VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS MEETING
MAY 15, 2008

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, May 15, 2008. The meeting was held at Village Hall, One Montebello Road in the Village of Montebello, New York 10901.

PRESENT
John Urcioli, Chairman
Tim Cronin
Rodney Gittens
Edward Bracken
Maria Conte-Benedict (sitting by designation)

OTHERS
Ira Emanuel, Deputy Village Attorney
Carol Adduce, Clerk

Fran Osei arrived at 7:58 p.m. and asked to be excused due to a personal problem.

Motion to approve the March 20, 2008 minutes.

MOTION: Rodney Gittens

SECOND: Edward Bracken

VOTE: Unanimously accepted.

Timothy Cronin
Public Hearing

Application of Timothy Cronin, 96 Viola Road, Montebello, New York 10901 for variance from the provisions of Article IV, Sect. 195-3, Use Group h, Cols. 2,4 & 5 (existing conditions) 6 & 9 - Minimum Lot Area (required 50,000 ft. - proposed 38,220 ft.); Front yard and Front Setback (existing condition of Spring House, required 50 ft. - proposed 0 ft.); Front Yard and Front Setback existing condition of dwelling (required 50 ft. - proposed 15.3 ft.); Side Setback existing ice house (required 30 ft. - proposed 10.6 ft.); and Rear Setback and rear existing two story barn (required 50 ft. - proposed 31.5 ft.) of the Zoning Local Law of the Village of Montebello to permit construction, maintenance and use of a subdivision of one lot into two lots. The premises which are the subject of this application are located on the north side of Viola Road approximately 0 feet west of Spook Rock Road in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 49.05, Block 1 and Lot 15 in a RR-50 Zone.

Present: Tim Cronin, Applicant

Chairman Urcioli made a disclosure that the applicant is a member of the ZBA and he asked if any of the Board members would have a problem acting on the application. He polled each member of the Board, which included Members Bracken, Gittens, Conte-Benedict and himself, and they all agreed that they could render a fair decision.

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

Mr. Cronin made a presentation based upon his narrative (appended). He said that the house on Lot 1 was built in 1840 and predates zoning. Mr. Cronin said that he decided to make Lot 1 the undersized lot because the existing house on Lot 1 is close to the road and this will give the lot more of a backyard and it also gives Lot 2 more available open space. He said the only variances brought
about by the subdivision are for lot area on Lot 1 and side setback on Lot 2 and the rest of the variances are a result of the proposed road widening.

Mr. Emanuel explained the road widening easement requested by the Rockland County Highway Department.

Discussion regarding the Rockland County Planning Department's recommendation in a letter, dated May 14, 2008 which refers to their recommendation, to the Planning Board in a letter dated March 19, 2008.

Their recommendation is that the plan should clearly indicate that the area between the existing Right-of-Way and Designated Street Line along Spook Rock Road will also be dedicated to the County of Rockland for Road Widening Purposes. The plan shall also indicate that the existing stone spring house, stockade fence and old hand dug well will be removed and/or relocated so that they are contained within the property lines and not remain within the Public Right-of-Way.

Mr. Emanuel advised the Board that all of these concerns, seem to him, to be Planning Board issues, not variance issues and it might be better to leave it to the Planning Board. He said his recommendation, if the Board decides to grant the variances, is that the Board should indicate that it would require an override.

Mr. Emanuel stated that he wanted to bring to the Board's attention the issue of why the lot with the existing house was to be smaller than the proposed new lot. He said the Planning Board was of the mind that the house should be listed as a local historic place and would indicate that as a condition of the subdivision. Mr. Emanuel explained that the reason for this is; if it is not protected in someway, the future owner or Mr. Cronin could demolish the house once the subdivision was filed and the reason for the off set of the line would be lost. He stated the house was not registered now because it would make the subdivision process more difficult.

Discussion regarding an additional variance that is needed.

It was discovered that Lot 1 will need a front yard variance and front setback (for residence) to the Viola Road steps. These variances are needed because of the proposed road widening.

Public Hearing was opened to the public.

