

A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY JULY 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
Ezra Bryan, Member
Elizabeth Dugandzic, Member
Carl Wanderman, Member/Vice Chair
Rosana Millos, Ad Hoc

Absent:

Janet Gigante, Member

Minutes approval

Member Dugandzic made a motion to approve the June 20, 2024, meeting minutes, seconded by Member Bryan and upon vote, all were in favor.

Jacob Leitner

8 Henry Court

Application of Jacob Leitner, 8 Henry Court, Montebello, NY which was submitted to the Village of Montebello Zoning Board of Appeals for variances for: Floor area ratio [max.0.20, proposed 0.22]; Side yard [required 20', proposed 7']; Minimum lot size [required 25,000' pre-existing non-conforming, proposed 26,063.06'*]; Parking spaces total for residence and RGP [required 7 spaces, proposed, 5 spaces]; Privacy fence height [max. 6', proposed 8'] As per Section 195-13, Use group q, and Sec. 195-19 of the zoning code of the Village of Montebello. The Parcel is located on the north side of Henry Court, approximately 310 feet north of the intersection of Zeck Court, and is shown on the Ramapo Tax Map as Section 48.10 Block 1 Lot 36 in the R-35 Zone.

***pre-existing nonconformance**

Present was the Applicant Rabbi Leitner, his attorney Joseph Churgin, and his engineer Josip Medic. After Chairman Gittens read the application into the record, Mr. Churgin explained that they were seeking the variances needed to use a room on the first floor of an existing home as a Residential Gathering Place per Sec. 195.79.1 of the Village Code. He explained that they are only seeking to use it on Shabbos and holidays for fifteen congregants who live nearby and who will arrive on foot only. The shul is here only to serve the neighborhood and no one will be arriving by car, he said.

Chairman Gittens asked the definition of a shul. Mr. Churgin explained that it is a place of worship, like a synagogue, but here it is just one room in a home. On Friday nights, fifteen people will come and pray, returning to their homes after prayers. He explained that they are not allowed to drive on Shabbos so there is no worry about traffic or parking.

Member Wanderman asked if that meant there would be any special services, for example bar mitzvahs. Mr. Churgin said no, that it is just one room in which a minyan can pray.

Chairman Gittens asked about the side setback variance of .7' from the property line. Mr. Churgin reminded him that it is for the required parking space, and not for any structure. He acknowledged that it is very close to the property line but said that if the Applicant had the choice, he would have foregone the parking spot. It is merely a requirement of the code for seven parking spaces, but because of the proximity of the wetlands, steep slopes and the river, five spaces are the most they could fit. The choice was between applying for this side setback variance or for a bigger variance for providing four parking spaces out of seven. He added that the proposed eight-foot fence is there to give his client as well as their neighbor extra privacy from whoever parks in that space.

The FAR variance is not a significant one, Mr. Churgin continued. There are no other legal orthodox shuls within walking distance and it's important to serve the community and the new people who are moving in. Under federal and New York State law, religious uses are to be afforded deference by Zoning and Planning Boards. It doesn't mean that the Boards should rubber stamp everything, but in cases such as this one, there should be some lenience, he said.

Mr. Churgin then cycled through the criteria by which Zoning Boards judge variance requests and surmised that this proposed use poses no undesirable change to the character of the neighborhood, community or environment, especially since no new structure is being proposed, that the requested variances are not substantial, and that the end cannot be met by any other means, particularly since there are certain codified requirements for which the Applicant requires relief. Mr. Churgin acknowledged that the need for the variances is self-created but when all factors are balanced against this, the tide favors granting the variances.

Regarding the County GML dated June 24, 2024, which recommended modifications, Mr. Churgin requested an override for comment #1, because it is a misunderstanding:

The bulk table on the site plan states the zoning district is R-25 and uses the bulk requirements from use group t of the Village's zoning code. However, the site is located in the R-35 zoning district, and must use the bulk requirement standards listed under use group q. The applicant shall resubmit the site plan with the correct bulk requirements listed, and should ensure all application materials are consistent.

He explained that they used the R-25 bulk table as advised by the building inspector because it is an undersized lot, and in any case, these numbers are the same for both zones. Ms. Terhune stated that there is nothing in the files that indicates that the building inspector instructed them to use the R-25 bulk, and recommended they submit something in writing to that effect. Mr. Churgin said that this is what the Building Inspector advised early on in the CDRC process, and that in any case, the setbacks are same for both R-25 and R-35 zones. Mr. Brecher noted that the variances are smaller under the R-25 bulk. Ms. Terhune stated that the Building Inspector will submit a memo clarifying and corroborating the issue. Mr. Churgin said that if the Building Inspector agrees that it should be R-25, our override request remains, and if he does not, then the plans will be modified.

