

**VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS**

IN RE: APPLICATION OF RICHARD STEINBERG
CALENDAR CASE NO. 1126

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Village Hall, Montebello, New York, on February 12, March 14, and April 16, 2007, for variances from the provisions of Section 195-13, Use Group h, Columns 6, 7, 8, and 13, of the Zoning Local Law of the Village of Montebello to permit the maintenance and use of an existing swimming pool with patio and Cabana, having a reduced side setback of 25.29 feet (Cabana), reduced total side setback of 64.29 feet (Cabana), reduced side yard of 16 feet (front pool patio); reduced side yard of 13 feet (rear pool patio); and excessive development coverage of 20.9%.

The premises which are the subject of this application are located at 15 Copeland Drive, which is on the east side of Copeland Drive, and 50 feet south of the intersection of Babbling Brook Lane in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 48.7, Block 1, Lot 38, in a RR-50 Zoning District.

The Board, upon motion duly made by Tim Cronin, and seconded by Edward Bracken, resolved:

WHEREAS, the applicant was represented by Bart Rodi, P.E., and the following documents were placed into the record and duly considered:

Application; Narrative; Short Environmental Assessment Form; Building Inspector's Denial Letter dated October 13, 2006; drawing showing the location of the requested variance; Rockland County Planning Board memorandum dated September 15, 2006, which approved the proposed variance; resolution of this Board in application no. 1030, affecting the applicant and the subject property; letter dated August 2006 from Richard A. Nozell, Jr. "acting agent" on behalf of applicant; letter dated February 5, 2007, from Village Engineer; letter dated February 8, 2007, from Building Inspector in response to Village Engineer's letter of February 5, 2007; building permit and proposed site plan for the cabana; Building Department inspection reports; certificate of occupancy for building permit #297-03, marked "Revoked' See letter dated 1/3/06"; two letters dated January 3, 2006, from Harry Lewis, Building Inspector, to applicant; photographs (4) of the parcel submitted by applicants; copy of tax map with structures hand drawn, submitted by neighbors (Floyd); photographs of parcel (7) submitted by neighbor (Floyd); Building Inspector's letter dated 3/23/07 regarding side setback variances for the cabana; letter dated 4/12/07 from Bart Rodi, P.E. regarding development coverage; Building Inspector's memorandum and drawing dated 4/10/07 regarding development coverage; 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 February 12, March 14, and April 16, 2007, and the testimony of the following persons was duly considered: applicant; Bart Rodi, P.E.; Robert Magrino, Esq., attorney for neighbor (Floyd); Pamela Floyd; Helen Epstein; Harry Lewis, Building Inspector; Leslie Greaney; Dolores Baker; and Diane Stern; 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, which is improved with a single family house. The applicant has installed a swimming pool, pool cabana, and patio. Initially, the Building Inspector determined that the cabana and patio were not built within the allowable building setbacks, and the total development coverage exceeds the maximum allowed under the Zoning Code.

The parcel is a long, narrow trapezoid, with its wider side fronting on Copeland Drive. Although the lot is undersized (at 36,268 square feet in a RR-50 zoning district), it has sufficient lot width to not be eligible for relief under section 195- 88.D. The applicant has constructed a patio which extends behind the existing garage, back to and around the existing swimming pool. For much of its length, the patio intrudes into the required easterly side yard. The applicant has also built a pool cabana at the southerly end of the patio, at a location where the allowable building envelope comes to a point. Photographs of the site, relating to the screening and fencing along the joint lot line with Floyd (to the east) were submitted by applicant.

In a letter, Richard Nozell, Jr., "acting agent" on behalf of the applicant, implied that the patio had not been built according to the plans, and that "the contractor assumed that certain materials that were used in construction would not be calculated into the developmental [sic] coverage."

The Village Engineer and the Building Inspector had exchanged letters with respect to whether the house itself is in compliance with the Zoning Code's requirements. Since the Building Inspector has not found a violation, and no appeal has been taken from that determination, the issue is beyond this Board's jurisdiction.

This applicant and this property were previously before this Board in June and July 1995. At that time, the applicant sought approval for a tennis court on the property. A number of variances were required, and denied by this Board.

An extensive review of the Building Department's files was conducted with Building Inspector Harry Lewis at the March 14, 2007, session of this Board. At that time, it was determined that the Department had issued building permits 203-02 and 876-06 for construction of the swimming pool and patio. Permit 203-02 had lapsed without having received a certificate of occupancy, and 876-06 was issued as a successor to the lapsed permit.

In addition, it was determined that, because the cabana is an accessory building, it is permitted to intrude into a required side setback (but not a required side yard). See, Zoning Code, § 195-124, Definition of "Setback": "The minimum distance between a principal building, structure or use and a property line of a lot * * * [emphasis supplied]." Accordingly, neither a side setback, nor a total side setback variance is needed for the cabana.

The Building Inspector also determined that, since a portion of the patio is set in sand, rather than in mortar or cement, the portion which is set in sand is not impervious surface, and therefore not counted toward development coverage. A subsequent field inspection conducted jointly by the applicant's engineer and the Building Inspector revealed that, because of the construction of the upper portion of the patio, the walkway, and the driveway, none of those areas constituted impervious surfaces as the term is used in the Zoning Code. Accordingly, the development coverage of the property is calculated at 14.78%, which is less than the maximum permitted coverage of 20%. (See, Building Inspector's memo of 4/10/07 and Rodi letter of 4/12/07.) No variance for development coverage is required.

