

A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY JULY 20, 2023, AT THE DR.JEFFREY OPPENHEIM COMMUNITY CENTER, 350 HAVERSTRAW ROAD, MONTEBELLO, NY. THE MEETING WAS CALLED TO ORDER AT 7:00 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

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

Minutes approval

Member Wanderman made a motion to approve the June 15, 2023, meeting minutes, seconded by Member Gigante and upon vote, all were in favor.

Yitzchok Zelcer—PUBLIC HEARING

14 Fant Farm Lane

49.17-1-2.11

Application of Yitzchok Zelcer, owner of 14 Fant Farm Lane, Montebello, NY which was submitted to the Village of Montebello Zoning Board of Appeals for variances for: Rear yard to pool [required 30 feet, proposed 20 feet] as per Section 195, attachment 2, Row t, and Section 195-57D of the zoning code of the Village of Montebello for the construction of an in-ground pool for an existing single-family home. The parcel is located on the west side of Fant Farm Lane approximately 1600 feet north of the intersection of Spook Rock Road and is identified in the Ramapo Tax Map as Section 49.17 Block 1 Lot 2.11 in the ER-Zone

Present was Robert Ball, President of Westrock Pool and Spa, and the Applicant/Homeowner Yitzchok Zelcer. Mr. Ball noted the submission of the landscaping plan as per the Board’s directive at the last meeting. Member Gigante asked about the proposed trees, and Mr. Ball said that they are green giant arborvitae that will grow into a vibrant hedge in three years.

Vice Chair Wanderman opened the public hearing. No one from the public having any comments, Member Gigante made a motion to close the public hearing. Member Dugandzic seconded the motion and upon vote, all were in favor.

Member Bryan asked how realistic the conceptual drawings were. Mr. Ball said that the engineer’s drawings [of the pool] are accurate and the landscaping follows suit. The renderings are almost identical to how it will look once installed and fully-grown, he added.

Member Gigante noted that the pool is lower than the backyard. Mr. Ball there was a grading difference of less than four feet held by a retaining wall.

No one else having any comments, Vice Chairman Wanderman went through the criteria for judging variances and determined that there is no substantial impact on the neighborhood, the community and the environment, and that while the need for the variance is self-created, it is a reasonable request since the variance is so small. Member Bryan requested assurance that the conceptual drawing is not the engineering drawing and that the contractor will follow only the latter. Member Dugandzic said she

thought the pool was appropriate and fitting with the surroundings. Vice Chairman Wanderman recognized the Applicant's efforts to satisfy both this Board's requirements and the neighbors' requests.

Before the Board put the matter to a vote, Ms. Terhune referred to comment #5 of the County GML which pointed out some missing numbers from the bulk table and advised that this correction should be made one of the conditions of approval.

Member Bryan made a motion to approve the variance subject to the inclusion of the missing bulk table numbers as per the GML. Member Gigante seconded the motion 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
14 Fant Farm Lane

**VARIANCE DECISION FOR
PROPERTIES IDENTIFIED ON
THE VILLAGE OF
MONTEBELLO TAX MAP AS
Section 40.17, Block 1, Lot 2.11**

for relief from the Village of Montebello Zoning Law Section 195-57D, "Swimming Pool," which requires minimum required setbacks to be measured beginning ten feet from the edge of the pool and Section 195-13, "Table of Bulk Requirements," minimum rear yard setback.

X

**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO
ZONING LAW FOR THE PURPOSE OF LOCATING AN INGROUND POOL IN
THE REQUIRED BACK YARD SETBACK**

The property location, zoning district and proposed project. The subject property is located at 14 Fant Farm Lane, Village of Montebello, County of Rockland, State of New York, identified on the Tax Map as Section 49.17, Block 1, Lot 2.11 (the "Parcel"), in the Estate Residential ("ER-80") zoning district (80,000 square feet per lot). Uses in the ER-80 district are governed by § 195-9, the Table of General Use Requirements. Bulk regulations are governed by §195-13, the Table of Bulk Requirements, Use Group x.1, which require a minimum rear yard setback of 20 feet. However, §195-57D, "Swimming pools," requires the 20-foot setback to be measured beginning 10 feet from the edge of the pool, effectively requiring a 30-foot rear yard setback.