Rabbi Leitner explained that he moved to Montebello in September and that there was no place to pray on Shabbos that was closer than a 35 minute walk to North Airmont Road on dark streets with no sidewalks. This will merely be a place of worship for a small group of residents to which they may walk safely, he said.

Chairman Gittens asked the Applicant's engineer how he came up with the site configuration. Mr. Medic explained that fitting in the required parking was a challenge, especially with the proximity of the Mahwah River and steep slopes. He said his intention was to make the most use of existing space without impacting the wetlands while [mostly] satisfying the parking requirements. The path to the mikvah was moved to the rear of the property per the ZBA's wishes, he added.

The Chairman wondered why they couldn't show all seven of the required spaces. A discussion ensued about tandem parking, turning radius, and the usage of the spaces. Mr. Medic stated that it was better to leave some of the area vacant and show five spaces that were more accessible.

Chairman Gittens asked why the privacy fence had to be eight feet high. Mr. Brecher explained that the extra height will afford both his client and the neighbor maximum privacy. The Chairman was puzzled by this because a six-foot fence at the property line would not require a variance while providing plenty of privacy, and asked if perhaps they thought that the neighbor would be offended in any way by the congregation. Mr. Brecher said it was just a privacy measure that would head off any potential problems. Member Dugandzic said that an eight-foot vinyl fence is a big deal and may very well change the character of the neighborhood. Member Millos agreed and said that the fence would stick out and be difficult to look at.

The discussion turned to the proposed mikvah, which, while not part of this application, was a source of curiosity among the Board members. Mr. Churgin explained that the mikvah is a ritual bath for the sole use by the Rabbi

and that no congregants will use it. Ms. Terhune noted that the path to the mikvah was removed from the site plan as the ZBA requested, and asked if it was originally included in the coverage calculations. Mr. Churgin said it was not.

The Board and the applicant discussed the fence and proposed parking spaces, and the possibility of relocating one or two spaces out of the side yard. Member Millos suggested creating a parking space in front of the converted garage. Mr. Churgin said it is possible to move one of the spots away from the property line, which will alleviate some of the setback issues, and that the site plan will be revised accordingly. The Chairman appreciated this last gesture.

Member Bryan wanted clarification of the worship space and how it will be used. Mr. Churgin said he would submit a narrative for the next meeting. Regarding the proposed fence, Member Bryan recommended that privacy can be achieved by other means, such as trees and shrubs, and the Applicant's said they will consider this alternate privacy screening.

No one having further questions, Member Wanderman made a motion to open the public hearing. Member Dugandzic seconded the motion and upon vote, all were in favor.

Judy Klein of 14 Zech Court, Montebello, NY said she has lived here for 30 years and that she welcomed her new neighbors from the very beginning. The biggest issue with the application is the parking, she said, explaining that though they say they do not drive there to worship, there often cars parked in the center of the cul-de-sac and lately there has been a huge dump truck parked right in front of the Applicant's house. She handed three photos that she had taken of the cars and truck to the Zoning Board clerk.

She then said that there are other nearby shuls to which congregants could walk, and used the Chabad as an example. The Chabad is less than a tenth of a mile from here and uses a public building that is already equipped for parking and for worship. If the rebuttal of the Rabbi is that they worship in different ways, then we might be faced with a future scenario of a shul on every corner, each with several parking spaces, which would change the character of the entire Village. Ms. Klein then said she doubted that the mikvah will be built for the Rabbi's sole private use, and wondered how the Village proposes to enforce and limit the number of congregants using the space for worship.

Rabbi Leitner explained that the dump truck belongs to his son for his business and that he will no longer park it on Henry Court. Regarding the Chabad, he explained that their congregation has many minions on weekdays and nights, not just on Shabbos, and there are big differences in the way the two congregations worship.

Michael Anders, 27 Victory Road, Montebello, NY said that he was a member of the Ramapo Civic Association in 1986 when the Village was incorporated. The code exists to control zoning and to keep the area residential, and this is not what was imagined at the time, he said. Ms. Terhune said that this proposal is a use permitted under current zoning.

