

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
July 2, 2009**

Mr. Mullen called the meeting to order at 7:41 P.M.

Mr. Mullen asked all to stand for the Pledge of Allegiance.

Mr. Mullen made the following statement: As per requirement of P.L. 1975, Chapter 231. Notice is hereby given that this is a Regular Meeting of the Borough of Highlands Zoning Board of Adjustment and all requirements have been met. Notice has been transmitted the Two River Times and the Asbury Park Press. Notice has been posted on the public bulletin board.

ROLL CALL:

Present: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Mullen, Mr. Kutosh

Late Arrival: Mr. Gallagher arrived at 7:52 P.M.

Absent: Mr. Britton, Ms. Tierney

Also Present: Carolyn Cummins, Board Secretary
Gregory Baxter, Esq., Board Attorney
Joseph May, P.E., Board Engineer

**ZB#2009-3 Pittsburgh Chili Kings
Block 69 Lot 9 – 21 Atlantic Street
Application Review & Set P.H. Date**

Present: Henry Wolff, Esq., Applicants Attorney
Martin Britton, Applicants Contractor

The Zoning Board reviewed the Pittsburgh Chili King application with Mr. Wolff and the following was stated:

1. The Board requested the applicant to provide the elevation or section of the building which would illustrate the height of the building.
2. The applicant must apply to the Flood Application.
3. The applicant needs to provide a Zoning Chart Analysis of what is a required use what is proposed.
4. The Board stated that the balcony's or decks on the second and third floor should be considered part of the primary structure. So the applicant would need a variance for rear yard setback.
5. The applicant must submit a set of drawings to scale for the Board Engineer and Board File.
6. Photographs of the site and surrounding properties should be brought to the hearing.
7. Article 20 of the Borough Zoning Ordinance deals with undersized lots and that is a good basis for the applicant's presentation.

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Mr. Fox offered a motion to set a public hearing date for this application for August 6, 2009, seconded by Mr. Braswell and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Kutosh, Mr. Mullen

NAYES: None

ABSTAIN: None

**ZB#2009-2 Dorau, Karl & Hala
Block 115 Lot 3 – 130 Linden Avenue
Approval of Resolution**

Mr. Mullen read the title of the following Resolution for approval:

Mr. Kutosh offered the following Resolution and moved on its adoption:

7/2/09

**RESOLUTION APPROVING BULK VARIANCES
FOR DORAU AT 130 LINDEN AVENUE**

WHEREAS, the applicants, KARL and HALA DORAU, are the owners of a single-family home at 130 Linden Avenue, Highlands, New Jersey (Block 115, Lot 3); and

WHEREAS, the DORAUS filed an application to reconstruct an attached elevated deck to their home; and

WHEREAS, all jurisdictional requirements have been met, and proper notice has been given pursuant to the Municipal Land Use Law and Borough Ordinances, and the Board has jurisdiction to hear this application; and

WHEREAS, the Board considered the application at a public hearing on June 4, 2009; and

WHEREAS, the Board heard the testimony of the applicant, HALA DORAU, and her engineer, TARIQ BASHIR; and

WHEREAS, the applicants submitted the following documents in evidence:

- A-1: Variance application (4 pages);
- A-2: Zoning Officer denial;
- A-3: 11/12/07 survey by BRIAN T. YURO;
- A-4: 3 pages of drawings by TARIQ BASHIR, of GENTECH ENGINEERING ASSOCIATES dated 5/26/09;

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- A-5 Architectural plan by PAUL DAMIANO dated 5/28/09;
A-6: Soils report dated 5/27/09 by TARIQ BASHIR, of GENTECH;

AND, WHEREAS, the following additional exhibits were marked into evidence as Board exhibits:

- B-1: Board Engineer's review letter dated 5/29/09;
B-2: 5/30/09 letter report of WILLIAM MERCURIO, of CMX ENGINEERING, regarding the GENTECH letter;
B-3(a through c): 3 aerial photographs of subject property and its environs;

AND, WHEREAS, no persons appeared in opposition or to ask questions about this application; and

WHEREAS, the Board, after considering the evidence and testimony, has made the following factual findings and conclusions:

