

**Zoning Board of Appeals
Minutes
June 17, 2021
Zoom Video Call**

Members Present: Richard Ubert, Chairman
Vice Chairperson Tracey Cullen
Roger Smith, Member
William Ordon, Member
Eric Taylor, Member
Robert Russo, Alternate Member

Other Attendee: Tracey Gronbach, Secretary to the Board

Meeting called to order at 7:00pm.

Chairperson Ubert welcomed everyone to the June 17, 2021, meeting of the Zoning Board of Appeals. He introduced himself and the Board Members.

Chairperson Ubert stated for the record that all applicants are hereby notified that any and all agreed concessions, promises, pledges, assurances, or declarations given by them or their duly appointed agents, during their hearing process shall become stipulations to any approvals given by this Board. He also asked that anyone who wishes to speak please state their name and address for the record so that may be accurately recorded in to the minutes.

Chairperson Ubert called for a motion to approve the minutes from the May 20, 2021, meeting.

A motion was made by Mr. Smith made a motion to approve the May minutes as edited which was seconded by Mr. Ordon.

Vote on the Motion:	Chairperson Ubert	aye
	Vice Chairperson Cullen	aye
	Mr. Ordon	aye
	Mr. Smith	aye
	Mr. Russo	aye

Motion carried: 5 ayes 0 nays

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Application of Eugene Monahan. Applicant seeks a special exception to install a 5' Fence in accordance with Section 183-139 A. (2) of the Village Code. Premises located on the southeast corner of the South Bay Ave and Richmond Ave in a B Residence District known as 2 South Bay Ave a/k/a SCTM#101-13-13-2.

Gene Monahan, 2 South Bay Ave, Amityville, NY, spoke on behalf of his application.

Findings:

- Mr. Monahan currently has a four-foot (4') chain link fence and would like to replace with a four-foot (4') solid and one-foot (1') lattice top vinyl fence. (five-foot (5') in total)
- There are other five-foot (5') fences in the neighborhood.
- Mr. Monahan has a dog; the fence will give privacy and will prevent his dog from barking at neighbors and other dogs that walk by.
- No one spoke for or against the application.

A motion to approve this application was made by Mr. Taylor and was seconded by Mr. Smith.

Vote on the Motion:	Chairperson Ubert	aye
	Vice Chairperson Cullen	aye
	Mr. Ordon	aye
	Mr. Smith	aye
	Mr. Taylor	aye

Motion carried: 5 ayes 0 nays

Stipulations:

1. Applicant must install fence as shown on the submitted survey.
2. Applicant must install fence with the good side facing towards the neighbors.
3. The fence must be properly anchored.
4. Applicant must obtain a Fence Permit.
5. Applicant must comply with all plans submitted to the Building Department.
6. Applicant must abide by all applicable State, Village and Local Codes.

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Application of Karin Ruiz. Applicant seeks a special exception to install a six-foot (6') Fence in accordance with Section 183-139 A. (2) of the Village Code. Premises located on the north side of Robbins Ave in a BB Residence District known as 69 Robbins Ave a/k/a SCTM#101-9-3-22.

Karin Ruiz, 69 Robbins Ave, Amityville, NY, spoke on behalf of her application.

Findings:

- Ms. Ruiz has an existing four-foot fence (4') fence that needs to be replaced.
- Ms. Ruiz's neighbors have a dog.
- Ms. Ruiz has a pool in the back of her property.
- The Fence would add privacy for both she and her neighbor.
- Ms. Ruiz would like to install a cedar grain PVC fence, which would not be seen from the street.
- No one spoke for or against the application.

A motion to approve this application was made by Mr. Smith and was seconded by Mr. Ordon.

Vote on the Motion:	Chairperson Ubert	aye
	Vice Chairperson Cullen	aye
	Mr. Ordon	aye
	Mr. Smith	aye
	Mr. Taylor	aye

Motion carried: 5 ayes 0 nays

Stipulations:

1. Applicant must install fence as shown on the submitted survey.
2. Applicant must install fence with the good side facing towards the neighbors.
3. The fence must be properly anchored.
4. Applicant must obtain a Fence Permit.
5. Applicant must comply with all plans submitted to the Building Department.
6. Applicant must abide by all applicable State, Village and Local Codes.

