

A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY SEPTEMBER 21, 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
	Elizabeth Dugandzic	Member
	Ezra Bryan	Member
	Janet Gigante	Member
Others Present:	Alyse Terhune	Assistant Village Attorney
	Regina Rivera	Planning & Zoning Clerk
Absent:	Rodney Gittens	Chairman
	Rosana Millos	Ad Hoc

Approval of the July 20, 2023 Meeting Minutes

Member Bryan made a motion to accept and approve the minutes of the July 20, 2023 ZBA meeting seconded by Member Dugandzic and upon vote the motion passed unanimously.

Approval of the August 17, 2023 Meeting Minutes

Member Dugandzic made a motion to accept and approve the minutes of the August 17, 2023 ZBA meeting seconded by Member Bryan and upon vote the motion passed unanimously.

Simon Ganz PUBLIC HEARING continued

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 his Engineer Devon Crinchlow of Civil Tec Engineering. Mr. Conway noted that since beginning of this application, they reduced the development coverage variance request from 23% to 21%, improved the turning radius as per the Rockland County Highway Department's letter, and received a letter of determination from Village Engineer Martin Spence attesting to the safety of the proposed driveway thereby negating the County Highway Department's comment to the contrary. To that end he requested that the Board override comment #2 of the July 17, 2023 County GML compelling them to adhere to the Highway Department's directives because it is clearly an overreach as the property is not on a county road, nor does their purview have anything to do with the development coverage variance being sought. Mr. Conway also requested an override of GML comment #1 because the variances were reduced as much as possible and will not set a precedent. The other comments we take under advisement with no objections, he added.

Mr. Crinchlow explained how the development coverage was reduced, explaining that it is actually 20.5% and that they are requesting 21% just to be safe, and added that the seepage pit was moved closer to the storm drain and silt fencing will be installed as requested by the Village Engineer.

Ms. Terhune asked if they added any landscaping between the driveway and the road as Mr. Spence suggested. Mr. Crinchlow said that his client did not want to add landscaping in that location but will comply if the Board insists.

Member Bryan asked if the Village Engineer reviewed the site plan post-modifications, to which Mr. Crinshlow answered no. Ms. Terhune said that an approval can be conditioned upon Mr. Spence's approval and Mr. Conway said he did not have an issue with that.

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.

Ms. Terhune said that the Board was asked to override two comments of the GML review. Comment # 1 states that the ZBA must consider community impacts of such a development and advises against granting it. However, the ZBA always considers cumulative impacts and the request is only .5%. Comment #2 addresses the concerns of the Rockland County Highway Department, but our own Engineer does not feel that the changes in the driveway will cause any danger. She explained that an override requires a super majority, and if they don't have one, they cannot vote on the variances. After a brief discussion, Member Dugandzic made a motion to override the comments #1 and #2 of the July 17, 2023 Rockland County GML review. Member Gigante seconded the motion and upon vote the motion passed unanimously.

Vice Chair Wanderman went through the criteria by which the ZBA deliberates the merits of granting variances and determined that the request is not substantial, will not have adverse impacts on the neighborhood, the community or the environment, and while it is self-created, it is minor. Member Bryan made a motion to approve the variance conditioned upon the review and acceptance of the revised site plan by the Village Engineer. Member Dugandzic seconded the motion and upon vote, all were in favor.

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

X

In the Matter of the Application of
3 Sycamore Lane LLC,

**VARIANCE DECISION FOR
PROPERTIES IDENTIFIED ON
THE VILLAGE OF
MONTEBELLO TAX MAP AS
Section 49.05-1-29**

for relief from the Village of Montebello Zoning Law
Section 195-13, Table of Bulk Requirements, Use
Group h, in the form of an area variance from the
maximum development coverage.

X

**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO ZONING
LAW FOR THE PURPOSE OF ADDING A CIRCULAR DRIVEWAY**

The purpose. The Village of Montebello Zoning Board of Appeals (the "Board") received an application for an area variance, dated March 27, 2023, from 3 Sycamore Lane, LLC., owned

by Simon Ganz (the “Applicant”). The property consists of one 1.19-acre parcel located on the west side of Sycamore Lane, 350 feet north of Viola Road in the RR-50 zoning district, and is identified on the Ramapo Tax Map as Section 49.05 Block 1 Lot 29.

