

VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS MEETING
APRIL 24, 2006

The meeting of the Zoning Board of Appeals of the Village of Montebello was called to order by the Chairman, John Urcioli at 7:42 p.m. on Monday, April 20, 2006. The meeting was held at Village Hall, One Montebello Road in the Village of Montebello, New York 10901.

PRESENT

John Urcioli, Chairman
Edward Bracken
Tim Cronin
Rodney Gittens, sitting by designation

OTHERS

Ira Emanuel, Attorney
Carol Adduce, Clerk

ABSENT

Fran Osei
Richard Fried

Motion to approve the March 16, 2006 minutes.

MOTION: Edward Bracken

SECOND: Tim Cronin

VOTE: Unanimously accepted.

Eric L. Schwartz
Public Hearing Continued

Application of Eric L. Schwartz, 206 Haverstraw Road, Montebello, NY 10901 for variance from the provisions of Chapter 195 - Article IV, Section 195-13, Use Group h, Columns 5 & 8, front yard (required 50 ft. - proposed 31 ft.), side yard (required 25 ft. - proposed 5 ft.) of the Zoning Local Law of the Village of Montebello to permit construction, maintenance and use of an 8 x 10 garden shed. The premises which are the subject of this application are located on the north west side of New York State Route 202 approximately 500 feet from the intersection of Orchard Street in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 48.13, Block 1 and Lot 10 in a RR-50 Zone.

Present: Eric L. Schwartz

Public Hearing continued at 7:59 p.m.

No one from the public spoke.

Motion to close the Public Hearing at 8:05 p.m.

MOTION: Edward Bracken

SECOND: Rodney Gittens

VOTE: Unanimously accepted

Discussion and Decision:

The consensus of the Board was that by allowing the shed to remain would not create an impact on the neighborhood. The shed is difficult to move and there are plantings that screen the shed. The shed cannot be put in the rear of the property because of the steep slope and there is no other location that is suitable.

Motion to approve the application of Eric L. Schwartz for variances from the provisions of Section 195-13, Use Group x.1 Column(s) 5 and 8, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance and use of a garden shed as an accessory to a single family dwelling with the reduced front yard of 31 feet and a reduced side yard of 5 feet.

MOTION: John Urcioli

SECOND: Tim Cronin

VOTE: Unanimously accepted.

Resolution annexed hereto and made a part hereof.

**IN RE: APPLICATION OF ERIC L. SCHWARTZ
CALENDAR CASE NO. 1117**

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Village Hall, Montebello, New York, on March 16, 2006 and April 24, 2006 for variances from the provisions of Section 195-13, Use Group x.1, Column(s) 5 and 8, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a garden shed as an accessory to a single family dwelling with a reduced front yard of 31 feet and a reduced side yard of 5 feet.

The premises which are the subject of this application are located at 206 Haverstraw Road, which is on the north side of U.S. Route 202 (Haverstraw Road), and 500 feet east of the intersection of Orchard Street in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 48.13, Block 1, Lot 10, 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 himself, and the following documents were placed into the record and duly considered:

Application; Narrative; Short Environmental Assessment Form; Building Inspector's Denial Letter; Assistant Village Attorney's memo dated March 14, 2006; revised Building Inspector's Denial Letter dated March 15, 2006, with cover memo; drawing showing the location of the requested variance; Rockland County Planning Board memorandum dated March 18, 2006, which approved the proposed variance; letter dated March 7, 2006, from NYS Department of Transportation.

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 March 16 and April 24, 2006, and the testimony of the following persons was duly considered: applicant; Patricia Carew, 31 Hemlock Hill Road

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 property pre-exists the Village Zoning Code, and is improved with a one-family dwelling. The applicant erected a 8' x 10' garden shed in a required front yard and side yard without a building permit, under the mistaken belief that structures of less than 144 square feet do not need to comply with the Zoning Code. The Building Inspector determined that the shed violated the bulk requirements of Use Group h, which is the standard set of bulk requirements for the RR-50 district.

