VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS MEETING
JULY 27, 2006

The Village of Montebello Zoning Board of Appeals meeting was called to order by the Chairman, John Urcioli, at 7:48 p.m. on Thursday evening, July 27, 2006. The meeting was held at Village Hall, One Montebello Road, in the Village of Montebello, New York 10901.

PRESENT
John Urcioli, Chairman
Tim Cronin, Vice Chairman
Edward Bracken
Fran Osei
Rodney Gittens

Maria Conte-Benedict, Alternate

OTHERS
Warren E. Berbit, Village Attorney
Carol Adduce, Clerk

ABSENT
Ira Emanuel, Assistant Village Attorney

Motion to approve the June 15, 2006 minutes.

MOTION: Tim Cronin

SECOND: Rodney Gittens

VOTE: Unanimously accepted.

Emerald Pines
Public Hearing

Application of JMK Building Corporation, 301 Main Street, New City, NY 10956 for variance from the provisions of Article IV, Sec. 195-13 (Bulk Table) Col. A (RR50 District); Col. B Uses by Right; Col. B-1 Use Group h; Col. C Uses by Special Permit Nos. 1 & 2 of the Zoning Local Law of the Village of Montebello to permit construction, maintenance and use of a temporary contractor's storage yard that is not permitted in a residential zone. The premises which are th subject of this application are located on the northerly side of Viola Road approximately 10 feet west of Lety Lane in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 49.05, Block 1, Lot 17 in a RR-50 Zone

Present: William J. Stein, Consulting Engineer

Mr. Stein submitted a preliminary subdivision map dated March 21, 2006, revised May 7, 2006 for the Canterbury Lane drainage project, which was marked up to reflect the location of the storage area, the distance from the road and stream. He also, submitted a copy of the DEC permit that they have been working under for the Montebello Pines subdivision, but he is not sure if it includes the dredging of ponds. The permit shows the effective date as of July 12, 1005 and to expire on December 31, 1998.

Mr. Stein informed the Board that they have changed their request for storing equipment. They no longer want to store the equipment to be used for dredging the ponds, now they would like to store the equipment on the

property for 45 days, until the Canterbury Lane drainage project it completed and then remove everything from the property. Mr. Stein stated that they are planning to store a moxie dump truck, bobcat, front end loader, small dozer and a site dump truck. He said there would not be any oil leaking into the swale or stream because of the distance from the equipment to the stream and because the land is mostly level and pitches in the opposite direction.

After discussion the consensus of the Board was to allow the equipment to be stored on the property until the Canterbury drainage project was completed but not to go beyond 45 days which would be September 10, 2006, and then everything is to be removed from the property at that time.

Motion to open the hearing to the public.

MOTION: Edward Bracken

SECOND: Tim Cronin

VOTE: Unanimously accepted.

No one from the public spoke.

Motion to close the public hearing at 8:11 p.m.

MOTION: Tim Cronin

SECOND: John Urcioli

VOTE: Unanimously accepted.

Motion to approve the application of Emerald Pines for variances from the provisions of Article IV, Section 195-13 - Bulk Table; Col. A (RR-50 District): Col B Uses by Right; Co. B-1 Use Group h; Col. C Uses by Special Permit Nos. 1 and 2 of the Zoning Local Law of the Village of Montebello to permit the storing of construction equipment no longer than 45 days for the purpose of completing the Canterbury Lane drainage project subject to terms and conditions so stated in the appended resolution.

Motion to formalize the resolution at the next meeting.

MOTION: Tim Cronin

SECOND: Rodney Gittens

VOTE: Unanimously accepted.

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: Tom LiPuma, Applicant
Jay Hood, Esq.

Dr. Urcioli stated at last month's meeting the public hearing was closed and a motion was made. He then read the resolution into the record.

The motion was made by John Urcioli, seconded by Tim Cronin and unanimously accepted by the Board.

Resolution annexed hereto and made a part hereof.

IN RE: APPLICATION OF RIO VISTA OF MONTEBELLO, LLC
CALENDAR CASE NO. 1119

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Village Hall, Montebello, New York, on March 16, April 24, May 18, and June 15, 2006 for variances from the provisions of Section 195-62.C(3), (6), (8), and (8)(a) and 195-14.A, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a twenty-four unit active adult town home community subject to the following variances: reduction of the required 75 foot interior buffer to not less than 31 feet; increase in the number of units per building from four to five units in two buildings; increased floor area ratio of 0.1833; and relief from the steep slope area reduction of section 195-14.A.