The application for variances. The application requested a variance from for relief from the Village of Montebello Zoning Law Section 195-13, Table of Bulk Requirements, Use Group h, in the form of an area variance from the maximum development coverage of 20% to 23%. The Board requested a reduction in development coverage to the greatest extent possible. The Applicant complied by reducing the requested variance to .05% (20% to 20.5%) with field tolerance of an additional .05%, bringing the variance request to 1% (20% to 21%).

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

1. Denial letter dated March 21, 2023, prepared by Adam Gordon, Building Inspector; and
2. Application dated March 27, 2023; and
3. Project description, dated May 15, 2023, prepared by Fast Forward Permits, last updated August 10, 2023; and
4. A denial letter from the Adam Gordon, Building Inspector, dated March 21, 2023
5. Plot plan from Civil Tec Engineering & Surveying PC dated January 1, 2022, last revised August 10, 2023.
6. A review from the Rockland County Highway Department dated May 30, 2023
7. GML review from Rockland County Department of Planning (“RCDP”) dated July 17, 2023; and
8. Letter dated July 20, 2023, prepared by the Applicant’s attorney, Kevin Conway, requesting an override of RCDP comment 1 and comment 2; and
9. Technical advisory memorandum, dated August 5, 2023, prepared by Spence Engineering, Village engineer.

Agency Referrals. The application was referred to all outside agencies with review and comment jurisdiction, including Rockland County Highway Department (“RCHD”), Rockland County Department of Planning, and the Town of Ramapo. By letter dated May 30, 2023, RCHD noted that it did not consider the proposed driveway layout safe. The Board referred the application to the Village Engineer who, among other things, stated that the driveway should be redesigned to meet the curb more perpendicularly and provide a splayed driveway opening greater than 10-foot wide (comment S-4). The Applicant modified the plan accordingly, which the Board noted addressed the RCHD safety concern.

General Municipal Law § 239-m. The application was referred to the Rockland County Department of Planning (“RCDP”) pursuant to GML § 239-m. By letter dated July 17, 2023, RCDP, issued eight (8) substantive comments. The Applicant requested an override of Comment 1 related to possible precedential effect and the need to consider the cumulative impacts of granting

the variance. The Board noted that each application stands on its own and each parcel is unique, therefore, does not agree that granting a 1% variance would set a precedent; and that is always considers possible cumulative effects of any variance it grants and did so here. Therefore, a supermajority of the Board voted to override Comment 1.

Likewise, the Board voted to override Comment 2, which required compliance with the safety concern raised by RCHD upon the Applicant's compliance with the Village Engineer's comment S-4. Comments 3-8 were addressed by the Applicant and the Board and accepted.

Public Hearing. A duly noticed public hearing was convened on September 21, 2023, whereat 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.

State Environmental Quality Review Act (SEQRA). The Zoning Board of Appeals determined that the application was a Type II Action pursuant to 6 NYCRR 617.5(c)(17), "granting of an area variance for a single-family, two-family or three-family residence." No further action was required.

FINDINGS

The zoning law applied to the application for variances. Applicants requested relief from Section 195-13, "Table of Bulk Requirements," Use Group "h," in the form of an area variance for maximum development coverage for the purpose of constructing a circular driveway. Circular driveways are not prohibited by the zoning law, however, parking in the front yard is discouraged.

The Board's Findings. When considering whether to grant an area variance, the Board must evaluate, and did evaluate, (1) whether granting said variance will produce an undesirable change in the character of the neighborhood, (2) whether the benefit sought by the Applicant can be achieved by some other method, (3) whether the requested 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. 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, if granted will produce an undesirable change in the character of the neighborhood and determined that it would not. The Board noted that there are other circular driveways in the neighborhood and determined this driveway would not be inconsistent with others.

2. The Board considered whether the benefit sought by the Applicant could be achieved by some other method and determined that it could not. The circular driveway will assist the owner's elderly parents by making it easier to enter the house without traversing steps.
3. The Board considered whether the requested variance is substantial and determined that it was not. The Board also noted the Applicant reduced the requested variance from 3% to a maximum of 1%.
4. The Board considered whether the variance, if granted, will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district and determined that it would not. However, the Board noted that to the extent that further plan modifications are required, the Applicant must fully comply with the Village Engineer's comments S-1 through S-4.
5. The Board considered whether the alleged difficulty was self-created and determined that it was. However, the Board noted that in nearly all circumstances the need for a variance is self-created, but that factor alone is generally not determinative of whether the variance should be granted. Here, the detriment to the community does not outweigh the benefit to the applicant and, therefore, self-created need is not sufficient to deny the relief.

