VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS MEETING
SEPTEMBER 20, 2007

The Village of Montebello Zoning Board of Appeals meeting was called to order by the Chairman, John Urcioli at 7:45 p.m. on Thursday, September 20, 2007. The meeting was held at Village Hall, One Montebello Road in the Village of Montebello, New York 10901.

PRESENT	OTHERS
John Urcioli, Chairman	Ira Emanuel, Assistant Village Attorney
Tim Cronin	Carol Adduce, Planning & Zoning Clerk
Ed Bracken	
Fran Osei	
Rodney Gittens	

Maria Conte-Benedict, Alternate

Motion to approve the August 16, 2007 minutes.

MOTION: Tim Cronin

SECOND: Rodney Gittens

VOTE: Unanimously accepted.

Green Mountain Development Corp.
Public Hearing Continued

Application of Green Mountain Development Corp, 233 South Main Street, New City, New York for variance from the provisions of Article IV - Section 195-17; Use Group t, Col. 8 (side yard - required 20 feet proposed 3 to 6 feet) of the Zoning Local Law of the Village of Montebello to permit construction, maintenance and use of a single family residence with a driveway in the side yard. The premises which are the subject of this application are located on the north side of Moriah Lane approximately 861.6 feet east of River Road in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 48.14, Block 1, and Lot 30 in a R-35 Zone.

Present: Yosef Amona, Applicant
Michael Specht, Esq.

The applicant was requested to bring in a copy of an alternate plan for each member of the Board in advance of the meeting, in order for the plan to be reviewed.

Since the applicant did not submit enough plans for each Board member to review in advance of the meeting, the Board unanimously agreed that the public hearing should be adjourned until the next meeting of October 18, 2007 and a sufficient number of plans be submitted by September 28, 2007, so that the members can review it.

Brandon and Marie Konicoff
Public Hearing

Application of Brandon and Marie Konicoff, 71 Viola Road, Suffern, NY for variance from the provisions of Article IV, Section 195-13, Use Group C; Column 5, Front Yard (Viola Road- required 50 ft., proposed 2 to 5 feet and Spook Rock Road - required 50 feet, proposed 30 feet) of the Zoning Local Law of the Village of Montebello to permit construction, maintenance and use of a wall in the front yard on Viola Road and Spook Rock Road (Required 50 feet Viola Road proposed 2 to 5 feet and Spook Rock Road proposed 30 feet). The premises which are the subject of this application are located on the south side of Viola Road at the intersection of Spook Rock Road in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 49.5, Block 1, and Lot 14 in a RR-50 Zone.

Present: Marie Konicoff, Applicant
Brandon Konicoff, Applicant
Lee DeRario, Architect

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

Chairman Urcioli and Member Cronin made disclosures that they know the Konicoff's but that would not affect their decision.

A memo from the Building Inspector dated September 17, 2007 was read into the record. The Building Inspector's interpretation is that this wall is a structure because of the way it was constructed.

A memo from Ira Emanuel, Esq., Assistant Village Attorney dated September 19, 2007 (appended) was read into the record. Mr. Emanuel researched the code and found that the definition of "wall" does not make a distinction based upon the type of construction. He recommended that the Board, on its own motion, convert the application from an application for a variance to an application appealing the decision of the Building Inspector. The application, as so corrected, should be granted, and the decision of the Building Inspector reversed.

Marie Konicoff made a presentation based on the appended narrative.

Discussion regarding the wall.

Ms. Konicofff stated they wanted to rebuild and move the wall back from the road because cars kept banging into it

The public hearing was opened to the public.

No one from the public spoke.

Motion to close the public hearing.

MOTION: Tim Cronin

SECOND: Ed Bracken

VOTE: Unanimously accepted.

Discussion whether this should be treated as a variance or an appeal of the Building Inspector's interpretation.

After discussion the Board unanimously agreed that this application should be converted to an appeal of the Building Inspector's interpretation.

Motion to accept the proposed resolution granting Brandon and Marie Konicoff variances from the provisions of Section 195-13, Use Group c, Column(s) 5 of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a wall in a required front yard, as set forth in the application submitted herein, and is hereby converted, on motion of the Board to an application appealing a determination made by the Building Inspector that, because the proposed construction of the applicant's wall requires the installation of footings and the use of cement, it is not a "wall" within the meaning of Section 195-19C.

