

A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY FEBRUARY 16, 2023, 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
	Carl Wanderman	Member
Others Present:	Alyse Terhune	Assistant Village Attorney
	Regina Rivera	Planning & Zoning Clerk
Absent:	Janet Gigante	Member

Member Wanderman made a motion to approve the meeting minutes of January 19, 2022, seconded by Member Bryan and upon vote, all were in favor.

8 Rose Hill Road

Aufgang Architects on behalf of Konstantino and Konstantina 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.

Present were Dan Chadwick, of Aufgang Architects and the Applicants Mr. & Mrs. Terranova. The Chairman read the application into the record and then swore in Mr. Chadwick, who explained that they were requesting only a minor variance for 1.67% coverage. The house has a very long footprint but the living space is inefficient and insufficient. The area chosen for the addition is in the rear of the house so it cannot be seen from the road, and the roof is flat so the chimney would not have to be raised. The overall goal is to provide ample living space for a growing family with little visual impact from the road. Mr. Chadwick added that they reduced the original variance request by replacing pavers behind the pool house and the front walkway with pea gravel.

Chairman Gittens asked why more pavers were not replaced with pea gravel to avoid a variance altogether. Mr. Chadwick said they took out ask many pavers as was desirable and that they wanted to keep the pool pavers for obvious reasons.

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

Sheldon Krause, 743 Passaic Avenue, Clifton NJ said he was there as a future neighbor and the owner of the abutting property 6 Rose Hill Road, and wanted clarification on the non-conforming side yard, which is 13.2 feet. He explained that when the property was subdivided into three lots, the ZBA in 2011 granted that side yard variance where the minimum was 20 feet. He wanted to be sure that there would be no change to this already non-conforming side yard and recommended that it be shown more clearly on the plans. He

then asked if the flat roof of the addition was intended to be used recreationally. Mr. Chadwick said it will not be and that there is no access.

Regarding the fence behind the house, Mr. Krause said that he wishes to install some arborvitae for screening after their own house is built but that the Terranova’s fence is 2.1 feet off their property. He said the Terranova’s agreed to relocate the fence and asked that it be part of the record.

No on having any more comments, Member Dugandzic made a motion to close the public hearing, seconded by member Wanderman and upon vote, all were in favor.

The Chairman went through the criteria for granting variances and determined that the addition will not have any negative impacts on the neighborhood or the environment, that the variance is not substantial and that the variance was reduced in good faith.

Member Wanderman made a motion to approve the development coverage variance of 1.67%. The motion was seconded by Member Dugandzic and 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
8 Rose Hill Road

**VARIANCE DECISION FOR
PROPERTY IDENTIFIED ON
THE VILLAGE OF
MONTEBELLO TAX MAP AS
Section 41.17, Block 1, Lot 60.2**

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 13,
maximum development coverage.

_____X
**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO
ZONING LAW FOR THE PURPOSE OF PARTIALLY DEMOLISHING AND RE-
CONSTRUCTING A PORTION OF AN EXISTING SINGLE-FAMILY HOME
WHICH WOULD RESULT IN DEVELOPMENT COVERAGE
IN EXCESS OF THE MAXIMUM ALLOWED**

The property location, zoning district and proposed project. The subject property is located at 8 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 60.2 (the “Parcel”). The Parcel is located in the Rural Residential District (“RR-50”) zoning district and is improved with a single-family home. 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.” The Parcel is owned by Konstantinos and Konstantina Terranova, who authorized Ariel

Aufgang to represent them as their agent before the Zoning Board of Appeals (together, the “Applicants”).

The existing home was granted a side yard variance from the required 25 feet to 23.4 feet by ZBA Resolution No. 1151, dated July 21, 2011. The Zoning Board of Appeals (the “Board”) incorporates ZBA Res. No. 1151 by reference as if fully set forth herein.