Applicant's burden. The Zoning Board of Appeals hereby finds and determines that the Applicants have sustained their burden of proof as required by New York State Village Law and Village of Montebello Zoning Law as to the need for the requested variance.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Village of Montebello Zoning Board of Appeals on a Motion by Member Bryan, seconded by Member Dugandzic, pursuant to the roll-call vote set forth below, hereby grants relief from Section 195-13, "Table of Bulk Requirements," Use Group "h," to the property identified on the Ramapo Tax Map as Section 49.05 Block 1 Lot 29 in the form of an area variance from the maximum development coverage of 20% to no greater than 21%.

In granting these variances, the Zoning Board relied on the testimony of the Applicants and the submissions identified herein and made a part of this Decision as if fully set forth herein. This variance is granted in reliance on its individual purpose as shown on the referenced application and plans and for no other purpose. Deviation from the variances granted by this Board shall invalidate this Decision and void 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. Compliance with Village Engineer, Spence Engineering, comments S-1 through S-4 contained in a memorandum dated August 5, 2023.

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

Mendy Kempler PUBLIC HEARING

213 Spook Rock Road

49.13-1-4

Application of Mendy Kempler, owner of 213 Spook Rock Road, which was submitted to the Village of Montebello Zoning Board of Appeals for variances for: Total side setback [required 75 feet, provided 56.80 feet]; side yard [required: 25 feet, provided 0 feet]; side yard [25 feet, provided 6.83 feet]; and side yard [required 30 feet, provided 17.10 feet] as per Section 195 Attachment 2, row h, columns 6, 7 and 8 of the zoning code of the Village of Montebello for a proposed addition to a single-family dwelling. The parcel is located on the east side of Spook Rock Road, 10 feet north of Topaz Court and is identified on the Ramapo Tax map as Section 49.13 Block 1 Lot 4 in Zone RR-50.

Present on behalf of the Applicant was Gracie McGuinness of Hudson Design who explained that they received feedback at the last meeting regarding the side yard setback and have since corrected that variance request. In all cases the existing setbacks are either being increased or maintained, and earlier this month the Historic Preservation and Parks Commission (HPPC) granted a Certificate of Appropriateness (COP) in accordance with Section 195-64.1 of the Village Code, she said.

Vice Chair Wanderman established that the public hearing was duly noticed and posted, and opened the public hearing. No one from the public wishing to speak, Member Dugandzic made a motion to close the public hearing seconded by Member Gigante. Upon vote all were in favor.

Ms. Terhune clarified for the Board that two of the three requested variances simply maintain the existing non-conforming setbacks, neither less nor more and that the one required variance for the north side yard is 20 feet, which is substantial. Ms. McGuinness explained that the existing driveway encroaches into the neighboring property line and that they are removing 2000 square feet of pavement, streamlining the area and providing a safe turn-around area while bringing everything back onto the property.

Member Dugandzic said she was concerned about that substantial variance nonetheless. Ms. McGuinness said that the area is preferred for parking because it is out of view from the front windows of the house, and not visible from the street. The trees will remain, the view of the driveway will be buffered all while correcting the existing encroachment. Ms. Dugandzic asked if they were expanding the house. Ms. McGuinness said they are doing an addition in the center of

the property but that mostly there will be interior renovations. She added that all changes to home will be ensconced within in the property and that the north side yard merely abuts a flag lot flagpole.

Member Bryan said he was confused about the variances and asked if the existing non-conforming setbacks received previous variances, and wondered if they were cementing something that was done and that should not have been done. Ms. McGuinness said that that is not likely the case since the house was built over 100 years ago before zoning laws. It's a unique craftsman style home and we are merely enhancing it, not changing the look, she added.

Ms. Terhune said the Applicant is basically asking this Board to memorialize the existing conditions and any approval can be conditioned upon not allowing the variances to run with the land should someone in the future wish to knock this house down and rebuild. Member Bryan asked why the parking couldn't be placed in the center of the lot instead. Ms. McGuinness said they wanted to preserve the gardens and vegetation, and the HPPC required that preservation in any case. Mr. Bryan asked if they engaged the neighbor at all about this project, and what will be installed in its place. Ms. McGuinness said they did not talk with the neighbor about this and that they will plant non-invasive species of grass. Mr. Bryan advised that they get the neighbor's input on what should and could be planted there.