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Application of 44 Merrick Holding LLC. Applicant seeks a special exception for the erection of a fast-food establishment (Starbucks), along with associated area variances for minimum lot size, minimum buffer size and minimum number of required parking spaces in accordance with Sections 183-82 A. (7), 183-140.1 A., 183-140.1 B., and 183-129 of the Village Code. Premises located on the Northwest corner of the intersection of Merrick Rd and Ketcham Ave in a B-2 General Business District known as 44 Merrick Rd a/k/a SCTM#101-7-1-27.

Nicole Blanda, Buzzel, Blanda, Visconti LLP, Melville, NY, spoke on behalf of this application.

Findings:

- Applicant seeks a special exception for a Starbucks Restaurant with Drive-Thru, and Parking Area. Applicant is also seeking a variance for lot coverage, a reduction in the buffer zone size and required parking spaces.
- The lot area is .49 acres
- Ms. Blanda stated that the property is presently a mixed-use building that requires a lot of work to get to code. The owners assessed whether the existing building could be retrofitted, which would require significant expenditures for ADA compliance, sprinklers, etc. The present property condition makes it commercially impossible; the building needs to be torn down.
- Proposal is for a one (1) story Starbucks farmhouse style building. The building will have of thirty-four (34) seats inside and six (6) seats outside.
- The proposed drive thru will have a ten (10) car queue, which is compliant within code.
- There will be two curb cuts on the property, one on Merrick Road and one on Ketcham Ave.
- The refuse will be enclosed in the rear, screened from the street, and fenced in, with landscaping around it.
- There will be seventeen (17) parking spots provided on site. The Amityville Code requires minimum of twenty-five (25), that would a relaxation of eight (8) parking spaces.
- Ms. Blanda explained that seventy-five percent (75%) of a Starbucks business is projected to be through the drive through. With the advent of mobile ordering, a significant number of customers will come and go rather quickly.
- There are two municipal parking lots within two blocks east of the site (Bennett Place and Route 110/Broadway), and Starbucks would encourage its employees to use those spots and walk to work.

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- Proposed hours of operation are 5:30 or 6 AM to 10 PM, with five to eight (5-8) employees working per shift.
- The Starbucks deliveries will be made via box trucks, not tractor trailers.
- In response to The Board's inquiry, Ms. Blanda stated that Starbucks will not consider this site without a drive through.
- The board expressed concerns about having a drive through next to residential homes

Ethan Schukoske – Atlantic Traffic Design, 2929 Expressway Drive North, Suite 120, Hauppauge, NY 11749, prepared a traffic study in February and April 2021, which included archived data from NYS DOT pre-dates the COVID pandemic. The Starbucks and fast-food establishments are generally used as pass by uses. Mr. Schukoske stated that “pass by” is traffic that is already on the roadway, turn in when already on the roadway. It is not new traffic to the site, but people driving by. They looked at an Oceanside Starbucks which is similarly sized and assessed the parking need for this application. Mr. Schukoske stated they anticipate one hundred (100) new trips during a peak weekday morning, forty-eight (48) are new fifty-two (52) are pass by. The Board asked questions regarding how the traffic study was conducted, expressed concern regarding the selection of days and times used for the survey.

Ben Plumb, Bohler Engineering, 2929 Expressway Drive North, Suite 120, Hauppauge, NY 11749 spoke on behalf of the application and stated that the applicant proposed evergreen plantings that will be closely spaced and grow into a hedgerow, creating a buffer for property to the north. On the recommendation of an arborist, they look to preserve as much of the natural landscaping as possible. Nearly thirty percent (30%) of the site will be landscaped, which is a lot for a project like this.

Richard Handler, 195 Ocean Avenue, Amityville spoke on behalf of Amityville Historical Society. Mr. Handler said that he and the members of the Historical Society are opposed to this application. Mr. Handler believes the applicant applied under wrong section of statute. This should be heard as a use variance as there is a section where fast food restaurants should be not permitted under a two-lane road, and then there is a hardship standard. Mr. Handler also felt that this application should be heard again in person so public could come speak. He asked that the Village require their own independent traffic study. The Historical society asked that the sycamore trees on the property be protected. Mr. Handler stated that a former mayor's grandfather Humbert Martin, who was a famed Milliner (hat manufacturer), built this building. Mr. Handler also stated that there should be a SEQRA determination, as no environmental determination was done. He also added that other Starbucks locations have paid homage to their local history, and hopes the same would be done here if this were permitted to proceed.