The premises which are the subject of this application are located at 75 Montebello Road, Suffern, New York, which is on the north side of Montebello Road, and 0 feet north of the intersection of Hemion Road in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 48.18, Block 2, Lot 1, in a EP Zoning District.

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

WHEREAS, the applicant was represented by Jay Hood, Sr., Esq., and the following documents were placed into the record and duly considered:

Application; Narrative; Short Environmental Assessment Form; Planning Board referral dated February 14, 2006; drawing showing the location of the requested variance; Rockland County Planning Board memorandum dated March 27, 2006, which disapproved the proposed variance; letter from Amy Rapaport, dated April 13, 2006; six photographs of the site taken by applicant; letter from Atzl, Scatassa & Zigler (applicant' surveyors) dated April 26, 2006; letters from applicant dated May 3, 2006, and May 25, 2006, respectively; letter from Hood, Hood, & Hood (applicant's attorneys) dated May 17, 2006; letter from Montebello Historic Preservation Commission dated June 6, 2006; Preliminary Site Development Plan drawing and Preliminary Subdivision drawing, both having last revision dates of May 24, 2006; Planning Board minutes and files; and

WHEREAS, the proposed action was granted a negative declaration by the Planning Board on April 11, 2006, under the regulations promulgated pursuant to the New York State Environmental Quality Review Act; and

WHEREAS, a public hearing was held on March 16, April 24, May 18, and June 15, 2006, and the testimony of the following persons was duly considered: Lawrence Turco, Thomas LiPuma, Leonard Jackson, P.E., and Theodore Atzl, L.S., for applicant; Amy Rapoport, Rosemary Scandura, Tony Caridi, Stan Shipley, Fern Lowenfels, and Josephine Bracken; 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 contract vendee of the subject premises in the Estate Preservation (EP) District. The premises is the site of the Thomas Fortune Ryan Mansion and is known as Montebello Park. The applicant seeks to develop the premises with twenty-four carriage-style homes in six buildings consisting of two pairs of three, four, and five homes lining both sides of the existing interior road from Montebello Road to the Mansion.

This parcel was the subject of extensive discussion during the 2003 Comprehensive Plan hearings. This discussion resulted in the creation of the EP district, which applies only to this parcel. As adopted, the EP district allows for up to 24 carriage-style homes, in buildings of not more than four homes each. The district also required a 75 foot buffer from Montebello Road, which wraps around the frontage of the parcel in a "U" shape, and an additional 75 foot buffer from the existing interior roadway which leads directly into the parcel from Montebello Road to the Mansion. (Zoning Code, § 195-62.) As a part of the application process, the Mansion was designated as a Village Historic Site.

The applicant made a number of informal, then formal, appearances before the Planning Board in an effort to develop a general site plan which would meet the requirements of the Zoning Code and also be aesthetically pleasing. According to the applicant, it became clear that the two buffer requirements (75 feet each from the interior road and Montebello Road) would squeeze the improvements into a sloped area. The need for tree removal to build the homes would diminish the visual buffers intended by the Code. Therefore, the applicant suggested, and presented to the Planning Board, proposals which brought the buildings closer to the interior roadway along 90% of its frontage. The nearest point of intrusion was at home 10, where the building was 31 feet from the interior road.

The applicant also presented a number of configurations for the buildings to the Planning Board. According to the applicant, it appeared that the Planning Board preferred a plan which reduced the buildings closest to Montebello Road to three homes each. Those buildings were also to be angled so that they faced neither Montebello Road nor the interior road. In response to the reduction in the number of homes in these buildings, the applicant increased the number of homes in the two middle buildings to five each. Thus, the applicant was able to maintain the total number of homes at twenty four.

Subsequent to the original adoption of the EP district in 2003, the slope preservation portion of the Zoning Code was amended. Originally, all slopes over 25% in grade were excluded from the calculation of lot area for all purposes. On the recommendation of the Rockland County Planning Department, the provision was changed such that, in addition to the exclusion of 25% and greater slope areas, areas having slopes of 15 to 20% were given half credit, and areas having slopes of 20 to 25% were given only one-quarter credit. (Local Law #5 of 2005.) The impact of this amendment was to further reduce the zoning lot area of the subject premises and to increase the effective FAR.

The applicant therefore requested the following variances:

Section #	Dimension	Required	Provided
195-62.C(3)	FAR (mansion)	0.20	0.33 (Alternative relief)
195-62.C(6)	Interior buffer	75 feet	31 feet
195-62.C(8)	d.u./bldg14	5	
195-62.C(8)(a)	FAR (homes)	0.13	.1833 (Alternative relief)

The applicant advised this Board that it did not care whether FAR relief was granted to the mansion or to the homes.