The Parcel is improved with a single-family home owned by Yitzchok Zelcer (the "Applicant"), who wishes to place an 18-foot by 44-foot inground swimming pool in the rear

yard. Although swimming pools are a permitted accessory use to single- and two-family homes in the ER-80 district, §195-57D requires setbacks from lot lines to be measured from a point beginning 10 feet from the edge of the pool, as noted above. Here, the Applicant seeks to place the pool 20 feet from the rear lot line where 30 feet is required. Thus, the Building Inspector referred the application to the Zoning Board of Appeals.

The application for variances. On March 30, 2023, the Montebello Zoning Board of Appeals received an application seeking relief in the form of two variances from Montebello Zoning Law:

1. Section 195-57D, which requires minimum required setbacks to be measured beginning ten feet from the edge of the pool, and
2. Section 195-13, “Table of Bulk Requirements,” Use Group x.1, in the form of a variance of 10 feet from the minimum rear yard setback from the required 30 feet (as modified by §195-57D) to 20 feet, and

1.

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. Permit denial letter from A. Gordon, March 2, 2023; and
 2. Narrative from the homeowner Yitzchok Zelcer (undated); and
 3. Additional narrative from Ephraim Goldstein, MS, BCBA, LBA (undated); and
 4. Additional narrative from Kensington Pediatrics, March 14, 2023; and
 5. ZBA application form, received March 30, 2023; and
 6. Pool Plan entitled “14 Fant Farm Lane” from Paul Gdanski, PE, PLLC last revised, May 18, 2023; and
 7. Survey, titled, “14 Fant Farm Lane,” by Paul Gdanski, PE, PLLC, last revised June 30, 2023; and
 8. Renderings and landscaping layout from Evergreen dated 6/30/2023 (8 pages).
- 2.

General Municipal Law § 239-m. The application was duly referred to the Rockland County Planning Department (“RCPD”) pursuant to GML § 239-m, which Department responded by letter dated May 15, 2023. Comment 5 noted that the bulk table indicated “N/A” where no variances were required and directed the bulk table be fully addressed.

Agency referrals. The application was duly referred to all agencies with jurisdiction. By letter dated May 18, 2023, Rockland County Sewer District No. 1 stated that the Zoning Board should advise the property owner that Section 902(B)(19) of the *Sewer Use Law* specifically prohibits the discharge of swimming pool drainage (not filter backwash) into the sanitary sewer system. A copy of the letter was provided to the Applicant. The Rockland

County Health Department responded by letter dated May, 10, 2023, noting that application is to be made to the RCDOH for review of the storm water management system for compliance with the County Mosquito Code.

Public Hearing. A duly noticed public hearing was convened on June 15, 2023, and continued on July 20, 2023. During the public hearings, the Zoning Board heard testimony from the Applicant and all those wishing to address the Board on the matter. After hearing all comments from the public, the hearing was closed on July 20, 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)(16), the granting of individual lot line variances and adjustments. No further action was required.

FINDINGS

The zoning law. A swimming pool is a permitted accessory use to a single-family home in the ER-80 district. Therefore, the accessory use complies with the Montebello Zoning Law.

The zoning law applied to the application for variances. Because the placement of the swimming pool does not comply with bulk requirements, the Applicant requested two variances: (1) Relief from Section 195-57D, which requires minimum required yard setbacks to be measured beginning ten feet from the edge of the pool, and (2) relief from Section 195-13, "Table of Bulk Requirements," Use Group x.1, in the form of a variance of 10 feet from the required 30-foot rear yard setback to 20 feet (as measured ten feet from the edge of the pool to the lot line pursuant to §195-57D)..

The Board's Findings. When considering whether to grant area variances, the Board 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 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 variances are the minimum necessary to relieve the practical difficulty or economic injury the Applicant would sustain if denied and determined that they are. The Board noted that the Applicant moved the pool to a different location on the lot after discussions with the Board and thus eliminated the need for a side variance in addition to the §195-57D rear yard variance.
2. The Board considered whether the variance is substantial in relation to the zoning code and determined that although it is substantial, the Applicant satisfied the Board as to the need for the for the pool.
3. The Board finds that there will not be a substantial change in the neighborhood if the variances are granted. The Board noted that pools are allowed as accessory use and that the pool, as proposed, would have met the 20-foot required setback in the absence of §195-57D.
4. The Board finds that the practical difficulty or economic injury cannot be overcome by some other method. The Board determined that the placement of the pool was ideal for the Applicant's use and enjoyment.
5. The Board finds and determines that granting these variances will not affect the health, safety or welfare of the neighborhood and noted that the Applicant submitted a landscaping plan that will screen the pool from the neighbors and lessen the impact.
6. The Board finds that no government facility or service will be affected by granting the requested area variances.