The application for variances. On November 23, 2022, application was filed with the Board requesting an 8.35% variance from the required 20% maximum development coverage to 21.67% for the purpose of partially demolishing a portion of the existing house and reconstructing a two-story addition with a total of 3,102 sq. ft.

Application Materials. The following materials were submitted to the Board, which materials are incorporated into and made a part of this Decision as if set forth fully herein and upon which this Board relied during its deliberations:

1. Letter of denial of building permit from the Village of Montebello Building Inspector, dated November 8, 2022.
2. Application dated November 23, 2022, with accompanying narrative.
3. Architectural plans for “Proposed Renovation Rose Hill Rd House,” prepared by Ariel Aufgang, consisting of 12 sheets as listed on sheet T-001, “Cover Sheet & Site Information, Plot Plan,” last revised November 23, 2022.
4. Affidavit of ownership signed by Konstantina Terranova, dated December 2, 2022.

General Municipal Law § 239-m. The Application was duly referred to the Rockland County Planning Department (“RCPD”) pursuant to GML § 239-m. By letter dated January 17, 2023, RCPD responded with eight (8) comments.

Agency Referrals. The Application was duly referred to the Rockland County Highway Department, which responded by letter dated December 15, 2022. The owners shall comply with all requirements therein.

Public Hearing. A duly noticed public hearing was convened on February 14, 2023, and adjourned to all subsequent meetings wherein the Applicants appeared. During the public hearing, the 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 February 14, 2023.

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), the granting of an area variance for a single-family, two-family or three-family residence.

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 Applicants desire to build an addition to the existing single-family home that would result in nonconformance with the zoning law. Therefore, they applied to the Board for relief from Section 195-13, "Table of Bulk Requirements," Use Group "h," column 13, for a 8.35% variance from the required 20% maximum development coverage to 21.67%.

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.

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 decided it would not. Although more modern in appearance than the main house, the addition will be located to the rear of the main house and will not be overly visible from the street.
2. The Board considered whether the benefit sought by the Applicants could be achieved by some method, feasible for the them to pursue, other than an area variance and decided that given that the Applicants' desire to add to and modernize the house as well as efforts to reduce the required variance through use of pervious pea gravel were sufficient to conclude that in this case the benefit to the Applicants outweighed any perceived detriment to the neighborhood and the community.

3. The Board considered whether the requested area variance was substantial and determined that a 20% to 21.67% variance was not substantial.
4. The Board determined that a minor variance to lot area coverage 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 Board's deliberation, it does not preclude granting the variance where other factors weigh in favor of the Applicant. Here, the Board was satisfied that the Applicants' desire to increase the size of the house represented a reasonable accommodation between their need as weighed against the Village's desire to maintain a particular residential character.

Applicants' 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 Law and Village of Montebello Zoning Law as to the need for the requested variance.

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," column 13, in the form of an 8.35% variance from the required 20% maximum development coverage to 21.67% for the purpose of partially demolishing a portion of the existing house and reconstructing a two-story addition with a total of 3,102 sq. ft. on property located at 8 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 60.2.

In granting this variance, the Zoning Board relied on the testimony of the Applicants and the submissions identified herein and made a part of this Decision by reference thereto. This variance is granted in reliance on its individual purpose as shown on the referenced application materials and is specific to the Architectural plans 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 Architectural plans 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 this Decision is 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. Full compliance with the Rockland County Department of Planning letter dated January 8, 2023, and Rockland County Highway Department letter dated December 15, 2022.
2. The Building Inspector is hereby respectfully directed to conform the plans submitted for construction to the relief granted herein.
3. The Building Inspector is hereby respectfully directed to make note that the maximum FAR of .15 will be reached with the addition to this house and to confirm that .15 FAR will not be exceeded prior to issuing a building permit.
4. 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:

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

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.

