THE REGULAR MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY, MAY 20, 2O10 AT THE MONTEBELLO COMMUNITY CENTER. THE MEETING WAS CALLED TO ORDER AT 7:47 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

Present:	John Urcioli	Chairman
	Rodney Gittens	Member
	Janet Gigante	Member
	James Tanner	Member (arrived at 8:10)
	Stan Shipley	Member
	Jack Barbera	Member
Others Present:	Ira Emanuel	Asst. Village Attorney
	Gloria Scalisi	Planning & Zoning Clerk
Absent:	Alice DiSanto	Member

Chairman Urcioli welcomed Mr. Jack Barbera to the Zoning Board as an Ad-Hoc member.

Member Gittens made a motion to approve the minutes of February 18, 2009, seconded by Member Gigante. Upon vote, the motion carried unanimously.

Richard S. Cutney
Public Hearing

Chairman Urcioli read the Public Hearing notice into the record:

> Application of Richard S. Cutney, Jr., 6 Lake Road, Montebello New York 10901 for variance from the requirement of Article IV, Sections 195-13, Use Group x-1, Column 8 (Side Yard) and Article VI, Section 195.24B (spacing between principal and accessory structures) of the Zoning Local Law of the Village of Montebello to permit construction, maintenance and use of an existing shed to existing single family house. The subject property is located on the east side of Lake Road and 500 feet from the intersection of Montebello Road in the Village of Montebello which is known and designated on the Ramapo Tax Map as Section 48.13 Block 2, Lot 9 in a RR-50 Zone.

Mr. Richard S. Cutney, Jr. was in attendance to discuss his application to the Zoning Board. Mr. Cutney stated that he has an existing shed on a very small lot and because his property is on the Mahwah River he is unable to put a shed in the back yard. Mr. Cutney stated that he kept the shed under 144 square feet in order to comply with the Code. Mr. Ira Emanuel, Assistant Village Attorney stated that the Village Code states that a shed that is less than 144 square feet is permissible with a letter from the next door neighbor granting permission. Mr. Emanuel stated that since Mr. Cutney has a letter from his neighbor, Clem Barto-8 Lake Road, dated April 19, 2010 (copy attached), he does not need a side yard variance.

Chairman Urcioli questioned the applicant on the reason he is unable to place the shed in the back yard. Mr. Cutney replied that when it rains the Mahwah River rises and his back yard is under water.

Member Gittens asked if there was a reason the shed could not be moved to the opposite side of the house. Mr. Cutney replied that he believed where the shed is currently placed, on the north side, is the most inconspicuous spot on the property. Mr. Cutney also stated that if he moves the shed he will be unable to put in a garage.

Chairman Urcioli questioned the applicant in the case of a fire in the shed how is a fireman to get to the shed. Mr. Cutney, who is a fireman, stated that there is 4 feet between the neighbor's hedges and Mr. Cutney's home. Mr. Cutney believes that, as a fireman, there is plenty of room to maneuver.

Chairman Urcioli made a motion to open the Public Hearing.

No one else wishing to speak Member Gittens made a motion to close the Public Hearing, seconded by Member Shipley. Upon Vote, the motion carried unanimously.

Mr. Ira Emanuel, Assistant Village Attorney, read the Resolution into the record:

VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS

IN RE: APPLICATION OF RICHARD S. CUTNEY, JR.
CALENDAR CASE NO. 1144 OF 2010

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Montebello Community Center, Montebello, New York, on May 20, 2010, for variances from the provisions of Section 195-13, Use Group x.1, Column(s) 8 and Section 195-24.B, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of an existing shed with a reduced side yard of 2.1 feet and having insufficient distance (±4 feet) between said shed and the principal structure on the lot.

The premises which are the subject of this application are located at 6 Lake Road, which is on the east side of Lake Road, and 500 feet north of the intersection of Montebello Road in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 48.13, Block 2, Lot 9, in a RR-50 Zoning District.

