

A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY JANUARY 18, 2024, 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:	Rodney Gittens	Chairman
	Carl Wanderman	Member/Vice Chairman
	Ezra Bryan	Member
	Janet Gigante	Member
	Rosana Millos	Ad Hoc
Others Present:	Alyse Terhune	Assistant Village Attorney
	Regina Rivera	Planning & Zoning Clerk
Absent:	Elizabeth Dugandzic	Member

Minutes approval

Member Wanderman made a motion to approve the December 21, 2023, meeting minutes, seconded by Member Gigante and upon vote, all were in favor.

Yosef Emuna—PUBLIC HEARING

96 Viola Road

49.05-1-15

Application of Green Mountain Development Corporation, c/o Yosef Emuna, 129 Grandview Avenue, Monsey, NY, owner of the subject property 96 Viola Road, Montebello, NY, which was submitted to the Village of Montebello Zoning Board of Appeals for a variance for: Minimum Lot Size [Minimum 50,000 sf, proposed for Lot 15.1 - 44,434 and proposed for Lot 15.2 41,722 Lot 15.2] as per Section 195-13, Use Group h of the zoning code of the Village of Montebello. The applicant wishes to subdivide the 2.25-acre property into two (2) lots. The Parcel is located on the north side of Viola Road 0 feet west of the intersection of Spook Rock Road and is identified on the Ramapo Tax Map as Section 49.05 Block 1 Lot 15 in the RR-50 Zone.

The Chairman established that the posting and the mailing were properly completed and then read the application and submissions into the record. Present was the Applicant, Yosef Emuna, and his attorney, Barry Haberman, who explained that the need for the variance arose from the fact that the County and the Village required a dedication of portions of the parcel for the right-of-way. Had they not, then the variance would have been de minimis. He also noted that this board had previously granted the same variances back in 2014. Mr. Haberman assured the Board that these variances will have no adverse impacts on the neighborhood, the community or the environment, that they were not self-created because part of the land had to be given away, that it will only permit a home consistent with the neighborhood and that no setback variances are required.

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

No one from the public wished to speak. Member Wanderman made a motion to close the public hearing, and Member Millos seconded the motion. Upon vote, all were in favor.

The Board deliberated the merits of the application. Members Wanderman, Gigante, and Bryan agreed they had no issues with the requested variances. Chairman Gittens reviewed the five criteria by which

variances are considered and determined that the effects on the neighborhood, community and environment were negligible, that the variances could not be avoided due to the mandatory land dedication, and, while he did note that any deviance from the bulk table is substantial, that the requested variances are relatively small.

No one having any more comments, Member Gigante made a motion to approve the application and grant the variances. 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

Calendar Case No. 1192

In the Matter of the Application of
96 Viola Road

**VARIANCE DECISION FOR
PROPERTY IDENTIFIED ON
THE VILLAGE OF
MONTEBELLO TAX MAP AS
Section 49.05, Block 1, Lot 15**

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

_____X

**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO
ZONING LAW FOR THE PURPOSE OF A TWO-LOT SUBDIVISION**

The property location, zoning district and proposed project. The subject property is located at 96 Viola 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”), situated on the north side of Viola Road, 0 feet west of the intersection of Spook Rock Road. The lot contains 2.2205 gross acres (96,724 square feet) and is in the Rural Residential District (“RR-50”). Because the Parcel is a corner lot fronting Viola Road and Spook Rock Road, the Village of Montebello required 10,568 square feet of property along Viola and Spook Rock to be dedicated to the Village for potential road widening, leaving a total of 86,156 square feet for residential development purposes.

Use of property located in the RR-50 district is governed by § 195-9, the Table of General Use Requirements. Bulk regulations are governed by §195-13, the Table of Bulk Requirements, Use Group h. The minimum lot size in the RR-50 zoning district is 50,000 square feet. Therefore, the entire Parcel is sufficient to build one single-family house. Parcel owner Yosef Emuna (“Applicant”) received a building permit to construct one house on the

Parcel. Subsequently, however, he decided to seek a subdivision so that he could build another single-family house on proposed Lot 15.2.

