VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS MEETING
MARCH 15, 2007

The Village of Montebello Zoning Board of Appeals meeting was called to order by the Chairman, John Urcioli at 7:52 p.m. on Thursday, March 15, 2007. 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
Fran Osei
Rodney Gittens

OTHERS
Ira Emanuel, Assistant Village Attorney
Carol Adduce, Clerk

ABSENT
Maria Conte-Benedict
Edward Bracken

Motion to approve the minutes of February 12, 2007.

MOTION: Tim Cronin

SECOND: Rodney Gittens

VOTE: Unanimously accepted.

Richard Steinberg
Public Hearing

Application of Richard Steinberg, 15 Copeland Drive, Montebello , New York 10901 for variance from the provisions of Article IV, section 195-13, Use Group H, Cols. 6,7,8,13; side setback (30 ft. required - proposed 25.29 feet); total side setback (75 feet required - proposed 64.29 feet); front pool patio side yard setback (25 feet required - proposed 16.00 feet); rear pool patio side yard setback (25 feet required - proposed 13.00 feet); development coverage(20% maximum - proposed 20.9%) of the Zoning Local Law of the Village of Montebello to permit construction, maintenance and use of an existing cabana, swimming pool and patio. The premises which are the subject of this application are located on the east side of Copeland Drive approximately 50 feet from the intersection of Babbling Brook in the Village of Montebello, which is known

Present: (Elliot) Richard Steinberg, Applicant
Mindi Steinberg, Applicant
Bart Rodi, P.E.

The Board's attorney, Mr. Emanuel, stated that the public hearing for this application started last month and some questions were raised with respect to the chronology of the permits that were requested, the permits that were received, the permit that was revoked. As a result, the Board requested that the Building Inspector, Mr. Harry Lewis, attend and try to give the Board some insight into what occurred here, so that the Board would have a better idea. In addition, the Board has been provided with copies of portions of the Building Department file. Under questioning by Mr. Emanuel, Mr. Lewis helped to identify the documents in the portion of the Building Department file.

Mr. Lewis identified the first document as the “bulls eye” for the applicant dated July 11, 2003 marked “Revoked” permit #297-03; the next is the same notice permit #297-03, not revoked; next is an application for a building permit relating to #297-03 both sides; next is a set of building plans marked “Steinberg Cabana” and marked revised plan marked “Received December 13, 2004” by the Montebello Building Department, consisting of 8 pages of elevations and details; a document relating to Building Department permit #297-03 Certificate of Occupancy/Use, also marked in handwriting “revoked, see letter January 3, 2006”; letter from Building Department dated January 3,2 006 to the applicant signed by Mr. Lewis; a letter addressed to Mr. Steinberg from Mr. Lewis dated January 3, 2006 with a hand written notation of “NG” on it (Mr. Emanuel asked Mr. Lewis if this meant “No Good”? Mr. Lewis answered, “Yes”) and attached to that letter is a letter to the ZBA from Brooker Engineering, the Village's consulting engineers, dated December 20, 2006 relating to this application signed by Eve Mancuso; a letter dated February 8, 2007 from the Building department relating to this application, a letter to Ms. Pamela Floyd from the Building Department; a letter dated October 13, 2006 to Mr. Steinberg which appears to be the usual denial letter which
the Building Department sends out, which provides jurisdiction for this Board; an Inspection Report for permit #297-03, inspection date is August 13, 2003 from the Building Department, there are two inspections noted on here, one is for foundation and backfill and the other is for footing forms and trenches, both are marked as being approved, there are remarks that say, “check south corner before backfill for footing depth”, the other inspection report is again for #297-03 inspection date September 2, 2003 for plumbing under slabs is marked approved, rough plumbing and frame is also marked approved and “a marked up survey with development coverage will be required for Certificate of Occupancy plus revised cabana plans” and that date for inspection was March 26, 2004 and the date of those remarks, these are all additional inspection reports - March 1, 2004 installation marked approved; May 6, 2005 approve for final Certificate of Occupancy; next is a different permit number, it is for #203-02 and the inspection date is December 13th but no year is indicated, inspection for pool site, marked approved; again for #203-02 December 19th inspection for steel frame marked approved; #203-02 date of inspection is August 11, 2005 marked approved for final Certificate of Occupancy pending photo of railing correction, grip not to code and revised plot plan and the last one is for #203-02, date of inspection is May 6, 2005; a final Certificate of Occupancy for a pool marked disapproved: a plot plan filed on December 20, 2004 does not match final conditions, exterior stairs requires railing, alarm in family room door does not work, greater than 2 inches below fence rear and front, front gate at right side of residence does not self close and catch, all gates require a lock and that disapproval was for permit #203-02.

