THE REGULAR MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY, JUNE 19, 2O14 AT THE MONTEBELLO COMMUNITY CENTER. THE MEETING WAS CALLED TO ORDER AT 7:48 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

Present:	Rodney Gittens	Chairman
	Janet Gigante	Member
	Stan Shipley	Member
	Jack Barbera	Member
	Alice DiSanto	Member
Others Present:	Ira Emanuel	Assistant Village Attorney
	Gloria Scalisi	Planning & Zoning Clerk
Absent:	Scott Goldstein	Member

Member Barbera made a motion to approve the minutes of May 15, 2014, seconded by Member Shipley. Upon vote, the motion carried unanimously.

Nafesa Farid
652 Haverstraw Road
40.16-1-3.2
Public Hearing—Continued

> Application of Nafesa Farid, 652 Haverstraw Road, Montebello, New York, 10901 which was submitted to the Village of Montebello Zoning Board of Appeals for Area Variances; Front Yard column 5 [Required: 50Feet; Proposed: 0 Feet] of the requirement of the Bulk Table, Section 195-13 and a fence greater than 4 feet from the Side and Rear Yard Exceptions requirement of Section 195.19C of the Zoning Code of the Village of Montebello to permit construction, maintenance, and use of a 50'foot X 84'foot Basketball Court and a 66inch high fence in the front driveway of a single family dwelling. The total acreage for the parcel is 3.05 acres. The property is located on the west side of Route 202 (Haverstraw Road), approximately zero feet of the intersection of Wilber Road in the Village of Montebello, which is known and designated on the Ramapo Tax Map as Section 40.16, Block 2, Lot 3.2 in an ER-80 Zone.

In attendance were the Applicant's representative, Mr. Majid Mohammed along with the Applicant's Engineer, Mr. Ray Ahmadi. Both applications were discussed simultaneously.

Chairman Gittens stated that the Application is a continuation from last month. Chairman Gittens stated that this application has no lights.

Mr. Ahmadi stated that the applicant has removed all lighting and all fencing from the application. The current drawings submitted have eliminated all details of lighting. The basketball court will be 50feet by 84feet.

Member Shipley stated that the since the lights and fencing are out he is in favor of the basketball court, as long as the covenant is in place. Mr. Ahmadi stated that the covenant will be recorded for both properties not just the one property.

Chairman Gittens opened the Public Hearing.

David Stern, 676 Haverstraw Road, Montebello, New York stated that they should wait for the Village engineer before they proceed any further.

Mr. Ahmadi stated that the Applicant inserted and moved the berms as a good gesture to please the neighbors.

Elizabeth Stevens, 642 Haverstraw Road, Montebello, New York would like the Applicant to install the berms and trees prior to installing the concrete basketball court.

Chairman Gittens stated that the request is beyond this Board; the Applicant will be applying for a building permit and will not receive a Certificate of Occupancy if all the items of the resolution are not met.

Mr. Emanuel stated that the Board has the right and ability to impose reasonable conditions to the variances. The Board may impose a condition of timing.

No one else wishing to comment, Member DiSanto made a motion to close the Public Hearings of 652 Haverstraw Road and 658 Haverstraw Road, seconded by Member Barbera. Upon vote, the motion carried unanimously.

IN RE: APPLICATION OF NAFESA FARID
CALENDAR CASE NO. 1164 OF 2014

Before the Board of Appeals of the Village of Montebello, at a public hearing held at Montebello Community Center, Montebello, New York, on March 20, April 17, May 15, and June 19, 2014, for variances from the provisions of (1) Section 195-13, Use Group e, Column(s) 5, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a 50' x 84' basketball court in a required front yard of a single family dwelling, and from (2) Section 195-19.C to permit the construction, maintenance and use of a an 8 foot high enclosure fence around said basketball court within a required front yard of a single family dwelling, and from (3) Section 195-19.C to permit the construction, maintenance and use of a 6 foot, 6 inch high wall, topped with a “carriage light”, together with a 7 foot, 6 inch gate, all within a required front yard of a single family dwelling.

The premises which are the subject of this application are located at 652 Haverstraw Road, which is on the west side of U.S. Route 202, and 0 feet north of the intersection of Wilbur

Road in the Village of Montebello, and which is known and designated on the Ramapo Tax Map as Section 40.16, Block 2, Lot 3.2, in a ER-80 Zoning District.

