

VILLAGE OF MONTEBELLO  
ZONING BOARD OF APPEALS  
COUNTY OF ROCKLAND, STATE OF NEW YORK

CALENDAR CASE 1195

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In the Matter of the Application of  
Jacob Leitner

X

**VARIANCE DECISION FOR  
PROPERTY IDENTIFIED ON  
THE VILLAGE OF  
MONTEBELLO TAX MAP AS  
Section 48.10, Block 1, Lot 36**

for relief from Section 195-13, Table of General Bulk  
Requirements, Use Group “q” of the  
Village of Montebello Zoning Law.

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X

**APPLICATION FOR RELIEF FROM THE VILLAGE OF MONTEBELLO ZONING  
LAW TO PERMIT A RESIDENTIAL GATHERING PLACE**

**The property location, zoning district and proposed improvements.** The subject property is located at 8 Henry Court, Village of Montebello, County of Rockland, State of New York. It is identified on the Tax Map as Section 48.10, Block 1, Lot 36 (the “Property”). The Property contains 1.058 acres and is in the Residential – 35 (“RR-35”) zoning district. The property owner, Rabbi Jacob Leitner (the “Applicant”), applied for a building permit to convert an existing garage into a Residential Gathering Place with a new bathroom and accessory parking. Residential gathering places are permitted by special permit of the Planning Board as governed by § 195-79.1 of the Montebello Zoning Law. Bulk requirements are governed by § 195-13, Table of General Bulk Requirements, Use Group “q”. The Building Inspector determined that the proposed conversion did not comply with the bulk requirements as to side yard setback and parking and referred the Applicants to the Zoning Board of Appeals (the “Board”).

**Application.** The Applicant applied to the Zoning Board of Appeals seeking the following relief from Section 195-13 of the zoning law:

1. A side yard variance from the required 20 feet to 9.2 feet<sup>1</sup>; and
2. A variance from the required 7 off-street parking spaces to 5; and
3. A FAR variance from the required 20% to 22%.

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<sup>1</sup> The Applicant originally requested a side yard variance of 20 feet to .7 feet but modified the site plan to increase the side yard to 9.2 feet. The Applicant originally asked for a fence height variance from 6 feet to 8 feet but removed the variance request.

**Submissions.** The following materials were submitted to the Board, which materials are incorporated into and made a part of this Decision and upon which this Board relied during its deliberations:

1. Denial letter dated April 30, 2024, prepared by Adam Gordon, Montebello Building Inspector; and
2. Application, dated May 30, 2024; and
3. Narrative dated June 6, 2024, from Builders Expediting; and
4. Site plan by Kevin P. Maher, PE, MASCE dated March 27, 2024, last July 4, 2024; and
5. Floor plans dated May 7, 2024, by James Chun, Architect; and
6. Letter from Rockland County Sewer District No. 1 dated June 14, 2024; and
7. GML review from Rockland County Planning Department dated June 24, 2024; and
8. Notice of receipt from the Rockland County Drainage Agency dated July 2, 2024; and
9. GML override letter and parking letter dated, July 16, 2024, prepared by Joseph Churgin, Esq.; and
10. Letter from Rockland County Health Department, dated July 18, 2024; and
11. Memorandum dated August 2, 2024, prepared by Adam Gordon, Montebello Building Inspector; and
12. Narratives dated August 12, 2024, and November 27, 2024, prepared by Joseph Churgin, Esq.

**General Municipal Law § 239.** The application was duly referred to the Rockland County Department of Planning (“RCDP”). By letter dated June 24, 2024, RCDP responded with seventeen (17) substantive comments. By unanimous vote, the Board overrode the following RCDP Comments:

Comment No. 2 cautioned that granting a FAR variance greater than 10% could set a precedent and impact community character. The Board considered the comment and noted that the requested FAR variance is 10%, not “greater than” 10%. The Board also noted that FAR is calculated on the net lot area after reduction for environmental constraints, not the gross lot area. Here, no FAR variance would be required if gross lot area applied. The Board also noted that that the only physical change being made to the Property is the future addition of a mikvah for personal religious use and that religious uses must be given some deference under New York State Law. For these reasons, the Board overrode the comment.

Comment No. 3 stated that the Village should determine whether a variance was required for the preexisting noncompliant lot area and lot width. The Board considered the comment and determined that no variances are required, thus overriding the comment. The Board based its

decision on a determination issued by the Montebello Building Inspector, dated May 29, 2024, stating that even though the property is now located in the R-35 zoning district, § 195-89, “Nonconforming buildings, structures, or lots,” allows any preexisting nonconforming lot with an existing one- or two-family home located thereon “shall be permitted to comply with the yard and setback requirements as specified for the highest residential district having the same or less lot width.” The Building Inspector noted that the Property “complies with the requirements of the R-25 zone” as to lot area and width.