Applicant's burden. The Zoning Board of Appeals hereby finds and determines that the Applicant has 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, that on a Motion by Member Bryan, Seconded by Member Gigante, on a roll-call vote as set forth below, the Village of Montebello Zoning Board of Appeals hereby grants the following variances to the Applicant for the purpose of placing an 18-foot by 44-foot inground swimming pool in the rear and side yard of the Parcel:

1. Relief from Section 195-57D, which requires minimum required setbacks to be measured beginning ten feet from the edge of the pool, and
2. Relief from Section 195-13, "Table of Bulk Requirements," Use Group x.1, in the form of a variance of 10 feet from the minimum rear yard and side yard setback from the required 30 feet (as modified by §195-57D) to 20 feet.

In granting these variances, 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. These variances are granted in reliance on their individual purposes as shown on the referenced application and survey and for no other purpose. Deviation from the variances

granted by this Board shall invalidate this Decision and the variances granted thereby by operation of law.

BE IT FURTHER RESOLVED, that these variances are granted pursuant to the following conditions:

1. Payment of all fees due and owing to the Village of Montebello in connection with this application and approval.
2. That use of the pool shall be limited to its customary accessory use to a single-family home and shall not be used for hosting large groups of people for public recreational use.
3. Compliance with the landscaping plan submitted to the Board, including planting a row of evergreens along the property line as set forth in the landscaping plan.
4. Compliance with Comment No. 5 of the Rockland County Department of Planning to fill in the “N/A” items identified in the bulk table on the “Pool Plan” entitled “14 Fant Farm Lane.” prepared by Paul Gdanski, PE, PLLC last revised, May 18, 2023.
5. Compliance with the Rockland County Health Department letter dated May, 10, 2023, directive to apply to RCDOH for review of the storm water management system for compliance with the County Mosquito Code.

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

Simon Ganz
3 Sycamore Lane
49.05-1-29

Application of Simon Ganz on behalf of 3 Sycamore Lane LLC, owners of 3 Sycamore Lane, Montebello, NY, which was submitted to the Village of Montebello Zoning Board of Appeals for a variance for: Development coverage [maximum 20%, proposed 23%] as per Section 195, Attachment 2, Use Group h of the zoning code of the Village of Montebello for the construction of a circular driveway. The Parcel is located on the west side of Sycamore Lane approximately 350 feet north of the intersection of Viola Road and is identified on the Ramapo Tax Map as Section 49.05 Block 1 Lot 29 in the RR-50 Zone.

Present was the applicant's attorney Kevin Conway, and Engineer Devon Crinchlow of Civil Tec Engineering. After the Vice Chairman read the submittals into the record, Mr. Conway explained that the homeowner wishes to construct the circular driveway to accommodate his elderly parents who may more easily access the home directly in front of the house instead of using the narrow 14-step staircase. At the last meeting, he continued, the board recommended a reduction of the variance. By removing some impervious coverage areas, the variance was reduced to 21%.

Mr. Conway requested an override of comments 1 and 2 of the GML review dated July 17, 2023, stating that they are avoiding any runoff by adding drainage pits, there is sufficient parking in the driveway and in the garage, and that they are not setting a precedent because there are many such driveways throughout the village, particularly in this area. Further, Mr. Conway said he saw no logic to comment 2 stating that they must adhere to the Rockland County Highway Department letter dated May 30, 2023. That agency offered no directives other than to say it's not safe, and Sycamore Lane isn't even a county road, he added.

Mr. Crinchlow was sworn in and further explained the adjustments that were made to reduce the variance, explaining that he added a curve to the driveway which affords more maneuverability and which allows some of the pavement to the west to be eliminated. None of this affects the drainage, he said.

