VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS MEETING
NOVEMBER 16, 2006

The Village of Montebello Zoning Board of Appeals meeting was called to order by the Chairman, John Urcioli at 7:46 p.m. on Thursday, November 16, 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
Edward Bracken
Rodney Gittens
Maria Conti-Benedict - sitting by designation

OTHERS
Ira Emanuel, Attorney
Carol Adduce, Clerk

ABSENT
Fran Osei

Motion to approve the August 17, 2006 minutes.

MOTION: Edward Bracken

SECOND: Rodney Gittens

VOTE: Unanimously accepted.

Kass, Steven
Public Hearing

Application of Steven Kass, 2 Fortune Way, Montebello New York 10901 for variance from the provisions of Article IV Sect. 195-13 side yard (required 20 feet - proposed 23.8 feet) Use Group q Col. 8, and Article X Sect. 195-57 Paragraph D side yard (required 20 + 10 feet - proposed 23.8 feet) of the Zoning Local Law of the Village of Montebello to permit construction, maintenance and use of a swimming pool that is 23.8 feet from the side property line (30 feet is required). The premises which are the subject of this application are located on the north side of Fortune Way approximate 0 feet from the intersection of Mayer Drive in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 48.18, Block 2 and Lot 1.2 in a R35 Zone.

Present: Leonard Jackson, P.E.
Steven Kass, Applicant

It was established that all application and legal requirements were met.

Mr. Jackson made a presentation based upon his narrative of October 23, 2006 (appended).

Public hearing was opened to the public.

Rosemarie Scandura, 11 Mayer Drive, stated that she lives across the street from Mr. Kass and is concerned for drainage problems.

Motion to close the Public Hearing.

MOTION: Tim Cronin

SECOND: Rodney Gittens

VOTE: Unanimously accepted.

Discussion:

The Board felt that there was a mixup in maps; it would be very expensive to remove the pool; there is no drainage impact; there is a retention pond on the property and this was not done intentionally.

Motion to accept the proposed resolution for Steven Kass for provisions of Section 195-13, Use Group q, Column (s) 8 and Section 195-57D, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance and use of a swimming pool with a reduced combined side yard and buffer of 23.8 feet.

MOTION: John Urcioli

SECOND: Tim Cronin

VOTE: Unanimously accepted.

Resolution annexed hereto and made a part hereof.

IN RE: APPLICATION OF STEVEN KASS
CALENDAR CASE NO. 1121

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Village Hall, Montebello, New York, on November 16, 2006, for variances from the provisions of Section 195-13, Use Group q, Column(s) 8 and Section 195-57.D, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a swimming pool with a reduced combined side yard and buffer of 23.8 feet.

The premises which are the subject of this application are located at 2 Fortune Way, which is on the north side of Fortune Way, and 0 feet west of the intersection of Mayer Drive in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 48.18, Block 2, Lot 1.2, in a R-35 Zoning District.

The Board, upon motion duly made by Dr. Urcioli, and seconded by Mr. Cronin, resolved:

WHEREAS, the applicant was represented by Leonard Jackson, 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 24, 2006; drawing showing the location of the requested variance; Rockland County Planning Board

memorandum dated November 9, 2006, which recommended modifications to the proposed variance; letter dated May 19, 2006, from Brooker Engineering to Building Inspector; copy of building permit no. 840-06; memorandum dated October 24, 2006, from Building Inspector to this Board; letter dated November 14, 2006, from Leonard Jackson Associates (applicant's engineer) to this Board; letter dated November 14, 2006, from Rockland County Health Department to this Board; site plan with last revision date of 11/14/2006; letter dated November 16, 2006, from Brooker Engineering to the Board; copy of drawing showing site with Building Inspector's markup.

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 November 16, 2006, and the testimony of the following persons was duly considered: Leonard Jackson, P.E., engineer for applicant; applicant; Rose Marie Scandura, 11 Mayer Drive, Montebello.

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 lot is burdened by a 50 foot wide conservation easement along its easterly border, which constrains the area available for additional construction. In addition, the lot is sloped.