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Ms. Blanda stated that she was advised to apply under this code by the former Building Inspector, Village Attorney, and the Mayor. Ms. Blanda said that a short form environmental study was filed when they filed their application with the Building Department. (May 5, 2021.) She would like to discuss with her clients the residents' concerns.

Dozens of residents spoke, and all were opposed to the application. Resident concerns included:

- overall quality of life, particularly as it relates to surrounding homeowners
- the impact on traffic, including a bottleneck already when traveling into Amityville on Merrick Road from the west at certain times of the day
- concern about the adequacy of the traffic study, including the days and times selected, and methodology of conducting it during COVID pandemic
- inadequate parking for employees and customers, with little likelihood that employees would walk to municipal lots (possibly parking on residential streets)
- cars lining up for the drive through on Ketcham could potentially block fire and EMS vehicles
- concern about erosion of charm and quaintness of the Village, particularly with the facade of the business facing the residential street (Ketcham) rather than the more major road (Merrick)
- concern about preserving the existing building
- discussion regarding impact on noise and air pollution
- concern for surrounding businesses that could be hurt by the competition
- discussion whether applicant applied under the correct section of the statute, and should this be heard as a use variance, which would require the applicant to demonstrate a hardship, and statement that fast food restaurants are not permitted on two-lane roads under Village code

The Board also received several letters residents, all in opposition to the application.

Chairmen Ubert asked for a motion to close this application and the board reserved their vote until a letter date.

A motion to close this application was made by Mr. Smith and was seconded by Mr. Ordon.

Vote on the Motion:	Chairperson Ubert	aye
	Vice Chairperson Cullen	aye
	Mr. Ordon	aye
	Mr. Smith	aye
	Mr. Taylor	aye

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Motion carried: 5 ayes 0 nays

Application of Rafael Denarski. Applicant seeks a special exception to maintain the installation of a 6' Fence in accordance with Section 183-139 A. (2) of the Village Code. Premises located on the west side of Central Ave in a B Residence District known as 23 Central Ave a/k/a SCTM#101-11-8-8.

Rafael Denarski, 23 Central Ave, Amityville, NY, spoke on behalf of his application.

Findings:

- Applicant recently purchased the home and stated that replaced an existing stockade fence.
- Mr. Denarski stated that fence does not block views and that his two adjacent neighbors had no opposition.
- Board asked applicant to taper fence down as it gets closer to the water.
- **Eric Meyer, 31 Central Ave, Amityville, NY 11701** lives two (2) houses south of applicant, the existing fence blocks some of his view and crosses across the bulkhead.
- **Denise Morrissey 39 Central Ave, Amityville NY 11701,** she does not feel like this style fence fits the character of the neighborhood, and wished he went through proper procedures and is disappointed he did not.
- **Mary Wood, Saugerties, NY 12477-3703 (Former owner, 2008-2015)** She stated there was four feet (4') fencing there, and in 2015 she removed fencing so they could repair bulkhead. When the home was being sold, there was an open fence permit which she closed during the sale process, but she intended to maintain the site line from the street.

A motion to approve this application was made by Mr. Smith and was seconded by Chairperson Cullen.

Vote on the Motion:	Chairperson Ubert	aye
	Vice Chairperson Cullen	aye
	Mr. Ordon	aye
	Mr. Smith	aye
	Mr. Taylor	aye

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Motion carried: 5 ayes 0 nays

Stipulations:

1. Applicant must taper fence down starting eight feet back from waterway so that the fence is no more than 4' high at water's edge. Applicant must make these changes within 30 days and have a re-inspection by the Building Inspector.
2. Applicant must install fence with the good side facing towards the neighbors.
3. The fence must be properly anchored.
4. Applicant must obtain a Fence Permit.
5. Applicant must comply with all plans submitted to the Building Department.
6. Applicant must abide by all applicable State, Village and Local Codes.

Motion to adjourn the meeting was made by Mr. Ordon seconded by Vice Chairperson Cullen.

Vote on the Motion:	Chairperson Ubert	aye
	Vice Chairperson Cullen	aye
	Mr. Ordon	aye
	Mr. Smith	aye
	Mr. Taylor	aye

Motion carried: 5 ayes 0 nays

Chairperson Ubert adjourned the meeting at 8:43pm.

Respectfully submitted:

Catherine Murdock, Clerk/Treasurer