The Board, upon motion duly made by Chairman Urcioli, and seconded by Member Gittens, 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; Building Inspector's Denial Letter dated March 22, 2010; drawing showing the location of the requested variance; Rockland County Planning Board memorandum dated May 18, 2010 recommending modifications; letter dated April 19, 2010 from Clem Barto, 8 Lake Road, immediately affected neighbor stating support; letter dated April 17, 2010 from Peter Warren, 4 Lake Road, in support of the proposed variance;

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 20, 2010, 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 premises were improved with a single-family home and a shed that abutted the home its north side. The prior shed was located within the required side yard. (The lot, although within the RR-50 district, has a gross lot area of only 21,428 square feet. Thus, it is undersized for the district. The Building Inspector has applied the x.1 use group bulk standards pursuant to the provisions of section 195-89.)

The applicant sought and obtained approval from the Rockland County Drainage Agency to remove the existing shed and to replace it with a new, smaller shed. The new shed is 140 square feet in area, and is located in approximately the same location as the prior shed within the required side yard. Had this been the only issue, the acceptance letter from the abutting neighbor pursuant to section 195-19.D may have avoided the need to seek variances.

However, because the new shed, unlike the old one, does not abut the principal structure, it runs afoul of section 195-24.B. that section requires a separation between a principal and detached accessory structure of 15 feet. The provided separation is only 4 feet.

Applicant is planning to erect a garage at the end of the driveway, so relocating the shed to that location is not feasible.

As noted above, the subject parcel is undersized for the district. Its total street frontage is only 75 feet, with similar lot width. The house is located 15.7 feet from the north side lot line and 20.4 feet from the south lot line. The driveway extends beyond the rear of the house in the south side yard.

To the north of the parcel is another residential lot. It contains a detached garage that is approximately 9 feet from the joint property line. A row of lilac bushes runs along this line for much of its length, including where the shed and garage are located.

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 new shed is in a location similar to that of the prior shed, and is smaller. But for the need to obtain a variance for separation between principal and accessory structures, this application might well have been avoided.

Separation between buildings, where achievable, is desired in order to improve access for emergency services. Here, however, the prior condition allowed less access, as the old shed abutted the principal building, was larger, and was closer to the north side lot line. Adequate access appears to be available along the south side on this narrow lot.

(2) “whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance”:

The only way to avoid the needed separation variance and to still have a usable shed is to locate it to the rear of the house. Doing so would place it closer to the flood plain of the Mahwah River and its abutting wetland. It would also place the shed in the middle of the backyard.

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

While of significant magnitude from an algebraic perspective, the fact remains that the new shed replaces a larger shed that was less in keeping with the Zoning Code's requirements.

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 will be located in approximately the same location as the prior shed. It is only 140 square feet in area. It should have no detrimental impact.

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

The difficulty results from the narrowness of the lot.

NOW, THEREFORE, BE IT RESOLVED, that the application of Richard S. Cutney, Jr. for variances from the provisions of Section 195-13, Use Group x.1, Column(s) 8 and Section 195-24.B, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of an existing shed with a reduced side yard of 2.1 feet and having insufficient distance (±4 feet) between said shed and the principal structure on the lot, as set forth in the application submitted herein, is hereby approved, subject to

1. 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 John Urcioli

SECOND: Member Rodney Gittens

MEMBERS PRESENT:	**YEA or NAY**
John Urcioli, Chairman	YEA
Rodney Gittens, Vice Chairman	YEA
Janet Gigante	YEA
Stan Shipley (by appointment)	YEA
Jack Barbera (by appointment)	YEA

MEMBERS ABSENT:
Alice DiSanto
James Tanner

The Resolution carried unanimously.

Barry Kraushaar
Public Hearing

Chairman Urcioli read the Public Hearing notice into the record:

> Application of Barry Kraushaar, 3 Divot Place, Montebello, New York 10901 for Variance from the requirement of Article IV, Section 195-13, Use Group h, Column 10 (Side Yard), [Required: 25 feet; Proposed: 21.4 feet] of the Zoning Local Law of the Village of Montebello to permit construction, maintenance, and use of an existing swimming pool cabana to existing single family dwelling. The premises which are the subject of this application are located one the east side of Divot Place approximately 0 feet from the intersection of Par Road in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 48.20, Block 1, Lot 24 in a RR-50 Zone.

Mr. Barry Kraushaar and Mrs. Helene Kraushaar-Applicant and Mr. Daniel Kraushaar-Attorney for the Applicant are in attendance.

Mr. Barry Kraushaar discussed the application for a side yard variance. The Building Inspector reviewed the building application and also inspected the cabana with no issues at the time. Mr.