Application. Because the minimum lot area in RR-50 is 50,000 square feet, the Applicant requires two variances to divide the Parcel into two substandard lots. The variances are required, in part, because the Village of Montebello required dedication of 10,568 square feet of the Parcel for potential road widening (3,928 from Lot 15.1 and 6,640 from Lot 15.2). Property dedicated to the Village for the purpose of road widening is deducted from the minimum lot area calculation. Therefore, proposed Lot 15.1 would require an 11.132% minimum lot area variance of 5,566 square-foot from 50,000 to 44,434. Proposed Lot 15.2 would require a 16.556% minimum lot area variance of 8,278 square-feet from 50,000 to 41,722.

Prior Decisions Granting Variances. The subject Parcel has been granted the variances requested here on two prior occasions: Calendar Case No. 1135, dated May 15, 2008, and Calendar Case No. 1161, dated March 20, 2014. However, neither subdivision was duly filed with the County of Rockland and, as a result, the variances granted lapsed. The owner, who owned the Parcel in 2014 and is currently building a house on Proposed Lot 15.2, now seeks essentially the same variances as granted heretofore.

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. CDRC Denial letter from the building inspector dated November 16, 2023.
2. ZBA application dated November 30, 2023.
3. Narrative summary from Barry D. Haberman, Esq. dated November 30, 2023.
4. Resolution No. 1161 in re: application of Yosef Emuna, dated March 20, 2014.
5. Survey and Subdivision Plat for Yosef Emuna dated November 8, 2023, from Paul Gdanski PE, PLLC, pages 1 and 2.
6. Letter from the Rockland County Highway Department dated December 5, 2023, and an approved road opening permit from that same agency dated December 12, 2023.
7. Letter from the Rockland County Sewer District dated December 7, 2023.
8. GML review from Rockland County Planning Dated December 19, 2023.
9. Zoning Board Decisions approving variances known as Calendar Case No. 1161, dated March 20, 2014.

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 December 12, 2023, recommending “disapproval” in large part because of a violation issued by the Rockland County Highway Department

("RCHD") citing unpermitted work on the Parcel (see, comment 1). However, subsequent to the RCPD response, the owner received a permit from RCHD mooted RCPD's objection. RCPD issued additional comments 2 through 5. The Zoning Board referred the application to the Department of Health and the Town of Ramapo, thus complying with comment 2 and 3. The Zoning Board also complied with comment 4 by referring the application and materials to RCPD for comment. Finally, the Applicant complied with comment 5 by referring the application to the Village of Montebello's Historic Preservation and Parks Commission ("HPPC") for comment and approval regarding the house being constructed on Proposed Lot 15.2. HPPC reviews proposed construction within the Historic and Scenic Roads Overlay District, not applications for lot area variances, which is the application before the Zoning Board. The remaining comments were merely observations for the Board's review.

Agency referrals. The application was duly referred to all agencies with jurisdiction and addressed. In addition to the responses from RCPD and RCHD, Rockland County Sewer District No. 1 commented by letter dated December 7, 2023. All comments contained therein shall be addressed by the applicant.

Public Hearing. A duly noticed public hearing was convened on January 18, 2024. During the public hearing, the Zoning Board heard testimony from the Applicant, his attorney, Barry D. Haberman, Esq., 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.

State Environmental Quality Review Act (SEQRA). The Planning Board determined that the application is a Type II action pursuant to 6 NYCRR 617.5(c)(16), granting of individual setback and lot line variances and adjustments, and (c)(17), granting of an area variance for a single-family, two-family, or three-family residence. No further SEQRA action was 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:

