

A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY FEBRUARY 15, 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.

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

Absent:

Minutes approval

Member Wanderman made a motion to approve the January 18, 2024, meeting minutes, seconded by Member Bryan and upon vote, all were in favor.

**David and Kirsten Elena Hirsch—PUBLIC HEARING
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 established that the public hearing was properly posted and noticed and then swore in the Applicant. Ms. Hirsch explained that the cabana was built nearly five years ago, and that she had no idea that her contractor did not follow the original plot plan and built it too close to the rear property line. She explained that this error was made without her knowledge and that they had no idea there was something wrong until recently. None of the neighbors have had any problem with it in all this time, she added. In response to a query at last month's ZBA meeting about its habitability, Ms. Hirsch stated that there is no shower in the cabana and that it is mostly for pool accessory storage with a wide covered patio for shade.

Member Dugandzic asked how the error was finally discovered. The Zoning Board clerk explained that in order to close the permit, the Applicant was required to submit an As-Built Survey so the Building inspector can verify that all was built according to the original plot plan. As such, upon final inspection, he discovered that the cabana encroached into the rear yard by 6.5 feet and could not issue a certificate of occupancy.

Member Bryan asked if she contacted the contractor to rectify the problem. Ms. Hirsch said there seemed to be no use because the structure cannot be moved or altered.

Wanderman made a motion to open the public hearing, seconded by Member Millos and upon vote, all were in favor. No one from the public was present. Chairman Gittens polled the Board. Member Gigante said that the cabana was certainly not disturbing anyone’s peace of mind and in any case, it sits a good distance away from the abutting house and is blocked by trees. Member Wanderman said that he once made a mistake too. This is not such a terrible error in that it is only off by six feet. None of the other Board members took issue with the variance, and no one having further comments, Member Gigante made a motion to close the public hearing, seconded by Member Wanderman and upon vote, all were in favor.

Chairman Gittens weighed the Application against the five criteria by which variances are judged and personally determined that the request poses no adverse impacts to the neighborhood, that it could not be achieved in any other way, that the variance, while somewhat substantial, is not large, and that there are no adverse impacts to the environment. Yes, the need for the variance is self-created, but it was not intentional, he added.

Member Wanderman made a motion to grant the variance. 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

Calendar Case No. 1193

X

In the Matter of the Application of
David and Elena Hirsch

**VARIANCE DECISION FOR
PROPERTY IDENTIFIED ON
THE VILLAGE OF
MONTEBELLO TAX MAP AS
Section 48.20, Block 1, Lot 16**

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

X

**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO
ZONING LAW FOR THE PURPOSE OF COMPLIANCE WITH THE REQUIRED
REAR YARD SETBACK REQUIREMENTS FOR AN AS-BUILD POOL CABANA**

The property location, zoning district and proposed project. The subject property is located at 8 Par Road, Village of Montebello, County of Rockland, State of New York, identified on the Tax Map as Section 48.20, Block 1, Lot 16 (the “Parcel”), situated on the east side of Par Road at the intersection of Caddy Lane. The Parcel contains .97 acres and is in the Rural Residential District – 50 (“RR-50”). The property owners, David and Elena Hirsch (together, the “Applicants”), applied for a building permit to construct a pool cabana. Upon inspection for the purpose of issuing a certificate of occupancy, the Building Inspector determined that part of the cabana as built encroached on the required rear yard and referred the Applicants to the Zoning Board of Appeals (the “Board”).

Application. RR-50 district bulk regulations are governed by §195-13, the Table of Bulk Requirements, Use Group “m”. The minimum required rear-yard is 20 feet. The cabana was constructed 13.5 feet from the rear-yard setback. To remedy the encroachment, the Applicants would be required to either move the cabana or apply to the Board seeking a 6.5-foot area variance. The application was made on or about December 20, 2023.

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. Denial letter from the building inspector dated December 15, 2023.
2. ZBA application dated December 20, 2023.
3. “As built” site plan, dated July 16, 2017, last updated December 19, 2023, prepared by Paul Gdanski PE, PLLC.
4. Photographs of the cabana and an aerial Google photograph of its location on the property and in relation to neighboring properties.

Public Hearing. A duly noticed public hearing was convened on February 15, 2024. 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.

State Environmental Quality Review Act (SEQRA). The 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 Applicants 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 the cabana has been constructed for approximately five (5) years with no apparent detrimental effect on the neighborhood. No complaints have been made by the neighbors. The Board also noted that the cabana is screened from neighboring properties by heavy vegetation.
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 cabana was duly inspected during construction, including laying the foundation, and the encroachment was not called out at the time.
3. The Board considered whether the requested variance is substantial and determined that although the variance is 32.5%, it is not substantial under the circumstances here, i.e., vegetative buffering, actual distance from the nearest neighbor's property line and residence and that a mistake was made by the contractor rather than an attempt to knowingly place the cabana closer than permitted.
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. No negative environmental impacts have been reported in the five years the cabana has been in place.
5. The Board considered whether the alleged difficulty was self-created and determined that it was a mistake by the builder of the pool, and not intended by the owners of the property.

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 variance.

DECISION

NOW, THEREFORE, BE IT RESOLVED on a Motion by Member Wanderman, Seconded by Member Gigante, pursuant to the rollcall vote set forth below, the Village of Montebello Zoning Board of Appeals hereby grants a 6.5-foot variance from the required 20-foot rear-yard setback to 13.5 feet to the Parcel identified on the Village of Montebello Tax Map as Section 48.20, Block 1, Lot 16.

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.

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

At 7:24 p.m. Member Gigante made a motion to adjourn the meeting, seconded by member Millos. Upon vote, all were in favor.