Mr. Emanuel stated that it looks like #203-02 failed inspection in May 2005, and when it was reinspected in August of 2005, it passed inspection, is that accurate? Mr. Emanuel stated that he did not know what permit #203-02 is for. He said it failed once and then it passed and it is the same building permit.

Mr. Lewis clarified that permit #203-02 was a replacement for permit #87-06, which had expired without being closed out by a certificate of occupancy. These permits were for the swimming pool, and they are still open. Permit #297-03 was for the cabana.

Mr. Emanuel stated then we have permit #297-03 for the cabana and a Certificate of Occupancy was issued on May 10, 2005 which later was revoked and it says, see letter of January 3, 2006.

So based on the January 23, 2006 letter, there are three variances required; side setback, total side setback and development coverage.

Mr. Lewis answered, yes.

Mr. Emanuel asked, subsequent to this January 3, 2006 letter, was an application made to the ZBA?

Ms. Adduce stated an application was submitted and Dr. Urcioli mentioned that the bulk table was confusing and requested that a correct survey be submitted with the correct numbers.

Mr. Emanuel recapped the information that was discussed. He said that there were two building permits that were issued, one was for the pool and one was for the cabana. Permit 203-02 was for the pool and permit 297-03 was for the cabana. Construction was begun with respect to both, inspections were performed and at some point it was determined that the pool was ready for a Certificate of Occupancy based upon some relatively minor conditions, which yet have not been fulfilled, requiring the issuance of a new successor permit. The permit for the cabana got to the point where a Certificate of Occupancy was actually issued on May 10, 2005 and then subsequently revoked because the as-built survey revealed that it did not comply with the plans and that there were violations of bulk requirements of the zoning code? He asked Mr. Lewis if this was correct.

Mr. Lewis answered, yes.

Mr. Emanuel stated it is the cabana in part that brings us here to this Board because there were no zoning violations with respect to the pool except that it figures into the development coverage and he asked Mr. Lewis if this was correct?
Mr. Lewis answered that the pavers are part of the pool permit.

Mr. Emanuel stated so, there are zoning violations with respect to both the cabana and the pool. He asked if the violation with respect to the pool, is that strictly development coverage or is that also a setback issue?

Mr. Lewis stated that is a setback issue.

Mr. Emanuel stated what is the issue with the setback on the pool?

Mr. Lewis stated that the pool is okay; it is the patio that is encroaching into the side yard. He said nothing can be built into the side yard.

Mr. Emanuel stated that he is looking at a site plan dated September 18, 2006 and that plan shows the pool extending into the side setback. Is that acceptable?

Mr. Lewis stated, no.

Mr. Emanuel stated, so the pool may not encroach into the side setback.

Mr. Lewis stated, that is correct.

Mr. Emanuel said there is a reason for asking this because the Village of Montebello has a yard requirement and a setback requirement and the two are not the same. He said the pool extends into the side setback.

Mr. Lewis stated and also into the side yard.

Mr. Emanuel stated, so it is the patio encroaching into the side yard that is the issue.

Mr. Lewis answered, yes.

Mr. Emanuel stated, so with respect to the pool, the issue is the pool itself encroaching into the side setback, the patio encroaches into the side yard and the development coverage.

Mr. Lewis commented that he did not think that they were looking at the same survey. He said there is 25 feet to the lot line and then you have to add 10 feet to the waters edge.