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 determined that the mere creation of one additional buildable lot in the RR-50 district does not implicate a change in the character of the neighborhood especially where, as here, widening the roads that border the property is not a certainty.
2. The Board considered whether the benefit sought by the Applicant could be achieved by some other method and determined that it could not. Without the variances, which were made necessary in part because of Village needs, the Parcel could not be subdivided. Notwithstanding the prior variances granted, the Board admonished the Applicant for seeking a building permit on the entire lot, beginning construction and only then applying for variances. The Applicant could not assume variances would be granted a third time. Moreover, failure to file the prior approved subdivision falls squarely on the Applicant. Therefore, the Board specifically warned the Applicant that it would not look favorably on any further applications for variances to build larger homes on either lot or for any other relief from the zoning code.
3. The Board considered whether the requested variances are substantial and determined that while they may be considered so, the fact that over 10,000 square-feet of the property was required to be dedicated to the Village, reducing the lot area calculation, weighs in favor of granting the variances.
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. Any potential adverse impacts will be investigated by the Planning Board during subdivision review and the Building Inspector before granting any building permits.
5. The Board considered whether the alleged difficulty was self-created and determined that was not. The scope of the variances was due in large part to the Village required dedication of land.

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 December 19, 2023, for the reasons stated herein.

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

1. Proposed Lot 15.1 – an 11.132% minimum lot area variance of 5,566 square-foot from 50,000 to 44,434 for proposed Lot 15.1, and;
2. Proposed Lot 15.2 – a 16.556% minimum lot area variance of 8,278 square-feet from 50,000 to 41,722.

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. Subdivision approval granted by the Village of Montebello Planning Board in a manner consistent with the materials submitted to this Board.
3. The variances granted herein shall expire if the approved plat is not filed with the Rockland County Clerk within the time allowed by law, as may be extended by the Planning Board.

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

David and Kirsten Elena Hirsch

8 Par Executive Blvd.

48.20-1-16

Application of David and Elena Hirsch, 8 Par Road, Montebello, NY which was submitted to the Village of Montebello Zoning Board of Appeals for a variance for: Rear Yard [required 20', proposed 13.5'] as per Section 195-13, Use group m of the zoning code of the Village of Montebello. A pool cabana that was constructed encroaches into the required rear yard. The Parcel is located on the east side of Par Road at the intersection of Caddy Lane in the RR-50 Zone.

Chairman Gittens read the application and submissions into the record. Paul Gdanski, engineer, presented on behalf of the Applicants. Mr. Gdanski explained that the Applicants applied for a permit to construct a pool and a cabana. Both were built but upon final inspection, the building inspector found that the as-built survey did not match the pool plan because the cabana encroaches into the rear yard. The contractor who built the cabana inadvertently did this and now the Hirsches are seeking a variance to correct the error, he said.

The Chairman asked if there is a buffer between the cabana and the next house. Mr. Gdanski showed an aerial photo of heavy trees and the next house some distance away. Upon seeing the photo, the Chairman remarked that the cabana doesn't appear to be an eyesore for any of the neighbors. Mr. Gdanski noted that the cabana was built back in 2019. Member Wanderman asked if any part of the cabana could be removed to bring it to conformance. Mr. Gdanski said that was impossible, especially given the small size of the structure.

After establishing that the contractor did not build according to the specs submitted to the Building Department, Ms. Terhune asked if there are utilities under the cabana. Mr. Gdanski said water, electricity and sewer runs from the house to the cabana, and that the equipment pad for the water filtration system is off to the right of the driveway. He added that there is a bathroom in the cabana¹. Member Gigante was concerned that it could be used as a separate dwelling unit. Mr. Gdanski said the majority of the structure is roof overhang and a large patio, and that there are no sleeping areas. The Chairman requested that photographs of the cabana be submitted, and recommended that the prohibition of using it as a dwelling unit be a condition of approval.

No one having further comments, Member Wanderman made a motion to set the public hearing for the next ZBA meeting, seconded by Member Millos. Upon vote, all were in favor.

Executive Enterprises GP

9 Executive Blvd.

55.07-1-9

Application of Executive Enterprises GP, 4 Executive Blvd, Suite 200, Montebello, NY, owner of the subject property at 9 Executive Boulevard, which was submitted to the Village of Montebello Zoning Board of Appeals for a variance for: Floor Area Ratio [required 0.40, proposed 0.52] as per Section 195-13, Use group J of the zoning code of the Village of Montebello. The Applicant proposes the construction of a 125,905 square foot building for printing operations, warehousing, and office space for The Schreiner Group. The Parcel is located on the south side of Executive Boulevard 30 feet north of the New York State Thruway in the LO Zone

Present was the Applicant Josh Goldstein, principal of Executive Enterprises GP and owner of the lot at 9 Executive Boulevard, and his attorney Michael Klein. Also present were James Tully, Executive

¹ The homeowners post-meeting clarified that there is no shower in the cabana, only a toilet.

