

A MEETING OF THE ZONING BOARD OF APPEALS OF THE VILLAGE OF MONTEBELLO WAS HELD ON THURSDAY JUNE 20, 2024, AT THE DR. JEFFREY OPPENHEIM COMMUNITY CENTER, 350 HAVERSTRAW ROAD, MONTEBELLO, NY. THE MEETING WAS CALLED TO ORDER AT 7:00 P.M. FOLLOWED BY THE PLEDGE OF ALLEGIANCE.

Present:

Janet Gigante, Member/Vice Chair
Ezra Bryan, Member
Elizabeth Dugandzic, Member
Rosana Millos, Ad Hoc (elevated to Member for the meeting)

Absent:

Rodney Gittens, Chairman
Carl Wanderman, Member/Vice Chair

Minutes approval

Member Dugandzic made a motion to approve the February 15, 2024, meeting minutes, seconded by Member Millos and upon vote, all were in favor.

Josh Jacobs

1 Canterbury Lane, Montebello, NY

Application of Josh Jacobs, 1 Canterbury Lane, Montebello, NY which was submitted to the Village of Montebello Zoning Board of Appeals for variances for: Development Coverage [maximum 20%, proposed 22.5%]; Rear Yard (pool patio) [required 25', proposed 6.2']; Rear Yard (fire pit) [required 25', proposed 5.2']; Front Yard (pool patio) [required 24' preexisting, proposed 15.7'] as per Section 195-13, Use group h of the zoning code of the Village of Montebello. As-built survey shows that the reconstruction of the pool and the addition of a hot tub, patio, fire pit and fence are non-conforming. The Parcel is located on the east side of Canterbury Lane at the intersection of Viola Road, and is shown on the Ramapo Tax Map as Section 48.12 Block 1 Lot 41 in the RR-50 Zone.

Present was the applicant, Josh Jacobs and his attorney Paul Baum. After Vice Chair Gigante read the application into the record, Mr. Baum explained that Mr. Jacobs purchased the property in 2021 and immediately set about making improvements to the home. He obtained permits for interior renovations, a roof replacement, rehabilitation of the existing pool and for a new hot tub. In the process, Mr. Jacobs also replaced the pool patio, which was unwittingly too large, pushing them over the development coverage threshold and causing setback violations.

Mr. Baum explained further that the impervious surface area is 9,812 square feet, and that the maximum allowable is 8,822.4 square feet (20%). While it is 991.6 square feet over the maximum allowed, Mr. Baum said that in studying the map further, he noticed that the wood deck, at 359 square feet, was included in the coverage calculation. However, the deck is a pervious structure through which rain can fall into the ground below, and that the coverage is actually 632 square feet, he said. Likewise, he continued, pools and hot tubs retain water and do not cause runoff so they technically should not be considered impervious structures.

Regarding the pool patio and the fire pit, Mr. Baum explained that, even though they are set too close to the front and rear property lines, both are obscured from the roads due to a berm. He noted too that Mr. Jacobs enjoys a good relationship with the neighbors, who do not object to any of these encroachments.

Mr. Baum explained that the fence was intended to enclose the pool but was installed beyond the property line and into the right of way of Viola Road, which is a county road. A permit application for same was submitted to the Rockland County Highway Department which, if granted, will legitimize the fence. If they are rejected, he continued, the fence will be removed and the variance withdrawn.

Mr. Jacobs was sworn in and explained that the now refurbished pool and hot tub are in the original location close to the house. When he redid the patio, he extended it to accommodate patio furniture and pool chairs, which seemed the logical thing to do.

Member Dugandzic asked if Mr. Jacobs used a contractor for the work. Mr. Jacobs said a contractor did the work, noting that the patio was not included on the plans that were filed for the building permit. Mr. Baum said that Mr. Jacobs incorrectly assumed that the patio size and location did not matter. Mr. Jacobs agreed with this assessment and added that he originally wanted to move the pool further away from the house but was denied by the Building Department because it did not meet the required setback.

