

THE REGULAR MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY, APRIL 23, 2009 AT THE MONTEBELLO COMMUNITY CENTER. THE MEETING WAS CALLED TO ORDER AT 7:57 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

Present:	John Urcioli	Chairman
	Maria Conte-Benedict	Member
	Alice DiSanto	Member
	Janet Gigante	Member
Others Present:	Gloria Scalisi	Planning & Zoning Clerk
Absent:	Tim Cronin	Member
	Rodney Gittens	Member
	Edward Bracken	Member
	Ira Emanuel	Asst. Village Attorney

First on the agenda:

**9 Bayard Lane
Public Hearing Continued**

Application of Dominick R. Pilla, 23 Depew Avenue, Nyack, New York for variance from the provisions of Article IV, Section 195-13, Use Group q, Cols. 2,4,5,6 (minimum lot area – front setback, front yard, side setback) of the Zoning Local Law of the Village of Montebello to permit construction, maintenance and use of construction of a new house. The premises which are the subject of this application are located on the south side of Bayard Lane approximately 389 feet from Haverstraw Road in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 48.10, Block 1, Lot 76 in a R-35 Zone.

The applicant has submitted a request for an adjournment until the May 21, 2009 meeting.

Member Conte-Benedict made a motion to adjourn the public hearing and continue it at the May 21st meeting, seconded by Member DiSanto. Upon vote, the motion carried unanimously.

Chairman Urcioli appointed Member Conte-Benedict, Member DiSanto and Member Gigante as voting members.

Second on the agenda:

**Wehman/Bambace
Public Hearing**

Chairman Urcioli read the Public Hearing notice into the record:

Application of Gina Wehman, 3 Lake Road, Montebello, New York, 10901 and Mary Bambace, 1 Lake Road, Montebello, New York, 10901, Applicants seek a waiver from the moratorium provisions of Local Law No. 6 of 2008, thus enabling the holding of a hearing at the same meeting for their application for the following variances from the requirements of Article IV, Section 195-13, Table of Bulk Requirements t, 2,3,6,7,8,10 & 11 to enable a Lot Line change without creating any new lots: (2) Minimum Lot Area Required 25,000 Sq.Ft., Provided 14,186 Sq.Ft., Variance 10,814 Sq.Ft.; (3) Minimum Lot Required Width Required 125 Ft., Provided 83.9 Ft., Variance 41.1 Ft.; (6) Minimum Side Setback Required 20 Ft., Provided 11.5 Ft., Variance 8.5 Ft.; (7) Minimum Total Side Setback Required 50 Ft., Provided 42.4 Ft., Variance 7.6 Ft.; (8) Minimum Side Yard Required 20 Ft., Provided 5.0 Ft., Variance 15.0 Ft.; (10) Minimum Rear Yard Required 20 Ft., Provided 1.5 Ft., Variance 18.5 Ft.; and, (11) Minimum Street Frontage Required 90 Ft., Provided 81.05 Ft., Variance 8.95 Ft., relating to the premises located on the east side of Orchard Street, and at the intersection of Lake Road in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 48.17, Block 1, and Lot 25 & 26 in a R25 Zone.

James Licata, Esq. and John Atzl— attorney and surveyor for the applicants, are in attendance to seek a waiver from the moratorium provisions of Local Law No. 6 of 2008 and also to seek variances from the Zoning Board of Appeals to allow application to the Planning Board for Subdivision to allow a lot line change.

Chairman Urcioli established the posting, publication and mailing legal requirements were met. Chairman Urcioli read the application and the applicant's narrative and summarized that Mary Bambace (the mother) is transferring 6000 square feet to Gina Wehman (the daughter) for use of an existing driveway. Chairman Urcioli read a letter from Aztl, Scatassa & Zigler (attached to the minutes hereof), the Applicant's Engineers, requesting an amendment to the application to include a side yard variance for the existing paved patio area. This patio area is located on the northeast side of the dwelling on Lot 1—the Bambace Lot. Chairman Urcioli read a letter from the Rockland County Department of Planning dated April 23, 2009 (attached to the minutes hereof), where they address the moratorium and the variances in the one letter. Rockland County Planning recommends that the applicant must complete a review by the County of Rockland Drainage Agency and they discuss discrepancies in the lot area calculations.

Mr. Licata discussed the application for a waiver from the moratorium.

Chairman Urcioli made a motion to open the Public Hearing in regards to the waiver. Chairman Urcioli swore in Katherine Bruce, 37 Utopian Avenue, Suffern New York into the record. Ms. Bruce wanted to know if Mary Bambace's house was sold. Mr. Licata stated that the house was indeed sold.

