

**VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS**

**IN RE: APPLICATION OF BRANDON AND MARIE KONICOFF
CALENDAR CASE NO. 1128**

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Village Hall, Montebello, New York, on September 20, 2007, for variances from the provisions of Section 195-13, Use Group c, Column(s) 5, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a wall in a required front yard.

The premises which are the subject of this application are located at 71 Viola Road, which is on the south side of Viola Road, and 0 feet west of the intersection of Spook Rock Road in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 49.5, Block 1, Lot 14, in a RR-50 Zoning District.

The Board, upon motion duly made by Dr. Urcioli, and seconded by Mr. Bracken, resolved:

WHEREAS, the applicant was represented by themselves, and the following documents were placed into the record and duly considered:

Application; Narrative; Short Environmental Assessment Form; Building Inspector's Denial Letter dated August 14, 2007; drawing showing the location of the requested variance; Rockland County Highway Department letter dated September 7, 2007; Building Inspector's memorandum of explanation dated September 17, 2007; photos of site (3);

WHEREAS, the proposed action is a Type II action under the regulations promulgated pursuant to the New York State Environmental Quality Review Act; and

WHEREAS, a public hearing was held on September 20, 2007, and the testimony of the following persons was duly considered: applicant's Marie Konicoff and Brandon Konicoff;

WHEREAS, all the evidence and testimony was carefully considered and the Zoning Board of Appeals has made the following findings of fact:

The applicant is the owner of the subject premises, which is located at the southwesterly corner of Viola and Spook Rock Roads. The premises are currently improved with a single family dwelling. A rubble stone wall had lined the street frontages, but had fallen into disrepair. The applicant wishes to remove the rubble stone wall, and replace it with a new wall. The new wall would be located farther from the road beds than the existing wall, and would be of a different construction. Instead of being dry-laid stone, the new wall would have a footing and the stone cemented into place. In addition, the new wall would have curved sections interspersed with straight sections, to provide a more formal look.

The Building Inspector determined that the proposed new wall required a variance from this Board, as it was within the required front yard of the lot. In a follow-up memorandum to this Board, he explained that, because the new wall would have footings and be cemented in place, it was not a wall as that term is used in section 195-19.C of the Zoning Code.

That section provides:

C. A fence or wall not more than four feet in height above average existing grade is permitted along any lot line and no more than six feet in height above average existing grade along that part of any lot line behind the required front yard. A fence or wall over the six-foot height is permitted, provided that it is set back from the lot line a distance equal to 2/3 its height. All fences shall be constructed with the outer face thereof located a minimum of one foot from the property line, except that a common fence may be constructed on the property line with the written consent of both abutting owners. The finished side of the fence shall face the lot line. For purposes of these regulations, the installation of a fence or wall shall require a building permit.

The term "wall" is not defined in the Zoning Code. Where a term is not defined, "the numbers, abbreviations, terms and words used herein shall have the meanings of common usage as set forth in the latest edition of Webster's New Collegiate Dictionary." § 195-13.

The applicable definition of "wall" in Webster's is, "1 a: a high thick masonry structure forming a long rampart or an enclosure chiefly for defense —often used in plural b: a masonry fence around a garden, park, or estate c: a structure that serves to hold back pressure (as of water or sliding earth)".

The definition of "wall" does not make a distinction based upon the type of construction.

Therefore, the determination of the Building Inspector that a variance is required is not correct. Accordingly, this Board, on its own motion, will convert the application from an application for a variance from the requirements of the Zoning Code to an application to appeal from the determination of the Building Inspector pursuant to § 195-108.A.

NOW, THEREFORE, BE IT RESOLVED, that the application of Brandon and Marie Konicoff for variances from the provisions of Section 195-13, Use Group c, Column(s) 5, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a wall in a required front yard, as set forth in the application submitted herein, is hereby converted, on motion of this Board, to an application appealing from a determination by the Building Inspector that, because the proposed construction of the applicant's wall requires the installation of footings and the use of cement, it is not a "wall" within the meaning of Section 195-19.C; and be it further

RESOLVED, that the said application, as so converted, be and hereby is approved, the Building Inspector's said determination is hereby reversed, and the construction at issue is hereby determined to be a "wall" within the meaning of Section 195-19.C, and be it further

RESOLVED, that the Building Inspector is hereby directed to issue a Building Permit and Certificate of Occupancy to the applicant upon compliance with the terms and conditions of this resolution and with all other applicable laws, rules and regulations, including, if appropriate, a Rockland County Highway Department Work Permit.

MEMBERS PRESENT:	YEA or NAY
John Urcioli, Chairman	YEA
Timothy Cronin, Vice Chairman	YEA
Edward Bracken	YEA
Rodney Gittens	YEA
Fran Osei	YEA

The Chairman declared the resolution approved and the application approved.

John Urcioli, Chairman

The Clerk is hereby directed to file this resolution and to notify the applicant accordingly.

Date Filed: September 24, 2007
Montebello, New York