1. The applicants are the owners of a single-family home located in the R-2.02 Zone.
2. When the DORAUS purchased their home, there was an L-shaped deck attached to the home, as shown on their 11/12/07 survey (A-3). The deck is on the slope side (Bayside Drive) of the home, while the front of the home faces Linden Avenue.
3. Shortly after the DORAUS purchased their home, their homeowner's insurance company came and made an inspection, as a result of which the insurance company advised them that they had to repair the deck, or the insurance policy would be canceled. Since part of the deck was rotted and missing pieces, it was not in reparable condition. As a result, the DORAUS determined to completely remove the deck and rebuild it.
4. The proposed new deck will be much safer than the old one and have handrails.
5. The new deck replacement was designed by MR. BASHIR, of GENTECH.
6. The Board Engineer's office was concerned about the soils on top of the slope, and where the footings would be at the rear of the home. As a result, three soil borings were done on the property—two at the top of the slope, and one at the bottom.
7. The soils report was admitted into evidence by the Board. There was nothing in that report which would contradict the installation of a deck and its footings, as requested by the applicants.
8. The old deck was on exposed piers.
9. Of the two options proposed by MR. BASHIR in his report, the applicants have chosen option #1 which is individual footings (Exhibit A-4, sheet

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2 of 3). This option was also preferred by the applicant's engineer, the Board and the Board Engineer.

10. Excavation for the piers will be done by hand, which will reduce any possible instability caused to the slope during construction.

11. MR. BASHIR testified that the black sand layer referred to in his report was probably historic fill, but was not contaminated. He further testified that the lot is stable, to the bank. The applicants engineer testified that testing was completed on both the top of the slope and the toe of the slope, to insure global stability.

12. MR. BASHIR testified that all of the diggings would be carted away, as they dig, and that nothing will be thrown down the hill. Because of the size of the footings, however, there will not be much soil displaced.

13. The piers will not be tied together, which was one of the proposals. They will be isolated on the right side, and in the front as well.

14. The tying of the deck to the house also creates lateral stability, in addition to the piers.

15. The footings are, however, close to the slope, as a result of which the Board asked questions in order to satisfy itself that the slope and the deck would both be safe if the applicants' plan was approved. Based on the testimony of the applicants' engineer, the Board is satisfied that the deck can be safely reconstructed in accordance with the plans submitted, and that the integrity of the slope will not be impaired.

16. MR. BASHIR testified, and the Board accepts his testimony, that the slope is and will remain stable; and that the deck can be installed without any detrimental effect on any neighbor.

17. The piers to be installed will be a minimum of three feet deep, below grade. They will be in excess of three feet if on the downward slope.

18. The applicant's engineer testified that the construction should be monitored. Later in the hearing, the applicant agreed to have MR. BASHIR be in charge of monitoring the construction. The Board was pleased to hear that.

19. The applicants seek a variance for side yard setback of 5.8 feet and 19.2 feet, where 6 feet and 8 feet are required. The difference is *de minimus* and is preexisting.

20. The applicant also seeks a variance from Ordinance 21-65 for steep slopes and slump blocks, where the proposed disturbance is within 15 feet of the top of the slope. There was testimony regarding various distances from the top of the slope to the pier, the shortest of which may be as little as 2 feet. Mr. Bashir is to provide the pier layout prior to any disturbance of the existing rear yard area to insure that all construction is in accordance with the intentions of the engineering drawings---specifically, that no pier be located within 2 feet of the top of the slope.

21. The reconstruction of the proposed exterior unenclosed deck in an L-shaped configuration at the rear of the home will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance,

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especially when one considers the age of this home and that the preexisting deck was removed relatively recently in order to reconstruct a new and safer deck. The Board is empowered to grant this bulk variance pursuant to N.J.S.A. 40:55d-70c(2), since the purposes of the M.L.U.L. would be advanced, and the benefits of these deviations substantially outweigh any detriments.

