculate, it can note that the Applicant originally applied for four variances including a development coverage of 37% and a FAR of .31 which was subsequently pared down. While the variances are decreased and some of the hardscapes were removed, it is the same house with the addition of a drop ceiling in the basement. The Board asked for clarification on this and it was not provided. She noted for the record that that the Board cannot vote based on public comment or favoritism and that it must judge independently on the impacts of the character of the neighborhood.

No one having any more comments, Member Wanderman made a motion to instruct counsel to draft a resolution denying the variances for the reasons stated by the Board for formal adoption at the next meeting. The motion was seconded by Member Bryan and upon vote, the motion passed unanimously.

Member Dugandzic made a motion to adjourn the meeting at 8:43 p.m., seconded by Member Bryan and upon vote all were in favor.