The Board, upon motion duly made by Mr. Shipley, and seconded by Mr. Barbera, resolved:

WHEREAS, the applicant was represented by Ray Ahmadi, P.E., and the following documents were placed into the record and duly considered:

Application; Narrative; Short Environmental Assessment Form; Building Inspector's Denial Letter dated June 20, 2013; drawing showing the location of the requested variance; Rockland County Planning Board memorandum dated February 24, 2014, which recommended modifications to the proposed variance; Building Inspector's memorandum dated April 10, 2014; Village Engineer's memorandum dated March 14, 2014; drawing showing rendering of proposed front wall; revised narrative dated May 1, 2014, withdrawing that portion of the application relating to the front wall and gate; Village Engineer's memo dated May 14, 2014; Building Inspector's revised Denial Letter dated May 15, 2014; revised plans entitled "Mohammed Families' Resident", dated June 5, 2013, last revised June 2, 2014, prepared by R A Associates; 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 March 20, April 17, May 15, and June 19, 2014, and the testimony of the following persons was duly considered: applicant; Ray Ahmadi, P.E., applicant's engineer; David Stern, 676 Haverstraw Road (immediately affected neighbor to North); Elizabeth Stevens and Kevin Stevens, 642 Haverstraw Road (immediately affected neighbor to South); Jean Gould, 638 Haverstraw Road; and

WHEREAS, said public hearing was held jointly with a public hearing affecting property belonging to Majid Mohammed, 658 Haverstraw Road, as the subject matter of the two applications overlapped; 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 front on U.S. Route 202, having 150 feet of frontage. The applicant initially asked to erect a brick-faced wall along his frontage with stone pillars at his driveway entrance. The wall height varied from 36 to 48 inches, rising where it was to meet the four proposed pillars. The pillars were to be 6 feet, 6 inches tall, with a carriage light of unspecified height atop each pillar. Most of the wall was to be placed along the front lot line. At the driveway, the walls arced back to a 7 foot, 6 inch tall sliding gate located13 feet behind the front lot line.

In the ER-80 zoning district in which the property is located, the required front yard extends 50 feet from the front lot line. Therefore, the entire proposed wall, and the pillars, would be within the required front yard.

Section 195-19.C of the Zoning Code prohibits walls higher than four feet (48 inches) within the required front yard. Therefore, a variance would be needed for that portion of the wall and gate that exceeds four feet in height.

In his narrative, the applicant stated that he needed the additional height in order to provide "privacy from the busy traffic on Route 202. In addition, it will provide aesthetics and beauty."

It is also noted that this portion of this appeal was a companion appeal to that of Majid Mohammed, 658 Haverstraw Road, tax lot 40.16-2-3.1, which property is adjacent to the subject property. The Mohammed appeal included an application for a wall variance of the same type and magnitude as that sought here.

The applicant, by narrative dated May 1, 2014, withdrew that portion of his application which related to the wall and gate (Item 3, in the preamble, above). Mr. Mohammed withdrew his application for a wall variance at the same time.

Having withdrawn his request for a variance for the wall, this applicant was then left with an application for a variance to allow a basketball court in a required front yard, surrounded by an overheight fence (Items 1 and 2, respectively, in the preamble, above). The subject property is a flag lot. Its front yard is behind the rear yard of the Mohammed property described above. This applicant and Mr. Mohammed are related to one another, and wish to share the use of the basketball court, to be located between their homes. The applicant states that the location chosen is logical based upon the configuration of the two lots and their desire for joint usage.

The basketball court will be dug into the grade, to allow for a level playing surface. The proposed enclosure fence will vary from approximately 4 feet, 6 inches in height to approximately 8 feet in height. To the extent that the fence is higher than four feet high, it, too requires a variance.

The applicant has added to the proposed site plan the following:

> As of the condition of granting the proposed basketball court, the owners will submit the proof of restrictive covenant on both deeds from Rockland County Clerk's Office that prior to the sale of either parcel the basketball court be removed and regarded [sic] to the satisfactory of the Village of Montebello, New York.

The basketball court was originally intended to be lit for evening and night use. The applicant proposed four "shoebox" style luminaires mounted on 14 foot high poles at each corner of the court. The shoebox style allows for shielding of the light source and spillage control.

Elizabeth Steven, Kevin Stevens and Jean Gould all expressed concerns about the proposed lighting and the impact of the lighting. In response, the applicant stated that he would eliminate the lighting from the proposal.

However, a subsequent drawing submitted by the applicant kept the lighting, but reduced the height of the poles to 10 feet above finished grade.

Thereafter, the Village Engineer provided a memo dated May 14, 2014, detailing engineering concerns relating to the construction of the basketball court and the lighting. The Building Inspector issued a revised Denial Letter dated May 15, 2014, based upon the applicant's April 30, 2014 submission. In his revised letter, the Building Inspector noted that the following variances were needed:

Sec. 195-19c – Basketball fence proposed is 8 feet, maximum allowed is 4 feet (front yard)

Sec. 195-11.J – Prohibited uses - use dangerous to the comfort, peace and enjoyment of the area (10 foot lights proposed)

Sec. 195-13 – Front Yard, Required 50 feet, Proposed +/- 0 feet (basketball court).