The parcel, however, does not comply with the bulk requirements of that district. According to the survey submitted with the application, the subject lot has a lot width of 100 feet, which is below that required in the RR-50 zoning district in which it is located. It appears that this lot pre-existed the Zoning Code, and therefore it would be considered non-complying as to bulk.

Under section 195-89.D(1), "A residential lot, separated from any other land in the same ownership and non-complying as to bulk, * * * and which has a minimum lot width of 100 feet, may be used for a one-family detached residence, provided such use shall comply with the bulk requirements as specified in the highest residential district having the same or less lot width. * * *"

The "highest residential district having the same or less lot width" appears to be the R-15 district, which requires 100 feet of lot width. If the Board applied those bulks, the shed would have to respect a required front yard of 35 feet, and a required side yard of 10 feet. While variances are still required (the applicant provides 31 feet of front yard and 5 feet of side yard), the magnitude of the variances appears to be less than as noted by the Building Inspector.

A subsequent review by the Building Inspector has confirmed that Use Group x.1 should be applied.

At the public hearing it was developed that the shed was built in place. It weighs approximately 1200 pounds. It is placed behind a rock retaining wall and evergreen plantings. The applicant claims that there is no other place on his property to locate the shed, as his backyard has a rock wall and steep terrain. The applicant stated that he would be willing to demolish the shed and not replace it if it fell into disrepair or when he sold or otherwise transferred the property.

A neighbor, Patricia Carew, said the shed is very nice, and "a work of art". She does not object to it. The New York State Department of Transportation had no comments. The Rockland County Planning Board approved the request for variances and remanded it for local determination.

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":

Although the shed is close to the road, the existing plantings buffer its appearance. In its current condition, there is no adverse impact. However, as the shed ages, it may become unsightly.

(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 property, though large, consists mostly of steep slopes. The available area for improvements is small. There is little or no open space in the rear of the property which could accommodate the shed and also allow for a usable backyard.

(3) "whether the requested area variance is substantial":

The variance would allow a small shed, and is not a substantial encroachment into the front and side yards.

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

The shed is small and will have no impact.

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

The applicant placed the shed without first seeking a permit, under the mistaken impression that none was needed.

NOW, THEREFORE, BE IT RESOLVED, that the application of Eric L. Schwartz for variances from the provisions of Section 195-13, Use Group x.1, Column(s) 5 and 8, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a garden shed as an accessory to a single family dwelling with a reduced front yard of 31 feet and a reduced side yard of 5 feet, as set forth in the application submitted herein, is hereby approved, subject to the following condition:

1. the applicant shall remove the shed and not replace it if its condition deteriorates or if the property is sold or otherwise transferred;

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 with the requirements of the Rockland County Planning Department.

MEMBERS PRESENT:	<u>YEA or NAY</u>
John Urcioli, Chairman	YEA
Edward Bracken	YEA
Timothy Cronin	YEA
Rodney Gittens, by designation	YEA

MEMBERS ABSENT:
Richard Fried, Vice Chairman
Fran Osei

The Chairman declared the resolution approved and the application approved.

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

Dated: May 3, 2006
Montebello, New York

**Rio Vista Montebello
Public Hearing Continued**

Application of Rio Vista of Montebello LLC, 212 Orange Avenue, Suffern, NY 10901 for variance from the provisions of Section 195-62.C (3), (6), (8), and (8a) and Section 195-14.A of the Zoning Local Law of the Village of Montebello to permit construction, maintenance and use of a 24 unit age restricted (55 and older) town home community. The premises which are the subject of this application are located on the northerly side of Montebello Road approximately 50 feet north of Hemion Road in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 48.18, Block 2, Lot 1 in an EP Zone.

Present: Lawrence Turco, Applicant
Thomas LiPuma, Tali Equities Inc., Applicant
Jay Hood, Esq.
Leonard Jackson, P.E.