MOTION: John Urcioli

SECOND: Ed Bracken

VOTE: Unanimously accepted.

Resolution annexed hereto and made a part hereof.

IN RE: APPLICATION OF BRANDON AND MARIE KONICOFF
CALENDAR CASE NO. 1128

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Village Hall, Montebello, New York, on September 20, 2007, for variances from the provisions of Section 195-13, Use Group c, Column(s) 5, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a wall in a required front yard.

The premises which are the subject of this application are located at 71 Viola Road, which is on the south side of Viola Road, and 0 feet west of the intersection of Spook Rock Road in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 49.5, Block 1, Lot 14, in a RR-50 Zoning District.

The Board, upon motion duly made by Dr. Urcioli, and seconded by Mr. Bracken, 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 August 14, 2007; drawing showing the location of the requested variance; Rockland County Highway Department letter dated September 7, 2007; Building Inspector's memorandum of explanation dated September 17, 2007; photos of site (3);

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 September 20, 2007, and the testimony of the following persons was duly considered: applicant's Marie Konicoff and Brandon Konicoff;

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 located at the southwesterly corner of Viola and Spook Rock Roads. The premises are currently improved with a single family dwelling. A rubble stone wall had lined the street frontages, but had fallen into disrepair. The applicant wishes to remove the rubble stone wall, and replace it with a new wall. The new wall would be located farther from the road beds than the existing wall, and would be of a different construction. Instead of being dry-laid stone, the new wall would have a footing and the stone cemented into place. In addition, the new wall would have curved sections interspersed with straight sections, to provide a more formal look.

The Building Inspector determined that the proposed new wall required a variance from this Board, as it was within the required front yard of the lot. In a follow-up memorandum to this Board, he explained that, because the new wall would have footings and be cemented in place, it was not a wall as that term is used in section 195-19.C of the Zoning Code.

That section provides:

C. A fence or wall not more than four feet in height above average existing grade is permitted along any lot line and no more than six feet in height above average existing grade along that part of any lot line behind the required front yard. A fence or wall over the six-foot height is permitted, provided that it is set back from the lot line a distance equal to 2/3 its height. All fences shall be constructed with the outer face thereof located a minimum of one foot from the property line, except that a common fence may be constructed on the property line with the written consent of both abutting owners. The finished side of the fence shall face the lot line. For purposes of these regulations, the installation of a fence or wall shall require a building permit.

The term "wall" is not defined in the Zoning Code. Where a term is not defined, "the numbers, abbreviations, terms and words used herein shall have the meanings of common usage as set forth in the latest edition of Webster's New Collegiate Dictionary." § 195-13.

The applicable definition of "wall" in Webster's is, "1 a: a high thick masonry structure forming a long rampart or an enclosure chiefly for defense —often used in plural b: a masonry fence around a garden, park, or estate c: a structure that serves to hold back pressure (as of water or sliding earth)".

The definition of "wall" does not make a distinction based upon the type of construction.

Therefore, the determination of the Building Inspector that a variance is required is not correct. Accordingly, this Board, on its own motion, will convert the application from an application for a variance from the requirements of the Zoning Code to an application to appeal from the determination of the Building Inspector pursuant to § 195-108.A.

NOW, THEREFORE, BE IT RESOLVED, that the application of Brandon and Marie Konicoff for variances from the provisions of Section 195-13, Use Group c, Column(s) 5, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a wall in a required front yard, as set forth in the application submitted herein, is hereby converted, on motion of this Board, to an application appealing from a determination by the Building Inspector that, because the proposed construction of the applicant's wall requires the installation of footings and the use of cement, it is not a "wall" within the meaning of Section 195-19.C; and be it further

RESOLVED, that the said application, as so converted, be and hereby is approved, the Building Inspector's said determination is hereby reversed, and the construction at issue is hereby determined to be a

"wall" within the meaning of Section 195-19.C, 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, including, if appropriate, a Rockland County Highway Department Work Permit.

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

The Chairman declared the resolution approved and the application approved.