No one from the public spoke.

Motion to close the Public Hearing.

MOTION: Edward Bracken

SECOND: Rodney Gittens

VOTE: Unanimously accepted.

Motion to accept the proposed resolution for the application of Timothy Cronin granting variances from the

provisions of Section 195-13, Use Group h, Column(s) 2,4,5,6 and 9 of the Zoning Local Law of the Village of Montebello to permit construction, maintenance, and use of a two lot subdivision with conditions listed in the annexed resolution.

MOTION: John Urcioli

SECOND: Maria Conte-Benedict

VOTE: Unanimously accepted.

Resolution annexed hereto and made a part hereof.
IN RE: APPLICATION OF TIMOTHY CRONIN
CALENDAR CASE NO.1135

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Village Hall, Montebello, New York, on May 15, 2008, for variances from the provisions of Section 195-13, Use Group h, Column(s) 2, 4, 5, 6 and 9, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a two lot subdivision with the following non-complying dimensions:

	Col.	Required	Existing	Proposed
Lot 15				
Lot area	2	50,000 sf	n/a	38,200 sf
Front yard (spring house)	4	50	8.5	0 (intrudes into road widening)
Front yard (residence)4	50	34.6	15.3 (to cellar doors)	
Front setback (spring house)	5	50	8.5	0 (intrudes into road widening)
Front setback (residence)	5	50	34.6	15.3 (to cellar doors)
Lot 15.1				
Side setback (ice house)	6	30	n/a	10.6
Rear setback (barn)	6	50	31.5	31.5

The premises which are the subject of this application are located at 96 Viola Road, which is on the north 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 49.05, Block 1, Lot 15, in a RR-50 Zoning District.

The Board, upon motion duly made by Dr. Urcioli, and seconded by Ms. Conte-Benedict, resolved:

WHEREAS, the applicant was represented by himself, and the following documents were placed into the record and duly considered:

Application; Narrative; Short Environmental Assessment Form; Planning Board referral and minutes dated April 8, 2008; Building Inspector's Denial Letters dated April 10, 2008; proposed subdivision plat entitled "Cronin", prepared by James Drumm, PLS, dated January 10, 2008; Rockland County Planning Board memorandum dated May 14, 2008, which recommended modifications to the proposed variance; Rockland County Highway Department letters to Carol Adduce, dated March 19, and May 15, 2008; 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 May 15, 2008, and the testimony of the following persons was duly considered: applicant; 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. He wishes to subdivide the parcel into two residential lots. The overall area of the existing lot is 96,724 square feet, which is slightly smaller than the 100,000 square feet needed for two lots in the RR-50 zoning district. However, because of the need to provide road widening strips for both Viola Road and Spook Rock Road, the net available lot area is reduced to 88,221 square feet.

In addition, there are existing structures on the lot which pre-date both Montebello's Zoning Code and its Ramapo antecedent. The effect of the proposed subdivision and road widening is to exacerbate some of the existing non-complying bulks, and to create some additional ones.

The necessary variances are set forth in the following table:

	Col.	Required	Existing	Proposed
Lot 15				
Lot area	2	50,000 sf	n/a	38,200 sf
Front yard (spring house)	4	50	8.5	0 (intrudes into road widening)
Front yard (residence)4	50	34.6	15.3 (to cellar doors)	
Front setback (spring house)	5	50	8.5	0 (intrudes into road widening)
Front setback (residence)	5	50	34.6	15.3 (to cellar doors)
Lot 15.1				
Side setback (ice house)	6	30	n/a	10.6
Rear setback (barn)	6	50	31.5	31.5

During the course of the public hearing, it was determined that additional variances are required because of the existing condition of the residence with respect to the Viola Road frontage. These variances also result from the required road widening along Viola Road:

	Col.	Required	Existing	Proposed
Lot 15				
Front yard (residence)4	50	53	40 ± (to Viola Road steps)	
Front setback (residence)	5	50	53	40 ± (to Viola Road steps)

Thus, of the variances requested, only those for lot area (Lot 1) and side setback (Lot 2) result from the subdivision. The rest are either existing conditions which will be unchanged, or which are increased as a result of the required road widening. Because these variances reflect an existing condition, it was determined that change was de minimis, and the public hearing notice did not have to be re-published, posted, or mailed.