No one else wishing to speak Member Conte-Benedict made a motion to close the Public Hearing, seconded by Member DiSanto. Upon vote, the motion carried unanimously.

Chairman Urcioli stated that since this property is not affected by the possible changes in the moratorium and it is a simple lot line change therefore Member Urcioli is in favor of granting the

waiver. Member Gigante asked if the new owners approve of the lot line change. Chairman Urcioli stated that it is a possible condition of the sale.

IN RE: APPLICATION OF WEHMAN-BAMBACE
CALENDAR CASE NO. 1141 of 2009

WHEREAS, an application has been made pursuant to Section 4 of Local Law No. 6 of 2008 of the Village of Montebello (hereinafter, the Moratorium Law) by Gina Wehman and Mary Bambace; and

WHEREAS, a Public Hearing was held by this Board on April 23, 2009, at which the applicant and members of the public were heard; and

WHEREAS, this Board has the authority to grant a waiver from the provisions of the Moratorium Law upon a showing of unreasonable hardship.

NOW, THEREFORE, BE IT RESOLVED, that the application for a waiver of the provisions of the Moratorium Law on behalf of Wehman-Bambace is hereby approved, based upon the following:

1. The applicants are the owners of adjoining properties. The easterly lot (Wehman) is a substandard lot when compared against the bulk regulations of the applicable R-25 zoning district in which the lot is located.

2. The Bambace lot is improved with a single family dwelling and Wehman lot is improved with a legal two family dwelling. Access is provided via a joint driveway from Lake Road, and also by an individual driveway from Orchard Street.

3. The applicants seek subdivision approval to move the existing lot line, which bisects the two lots in a north-south direction, to the west. The effect of the lot line change will be to add approximately 2900 square feet to the easterly lot (Wehman), increasing its net lot area to 14,186 square feet. The westerly lot (Bambace) would have its net lot area reduced to 27,811 square feet, which still exceeds the required 25,000 square foot lot area.

4. The re-subdivision requires variances from this Board, which are to be dealt with separately.

5. No new construction is proposed, with the exception of eliminating the shared access in favor of individual access for each lot.

6. The existing moratorium was enacted for the purpose of preventing development which may be inconsistent with any changes that may be proposed in the revision to the Comprehensive Plan. This proposal does not contemplate new development, and brings the Wehman lot closer to conformity with existing zoning regulations, and therefore, most likely, closer to any proposed, stricter, regulations.

7. Because of the de minimus nature of the relief requested, and because the relief requested would bring the affected lot into closer conformity with existing zoning regulations, and because there is little chance that an amendment to the Comprehensive Plan would be adverse to the relief requested, and because of the transfer of title of one of the lots, this Board believes that it would be an unreasonable hardship to require the applicant to wait until the expiration of the moratorium to complete the lot line change.

MOTION: Chairman Urcioli

SECOND: Member Conte-Benedict

ROLL CALL VOTE:

YEA or NAY

John Urcioli, Chairman	Yea
Maria Conte-Benedict	Yea
Alice DiSanto	Yea
Janet Gigante	Yea

The Resolution carried unanimously.

Chairman Urcioli swore in John Atzl into the records.

Mr. Licata briefly discussed the proposed variances before the Board. Mr. Atzl clarified the variances on the maps. Mr. Licata noted that the Drainage Agency stated that the Applicant does not need a permit from their agency. Mr. Atzl disputed the discrepancies on the lot area calculations from the Rockland County Planning Department. Mr. Licata stated that since Ms. Arlene Miller from the Rockland County Planning Department is not a surveyor her calculations are not accurate. Mr. Licata stated that municipalities like when people make lots less non-conforming.

Mr. Atzl explained the amendment to the application to include a side yard variance for existing paved patio area. The patio is located on the northeast side of the dwelling on Lot 1. Per the code, the patio is permitted to project not more than six (6) feet into the required yard. The required side yard for this zone is twenty (20) feet. Twenty (20) feet minus six (6) feet would equal a minimum side yard of fourteen (14) feet. This variance is not on the application and was added on pursuant to the comments of Martin Spence, Village Engineer, in a letter dated April 23, 2009.

Chairman Urcioli made a motion to open the Public Hearing.

No one wishing to comment, Member DiSanto made a motion to close the Public Hearing, seconded by Member Gigante. Upon vote, the motion carried unanimously.

Chairman Urcioli stated that most of the variances are simple and pre-existing. Chairman Urcioli expressly noted that he does not want the patio area to be used as a driveway not now nor in the future.