Dr. Urcioli stated that should be a 35 foot not 45 foot setback.

Mr. Lewis stated, yes.

Dr. Urcioli said that it shows it as a 45 foot setback.

Mr. Lewis said what he has was done by scale. He said he had a problem with all the surveys and he kept sending them back.

Mr. Emanuel asked Mr. Lewis if he ever received a survey that he was ever happy with, in terms of its accuracy?

Mr. Lewis stated the one dated September 19, 2006.

Mr. Emanuel stated that he is asking this because this same survey dated September 19, 2006 calls for a side setback of 45 feet and you just told us that it is 35 feet and there is no dimensions shown to the waters edge. Mr. Emanuel stated that he was not disputing what Mr. Lewis was telling him, regarding what the setback is suppose to be. He said he would take his word for it that it was supposed to be 35 feet but he did not know from the survey how distant the pool is from the side lot line.

Mr. Lewis stated that the side setbacks are 30 feet.

Mr. Emanuel stated that he did not know where the pool was.

Mr. Lewis said it is 30.25 feet to the waters edge.

Mr. Emanuel asked how he knew that?

Mr. Lewis said that he scaled it.

Mr. Emanuel asked, if it is 30.25 feet what is the setback supposed to be?

Mr. Lewis stated that it is 30 feet, but he takes it by the side yard, 20 feet and then adds 10 feet to it.

Mr. Emanuel stated that the waters edge is supposed to be 30 feet from the side line and the plan shows 30.25 feet from the side line, so this complies. He said there is no issue with respect to the pool itself.

Mr. Lewis stated that there is no problem with the pool.

Mr Emanuel said this was one of the problems that the Board had because of the way this drawing was set up, it showed the pool encroaching into something and it does not. He asked Mr. Lewis if this was the ruling that he is making?

Mr. Lewis answered, that is right.

Mr. Emanuel stated that we already discussed the pavers for the patio. It is indicated that the pavers are an encroachment into the required side yard and those dimensions are 16 feet and at another point 13 feet as you move back into the property towards the rear lot line. There are side setback and total side setback issues with respect to the cabana and a development coverage issue for the lot itself.

Mr. Emanuel asked Mr. Lewis if the patio was composed of pavers?

Mr. Lewis stated that he did not know; he has not seen the patio.

Mr. Emanuel stated then he will ask the applicant.

Mr. Rodi stated it is concrete pavers with non-sealed joints, with sand between.

Mr. Emanuel asked Mr. Lewis, based upon that description do you think that constitutes an impervious surface?

Mr. Lewis stated, no it does not.

Mr. Emanuel asked what was counted towards the development coverage?

Mr. Lewis stated, the existing house, sidewalks, driveway, cabana, shed and the swimming pool itself.

Mr. Emanuel stated there was a letter from Brooker Engineering dated September 20, 2006.

Mr. Rodi stated regarding the development coverage and the pavers that are not sealed, usually it refers back to the zoning of the Town. The Village of Montebello does not answer the question as to whether or not it is impervious. He said a lot of other town engineers figure out a percentage. Mr. Rodi stated that he disagrees with Brooker's firm because they are using some standard that it is impervious and that is how he came up with the numbers. He said that he spoke to Mr. Corless, and he said that he included it as impervious after he spoke to Brooker, but it is a small amount of the development coverage. As it stands now, it is less than 1% over, it is very close either way.

Dr. Urcioli stated that is not 1% it is a percent of a percent.

Mr. Emanuel stated that it is 100 basis points as they say in the banking business.
Dr. Urcioli stated that it works out to be 11% over.

Mr. Rodi stated that the letter you are referring to is incorrect, that is an earlier letter, the most recent letter says it is 20.87% or 20.9% and required is 20%.

Mr. Emanuel stated that is correct.

Mr. Rodi stated that it is less then 5% over what is allowed.