Vice President of the real estate brokerage firm CBRE, and Matthias Kursch, Director of Engineering for The Schreiner Group.

Mr. Klein presented the project for the 5.6-acre lot in the LO zone at the very end of Executive Boulevard, which borders the NYS Thruway to the south, 2 and 4 Executive Boulevard to the North, Crown Plaza to the east, and the Archdiocese of New York State to the west. These nearby buildings and the hotel on Executive Boulevard are all owned by related entities of which Mr. Goldstein is the principal. Mr. Klein explained that they received approval for a 103,000 square foot three-story office building but were unable to find a tenant and abandoned the project. A subsequent plan for two smaller buildings, each 46,000+ square feet, was approved but they were again unable to find a tenant and they did not build. The Market remained elusive until earlier this year when Mr. Goldstein engaged in talks with The Schreiner Group, a family-owned and growing business that prints and markets labels primarily for the pharmaceutical industry. They are seeking to relocate their US corporate and printing offices from their leased space in Orangeburg, NY, the lease for which will shortly end.

Mr. Klein said that The Schreiner Group appealed to the Village +Board of Trustees for a zone amendment to permit light printing operations, which is integral to their needs. The Board looked upon the proposal favorably and, after holding a public hearing, the zone change was enacted to allow the use by special permit. The CDRC was also amenable to the project, but the plan, based on their needs, will require a FAR variance. Mr. Klein said that the CDRC suggested they come to ZBA informally to introduce the project to see how receptive this Board is to the project. We are at the point where we are about to commit a lot of time and money to develop the plans further and knowing whether the ZBA is willing to grant the variance would help us determine whether it is worth taking the next steps, he said. Mr. Klein added that The Schreiner Group would prefer to settle in Montebello, but that they have their eye on a property in North Carolina if things do not work out here.

The engineer for the project, Joe Nyitray of Brooker Engineering walked the Board through the project, explaining that the first floor will be a total of 125,905 square feet: 85,906 square feet will be dedicated to their printing operations, and a 40,000 square-foot mezzanine for office and related operations. The Village code requires 317 parking spaces. There are 147 parking spaces on site, and more than enough overflow parking at 2-4 Executive Boulevard and Crown Plaza that is not currently in use. Five loading docks for box truck deliveries are provided, and a new underground stormwater retention system will be built under the parking lot to meet the 0 net runoff requirement. The project is in conformance except for FAR, he added.

Mr. Kursch of the Schreiner Group explained that this private company was started in Germany seventy-five years ago and opened their facility in the United States in 2007. The business continues to expand and, while it has outgrown the current building, they wish to accommodate their projected needs in terms of operations and number of employees in twenty years from now, which is why they are maximizing their footprint now. Mr. Kursch explained that these projections drive the size of the Mezzanine that will house their corporate offices, thereby adding to the FAR. We are thinking long-term, we are thinking be, and we want to construct the building the right way, he said.

Mr. Goldstein said he and his family have owned the majority of the properties on Executive Boulevard for thirty-five years. Crown Plaza was developed, owned and operated by us, and we recently made large capital improvements there. Executive 2 and 4 are owned and operated by us as well he said, and explained that this parcel could have been developed or sold off due to its size and location which is just a stone's throw away from the NYS Thruway. However, our family wishes to realize our grandfather's vision for the area. Not only is The Schreiner Group privately owned, but they are a family organization with a footprint already in Rockland County and we'd like to help them stay in Rockland to continue to contribute to the local economy and tax base. Time is of the essence and we will work diligently to help them get through the Boards as quickly as possible, he added.

