

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF MIDLAND PARK**

RE: Miguel Garcia and Amber Garcia
38 Van Blarcom Avenue
Block 20, Lot 5.02
R-1 Zone District

RESOLUTION

WHEREAS, Miguel Garcia and Amber Garcia (the “Applicants”) filed an Application with the Midland Park Zoning Board of Adjustment (the “Board”) seeking approval of a variance for fence height so as to allow for the construction of a 6-foot high fence along their Habben Avenue property line at their existing home located at 38 Van Blarcom Avenue, Midland Park, New Jersey (the “Property”); and

WHEREAS, a Public Hearing was held by the Board on April 14, 2021; and

WHEREAS, the Applicants’ Notice of Public Hearing has been served on all required parties and published in accordance with the requirements of the Municipal Land Use Law; and

WHEREAS, the Board has considered the Application and supporting documents submitted by the Applicants as they relate to the applicable provisions of the Midland Park Zoning Ordinance; and

WHEREAS, the Board has considered the following testimony presented at the Public Hearing:

Testimony

1. The Board heard testimony from Applicant Amber Garcia (“Applicant”). The Applicant testified that they proposed to replace their existing 4-foot fence located along the Habben Avenue property line with a solid 6-foot high fence made of PVC or a composite. The Applicant testified that the 6-foot high solid fence was necessary for safety and privacy reasons since the new Starbucks drive-thru is directly across from the Applicant’s property. The Applicants provided four (4) photographs depicting deliveries, traffic, and patrons produced by the new Starbucks in close proximity to the Applicants’ property. The photographs were marked into evidence as **Exhibits A1** through **A4**.

The Applicant testified that the proposed fence would run along the Habben Avenue property line from the rear of the house to the rear property line. The Applicants provided a survey of the property demarcating the location of the proposed fence which was marked into evidence as **Exhibit A5**. The Applicants agreed to the condition that the color of the fence would be neutral.

The Applicant testified that the new Starbucks has caused an increase in vehicular and pedestrian traffic as well as litter and noise. The Applicants are seeking the fence to shield their backyard and property from such traffic, noise, and litter.

Comments and Findings of the Board

2. The Board finds that the Applicants have met their burden of proof, pursuant to N.J.S.A. 40:55D-70(c)(2), as the 6-foot fence along the Habben Avenue property line will provide a needed buffer from the additional traffic, noise, and litter created by the new Starbucks Coffee House and drive-thru. The Board finds that the granting of the variance would promote the purposes of the Municipal Land Use Law by providing conditions that would be safer and more accommodating for single family living.

3. The Board finds that the granting of the variance would be consistent with the purposes of the Municipal Land Use Act and that the benefits of any deviation from the zoning ordinance will substantially outweigh any detriments. The Board finds that the Application for variance can be granted without substantial detriment to the neighboring properties, the public good, or without substantially impairing the zoning plan or the zoning ordinance of the Borough of Midland Park. Specifically, the Board takes note that the 6-foot fence will not have a substantial negative impact as it is directly adjacent to Habben Avenue and the new Starbucks Coffee House and drive-thru.

NOW, THEREFORE, BE IT RESOLVED, by the Midland Park Zoning Board of Adjustment that, based upon the above findings of fact and conclusions of law, the Application of Miguel Garcia and Amber Garcia for variance as described herein is hereby GRANTED, and that the action taken by the Board of Adjustment on April 14, 2021 be and is hereby memorialized subject to the following conditions:

1. The Applicants are required to obtain a building permit and post all necessary fees and costs with the Borough prior to any construction; and
2. All construction shall be completed in accordance with the plans and drawings marked into evidence, along with the testimony of the Applicants and their experts, and in accordance with all applicable, state, county, and municipal codes, ordinances, rules, regulations, and in accordance with the instructions of the construction code of the Borough; and
3. The variance relief granted by this Resolution applies only to such variance requests as depicted in the Resolution.
4. The color of the fence to be installed pursuant to this resolution shall be neutral in color.

BE IT FURTHER RESOLVED that the Chairperson and Secretary of the Board are hereby authorized to affix their signatures to this Resolution confirming approval of the Application.

Approved: May 12, 2021

John Meeks, Secretary

Les Anderson, Chairperson