Comment No. 10 noted that the addition of additional structures and impervious surfaces in or near the riparian buffer of the Mahwah River could potentially degrade water quality and increase local flooding. The Board noted that no development is planned within the 100-foot flood plain and that the total coverage proposed is 3.7% less than the 30% maximum allowed by the zoning law. Moreover, lot coverage is calculated on net lot area, not gross lot area, thus affording protection to sensitive environmental features such as the Mahwah River. For these reasons the Board overrode Comment No. 10.

Comment No. 11 cautioned the Village to be satisfied that the application provides adequate information for managing construction because of steep slopes located on the property. The Board considered the comment and determined that the Planning Board will consider the construction phase in detail and the Village Engineer will inspect the property during construction to ensure that all precautions are begin taken to safeguard the Mahwah River.

Comment No. 12 suggested that the Applicant use pervious surface material and other techniques to reduce the impact of the development. The zoning law does not deduct pervious surface material from lot area coverage because over time such materials tend to become impervious. This provides greater protection to the land and is incorporated into all lot coverage calculations. The Board also noted that no lot coverage variance is required even though the calculation is on the net, not gross, area of the lot.

Comment No. 14 stated that the application must be approved by the HPPC because the property is in the Historic and Scenic Roads Overlay District. This is incorrect. The property is not located in the Historic and Scenic Roads Overlay District and, therefore, does not need HPPC approval.

**State Environmental Quality Review Act (SEQRA).** The Board determined that the application is a Type II action pursuant to 6 NYCRR 617.5(c)(16), granting of individual setback and lot line variances and adjustments, and (c)(17), granting of an area variance for a single-family, two-family, or three-family residence. No further SEQRA action was required.

**Public Hearing.** A duly noticed public hearing was convened on July 18, 2024, continued August 15, 2024, and December 19, 2024. During the public hearing, the Board heard testimony from the Applicant and all those wishing to address the Board on the matter. After receiving all comments from the public, the hearing was closed.

### **FINDINGS**

**The Board's Findings.** When considering whether to grant an area variance, the Board must evaluate, and did evaluate, (1) whether granting said variance will produce an undesirable change in the character of the neighborhood, (2) whether the benefit sought by the Applicants can be achieved by some other method, (3) whether the requested variance is substantial, (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district, and (5) whether the alleged difficulty was self-created. Any area variance so granted by the Board must be the minimum variance that it deems necessary and adequate.

The Board made the following findings:

1. The Board considered whether the requested variances, if granted will produce an undesirable change in the character of the neighborhood and determined that they would not so long as the use of the Property conforms to the Applicant's representations made to this Board and upon which the Board's deliberations were predicated. Chief among them was the Board's concern that congregants will not exclusively walk to the gathering place, as represented by the Applicant and a primary reason for granting the parking variance but will also drive to the residence on other than sabbath days and high holy days. This would result in a greater need for off-street parking than provided on the site plan. The Board expressed concern that congregants will park on the street causing congestion and unsafe street conditions, as is the case in other areas of the Village and other municipalities where residents are regularly congregating at neighborhood residences for religious purposes.
2. The Board considered whether the benefit sought by the Applicant could be achieved by some other method and determined that it could not because of the unique environmental constraints of the Property including proximity to the Mahwah River and steep slopes.

3. The Board considered whether the requested variances are substantial and determined that they are. In considering substantiality, the Board noted that the 54% side yard variance was significantly reduced from 95.5% by the Applicant in response to the Board's comment on the interior parking area's impact on the neighbor. However, in granting the 28.57% parking variance, the Board relied on the Applicant's statement that congregants would not drive to the residence but instead would walk.
4. The Board considered whether the variances, if granted, will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district and determined that they will not. The Board noted that the single-family home will not be enlarged to accommodate the gathering place; instead, the existing garage will be converted for that purpose.
5. The Board determined that the alleged difficulty is self-created. All applicants before the Board are charged with knowledge of the zoning law and, in this case specifically to the law that applies to the creation of residential gathering places. Rabbi Leitner purchased the property in August 2020, after the zoning law was modified in August 2018 to regulate the conversion of single-family homes into residential gathering places. Indeed, the Property is identified on Google Maps as "Congregation Halberstade" and "Camp Tomid," which strongly suggests that the Applicant began using the Property as a residential gathering place in contravention of the zoning law prior to applying to the Planning Board for the required special permit. In turn, this use suggests that the Applicant foresaw the use of his property as a residential gathering place. Nonetheless, the Board determined that the benefit to the Applicant if the variances are granted outweigh any detriment to the neighborhood and the community.