Public Hearing continued at 8:05 p.m.

Dr. Urcioli read Amy Rapoport letter dated March 19, 2006 revised April 13, 2006 into the record asking that the application be denied because she feels the proposal does not meet the requirements of the Master Plan.

Mr. Emanuel read the Rockland County Planning Department dated March 27, 2006 (appended) disapproving the application.

Mr. LiPuma gave an update as to what happened at the Planning Board. He stated that the Planning Board accepted the Part III of the EAF and issued an Negative Declaration. He presented pictures of the property from different angles. Mr. LiPuma stated that the pictures show that there is no significant view shed. He said by taking the hump out of the center of the driveway it will help with the view of the mansion.

Discussion regarding the view shed of the mansion and the position of the buildings.

Mr. LiPuma stated in regards to the 7.51 buffer variance, they plan on lowering the road and removing the hump in the center of the property. Some trees will also be removed along the center roadway and that will improve the view shed. Mr. LiPuma stated that in terms of the view shed from other perimeters such as River Road, the school, Mayer drive and East Place, there virtually is no view shed.

Dr. Urcioli (looking at picture #2, which is looking straight down interior driveway) asked, if during development, will trees be removed?

Mr. LiPuma said, some will be removed. The center island will be improved with landscaping. Halfway down the drive, the hump will be removed and some of the trees along the roadway and where the internal drive cuts in will be removed. It will have the effect of widening the view of the mansion so it will be more visible from Hemion Road.

Mr. Turco stated that where the two choke points are the road will be widened and there will be a clear view of the mansion.

Mr. Gittens stated that he drove through the property and it is not clear from the pictures presented, what the view would be.

Dr. Urcioli stated that he feels the buildings at the corner near Hemion Road are large and will obscure the vista.

Mr. Jackson stated that the buildings are actually further back and will be behind trees and shrubs, so they will not appear that large from the road. The buildings (#13 and #14 shown in picture #2) at the right of the entrance way, are closer to the interior road but, are behind two pine trees.

Mr. LiPuma stated that the positioning of the buildings and varying the number of units came about after discussions with the Planning Board because they felt the two front buildings, near Hemion Road, were too much. Originally the buildings were in a straight line and each building had four units each.

Mr. Turco stated that he wants to cooperate and do whatever he can to make this a better project. He said, that he did what he thought everyone wanted.

Mr. Jackson stated that at the last meeting there was a discussion of the variances. He said that they needed a variance right from the outset, but somewhere mid-way the code changed and because of the way the area is calculated the lot now requires a larger variance. It turns out in this instance, if you are concerned with a view, then the area of the lot becomes just a numerical calculation. The density of the site is really what the density is. Mr. Jackson said, it is the floor area of the buildings divided by the area of the lot, which no matter how you calculate it, the area of the lot is the area of the lot. Mr. Jackson stated that they have avoided slopes to the extent practicable. The mansion lot is eliminated from the remainder of the site. If you look at the numbers, the gross lot area is 760,970 square feet and if you deduct the mansion lot of 215,600 square feet, the remainder is 545,360 square feet, which is where the townhouses are going. Mr. Jackson stated the proposal is to build 24 units at approximately 2,947 square feet which is a total FAR of 70,728 square feet. He said if there were no deductions and you calculated the FAR for 24 units of the 70,728 square feet divided by the lot that it is going on, you come up with .13. The problem is with the new slope law deductions have to be made and under the new law the FAR would be .1833.

Mr. Emanuel requested that the applicant submit information regarding these numbers for the next meeting.

Mr. LiPuma stated that under the new slope law the required FAR is .13. The FAR that we are showing now is .1833. He said the design did not change, the slope law did. The original request for a FAR variance was .154 versus .13 and with the change in calculations the variance needed now is .1833.

Mr. Emanuel stated that even under the old slope law a variance was needed.