Mr. Cronin stated that he walked the site and noticed that the driveway is pavers, the walkway to the back is large flagstone style stones set in stone; the back patio off the house is pavers, but the patio around the pool is flagstone set in concrete.

Mr. Gittens asked what variances are we considering?

Mr. Emanuel stated with respect to the cabana, the required side setback is 30 feet and 25.29 feet is proposed and the total side setback requirement is 75 feet and 64.29 feet is proposed. There is also the patio that encroaches into the yard in two places. The required side yard is 25 feet and the front part of the patio is at 16 feet and the rear yard of the patio is 13 feet.

Mr. Rodi stated that he will start with the original site plan dated July 14, 2003 which was submitted to obtain a building permit.

Mr. Emanuel stated that the actual date on it was June 22, 2003 revised January 7, 2004, entitled "Relocated Cabana".

Rodi stated that he will describe for the record what was on the map. It is a site plan of the property with a proposed cabana showing the setback of the cabana 30 feet 8 inches and the other side 31 feet 2 inches. It also shows a swimming pool and a patio which says under construction and it shows the house on it.

Dr. Urcioli stated there is also an addition or deck or something on the rear of the house.

Mr. Rodi believes it was placed on the map to depict the patio under construction and the existing deck to be removed.

Mr. Emanuel asked the owner of the house, if that is what it was and was that after July 14, 2003?

Ms. Steinberg answered yes, that is showing the existing deck being removed.

Mr. Rodi stated that the permit was submitted for and approved initially, which he believes was issued in error because there are several issues here. First the combined setback on the cabana does not meet the Code. Two, it is pretty clear that the patio is going to the side yard. He said there is no exact dimension, but it is very clear on this drawing. He said, we have a homeowner trying to build something nice but, there were mistakes made by the hired professionals to do the work, and the town. Mr. Rodi said one of the things the Board asked was, how come the cabana in the proposed site plan compared to the final site plan is a different shape? He said, it was because the contractor went in for a revised plan dated December 13, 2004 and this plan shows the change in shape and that is what was built. There was a Certificate of Occupancy issued May 10, 2005 and then revoked on January 3, 2006. Mr. Rodi stated that he is guessing the Certificate of Occupancy was issued based on the site plan would verify what the field conditions were and then the engineer provided a site plan that was different and the Certificate of Occupancy was revoked.

Mr. Lewis stated, that is correct.

Mr. Rodi stated that the denial letter was sent to the Steinbergs saying that they needed three variances, side setback for the cabana, total side setback for the cabana and development coverage; it does not mention patio setback. He said his guess is that it is a little known zoning ordinance because he has been looking for something in the code and cannot find anything. However, he said in Mr. Lewis' letter dated August 3, 2006 it says the pool cabana is considered by the zoning law to be an accessory building to a primary structure, that requires a side setback of 25 feet and the proposed side setback is 25 feet 3.5 inches. He said if that is true, we do not need a variance for the cabana side setback. He asked the Board if this was true?

Mr. Emanuel asked Mr. Lewis if an accessory structure is permitted in a setback?

Mr. Lewis stated, yes, but not in a side yard. He said it is not written in the code, but there is an illustration that shows that.

Mr. Emanuel then researched the code and definition of setback. It was determined that the cabana did not need a variance because the setback requirements do not pertain to accessory buildings. According to the September 19, 2006 survey, the cabana is 25.25 feet away on one side and the other side is 39 feet, therefore, it is outside of the required yards and there is no encroachment.

Mr. Rodi stated just to clarify, Mr. Lewis actually said that to the contractor, but then the Village Engineer wrote letters saying everything is wrong, that the numbers are wrong, the setbacks are wrong.

Mr. Emanuel asked Mr. Lewis if the cabana complies with the code?

Mr. Lewis said that is correct. He said as far as the patio, when he issued the permit, it did not show a patio; it just showed a fence around the pool.

Mr. Emanuel stated a variance is not needed for the placement of the cabana and he asked Mr. Lewis if this was correct?

Mr. Lewis answered , that is correct.