No one was present for the Applicant. Ms. Terhune explained, for the Board’s benefit and for the record, that she was asked to draft a resolution on both negative votes taken at the January 19, 2023 ZBA meeting and to circulate the draft for review. If the Board feels it accurately represents their concerns, she continued, it will be formally adopted at this meeting. There were two questions, she said. The first was whether the variances granted were expired. As per Section 195-108 F, the variances will auto expire in one year unless a building permit is issued. A permit was issued in 1999, but the subsection F also says that the permit must be issued in accordance with the plans for which the variance was granted. Mr. Klein did not present the same house as submitted in 1999 and for that reason and others, this Board decided to uphold Building Inspector Gordon’s determination that the variances expired and do not run with the land. Ms. Terhune

added that even though the former Building Inspector made the opposite determination, this Board deemed that decision an error.

No one having any comments, member Wanderman made a motion to uphold the Building Inspector’s determination of May 12, 2022. The motion was seconded by Member Bryan and upon vote, the motion passed unanimously.

Ms. Terhune said that in the alternative, if the determination is upheld, the Applicant requested that the variances be granted. The Board discussed in detail the five factors by which variances should be judged and agreed that the character of the neighborhood will be changed, the desires of the applicant can be achieved in other ways, the variances are substantial, that there will be negative environmental impacts, and that the “hardship” was self-created since they could have built a house that meets the zoning code.

Member Wanderman led the Board in thanking Ms. Terhune for the clarity of her draft resolution and then made a motion to deny the variances. Member Bryan seconded the motion and upon vote, the motion passed unanimously.

Ms. Terhune noted that she included language in the draft that made it clear the Board was interpreting Section 195-108F for all-time that a variance is not valid in perpetuity and that it is indeed tied to the expiration of the building permit itself. In the future, this Board may include a timeline in all approvals. Member Wanderman said that shouldn’t be necessary, but Ms. Terhune countered that it should until the Section of the code is modified to include the directive “it will expire.” The Chairman and Member Bryan agreed that a timeline is appropriate and effective, and Member Bryan felt that if an applicant is serious about obtaining a variance, they should act on it.

VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS
COUNTY OF ROCKLAND, STATE OF NEW YORK

X

In the Matter of the Application of
MORRIS KLEIN

**INTERPRETATION AND
DECISION OF THE ZONING
LAW AS IT APPLIES TO
PROPERTY IDENTIFIED ON
THE VILLAGE OF
MONTEBELLO TAX MAP AS
Section 40.19, Block 1, Lot 36.2**

Appealing a determination of the
Village of Montebello Building Inspector and, in the
alternative, if the determination is upheld, for two area
variances in the form of an increase in maximum
lot coverage from the required 20% to 25% and increase
in floor area ration from the required .15 to .20.

X

The property location, zoning district and proposed project. The subject property is located at 62 West Gate Road, Village of Montebello, County of Rockland, State of New York, identified on the Tax Map as Section 40.19, Block 1, Lot 36.2 (the “Parcel”). The Parcel is vacant land located in the Rural Residential District (“RR-50”) and contains 60,540

SF (1.39± acre), which requires a minimum lot area of 50,000 SF. It is owned by Morris Klein (the “Applicant”), who wishes to construct a single-family dwelling (“SFD”) on the Parcel, which residential use is permitted provided the structure conforms to all bulk requirements.

Relevant history. The subject lot is “Lot 2” of the Joan H. Cox Subdivision, last revised November 7, 1997, and filed in the Rockland County Clerk’s Office on November 25, 1997. Since the filing of the Cox Subdivision Plat, many properties within the subdivision have been improved with single-family homes.

On December 17, 1998, the prior owner applied to the Montebello Zoning Board (the “ZBA”) for area variances to build a SFD. Specifically, the ZBA granted two forms of relief from the zoning law: 1. Maximum development lot coverage of 25.1% from the required 20% for the purpose of constructing “a single family dwelling with accessory structures such as a swimming pool, cabana, shed, large driveways and turnaround driveway.” 2. Maximum Floor Area Ratio (“FAR) of .20 from the required .15. A building permit was issued on October 15, 1999 to construct a SFD in accordance with the 1998 variances (Permit #1209). Permit #1209 was twice renewed from a duration of one-year each, the last time on November 28, 2001. That building permit expired two years later and was not renewed. No construction of any kind has occurred on the Parcel.