Ms. Terhune suggested the Board discuss the ZBA criteria one by one. Member Bryan said he was stuck on how this project would affect nearby properties and felt uneasy not knowing what they will plant near the property line. Ms. McGuinness said she would share the planting plan she showed the HPPC, which replaces the wooded buffer between the properties with natural, indigenous vegetation. Member Dugandzic noted that because this is a long narrow lot, the proposed arrangement seems optimal and cannot really be achieved by some other method. Member Gigante said she was worried about the impact on the neighborhood since they proposed a 1600 square foot addition. Ms. Terhune said that no variances are needed for that as it will not exceed the maximum Floor Area Ratio and reminded her that two of the variances merely maintain existing conditions.

Member Bryan asked what material will be used for the driveway and Ms. McGuinness said it will be asphalt as it is now, and added that the current driveway, at 5,300 square feet, will be reduced to 3,700 square feet.

No one having any more comments or questions, the Board was ready to vote. Member Dugandzic made a motion to approve the requested variances provided they do not run with the land. Member Bryan 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 Mendy Kempler,

**VARIANCE DECISION FOR
PROPERTIES IDENTIFIED ON
THE VILLAGE OF
MONTEBELLO TAX MAP AS
Section 49.13-1-4**

for relief from the Village of Montebello Zoning Law
Section 195-13, Table of Bulk Requirements, Use

Group h, in the form of an area variances from the side yard and total side yard setback requirements.

X

APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO ZONING LAW FOR THE PURPOSE OF ENLARGING AN EXISTING SINGLE-FAMILY HOME

The purpose. The Village of Montebello Zoning Board of Appeals (the “Board”) received an application for an area variance, dated May 1, 2023, from Mendy Kempler (the “Applicant”), for property located at 213 Spook Rock Road (the “Property”). The property consists of one 1.4864-acre parcel located on the east side of Spook Rock Road, 10 feet north of Topaz Court, in the RR-50 zoning district, and is identified on the Ramapo Tax Map as Section 49.13 Block 1 Lot 4.

The application for variances. The application requested relief from the Village of Montebello Zoning Law Section 195-13, Table of Bulk Requirements, Use Group h, in the form of a three variances: (1) a 19-foot total side yard setback variance from the required 75 feet to 56.4 (existing condition), (2) a 20-foot north side yard setback variance from the required 25 feet to 5 feet (0 existing condition), and (3) a 7-foot front yard setback variance from the required 30 feet to 23.3 feet (existing condition). The purpose of the request is to construct a new two-story addition to an existing single-family home and will involve the demolition of 370 square foot garage and the addition of 1680 square foot two-story addition and basement, replacing an existing asphalt driveway with a smaller driveway,

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

10. Denial letter dated May 1, 2023, prepared by Adam Gordon, Building Inspector; and
11. Application dated May 1, 2023, revised page 10, submitted for June 15, 2023, review; and
12. HPPC Resolution No. 23-02 granting a Certificate of Appropriateness filed on September 20, 2023; and
13. Revised Application dated July 19, 2023; and
14. Survey by Sparaco & Youngblood dated February 16, 2023, revised May 19, 2023; and
15. RC Highway Department letter dated May 9, 2023; and
16. Analysis bulk Table: Kempler Residence, revised July 19, 2023; and
17. Narrative by Hudson Design dated May 25, 2023; and
18. Survey by Sparaco & Youngblood dated February 16, 2023, revised May 19, 2023; and
19. Revised proposed site plan page SP-3 dated July 19, 2023; and
20. Architectural drawings dated May 1, 2023, pages G-001, G-002, SP-3, A-101 – 104, A-201 and A-202
21. GML review from RC Planning dated July 13, 2023

Agency Referrals. The application was referred to all outside agencies with review and comment jurisdiction, including Rockland County Highway Department (“RCHD”) and Town of

Ramapo. RCHD responded by letter dated May 9, 2023, with comments that were addressed by the Board and the Applicant.

General Municipal Law § 239-m. The application was referred to the Rockland County Department of Planning (“RCDP”) pursuant to GML § 239-m. RCDP issued three (3) comments by letter dated July 13, 2023. RCDP comments were accepted and addressed.

Public Hearing. A duly noticed public hearing was convened on September 21, 2023, whereat 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.

State Environmental Quality Review Act (SEQRA). The Zoning Board of Appeals determined that the application was a Type II Action pursuant to 6 NYCRR 617.5(c)(17), “granting of an area variance for a single-family, two-family or three-family residence.” No further action was required.