Mr. Emanuel stated according to Mr. Lewis, the only variances that are required are for the encroachment of the patio into the side yard and for development coverage.

Mr. Lewis stated that is correct.

Mr. Emanuel explained that the cabana is an accessory structure which may be put in a side setback.

Mr. Emanuel requested Mr. Lewis to send a letter to the applicant indicating that there are no variances needed for the cabana.

Mr. Rodi stated that he would like to correct some statements made by the neighbor's attorney, Mr. Magrino, that were made at the last meeting. Mr. Magrino said there is only one fence between properties and it was the Floyds'. He submitted pictures showing two 4 ft. fences: one was the Floyds' and the other was the Steinbergs' new black fence, that was along side of the Floyds' that was put in a year ago. The other statement that was made was that there was not any buffering between properties, but almost a year ago the Steinbergs' put in a line of evergreens on the Steinberg side of the black fence, and he submitted three pictures of the line of trees. Mr. Rodi stated that it is true that the front patio is only 16 feet from the property line, but Mr. Magrino made a big issue
about the one being 13 feet. He said for the record that 13 feet is three properties away from the Floyds. If you draw a direct line from the 13 foot point location to the closest point of the Floyd's property line, it is 53 feet away, so, the 13 foot. space has no consequence. Mr. Rodi said we are dealing with the one issue, the 16 ft. setback

Robert Magrino, Esq., representing the Floyds, stated with respect to the two other properties, if you look at the copy of the tax map, that was just submitted, you will see the location of the Floyds' house and the Steinbergs' house. He said you will see the two properties that Mr. Rodi spoke about basically come to a point because the property is pie-shaped, and because of the location of the patio, he feels the 13 feet is a significant impact. Mr. Magrino asked with respect to the 16 ft. side yard, if the pavers were cut down to a point where there was no need for variances or at least to a point of having it such that party goers would be forced to go to

the other side away from the Floyds, that would be helpful; he said instead of the black chain link fence, they would ask that a 6 ft. high natural wood fence be put in; some restriction on the lighting as to where it would be directed; he asked if the entrance of the pool could be moved to the other side and the cabana not be used when it was not being used for the pool and not to be used in the winter for parties.

Pamela Floyd, abutting neighbor submitted pictures showing how the pool cabana and patios impacting her property.

Mr. Emanuel explained that this is a non-conforming lot and when the lot was originally developed under the Town of Ramapo, it was probably in a R-35 zone, but when the Village of Montebello adopted their zoning, it was changed to RR-50.

Ms. Floyd asked how big is the cabana?

Dr. Urcioli stated a quick measurement would be approximately 540 square feet.

Mr. Emanuel asked Mr. Lewis if the Building Department inspected the property based on the September 19, 2006 as-built survey?

Mr. Lewis stated no, because he gets them from a licensed engineer.

Ms. Floyd asked if the cabana should be re-measured since there has been so many errors made and how do you determine if it is a second dwelling?

Dr. Urcioli told Ms. Floyd that she could register a complaint with the Building Department.

Dr. Urcioli stated, that he would like to keep the public hearing opened in order to have the cabana measured. He wants to clarify the amount of impervious surface.

Mr. Lewis stated that he will re-measure the cabana.

Mr. Rodi stated that the applicant agrees to allow Mr. Lewis to measure the cabana.

Mr. Cronin asked that the Building Inspector determine what is or is not impervious surface.

Motion to continue the public hearing at the April 16, 2007 meeting

MOTION: Tim Cronin

SECOND: Rodney Gittens

VOTE: Unanimously accepted.

Julie Celentano and Gerry Hill
Public Hearing

Application of Julie Celantano and Gerry Hill, 18 Senator Levy Drive, Suffern, NY 10901 for variance from the provisions of Article IV, Section 145-13; Use Group h, Columns 8 and 10 (side yard - required 25 feet, proposed 12 feet and rear yard - required 25 feet , proposed 10.5 feet) of the Zoning Local Law of the Village of Montebello to permit construction, maintenance and use of a 10 foot X 20 foot existing storage shed. The

premises which are the subject of the application are located on the south side of Senator Levy Drive approximately 250 feet from the intersection of Golf Course Road in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 48.20, Block 1 and Lot 73 in a RR-50 Zone.