During the course of the hearings before this Board, the applicant revised its proposal and amended its application. By letter dated May 25, 2006, and confirmed orally at the hearing held on June 15, 2006, the applicant reduced the number of home from 24 to 22 and reconfigured the project. The reconfigured project is depicted on a Preliminary Site Development Plan drawing and a Preliminary Subdivision drawing, both having last revision dates of May 24, 2006.

Under the new proposal, the number of dwelling units for each of the two middle buildings was reduced to four, thus eliminating the need for a variance under § 195-62.C. In addition, the FAR attributable to the homes was reduced from 0.1833 to 0.16. Last, the buffers to the interior road were increased so that the size of that variance was also reduced. (The new "choke points" were: opposite unit 4: 72 feet; opposite unit 5: 61 feet; opposite unit 8: 74 feet; opposite unit 9: 60 feet; opposite unit 12: 60 feet; opposite unit 15: 60 feet; and opposite unit 19: 50 feet.)

Although the applicant did not formally withdraw its request for relief from the new slope calculations, its presentation did not refer to that request.

The new proposed units would be of smaller size: 16 homes at 2,954 square feet, 6 homes at 2,487 square feet.

The applicant explained that it needed homes of a minimum size to justify the expenditures for both on-site and off-site improvements wanted by it and the Planning Board. Among the off-site improvements the applicant was willing to provide was a correction to the existing drainage system which serves the subject parcel. In addition, the applicant explained that it did not believe that small homes would meet the intent of the Zoning Code, which, it claimed, discouraged "cookie-cutter" 2,000 square foot townhouses. Last, the applicant stated that, to financially support the off-site drainage improvements which it promised to the Planning Board, it needed the financial return which could be achieved from these "carriage homes."2

The applicant reiterated that the change in the Village's slope calculations subsequent to the adoption of the EP zoning district and subsequent to the commencement of the review process for this project aggravated its non-conformity as to FAR. This aggravation occurred because, by reducing the amount of "credit" available for steep slopes, the net zoning lot area was also reduced. This, in turn, increased the FAR even though there was no change to the physical size of the buildings.

Under questioning from the Board, the applicant provided a comparison between the amount of gross floor area which would be allowed under the original slope calculations, the new slope calculations, and its current proposal:

	Under original slope calculation	Under current slope calculation	Applicant's original proposal	Applicant's 5/25/06 proposal
Net lot area for homes (sq. ft.)	545,370	386,848	386,848	386,848
Gross floor area (sq. ft.)	59,688	50,290	70,909	62,186
Floor Area Ratio	0.13	0.13	0.1833	0.16

Thus, even under the original slope calculation, the applicant's May 25 proposal would exceed the allowed FAR (62,186 sq. ft. proposed vs. 59,688 sq. ft. permitted).

The proposals elicited some public comment. Prior to the project's change, Stan Shipley, a former trustee who served when the Comprehensive Plan was adopted, objected to any deviation from the Plan. He reminded the Board that the Plan, especially for this parcel, was quite detailed, and reflected the Village Board's vision of how this parcel should be developed. Amy Rapoport expressed concerns regarding drainage, slope calculations, and development density. Fern Lowenfels was concerned with drainage impacts of the project. Rosemary Scandura was concerned that an additional 48 cars entering the intersection of Montebello and Hemion Roads would create safety issues. Tony Caridi questioned whether the proposed variances would allow development beyond that which is being proposed. Josephine Bracken stated that the original density was too great.

The Historic Preservation Commission, in its June 6, 2006, letter, stated that its primary interest was in maintaining the view of the Ryan Mansion. To that end, it called for maintaining the 75 foot interior buffer. It also suggested three-dimensional modeling of the Mansion and its surrounding area.

The Rockland County Planning Department, in a review of the original proposal dated March 27, 2006, disapproved of the variances. It, too, noted the Village's Comprehensive Plan, and questioned the need to deviate from it or from the zoning provisions adopted to implement the Plan. “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 in the Village.” The Department noted that if the interior and exterior buffers cannot be met, then the buildings should be repositioned and/or homes eliminated. Similarly, it objected to increasing the number of homes per building above the four permitted.

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 parcel is a unique parcel in the Village, and in Rockland County. The Thomas Fortune Ryan Mansion and its grounds have special significance, as reflected in their treatment in the Village's Comprehensive Plan and Zoning Code.