Relevant Building Inspector Determinations and Applications to the ZBA.

Building Department Application 1: The Applicant entered into a contract for sale for the Parcel on October 7, 2020 and closed on February 1, 2021. Prior to executing the contract of sale the Applicant stated that he met with then-Montebello Building Inspector, Larry Picarello, and was told that a SFD could be constructed on the lot in conformance with the 1998 variances. By determination dated November 6, 2020, Picarello noted, among other things, that “[I]n accordance with ZBA Resolution Calendar Case No. 1057 dated December 17, 1998, a single-family dwelling may be constructed on the [Parcel].”

However, on September 22, 2021, Picarello denied an application for a building permit citing plans¹ that exceeded the relief granted in 1998 including a variance for, 1) rear yard (18.5’ from the required 25’), 2) maximum development coverage (from the required 20% to 37%), and 3) FAR (from the required .15 to .31). Picarello also noted in a separate

¹ Consisting of a plot plan dated August 26, 2021, architectural drawings dated August 9, 2021 and landscape concept plan dated July 7, 2021.

letter that fence height and setback variances may be required depending on additional information not provided at that time.

ZBA Application 1. On October 20, 2021, the Applicant applied to the ZBA for four (4) variances necessary to construct an 18,609 sq. ft. dwelling on the parcel: 1) a 6.5' rear yard variance from the required 25' to 18.5'; 2) development coverage variance of 17% from the maximum required of 20% to 37%; 3) a .16 FAR variance from the permitted .15 to .31; and 4) south wall side yard setback variance of .4' from the required 8.9' to 8.5'. The Applicant was to appear before the ZBA in November 2021, requested an adjournment to the December meeting but withdrew the application by letter dated December 14, 2021.

Building Department Application 2: On May 12, 2022, Building Inspector Gordon denied an application for a building permit to construct a single-family home on the property that purportedly complied with the variances granted in 1998. Gordon noted that the proposed single-family home differed from the house presented to the building department in 1998 for which the subject variances were granted. He also noted that Permit #1209 granted on October 15, 1999, had expired. He informed the applicant that the architectural plans could be conformed to the current zoning law or an application to the ZBA could be made.

ZBA Application 2. By application dated June 7, 2022, the Applicant appealed the May 12, 2022, Gordon determination to the ZBA seeking, in essence, a decision that the 1998 variances ran with the land and did not apply to a specific house design or footprint. In the alternative, for two (2) variances: 1) development coverage from 20% to 25%; and 2) Floor Area Ratio ("FAR") from .15 to .20.

DECISION ONE: INTERPRETATION OF VILLAGE OF MONTEBELLO ZONING LAW § 195-108F

General Municipal Law § 239-l, m, n. An appeal seeking the interpretation of zoning law by a zoning board of appeals is not subject to review by the Rockland County Planning Department pursuant to GML 239-l, m or n.

Public Hearing. A duly noticed public hearing was convened on August 18, 2022, and adjourned to all subsequent meetings wherein the Applicant appeared. During the public hearings, the ZBA heard testimony from the Applicant, his representatives and all those wishing to address the ZBA on the matter. After hearing all comments from the public, the hearing was closed on January 19, 2023.

State Environmental Quality Review Act (SEQRA). The ZBA determined that the Appeal was a Type II Action pursuant to 6 NYCRR 617.5(c)(37), the interpretation of an existing code, rule or regulation. No further environmental review was required.

ANALYSIS AND DECISION REGARDING THE GORDON DETERMINATION.

Standard of Review. A zoning board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken. N.Y. Village Law § 7-712-b(1). Thus, it is within the ZBA's discretion to affirm, reverse or modify the Building Inspector's May 14, 2022, determination.