The applicant has previously advised the Planning Board that it decided to make Lot 1 the undersized lot because the existing house on Lot 1 is close to the road. This opens the rear of Lot 1 for yard area. If Lot 2 was to be the undersized lot, it would have less available open space.

The Rockland County Planning Department, in its memorandum dated May 14, 2008, recommended the following modification: “1. The applicant shall address the concerns raised in the Rockland County Highway Department’s letter of March 19, 2008. All required permits shall be obtained.”

The Rockland County Highway Department’s letter of March 19, 2008, addressed certain planning concerns. It required dedication of a road widening strip along Spook Rock Road to the County of Rockland, required the removal of the spring house, hand dug well, and stockade fence to the extent they intrude into the right of way, and described where the access drive for the proposed new lot should be located. A similar letter, dated May 15, 2008, was sent to directly to this Board.

No one from the public sought to speak.

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 overall lot is only slightly smaller than what is needed for a two lot subdivision. The granting of the required road widening strips serves to reduce the overall area further, but only on a map. The likelihood that the roads will be widened is small, considering the Village's continued control over the strips and its opposition to such widenings. The other variances either reflect existing conditions, or, with respect to the ice house, are minuscule.

(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”:

As noted, the variances are mostly required because of the required road widening. The only way to avoid the variances is to abandon the subdivision.

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

The variances are inconsequential in this context. Most reflect existing conditions or are the result of map changes, as opposed to physical changes.

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

The variances will allow one additional home to be built. The new home will be on a conforming lot.

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

The difficulty results from the parcel being a corner lot, with frontage on two roads which are not at their respective mapped widths, together with the desire of the applicant to maintain existing historic structures in their existing locations.

NOW, THEREFORE, BE IT RESOLVED, that the application of Timothy Cronin for variances from the provisions of Section 195-13, Use Group h, Column(s) 2, 4, 5, 6 and 9, of the Zoning Local Law of the

Village of Montebello to permit the construction, maintenance, and use of a two lot subdivision with the following variances

	Col.	Required	Existing	Proposed
Lot 15				
Lot area	2	50,000 sf	n/a	38,200 sf
Front yard (spring house)	4	50	8.5	0 (intrudes into road widening)
Front yard (residence)4	50	34.6	15.3 (to cellar doors)	
Front setback (spring house)	5	50	8.5	0 (intrudes into road widening)
Front setback (residence)	5	50	34.6	15.3 (to cellar doors)
Front yard (residence)4	50	53	40 ± (to Viola Road steps)1	
Front setback (residence)	5	50	53	40 ± (to Viola Road steps)1
Lot 15.1				
Side setback (ice house)	6	30	n/a	10.6
Rear setback (barn)	6	50	31.5	31.5

as set forth in the application submitted herein, is hereby approved subject to the following conditions:

1. The spring house intrudes into the road widening strip for Spook Rock Road. Road widening strips are required under the subdivision regulations where the existing right of way for a road does not conform to its designated width. Such is the case with both Spook Rock and Viola Roads. However, the mere fact that a road's right of way has been expanded does not mean that its traveled surface will likewise expand. Indeed, the Village's Planning Board has, as a matter of policy, reserved these strips to the Village rather than to the County in order to control whether the roadway itself is ever widened.

As a result, there does not appear to be an immediate need to relocate or remove the spring house. Therefore, this Board recommends to the Planning Board that the spring house be allowed to remain in its current location, subject to removal or relocation if the travel lanes of Spook Rock Road are widened and the spring house becomes a safety hazard as a result.

2. These variances are granted subject to the granting of subdivision approval by the Planning Board in a manner consistent with the drawing submitted to this Board, and shall expire if the approved plat is not filed with the Rockland County Clerk within the time allowed by law, as that time may be extended by the Planning Board.