Present: Julie Celentano, Applicant
Gerry Hill, Applicant

Public Hearing continued at 9:47 p.m.

Dr. Urcioli stated after a site visit was made the Board concluded that the shed should be moved about 5 feet away from the side yard which would make a total of 17 feet away from the side yard; not from the fence. He said the measurement should be taken from the corner of the shed and move it 5 feet and the back of the shed should be no closer than it is now which is 10.5 feet.

No one from the public spoke.

Motion to close the public hearing.

MOTION: Tim Cronin

SECOND: Fran Osei

VOTE: Unanimously accepted.

Motion to accept the proposed resolution for Julie Celentano and Gerry Hill granting variances from the provisions of Section 195-13, Use Group m, Columns 8 and 10 of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a 10 foot by 20 foot shed with a reduced side yard of 12 feet and a reduced rear yard of 10.5 feet with three conditions as stated in the annexed resolution.

MOTION: John Urcioli

SECOND: Tim Cronin

VOTE Unanimously accepted.

Resolution annexed hereto and made a part hereof.

IN RE: APPLICATION OF JULIE CELENTANO AND GERRY HILL
CALENDAR CASE NO. 1124

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Village Hall, Montebello, New York, on January 18, February 12, and March 14, 2007, for variances from the provisions of Section 195-13, Use Group m, Column(s) 8 and 10, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a 10 foot by 20 foot shed with a reduced side yard of 12 feet and a reduced rear yard of 10.5 feet.

The premises which are the subject of this application are located at 18 Senator Levy Drive, which is on the south side of Senator Levy Drive, and 250 feet from the intersection of Golf Course Road in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 48.20, Block 1, Lot 73, 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 themselves, and the following documents were placed into the record and duly considered:

Application; Narrative; Short Environmental Assessment Form; Building Inspector's Denial Letter dated November 6, 2006; drawing showing the location of the requested variance; two photographs of the shed; bill of sale for shed from Amishland Sheds and Gazebos, Danbury, CT; proposal from Landscape Group, New City, NY; letter of no opposition from Mr. & Mrs. Ulman, 2 Golf Course Drive, Montebello (immediate neighbor); revised Building Inspector's Denial Letter dated January 19, 2007; letter from applicants dated January 28, 2007, with proposals for relocating shed dated January 26, 2007;

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 January 18, February 12, and March 14, 2007, and the testimony of the following persons was duly considered: applicants;

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

The applicants are the owners of the subject premises, which are located in the Montebello Pines area of the Village. They have installed a 200 square foot pre-constructed shed on an area of their parcel which was built up and leveled for the purpose. The shed is within the required side and rear yards, in the easterly corner of the lot

The applicants note that their house is set back on the lot relative to other houses on the street, reducing the effect area of their backyard. Placing the shed closer to the lot lines makes more of the backyard available to them. The applicant further claims that, if they complied with the yard requirements, the shed would appear to be “floating” in the backyard area. The applicant also claims that moving the shed would be “difficult and expensive”, in that a move would affect the existing ramp, stone wall, and utilities.

Section 195-19.D of the Zoning Code permits accessory buildings of up to 144 square feet within required yards, with the consent of the abutting property owners. The subject shed is significantly larger than permitted.

The original denial letter of the Building Inspector measured the shed against use group “h”. Subsequent research resulted in an amended denial letter using use group “m”. Under use group “m”, the magnitude of the requested variances is smaller:

Use group “h”	Use group “m”	Provided	% v. use group “m”
Side yard:	25 feet required	20 feet required	12 feet	40% ([20-12])20)
Rear yard:	25 feet required	20 feet required	10.5 feet	4.5%([20-10.5])20)

According to the applicant, the shed was ordered from one company and the landscaping was provided by another. Applicant selected the location because it was relatively level, compared to the rest of the lot, even though a 2 _ foot high retaining wall and three stairs were needed to get to the level of the shed. The shed does not have footings, and was laid directly on the prepared ground, with the narrow (10 foot wide) end facing the

street. The area around the shed, as depicted in the photographs provided, is nicely landscaped with slate stepping stones, gravel, and plantings. According to the applicant, the shed contains landscaping and swimming pool equipment and supplies.