Vice Chairman Wanderman wondered why they could not eliminate the variance altogether. Mr. Conway said they tried but the grade requires the wall, which adds to the impervious area. Much of the existing asphalt will be eliminated but some must remain to accommodate a proper turning radius.

Member Bryan asked the turning radius requirement and Mr. Crinchlow said approximately 20 feet is required. Member Bryan asked why the entire radius of the driveway couldn't be made smaller. Mr. Conway said they would still be at 21% development coverage, and even though a 1% request is small, it is still a large portion of hardscape. Vice Chairman Wanderman asked them to try to reduce it further in any case, but Mr. Crinchlow explained that they are really at 20.4% and rounded up to 21% to be safe. That is 1,325 square feet of hardscape, which is not easy to eliminate.

Member Gigante noted that the former owner of the property, Sam Diaz, is on the site plan. Ms. Terhune said that correction can be conditioned in the approval.

Ms. Terhune then stated that she did not agree with an override of comment 1 of the GML, but that comment 2 is strange in that the Highway department's letter states the circular driveway is not safe without giving any explanation. Mr. Crinchlow said they too were unclear as to why the Highway Department said that and doubted it had any relevancy.

Ms. Terhune noted that the Applicant made changes to the driveway based on this Board's comments to make turning easier and safer. This Board could refer this matter to the Village Engineer [Martin

Spence] if they think it's important, but the Highway Department offered a mere blanket statement which is an insufficient reason to deny the Application. After some discussion, it seemed clear that the Board was amenable to overriding comments 1 and 2.

Going through the rest of the GML comments, Ms. Terhune noted that drywells were installed, there is no reason to send the application to Rockland Community College (Comment 4), sections of impervious surface were eliminated to reduce coverage in-lieu-of using pervious pavers which the Village does not recognize as porous (Comment 7). Overall, she continued, the Board and the Applicant have no issues with the rest of the GML review and recommended an override of comments 1, 2 and 4 if they felt ready to do so. Member Bryan said he didn't want to vote on any overrides without first hearing from the Village Engineer regarding the safety of the driveway. Mr. Conway said the Highway Department had the opportunity to set forth the reasons for their comments and to explain why they think it's not safe, but they did not, and in any case this Board, not the Highway Department, has the final say.

Ms. Terhune noted that Mr. Conway had this letter since May 30th and asked if there was something they could change in the plans to address this comment, but Mr. Conway said there is no section of the code that would address this weird comment, and there is no reason to allow this arbitrary comment to hold up the proceedings.

Ms. Terhune agreed and added that the Village Engineer and the Building Inspector will review the plans for the permit and would send the application back to ZBA if they found anything wrong. Mr. Conway said that the Building Inspector did review the plans for the denial letter, but if the Board would like him to opine on this further, fine. There is nothing in the code to support the Highway Department's comment, however, and since it is a village road, it's not even their jurisdiction, he added.

Vice Chairman Wanderman said the other solution is to eliminate the variance, but Mr. Conway said they already reduced it from 24% to 21% and cannot reduce it further, even if they change the grade.

Members Gigante and Bryan said they preferred to send this to the Village Engineer because statistics and numbers matter. Mr. Conway said they rounded up to 21% from 20.4% to be safe and to avoid any potential problems. Still, the Board agreed to have the Village Engineer review and comment before taking any steps.

The Application was adjourned to the August ZBA meeting.

Montebello Gateway, LLC
34 N. Airmont Road
55.07-1-3

Application of Montebello Gateway, LLC, PO Box 782, Monsey, NY 10952 for 34 North Airmont Road, Montebello, New York 10901 which is submitted to the Village of Montebello Zoning Board of Appeals for area variances for: Maximum Height [required 36'* feet, proposed 36 feet]; Floor Area Ratio [required .24* proposed .25] per Sec.195-13 Bulk table, Use Group L of the zoning code of the Village of Montebello. The Applicant is proposing the construction of a 3.5 story, 46,400 square foot medical office building with 228 parking spaces. The parcel is located at 34 North Airmont Road, on the northwest side of Airmont Road at the intersection of Montebello Road in the Village of Montebello, which is designated on the Ramapo Tax Map as Section 55.07 block 1 Lot 3 in the LO-C zone.