Manny Weisel, 5 Robin Hood Road, Montebello, NY, took issue with Mr. Anders' statement, and said that no one could foresee any of this. He explained that he grew up in Monsey and came to Montebello because he wanted some distance from the bustle of central Monsey and preferred this more bucolic way of life, and wishes to preserve it. No one wants a shul on every corner. There are massive fundamental differences among Jewish sects, and Rabbi Leitner is here for the crowd currently gathered in this room. There is a massive need in any community to have a shul like Rabbi Leitner's, whose home is a 20 minute walk from my home. The Rabbi runs a tight ship and that, aside from a couple of extra people from time to time, the congregation primarily consists of fifteen people, he said. He then thanked the Board for listening.

David Klein, 14 Zeck court, Montebello, NY addressed the Rabbi directly, stating that he noticed there was a dumpster on Rabbi Leitner's property and that last Saturday morning, he witnessed two cars parked in the middle of the cul-de-sac, which could prevent any emergency vehicles from getting through, and in any case, there is a sign that reads "no overnight parking."

Rabbi Leitner said he was surprised at this, especially since he was away last weekend.

No one else from the public having any comments, Member Dugandzic made a motion to adjourn the public hearing and the application to the August ZBA meeting. Member Wanderman seconded the motion and upon vote, all were in favor.

Josh Jacobs

1 Canterbury Lane, Montebello, NY

PUBLIC HEARING

Application of Josh Jacobs, 1 Canterbury Lane, Montebello, NY which was submitted to the Village of Montebello Zoning Board of Appeals for variances for: Development Coverage [maximum 20%, proposed 22.5%]; Rear Yard (pool patio) [required 25', proposed 6.2']; Rear Yard (fire pit) [required 25', proposed 5.2']; Front Yard (pool patio) [required 24' preexisting, proposed 15.7'] as per Section 195-13, Use group h of the zoning code of the Village of Montebello. As-built survey shows that the reconstruction of the pool and the addition of a hot tub, patio, fire pit and fence are non-conforming. The Parcel is located on the east side of Canterbury Lane at the intersection of Viola Road, and is shown on the Ramapo Tax Map as Section 48.12 Block 1 Lot 41 in the RR-50 Zone.

Present was the Applicant, Josh Jacobs, and his attorney Paul Baum. Chairman Gittens read the application and submittals into the record.

Mr. Baum introduced himself and reminded the Board that they were before them last month and are here now for the public hearing. Mr. Baum explained that his client bought the property in 2021 shortly after which he applied for and was issued a building permit for the pool refurbishment and a hot tub. He noted that the site plan that was submitted for the permit did not show the patio or the fence, both of which were completed after the other work was done. Mr. Baum said the fence encroaches into the right of way on Viola, and though we applied to the Rockland County Highway Department for a fence permit to rectify the situation, the County will neither issue a permit nor a letter stating they had not issue with the fence in the right of way. However, I spoke to them several times and they stated plainly that they don't mind the encroachment, he said.

Mr. Baum went over the requested variances, noting that the development coverage variance is de minimis, and that the building inspector agreed in writing that the existing deck should not be included in the coverage calculations, and asked Mr. Jacobs to explain how this happened. Mr. Jacobs said that he did his best to create a beautiful home, and hired a pool company, a contractor and a landscaper. As the Board perused the before and after photos of the home that were submitted, Mr. Jacobs said that he has no knowledge of zoning rules and gave the contractor free reign.

Chairman Gittens asked who obtained permits from the building department. Mr. Jacobs said his contractor obtained the required building and land disturbance permits. Mr. Baum said that ignorance of the law is no excuse, but that his client relied exclusively on his design team and contractors. He is complicit but there is no harm done. Mr. Baum referred to the photos and remarked on the beautiful backyard oasis that Mr. Jacobs created, and added that the abutting neighbors have no objections, an opinion which they submitted in writing, and that it is actually an improvement to the neighborhood. Dimensional requirements are arbitrary, and the ZBA exists to grant relief from strict requirements for projects that do not negatively impact the community. This is a perfect example of that safety valve, he said.

Mr. Baum said the work performed does not change the neighborhood and poses no threat to the environment or neighborhood, that the variances are not substantial when compared with the totality of improvements to the property, and while the issue was self-created, Mr. Jacobs relied on professionals and was not aware of the zoning parameters. He noted too that the building department issued permits based on a site plan that did not show a fence nor a patio. Mr. Jacobs stated that he built what made sense to him, something elegant and functional.

