

VILLAGE OF MONTEBELLO  
LOCAL LAW NO. 2 OF THE YEAR 2023  
A LOCAL LAW AMENDING CHAPTER 195, ZONING, TO CONFORM THE DECISION  
CRITERIA GOVERNING ACTIONS BY THE ZONING BOARD OF APPEALS  
TO STATE LAW AND MODIFY THE DEFINITION OF  
“ACCESSORY, BUILDING OR STRUCTURE”

Be it enacted by the Village Board of Trustees of the Village of Montebello by authority of Article 7 of the Village Law and Article 2, Section 10 of the Municipal Home Rule Law, as follows:

*(Note: Proposed insertions of language into the Code are indicated by underlining. Proposed deletions of language from the Code are indicated by strikeout symbols. All other language shown is to remain unchanged. The symbol “\* \* \* \* \*” indicates portions of the Code to remain unchanged, which are not shown here for brevity.)*

*Section 1: Legislative findings and intent. The Village Board of the Village of Montebello hereby finds and declares:*

The Village periodically reviews its Zoning Code to ensure that the various provisions continue to effectively implement the purposes set forth in § 195-3 of the Village Code, which directs the zoning law to protect and enhance environmental, human and community resources and maintain the rural and semirural character of the Village, among other things, while complying with New York State Law. In doing so, the Village identified certain provisions of Article XV of Village Zoning Law, “Board of Appeals,” specifically § 195-108, “Powers and duties” that may be inconsistent with NYS Village Law § 7-712-b, “Permitted action by boards of appeal.” While the Montebello Zoning Board of Appeals under advice of counsel has consistently followed New York State Law as it has evolved, it is prudent that Chapter 195 reflect same verbatim. The Village also determined that the definition of “Accessory, building or structure,” was inconsistent with the purposes set forth in § 195-3 in that accessory buildings or structures could approach or be larger than the principal use on the lot.

*Section 2: Amend Chapter 195, Zoning, Article XVIII, “Word Use and Definitions, Section 195-124, “Definitions,” by amending the existing definition of “Accessory,” and adding a new definition “Accessory, Use” as follows:*

**ACCESSORY BUILDING OR STRUCTURE**

A. The term applied to a building or structure which is clearly incidental or subordinate to, and customarily used in connection with the separate principal building or structure which is located on the same lot. Any accessory building or structure whether attached to a principal building or structure or not, is deemed to be part of such principal building or structure for the purpose of compliance with all bulk requirements. In addition, no separate building or structure shall be considered “accessory” where:

- (1) The sum of all such accessory building’s or structure’s gross floor area exceeds thirty-three (33%) percent of the gross floor area of the principal building or structure; and

(2) The sum of all such accessory building's or structure's ground floor area (also known as the "building footprint") exceeds thirty-three (33%) of the ground floor area or building footprint of the principal building or structure.

(3) The number of stories of the accessory building or structure shall not exceed the number of stories of the principal building, and in no event shall it exceed 25 feet in height.

B. Any additional buildings or structures on the site, besides the principal building, must meet all of the conditions above, in order to be allowed as accessory buildings or structures.

C. For example, if the gross floor area of the principal building is 6,500 square feet and the ground floor area of the principal building (the footprint) is 3,000 square feet, then the sum total of all gross floor area of accessory buildings or structures on the lot shall not exceed 2,145 square feet and the ground floor area or footprint shall not exceed 1,000 square feet.

D. Said limitations shall not apply to land governed by the New York State Agriculture and Markets Law.

E. Said limitations shall be appealable to the Zoning Board of Appeals.

#### **ACCESSORY USE**

The term applied to a use which is clearly incidental or subordinate to, and customarily in connection with, the principal use and which is located on the same lot with the principal use. No use shall be considered "accessory" where such use exceeds the square-foot limitations for accessory buildings or structures as defined in this chapter.

*Section 3: Amend Chapter 195, Zoning, Article, XV, "Board of Appeals," Section §195-108, "Powers and duties," as follows:*

Paragraph A, "Appeals," is modified as follows:

The Board of Appeals shall hear and decide appeals from and review any order, requirement, decision or determination of the Building Inspector or such other official charged with the enforcement of this chapter. The Board of Appeals shall not hear any appeal from nor review any order, determination, requirement, decision, or revocation of the Building Inspector where such order, determination, requirement, decision, or revocation has been directed by the Village Board. In addition, the Board of Appeals may not waive the requirement for site development plan application as required in any part of this chapter, or a condition of site plan approval imposed by the Planning Board, or a condition imposed by the HPPC when granting a certificate of appropriateness.