The applicant is correct that the change in the slope calculations adversely affected it. By reducing the amount of steep slope “credit”, the net zoning lot area was also reduced. However, this change affected all environmentally sensitive parcels in the Village, including the subject parcel. All would-be developers are similarly impacted. Further, it is a basic presumption of statutory construction that the legislative body knows what it is doing, and the impacts of its actions. Thus, the Village Board must be presumed to have realized the effect of the new slope calculations on this project when they were enacted.

The applicant's May 25 amendment to the plan and its application were a good faith attempt to meet the concerns expressed by this Board, the public, and other agencies. The removal of two homes and the increased buffer to the interior road have brought the project closer to the vision of the Village Board.

The fact remains that, even with these changes, the amended requested FAR of 0.16 exceeds the per-

mitted FAR of 0.13 by 23%. (0.03 ÷ 0.13 = 0.23.)

Nonetheless, it is clear that some relief is appropriate. By removing two additional homes, numbers 9 and 12, as shown on the May 24, 2006, drawings, the applicant can achieve an FAR of 0.145, and also increase the interior buffer at that point. An FAR of 0.145 will yield 56,093 square feet of gross floor area. This amount is about 3,700 square feet less than what would have been allowed under the original slope calculation, and about 5,800 square feet more than allowed under the current method.

Thus, the applicant would be allowed 20 homes averaging 2,804 square feet each. This size is similar to that originally sought by the applicant and is in keeping with the concept of the Village Board.

In addition, the interior buffers shown on the May 24, 2006 drawings are an appropriate response to actual topography. This Board must defer to the Planning Board in that Board's determination that the buildings should not be moved further downslope. With the elimination of homes 9 and 12, the initial entry to the project site will be opened and improved.

(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”:

This Board has held four days of public hearings on this matter, and has explored the proposal from within the site and without the site. It is apparent to this Board (as it seemed apparent to the Planning Board) that the requirement for a 75 foot buffer along the entire length of the internal road cannot be achieved along its full length without substantially impairing the Zoning Code's vision of “carriage homes” or requiring intrusion into the steep slope areas. The alternative of further reducing the number of homes below 20, in order to achieve an FAR of 0.13, appears punitive, especially given the history of this project.

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

At 22% above that which was permitted, the originally requested FAR variance was substantial. The testimony showed that, even under the old slope calculations, the applicant would have needed a variance. The magnitude of the variance was exacerbated by the change in the slope calculations, in that a 50% credit for slopes was changed to zero percent credit for slopes. This greatly reduced the net lot area, and reduced the square footage of building which could be permitted. This Board's proposed variance allowing an FAR of 0.145% is, we believe, the minimum variance necessary to allow the applicant to achieve its objectives in a manner consistent with the Comprehensive Plan.

Likewise, the interior buffer variances affect specific locations, and take into account the need to maintain vistas of the Ryan Mansion while minimizing intrusions into the steep slope areas.

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

The Planning Board, in granting a negative declaration under SEQRA for this project, considered it as if the full variances originally requested would be granted. The proposed FAR of 0.145 and the reduction of the number of homes to 20 from 24 will further reduce the amount of impervious surface and the traffic impacts. The increased internal buffer, from the original minimum of 31 feet to the 50 to 65 feet and greater which this Board here grants, will improve the view of the Ryan Mansion, as the Historic Preservation Commission suggested.

In addition, the Planning Board relied heavily on the proposed off-site drainage improvements proposed by the applicant to that Board in granting the negative declaration. The applicant advised this Board that the relief it was requesting was needed, in part, to provide sufficient financial return to fund these improvements. While this Board cannot and does not engage in quid pro quo trading for variances, the fact remains that both the applicant and the Planning Board recognize the need for these improvements.

Any variances granted by this Board which allow for additional square footage beyond that which the Zoning Code allows must take into account the need to mitigate the impact on surface water drainage which the additional footprint area will create. To that end, as a condition of granting the requested FAR variance, this Board will require the applicant to provide the off-site drainage improvements outlined in its drawing entitled "Off-Site Drainage West" dated 3/27/2006, and accompanying calculations as submitted to the Planning Board, and as those improvements may be further modified by the Planning Board.

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

The difficulty is self-created, in that the applicant had sought, from the beginning, to build in excess of the permitted FAR. However, the amended application and the further reduction of the FAR, together with the applicant's proven willingness to work with both this Board and the Planning Board, mitigate against denial of the variances on this ground.