Mr. LiPuma stated correct.

Dr. Urcioli stated under the old slope law the variance needed was .15.

Mr. LiPuma stated correct.

Mr. Emanuel stated looking at the Zoning Code for the Estate Preservation Overlay District, one of the requirements, I believe you are looking for a variance for this as well, is that minimum lot area for the mansion shall be determined based on the existing FAR of the mansion and the LO-C FAR development coverage limitations.

Mr. LiPuma stated that they are not asking for a variance. Mr. LiPuma explained at the Planning Board level, originally, we had discussed two ways to address the FAR. We could have asked for a variance on the mansion FAR and the reason that came up, is the majority of the slope is on the mansion site, that is going to be subdivided and not part of this development. Also, the majority of the 15-20-25 percent slope on this piece of property is in the 75% buffer which is not part of this development. Mr. LiPuma stated that a lot of the area that is being deducted from the useful area for calculations is not area that is being developed on. Mr. LiPuma said at the Planning Board level we said we could ask for a variance on the mansion FAR or we can ask for a variance on the total site. In the calculations, when we are talking about the numbers, we are not asking for a variance on the mansion.

Mr. Emanuel stated at one time a variance was requested because that variance shows up on the notices and your application as well. Mr. Emanuel asked if the variance on the mansion is being withdrawn?

Mr. LiPuma stated that they did apply for either the mansion or the townhouse property.

Mr. Emanuel stated that if a FAR variance on the mansion is being requested, then the Planning Board needs to know what the numbers are.

Mr. LiPuma stated that .20 is required for the mansion site and they would have requested .33. However, they decided to leave the mansion site alone and ask for a variance on the site which the code requires .13 and we are requesting .1833.

Mr. Emanuel advised the Board that there are two alternate means of relief. The mansion site requires an FAR of .20 and the applicant is requesting .33 and the home site requires a FAR of .13 and they are requesting .1833. Mr. Emanuel advised if the Board grants relief on the mansion, then it need not grant relief on the home site portion and vice versa.

Mr. Hood stated that they have tried to do everything that was requested of them in the past two years. They followed the overlay; they have improved the view shed, they are doing off-site drainage improvements, which add to the cost. Mr. Hood said, what they need is a balance between the developers needs, the applicants needs as compared to how it will impact the community. Mr. Hood stated that if we do not get some help with some variances, we cannot produce a product that is going to do all the things everybody expects it to do.

Mr. Emanuel stated that the Rockland County Planning Department gave a rather strong disapproval and it forces a 4-1 vote rather than the normal 3 vote majority. An alternative take on it is maybe what the County Planning Department is saying is, that you are at the wrong Board. Perhaps alternatively instead of seeking variances on a zoning code that is relatively new and that was put in place specifically for this parcel, the better way to deal with this is to go back to the Village Board, whose law this is, and seek relief from the Village Board. There are certain advantages to that at least from a legal point of view because the Village Board has legal discretion and you probably would not get a disapproval from the County. This Board does not have discretion; it must act within the perimeters set forth and the Village Law 7-712B.

Mr. Hood stated that they did consider it.

Dr. Urcioli asked what is the total square footage that you are asking for?

Mr. LiPuma stated 70,240 square feet the allowed is 50,290 square feet.

Dr. Urcioli stated that there is approximately a 20,000 square foot difference; which is 40%.

Mr. LiPuma stated that under the old law 59,705 square feet was allowed.

Dr. Urcioli stated so, you were asking for 10,000 square feet which comes to 18%.