Last, upon examination of both the Building Inspector and the applicant's engineer, Mr. Rodi, it was determined that the site plan having a last revised date of September 19, 2006, is the accurate site plan, and all prior site plans are to be deemed to have been superseded by the 9-19-06 plan. No later site plans have been presented to this Board.

Helen Floyd, the neighbor most affected by the proposed variances, testified that during gatherings at the subject premises, attendees tended to congregate at the front pool patio, which is only 13 feet from the joint lot line and close to her home. The noise at that location is particularly disturbing. She also noted that the existing screening was insufficient, as was the existing fencing, and stated that she felt that she could not have privacy or quiet under the existing conditions. She presented a number of photographs to support her contentions.

Mrs. Floyd also noted that the "houses are unusually close together" because of the lot configurations and their relative angles to one another. She suggested that the walkway and patio could be oriented to the westerly side of the lot, away from her property. She believed that there was ample room to accomplish this, and that doing so would help reduce noise and preserve her privacy.

In response to this suggestion, Mr. Rodi, the applicant's engineer, noted that there was a greater grade differential on the westerly side of the lot than on the easterly side, and that retaining walls would be needed to relocate the walkway.

Leslie Greaney, a neighbor, also noted that all the houses in the neighborhood were built at around the same time, and all had walkways to the backyard on the left side of the house, the same side on which the garage and driveway were located. The patio is in the logical place, she stated.

A review of the photographs of the disputed area show a row of mature Norway spruce trees, which have lost their understory branches. The spruces belong to Mrs. Floyd. The applicant has planted a row of hemlocks on its side of the line, in an effort to make up for the lost understory. The hemlocks are growing in, but do not provide complete screening.

Member Cronin, a landscaper, noted that, while the hemlocks will grow in the shade of the spruces, they will likely not thrive. As additional screening, the Board discussed either an additional row of hemlocks in front of the existing row, or the installation of an opaque fence behind the hemlocks. The Board determined that a fence would be less expensive to install and maintain, and would be easier to maintain.

Based on the testimony of the Building Inspector and the joint field investigation, it was determined that the only remaining variances for this Board to consider were the side yard variances for the patio, at 16 feet and 13 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 area has an unusual arrangement of lots, which has resulted in the long narrow lot owned by the applicant. While the patio does intrude into the side yard, such an intrusion does not introduce a structure into the side yard. The denial of the variance would not result in a significant improvement to the neighbor's (Mrs.

Floyd's) privacy, which could be better protected with increased screening.

(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 could eliminate the need for the variance by redesigning the patio to remove the intrusion into the side yard. Since the front portion is not set in concrete, removing the offending portion would not result in an onerous expense. On the other hand, it would also not solve the issues raised by Mrs. Floyd.

Relocating the patio to the westerly portion would only relocate the needed variance, and cause considerable expense to the applicant. While it may please the complaining neighbor, it would impose a new burden on a different neighbor.

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

The variances are to reduce the 25 foot required side yard to 16 feet at the front patio and 13 feet at the rear patio. However, these intrusions, although of significant proportional depth, are of minimal length and overall area. They are calculated at well under 200 square feet in total. Under the circumstances, and given the mitigation measure proposed, they are 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”:

The impact of the variances is to allow potential activity on the subject property to move closer to the neighboring property. However, there is nothing to prevent guests of the applicant from congregating on the grassed area that would remain if the patios were reconfigured and the intrusions removed.

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

The difficulty was self-created. The applicant and its contractors should have been more cognizant of the requirements of the Zoning Code. However, given the circumstances, this Board does not believe that the fact of self-created difficulty is sufficient to deny the requested variances.

NOW, THEREFORE, BE IT RESOLVED, that, based upon the testimony of the Building Inspector, and a review of the evidence presented, no variance is required from the provisions of Section 195-13, Use Group h, Columns 6, 7, and 13 of the Zoning Local Law of the Village of Montebello to permit the maintenance and use of a cabana within a side setback and to permit excessive development coverage, and the determination of the Building Inspector requiring such variances is hereby reversed; and be it further

RESOLVED, that the application of Richard Steinberg for variances from the provisions of Section 195-13, Use Group h, Column 8, of the Zoning Local Law of the Village of Montebello to permit the maintenance and use of an existing swimming pool with patio having a reduced side yard of 16 feet (front pool patio); reduced side yard of 13 feet (rear pool patio) as set forth in the application submitted herein, is hereby granted, subject to the following condition:

1. The applicant shall erect a fence, six feet in height, along the easterly lot line (shared with Floyd), extending from the existing fence which crosses the easterly side yard and continuing southerly to a point opposite the front of the cabana. Such fence may be an extension or enlargement of the existing fence owned by the applicant in that location, or may be a new fence. The fence shall be of such material as applicant shall

choose, provided, however, that it shall be made completely opaque through its length and height, and that it shall be either dark green in color, or, if made of wood, be the natural color of the wood. The applicant shall obtain all permits required for the erection of a fence prior to erecting same.

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: April 18, 2007
Montebello, New York