

Decision

A public hearing was held before the Board of Zoning Appeals of the Village of Amityville, Suffolk County, New York at Village Hall on Thursday July 28, 2016 at 7 p.m. A recording of the hearing is on file with the Village Clerk.

The following persons were present:

Tracey Cullen, Chairperson
Richard Ubert, Vice Chairperson
Kirk Hurme, Member
Todd Brice, Member
Bill Ordon, Member
Chuck Vinciulla, Alternate Member
Robert Alweis, Building Inspector
Stephen Greenwald, Director of Operations

Michael Schilling, Owner/Applicant
Rivi Bayonne, Tenant
Ray Caliendo, Art of Form Architecture (Architect for the Tenant)
Gilbert Bayonne, Son of Tenant
Members of the Public

At various times preceding the hearing, physical inspections of the exterior of the site (property and building) were made by all members of the Board of Zoning Appeals ("the Board"), as well as Mr. Alweis. Public Notices of the Meeting were printed in The Amityville Record in accordance with statutory requirements. Copies of the application and the Public Notice are on file with the Village Clerk.

Following deliberation and comment at the open meeting, the Board, on a motion duly made by Richard Ubert and seconded by Bill Ordon, by a vote of 5 for and against, the Board denied the Application.

Relief Sought

Applicant seeks a parking variance from the Board pursuant to Amityville Village Code ("AVC") § 183-129; specifically, he seeks relief from the parking requirement for the operation of a restaurant on the premises.

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Overview and Background:

Michael Schilling ("Applicant") is the owner of the premises, located at 127 Merrick Road, Amityville (also known as Suffolk County Tax Map # 101-7-7-2). The premises are located on the south side of Merrick Road, approximately 205 feet east of Richmond

Avenue in a B-2 General Business District. The subject lot is improved, with a structure on the property. The structure is divided, with the west side of the building operated by the applicant as "Anflo Auto Electric," an electric motor store. The east side of the building is vacant, and is the subject of this application. The premises contains a rear parking lot with a number of parking spaces, many of which are not properly marked in accordance with Village Code. No on-site parking is available to the subject application since the property owner has already rented those spaces to other third parties.

The Applicant's Tenant seeks to open a Caribbean restaurant in the west section of the structure. Applicant seeks relief from the Board for parking space requirements.

The Application:

Applicant seeks relief, on behalf of his Tenant, from § 183-129 of the AVC, which requires restaurants within the Village to have a paved parking area or garage facility or both, with 1 space for each 4 seats. A 38-seat restaurant would require 10 parking spaces. The Applicant has zero parking spaces. The subject lot, which is within a B-2 General Business District, is adjacent to a residential district.

Proof of registered, return receipt letters to all affected residents as required by the Code, and due publication and posting was submitted and filed with the Village's Director of Operations. The Chairperson and Director of Operations each personally observed a sign posted on the premises regarding the hearing, in accordance with the Code.

Code Considerations:

AVC requires restaurants within the Village to have a paved parking area or garage facility or both, with parking spaces that are nine feet wide and 19 feet long per space. There must be 1 space for each 4 seats. A 38-seat restaurant would require 10 parking spaces. Applicant has zero parking spaces available.

Upon an application for a parking variance, the area variance standards apply. Thus, the Board must consider the criteria promulgated in New York State Village Law ("VL") § 7-712-b(3) which states:

In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighted against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board shall also consider: (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; (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; (3) whether the requested area 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; which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting on the area variance.

Findings:

Statements from Applicant and Tenant

1. Applicant owns the building and is leasing the space to prospective proprietors.
2. Tenant proposes a Haitian style restaurant, called Paradise Caribbean Restaurant, to occupy the western portion of the building, with seating for 34 people and an additional 4 seats at a bar area.
3. Applicant has zero parking spaces available, and is seeking a variance for the 10 parking spaces needed.
4. Applicant was granted a Special Exception, by the Zoning Board of Appeals on October 15, 2015, to permit the outside storage of motor vehicles in the rear of the property (for the Anflo business entity) which is why there is no available on site parking for the proposed restaurant.
5. The hours of the restaurant's operation were proposed by Tenant as Monday-Thursday 10:00am-10:00pm, Friday and Saturday 11:00am-12:00am and Sunday from 9:00am-9:00pm.
6. The prospective business owners have no restaurant operation experience.
7. The prospective business owners stated that the restaurant will be mostly used by family and friends even though it will be open to the public
8. A five (5) year lease has already been signed with a rent of \$1,950 per month and Tenant has been paying rent.
9. Tenant stated that a grease trap will have to be installed as required by the Suffolk County Department of Health.
10. Tenant's son stated that most of the employees will be coming by train from Queens and that the proprietors will transport them from the train station to the restaurant via van.
11. Tenant stated that they will shop for their own supplies and that there will be minimal deliveries, which will have to be done directly on Merrick Road, as the driveway is too narrow for a delivery truck.