Decision. The ZBA finds that Building Inspector Gordon's determination should be upheld for the following reasons. First, it is axiomatic that when a zoning board of appeals is presented with an application for one or more area variances, they are presented with a specific proposed structure or structures shown on a specific proposed site plan. Here, although it is unclear whether Picarello was shown a particular plan before issuing the November 2020 determination, there is no question that the plan for a single-family dwelling he denied in 2021 was not the plan presented either to the building department or the ZBA in 1998. Likewise, the plan shown to Gordon in 2022 was not the 1998 plan.

Second, the Applicant's reliance on Montebello Code § 195-108F for the proposition that the 1998 variances have not expired, indeed, will never expire, is misguided. Section 195-108F states that variances will automatically expire in one year unless a building permit is issued. The Applicant posits that that because a building permit was issued in 1999, the 1998 variances will never expire. This characterization ignores a significant qualifier contained in § 195-108F; the building permit must be issued "in accordance with the plans for which such relief was granted." Here, the house proposed in 2022 is not the house proposed 1998. It is completely different. Therefore, the ZBA holds that the variances granted in 1998 were specific to the plans upon which the 1998 ZBA relied and cannot be transferred to a different set of plans. Likewise, the ZBA holds that a building permit is

specific to the plans for which it was issued and cannot be transferred to a different set of plans.²

Third, every application for zoning relief requires a zoning board to consider the enumerated factors set forth in Village Law § 7-712-b and, ultimately, balance 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.” It is reasonable to conclude, as this ZBA has, that a neighborhood and community changes over time and that area variances not acted upon for 22+ years cannot be revived in the absence of reconsideration of the changes in the neighborhood and community. To conclude that the mere issuance of a building permit creates a vested right to an area variance in perpetuity is not reasonable and contrary to the principals of zoning relief contained in Village Law § 7-712-b; especially where the 1998 building permit was never acted upon. Thus, the ZBA finds that the 1998 variances have been abandoned and no longer in force or effect for any purpose.

Furthermore, the ZBA concludes that § 195-108F must be interpreted in the context of § 195-97, “Expiration of permits,” so as to effectuate the purpose of the zoning chapter as a whole. Under § 195-97 a building permit expires at the end of two years and is “void and of no effect” if not acted upon, subject to a one-year extension granted by the building inspector. The two-year expiration period applies to the extension unless an application is made to the ZBA for another extension of the building permit. Notwithstanding the language of § 195-108F, the ZBA concludes that variance expiration is tied to building permit expiration not issuance. As applied here, the 1999 building permit was last extended for one additional year on November 28, 2001. No application was made to the ZBA for a further extension. Therefore, the 1998 variances expired on or about November 28, 2002.

Finally, to the extent the Applicant relies on the September 22, 2021, Picarello determination, the ZBA finds that said determination was issued in error and hereby reverses, revokes and annuls it.

On the motion of Member Wanderman, seconded by Member Bryan, the Village of Montebello Zoning Board of Appeals hereby upholds the May 12, 2022, determination of Building Inspector Adam Gordon that the area variances granted 1998 to SBL 40.19-1-36.2 are null and void.

² By “plans,” the ZBA means all plans presented to the building department or the zoning board, including, but not limited to site plans, architectural plans, landscaping plans, and so forth.

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

DECISION TWO: VARIANCE APPLICATION

In the event that the Gordon determination was upheld, the Applicant requested two area variances: 1) a 25% variance to increase development coverage from the maximum 20% to 25%; and 2) a 33% variance to increase FAR from .15 to .20 for the purpose of constructing a 12,108 square foot house on the parcel.

Preliminary findings.