Member Millos said she was concerned that the winter pool cover will render it impervious, but Member Dugandzic said that the covers are usually made of mesh. Mr. Baum said that if more mitigation were required, his client would be willing to install additional drainage.

Member Bryan said that many people failed Mr. Jacobs, especially his design team, and wondered how they could possibly miss the zoning code requirements. Had they know, they would have alerted the contractors. These non-conformances don't hurt anyone, but they are problematic nonetheless because rules are put in place for a reason. He then remarked on the outrageousness of installing a fence beyond one's own property line, and into the county right of way. Mr. Jacobs said he retroactively filed for a permit with the County Highway Department but they showed no interest in the encroachment or in issuing permission.

Member Bryan suggested Mr. Jacobs take legal action against the contractor and design team to try and recoup funds. Mr. Jacobs said he would rather move past the issue. Mr. Baum said his client preferred to come here rather than battle contractors in court for years.

No one having further questions, Member Wanderman made a motion to open the public hearing, seconded by Member Dugandzic and upon vote, all were in favor.

Kevin O'Rourke, 3 Canterbury Lane, Montebello, NY said he lives on the property adjacent to Mr. Jacobs and said that the grounds were renovated beautifully, which is a vast improvement to the site. There is nothing detrimental, offensive or obtrusive, rather the opposite, he added.

No one else from the public having any comments, Member Wanderman made a motion to close the public hearing, seconded by Member Bryan and upon vote all were in favor.

Chairman Gittens went through the ZBA criteria for granting variances and found no harmful impacts to the community or neighborhood. He acknowledged that the setback variances are substantial, but felt that any remediation would be even more obtrusive. He then polled the Board, who were mostly in favor of leniency.

Member Dugandzic made a motion to approve the requested variances. Member Wanderman 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. 1194

In the Matter of the Application of
Josh Jacobs

X

**VARIANCE DECISION FOR
PROPERTY IDENTIFIED ON
THE VILLAGE OF
MONTEBELLO TAX MAP AS
Section 48.12, Block 1, Lot 41**

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
TO CONFORM AS-BUILT IMPROVEMENTS WITH REQUIRED YARD SETBACKS AND
DEVELOPMENT COVERAGE**

The property location, zoning district and as-built improvements. The subject property is located at 1 Canterbury Lane at the intersection with Viola Road, Village of Montebello, County of Rockland, State of New York. It is identified on the Tax Map as Section 48.12, Block 1, Lot 41 (the “Parcel”). The Parcel contains 1.01 acres and is in the Rural Residential District – 50 (“RR-50”) zoning district. The property owner, Josh Jacob (the “Applicant”), applied for a building permit to refurbish a concrete patio surrounding an existing inground swimming pool and install a hot tub. He also installed a fire pit and a new fence to enclose the backyard and pool area. Upon inspection for the purpose of issuing a certificate of occupancy, the Building Inspector determined that the improvements did not comply with Section 195-13, Table of General Bulk Requirements, Use Group “h”, of the Village of Montebello Zoning Law and referred the Applicants to the Zoning Board of Appeals (the “Board”).

Application. The Building Inspector determined that the increased size of the concrete pool surround encroached into the rear yard and front yard setback,¹ that the fire pit encroached into the rear yard setback, that part of the fence was located in the County’s Viola Road right-of-way and that the improvements increased development coverage beyond the required maximum of 20%.

The Applicant applied to the Zoning Board of Appeals seeking the following relief from Section 195-13 of the zoning law:

1. A rear yard setback variance from the required 25 feet to 6.2 feet for the concrete pool surround; and
2. A front yard setback variance from pre-existing nonconforming 24 feet (where 50 feet is required) to 15.7 feet for the concrete pool surround; and
3. A rear yard setback variance from the required 25 feet to 5.2 feet for the fire pit; and
4. A development coverage variance from the maximum 20% to 20.8%.²

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 dated April 25, 2024, prepared by Adam Gordon, Montebello Building Inspector.
2. Application and narrative dated May 14, 2024, received May 16, 2024.
3. Short Environmental Assessment Form, dated May 15, 2024, prepared by Yehoshua Jacobs.
4. “As built” survey and site plan, dated May 9, 2024, prepared by Anthony R. Celentano, P.L.S.