[Subsequent to the meeting, the Building Inspector issued a determination, contained in a memorandum dated May 4, 2009 (copy attached), that the patio did not require a variance to intrude into the required side yard. As a result, the variance granted for that purpose has been voided, and the resolution deemed amended to exclude that variance.]

IN RE: APPLICATION OF WEHMAN-BAMBACE
CALENDAR CASE NO. 1142 of 2009

Before the Board of Appeals of the Village of Montebello, at a public hearing held at the Montebello Community Center, Montebello, New York, on April 23, 2009, for variances from the provisions of Section 195-13, Use Group t, Column(s) 2, 3, 6, 7, 8, 10 and 11, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a single family dwelling with reduced lot area of 14,186 square feet, reduced lot width of 83.9 feet, reduced side setback of 11.5 feet, reduced total side setback of 42.4 feet, reduced side yard of 5 feet, reduced rear yard of 1.5 feet, and reduced street frontage of 81.05 feet on Lot 26.

The premises which are the subject of this application are located at 1 and 3 Lake Road, which is on the north side of Lake Road, and 0 feet east of the intersection of Montebello Road in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 48.17, Block 1, Lot 26, in a R-25 Zoning District.

WHEREAS, the applicant was represented by James Licata, Esq., and the following documents were placed into the record and duly considered:

Application; Narrative; Short Environmental Assessment Form; drawing showing the location of the requested variance; Rockland County Planning Board memorandum dated April 23, 2009, which the proposed variance;

WHEREAS, the proposed action is a Type 2 action under the regulations promulgated pursuant to the New York State Environmental Quality Review Act; and

WHEREAS, a public hearing was held on April 23, 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:

This application arises in the context of an application to adjust a lot line separating the applicant's premises and those of her adjoining neighbor to the west. The applicant's lot is a substandard lot when compared against the bulk regulations of the applicable R-25 zoning district in which the lot is located. (The adjoiner, Bambace, conforms to the regulations, and will continue to conform even if the proposed re-subdivision is approved.) The Bambace lot is

improved with a single family dwelling and the Wehman lot is a legal two family dwelling. Access is provided via a joint driveway from Lake Road, and also by an individual driveway from Orchard Street.

The applicants seek re-subdivision approval to move the existing lot line, which bisects the two lots in a north-south direction, to the west. The effect of the lot line change will be to add approximately 2900 square feet to the easterly lot (Wehman), increasing its net lot area to 14,186 square feet. The westerly lot (Bambace) would have its net lot area reduced to 27,811 square feet, which still exceeds the required 25,000 square foot lot area.

The re-subdivision requires variances from this Board for the Wehman lot and one variance for the Bambace Lot.

No new construction is proposed, with the exception of eliminating the shared access in favor of individual access for each lot.

Each requested variance will recognize an existing condition. No dimension will be reduced except for the westerly side yard and the rear yard. However, in both cases, the reduction is not caused by new construction but by the relocated lot line.

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 proposed variances will facilitate the relocation of an existing lot line and will bring the resulting lot closer to conformance with the bulk requirements of the R-25 zoning district. There will be no new construction, nor any physical evidence of the variances, with the exception of removing some macadam to eliminate joint usage of the Lake Road driveway.

(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":

There is insufficient land area to create two lots that conform to the bulk requirements.

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

The proposed lot line is placed in a logical position. It will allow the current joint driveway, which is the only access to the subject lot, to be owned by the subject lot.

(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 no physical impact.

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

The lots are in the oldest part of the Village. They were created prior to zoning.

NOW, THEREFORE, BE IT RESOLVED, that the application of Gina Wehman for variances from the provisions of Section 195-13, Use Group t, Column(s) 2, 3, 6, 7, 8, 10 and 11, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a two family dwelling with reduced lot area of 14,186 square feet, reduced lot width of 83.9 feet, reduced side setback of 11.5 feet, reduced total side setback of 42.4 feet, reduced side yard of 5 feet, reduced rear yard of 1.5 feet, and street frontage of 81.05 feet, as set forth in the application submitted herein, is hereby approved, subject to:

1. The conditions of the Rockland County Planning Department's memorandum dated April 23, 2009; and

2. Re-subdivision approval by the Planning Board to permit the lot line change consistent with this resolution;

3. Completion of an interior and exterior inspection, and a records search, by the Building Inspector for any violations of the Code of the Village of Montebello and of the New York State Uniform Fire Prevention and Building Code Act and its implementing regulations, and the cure or removal of any violations found by such inspection;

and the Building Inspector is hereby directed to issue a Building Permit and Certificate of Occupancy to the applicant upon compliance with the terms and conditions of this resolution and with all other applicable laws, rules and regulations, and with the requirements of the Rockland County Planning Department.