Also located in the rear of the property is a swimming pool in the westerly corner of the property and a swing set between the shed and the pool. The pool and the swing set are apparently in compliance. A neighbor's (Ulman) shed backs up to the subject shed on tax lot 55. The neighbor's shed is apparently less than or equal to 144 square feet. That neighbor has submitted a letter expressing no opposition to the applicant's shed. According to the applicant, the cost to relocate the shed exceeded $5,000, based upon an oral estimate provided by their landscaper. This estimate appears to be based upon creating a new landscaped platform for the shed in a different location. This compares with the $2,650 set forth in the original proposal prepared for the landscaping, and the $4,568.81 paid for the shed, itself.

In a follow-up letter, the applicants provided estimates for relocating the shed farther from. These estimates ranged from $5,300 to $2,200, depending on the distance moved. The applicants also re-measured the distance from the back corner of the shed to the lot corner, which they now claim to be 20 feet. They assert that, if their lot was rectangular, and not its “unique shape” (with less than 90 degree corners, the shed would comply with the required 20 foot yard.

This Board conducted a site visit on March 3, 2007, at which time the area was reviewed and measurements were taken.

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 Board is concerned with setting precedents which will have a deleterious impact in the future. It is also concerned when an applicant has already erected a structure which violates the requirements of the Zoning Code and then seeks relief from his or her own acts. Both situations exist here.

Ordinarily, this Board would reject such an application for relief. However, upon viewing the property, it appears that the applicants have a need for relief, and that relief would have been granted if they had approached the Board prior to installation. Strict compliance with the side and rear yard requirements of the Zoning Code would cause the shed to appear to “float” in the backyard, and would severely reduce the effective size of the backyard.

This Board notes, too, that there is at least one shed almost directly on the lot line of an adjoining neighbor, and that fences separate the neighbors. These factors mitigate the impact of the shed placement.

Last, there has been no opposition to the application. While neighborhood concerns, or lack thereof, is not dispositive, this application has the most impact on the immediate neighbors. The lack of neighborhood opposition therefore, is instructive.

(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 shed is a substantial structure, which has been placed on a landscaped terrace which also features a ramp and steps. The shed is serviced by utilities. The estimates for removing the shed indicate that complete relocation would be economically not feasible.

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

The requested variances are large. The shed itself, at 200 square feet, is 39% larger than permitted. The side yard variance is a 40% variance and the rear yard variance is a 47.5% variance. Even given the impact of strict compliance on the backyard of the home, the requested variances appear 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 shed, because of its size and location, has the potential for an adverse visual impact on neighboring properties.

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

The difficulty is self-created. The applicants failed to inquire as to the permitted location of a shed of this large size. Reliance on the vendor (from out of state) and the landscaping contractor is not an excuse.

Balancing all of the foregoing, it appears that some relief is warranted, and this Board is empowered to grant the minimum variance necessary to achieve the applicant's purpose without adversely impacting the Village as a whole, and to impose conditions which mitigate the impact of the variances granted. To that end, this Board believes that moving this large shed away from the side lot line, but keeping it on the existing terrace, together with screening, achieves an appropriate balance.

NOW, THEREFORE, BE IT RESOLVED, that the application of Julie Celentano and Gerry Hill for variances from the provisions of Section 195-13, Use Group m, Column(s) 8 and 10, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a 10 foot by 20 foot shed with a reduced side yard of 12 feet and a reduced rear yard of 10.5 feet, as set forth in the application submitted herein, is hereby approved, subject to the following conditions:

1. No portion of the shed shall be closer than 17 feet from the side lot line, and no portion of the shed shall be closer than 10.5 feet from the rear lot line;

2. Upon removal or destruction of the shed, as that term is used in the Zoning Code, these variances shall expire;

3. So long as the shed is in the permitted location, the applicant, or their successors, shall maintain an opaque, at least four-foot high, fence along both the affected rear and side lot lines for a distance of at least 75 feet from the intersection of said lot lines in both directions. A fence erected by a neighboring property owner shall meet this requirement;

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.