3. Subsequent to the granting of conditional final subdivision approval, but prior to the filing of the plat, the applicant shall cause the existing house to be registered as a "local landmark" pursuant to section 195-60 of the Village Code. The lot area variance granted to lot 1 is based, in part, on the location of the existing house, which is of historic significance due to its age. Registering the house as a local landmark will help to preserve the house.

4. The front yard, front setback, side setback, and rear setback variances granted herein shall expire when the structures to which they relate (the existing house and spring house on Lot 1 and the existing ice house and barn on Lot 2, respectively) are destroyed or removed.

5. Conditions 2, 3, and 4 shall be recited, verbatim, in a plat note for the approved subdivision plat.

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 the sole recommended modification of the Rockland County Planning Department as set forth in that Department's memorandum of May 14, 2008, for the following reason:

The recommended modification require that the "concerns" of the Rockland County Highway Department, as described above, be addressed. Those "concerns" all relate to site plan issues, and not to the variances requested by the applicant. How those concerns are to be addressed are more properly within the province of the Planning Board, and this Board will not interfere with its sister board's prerogatives or responsibilities.

MEMBERS PRESENT:	YEA or NAY
John Urcioli, Chairman	Yea
Edward Bracken	Yea
Rodney Gittens	Yea
Maria Conte-Benedict (Alternate, sitting by designation)	Yea

MEMBERS ABSENT:
Fran Osei
Timothy Cronin, Vice-Chairman (recused, as he is the applicant)

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: May 19, 2008
Montebello, New York

New Business:

Green Mountain Development
Clarification of Facts

Present: Yosef Emuna, Applicant
Michael Specht, Esq.

Mr. Specht stated that in October, the Zoning Board of Appeals granted approval to an amended application for

a side yard variance of 12 feet proposed two conditions: The first condition is that the footprint of the house conform to the August 14, 2007 revised plan and the other is that the gross floor area of the house shall not exceed 3,500 square feet as shown on the August 14, 2007 revised plan. He said the reason why they are back before the Board is, when Mr. Emuna went to get a building permit, he submitted the plan that the Board approved, and the Building Inspector said that the gross floor area square footage of the house was over the 3,500 square feet. Mr. Specht stated that there were no changes made; these were the same exact plans that the Board approved. He said the problem is the calculation of the gross floor area, which includes the basement space, the garage space etc., in addition to the living space puts it over the limit imposed by the Board. Mr. Specht stated that they respectfully ask that the Board consider amending the condition so that the variance be granted subject to the applicant conforming with the plans that were approved and submitted with the August 14, 2007 plans, but leaving out the specification of the exact square footage.

Mr. Emanuel advised the Board that he did not believe that this constitutes an application for a rehearing. He said the reason why, is because as he understands it, this is an issue of fact, not a challenge or a request for the Board to change its prior decision. The prior decision granted a variance of a certain dimension, but it was based upon two different perceptions of fact with respect to a condition that was imposed. Mr. Emanuel stated that what Mr. Specht said was that the applicant is not seeking to change the drawing or change the size of the variance that was granted or even the nature of the variance. What he is saying is, that whatever number was given to the square footage of the house by the applicant at that time was basically incorrect as measured under the Village's definitions. Mr. Emanuel stated that there are many municipalities and they have different ways of measuring what constitutes gross floor area. He said some of them include garages, some include basements and attics. He said that he does recall that when the applicant originally came before the Board and there was discussion of how big the house was, the applicant said, that it was 3,200 square feet or 3,300 square feet and the Board was about to impose that as the maximum size at which point, the applicant said, he was not sure because he did not measure it. The Board then settled on 3,500 square feet. Mr. Emanuel stated nobody went and took a measurement or consulted the Zoning Code at that time to see what the definitions were. Mr. Emanuel stated because of all of this, he does not believe this is an application of a rehearing but an application of clarification. He said what the applicant is saying is, there was a mistake of fact.

Member Bracken asked how much more do you want?