Stan Shipley, 9 River Road, stated that he was a member of the Board of Trustees that approved the master Plan in 2003-2004. This project took the bulk of our time. All of us walked the property and measured things, we sat and talked about what we wanted to do on the property. We wanted to preserve the mansion and it was quite clear that we wanted to keep the density to a minimum. When we spoke about 24 units, it was the cap. As a result of the talks, this was the absolute maximum that we would permit there. We wanted less units there because we knew about the slope law and we knew about the drainage problems. We anticipated that it would be less than 24 units. Mr. Shipley stated that he sees no reason to grant them a change in the FAR of 45% or even 18% under the old law. He said some of us stuck our neck out on this project and a bad project would look bad for us and no one wants a bad project. Mr. Shipley stated that he rather have no project than a bad project. If it takes a smaller square footage then that is what I want. I do not want a project with a larger square footage.

Fern Lowenfels, 97 Montebello Road, stated that drainage is a big concern to her and would like reassurances that if the project goes through that the drainage will be taken care of by having the pipes that are facing Montebello Road be put underground and diverted to the local streams. Ms. Lowenfels said that she supported Mr. Shipley.

Mr. Gittens asked since the Board can make a decision on the FAR for either the mansion or the site, if you go with reducing or increasing the FAR for the mansion, what is that going to do to the lot size of the mansion?

Mr. LiPuma stated that the lot size of the mansion will remain the same and that is why the FAR ratio will increase.

Mr. Gittens asked what will happen to the lot size that the mansion is sitting on? He said the FAR will be increased from .20 to .33 so that means the lot is being reduced.

Mr. LiPuma stated under the .20 FAR, the square footage of the mansion is 215,600 square feet and that is the required square footage.

Mr. Turco stated that it would reduce the lot size which will increase the FAR for the mansion lot.

Mr. Gittens asked would this effect the front yard or side yards since it will be subdivided from the rest of the site?

Mr. Emanuel asked can you move the line without forcing an encroachment into a required yard or setback, because you are talking about a dividing line between the mansion and the townhouse development.

Discussion regarding whether or not the mansion lot needs a variance.

It was decided that it probably would need some yard variances.

Mr. Emanuel asked the applicant, with that information, do you still want to pose that as an alternative? He suggested that the applicant think about it and let the Board know.

Mr. Bracken stated that his concern was drainage because there was such a big problem with the Fortune Way subdivision.

Motion to close the Public Hearing.

MOTION: Rodney Gittens

SECOND: Tim Cronin



COUNTY OF ROCKLAND
DEPARTMENT OF PLANNING

Building T

50 Sanatorium Road

Pomona, New York 10970

(845) 364-3434

Fax: (845) 364-3435

C. SCOTT VANDERHOEF
County Executive

SALVATORE CORALLO
Commissioner

ARLENE MILLER
Deputy Commissioner

March 27, 2006

Montebello Zoning Board of Appeals
One Montebello Road
Suffern, NY 10901

Tax Data: 48.18-2-1

RECEIVED

MAR 29 2006

Planning & Zoning Clerk

Re: GENERAL MUNICIPAL LAW REVIEW: Section 239 L and M

Map Date: 2/15/2006

Date Review Received: 2/27/2006

Item: RIO VISTA MONTEBELLO, INC. (M-11L)

Variances for a reduction of the 75-foot interior buffer at various points along the central access road, an increase from four units per building to five units per building in two of the six buildings and an increase in the maximum allowable Floor Area Ratio to allow a 26-lot subdivision of 17.457 acres in the EP zoning district and the construction of 24 single-family, semi-attached, townhouse dwellings.

North side of Montebello Road, opposite Hemion Road, approximately 190 feet east of Rocklyn Drive and 100 feet west of Mayer Drive.