The lot is also constrained by a site plan approved by the Planning Board, which limits the locations in which structures may be built.

The applicant's contractor applied for and received Building Permit #840-06 to construct an in-ground swimming pool in the backyard of the parcel. The original location of the pool intruded into a required side yard. The Building Inspector denied the original location, but indicated on a copy of the survey the area in which the pool could be built (30 feet from the lot line). The setback is a combination of the required 20 foot side yard plus a ten foot buffer.

In a letter dated May 19, 2006, the Village's engineering consultant, Brooker Engineering, advised the Building Inspector that the pool "does not interfere with or contradict the conditions" of the approved site plan. Brooker Engineering also found that the location was outside the conservation and drainage easements, and that the proposed evergreen screening buffer was as required by the Planning Board.

The pool contractor, apparently working from a different survey, or a different copy of the same survey, than that which the Building Inspector had marked, dug the pool foundation and installed the metal frame in its current location, less than 30 feet from the affected lot line. The issue was discovered during a routine inspection by the Building Inspector.

The Building Inspector has written, in a memorandum dated October 24, 2006, that the applicant, as an innocent party, should not be made to suffer the hardship of relocating the pool, and has taken the unusual step of recommending that the variance be granted.

The Rockland County Planning Department has recommended the following modifications to the proposed variance: (1) a review by the Rockland County Health Department and the obtaining of all required permits; (2) development and use of a soil and erosion control plan for the entire site; and (3) depiction of the entire parcel on the site plan.

In response to the Department's recommendations, the applicant has provided a review letter from the Rockland County Health Department dated November 14, 2006, and a revised site plan which includes a soil and erosion control plan and depicts the entire parcel. The County Health Department noted that no permits were required from it. If the variance is granted, the applicant must still conform to the soil and erosion control plan. Rosemarie Scandura, the down gradient neighbor, complained about past drainage problems and was concerned about future drainage problems which may result from the proposed pool.

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 neighborhood consists of relatively new, large homes. These homes generally have amenities such as swimming pools. The proposed pool is behind the home, and is screened on all sides by a conservation easement, evergreen screening, and the topography of the land (there is a retaining wall system approximately 6 feet high between the pool and the only neighbor).

(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 only way to avoid the variance is to fill the existing hole and to relocate the pool; this would be at considerable expense to the applicant relative to the cost of the pool.

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

The requested variance has the effect of reducing the required buffer and side yard from 30 feet to 23.8 feet. The required side yard is 20 feet. In addition, for swimming pools, Zoning Code section 195-57.D requires that "Distances to lot lines shall be measured from a point beginning 10 feet from the edge of the pool." This latter provision is intended to account for pool aprons or patios, which are generally not considered structures which are otherwise prohibited in a required yard. According to the submitted site plan, the actual distance between the edge of the pool apron and the nearest side lot line is 18.8 feet. This is an intrusion of only 1.2 feet into the required side yard. Under the circumstances, and combined with the screening effect of the retaining wall system, this Board finds that the variance is 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 proposed variance results from the applicant's desire to stay out of the conservation and drainage easements which affect his property.

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

The difficulty appears to have resulted from mis-communication between the Building Inspector, the Village's engineering consultant, the applicant's engineer, and the applicant's contractor.

NOW, THEREFORE, BE IT RESOLVED, that the application of Steven Kass for variances from the provisions of Section 195-13, Use Group q, Column(s) 8 and Section 195-57.D, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a swimming pool with a reduced

combined side yard and buffer of 23.8 feet, as set forth in the application submitted herein, is hereby approved 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:	YEA or NAY
John Urcioli, Chairman	Yea
Timothy Cronin, Vice Chairman	Yea
Edward Bracken	Yea
Rodney Gittens	Yea
Maria Conte Benedict (alternate)	Yea

MEMBERS ABSENT:
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: November 20, 2006
Montebello, New York

Motion to adjourn the meeting at 8:50 p.m.

MOTION: Edward Bracken

SECOND: Rodney Gittens

VOTE: Unanimously accepted.

Respectfully submitted:

Carol Adduce, Planning & Zoning Clerk