

VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS

IN RE: APPLICATION OF MONSEY JEWISH CENTER
CALENDAR CASE NO. 1125

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Village Hall, Montebello, New York, on February 12, 2007, for variances from the provisions of Section 195-13, Use Group c, Column(s) 3, 4, 5, 6, 8, and 13, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a place of worship and clergy residence with reduced lot width of 397.59 feet, reduced front setback of 43.5 feet (existing residence), reduced front yard of 43.5 feet (existing residence), reduced side setback of 32 feet (existing residence), reduced side yard of 1.6 feet (to allow a driveway in a side yard), reduced rear yard of 32.9 feet (to allow parking in a rear yard), and greater than permitted development coverage of 33.0%.

The premises which are the subject of this application are located at 16, 18, and 20 Montebello Road, which is on the south side of Montebello Road, and 1000 feet west of the intersection of North Airmont Road in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 48.19, Block 1, Lot 49 and 48 and Section 55.07, Block 1, Lot 1, in a RR-50 Zoning District.

The Board, upon motion duly made by John Urcioli, and seconded by Tim Cronin, resolved:

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

Application; Narrative; Short Environmental Assessment Form; Planning Board referral dated January 9, 2007; drawing showing the location of the requested variance; Rockland County Planning Board memorandum dated February 28, 2007, which recommended modifications to the proposed variance; Building Inspector's letter dated January 26, 2007, detailing the necessary variances;

WHEREAS, pursuant to the New York State Environmental Quality Review Act, the Planning Board has assumed Lead Agency status, and has granted a negative declaration with respect to this project; and

WHEREAS, a public hearing was held on February 12, 2007, and the testimony of the following persons was duly considered: applicant;

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 applicant is a religious corporation which wishes to construct a place of worship and a clergy's residence on the combined three lots. It has previously appeared before the Planning Board for approval of its site plan and subdivision (to eliminate the existing lot lines). That application is still pending, and is dependent upon the proceedings of this Board.

The applicant proposes the construction of a new synagogue, with attendant parking areas and driveways. Access is proposed from both Executive Boulevard and Montebello Road, although it appears that the Montebello Road access will be for ingress, only, and may be closed when large events are scheduled to occur (High Holy Day services, large funerals and bar/bat mitzvahs). The synagogue building itself complies with the floor area ratio requirements of the Zoning Code. However, because the lot is somewhat narrow, variances are needed for the side yard and rear yard. These variances relate to the driveway along the easterly side of the parcel.

The applicant also proposes to use the existing dwelling on the westerly side of the parcel for its clergy residence. Variances are required with respect to the front and side setbacks, and the side yard. Each of these dimensions is an existing condition.

The extent of the required variances is set forth in detail in the Building Inspector's letter dated January 26, 2007.

As set forth in the applicant's narrative, this project originally included only two lots. A third, adjacent lot, which contained a dwelling, was subsequently acquired. The project was changed to eliminate the construction of a new clergy residence and to, instead, use the existing dwelling as the clergy residence. While the addition of the third lot eliminated the need for some variances (most notably, for lot area), and allowed for reconfiguration of the site plan, it also created the potential need for other variances relating to the new lot.

In that connection, the applicant asks for a determination as to whether variances are required with respect to the clergy residence, in that the structure is existing and will be neither moved nor enlarged. All of the variances cited in the Building Inspector's letter of January 26, 2007, are existing conditions.

In its memorandum of February 28, 2007, the Rockland County Planning Department noted a change from the original proposal of applicant which added lot area in order to conform to the minimum lot area requirement of the Zoning Code. It also noted that 45 more parking spaces had also been added, which resulted in an increase in the development coverage proportion. Although couched as a recommendation, the Department stated, "The synagogue building must be scaled back to more closely conform to the RR-50 bulk standards for places of worship."

A review of the Planning Board's minutes reveals that the additional parking spaces were added at that Board's request. The Planning Board was concerned that there be sufficient on-site parking.

The County Planning Department also required compliance with the requirements of the Rockland County Highway Department's letter of February 21, 2007.

WHEREAS, this Board has examined the written documentation and reviewed the testimony of the witnesses with respect to the applicant's request for an interpretation and variances, and has made the following determinations:

With respect to the applicant's request for an interpretation of the Zoning Code relating to whether variances are required for the proposed clergy residence, given that the building to be used as a clergy residence is an existing structure which will be neither moved nor enlarged, this Board

has determined that such variances are needed. The Building Inspector has determined that the bulk requirements for a place of worship, Use Group "c", are applicable. The applicant contends that the building is being used as a 1-family residence, and therefore the less stringent requirements of Use Group "h" should apply.