The actual lot development coverage variance required to build a 12,108 SF house is not 25%, but 38.56%. The gross lot area calculated by the Applicant failed to deduct the flood plain contained on the lot from gross lot area, as it must pursuant to § 195-14A.³ The Village Engineer noted that after deducting the flood plain area, the resulting gross lot area is 58,310 SF, not 60,540 as shown on the plot plan. For the purpose of § 195-14A, the proposed coverage of 15,123 SF results in a variance of 38.56%, not 25%. Notwithstanding this discrepancy, the ZBA's following decision is predicated on a 25% lot development coverage variance. In other words, although the Board is concerned about the precedential effect of an even greater numeric variance, the bulk of the proposed building on lot and its effect on the neighborhood and the community should be given more weight than a numeric value.

As noted earlier, the subject lot is part of the Joan H. Cox Subdivision filed in the Rockland County Clerk's Office on November 25, 1997. As relevant here, many of the parcels within the subdivision have been improved with single-family homes. Thus, when the original 1998 variances were granted, it is reasonable to assume that many of the surrounding properties were vacant. Since that time, the neighborhood has been substantially

³ "As part of any minimum lot area requirement of this chapter, no land under water, subject to or within the one-hundred-year-frequency floodplain, freshwater wetlands, within easements or rights-of-way for any utilities, with slopes of over 25% or within a designated street line of any road shall be counted."

developed. County records reveal that the homes in the surrounding neighborhood on similar-sized lots range from approximately 2,500 to 4,600 SF. This was confirmed by individual Board member observations.

Submissions. The following materials were submitted to the ZBA which materials are incorporated into and made a part of this Determination and upon which this Board relied during its deliberations:

1. Application dated June 7, 2022;
 2. Narrative summary “Klein Residence”;
 3. Building Inspector Adam Gordon permit denial letter dated May 12, 2022;
 4. Former Building Inspector Lawrence Picarello determination letter dated November 6, 2020;
 5. ZBA Resolution No. 1057 – December 17, 1998;
 6. Planning Board Resolution PB-14 of 1998;
 7. Planning Board Resolution PB-02 of 1999;
 8. Architectural drawings by Robert E. Zampolin, A.I.A. of Zampolin & Associates dated August 19, 2022, pages A-1 through A-6;
 9. Plot Plan for Klein dated August 26, 2021, latest revised date August 29, 2022 from Paul Gdanski P.E., P.L.L.C. , 2 pages;
 10. Excerpt from Village of Montebello Zoning Ordinance: Definition of Gross Floor Area;
 11. GML review from Rockland County Planning Department dated October 13, 2022;
 12. Review from Village Engineer Martin Spence dated October 15, 2022.
- 1.

General Municipal Law § 239-m. The application was duly referred to the Rockland County Department of Planning (“RCDP”) pursuant to GML § 239-m. By letter dated August 29, 2022, RCDP recommended several comments, including concern that the variances requested are significant and a portion of the parcel encroached into the 100-year flood zone of the Mahwah River. The ZBA considered RCDP comments before making its decision. Specifically, the ZBA agrees with RCDP’s concern regarding the flood plain. Although the Village Engineer confirmed that the proposed structure does not encroach into the flood plain, after deducting the flood plain area as required under § 195-14A, the resulting gross lot area is 58,310 SF, not 60,540 as shown on the plot plan. Thus, the RCDP comments are pertinent to the ZBA’s deliberations.

State Environmental Quality Review Act (SEQRA). The ZBA determined that the Appeal was a Type II Action pursuant to 6 NYCRR 617.5(c)(17), granting of area variances for a single-family, two-family or three-family residence. No further environmental review was required.

Public Hearing. A duly noticed public hearing was convened on August 18, 2022, and adjourned to all subsequent meetings wherein the Applicant appeared. During the public hearings, the ZBA heard testimony from the Applicant, his representatives and all those wishing to address the ZBA on the matter. After hearing all comments from the public, the hearing was closed on January 19, 2023.

ANALYSIS AND DECISION REGARDING THE 2022 VARIANCE APPLICATION.