¹ The concrete pool surround was increased in size by the Applicant’s contractor although no increase was shown on the plans submitted to the building department with the application for a building permit.

² The original variance was for 22.5%. Subsequently, the Building Inspector reconsidered, concluding that the deck was not “impervious surface” for the purpose of calculating development coverage because it was constructed of wood or wood-like slats open to ground. Therefore, the development coverage variance was required was reduced from 22.5% to 20.8%.

5. Photographs of the improvements submitted to the Zoning and Planning Clerk for presentation to the Board during its July 18, 2024, meeting.

General Municipal Law § 239. The application was duly referred to the Rockland County Department of Planning (“RCDP”) on May 17, 2024. By letter dated May 23, 2024, RCDP responded with seven (7) substantive comments. Comment No. 4 regarded the use of pervious pavers to reduce development coverage, which comment was ameliorated by the subsequent Building Inspector’s determination reducing the development coverage to 20.8%. In addition, the Zoning Board clarified that it had no authority to issue a variance for the fence encroachment into the Viola Road ROW, however, the Applicant will show said encroachment on the survey and will comply with all other RCDP comments.

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.

Public Hearing. A duly noticed public hearing was convened on July 18, 2024. During the public hearing, the Board heard testimony from the Applicant and all those wishing to address the Board on the matter. After receiving all comments from the public, which were generally favorable to the application, including testimony from the immediate neighbor who voiced support for granting the requested variances, the hearing was closed.

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 variances, if granted will produce an undesirable change in the character of the neighborhood and determined that they would not. The Board noted that the improvements to the Parcel were well done and enhanced rather than detracted from the neighborhood. The Board also noted that the neighbors were pleased with the renovation and upgrade of the property. Finally, the Board noted that there is a berm and trees that shield the improvements from Viola Road. There is a

wide drainage easement between the Applicant's property and the neighbor nearest to the fire pit, as well as a fence on the neighbor's property that provide additional buffer.

2. The Board considered whether the benefit sought by the Applicant could be achieved by some other method and determined that it could be done by removing the fire pit and saw-cutting the concrete around the pool and removing a significant portion of it. The Board determined that neither solution was reasonable given the circumstances that include the positive improvement in the property and the neighborhood because of the work.
3. The Board considered whether the requested variances are substantial and determined that they are, except for development coverage, which is de minimis. However, the Parcel is unique in that it is narrow and a corner lot. Thus, it must comply with two 50-foot front yard setbacks instead of one. Moreover, the Board noted that the front-yard setback for the old pool concrete surround was 24 feet, a preexisting nonconforming condition. Therefore, the requested front-yard variance for the pool surround can be reasonably viewed as somewhat reduced by the preexisting nonconforming condition.
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. There was some concern regarding drainage, but the Applicant correctly noted that the pool itself impounds water and during a storm event an additional nine inches of pool containment is provided.
5. The Board considered whether the alleged difficulty was self-created and determined that it was. The Board expressed concern that the Applicant did not pay more attention to the construction of the improvements, which were inconsistent with the permits issued by the Building Inspector. Further, "as-built" plans that do not comply with the plans submitted to the building department are becoming an issue, especially with outdoor improvements such as pools, cabanas, hot tubs, etc. However, in balancing the equities and given the enhancement to the neighborhood from the improvements, the Board determined that the benefit to the Applicant if the variances are granted outweighs any detriment to the neighborhood and the community.

Applicant's burden. The Zoning Board of Appeals hereby finds and determines that the Applicant has sustained his 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 on a Motion by Member Bryan, Seconded by Member Wanderman, pursuant to the rollcall vote forth below, the Village of Montebello Zoning Board of Appeals hereby grants the following variances from Section 195-13, Table of General Bulk Requirements, Use Group "h", of the Village of Montebello Zoning Law to the identified on the Village of Montebello Tax Map as Section 48.12, Block 1, Lot 41:

1. A rear yard setback variance from the required 25 feet to 6.2 feet for the concrete pool surround.
2. A front yard setback variance from pre-existing nonconforming 24 feet (where 50 feet is required) to 15.7 feet for the concrete pool surround.
3. A rear yard setback variance from the required 25 feet to 5.2 feet for the fire pit.

4. A development coverage variance from the maximum 20% to 20.8

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 hereby 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	[√]	[]	[]	[]

Member Dugandzic made a motion to adjourn the meeting at 9:02 p.m., seconded by Member Wanderman and upon vote, all were in favor.