An examination of the Use Table in the Zoning Code reveals that 1-family detached residences are in a different category from churches and similar places of worship (items 4 and 3, respectively, in column B "Uses Permitted by Right", ER-80 District, applied by reference to the RR-50 District).

As noted in an attachment to the narrative summary, the Building Inspector has previously opined that the clergy residence is a part of the place of worship use as a single principal use. Building Inspector memo dated October 25, 2006. If the residence is a part of the place of worship use, then it, too, is governed by Use Group "c". Although the physical characteristics of the building are concededly not changing, its use is changing. Accordingly, we agree with the Building Inspector's determination and interpret the Zoning Code to require the bulk requirements under Use Group "c" to apply.

It is worth noting that, even if we were to agree with the applicant that Use Group "h" applies, variances from the required front setback and side yard dimensions would still be needed. Other issues, which need not be resolved here, would also arise, such as whether the variances for the residence should be treated in the same manner as religious institutions are treated, and whether other variances for the synagogue should be required (for example, if the residence were deemed to remain on its own lot, variances for both lot area and lot width would be required or enlarged).

Having determined that the clergy residence is a part of the principal use of place of worship, and that variances are required from Use Group "c" for both the clergy residence and the place of worship, we now turn to the application of section 7-712-b(3) of the Village Law.

This Board is aware that, when applying the balancing test of the Village Law, it must consider that places of worship are, as a matter of law, deemed inherently beneficial to the neighborhood. Further, while places of worship are not exempt from the application of local zoning controls, greater flexibility must be used in evaluating such projects in order to accommodate the religious use. The same requirements apply, under New York law, to educational institutions.

With the foregoing in mind, this Board makes the following determinations with respect to the requested variances:

(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";

As previously noted, under New York law, religious uses are deemed to be inherently beneficial, and are appropriately located in a residential area. Indeed, the Zoning Code permits religious uses as a matter of right in all residential districts of the Village, albeit with more stringent bulk requirements than are applied to 1-family residences.

These additional requirements reflect the fact that, in general, religious uses attract more people at one time than do residences. They are, by their nature, places of assembly, with periods of little or no use alternating with periods of more intense use.

Having noted that the bulk requirements are more stringent, and the use more intense, than for 1-family residences, the variances requested nonetheless are not so drastic as to interfere with, or change the character of the surrounding neighborhood.

The neighborhood along Montebello Road is developed with single family homes. On the north side of the road is the Montebello Pines development, with homes separated from the road by a conservation easement. This easement was initially intended to preserve the road from the impact of development, but it also serves to insulate the homes from further development along the road.

On the south side of Montebello Road, to the west of the project, are smaller homes, some of which long pre-date the incorporation of the Village. The proposed clergy residence is one of these homes. Just west of those homes is the existing Montebello Jewish Center. The homes immediately east of the project are the most impacted, but this impact can be mitigated by the introduction of landscape screening.

To the south of the project is Executive Boulevard and the parking areas for the offices along that road. The applicant has wisely chosen to place its parking area against the existing parking areas, which both minimizes the impact of the new parking on the neighborhood and directs vehicular traffic to Executive Boulevard.

The use of Executive Boulevard as the sole egress from the site for visitors will minimize the traffic impact on Montebello Road.

Based on the foregoing, we conclude that there would be no adverse impact on the surrounding 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 taken steps to minimize the impact of the project on the area. It is limiting the use of its Montebello Road frontage to allow ingress, only. It has increased the land area of the project by acquiring an adjoining parcel with an existing home, thus eliminating the need to construct a new home. The variances which remain reflect either existing conditions or the best siting of facilities given the requirements of the applicant and the size and shape of the lots.

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

To the extent that the requested variances reflect existing conditions, they are not here substantial. Those variances are generally attributed to the clergy residence, which will continue to function in much the same way as a single family house. Had the use not changed, and the lot lines not been affected, this Board would have no jurisdiction over it.

The requested variance for lot width is *de minimis*, at less than 3 feet (0.6%).

The variances for side yard and rear yard do not reflect the introduction of structures, but rather allow for a driveway and a parking area, respectively. The side yard variance can and should be mitigated by the introduction of screening. The parking in the rear yard abuts existing office parking, and is also screened.

The development coverage variance is largely the result of the parking requirement. While this variance could be reduced or eliminated by reducing the size of the synagogue building, the fact is that the synagogue, itself, does not overburden the site. Under the Zoning Code, a floor area ratio (FAR) of 0.15 is permitted, while the applicant proposes approximately half of that: 0.08. The parking requirement, and therefore the development coverage, increases with the floor area of the building. Had the applicant sought a building with a full FAR of 0.15, then significantly more parking, and therefore development coverage, would have resulted.