Chairman Gittens asked how many stories are being proposed. Mr. Klein said it will be thirty-five feet high, which is ten feet lower than the surrounding buildings, and that only a portion of the building will contain the mezzanine. Chairman Gittens noted that it will be one floor except for the mezzanine, and remarked that they are building within the maximum bulk and that the mezzanine pushes them over the FAR threshold. He then asked about parking. Mr. Klein said that the calculations require 317 spaces and there are reciprocal parking easements with Crown Plaza and 2 and 4 Executive Blvd that easily satisfy the requirements. However, the Schreiner Group has small parking needs because the office staff works from 8 a.m. to 4:30 p.m., and the printing employees work in two ten-hour shifts Monday through Thursday. Parking needs are therefore staggard and the requirement is dramatically lower than it seems. Also, he continued, the office employees vary their days in the office as they work from home part of the time. Ten years from now, they project that only 50% of the workforce will be on site on any given day and that 147 parking spaces actually exceed what is needed now *and* in ten years. Mr. Klein added that, as such, they will request a 25% parking reduction from the Planning Board. Finally, he continued, truck traffic will be minimal because they use vans or box trucks only and their truck use is much less than other contemplated users for the site. The Schreiner Group is an ideal user in terms of people on site and traffic generation, he said.

Member Wanderman asked if they contemplated a variance for parking. Mr. Klein said that they would have if they needed to go below the 25% reduction, but it is more reasonable to ask for a Planning Board waiver because they are certain that more spaces will never be needed, adding that should the Planning Board decides not to grant the waiver, they can demonstrate there are enough spaces in the overflow lots.

Member Gigante asked if there could be restrictive language about parking in an approval resolution. Ms. Terhune explained that they are appearing tonight informally to gain a sense of how this Board feels about the project and that they can't issue speculative approval. This evening, the Board can only give them an idea if it thinks this is a good project, she said.

Chairman Gittens wanted assurance that, should they receive the FAR variance, they won't return to the ZBA for more mezzanine space. Mr. Klein said The Schreiner Group intends to operate here for decades to come and designed the building to accommodate now and future contemplated needs. They need 40,000 square feet for office space or they won't build, he said.

Member Bryan said he appreciated the history of the property and the project overview, but sees the mezzanine a little differently. Noting that, as they explained it, the operation will be at 50% capacity most days, he said he did not understand why they would ever need 40,000 square feet of office space. The design is ambitious in accommodating a full staff. He asked the size of the building they are currently using, and Mr. Kursch said it is 60,000 square feet. Member Bryan said this lot allows for way more than they have right now, within the bulk, which already accommodates future expansion. And, he continued, if you build for 100% of your work force, logic dictates that you would need 100% of the required parking.

Mr. Klein reminded him that the printing and distribution employees work two different shifts and that their ten-year projection shows a maximum of 154 people on site at one time. Member Bryan asked if the parking projections can be provided to this Board. Ms. Terhune said that is the purview of the Planning Board, not the ZBA. Mr. Klein said that the projections are part of the Traffic Impact Study and that they are happy to share those numbers with this Board.

Chairman Gittens and Member Bryan wanted to know how many offices are proposed. Mr. Kursch said there will be fifteen or sixteen separate offices and some conference rooms. Member Bryan asked the percentage of office space and cubicle areas, but Mr. Kursch said that Germans do not have cubicles

as they do in America. Mr. Goldstein suggested that the Board make a site visit to the current Schreiner office space in Blauvelt to see the business in action. The Board was amenable to that idea.

Member Millos asked if Schreiner is a green company. Mr. Kursch said they are and that they are struggling with American standards which are lower than they would like. Mr. Goldstein said that they will keep as many trees as possible and will supplement the landscape where suitable. He added that one of the five criteria by which the ZBA considers a variance is “is the need for a variance self-created?” In this case, the answer is “yes.” We tried to convince them to avoid the need for a variance, but it is what they need to operate their business, and I am doing my best to keep them here, he said.

Ms. Terhune asked the Board if they saw any significant issues with this project. Chairman Gittens said that they already expressed their issues, parking chief among them, but that he admired their staggered working days and smaller trucks which keeps traffic issues at bay. Overall, the Board seemed to look favorably on this project. The Applicant was advised to return to make a formal application to the ZBA after they receive a Neg Dec From the Planning Board.

Member Bryan made a motion to adjourn the meeting at 8:38 pm, seconded by Member Gigante and upon vote the motion passed unanimously.