Mr. Jacobs said there was already a chain link fence around the pool and beyond that, a steep upward hill. He said he replaced the fence with the cast aluminum fence and installed it at the top of the hill without realizing that he went beyond his own property line. Mr. Baum said that the fence was not on the plans that were submitted to the Building Department, a detail that no one questioned. Mr. Jacobs reiterated that he just had no idea where his property line was. Mr. Baum said that the fence is no more than four feet high and if the County demands that they remove it, they will withdraw that permit application. However, we feel the Highway Department will allow it based on recent discussions with them, he added.

After Mr. Baum summarized the ZBA criteria, and stating that there are no adverse impacts on the environment, the neighborhood and the community, Member Bryan asked if Mr. Jacobs knew that pool and patio were already non-conforming. Mr. Baum said the pool plan indicated that the existing pool was 44 feet and the pool patio was 56 feet vs. the proposed new pool of 36 feet, with a 7-foot hot tub, with a notation that read “no variance needed.”

Member Bryan asked if there was an existing fence. Mr. Baum explained that there was a chain link fence that hugged the concrete patio enclosing just the pool. Mr. Bryan asked if they needed a permit for the fence. Mr. Jacobs said he applied for a fence permit retroactively, but was denied due to the location of the fence.

Member Millos, noting that they claimed that the pool is actually pervious, said there will surely be runoff if the pool overflows during a storm. Mr. Baum said that the odds of that happening are minimal and that they will provide mitigation from any runoff. Ms. Terhune advised that this be shown in the survey.

Members Bryan and Millos wondered why Mr. Jacobs did all the work with no approvals in place, and why the contractor did not flag the situation. Mr. Baum said they had a permit for the pool, but not for the fence, adding that the fence should have been on the pool plan and the Building Department should have noticed. Mr. Bryan said that still did not explain why the size of the pool patio increased. Mr. Baum said that the patio wasn't shown on the plans either, and said that these errors were all due to Mr. Jacob's lack of knowledge. Mr. Jacobs said that he changed the plans in the middle of the process, that he has no engineering or building knowledge and that there was no ill-intent on his part.

Member Bryan asked for more details on the patio and the fire pit, and after some discussion, he asked what was between Mr. Jacob's and the neighbor's property. Mr. Baum said there is extensive landscaping between the houses, and that the neighbor's house is set back. The neighbors do not have any objections, he said, and promised to submit letters of endorsement from them.

Ms. Terhune advised Mr. Baum to submit photos of the property, then asked him if he was requesting any overrides of the May 23, 2024 GML review. Mr. Baum said they have no issues with any of the comments, and that they are addressing comment #1 with the Rockland County Highway Department.

Member Millos asked the size of the deck, and Mr. Jacobs showed her a photo, stating that it's small and there is no room for outdoor furniture. Member Bryan asked at what point Mr. Jacobs decided to make the patio bigger. Mr. Jacobs said the designer with whom he was working sought to make the patio more accommodating for lounge furniture, a decision that was made in the middle of the construction. The decision was purely aesthetic.

No one having further questions, Member Dugandzic made a motion to set the public hearing for the July 18, 2024 meeting. The motion was seconded by Member Gigante and upon vote, all were in favor.

**1. Jacob Leitner
8 Henry Court**

Application of Jacob Leitner, 8 Henry Court, Montebello, NY which was submitted to the Village of Montebello Zoning Board of Appeals for variances for: Floor area ratio [max.0.20, proposed 0.22]; Side yard [required 20', proposed 7']; Minimum lot size [required 25,000' pre-existing non-conforming, proposed 26,063.06'*]; Parking spaces total for residence and RGP [required 7 spaces, proposed, 5 spaces]; Privacy fence height [max. 6', proposed 8'] As per Section 195-13, Use group q, and Sec. 195-19 of the zoning code of the Village of Montebello. The Parcel is located on the north side of Henry Court, approximately 310 feet north of the intersection of Zeck Court, and is shown on the Ramapo Tax Map as Section 48.10 Block 1 Lot 36 in the R-35 Zone.

***pre-existing nonconformance**

Present for the Applicant was his attorney, Joseph Churgin, Eliezer Brecher of Builders Expediting, Inc., and his engineer Kevin Maher. After Vice Chair Gigante read the application into the record, Mr. Churgin explained that they were seeking variances to convert a room in Mr. Leitner's home for use as a Residential Gathering Place. The room is roughly 24' X 24' and will accommodate up to 15 local residents for Friday, Saturday and holiday services only. There will be no weekday minions, and all residents will be arriving on foot, he said.