John Urcioli, Chairman

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

Dated: September 24, 2007
Montebello, New York
Mary Ann Zeilinger
Public Hearing

Application of Mary Ann Zeilinger, 20 Orchard Street, Montebello, New York 10901 for variance from the provisions of Article 195-89 Section A, D(a)(b)and (d); Use Group X.1 Columns 2, 3, 4 and 14 - Lot Area (required 15,000 sq. ft.- existing condition 6,250 sq. ft. - proposed 6,250 sq. ft.), Lot Width, (required 75 ft. - existing condition 50 ft. - proposed 50 ft.), Front Set Back (required 30 ft. - existing condition 24.5 ft. - proposed 24.5 ft.), Floor Area Ratio (required 25% - existing condition 26.11% - proposed 30.74%) of the Zoning Local Law of the Village of Montebello to permit construction, maintenance and use of a one story bedroom, barrier free bath, kitchen eating area addition to the existing residence. The premises which are the subject of this application are located on the east side of Orchard street approximately 510 feet north of Lake Road in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 48.17, Block 1, Lot 19 in a R-15 Zone.

Present: Mary Ann Zeilinger, Applicant
Richard Davidson, Rothe Architects

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

A presentation was made based on the appended narrative.

The applicant is proposing an addition that requires a variance for lot width and front yard setback due to existing nonconforming conditions and a variance for floor area ratio for the larger building foot print. The proposed plan is to build a one story bedroom expansion, barrier free bath, kitchen eating area and covered rear entry.

While discussing the addition and the variances needed, the Board found that there were other pre-existing conditions which should be given variances even though they do not comply with the current code. In addition

to the variances requested (lot area, lot width and front setback) it was determined after further review of the plan that the application should be amended to include variances for the side setback, total side setback and rear setback.

The public hearing was opened.

No one from the public spoke.

Motion to close the public hearing.

MOTION: Rodney Gittens

SECOND: Tim Cronin

VOTE: Unanimously accepted.

Motion to accept the proposed resolution for Mary Ann Zeilinger granting variances from the provisions of Section 195-89.D (1)(a)(b) and (d) and Section 195-13, Use Group x.1, Column(s) 2,3,4,and 14, of the Zoning Local Law of the Village of Montebello to permit, maintenance, and use of an addition to an existing single family dwelling on a non-conforming lot with increased Floor Area Ratio of 0.3074, and recognizing the existing conditions of non-conformity for lot area, lot width, front setback, side setback, total side setback and rear setback.

MOTION: Fran Osei

SECOND: Ed Bracken

VOTE: Unanimously accepted.

Resolution annexed hereto and made a part hereof.

IN RE: APPLICATION OF MARY ANN ZEILINGER
CALENDAR CASE NO.1129

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Village Hall, Montebello, New York, on September 20, 2007, for variances from the provisions of Section 195-89.D(1)(a)(b) and (d) and Section 195-13, Use Group x.1, Column(s) 2, 3, 4 and 14, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of an addition to an existing single family dwelling on a non-conforming lot with an increased Floor Area Ratio of 0.3074, and recognizing the existing conditions of non-conformity.

The premises which are the subject of this application are located at 20 Orchard Street, which is on the east side of Orchard Street, and 510 feet north of the intersection of Lake Road in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 48.17, Block 1, Lot 19, in a R-15 Zoning District.

The Board, upon motion duly made by Mrs. Osei, and seconded by Mr. Bracken, resolved:

WHEREAS, the applicant was represented by Richard Davidson, R.A., and the following documents were placed into the record and duly considered:

Application; Narrative; Short Environmental Assessment Form; Building Inspector's Denial Letter dated August 13, 2007; drawing showing the location of the requested variance; Rockland County Planning Board memorandum dated September 20, 2007, which approved the proposed variance; copy of survey dated November 30, 1999; and photographs of the property; and

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

WHEREAS, a public hearing was held on September 20, 2007, and the testimony of the following persons was duly considered: applicant; Richard Davidson, applicant's architect; and

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

The applicant is the owner of the subject premises. The premises are in an older area of the Village abutting the Village of Suffern, which is characterized by small homes on small lots. Most of the lots on both sides of Orchard Street are 7,500 square feet in size, or less. The area is zoned R-15 (single family dwellings on minimum lot sizes of 15,000 square feet), but few, if any, of the lots conform to the bulk requirements of that district.