NOW, THEREFORE, BE IT RESOLVED, that the application of Rio Vista of Montebello, LLC for variances from the provisions of Section 195-62.C(3), (6), and (8)(a) and 195-14.A of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a twenty-four unit active adult town home community subject to the following variances: reduction of the required 75 foot interior buffer to not less than 31 feet; increase in the number of units per building from four to five units in two buildings; increased floor area ratio of 0.1833; and relief from the steep slope area reduction of section 195-14.A, as set forth in the application submitted herein, as amended by its letter dated May 25, 2006 is hereby adjudicated as follows:

1. The request for a variance from the requirements of Section 195-62.C(3) [FAR for Mansion] is moot as a result of the applicant's amended application, and is therefore denied.

2. The request for a variance from the requirements of Section 195-62.C(6) [Interior Buffer] is hereby granted to the extent shown on the drawing entitled "Preliminary Site Development Plan, Rio Vista Montebello, Inc." last revised May 24, 2006, subject to the following restrictions:

(a) that the buffer between the most southerly buildings and the interior roadway leading to the Ryan Mansion shall not be less than 65 feet on either side of said roadway; and

(b) that the buffer between unit 19 and the interior roadway shall not be less than 50 feet.

3. The request for a variance from the requirements of Section 195-62.C(8) [Number of Dwelling Units per Building] has been formally withdrawn by the applicant.

4. The request for a variance from the requirements of Section 195-62.C(8)(a) [FAR for housing] is hereby granted to the extent that the Floor Area Ratio for homes, when measured against the net lot area not attributed to the Ryan Mansion, shall not exceed 0.145, and provided further that the two most southerly buildings shall not have more than two dwelling units each, with each dwelling unit not to exceed 3,000 square feet in gross floor area, and provided further that there shall not be more than 20 dwelling units permitted. This

variance is conditioned upon the applicant providing the off-site drainage improvements outlined in its drawing entitled “Off-Site Drainage West” dated 3/27/2006, and accompanying calculations as submitted to the Planning Board, and as those improvements may be further modified by the Planning Board.

5. The request for a variance from the requirements of Section 195-14.A. [Steep Slope Calculation] is hereby denied.

6. The foregoing variances are subject to site plan approval of the Planning Board.

; and be it further

RESOLVED, that the disapproval of the Rockland County Planning Department, dated March 27, 2006, is hereby overridden for the following reasons:

1. The Department's disapproval was based upon the original proposal made by the applicant. The amendment, comprised of the applicant's letter dated May 25, 2006 and two drawings last revised May 24, 2006, were not sent to the Department.

2. The disapproval was nevertheless complete in scope, making no allowance whatsoever for the possibility that topographic or other conditions, as discovered during the planning process, could be cause for alteration of, or relief from, the standards which had been inserted into the Zoning Code prior to the land planning and engineering process. Instead, the Department held to an unyielding policy that “[n]ew construction should conform to the bulk requirements outlined in the Village Zoning Code”. Thus, it left no indication that any revision, short of complete conformity with the Zoning Code, would be acceptable.

3. Such a policy, while appropriate as a general rule, nonetheless tends to void the basic premise underlying the existence of this Board: that when the strict application of a zoning code yields improper or unfair results, relief must be granted.

4. The applicant has proved, to the satisfaction of this Board, that the relief it requested, to the extent granted, is warranted based upon the physical, environmental and economic conditions presented, as specified in greater detail above.

; and be it further

RESOLVED, that 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 to the extent set forth herein.

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

Dated: August 2, 2006
Montebello, New York

Emerald Pines
Public Hearing

Mr. Berbit drafted a resolution and it was read into the record.

A motion was made by Tim Cronin to accept the resolution as read, seconded by Rodney Gittens and it was unanimously accepted.

Resolution annexed hereto and made a part hereof.

IN RE: APPLICATION OF EMERALD PINES
CALENDAR CASE NO. 1118

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Village Hall, Montebello, New York, on June 15 and July 27, 2006, for variances from the provisions of Article IV, Section 195-13-Bulk Table; Col. A (RR50 District); Col. B Uses by Right; Col. B-1 Use Group h; Col. C Uses by Special Permit Nos. 1 & 2 , of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a temporary contractor's storage yard.

The premises which are the subject of this application are located at 84-86 Viola Road, which is on the northerly side of Viola Road 10 feet west of the intersection of Lety Lane in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 49.05, Block 1, Lot 17 in a RR-50 Zone.