WHEREAS, the application was heard by the Board at its meeting on June 4, 2009, and this resolution shall memorialize the Board's action taken at that meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of KARL and HALA DORAU to reconstruct an attached elevated deck based on the plans submitted is hereby approved; and variances are hereby granted for the preexisting deficiency on minimum side yard setback (6 and 8 feet are required, where 5.8 feet and 19.2 feet are proposed). Further, a variance is granted from Ordinance 21-65 for steep slopes and slump blocks, so that the applicants may reconstruct their deck in accordance with the plans submitted;

AND BE IT FURTHER RESOLVED that this approval is subject to the following conditions:

1. The individual pier configuration will be used.
2. A soil stabilization plan, such as using jute mat, will be employed prior to construction. Upon completion of the deck construction, the applicant is to provide
3. permanent soil stabilization in the form of seeding or other permanent stabilization method.
3. The installation of the piers and deck will be overseen by a licensed engineer, such as the applicant's engineer, TARIQ BASHIR.
4. No vegetation will be removed during construction.
5. No machines will be used on the slope side of the property during construction.
6. No soil material is to be stockpiled on the property.
7. Pier layout is to be provided pursuant to para. 20 herein.

Seconded by Mr. Fox and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Fox, Mr. Anthony, Mr. Kutosh,
Mr. Mullen

NAYES: None

ABSTAIN: None

Mr. Gallagher arrived to the meeting.

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Professional Service Resolution

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Mr. Mullen read the titles of the following Resolutions for approval:

Ms. Ryan offered the following Resolution and moved on its adoption:

**RESOLUTION
BOROUGH OF HIGHLANDS ZONING BOARD
APPROVING PROFESSIONAL LEGAL SERVICES FOR THE PERIOD OF JULY 1,
2009 THROUGH DECEMBER 31, 2009**

WHEREAS, the Borough of Highlands Zoning Board has a need for Professional Legal Services; and

WHEREAS, such Professional Legal Services can only be provided by licensed Professionals and Gregory Baxter, Esq. of Caruso & Baxter is so recognized; and

WHEREAS, the Borough of Highlands Zoning Board memorialized a Resolution on January 15, 2009 appointing Gregory Baxter, Esq., of the firm of Caruso & Baxter as Zoning Board Attorney for a (1) one year term expiring December 31, 2009; and

WHEREAS, the law office of Caruso & Baxter has completed and submitted a Business Entity Disclosure Certification which certifies that Caruso & Baxter has not made any reportable contributions to a political or candidate committee in the Borough of Highlands in the previous one year, and that the contract will prohibit them from making any reportable contributions through the term of the contract; and

WHEREAS, the determination of the value has been placed on file with the resolution of appointment with the Board Secretary; and

WHEREAS, the law office of Caruso & Baxter has submitted the C.271 Political Contribution Disclosure form in accordance with the NJSA 19:44A-20.26 (P.L. 2005,c271,s2).

WHEREAS, in addition to Professional Services Contract a contract is hereby awarded for an additional amount not to exceed \$600.00 for legal services provided to the Zoning Board for the period of July 1, 2009 through December 31,2009 for legal services provided to the board which are not covered under annual salary amount; and

WHEREAS, a certification of availability of funds is hereby provided by the Chief Financial Officer contingent upon adequate funding being provided by the Borough of Highlands Governing Body in the State Fiscal Year 2010 Budget:

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Zoning Board Budget
Account #1151-3755 \$600.00
Account #1151-3755 \$5,205.00
July 1, 2009 through December 31, 2009

Stephen Pfeffer, CFO

WHEREAS, the Local Public Contracts Law, NJSA:11-1 et. Seq., requires that notice with respect to contract for Professional Services awarded without competitive bids must be publicly advertised.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Highlands Zoning Board as follows:

1. That Gregory Baxter, Esq., from the firm of Caruso & Baxter is hereby retained to provide Professional Legal Services as described above for an amount not to exceed \$600.00 in addition to retainer amount of \$5,205.00 for the period of July 1, 2009 through December 31, 2009.
2. This contract is awarded without competitive bidding as a "Professional Service" in accordance with the Local Public Contracts Law, NJSA 40A:11-5(1)(a) because it is for services performed by person authorized by law to practice a recognized profession.
3. A copy of this Resolution shall be placed on file with the Board Secretary.
4. The Board Secretary is hereby directed to publish notice of this award as required by law.

