

**Borough of Highlands  
Zoning Board of Adjustment  
Regular Meeting  
August 6, 2009**

Mr. Mullen called the meeting to order at 7:45 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 and all requirements have been met. Notice has been transmitted to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board.

**ROLL CALL:**

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

**Absent:** Mr. Gallagher

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

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**ZB# 2009-4 Sarosy, Marie  
Block 110 Lot 10 – 224 Linden Avenue  
Application Review & Set P.H. Date**

**Present:** Marie Sarosy

Mr. Mullen stated that this is an application to build a detached two-car garage in the rear yard.

The Board reviewed the Sarosy application and the following comments were made:

1. The applicant needs to provide testimony regarding the height of the garage.
2. The applicant must provide photographs of the nature of the setting of the garage.
3. Grading – the documents show a flat slab and the applicant should consider the grade.

Mr. Fox offered a motion to set this matter for a public hearing on September 3, 2009, seconded by Ms. Ryan and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Braswell, Ms. Ryan, Mr. Fox, Mr. Anthony, Mr. Britton, Ms. Tierney,  
Mr. Mullen

**NAYES:** None

**ABSTAIN:** None

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**ZB#2009-3 Pittsburgh Chili Kings  
Block 69 Lot 9 – 21 Atlantic Street  
Hearing on New Business**

**Present: Henry Wolff, Esq., Applicants Attorney  
Martin Britton, Contractor  
Stephen Sherman, Member of Pittsburgh Chili Kings**

**Conflict: Mr. Britton stepped down**

Mr. Wolff stated that he just recently received the comments from the Flood Review Officer and they will comply with all requirements and they will have drawings to that effect. He believes that the proposed height of 32 and a ½ feet does not require a height variance.

Mr. Baxter stated that he reviewed all of the public notices and finds them to be in proper order therefore the Board can take jurisdiction on this matter.

The following documents were marked into evidence:

- A-1: Variance Application;
- A-2: Zoning Permit Denial dated 3/12/09;
- A-3: Survey Prepared by Thomas M. Ernst Dated 2/27/07 and Revised 4/16/09;
- A-4: Sketch Plat Prepared by R. Stockton dated 7/27/09;
- A-5: Architectural Drawing, One Sheet Prepared by D. Winters A.I.A. dated 7/17/09;
- A-6: Large Copy of Tax Map Sheet 14;
- A-7a-g: Seven Photographs of Existing Site;
- A-8a-b: Two Photographs of Neighbor Property to the East (lot 10);
- A-9: Photograph of Block 69 Lot 8;
- A-10: Photograph of Block 69 Lot 7;
- A-11a-e: Five Photographs of Properties across the street;
- B-1: Dale Leubner Email to Board Secretary dated 8/6/09 RE: Flood Review;
- B-2: Board Engineer Review Letter dated 8/6/09.

Mr. Mullen described the application as requiring variances for lot size of 2,700 where 4,000 is required, side yard setbacks of 5/5 where 6 ft and 8ft are required, lot width 30 ft provided where 50 ft is required, building coverage of 37% where 33% is permitted.

Joseph May, P.E., Board Engineer from CMX. Inc. was sworn in.

Stephen Sherman, 220 Meadowfield Lane, Jefferson Hills, PA 10525 was sworn in.

Mr. Sherman stated the following during his testimony and response to questions from the board:

1. He is a member of Pittsburgh Chili Kings. LLC along with his partner Michael Vazza, Jr.

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2. They purchased the subject property about two years ago.
3. They want to develop the property to live in it as a summer residence.
4. The property would be left vacant when they are not using it.
5. The property is currently deplorable and unlivable.
6. They wanted to fix up the existing home but then it became obvious to just start over with a new structure.
7. They have hired Marty Britton to build the house.
8. They will comply with the flood requirements.

Mr. Mullen asked if there were any questions from the public but there were none.

Martin Britton of 147 Highland Avenue, Highlands, NJ was sworn in.