Barry Kraushaar stated that at the final building inspection it was determined that one corner of the Cabana was 3.6 feet in the side yard setback. Mr. Daniel Kraushaar stated that in terms of standards the application can not be corrected by any other means than applying for a variance, it will not have an impact on the neighbors or neighborhood.

Member Gittens asked if the submitted building plans had the Cabana's dimensions on them. The applicant did not know. Mr. Barry Kraushaar replied that the Building Inspector had inspected the footings and the error was not picked up.

Chairman Urcioli made a motion to open the Public Hearing.

No one else wishing to speak Member Gittens made a motion to close the Public Hearing, seconded by Member Gigante. Upon Vote, the motion carried unanimously.

Mr. Ira Emanuel, Assistant Village Attorney, read the Resolution into the record:

VILLAGE OF MONTEBELLO
ZONING BOARD OF APPEALS

IN RE: APPLICATION OF BARRY KRAUSHAAR
CALENDAR CASE NO. 1145 OF 2010

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Montebello Community Center, Montebello, New York, on May 20, 2010, for variances from the provisions of Section 195-13, Use Group h, Column(s) 10, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a cabana/pool house with a reduced rear yard of 21.4 feet.

The premises which are the subject of this application are located at 3 Divot Place, which is on the east side of Divot Place, and 0 feet south of the intersection of Par Road in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 48.20, Block 1, Lot 24, in a RR-50 Zoning District.

The Board, upon motion duly made by Chairman John Urcioli, and seconded by Member Rodney Gittens, resolved:

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

Application; Narrative; Short Environmental Assessment Form; Building Inspector's Denial Letter dated July 22, 2009; drawing showing the location of the requested variance;

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 20, 2010, and the testimony of the following persons was duly considered: applicant; Helene Kraushaar;

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 submitted for and received a building permit to construct a cabana/pool house on the far side of his swimming pool from the main house. The pool house appears to have been built in accordance with the permit application. However, prior to issuance of a certificate of occupancy, it was discovered that the building was 21.4 feet from the east (rear) lot line[1], instead of the 25 feet required under the applicable Use Group "m".

The pool area, including the pool house, are enclosed by a chain link fence. A stone wall runs along the rear lot line. There appears to be substantial landscape screening between the two affected lots.

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 amount of encroachment is 3.6 feet. There is a fence, stone wall, and trees between the pool house and the next neighboring structure (a swimming pool). The difference between a conforming structure and this non-conforming structure is almost not discernable to the naked eye.

(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 pool house was ready for a certificate of occupancy when the error was discovered. A variance is the only way to avoid demolition and reconstruction.

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

The variance is minimal in the context, as described above.

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[1]The parcel is a corner lot, having frontage on both Divot Place and Par Road. As such, it has two front lot lines, and the property owner may choose which opposite lot line to use as a rear lot line (*see,* § 195-21). Since the house faces Divot Place, and has a Divot Place address, the applicant has chosen to treat the east lot line, opposite the Divot Place lot line, as his rear lot line.

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

The proposed 3.6 foot variance will have no impact.

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

The pool house was built according to a validly issued building permit and the plans submitted therewith. The error was found only upon a pre-certificate of occupancy inspection.

NOW, THEREFORE, BE IT RESOLVED, that the application of Barry Kraushaar for variances from the provisions of Section 195-13, Use Group h, Column(s) 10, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a cabana/pool house with a reduced rear yard of 21.4 feet, as set forth in the application submitted herein, is hereby approved, subject to

2. 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.

MOTION: Chairman John Urcioli

SECOND: Member Gittens

MEMBERS PRESENT:	**YEA or NAY**
John Urcioli, Chairman	YEA
Rodney Gittens, Vice Chairman	YEA
Janet Gigante	YEA
James Tanner	YEA
Stan Shipley (by appointment)	YEA
Jack Barbera (Ad Hoc)	

