

**VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS**

**IN RE: APPLICATION OF GREEN MOUNTAIN DEVELOPMENT GROUP
CALENDAR CASE NO.1130**

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Village Hall, Montebello, New York, on May 17, June 21, July 19, August 16, September 20, and October 18, 2007, for variances from the provisions of Section 195-17, Use Group t, Column(s) 8, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a driveway for a single family dwelling in a reduced side yard of 6 feet, subsequently amended to 12 feet.

The premises which are the subject of this application are located at 15 Moriah Lane, which is on the north side of Moriah Lane, and 861 feet east of the intersection of River Road in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 48.14, Block 1, Lot 30, in a R-35 Zoning District.

The Board, upon motion duly made by John Urcioli, and seconded by Rodney Gittens, resolved:

WHEREAS, the applicant was represented by Michael Specht, Esq., and the following documents were placed into the record and duly considered:

Application; Narrative; Short Environmental Assessment Form; Building Inspector's Denial Letter dated March 26, 2007; drawing showing the location of the requested variance; letter from Balsamo, Byrne, Cipriani and Ellsworth, Esqs., dated May 15, 2007, on behalf of a neighboring property owner; photographs presented by applicant; plot plan of lot 11 (adjoining lot); elevations of proposed home; Rockland County GIS map of area showing lot lines, structures, and driveways; Greater Hudson Valley MLS data regarding homes for sale in the area from 2000 to present (prices, sizes, types); revised site plan drawing dated August 14, 2007; 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 May 17, June 21, July 19, August 16, September 20, and October 18, 2007, although neither the applicant nor its representative appeared at the July 19 or August 16, 2007 hearing dates, and the testimony of the following persons was duly considered: Laurie DiFrancesco, real estate broker for applicant; Yosef Emuna, President of applicant; Randy Vilord, neighboring property owner; Gisa Singh, neighboring property owner;

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 contract vendee of a parcel located near the southerly terminus of Moriah Lane, opposite its intersection with Rocklyn Road. The parcel is currently vacant, and applicant wishes to construct a single family dwelling on it.

The lot is undersized for the R-35 zoning district in which it is located, having only 25,000 square feet of lot area, as opposed to the 35,000 square feet normally required. It appears that the lot was created under

prior Town of Ramapo zoning, and conformed to that zoning at the time of its creation. According to the applicant, and as confirmed by an examination of the tax map submitted with the application, most of the lots in the immediate area are of approximately the same size and shape. A notable exception is the lot immediately adjoining the subject lot to the south. This adjoiner appears to be a quadruple lot, but has limited frontage on the Moriah Lane cul-de-sac.

Because the lot is undersized, and has less than the minimum lot width required under the R-35 district bulk standards, the applicant has taken advantage of the provisions of section 195-89.D of the Zoning Code. That section provides relief to undersized lots, by allowing the use of the bulk standards of the use group to which the lot's width conforms. Here, instead of being required to conform to use group "q", as would a standard R-35 lot, the subject lot must conform to use group "t".

The lot does appear to conform to all the bulk standards of use group "t" except for the required side yard. The applicant wishes to place its driveway in the required side yard, thus reducing it from 20 feet to 6 feet. In support of its application, the applicant notes that many other homes in the Village have driveways in side yards, that the "nearest lot is over 100' away", and that there is a backyard adjacent to the subject property.

Applicant was not represented by counsel at the May 17 session, but appeared with its attorney, Michael Specht, Esq., at the June 21 session.

At the May 17 session, the Board asked the applicant why the driveway and garage could not be located on the north side of the house, or why the house could not be made shorter, perhaps by front loading the garage.

Laurie DiFrancesco, the applicant's real estate broker, testified that a side loaded garage was needed in order to properly market the property and to sell it at a price which will allow a reasonable profit. She testified that the applicant is buying the lot for the purpose of building a house for re-sale. The house is not a custom house, but will be built "on spec". Under questioning from the Board, Ms. DiFrancesco testified that, while the proposed house conforms to the Village's FAR requirements, it is significantly bigger than other homes in the area. The proposed home has 4,000 square feet of floor area, while the other homes are in the 2,000 - 2,500 square foot range.

Ms. DiFrancesco presented photographs of the immediate area, and a copy of a site plan of the lot immediately south, lot 11. According to the plan, lot 11 has a driveway which extends from Moriah Lane to Victory Road, near the side lot line. She also claimed that the lot immediately to the east, lot 8, has a driveway on the lot line.

Two neighbors, Randy Vilord and Gisa Singh, asked questions about the proposal, but did not raise specific objections.

At the close of the May 17 session, the applicant was asked to provide the Board with a portion of the Rockland County GIS map showing the locations of lot lines, structures, and driveways for the area surrounding the subject parcel, and information regarding the sizes of other homes in the area.