Seconded by Mr. Kutosh and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher,
Mr. Kutosh, Mr. Mullen

NAYES: None

ABSTAIN: None

Mr. Fox offered the following Resolution and moved on its adoption:

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**RESOLUTION
BOROUGH OF HIGHLANDS ZONING BOARD
AUTHORIZING THE AWARD OF A NON-FAIR AND OPEN CONTRACT FOR
PROFESSIONAL ENGINEERING SERVICES
FOR THE PERIOD OF JULY 1, 2009 THROUGH DECEMBER 31, 2009**

WHEREAS, the Borough of Highlands Zoning Board has a need for Professional Engineering Services; and

WHEREAS, such Professional Engineering services can only be provided by a licensed professional; and

WHEREAS, the Borough of Highlands Zoning Board memorialized a Resolution on January 15, 2009 appointing Joseph May, P.E. of CMX, Inc. as Zoning Board Engineer for a (1) one year term expiring December 31, 2009; and

WHEREAS, the Board Secretary has determined and certified in writing that the value of the contract will exceed \$17,500; and

WHEREAS, CMX, Inc., has completed and submitted a Business Entity Disclosure Certification which certifies that CMX, Inc., has not made any reportable contributions to a political or candidate committee in the Borough of Highlands in the previous one year and that the contract will prohibit CMX, Inc. from making any reportable contributions through the term of the contract; and

WHEREAS, CMX, Inc., has completed and submitted a Political Contribution Disclosure Form in accordance with P.L. 2005, c271; and

WHEREAS, this contract is to be awarded for an amount not to exceed \$2,100.00 for Professional Engineering Services provided to the Borough of Highlands Zoning Board for the period of July 1, 2009 through December 31, 2009; and

WHEREAS, certification of availability of funds is hereby provided by the Chief Financial Officer contingent upon the Governing Body of the Borough of Highlands adopting the SFY 2010 Municipal Budget.

Planning Board Budget
Account #1151-3757 = \$2,100.00
July 1, 2009 – December 31, 2009

Stephen Pfeffer, Chief Financial Officer

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WHEREAS, the Local Public Contracts Law, NJSA40A:11-1 et. Seq. requires that notice with respect to contract for Professional Services awarded without competitive bids must be publicly advertised.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Highlands Planning Board as follows:

1. That Joseph May, P.E. of CMX, Inc., is hereby retained to provide Professional Engineering Services as described above for an amount not to exceed \$2,100 for the period of July 1, 2009 through December 31, 2009.
2. This contract is awarded without competitive bidding as a "Professional Service" in accordance with the Local Public Contracts Law, NJSA 40A:11-5(1)(a)(i) because it is for services performed by persons authorized by law to practice a recognized profession.
3. A copy of this Resolution shall be placed on file with the Zoning Board Secretary.
4. The Borough of Highlands Zoning Board Secretary is hereby directed to publish notice of this award as required by law.

Seconded by Mr. Kutosh and adopted on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher,
Mr. Kutosh, Mr. Mullen

NAYES: None

ABSTAIN: None

Request for Change of October Meeting Date

The Board discussed the Board Attorney's request for a change of the October Meeting Date.

Ms. Ryan offered a motion to change the October Zoning Board Meeting date from October 1, 2009 to October 15, 2009, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Gallagher, Mr. Kutosh,
Mr. Mullen

NAYES: None

ABSTAIN: None

Approval of Minute

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Mr. Mullen requested an amendment to the June 4, 2009 Minutes on page 6, the blank line should be filled in with "soil bearing capacity".

Mr. Fox offered a motion to approve the June 4, 2009 Minutes, seconded by Mr. Anthony and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Braswell, Mr. Fox, Mr. Anthony, Mr. Mullen, Mr. Kutosh

NAYES: None

ABSTAIN: Mr. Gallagher

Communications

Highlands 2009 Master Plan Reexamination Report & Land Use Plan Amendment

The Board briefly discussed the recent Master Plan Reexamination Report & Land Use Plan Amendment.

Letter from Mrs. Dorau RE: Engineering Expenses

Mr. Baxter explained to Mrs. Dorau that the Borough Administrator or Clerk is the person that deals with applicants appeals of Professional Service expenses.

Ms. Ryan offered a motion to adjourn the meeting, seconded by Mr. Fox and all were in favor.

The Meeting adjourned at 8:09 P.M.

CAROLYN CUMMINS, BOARD SECRETARY