The Zoning Board’s Findings. When considering whether to grant area variances, the ZBA must consider, and did consider: (1) whether the requested variances are the minimum necessary to relieve the practical difficulty or economic injury; (2) whether the variances are substantial in relation to the zoning code; (3) whether the variances will produce a change in the character of the neighborhood or a substantial detriment to adjoining property owners; (4) whether the alleged practical difficulty or economic injury be overcome by some other method; (5) whether granting the said variances will affect the health, safety or welfare of the neighborhood or community; and (6) whether granting the variances will have any effect on government facilities or services. Any area variance so granted by the ZBA must be the minimum variance that it deems necessary and adequate.

The Montebello Comprehensive Plan.

When considering whether to grant an area variance, the Board must consider that the bulk requirements enacted by the Village Board were intended to effectuate a primary goal of the Comprehensive Plan, which was to maintain the existing scale of residential neighborhoods, protect the rural character of the Village. In residential districts, this protection is best described by the floor-area-ratio of building to lot size.

The point of FAR is to accomplish the aims of the 2017 VOM Comprehensive Plan specifically par. 11 of the Comp Plan’s “Key recommendations”:

Montebello continues to be concerned with houses in older sections of the Village being enlarged beyond the existing neighborhood character or being razed and completely replaced with new larger inconsistent homes. This was a trend first identified in the 2009 update. The Commission’s Members continue to recommend greater protections for existing neighborhood character as defined by the size of structures, presence of stone walls, and the strengthening of the Village’s rural character, including rural character design guidelines in most residential areas.

As a result of this observation, the Village Board adopted the FAR standards – not only to protect existing houses from being oversized, but also to apply to new subdivisions; to

regulate the size of those houses in those subdivisions to maintain the scale of the Village. In fact, Objective “a” of Goal “1” of the Comp Plan stated:

Adopt a Land Use Plan and subsequent site planning standards that will maintain the existing residential scale of single family areas and enhance and protect the natural character of Montebello.

Incompleteness of application material.

As a threshold finding, the ZBA notes that the Applicant did not provide room-by-room clarification of FAR or clarify ceiling heights, as requested by the Board. Likewise, the Applicant did not respond to the Village Engineer’s comments dated October 15, 2022, including the smaller gross lot area calculation, which would have required a modification to the application to request a larger lot coverage variance. Indeed, by email dated December 15, 2022, the Applicant wrote:

Please be advised that my client shall rely on the documents, information, application and the testimony already delivered and provided to this board in connection with this matter, and asks that the board render its decision at the upcoming meeting scheduled for December 15 based upon same. No further information or documentation shall be provided, and in that vein, we will not be appearing at the upcoming meeting.

That said, our position remains that the facts as applied to the law mandate the granting of the subject application, for the reasons previously provided. We are optimistic that the board agrees with our position and recognizes that our application for area variances that were previously granted (identical in scope) compels the granting of our application.

Based upon the materials submitted by the Applicant, the Village Engineer, outside agencies, personal observations of the site and the neighborhood, consideration of the Village Zoning Law, and discussions had, the Zoning Board made the following findings:

6. The ZBA considered the build out of the neighborhood from subdivision approval in was approved in in the intervening time since the 1998 variances were granted and determined that granting the same variances in 2023 would result in an undesirable change in the character of the neighborhood and would be detrimental to nearby properties. The variances, if granted, would result in a house two- to three-times larger than the houses currently existing in the neighborhood. The Board determines that a house of that scale would be inconsistent with neighboring houses and out of character with the surrounding community.
7. The ZBA considered whether the benefit sought by the applicant could be achieved by some method, feasible for the applicant to pursue, other than area variances and determined that other methods are available. First, a larger lot would accommodate a larger house without variances or with smaller variances. Also, the Applicant stated on the Record that the proposed house

would be occupied by a family of four (two parents and two grown daughters). The reason the Applicant wishes to build a 12,000+ SF house was to accommodate occasional family visits. It is not unreasonable to assume that, like other families in the community, an occasional family get-together could be accommodated in a house scaled to the neighborhood and built in conformance with the zoning law. Thus, the Board also finds that the practical difficulty or economic injury can be overcome by a method other than a variance, which will allow for the issuance of a Certificate of Occupancy.