Statements from Community

12. Three residents spoke about the application, and two who were unable to attend submitted letters regarding the application. All five were not in favor of the application
 - a. Phil Gianfresco of 19 Hildreth Avenue, stated he opposed the application. He lives directly behind the building and has complained in the past over how the property is not maintained. He stated that Applicant, as Anflo, has violated the terms of its special exception and has little faith that Applicant would comply with any new stipulations. He also has concerns about adding to the existing parking problem already on Merrick Road and that many times cars are parked in front of his house due to the lack of parking for the other existing businesses. He is also concerned about fire safety and the proximity to his home. Operating a restaurant with such a narrow driveway to get back towards the kitchen was very concerning to him.
 - b. Kerry Doran of 66 Ocean Avenue also spoke out against the application, due to the already existing lack of parking in the area. He stated that the Bennett Municipal Parking Lot is usually filled almost to capacity already. He believes parking has been a significant problem since Big Al's Gym opened, and that if you cannot provide parking you should not open a business.
 - c. John Langan of 144 South Ketcham Avenue also stated he was against the application. He said that the project sounds like a nice restaurant, but he is worried about compounding an already existing parking problem. He stated he is also concerned about deliveries being done on Merrick Road, particularly so close to the intersection with Broadway/Route 110. He further asked how the owners would ensure that the patrons only park in the municipal lot. Mr. Langan was opposed to the application.
 - d. Jean Dull of 64 Bennett Place was unable to attend the meeting, but submitted a letter, which is on file with the Village. She opposed the application, because of the already existing parking issue on Merrick Road. She also has concerns as to noise and loitering in the municipal lot that is already a problem.
 - e. Allison and Myles Varley, 20 Hildreth Court, were also unable to attend the meeting, but sent a letter in opposition, expressing concerns with the already existing parking issues in the area.

Other Findings

13. According to Village records, the Applicant/property owner rents out part of the rear parking area to an out-of-Village vehicle towing company. The License granted by the Board of Trustees to that company requires a reserved Village location capable of storing vehicles to qualify for a license. (See, CVA §164-3H).

14. Each member of the Board is familiar with the location of the premises, the roads, parking and emergency access conditions, and each member of the Board is familiar with the character of the neighborhood in which the subject premises are located, including the physical and environmental characteristics of the neighborhood.
15. Each member of the Board is concerned with sound municipal planning and with the policies necessary to promote the health, safety and welfare of Amityville's residents.
16. The former tenant of the premises operated a tattoo business.
17. On October 15, 2015, the Zoning Board of Appeals granted a special exception to allow Applicant to store up to eight neatly placed vehicles.
18. Applicant has leased space to Joseph Garguilo of All Town Towing. All Town Towing's application for a towing license was approved at the January 25, 2016 Board of Trustees meeting, with a stipulation that it submit a site plan detailing 15 parking spots and paint the west exterior wall.
19. The Board of Appeals is reasonably concerned that a patron or delivery agent will be unaware that there is no parking available in the rear yard, and attempt to use the rear lot. Access to the lot behind the store front is accomplished only through an exceptionally narrow driveway, nestled between two (2) structures which is not appropriate for vehicles to simultaneously exit and enter, since the driveway is only about eleven (11') feet wide. That driveway is the sole means of ingress and egress for that lot. Patrons are likely to enter into that narrow driveway, whose visibility is completely blocked by buildings on both sides when approaching from Merrick Road, until a driver has actually entered the driveway space

The adjacent buildings front up to the sidewalk line and prohibit any visibility of pedestrians or vehicles on Merrick Road. These dangerous conditions coupled with the commercial vehicles, tow trucks and towed vehicles render any use of that driveway, for restaurant employees or patrons a dangerous proposition.

It is likely that a patron or delivery agent, unfamiliar with these conditions, will be confronted by a car, truck or worse a tow truck hauling a damaged vehicle. At that point, and since it is physically impossible for two vehicles to pass, the entering vehicle would have to back up into oncoming traffic traveling easterly on Merrick Road, (NY-27A) a major thoroughfare. The situation is even more aggravated by the fact that there is automobile parking along the Merrick Road curb line, which substantially restricts the visibility of both the oncoming traffic and any vehicle exiting the driveway.

Several years ago, in a similar Board of Appeals Application regarding Villa Avanzo Restaurant on Merrick Road, then Fire Chief Juliano advised the Zoning

Board of Appeals that the Amityville Fire Department recommends a driveway of at least sixteen (16') feet to allow proper ingress and egress, especially with two-way usage. The subject driveway is approximately eleven (11') wide.

Due to the serious potential for personal injury and property damage, to motorists attempting to use that driveway and to pedestrians walking by, this Application should be denied upon those grounds alone.