MEMBERS PRESENT:	YEA or NAY
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

Monsey Jewish Center
Public Hearing

Application of Monsey Jewish Center, 201 Route 306, Monsey, New York 10952 for variance from the provisions of Article IV, Sec. 195-13, Use Group c (Lot Width - Front Setback - Front Yard - Side Setback - Side Yard - Rear Yard and Development Coverage) of the Zoning Local Law of the Village of Montebello to permit construction and use of a synagogue and clergy (existing) residence. The premises which are the subject of this application are located on the south side of Montebello Road approximately 1,000 feet north of the intersection of North Airmont Road in the Village of Montebello, which is known and designated on the Ramapo tax Map as Section 48.19, Block 1, Lot 19, Section 55.07, Block 1, Lot 1 and Section 48.19, Block 1 and Lot 48 in a RR-50 Zone.

Present: Dan Kwilecki, representing Monsey Jewish Center
Barry Haberman, Esq.
Stuart Strow, PLLC
David Mayerfield, Architect

Mr. Emanuel stated that the Planning Board granted a negative declaration , which allows this Board to act. In addition we have received a memorandum from the Rockland County Planning Department dated February 28, 2007,(appended) and the Rockland County Highway Department dated February 21, 2007 (appended). He said the Rockland County Planning Department recommends modifications to the variance and the Rockland County Highway Department letter gives seven comments.

Mr. Emanuel stated that the Planning Board will handle all of the comments in the Rockland County Highway Department's letter. However, he advised the Board, the Rockland County Planning Department's letter recommends modifications and if the Board is willing to incorporate the modifications, they can incorporate them into the resolution. However, these are advisory only. The Board has a right to decide if the modifications should or should not be accepted. If the Board decides not to accept any of them, then it would require a vote of the majority plus one of the Board. He said that means there are five members on the Board and it would require an affirmative vote of four members as opposed to the normal affirmative of three members. Mr. Emanuel advised the applicant that there were only four voting members present which means that there would

have to be a unanimous vote in order to grant the requested variances with an override of either or both of the recommended modifications. Mr. Emanuel stated that the Board always gives the applicant the opportunity to put the matter over until there is a full Board.

Mr. Haberman stated that he would like to proceed. He said he wanted to address the Rockland County Planning Board comments. He said they originally planned on being able to use off-site parking and have that counted in as to the amount of parking that is required. He said that they have access to off-site parking on the adjacent back property, but the Planning Board required all the parking to be on the premises and that is the reason for the large increase in the amount of parking spaces. Mr. Haberman stated that even though the building is half of what is permitted, with the required parking that is required under the code for that size building, they still need the variances. He said the variances are desperately needed by the Congregation in order to build a building that will serve their purpose. Mr. Haberman stated that he respectfully requests that the variances be granted.

Discussion regarding drainage and how it will be handled.

No one from the public spoke.

Motion to close the public hearing.

MOTION: Tim Cronin

SECOND: Rodney Gittens

VOTE: Unanimously accepted.

Motion to accept the proposed resolution as drafted with overrides for the Monsey Jewish Center for 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% with 3 conditions as stated in the annexed resolution.

MOTION: John Urcioli

SECOND: Tim Cronin

VOTE: Unanimously accepted.

Resolution annexed hereto and made a part hereof.

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 con-

struction, 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 resubdivision (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 neigh-

borhood.

(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 nega-

tive 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:	YEA or NAY
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

Motion to adjourn the meeting at 10:26 p.m.

MOTION: Fran Osei

SECOND: Tim Cronin

VOTE: Unanimously accepted.