8. The Board considered whether the 25% lot coverage variance and the 33.3% FAR variance requested are substantial in relation to the zoning code and determined that they are. First, the ZBA is instructed under state law that IF the ZBA grants a variance at all, it must grant the minimum area variance necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community. Here, the Board notes that the actual 38.56% lot coverage variance required to construct the house and grounds as shown is greater than the 25% requested. However, the ZBA acts upon the appeal before it. The Board finds that even a 25% variance is substantial.

Second, a 33% FAR variance is substantial, even assuming the 12,108 SF calculation is exact. The Board was not provided room-by-room calculations, as requested, and the discrepancy between the interior ceiling heights and exterior wall height was not explained, again as requested.⁴ The ZBA has recently received several applications for FAR variances. Many of them, as here, are significant. If all or a substantial number of the FAR variances were granted a precedent could be established that the ZBA determines would have a cumulative negative impact to neighborhoods throughout the Village; neighborhoods that have been regulated with consistency by the zoning law established by the Village Board based on the guidance of the Comprehensive Plan.

9. The Board finds and determines that the proposed variances, if granted, will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Village Engineer notes that although no fill or disturbance is within the floodplain, 4,459 SF of mapped flood plain are located along the East property line (approximately 2,230 SF located within the parcel) with a total grade change of 22 feet. A retaining wall with an exposed height of approximately 10 feet is shown at the floodplain line, which raises the grade at the rear property to create a more level yard for the improvements (pool and yard). No fill or disturbance is within the floodplain. Additionally, approximately 50 trees and all underbrush will be removed from the lot. Therefore, the Board additionally finds and determines that granting the variances will affect

⁴ ZBA notes for the Record that the 2021 variance application sought four (4) variances for the purpose of constructing a 15,782 square-foot house. The 2021 variance application encompassed rear yard, lot line, coverage and FAR. The 2022 house shows essentially the same footprint as the 2021 house. However, the coverage and setback variances were eliminated or reduced by removing hardscape from the yards; FAR was reduced by changing the basement ceiling to 6.3” even though the basement walls remain the same height as before, 10 feet. The Building Inspector also noted that access to and from the basement is shown.

the health, safety and welfare of the neighborhood or have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

10. The Board finds that the alleged difficulty was self-created. All variances are self-created unless there is an environmental impediment which cannot be avoided, such as extensive wetlands, conservation easements, boulders, steep slopes or ravines. Here, the only environmental constraint is approximately 2,300 SF of flood plain, which are not being encroached upon by the proposed development, except the requirement of a retaining wall at the floodplain line. Although this consideration is relevant to the decision of the ZBA, it does not necessarily preclude the granting of the area variances. However, here, the lot is vacant, therefore, any proposed new development is presumptively subject to the zoning law, including lot coverage and FAR. A larger lot, especially in the absence of flood plain or other environmental constraints, would accommodate a house at the size proposed here. In addition, as noted earlier, the Board is concerned about setting precedent, which could undermine the goals of the Comprehensive Plan as expressed in the zoning law. If this vacant lot is granted area variances to exceed lot coverage and FAR, the existing neighborhood character would change, making it more difficult for the Board to deny the types of variances requested here.

Applicant’s burden. The Zoning Board of Appeals hereby finds and determines that the Applicant has not sustained his 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.

On the motion of Member Wanderman, seconded by Member Bryan, the Village of Montebello Zoning Board of Appeals hereby denies the application for a 25% variance to increase development coverage from the maximum 20% to 25%, and a 33% variance to increase FAR from .15 to .20 for the purpose of constructing a 12,108 square foot house on the parcel identified on the Tax Map as Section 40.19, Block 1, Lot 36.2.

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

After a brief discussion on vested rights and expiration of approvals, Member Dugandzic made a motion to adjourn the meeting at 7:53 p.m., seconded by Member Bryan. Upon vote, all were in favor.