**Applicant's burden.** The Zoning Board of Appeals hereby finds and determines that the Applicant has sustained his burden of proof as required by New York State Village Law and Village of Montebello Zoning Law as to the need for the requested variances.

### **DECISION**

**NOW, THEREFORE, BE IT RESOLVED** on a Motion by Member Dugandzic, Seconded by Member Millos, pursuant to the rollcall vote forth below, the Village of Montebello Zoning Board of Appeals hereby grants the following variances from Section 195-13, Table of General Bulk Requirements, Use Group "t", of the Village of Montebello Zoning Law to the identified on the Village of Montebello Tax Map as Section 48.10, Block 1, Lot 36:

1. A 54% side yard variance from the required 20 feet to 9.2 feet; and
2. A 28.57% variance from the required 7 off-street parking spaces to 5; and
3. A 10% FAR variance from the required 20% to 22%.

In granting these variances, the Zoning Board relied on the testimony and representations of the Applicant and the submissions identified herein and made a part of this Decision as if attached hereto. These variances are granted in reliance on their individual purposes as shown on the referenced plans and for no other purpose. Deviation from the variances granted by this Board shall invalidate this Decision and the variances granted hereby by operation of law.

**BE IT FURTHER RESOLVED**, that these variances are granted pursuant to the following conditions:

1. Payment of all fees due and owing to the Village of Montebello in connection with this application and approval.
2. The Applicant stated that he voluntarily agrees to limit the congregants to no greater than 15 at any one time as a condition of the Board's granting of these variances, specifically the parking variance. The Applicant shall post a sign on the entrance to the gathering place stating that occupancy by more than 15 people is a violation of the Village of Montebello Zoning Board of Appeals Approval.
3. The variances granted herein are a condition precedent to the granting of a special permit. Therefore, failure to comply with the above stated occupancy condition shall nullify the variances and, by operation of law, any special permit issued by the Planning Board.
4. Modification of the site plan to reduce the vinyl privacy fence noted thereon from 8 feet to 6 feet, thus complying with the zoning law.
5. Evergreen screening between the parking area and the neighbor's property as approved by the Planning Board.
6. The parking variance is predicated on the Board's good-faith acceptance of the Applicants statement that congregants will walk to the residence. If it turns out that congregants routinely drive to the residence and numerous vehicles park on the street causing congestion or unsafe conditions or on the Property in contravention of the zoning law, then the Applicant will be in violation of the terms of this Decision and the parking variance will be revoked by operation of law.

**BE IT FURTHER RESOLVED**, that pursuant to § 195-108F Expiration of relief. Any grant of relief by the Board of Appeals pursuant to this chapter shall expire by operation of law if a building permit has not been issued, in accordance with the plans for which such relief was granted, within one year after the date on which such relief was granted, provided further that the structure is built within two years from the date of the building permit. If such relief was granted within the context of an application for site plan, subdivision, special permit or other approval from the Planning Board or the Village Board, then such relief shall expire at the time such site plan, subdivision, special permit, or other approval shall expire. In the event judicial review of such relief by the Board of Appeals is sought, then the expiration periods set forth above shall be

tolled pending the date of entry of the final order in such judicial review proceedings, including all appeals.

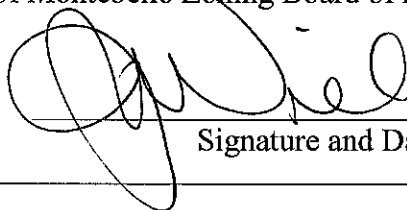
	Yea	Nay	Abstain	Absent
Rodney Gittens, Chairman	[√]	[ ]	[ ]	[ ]
Elizabeth Dugandzic, Member	[√]	[ ]	[ ]	[ ]
Janet Gigante, Member	[√]	[ ]	[ ]	[ ]
Ezra Bryan, Member	[√]	[ ]	[ ]	[ ]
Rosana Millos, Member	[√]	[ ]	[ ]	[ ]

Dated: January 16, 2025

VILLAGE OF MONTEBELLO  
ZONING BOARD OF APPEALS

  
BY: RODNEY GITTENS, CHAIRMAN

Joan Will, Village Clerk for the Village of Montebello, does hereby certify that the foregoing Decision of the Village of Montebello Zoning Board of Appeals was filed in my office on the following date:



Signature and Date

1-27-2025