Paragraph C, "Variances," is modified as follows:

Variances. On appeal from an order, requirement, decision or determination made by the Building Inspector, or on referral of an applicant to the Board by an approving agency acting

pursuant to this chapter, the Board of Appeals is authorized to vary or modify the strict letter of this chapter, provided, however, that said variance is in such manner as to observe the spirit of the chapter, protect the character of the community and neighborhood as represented by the use and bulk tables enacted by the Village Board, secure public safety and welfare and do substantial justice as between the applicant, the general community and specific neighborhood impacted by the requested variances.

Subsection (1) of Paragraph C, "Area Variances," is deleted in its entirety and replaced with the following:

1. Area variances.

(a) The Board of Appeals may grant area variances from the bulk requirements of this chapter. In making its determination, the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the Board shall also consider:

- [1] Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- [2] Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- [3] Whether the requested area variance is substantial;
- [4] Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- [5] Whether the alleged difficulty was self-created; which consideration shall be relevant to the decision of the Board of Appeals but shall not necessarily preclude the granting of the area variance.

(b) Minimum area variance. The Board, if granting an area variance according to the standards set forth in this chapter, shall only grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

(c) Balancing test. When considering whether to grant area variances, the Board shall also consider that the bulk requirements enacted by the Village Board were intended to effectuate a primary goal of the Comprehensive Plan, which was to maintain the existing scale of residential neighborhoods, protect the rural character of the Village, and reasonably scale commercial to residential development to provide the greatest opportunity for the quiet enjoyment of residential life in the Village. In residential districts, this protection is best described by the floor-area ratio of building to lot size. The Village Board considers any increase whatsoever in floor-area ratio to be "substantial" and will result in an undesirable change in the character of the neighborhood in which it is proposed. Substantiality and undesirable result shall be considered "rebuttable presumptions" where all such variances are requested and should be granted only where the Zoning Board determines that all other factors weigh strongly in favor of

the applicant. Similarly, the Village Board considers any variance in floor-area-ratio, maximum lot coverage and transitional yards “substantial” and undesirable for all nonresidential development, including, but not limited to, commercial, religious, educational, and public assembly uses and should be granted only where the Zoning Board determines that all other factors weigh strongly in favor of the applicant.

Subsection (2) of Paragraph C, “Use variances,” is deleted in its entirety and replaced with the following:

2. Use variances.

(a) No use variance shall be granted by the Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

- [1] The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- [2] That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
- [3] That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- [4] That the alleged hardship has not been self-created.

(b) Minimum use variance. The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Paragraph F, “Expiration of relief,” is modified as follows:

Expiration of relief. Any grant of relief by the Board of Appeals pursuant to this chapter shall expire by operation of law if a building permit has not been issued, in accordance with the plans for which such relief was granted, within one year after the date on which such relief was granted, provided further that the structure is built within two years from the date of the building permit. If such relief was granted within the context of an application for site plan, subdivision, special permit or other approval from the Planning Board or the Village Board, then such relief shall expire at the time such site plan, subdivision, special permit, or other approval shall expire. In the event judicial review of such relief by the Board of Appeals is sought, then the expiration periods set forth above shall be tolled pending the date of entry of the final order in such judicial review proceedings, including all appeals.

*Section 4: Amend Chapter 195, Zoning, Article IV, “Bulk Regulations,” Section 195-16, “Modification of bulk requirements,” as follows:*

**§ 195-16 Planning Board modification of bulk requirements for environmental features in the ER-80 and RR-50 Zoning Districts.**

The Planning Board may modify yard, setback, lot width and frontage requirements for single-family homes and accessory buildings in the ER-80 and RR-50 Zoning Districts. Such modifications shall not reduce the lot area below that required for the district in which the lot is located, nor shall any development coverage or floor area ratio be increased beyond required maximum limitations, nor shall any minimum bulk requirement be reduced by more than 50% of the required distance, and nor shall more lots be created than would otherwise be permitted. Setback requirements may be modified where, in the Planning Board's judgment, the preservation of an environmental feature is deemed to be important. Examples of environmental features include, but are not limited to, wetlands, streams, ponds, steep slopes, poorly drained soils, stone walls, prominent landscape features such as stands of trees or unique species or forms of vegetation, significant existing buildings, vistas, parks, and recreation facilities.

*Section 5: This local law shall take effect immediately upon filing with the Secretary of State.*