MOTION: Chairman Urcioli

SECOND: Member Conte-Benedict

ROLL CALL VOTE:

YEA or NAY

John Urcioli, Chairman
Maria Conte-Benedict
Alice DiSanto
Janet Gigante

Yea
Yea
Yea
Yea

The Resolution carried unanimously.

Member Conte-Benedict made a motion to approve the March 19, 2009 minutes, seconded by Member DiSanto. Upon vote, the motion carried unanimously.

Member Gigante made a motion to adjourn, seconded by Member Conte-Benedict. The meeting adjourned at 9:02 p.m.



Atzl, Scatassa & Zigler, P.C.

ENGINEERS - SURVEYORS - PLANNERS

Email: ASZSurveys@aol.com

April 23, 2009

Village of Montebello
1 Montebello Road
Suffern, NY 10901
Att: Chairman John Urcioli

RECEIVED
APR 27 2009
Planning & Zoning Clerk

Re: Wehman-Bambace
Orchard Street & Lake Road

Dear Mr. Urcioli,

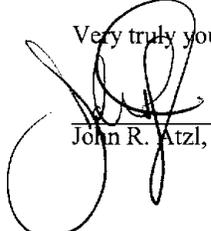
Based on the comments from the Village Engineer, we respectfully request to amend our application to include a side yard variance for the existing paved patio area. This patio is located on the northeast side of the dwelling on Lot 1.

Per the code, the patio is permitted to project not more than six (6) feet into the required yard. The required side yard for this zone is twenty (20) feet. Twenty (20) feet minus six (6) feet would equal a minimum side yard of fourteen (14) feet.

We are respectfully requesting a variance from the required fourteen (14) feet to two (2) feet as shown on the plan. The variance requested will be twelve (12) feet.

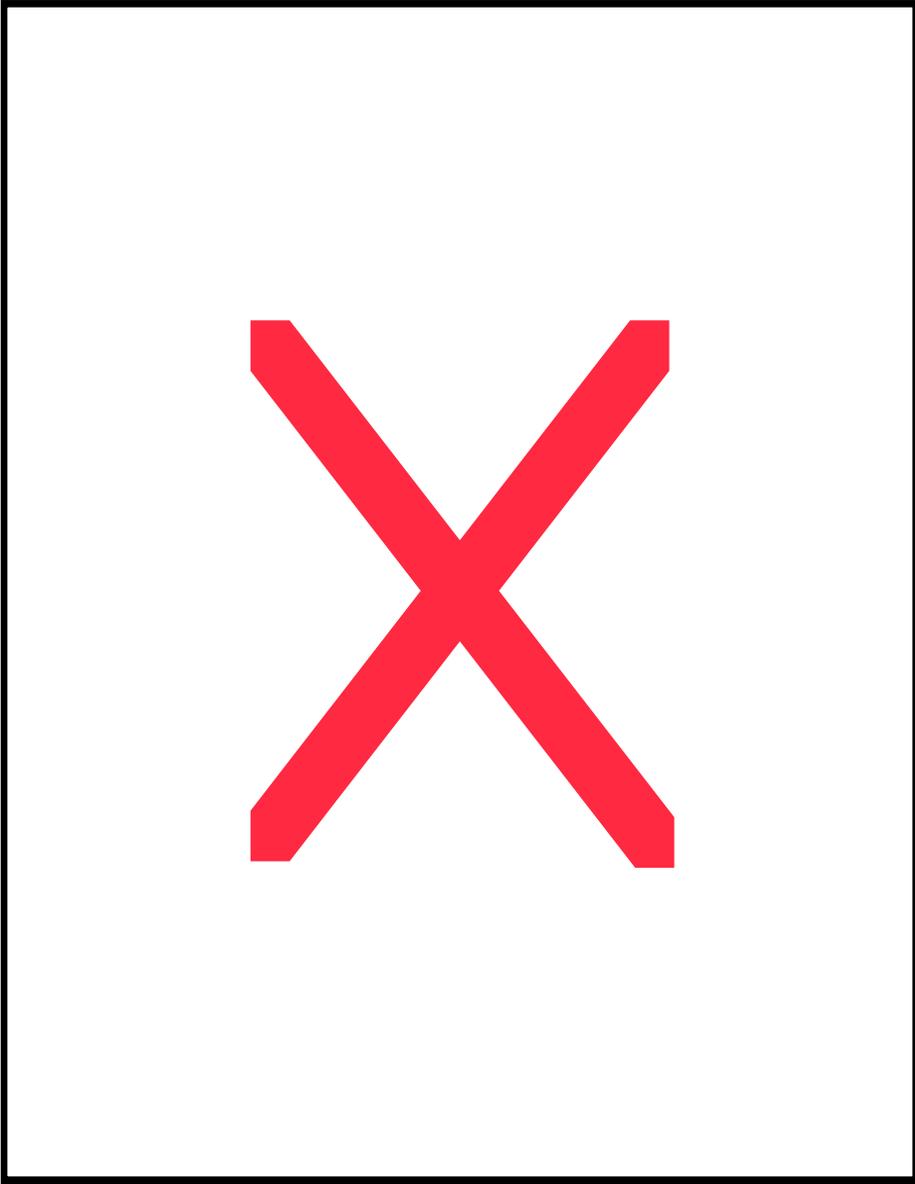
If you have any questions, please feel free to contact our office at any time.