The applicant wishes to build a one-story addition to her home, which is to contain a master bedroom suite. The suite, which includes a bedroom and bath, will be of "barrier-free" design, in order to accommodate the applicant's needs. The addition will extend the current sides of the house, and will not reduce the side yards and setbacks. However, because of the small size of the lot, the existing house already exceeds the maximum floor area ratio permitted in the district (0.25). The addition will cause the FAR to rise to 0.3074.

In addition, the Zoning Code makes provision for non-conforming lots. Section 195-89.D provides:

D. Noncomplying lots.
(1) A residential lot, separated from any other land in the same ownership and noncomplying as to bulk, whether or not located in and part of a subdivision plat approved by the Planning Board and filed in the office of the County Clerk, and which has a minimum lot width of 100 feet, may be used for a one-family detached residence, provided that such use shall comply with the bulk requirements as specified in the highest residential district having the same or less lot width. For all residential lots having less than 100 feet of lot width, the following minimum requirements shall apply:
(a) The minimum width of one required side setback shall be 20 feet for lots in the ER-80, RR-50, and R-35 Districts; 15 feet for lots in the R-25 District; and 10 feet for lots in the R-15 District.
(b) The total width of both required side setbacks may be reduced nine inches for each foot that the lot width is less than that specified in the Bulk Table.
(c) The minimum front and rear setbacks shall be 30 feet.
(d) The minimum lot width and lot frontage shall be 75 feet.
(e) The maximum building height shall be 25 feet.

The Building Inspector has correctly applied this "grandfathering" provision, although he recommends that this Board grant variances to recognize the existing dimensions which do not conform to section 195-89.D as follows:

Dimension	Required	Existing	Proposed
Lot Area	15,000 sf	6,250 sf	6,250 sf

Lot Width	75 feet	50 feet	50 feet
Front Setback	30 feet	24.5 feet	24.5 feet

A review of the site plan revealed other pre-existing conditions which should be considered for recognition by this Board:

Dimension	Required	Existing	Proposed
Side Setback	10 feet	2.5 feet	2.5 feet
Total Side Setback	121.25 feet	5.5 feet	5.5 feet
Rear Setback	30 feet	1.1 feet (to garage)	1.1feet(to garage)

An existing 218 square foot deck at the rear of the house will be removed and replaced with the proposed 300 square foot addition.

The Rockland County Planning Department approved the proposed variances without further comment, recommendations, or conditions.

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 is an area of the Village which does not generally conform to the bulk requirements of the Zoning Code, although there appears to be consistency of size and setbacks which has grown organically. The proposed 300 square foot addition would extend from the rear of the house, and not reduce the existing side setback. It would essentially replace the existing deck.

(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 lot is too small for its zoning district. Any addition would require a variance. The proposed addition is sensitive to the existing lot and to the adjoining lots.

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

The requested area variance respects the existing conditions. Under the circumstances, particularly the undersized nature of this lot, and all the lots along Orchard Street, 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":

There is an insignificant increase in development coverage.

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

The difficulty arises from the imposition of a modern zoning code on an older area of the Village which predates current zoning.

NOW, THEREFORE, BE IT RESOLVED, that the application of Mary Ann Zeilinger for variances

from the provisions of Section 195-89.D(1)(a)(b) and (d) and Section 195-13, Use Group x.1, Column(s) 2, 3, 4 and 14, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of an addition to an existing single family dwelling on a non-conforming lot with an increased Floor Area Ratio of 0.3074, and recognizing the existing conditions of non-conformity:

Dimension	Required	Existing	Proposed
Lot Area	15,000 sf	6,250 sf	6,250 sf
Lot Width	75 feet	50 feet	50 feet
Front Setback	30 feet	24.5 feet	24.5 feet
Side Setback	10 feet	2.5 feet	2.5 feet
Total Side Setback	21.25 feet	5.5 feet	5.5 feet
Rear Setback	30 feet	1.1 feet (to garage)	1.1 feet (to garage)

as set forth in the application submitted herein and as shown in the site plan 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.

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

MEMBERS ABSENT:
None

The Chairman declared the resolution approved and the application approved.

John Urcioli, Chairman

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

Dated: October 1, 2007
Montebello, NY 10901

Motion to adjourn the meeting at 8:56 p.m.

MOTION: John Urcioli

SECOND: Tim Cronin

VOTE: Unanimously accepted.