MEMBERS ABSENT:
Alice DiSanto

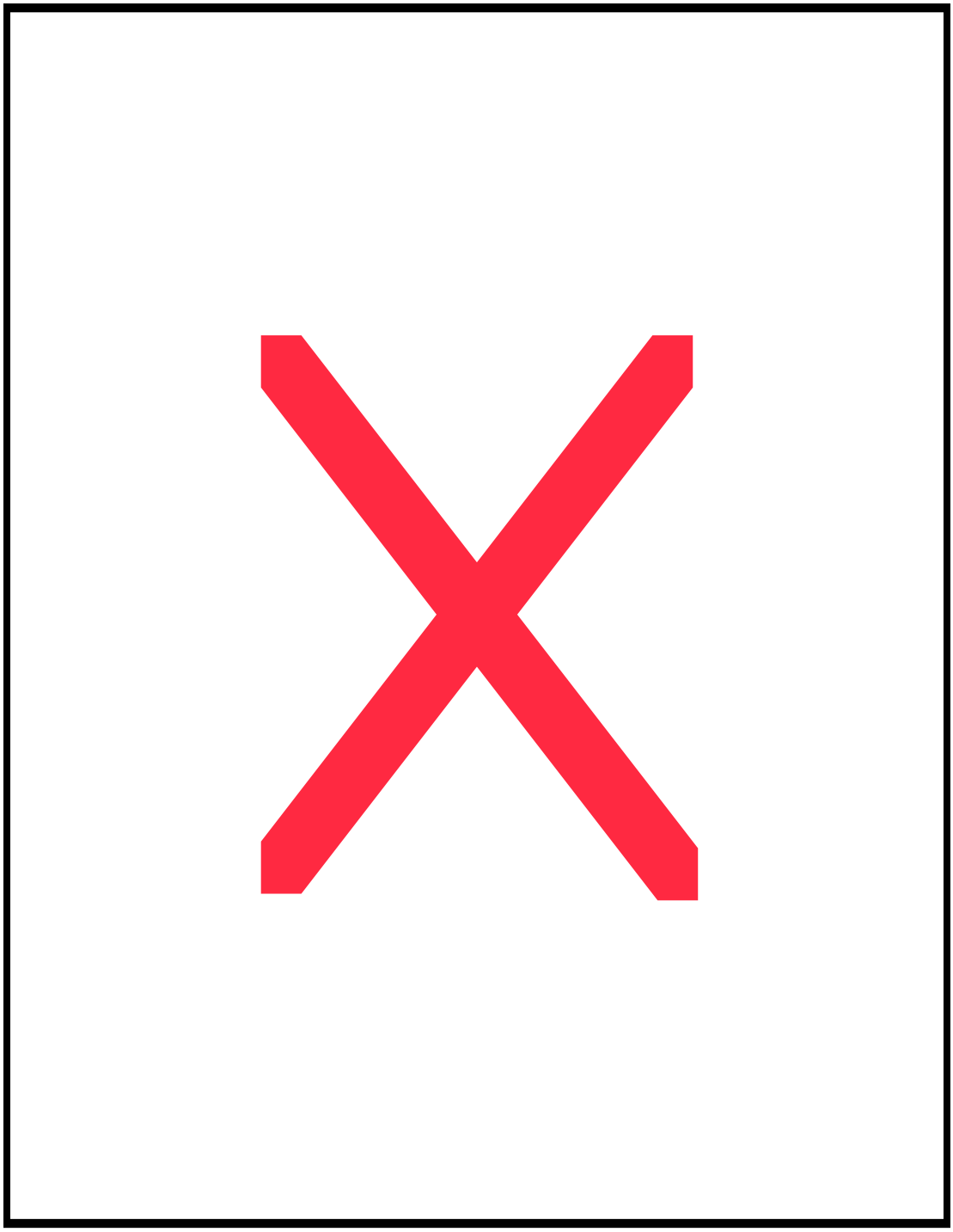
The Resolution carried unanimously.

New Business

Review and adoption of new application forms to the Planning Board.

Mr. Emanuel briefly discussed the proposed changes to the Zoning Board of Appeals application form. Mr. Emanuel stated that the new application needs to be adopted by the Planning Board and the Zoning Board of Appeals and then sent to the Village Board for approval.

Member Gigante made a motion to recommend that the Village Board adopt the New Application Forms to the Planning Board and the Zoning Board of Appeals, seconded by Member Tanner. Upon vote, the motion carried unanimously.

Member Gittens made a motion to adjourn the meeting, seconded by Member Gigante. Upon vote, the motion carried unanimously. The meeting adjourned at 8:34 p.m.

APPENDIX: