

**VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS**

**IN RE: APPLICATION OF MARY ANN ZEILINGER
CALENDAR CASE NO.1129**

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 195-89.D(1)(a)(b) and (d) and Section 195-13, Use Group x.1, Column(s) 2, 3, 4 and 14, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of an addition to an existing single family dwelling on a non-conforming lot with an increased Floor Area Ratio of 0.3074, and recognizing the existing conditions of non-conformity.

The premises which are the subject of this application are located at 20 Orchard Street, which is on the east side of Orchard Street, and 510 feet north of the intersection of Lake Road in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 48.17, Block 1, Lot 19, in a R-15 Zoning District.

The Board, upon motion duly made by Mrs. Osei, and seconded by Mr. Bracken, resolved:

WHEREAS, the applicant was represented by Richard Davidson, R.A., 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 13, 2007; drawing showing the location of the requested variance; Rockland County Planning Board memorandum dated September 20, 2007, which approved the proposed variance; copy of survey dated November 30, 1999; and photographs of the property; and

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; Richard Davidson, applicant's architect; and

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. The premises are in an older area of the Village abutting the Village of Suffern, which is characterized by small homes on small lots. Most of the lots on both sides of Orchard Street are 7,500 square feet in size, or less. The area is zoned R-15 (single family dwellings on minimum lot sizes of 15,000 square feet), but few, if any, of the lots conform to the bulk requirements of that district.

The applicant wishes to build a one-story addition to her home, which is to contain a master bedroom suite. The suite, which includes a bedroom and bath, will be of "barrier-free" design, in order to accommodate the applicant's needs. The addition will extend the current sides of the house, and will not reduce the side yards and setbacks. However, because of the small size of the lot, the existing house already exceeds the maximum floor area ratio permitted in the district (0.25). The addition will cause the FAR to rise to 0.3074.

In addition, the Zoning Code makes provision for non-conforming lots. Section 195-89.D provides:

D. Noncomplying lots.

(1) A residential lot, separated from any other land in the same ownership and noncomplying as to bulk, whether or not located in and part of a subdivision plat approved by the Planning Board and filed in the office of the County Clerk, and which has a minimum lot width of 100 feet, may be used for a one-family detached residence, provided that such use shall comply with the bulk requirements as specified in the highest residential district having the same or less lot width. For all residential lots having less than 100 feet of lot width, the following minimum requirements shall apply:

- (a) The minimum width of one required side setback shall be 20 feet for lots in the ER-80, RR-50, and R-35 Districts; 15 feet for lots in the R-25 District; and 10 feet for lots in the R-15 District.
- (b) The total width of both required side setbacks may be reduced nine inches for each foot that the lot width is less than that specified in the Bulk Table.
- (c) The minimum front and rear setbacks shall be 30 feet.
- (d) The minimum lot width and lot frontage shall be 75 feet.
- (e) The maximum building height shall be 25 feet.

The Building Inspector has correctly applied this "grandfathering" provision, although he recommends that this Board grant variances to recognize the existing dimensions which do not conform to section 195-89.D as follows:

Dimension	Required	Existing	Proposed
Lot Area	15,000 sf	6,250 sf	6,250 sf
Lot Width	75 feet	50 feet	50 feet
Front Setback	30 feet	24.5 feet	24.5 feet

A review of the site plan revealed other pre-existing conditions which should be considered for recognition by this Board:

Dimension	Required	Existing	Proposed
Side Setback	10 feet	2.5 feet	2.5 feet
Total Side Setback	121.25 feet	5.5 feet	5.5 feet
Rear Setback	30 feet	1.1 feet (to garage)	1.1 feet (to garage)

An existing 218 square foot deck at the rear of the house will be removed and replaced with the proposed 300 square foot addition.

The Rockland County Planning Department approved the proposed variances without further comment, recommendations, or conditions.

WHEREAS, this Board has examined the written documentation and reviewed the testimony of the witnesses with respect to the applicant's request for a variance, and, pursuant to the requirements of section 7-712-b(3) of the Village Law, has made the following determinations:

(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":

This is an area of the Village which does not generally conform to the bulk requirements of the Zoning Code, although there appears to be consistency of size and setbacks which has grown organically. The proposed 300 square foot addition would extend from the rear of the house, and not reduce the existing side setback. It would essentially replace the existing deck.

(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”:

The lot is too small for its zoning district. Any addition would require a variance. The proposed addition is sensitive to the existing lot and to the adjoining lots.

(3) “whether the requested area variance is substantial”:

The requested area variance respects the existing conditions. Under the circumstances, particularly the undersized nature of this lot, and all the lots along Orchard Street, the variance is not substantial.

(4) “whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district”:

There is an insignificant increase in development coverage.

(5) “whether the alleged difficulty was self-created”:

The difficulty arises from the imposition of a modern zoning code on an older area of the Village which predates current zoning.

NOW, THEREFORE, BE IT RESOLVED, that the application of Mary Ann Zeilinger for variances from the provisions of Section 195-89.D(1)(a)(b) and (d) and Section 195-13, Use Group x.1, Column(s) 2, 3, 4 and 14, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of an addition to an existing single family dwelling on a non-conforming lot with an increased Floor Area Ratio of 0.3074, and recognizing the existing conditions of non-conformity:

Dimension	Required	Existing	Proposed
Lot Area	15,000 sf	6,250 sf	6,250 sf
Lot Width	75 feet	50 feet	50 feet
Front Setback	30 feet	24.5 feet	24.5 feet
Side Setback	10 feet	2.5 feet	2.5 feet
Total Side Setback	21.25 feet	5.5 feet	5.5 feet
Rear Setback	30 feet	1.1 feet (to garage)	1.1 feet (to garage)

as set forth in the application submitted herein and as shown in the site plan herein, is hereby approved and 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.

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

MEMBERS ABSENT:

None

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: October 1, 2007
Montebello, New York