20. The Board noted substantial interest in the application by larger than usual attendance at the public hearing. Although the sentiments of surrounding neighbors are not dispositive, the Board did give their sentiments some weight, especially with respect to their sense of the negative impact upon their quality of life as a result of the proposed project.
21. There are a limited number of designated street parking spaces near the premises, and upon observation of this Board, they are generally occupied throughout the day and evening, by the patrons and employees who already utilize those spaces for the dozen businesses which exist in close proximity.
22. Tenant stated it will be required to accept deliveries on Merrick Road. The front door is approximately 200 feet from the base of Route 110. The Board is concerned about the traffic concerns that may arise from a delivery truck, of any size, stopping the flow of traffic while unloading delivery orders so close to a highly traveled State Road. Merrick Road is two lanes with very narrow shoulders and there is no room for traffic to flow in two directions if a delivery truck stops to unload. The Board is concerned about traffic being impeded on both Merrick Road as well as backed up at the light where Route 110 (Broadway) and Merrick Road intersect. The Board believes the health, safety and welfare of residents traversing Merrick Road, and potentially Route 110, as well as those residents and businesses adjacent to the property, will be detrimentally impacted while groceries and supplies would be delivered to the restaurant.
23. The proposed business will detrimentally impact neighbors who reside adjacent to the location. It is projected to operate throughout the day and into the evening 7 days per week, with an adjacency to a residential neighborhood. There is no parking available, and residents located nearby have concerns about parking in their neighborhoods, and disruption to traffic patterns at and near the intersection of Route 110 and Merrick Road, particularly as patrons attempt to search for parking, and deliveries are made at the front entrance. Although there is a municipal parking lot approximately 250 feet to the east, that lot services existing businesses and its approximately 26 regular and 2 handicapped parking spaces are substantially full at peak hours of use. Existing high volume users such as Big Al's Gym, ER Dox Emergency Care and the Revolution Music Hall, along with the Amityville Fire Department Firehouse directly across the Street from that lot, already tax the availability of spaces in that lot.

24. The Board has heard no testimony and has no knowledge of Applicant attempting to obtain parking elsewhere, i.e. renting from a neighboring business, which, upon information and belief, has been done by at least one neighboring business with parking needs that exceeds the size of their lot. This would be an alternate method, other than an area variance, that would be feasible for the applicant to pursue. Another alternative would be for Applicant to discontinue use of the rear lot by the third party tenant(s) to provide parking spaces for Tenant. Applicant has not expressed any interest or willingness to do so.
25. The requested relief is more than de minimus. Applicant does not have any parking spots, yet is required to provide ten spaces. This is a substantial variance.
26. The proposed variance will adversely impact the physical and environmental conditions of the neighborhood. With no on-site parking it is likely that cars will slow up along the front of the restaurant to allow patrons to exit. The restaurant is approximately 180 feet from the intersection of Merrick Road and State Route 110 (Broadway). A traffic light monitors movement at that major intersection. It is anticipated that cars may queue up as they wait for a parking space to become available, which is especially dangerous since Merrick Road at that point has only one (1) lane going east and one (1) lane going west. Cars are likely to circle the block looking for a parking space in the residential section which has limited street parking. Because of the Firehouse around the corner, there is no street parking on either side of Bennett Place, south from Merrick Road to Hildreth Court for about 200 feet. Nor is there street parking north of Merrick Road for the first two hundred (200') feet north along both sides of Broadway. Granting a parking variance will substantially aggravate an already difficult and dangerous situation.
27. The alleged difficulty was self-created by the Applicant and his Tenant. Tenant had actual, knowledge that the property had no parking and that parking was required by the Code for this business. Upon information and belief, employees of the Village's Building Department repeatedly advised Tenant that the property required parking spots, and suggested they seek out other properties within the Village that offered parking.
28. The Findings herein are based upon the documents presented, testimony heard, as well as the comments of the Applicant, Tenant, and other persons which were presented on the record. Findings were also premised upon personal observations made by each Board member who made a visual inspection of the premises. Board members also utilized their general observations and impressions of Amityville nurtured by many years as residents of the Village.

Conclusion

NOW, THEREFORE, BE IT RESOLVED that the Application of Michael Schilling, seeking a parking variance pursuant to AVC § 183-129, is hereby denied.

On a poll of the Board, the following vote was taken to deny the Application:

Tracey Cullen, Chairperson - Yes

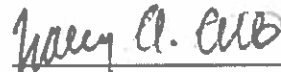
Richard Ubert, Vice Chairperson - Yes

Todd Brice - Yes

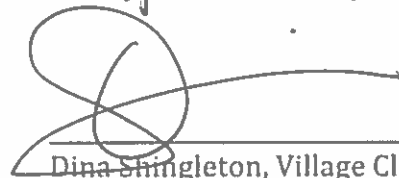
Kirk Hurme - Yes

Bill Ordon -Yes

Dated: September 29, 2016
Amityville, New York



Tracey A. Cullen, Chairperson



Dina Shingleton, Village Clerk