At the June 21 session, applicant provided the requested GIS map together with data taken from the Greater Hudson Valley Multiple Listing Service.

The MLS information included data on the sizes of existing homes on Victory Road, and general information on homes in Montebello, all from the year 2000 and forward, and limited to homes which were listed for sale during that time.

The MLS data confirmed that the older homes on Victory Road were in the 1,900 - 2,500 square foot range, while newer homes were 3,000 - 3,500 square feet in area. In the Village, generally, new homes ranged from 4,500 to 5,000 square feet in area. It was noted that most of the Village was divided into lots of 40,000 square feet and greater. The subject lot is 25,000 square feet, and the proposed home is 4,000 square feet.

Ms. DiFrancesco continued her testimony, stating that the types of homes which sell best in Montebello are ranch style, followed by colonials. A ranch home would be longer than the proposed colonial, and would not fit on the lot. A typical newly constructed colonial requires at least 63 feet of length to accommodate the front entry and two rooms, as well as a side entry garage. The side entry garage must be at least 21 feet long to accommodate a car. Ms. DiFrancesco further testified that the turnaround area must be 30 feet deep, according to code. Applicant's president, Mr. Emuna, agreed with this.

Ms. DiFrancesco also noted that buyers' expectations of new homes required that houses be of the size proposed.

There was significant discussion with the Board as to other arrangements for the proposed home. Among the possibilities were shifting the house further north; changing the garage to a front entry or angled entry; curving the driveway to take the front portion out of the side yard; and relocating the garage to the north side of the house, at the basement level, and shifting the entire house further south. The applicant agreed to explore these and other options and to return to the July 19 session.

No one from the public attended the June 21 session.

In addition, while the applicant has requested a variance from the side yard dimension requirements, the more appropriate relief would be from the prohibition against driveways in required side yards. This relief would allow the driveway to be located as requested, but would prevent a reduction in the side yard for any other purpose.

At the June 21 session, the applicant advised the Board that it had a model for a home with a reduced width, which may also reduce the magnitude of some of the requested variances. The Board asked the applicant to submit such a plan in time for its July 19 meeting. The applicant failed to provide the plan for the July 19, August 16, and September 20, 2007 meetings. At the September 20, 2007, meeting, the Board granted the applicant one week to submit drawings. Those drawings were timely submitted, and bear a revision date of August 14, 2007.

The new drawings show a narrower house, with the width reduced from 63'2" to 58'0", a reduction of approximately five feet. The house appears to have been shifted slightly north, as the distance from the house to the southerly lot line has been increased by six feet, from 36 feet to 42 feet. There has been a corresponding increase in the distance from the driveway to the southerly side lot line from six feet to twelve feet. At the hearing session of October 18, 2007, the applicant orally amended its application to reduce the southerly side yard to twelve feet, as opposed to the required twenty feet.

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":

The originally proposed house is about twice as large as other homes in the area. While it may conform to the FAR requirements of the Zoning Code, its size and layout are the direct cause of the requested variance. The revised proposal reduces the size of the house, particularly in its relation to the street. As a result it provides spacing between properties which is more consistent with that of the existing neighborhood.

(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 applicant has worked with the Board to reduce the impact on the neighborhood. It has produced a different design for the house which allows it to build a marketable home while respecting the existing character of the community.

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

The original variance request would have reduced the required side yard from 20 feet to 6 feet, a difference of 70% ($(20-6) / 20$). As revised, the side yard reduction would be 40% ($(20-12) / 20$). The reduced variance, while of significant magnitude, is not so substantial as to require denial of the request. The adjoining property to the south, which is not improved in the immediate area of this variance request, would not be as substantially impacted by the 12 foot distance to the driveway.

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

The proposed variance will allow the construction of a single family dwelling in an area zoned for such development.

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

The difficulty is self-created, in that the land is vacant and the applicant wishes to build in excess of the requirements of the Zoning Code. However, the applicant has also persuaded this Board that the proposed house is what is required by the current real estate market. The concession made by the applicant is sufficient to allow for the granting of the requested variance to twelve feet from the side lot line.

NOW, THEREFORE, BE IT RESOLVED, that the application of Green Mountain Development Group for variances from the provisions of Section 195-17, Use Group t, Column(s) 8, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a driveway for a single family dwelling in a reduced side yard of 12 feet, as set forth in the application submitted herein, is hereby approved subject to the following conditions:

1. The gross floor area of the house shall not exceed 3,500 square feet, as shown on the August 14, 2007 revised plan;
2. The footprint of the house shall conform to the August 14, 2007 revised plan;
3. The floor area ration shown on the revised plan shall be corrected to conform with the foregoing;

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

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.

Dated: October 25, 2007
Montebello, New York