The requested variances are therefore 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”:

This project has been reviewed by the Planning Board, which will continue to review the site plan after this Board is finished. The Planning Board has examined the environmental impacts in its role as Lead Agency under SEQRA, and has issued a negative declaration with respect to those impacts.

The one impact of concern which arises directly from the variances sought is that on the easterly adjoining neighbors. As noted above, this impact can be mitigated through the use of landscape screening, and the granting of the variances by this Board can be conditioned thereon.

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

The difficulties are generally the result of the shape of the lot and, in the case of development coverage, an apparent lack of coordination between the allowed floor area and development coverage formulae. The applicant has not sought to develop the property to the fullest extent imaginable, and has attempted to maintain separation from the existing residences, without having to hide.

With respect to the modifications “recommended” by the Rockland County Planning Department in its memorandum dated February 28, 2007, this Board makes the following determinations:

1. It appears that the Department was not aware that the increase in the number of parking spaces was requested by the Village’s Planning Board, and not by the applicant. When parking spaces are increased, so, too, does the amount of impervious surface. In this case, even with the additional land area, the increased impervious surface was of sufficient magnitude to also increase the development coverage proportion beyond that permitted by the Zoning Code. However, the Department’s directive to require that the synagogue building be reduced in size appears contrary to the intent of the Planning Board, as stated above, and contrary to applicable state and federal laws.

We cannot lose sight of the fact that the application is for a religious institution. Under long-standing New York case law, beginning with *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), religious and educational institutions have received special preferences in land use applications. It is incumbent upon land use boards to work to find solutions to land use issues which do not interfere with religious practices, or, in the words of the federal RLUIPA statute, “imposes a substantial burden” upon them.

The issue of development coverage relates to one major issue which requires mitigation: surface water runoff. The solution is not to reduce the size of the synagogue building, but to insure that the additional runoff is properly contained and channeled. Again, the records of the Planning Board reveal that the applicant will be required to achieve “zero net incremental rate of runoff” for surface water, and that the applicant is improving the drainage system in Montebello Road.

This Board therefore determines that the granting of the requested variances, coupled with the improvements required by the Planning Board are a more appropriate method of dealing with the proposed increase in impervious coverage than is the Department’s requirement that the synagogue building be reduced in size. Accordingly, this Board will override the Department’s requirement.

2. The recommendations of the Department with respect to the Rockland County Highway Department letter of February 21, 2007, are more appropriate for the Planning Board to address. Accordingly, we decline to include those matters in this grant of variances.

NOW, THEREFORE, BE IT RESOLVED, that the application of Monsey Jewish Center for variances from the provisions of Section 195-13, Use Group c, Column(s) 3, 4, 5, 6, 8, and 13, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a place of worship and clergy residence with reduced lot width of 397.59 feet, reduced front setback of 43.5 feet (existing residence), reduced front yard of 43.5 feet (existing residence), reduced side setback of 32 feet (existing residence), reduced side yard of 1.6 feet (to allow a driveway in a side yard), reduced rear yard of 32.9 feet (to allow parking in a rear yard), and greater than permitted development coverage of 33.0%, as set forth in the application submitted herein, is hereby approved subject to the following conditions:

1. There shall be landscape screening between the proposed driveway and the easterly adjoining properties of a type and manner to be determined by the Planning Board;
2. The Planning Board shall insure that the increase in impervious surface allowed by this grant of variances shall be mitigated by appropriate sizing of drainage structures to achieve the standard of zero net incremental rate of surface water runoff, and that the drainage system in Montebello Road will be improved in a manner substantially in compliance with the improvements upon which the Planning Board’s grant of a negative declaration under SEQRA.
3. Site plan and subdivision approval by the Planning Board;

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; and be it further

RESOLVED, that this Board hereby overrides recommendations 1 and 2 of the Rockland County Planning Department's memorandum of February 28, 2007, provided, however, that this Board asks the Planning Board to review the provisions of the February 21, 2007, letter of the Rockland County Highway Department for appropriateness.

MEMBERS PRESENT:

	<u>YEA or NAY</u>
John Urcioli, Chairman	YEA
Timothy Cronin, Vice Chairman	YEA
Rodney Gittens	YEA
Fran Osei	YEA

MEMBERS ABSENT:

Edward Bracken

The Vice-Chairman declared the resolution approved and the application approved.

Tim Cronin, Vice-Chairman

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

Dated: March 19, 2007
Montebello, New York