Mr. Britton stated the following during his testimony and response to questions from the board:

1. He is a licensed Contractor and has built similar structures.
2. He has been hired to construct the proposed structure.
3. He did not prepare the architectural drawings but does know that they are not finished.
4. He described the proposed structure referring to Exhibit A-5.
5. He stated that the first floor is a single-car garage and the room labeled as recreation room should be labeled storage area because it's not a finished area.
6. The main entrance is on the side of the first floor.
7. There will be flood vents in the garage area and the Architect will update the plans to reflect the vents.
8. He then described the second floor which consists of a kitchen and dining area, deck in the back, entrance stairs, living room, washer and dryer, half of bath and a pantry closet.
9. Utility System is in the attic which is not shown on the plans.
10. The compressor could be put on a platform in the rear yard.
11. He pointed to the top forth of the door entry to the garage area to show where the actual flood plain area is located.
12. The first habitable floor will meet the flood requirement of being above the flood plain.
13. The third floor (second livable level) has two bedrooms and two bathrooms.
14. He described the attic area and stated that there is 1/3 less area in the attic verses the third floor. He also spoke about using the attic area as a recreation area. He also stated that the mechanical room would be located on third floor. He spoke about a portion of the attic being less than seven feet in height. He stated that there are egress windows in the attic. He stated that attic recreation area will not be made into bedrooms.
15. The garage won't be more than a few inches above grade.
16. He referred to Exhibit A-4 the sketch plat and described it.
17. The existing fencing will be taken down.
18. Parking – there is a one-car garage and they can put a concrete driveway to almost the entire length of the house to provide two additional off-street parking spaces for a total three spaces. They will not do the driveway outside the dimension of the building so there is five feet off both side yards.

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19. Trash – the garage will be kept in the garage until pick up day.
20. Drainage – it's a flat piece of property and they will have the roof drains directed toward the street.
21. Driveway surface will not be gravel stones it will be concrete.
22. There is an existing curb cut that might work, they will have to see about maybe a new one.
23. The door located on the front of the property is to the garage not the house. The house door is on the side.

Mr. Mullen asked if there were any questions from the public for Mr. Britton but there were none.

Richard Stockton, 17 Avenue D, Atlantic Highlands, NJ was sworn in.

Mr. Stockton stated the following during his testimony and response to questions from the board:

1. He is a licensed Professional Land Surveyor and Planner.
2. He prepared the sketch plat for this project which is located at 21 Atlantic Street.
3. He described the enlarged Tax Map marked as Exhibit A-6. He described the neighboring lots and stated that they were mapped in 1903 as basically 30 foot lots. The flavor of the neighborhood is basically smaller lots. The subject lot does not provide the required frontage or lot area which are preexisting conditions that have existed for many years.
4. He then described the photos of the subject property which were marked as Exhibit A-7 a-g and those pictures were passed around to the board member to view.
5. He spoke about the gap between the proposed house on lot 9 and the existing house on lot 10.
10. At present the two houses are separated by 3 feet and what is being proposed is the increase in the side yard to make this condition to 6 feet. The new construction would be farther away than the existing side yard.
11. The front yard on the existing structure 19.4 and they are proposing 20 feet.
12. There is a deck or porch on the front of the existing structure and that was not included in the existing front yard calculations. He measured to the front of the structure itself, not the porch.
13. He described the photographs marked as Exhibit A-8 a-b picture of lot 10 and stated that this property does not comply with the side yard setbacks. It's has a 1 ½ foot side yard of the southerly property line.
14. He described the photograph marked as Exhibit A-9 which shows lot 8 and stated that it's in conformance with the required 6 foot side yard. Lot 6 is a double wide lot of 60-feet.
15. He described the photograph marked as Exhibit A-10 which shows lot 7 which has a lot width of 30feet.
16. He described photographs marked as Exhibit A-11 a-3 which were of properties located across the street from the subject lot. The photographs were of 18 Atlantic Street, 20 Atlantic Street (Lot 5), 22 Atlantic Street (lot 4), 24 Atlantic Street (lot 3), and 28 Atlantic Street (lot 1). He then described the side yard setback of 20 Atlantic Street as 2 ½ feet.
17. There are two preexisting condition variances required for lot area of 2,700 square feet, where 4,000 square feet is required and lot width of 30 feet where 50 feet is required. There is

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no ability to alter these existing conditions. There are also variances for two side yards of 5.1 feet. 5.1 feet, where 6 ft/8ft is required. The proposed side yard's are an increase over the existing conditions. Building Coverage is at 36.7%, where 33% is allowed.