FINDINGS

The zoning law applied to the application for variances. Applicants requested relief from Section 195-13, “Table of Bulk Requirements,” Use Group “h,” in the form of an area variance for maximum development coverage for the purpose of constructing an addition to an existing single-family home.

The Board’s Findings. When considering whether to grant an area variance, the Board must evaluate, and did evaluate, (1) whether granting said variance will produce an undesirable change in the character of the neighborhood, (2) whether the benefit sought by the Applicant can be achieved by some other method, (3) whether the requested 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. 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:

6. The Board considered whether the requested variance, if granted will produce an undesirable change in the character of the neighborhood and determined that it would not. The Board noted that the house was originally built on or about 1920 and enlarged thereafter at least once. The proposed plans will be an improvement to the house and will improve the neighborhood.
7. The Board considered whether the benefit sought by the Applicant could be achieved by some other method and determined that it could not. The addition, while large, complies with FAR, is not out of character with the neighboring houses

and is a reasonable accommodation for the owner's family. The Board also acknowledged that HPPC granted approval to the addition.

8. The Board considered whether the requested variance is substantial and determined that a 1% variance is not substantial. The Board also noted that two of the variances relate to conditions that already exist on the property and that the third variance (for the driveway) reduces the existing non-conformity from zero to 5 feet. In addition, the Applicant reduced the number of variances requested from 4 to 3, further accommodating the Board's request to reduce the number of variances.
9. The Board considered whether the variance, if granted, will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district and determined that it would not. The Board noted that the development coverage is being decreased from 20.67% to 18.69% by reducing the size of the existing asphalt driveway.
10. The Board considered whether the alleged difficulty was self-created and determined that it was. However, the Board noted that in nearly all circumstances the need for a variance is self-created, but that factor alone is generally not determinative of whether the variance should be granted. Here, the detriment to the community does not outweigh the benefit to the applicant and, therefore, self-created need is not sufficient to deny the relief.

Applicant's burden. The Zoning Board of Appeals hereby finds and determines that the Applicants have sustained their burden of proof as required by New York State Village Law and Village of Montebello Zoning Law as to the need for the requested variance.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Village of Montebello Zoning Board of Appeals on a Motion by Member Dugandzic, seconded by Member Bryan, pursuant to the roll-call vote set forth below, hereby grants relief from Section 195-13, "Table of Bulk Requirements," Use Group "h," to the property identified on the Ramapo Tax Map as Section 49.13 Block 1 Lot 4 in the form of three variances: (1) a 19-foot total side yard setback variance from the required 75 feet to 56.4 (existing condition), (2) a 20-foot north side yard setback variance from the required 25 feet to 5 feet (0 existing condition), and (3) a 7-foot front yard setback variance from the required 30 feet to 23.3 feet (existing condition).

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 fully set forth herein. This variance is granted in reliance on its individual purpose as shown on the referenced application and plans and for no other purpose. Deviation from the variances granted by this Board shall invalidate this Decision and void the variances granted thereby by operation of law.

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

3. Payment of all fees due and owing to the Village of Montebello in connection with this application and approval.

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

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 53 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

The Applicant's attorney, Paul Baum, and his architect Boaz Golani of AB Design presented. Mr. Baum explained simply that they thought they were constructing the building that was approved by the ZBA, the Planning Board and the HPPC and that when they submitted for a building permit, the building inspector did not agree with the previous inspector's determination on the height, nor did he think the bulkhead and elevator bulkheads should be waived from the height requirement as his predecessor had determined. He showed the Board two renderings of the building, one containing bulk heads which was approved by all three land use Boards, and the other without, which was submitted subsequent to receiving a building permit denial letter.

He explained that the building was under construction right now and that they appeared before the ZBA last month but there were not enough members present at that meeting for a super majority to override the County GML. If we do not receive the variances at this meeting, he continued, then we must build the building submitted for the permit, not the one we would prefer to build.

Mr. Golani explained that the bulkheads lend an aesthetic appeal and enhance the look of the entire building. Member Bryan asked what was inside the center main bulkhead. Mr. Golani said there is nothing, not even mechanicals, which are in the basement. It is just a very nice way to enter the roof and purely aesthetic, he said.

Member Bryan asked to see the renderings once again side by side after which a discussion ensued about the bulkheads and the differences in height of the main bulkhead and the elevator vestibule bulkhead. Mr. Baum reminded the Board that the bulkhead only takes up 2600 square feet in the middle of the building, that it will be empty and that they are not adding another floor.