*per ZBA Resolution of May 2021

Present were the applicant's attorney Paul Baum and Architect Boaz Golani from AB Design. Mr. Baum explained that this application to the ZBA was made to correct the record of what happened over the course of three years of Planning Board, Zoning Board, and Historic Preservation and Parks Commission (HPPC) review. Mr. Baum showed a rendering of the proposed building and explained that it was the very same rendering shown to this Board nearly two years ago, and that it clearly shows the bulkhead in the center of the building. After the ZBA, the same rendering was submitted to the HPPC for a Certificate of Appropriateness (COA) to ensure the viewshed of the corridor is not impacted. More elevations were submitted by the developer along with seasonal renderings, all showing the bulkhead in question. This is what the Boards approved, and this is what was shown, he added.

Mr. Baum further explained that the former Building Inspector determined that a variance of 6 feet was needed. The variance was subsequently granted, but it wasn't until a building permit application was made that the current Building Inspector determined the bulkhead and the roof-top elevator vestibule exceeded the allowable height of 36 feet. Mr. Baum said he and his clients disagree with this determination, that the plans submitted were always the same but for the fact that some mistake was made in calculating the FAR and height, and that he was there to ask the Board to correct the record by granting the variances needed to build the building that was approved by three Boards.

Mr. Baum noted that the Section 195-22A of the Village code includes exceptions for parapets and bulkheads: *The Planning Board may modify the permitted height limitations of this chapter as to the following: Rooftop bulkheads, elevator penthouses, water towers, fire towers, hose towers, cooling towers, air-conditioning or heating equipment, flagpoles, dish antennas, radio or television aerial, provided that such features shall not occupy, in the aggregate, more than 10% of the area of the roof of a building and are set back from the edge of the roof at least one foot for each one foot by which such features exceed the maximum height otherwise specified for the district in which they are located.*

The Planning Board is free to approve the height if the parapet was set further back, he said, adding that the building hasn't changed and that they submitted for a permit exactly what was approved by the Planning Board. He noted that they received an extension of the Planning Board approval because of the permit denial and to take some time to revise the building plans. However, it is our wish to build the building that was approved in the first place, he said.

Ms. Terhune made it clear for the Board that the Applicant is not there to challenge the Building Inspector's determination, and that rather, they are there seeking the variances they should have sought in the first place.

Mr. Golani explained that they submitted plans to CDRC in early 2020 which included what they thought was the correct height because they didn't think the bulkhead required a variance. Ms. Terhune agreed that he was likely using the provisions of Section 195-22A. Mr. Baum reiterated that the bulkhead height could be waived by the Planning Board if it were pulled further away from the edge.

Member Dugandzic asked the purpose of the rooftop vestibule and bulkhead. Mr. Baum said that since the building is designed for office space, his client wishes to provide a pleasant rooftop space for lunches and other functions. He added that the FAR variance of 1% is for the floor area within the bulkhead and not for any occupiable space, and that it is an area solely to allow access to the roof. Mr. Boaz explained that the measurement to the top of the bulkhead is really 45 feet, and then there is a parapet wall on top which increases the total height of 50 feet. We are asking for 53 feet for wiggle room, just in case, he said.

Ms. Terhune said that the former Building Inspector's letter corresponds with these measurements and agreed that if the Board approved that, they could approve this as it is the same building. Mr. Baum said they would have requested the extra height in the first place had they known. Ms. Terhune wondered if the other building without the bulkhead would require another HPPC approval, and Mr. Baum said he didn't think so because the alternate building is smaller and the HPPC's purview is the parking lot and the buffer, not the building itself.

Member Dugandzic said the GML review dated July 17, 2023, included concerns about parking and asked if the parking requirement will be affected in any way. Mr. Baum said it would not and that he will request an override of that comment. Ms. Terhune suggested the Board re-read the ZBA decision from 2021 as well as the Planning Board approval resolution which were part of the application submittal.

No one else having any comments, Member Dugandzic made a motion to set the public hearing for the August 17, 2023, ZBA meeting. Member Bryan seconded the motion and upon vote all were in favor.

Member Dugandzic made a motion to approve the meeting minutes from the June 15, 2023, seconded by Member Gigante and upon vote, the motion passed unanimously.

Member Dugandzic made a motion to adjourn the meeting at 8:39 p.m. which was seconded by Member Gigante and upon vote, all were in favor.