Very truly yours,



John R. Atzl, P.L.S.

cc: J. Licata, Esq
G. Wehman



WEHMAN-BAMBACE (M-145)

2 The following additional comments are offered strictly as observations and are not part of our General Municipal Law (GML) review. The board may have already addressed these points or may disregard them without any formal vote under the GML process.

We note that there are discrepancies in the lot area calculations. The combined gross lot area of Lots 25 and 26 in the Existing Conditions lot area calculations is 51,826 SF; it is only 50,364 SF in the Proposed Lot Line Change lot area calculations - a difference of 1,462 SF. Given the transfer of 6,057 SF, we believe that the proposed gross lot area should be 31,430 SF for Lot 25 and 20,392 SF for Lot 26. The gross lot area calculations should be reviewed for accuracy.

The overall square footage of the lot area deductions also varies between the existing conditions and the proposed lot line change conditions. This may be related to the elimination of the easement area. The net lot area calculations should also be reviewed for accuracy.



Salvatore Corallo
Commissioner of Planning

cc: Mayor Jeffrey Oppenheim, Montebello
Rockland County Drainage Agency
Atzl, Scatassa & Zigler P.C.
Village of Suffern

Gina Wehman & Mary Bambace

**NYS General Municipal Law Section 239 requires a vote of a 'majority plus one' of your agency to act contrary to the above findings.*

The review undertaken by the Rockland County Planning Department is pursuant to, and follows the mandates of Article 12-B of the New York General Municipal Law. Under Article 12-B the County of Rockland does not render opinions, nor does it make determinations, whether the item reviewed implicates the Religious Land Use and Institutionalized Persons Act. The Rockland County Planning Department defers to the municipality forwarding the item reviewed to render such opinions and make such determinations if appropriate under the circumstances.

In this respect, municipalities are advised that under the Religious Land Use and Institutionalized Persons Act, the preemptive force of any provision of the Act may be avoided (1) by changing a policy or practice that may result in a substantial burden on religious exercise, (2) by retaining a policy or practice and exempting the substantially burdened religious exercise, (3) by providing exemptions from a policy or practice for applications that substantially burden religious exercise, or (4) by any other means that eliminates the substantial burden.

Proponents of projects are advised to apply for variances, special permits or exceptions, hardship approval or other relief.

Village of Montebello
Building & Zoning Department
One Montebello Road
Montebello, N.Y. 10901
(845) 368-2491* Fax (845) 368-2044

P. Douglas Siebenaler
Building Inspector

David Schumer
Assistant Building Inspector

Frank Wilson
Fire Inspector

MEMORANDUM

TO: VILLAGE OF MONTEBELLO ZONING BOARD OF APPEALS
FROM: P. DOUGLAS SIEBENALER, BUILDING INSPECTOR
DATE: MAY 4, 2009
SUBJECT: WEHMAN-BAMBACE SUBDIVISION (LOT LINE CHANGE)
TAX LOT 48.13-1-25, & 48.13-1-26 LAKE ROAD AND ORCHARD
STREET

I have reviewed the aforementioned and offer the following:

1. The existing Macadam Driveway at the East side of the residence on Lot 1 is to be abandoned as a driveway and used as a patio area. This is a permitted encroachment in to the side yard as per § 195-19A.
2. A portion of the existing Macadam Driveway is to be removed as noted on the survey prepared by Atzl, Scatassa, and Zigler P.C.
3. I prefer that there be additional Macadam removed from Lot #1 Macadam patio or the inclusion of a barrier, fence, or plantings to ensure the discontinuation of access from Lot #3.

Cc: Ira Emanuel, Assistant Village Attorney
Martin Spence, Village Engineer
Gina Wehman, Property Owner
Mary Bambace, Property Owner