As a result of the revised letter, the applicant withdrew his proposal for fencing (Item 2 in the preamble, above) and lighting the basketball court, and submitted new drawings, with a last revision date of June 2, 2014. These new drawings show the basketball court in the same position as always, with no fencing or lighting. The drawings also now show two earthen berms with Blue Spruces atop them, one along the northerly lot line and one along the southerly lot line. The purpose of the berms and landscaping is to screen the view of the basketball court from the adjoining neighbors.

As a result of these last amendments, the only variance being requested is to allow the basketball court in the required front yard (Item 1 in the preamble, above).

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:

A. Those portions of the application for variances relating to the proposed wall and gate (Item 3 in the preamble, above), and the proposed fencing around the proposed basketball court (Item 2 in the preamble, above), have been withdrawn by the applicant, and require no further action by this Board.

B. That portion of the proposal seeking lighting of the proposed basketball court, and determined by the Building Inspector to be contrary to the requirements of the Zoning Code in the revised Denial Letter dated May 15, 2014, has been withdrawn by the applicant and is therefore not before this Board.

C. As to the applicant's request for a variance from section 195-13, Use Group e, column 5 (basketball court in a required front yard; Item 1 in the preamble, above):

(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 location is logical, based on the usage presented, although difficulties may arise if one or the other property is sold.

(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 court could be moved to an alternative location that conforms to the Zoning Code's requirements, but doing so would make it more difficult for one or the other family to enjoy its use.

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

The variance is substantial, in that it allows a significant intrusion into a required front yard. However, to the extent that these two properties operate as a joined compound, the location makes sense.

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

The basketball court will have a minimal impact on drainage, especially if installed as designed and in compliance with the Village Engineer's requirements. The elimination of lighting significantly reduced the adverse impacts of noise from the court. These impacts are further reduced by the berms and landscaping offered by the applicant.

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

The difficulty stems from the applicant's desire to share the use of the court.

NOW, THEREFORE, BE IT RESOLVED, that the application of Nafesa Farid for variances from the provisions of (1) Section 195-13, Use Group e, Column(s) 5, of the Zoning Local Law of the Village of Montebello to permit the construction, maintenance, and use of a a 50' x 80' basketball court in a required front yard of a single family dwelling, as set forth in the application submitted herein, is hereby approved, subject to the following:

1. Construction shall conform to the drawings submitted in support of the variance application entitled "Mohammed Families' Resident", consisting of two pages, prepared by R A Associates, dated June 5, 2013, and last revised June 2, 2014 and shall include the installation and planting of the berms shown thereon;

2. The said berms shall be constructed at the same time that the basketball court is constructed, using dirt excavated for the court; the proposed trees shall be planted on the berms not later than November 1, 2014, provided, however, that said date can be extended for extenuating circumstances related to such planting by the Village Engineer; said proposed trees are to have at least a two-year nursery warranty running in favor of the Village;

3. There shall be no lighting at or for the basketball court;

4. Any fencing around the basketball court shall comply with the height requirements of the Zoning Code;

5. Any walls and/or gates along the front lot line shall comply with the height requirements of the Zoning Code;

6. At such time as either Farid or Mohammed sell their respective homes, the basketball court must be removed and regraded to the satisfaction of the Village Engineer; and

7. Prior to the issuance of any permits for the construction of the basketball court, the applicant shall record in the Office of the Rockland County Clerk, in the real property records, a declaration, in a form acceptable to the attorney for this Board, setting forth the conditions under which the basketball court may remain in place, as set forth in item 6, above;

8. Applicant shall comply with comments S-1, S-2, S-3, and S-4 of the Village Engineer's memo dated May 14, 2014. Comment S-5 is not applicable as a result of the applicant's withdrawal of his request for lighting;

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; and be it further

RESOLVED, that this Board hereby overrides recommended modifications 1 and 3 of the Rockland County Planning Department's review letter dated February 24, 2014, for the following reasons:

As to modification "1", the withdrawal of the variance for fence/wall height means that there will be no impact from that variance on the road. The proposed basketball court is over 400 feet from the designated street line, and will have no impact on the road.

As to modification "3", the applicant's offer of a declaration of covenants requiring the removal of the basketball court prior to conveyance of either property, and the inclusion of said declaration as a condition of this variance, is an appropriate safeguard against the potential difficulties raised by the Department.

MEMBERS PRESENT:	YEA or NAY
Rodney Gittens, Chairman	Yea
Alice DiSanto	Yea
Janet Gigante	Yea
Stan Shipley	Yea
Jack Barbera	Yea

MEMBERS ABSENT:
Scott Goldstein

The Chairman declared the resolution approved and the application, as amended, approved.

Member Gigante made a motion to adjourn the meeting, seconded by Member Barbera. Upon vote, the motion carried unanimously. The meeting adjourned at 8:46 p.m.