Member Gigante said she was concerned that some of that area could be converted into office space. Ms. Terhune said that would be a violation of any approval. Member Gigante insisted that walls can be added for extra office space and asked why they couldn't just build a separate smaller elevator area. Member Dugandzic said she felt the current design is more visually pleasing and that it will add very little to the FAR. She added that she liked the idea of roof access for the building office workers.

Member Bryan said the differences between the two buildings are vast and that there is no attempt to make the new design look anything like the old. Mr. Golani said that the plans submitted for the permit really just eliminated the bulkhead so it's more of a square building. Mr. Baum explained that they needed to submit for building permit lest the site plan approval expire, and stated that if they don't receive the variances tonight then they will build the building they don't want to build. Ms. Terhune asked what the point of no return was. Mr. Baum said in the next two weeks, and after that this is no longer an option.

Ms. Terhune told the Board that they would first need to vote on overriding the entire County GML which issued a disapproval without a real understanding of the project (GML review on file). This Application is only for the height and there is no need to revisit the entire project that is currently under construction. However, if all four members present do not vote in favor unanimously, then there is no point of going forward, she added. Member Dugandzic said she felt comfortable overriding the county GML, as did Vice Chairman Wanderman, but Members Gigante and Bryan said they were not.

Ms. Terhune suggested that the Board discuss each comment in detail and explained again that this is all the result of a difference of opinion between the prior and current Building Inspectors. The Applicant is not disputing the current Building Inspector's decision, rather they are asking for the extra variances. They did make the effort to redesign the building without the variances but they are asking you for permission to build the building they would prefer to build. Half of the county GML addresses the site plan, which has nothing to do with this Board, and the parking, setbacks, and coverage are all the same, she said.

Member Dugandzic made a motion to override the July 17, 2023 Rockland County GML seconded by Vice Chairman Wanderman. Upon vote Members Gigante and Bryan voted nay and the motion did not pass, with Member Gigante repeating her concerns about the additional FAR.

Mr. Baum thanked the Board for their time and consideration and as he was packing up, Mr. Golani asked the Board if he could say a few more words, to which they agreed. He made an impassioned speech about the design of the building, the goals of the Applicant and the aesthetics of the roof top design and asked the Board if they could reconsider and vote again. Mr. Baum reiterated that the building is the very same that was approved by the Planning and Zoning Boards, and it's what they would be building right now if not for the Building Inspector's determination.

Member Bryan said his decision is not a critique of the aesthetics of the building, but Mr. Golani said it should be. Member Bryan said this is the ZBA, not the ARB, and the height variance puts this building in a different class. Mr. Baum said it fits in with the surrounding neighborhood and that if this were an assisted living facility (ALF0 like the Sentinel, it could be 50 feet high, and

said that he did not see the logic in denying this request when there are 45-foot and 50-foot buildings on Rella and Executive Boulevards. Member Gigante asked if those other buildings exceed the FAR limit. Mr. Baum said that The Sentinel is at .40 FAR and 2-4 Executive Boulevard received a variance for .42 FAR in 1992. We are not out of character for the neighborhood, and the only thing that goes to 53 feet is the elevator bulkhead, he said.

More discussion ensued about the difference in height of the elevator bulkhead and the exclusion of the bulkheads from the height requirements, until the Board agreed to vote once more on the GML override. Member Dugandzic made a motion to override the county GML. Vice Chairman Wanderman seconded the motion and upon vote, the motion passed unanimously.

After Ms. Terhune reviewed the criteria by which the ZBA grants relief, the Board was ready to vote. Member Bryan made a motion to grant the requested variances. Member Dugandzic seconded the motion and upon vote, all wear in favor.

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

X

In the Matter of the Application of
34 NORTH AIRMONT ROAD

**VARIANCE DECISION FOR
PROPERTY IDENTIFIED ON
THE VILLAGE OF
MONTEBELLO TAX MAP AS
Section 55-07, Block 1, Lot 3**

for relief from Section 195-9, Table of General Use
Requirements, Column G (Additional Use Requirement #1);
and Section 195-13, Table of General Bulk Requirements,
Use Group L, of the Village of Montebello Zoning Law.