The Board, upon motion duly made by Tim Cronin and seconded by Rodney Gittens resolved:

WHEREAS, the applicant was represented by Bill Stein, 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 May 8, 2006; Notice Letter to Rockland County Planning Department, etals dated May 22, 2006; Rockland County Planning Department memorandum dated June 6, 2006, which recommended the proposed variance with modifications: including, locating the storage location on the map, review by the Rockland County Department of Highways, and stating a clear time frame indicating a temporary use; Rockland County Department of Highways memorandum dated May 31, 2006, at para. 8., which does not object subject to providing a stabilized construction entrance and that proper soil and erosion control measures are installed, and access is via the stub road, not Viola Road; map of March 21, 2006 as hand marked; DEC permit dated 1995 expiring 1998; and

WHEREAS, the proposed action is an Unlisted action under the regulations promulgated pursuant to the New York State Environmental Quality Review Act; and

WHEREAS, a public hearing was held on June 15 and July 27, 2006, and the testimony of the following persons was duly considered:
William Stein, P.E. for the applicant; and

WHEREAS, the hearing was continued to July 27th to permit the applicant time to ascertain the DEC permit status, to come up with an overall time frame, a precise location, and also a means to protect against oil and gas spills and leaks, or explain why such was not needed, and to list all equipment to be stored; and

WHEREAS, the applicant appeared on July 27th and supplied a marked map showing a location on the proposed subdivision road 200 feet from the stream and 300 feet from Viola Road, listing a moxie dump truck, front end loader, bobcat, small dozer, and added a site dump truck, to be stored, indicated that such equipment would have little leakage far from the stream, and revised the application indicating that the equipment would be used to effectuate the Canterbury drainage project, not pond dredging, for a maximum period of another 45 days, and indicated a willingness to accept fining if removal does not occur by then; and

WHEREAS, all the evidence and testimony was carefully considered and the Zoning Board of Appeals has made the following findings of fact:

1. That applicant is unable to specify a time frame for dredging since, apparently, a DEC permit is needed which could take 18 months to obtain, but such was cured by revising the application to 45 additional days for the drainage project.

2. That although the location is particularly sensitive to oil or gas spills or leaks due to high aquifer, slopes and nearby streams, the long distance from the stream and limited amount of equipment ameliorated same.

3. Pursuant to the New York State Environmental Quality Review Act, the Board has determined that the action will have no significant impact on the environment for the following reasons: limited amount of equipment located 200 feet from the stream and to be stored for only 45 days, and with no visual impact on the neighborhood.

WHEREAS, pursuant to the requirements of section 7-712-b(2) of the Village Law, the Board has made the following determinations:

(1) with respect to the requirements “that the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence”, that: given the temporary nature of the use, proximity to the drainage project, the cost to store the equipment elsewhere would be prohibitive.

(2) with respect to the requirements “that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood”, that: the proximity to the drainage project and short-term need is unique, and the usage quite limited in time and scope and virtually invisible from the neighborhood.

(3) with respect to the requirements “that the requested use variance, if granted, will not alter the essential character of the neighborhood”, that: given the limited scope and time, the essential character will not be impacted; and

(4) with respect to the requirements “that the alleged hardship has not been self-created”, that: such is a practical, logistical need, arising due to the nearby drainage project, and the completion of the balance of the Montebello Pines project.

NOW, THEREFORE, BE IT RESOLVED, that the application of Emerald Pines for variances from the provisions of Article IV, Section 195-13-Bulk Table; Col. A (RR50 District); Col. B Uses by Right; Col. B-1 Use Group h; Col. C Uses by Special Permit Nos. 1 & 2 , of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a temporary contractor's storage yard, as set forth in the application submitted herein, is hereby approved and the Building Inspector is hereby directed to

permit the usage upon compliance with the terms and conditions of this resolution and with all other applicable laws, rules and regulations, which terms and conditions are as follows:

1. The equipment is not to exceed the moxie dump truck, bobcat, front end loader, small dozer and site dump truck.

2. The equipment must be removed no later than September 10, 2006, and failure to comply will be subject to per diem fining.

3. That the location will be as specified, and no closer to the stream.

4. That any spill, or leakage will be immediately corrected.

5. That the conditions expressed by the Rockland County Planning and Highway Departments in their letters of June 6th and May 31st are included.

6. That this grant is expressly conditional on JMK (J. L. Heritage) performing the Canterbury drainage work.

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

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: August 2, 2006
Montebello, New York

Motion to adjourn the meeting at 9:06 p.m.

MOTION: Edward Bracken

SECOND: Tim Cronin

VOTE: Unanimously accepted.