Mr. Emuna said the first floor is 1,744 square feet; the second floor is 1,755 square feet, and the garage is 672 square feet (4,171 square feet).

Mr. Specht stated that it appears that the living area is a little less than 3,500 square feet. The gross floor area is about 5,300 square feet.

Mr. Emanuel stated that is the gross floor area, as defined in the Village of Montebello zoning code is about 5,300 square feet, which is significantly larger than 3,500 square feet.

Mr. Specht stated that they understand that, but would appeal to the Board is that the plans have not changed, the house is the way it was shown. He said certainly, if we were to go to the gross floor of 3,500 square feet we would be looking at a house with a living area of about 1,000 - 1,500 square feet which would not be practical.

Mr. Emuna stated from the beginning we always talked about living square footage, we never brought up what the Village counts as gross floor area and that is why he never knew about it.

Mr. Emanuel stated that he was looking at the public hearing minutes of October 18, 2007 and the pertinent portion reads, "Mr. Emuna requested that condition #1, where it states that the "gross floor area" of the house

shall not exceed 3,400 square feet, " be changed to give him some leeway. Then it says after discussion the Board agreed to 3,500 square feet. A motion was made to amend the motion to read "that the gross floor area of area of the house shall not exceed 3,500 square feet as shown on the August 14, 2007 revised plan. Mr. Emanuel stated that what the minutes read and the term that was used by both Mr. Emuna and the Board was "gross floor area".
Chairman Urcioli stated that he knew what it was.

Mr. Emuna said, no, he did not know. He said if he did not need a side yard variance, he could put in a front garage instead of a side entry garage and then he could build a 6,000 square foot house, but he wanted to build something more appealing to the neighborhood. He said that he really did not want to build a really big house especially in this market.

The Board, after discussion regarding the size of the lot and the allowable floor area ratio came up with the conclusion that the maximum size house that could be built on that lot, would be 5,000 square feet.

Mr. Specht said if the Board was happy with the plan that was already approved, they would take the blame for the error on the square footage, but he would ask that the Board focus more on the plans themselves. He said obviously they have another issue regarding the bulk table and the undersized lot, which the Building Department will catch even if they resolve this issue. He said the other issue is the Floor Area Ratio (FAR) which is not before the Board but there is a possibility, if the Board allows the applicant to build according to the footprint, there might be ways to reduce the square footage, so that the FAR is within the .20.

Member Cronin stated that the Board never had a problem with the plan that was presented, however, the Board never calculated out what the FAR was nor that it was that much over what the Board was willing to grant. The Board was willing to grant 3,500 square feet, as per the plan, the Board did not know that it was a 5,300 square foot home.

Mr. Emuna asked the Board to let him build up to the limit of the code.

Mr. Emanuel explained to the Board that what the absolute upper limit under the code, allows for a 5,000 square foot house. When the Board granted the variances, it was granted with the condition that the house would not be more than 3,500 square feet. gross floor area. He said, what Mr. Emuna is saying is he made an error in his calculation when he indicated that the house was going to be 3,500 square feet. What Mr. Emuna is presenting to the Board is a plan that has not been changed, it is the same plan, with the same square footage that the Board saw previously but, the actual square footage of the house as calculated is significantly more than what he presented to the Board. Mr. Emanuel said the question to the Board is, does it make a difference? If it does and the Board feels as the Chairman has stated, that one of the concerns of the Board had originally was that the house would be too big for the neighborhood and felt that it would be significantly layer, especially compared to the other houses in the neighborhood.

After discussion, the Board was polled and the Board unanimously voted to let the decision stand as it is.

Chairman Urcioli	-	Yea
Vice Chairman Cronin	-	Yea
Member Bracken	-	Yea
Member Gittens	-	Yea
Member Conte-Benedict	-	Yea

Discussion regarding putting a time limit on applicants complying with Zoning Board of Appeals decisions of denial.

Mr. Emanuel stated that it could be a condition of approval.

Motion to adjourn the meeting at 9:31 p.m.

MOTION: Tim Cronin

SECOND: Edward Bracken

VOTE: Unanimously accepted.