X

**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO ZONING
LAW FOR THE PURPOSE OF CONSTRUCTING A MEDICAL OFFICE BUILDING**

The property location, zoning district and proposed project. The subject property is located at 34 North Airmont Road, Village of Montebello, County of Rockland, State of New York, identified on the Tax Map as Section 55.07, Block 1, Lot 3 (the “Parcel”). The lot contains 4.378 gross acres and is in the Laboratory Office-Campus District (“LO-C”). Uses in the LO-C district is governed by § 195-9, the Table of General Use Requirements, as well as additional use requirements found in column G. Bulk regulations are governed by §195-13, the Table of Bulk Requirements, Use Group L.

The Parcel is bounded on three sides by North Airmont Road, Executive Boulevard and Montebello Road. The westerly portion of the property abuts a residential neighborhood. It is located directly across Montebello Road from the historic Village Hall. Montebello Gateway,

LLC (the “Applicant”), is currently constructing the infrastructure to support a medical office building containing 46,400 square feet and 228 parking spaces, pursuant to approval granted in 2021 by the HPPC, the Planning Board and variances granted by the Zoning Board.

Prior Decision Granting Variances.

By Decision dated May 20, 2021, “Calendar Case No. 1175,” the Zoning Board of Appeals granted the Applicant three variances: (1) relief from § 195-9, specifically the additional use requirement contained in Column G, #1, of the Table of General Use Requirements, which prohibits entrances or exits for any parking or loading area within 300 feet of any residential districts in the form of a variance of 201 feet from the required 300 feet to 99 feet, (2) relief from § 195-13, Table of General Bulk Requirements, Use Group L, in the form of a six (6) foot height variance from the maximum permitted height of 30 feet to 36 feet; and, (3) relief from § 195-13, Table of General Bulk Requirements, Use Group L, in the form of a variance of .04% from the maximum Floor Area Ratio of .20% to .24%. Decision 1175 is incorporated herein by reference.

Post-approval Building Inspector Determination. By letter dated May 30, 2023, current Building Inspector Adam Gordon denied an application to build the structure that was approved by the HPPC, the Planning Board and for which the ZBA issued variances in 2021, noting that he disagreed with the prior Building Inspector’s interpretation that a 6-foot height variance was sufficient to comply with the maximum height regulation of 30 feet to 36 feet or that a FAR variance of 4% rendered the proposed structure conforming. Mr. Gordon determined that: (1) the 2,579 square-foot enclosed area allowing access to the roof constituted a partial fourth story that should have been included in the 2021 FAR calculations; (2) the aforementioned story was located 50 feet, 7 inches above grade for the purpose of height calculations, and (3) an elevator bulkhead measuring 53 feet above grade should have also have been considered for the purpose of height calculations. Therefore, the Building Inspector determined that construction of the building as originally approved in 2021 would require (1) an additional height variance of 50 feet, 7 inches for the partial fourth story, (2) 53 feet for the elevator bulkhead, and (3) an additional .04% variance of FAR above the 24% (from required 20%) granted by this Board in 2021.

2023 Application. By application dated June 1, 2023, the Applicant requested a height variance from the previously granted 36 feet to 53 feet and an increase in FAR from the previously granted 24% to 25%.

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. An application dated June 1, 2023; and
2. Architectural drawings entitled “Karniol Business Hub” from AB Design, dated 8/17/2021, pages C-100, Z-100, A-100, A-101, A-102, A-103, A-104, A-200, A-201, A-300, A-304; and
3. Narrative summary; and
4. ZBA Resolution No 1175 dated May 20, 2021; and
5. HPPC Resolution dated August 10, 2021; and
6. Elevations and floor plans from AB Design, pages A-1.0, A-2.0, A-3.0, A-4.0, A-5.0, A-6.0; and
7. Letter from Building Inspector Adam Gordon dated May 30, 2023; and
8. GML review from RC Planning dated July 17, 2023; and
9. Visual history of buildings proposed; and
10. Response to GML comments, dated September 1, 2023, prepared by Paul S. Baum.

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 July 17, 2023, issuing eight (8) mandatory recommendations. However, several comments were directed to the Planning Board or recommended referrals to other agencies to which this exact same site plan and building plans had been referred in 2021. All 2021 comments were either accepted or overridden. Thus, the Zoning Board, by supermajority vote, overrode the comments contained in the RCPD letter dated July 17, 2023. See Decision

Agency referrals. The 2021 application was duly referred to all agencies with jurisdiction and addressed. See Decision 1175.