Reason for Referral:

Montebello Road, Hemion Road, Village of Suffern

The County of Rockland Department of Planning has reviewed the above item. Acting under the terms of the above GML powers and those vested by the County of Rockland Charter, I, the Commissioner of Planning, hereby:

***Disapprove**

This department issued a GML review for the proposed subdivision and site plan in August of 2005. We noted that the Village planned for the future development of this parcel by amending the Village Zoning Code to include the Estate Protection Overlay District, a concept promoted in the Village's Comprehensive Plan. This overlay district allows for reasonable development of this site while retaining the view of the mansion and the structure itself. The proposed subdivision and site plan do not meet the requirements of the Village code in regards to the Estate Protection Overlay District and therefore three variances are sought. While the overlay district allows for a maximum of 24 lots along either side of the mansion drive with no more than four dwellings per grouping, the natural features of the site do not allow for this type of development while maintaining the view of the mansion. New construction should conform to the bulk requirements outlined in the Village Zoning Code, especially when such forethought has been considered for a particular property that is a distinct historic and visual landmark within the Village.

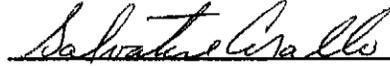
The interior buffer of 75-feet shall be adhered to from all proposed structures and roadways to the

RIO VISTA MONTEBELLO, INC. (M-11L)

mansion drive. If the repositioning of buildings then encroaches on the required exterior buffer, units shall be eliminated or redesigned in order to meet the requirements of the Village Code.

As per the Village Code for the Estate Protection Overlay District, no buildings shall accommodate more than four dwelling units. The two buildings proposed to accommodate five dwelling units shall be reduced to the required maximum of four dwelling units per building.

The design standards for the Estate Protection Overlay Zoning District indicate that no more than 24 dwelling units shall be permitted. This is a maximum number not a guarantee of what can be built. The applicant shall reduce the total number of townhouse units or the total square footage of the individual units so that this proposal meets the maximum allowable F.A.R. standard.



Salvatore Corallo
Commissioner of Planning

cc: Mayor Kathryn Gorman, Montebello
Rockland County Department of Highways
Atzi, Scatassa & Zigler P.C.
Village of Suffern

Rio Vista Montebello LLC
Rockland County Planning Board Members

**NYS General Municipal Law Section 239 requires a vote of a 'majority plus one' of your agency to act contrary to the above findings.*

The review undertaken by the Rockland County Planning Department is pursuant to, and follows the mandates of Article 12-B of the New York General Municipal Law. Under Article 12-B the County of Rockland does not render opinions, nor does it make determinations, whether the item reviewed implicates the Religious Land Use and Institutionalized Persons Act. The Rockland County Planning Department defers to the municipality forwarding the item reviewed to render such opinions and make such determinations if appropriate under the circumstances.

In this respect, municipalities are advised that under the Religious Land Use and Institutionalized Persons Act, the preemptive force of any provision of the Act may be avoided (1) by changing a policy or practice that may result in a substantial burden on religious exercise, (2) by retaining a policy or practice and exempting the substantially burdened religious exercise, (3) by providing exemptions from a policy or practice for applications that substantially burden religious exercise, or (4) by any other means that eliminates the substantial burden.

Proponents of projects are advised to apply for variances, special permits or exceptions, hardship approval or other relief.

Discussion:

Mr. Hood stated that he would like the Public Hearing to remain open because he would like to submit more information regarding what was discussed tonight.

Mr. Emanuel advised the Board if they need more information submitted for the next meeting, then the hearing should remain open and the Board should state what additional information it wants.

Dr. Urcioli stated for the next meeting he would like the discussion limited to only the variance on the mansion.

Mr. Gittens stated that he is withdrawing his motion to close the Public Hearing.

The applicant was requested to submit all the numbers discussed at this meeting, regarding the mansion variances, in a form that is understandable.

Motion to continue the Public Hearing at the May 18, 2006 meeting.

MOTION: Edward Bracken

SECOND: Rodney Gittens

VOTE: Unanimously accepted.

New Business:

Dr. Urcioli congratulated Rodney Gittens who was appointed to the Zoning Board of Appeals as a full member of the Board and his ad hoc position will be filled by Marie Conte Benedict.

Motion to adjourn the meeting at 10:16 p.m.

MOTION: John Urcioli

SECOND: Edward Bracken

VOTE: Unanimously accepted.