Regarding the required 20 foot side yard, we are providing .7 feet to accommodate the required parking spaces. He said that his client does not require parking since the congregants will be walking to shul on Shabbos and holidays, but it is required by the code. We are seeking a variance for two less parking spaces than is required as well, and would ask for less if we could—that is up to the Board, he said.

The FAR variance is necessary due to the proximity of the Mahwah river, which is subtracted from the total buildable area, even though nothing is actually being built for the gathering place.

Finally, the variance for the fence height and location is being sought because the maximum of 6 feet height at the property line is not enough to protect our and the neighbors' privacy. We are asking for that height at the property line and hope that this Board will afford us a bit of deferential treatment for this small, low-intense religious use.

Member Millos asked if the proposed mikvah is a separate structure. Mr. Churgin said it is not part of this application, that it will not need a variance and that they do not plan to build it at this time. He stressed the fact that this will be for the Rabbi's own private use and not for the congregation. Ms. Terhune asked if it was figured into the FAR variance. Mr. Churgin said it was, and his engineer confirmed that fact. Ms. Terhune asked why there was a path from the parking area to the Mikvah if it was only for private use. Why would the path not lead from the house to the Mikvah?

Mr. Brecher said that the walkway is there to keep small children safe. Ms. Terhune said she wasn't clear on how the path, from the parking area to the Mikvah, would keep children safe. Mr. Brecher said there is a backyard where children play so it is safer to keep them in the area away from the path and the Mikvah. Mr. Churgin said there is less of a nuisance if there isn't a path leading right to the structure from the home. He assured the Board that the owner would walk from the house over the grass to the mikvah.

Member Bryan asked why the proposed worship area needs to be the size shown. Mr. Churgin directed him to the architectural details and said that NYS Fire and Building codes require 200 square feet per person for a place of worship. This area will provide enough room for at least the fifteen people who will regularly attend and extra room just in case for a maximum of 28 people. This is in accordance with the standards of a residential gathering place as defined in Sec. 195-124 of the Village code.

Member Bryan noted that the gathering place will be attended by local residents who will arrive on foot and asked about the seven parking spaces required by the code. Mr. Brecher said they do not need any spaces for this reason, but are providing just enough for the rabbi and his family and to satisfy the code somewhat. Mr. Bryan asked if there is enough room for seven spaces which, if provided, would eliminate the need for this variance. Mr. Brecher said there is not enough room for seven due to the location of the Mahwah river and its 100 foot buffer, an area in which no construction is permitted. The Applicant's engineer Mr. Maher added that there are steep slopes and extreme grading that take away from the area calculations, and that they are proposing parking at less than the required so they do not increase their development coverage while keeping out of the buffer. Ms. Terhune noted that the Rockland County Drainage Agency will certainly need to weigh in on the application as well.

Member Bryan asked why they needed such a high privacy fence. Mr. Brecher said a fence would be best for the Rabbi and for his neighbor. Landscaping was considered but it does not afford enough shielding. Member Dugandzic asked if the neighbor requested this fence. Mr. Brecher said they did not, and that the Applicant wishes to get out ahead of any potential issues by installing the fence.

Member Bryan asked the distance between this and the neighbor's house. Mr. Churgin said that the houses are set back from the road, and that it's hard to explain the layout without seeing it in person. Ms. Terhune encouraged the Board members to visit the site. After some discussion on the neighborhood layout, Member Bryan stated that the high white vinyl fence may adversely affect the character of the neighborhood and encouraged the application to explore other options.

Member Millos asked about the play area and was told that it will only be a grassy area with no play equipment.

No one having further questions or comments, Member Dugandzic made a motion to set the public hearing for the July 18, 2024 ZBA meeting. Member Millos seconded the motion and upon vote, the motion was carried unanimously.

Member Dugandzic made a motion to adjourn the meeting at 8:18 p.m., seconded by Member Millos and upon vote, all were in favor.