Public Hearing. A duly noticed public hearing was convened on August 17, 2023. During the public hearing, 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 at that meeting on August 17, 2023.

State Environmental Quality Review Act (SEQRA). The Planning Board determined that the application was an Unlisted Action and circulated a Notice of Intent to act as Lead Agency to which the Zoning Board made no objection. On March 9, 2021, the Planning Board issued a Negative Declaration. On April 4, 2021, the Zoning Board of Appeals, an involved agency under SEQRA, concurred with and adopted the Negative Declaration, thus closing SEQRA for the purpose of rendering a decision on this application. The 2023 Application contains no changes whatsoever to the stie plan, construction plan, parking, infrastructure, building footprint, building

or any other element that was the subject of the SEQRA analysis in 2023. Therefore, the Zoning Board concludes that the 2021 Negative Declaration remains applicable and no further SEQRA action is required.

FINDINGS

The Board's Findings. When considering whether to grant an area variance, the Board must evaluate, and did evaluate, (1) whether granting said variance will produce an undesirable change in the character of the neighborhood, (2) whether the benefit sought by the Applicant can be achieved by some other method, (3) whether the requested 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. 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:

11. The Board considered whether the requested variance, if granted will produce an undesirable change in the character of the neighborhood and determined that it would not. The Board finds that but for a post-approval determination by the Building Inspector, the 2021 Zoning Board decision granting the variances would have remained in force. Indeed, that approval was predicated on finding that the building, as designed in 2021, is of greater architectural interest than the proposed "replacement" building, which lacks many of the interesting features of the building approved by the HPPC, Planning Board and for which variances were granted by this Board in 2021. Finally, the Board approves the use of the rooftop amenity as permitted in the 2021 building design, which amenity is absent from the proposed redesigned building.
12. The Board considered whether the benefit sought by the Applicant could be achieved by some other method and determined that while a different, less interesting building compliant with the 36-foot height variance granted in 2021 could be placed on the approved footprint, that building was not presented to or approved by the HPPC, Planning Board or this Board.
13. The Board considered whether the requested variance is substantial and determined that it is not. The building approved in 2021 was (and remains) consistent with similar structures in the vicinity as to height, size, and relationship to lot. The Board also noted, as it did in 2021, that because of the topography of the land, the additional "partial fourth story" will appear to be lower than 4 stories from Airmont Road. The additional FAR variance for the "partial fourth story" is, in the Board's opinion, not significant as the area shall only be used for access to the roof and, perhaps, additional seating areas for rest and relaxation. None of the areas shall be used for or converted to additional office space.
14. The Board considered whether the variance, if granted, will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or

district and determined that it would not. The Negative Declaration remains intact because the plans have not changed.

15. The Board considered whether the alleged difficulty was self-created and determined that it was. However, the Board noted that in nearly all circumstances the need for a variance is self-created, but that factor alone is generally not determinative of whether the variance should be granted. Here, the detriment to the community does not outweigh the benefit to the applicant and, therefore, self-created need is not sufficient to deny the relief.

Applicant's burden. The Zoning Board of Appeals hereby finds and determines that the Applicant has sustained its burden of proof as required by New York State Village Law and Village of Montebello Zoning Law as to the need for the requested variances.

DECISION

NOW, THEREFORE, BE IT RESOLVED, that the Village of Montebello Zoning Board of Appeals hereby overrides mandatory recommendations enumerated in the Rockland County Planning Department's General Municipal Law § 239-m response dated July 17, 2023. None of the RCPD's comments are relevant to this Application because no new site plan approvals are being sought.

BE IT FURTHER RESOLVED, that on a Motion by Member Bryan, Seconded by Member Dugandzic, on a roll-call vote as set forth below, the Village of Montebello Zoning Board of Appeals hereby grants the following additional variances:

1. a height variance from 36 feet (as approved in 2021) to 50 feet, 7 inches for the "partial fourth story; and
2. a height variance from 36 feet (as approved in 2021) to 53 feet for the elevator bulkhead; and
3. a FAR variance of an additional .04% variance of FAR above the 24% (from required 20%) granted by this Board in 2021.

In granting these variances, the Zoning Board relied on the testimony and representations 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 plans 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. The “partial fourth story” permitted by the height variance granted herein shall be used for access to the roof or for winter-time amenities only and shall not be converted to or used for office space or rentable space of any kind.

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

Member Bryan made a motion to adjourn the meeting at 9:13 p.m. seconded by Member Gigante and upon vote all were in favor.