Mr. Mullen stated that in terms of height, this structure will be out of character with the neighborhood. It is a permitted height but it may well be out of characters in terms of the lot coverage. He also believes that a rear yard setback is required for the rear deck. He also stated with regard to height he definitely feels that we need something certifying the height.

Mr. Stockton continued as follows:

18. He did not measure adjoining lot coverage.
19. He agrees that a rear yard setback is required.

Mr. Wolff stated that the applicant would be willing to reduce the size to comply with the lot coverage but he does feel that there is the issue of the lot narrowness.

Mr. Mullen also commented on the location of the door entrance being located on the side verses the front of the building.

Mr. Wolff spoke about possible reassessment of the location of the entrance.

Mr. Stockton continued his testimony as follows:

20. He spoke about the positive criteria for the variances for side yards, building coverage and rear yard variances. The positive criteria would be the removal of a substandard home which is in poor shape and putting in a new home that would be built to present code which would improve the safety to the occupant of the new home as well as to the neighbors that are close to this property on both sides.

21. The negative criteria, this is a permitted use in this zone and he does not see that as being a substantial detriment. D-2b of Municipal Land Use Law speaks to the security, safety from fire, flood and panic. This would be a new house built to current code and it protects both the occupants and the neighbors. D-2e of Municipal Land Use Law speaks to the establishment of appropriate population densities. They are not increasing density, they are replacing one dwelling unit with a dwelling unit. D-2i of Municipal Land Use Law speaks to a desirable visual environment. The new home will greatly enhance the appearance of the neighborhood over the home that exists there today.

22. With regard to Mr. Mullen's comment on the neighborhood character as it deals with other homes that might be at or greater than the 36% that they are asking now, he did not measure the homes in the neighborhood.

23. The preservation of neighborhood character is a recognized planning purpose. Upgrading an existing structure to current code, is it going to be in tune with the neighborhood he thinks that's something the board has to decide

24. The second story deck, he thinks that a deck off of the kitchen area is an asset.

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Mr. Britton stated that the curb cut will be the entire driveway for two spaces wide.

Mr. Stockton stated that as many of these homes get raised above the flood level we create a situation of taller homes. With regard to flood elevations, they did not take any elevations on this site but several years ago he did an elevation certificate on the adjoining lot 10 and the ground elevation on lot 10 was around five. He feels that this first floor living space will be several feet above the flood elevation.

The Board questioned Mr. Britton about how the building height was calculated and the location of the compressor in the rear yard.

Mr. Kutosh suggested that the French sliding doors be eliminated in the rear and replaced with a single door then you have room on the side for the air conditioner.

The Board discussed the application.

Mr. Sherman stated that the structure to the rear of this property is back away.

Mr. Mullen asked if there were any questions from the public but there were none.

Mr. Braswell offered a motion to approve the application subject to the following conditions:

1. The air conditioner compressor be located in the rear yard and must comply with the flood plain requirements.
2. Drainage be directed toward the street.
3. The driveway will be of concrete for two spaces.
4. The applicant is responsible to maintain the sidewalk and reconstruct the sidewalk if needed.
5. Street trees
6. The existing fence will be removed and replaced in compliance with regulations.
7. Post Framing Survey must be provided by applicant to verify height.

Seconded by Ms. Ryan and approved on the following roll call vote:

**ROLL CALL:**

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

**NAYES: None**

**ABSTAIN: None**

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Mr. Braswell leaves the meeting.

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**Approval of Minutes:**

Ms. Ryan offered a motion to approve the July 2, 2009 Zoning Board Minutes, seconded by Mr. Kutosh and approved on the following roll call vote:

**ROLL CALL:**

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

**NAYES:** None

**ABSTAIN:** None

The Meeting adjourned at 9:23 P.M.

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**CAROLYN CUMMINS, BOARD SECRETARY**