

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
August 6, 2015**

Meeting Location: Highlands Fire House, 17-1 Shore Drive, Highlands, NJ 07732

The Meeting was called to order at 7:35 P.M.

Pledge of Allegiance

Mrs. Cummins read 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 to the Asbury Park Press and the Two River Times. Notice has been posted on the public bulletin board.

ROLL CALL:

Present: Mr. Kutosh, Mr. Knox, Mr. Mullen, Ms. Ziemba, Mr. Braswell

Late Arrival: Ms. Pezzullo arrived at 7:43 p.m.
Mr. O'Neil arrived at 7:36 p.m.

Absent: Mr. Fox, Ms. Pezzullo, Mr. Booth

Also Present: Carolyn Cummins, Board Secretary
Greg Baxter, Esq., Board Attorney
Robert Keady, P.E., Board Engineer

**ZB#2015-6 Anasoulis, Sandra
357 Shore Drive, Block 103 Lot 8
Application Review & Schedule Public Hearing**

Present: Sandra Anasoulis

Conflict of Interest: Mr. Kutosh

The Board reviewed the application and the following was stated:

1. Mr. Baxter stated that the application was complete.
2. Mr. O'Neil arrives at 7:36 P.M.
3. Mr. Keady stated that the elevation was cut off and needs to be provided.
4. Mr. Baxter explained the public notice requirements and the 10 day requirement to the applicant.
5. There are six bulk variances required for the application.
6. Mr. Braswell explained the public hearing process to the applicant.
7. The applicant must bring photographs of the subject and surrounding homes to the hearing.
8. Ms. Pezzullo arrives at 7:43 P.M.

Mr. Mullen offered a motion to schedule this matter for a public hearing on September 3rd, seconded by Mr. O'Neil and approved on the following roll call vote:

ROLL CALL:

AYES: Mr. Knox, Mr. Mullen, Mr. O'Neil, Ms. Ziemba, Mr. Braswell

NAY: None

ABSTAIN: None

**ZB#2015-4 Fitzpatrick, Andrew
30 Gravelly Point Road, Block 100 Lot 26.30
Adoption of Resolution**

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

**RESOLUTION APPROVING USE AND BULK VARIANCES
FOR FITZPATRICK AT 30 GRAVELLY POINT ROAD**

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WHEREAS, the applicants, ANDREW & CHRISTINA FITZPATRICK, are the owners of a single-family home at 30 Gravelly Point Road, Highlands, New Jersey (Block 100, Lot 26.3); and

WHEREAS, the property owners filed an application to replace their existing flood-damaged home and construct a new single-family dwelling; 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 July 2, 2015; and

WHEREAS, the following persons testified before the Board: The applicant, CHRISTINA FITZPATRICK; and her engineer, EVAN HILL; and the board engineer, ROBERT KEADY, and board planner, MARTIN TRUSCOTT; and

WHEREAS, no other persons appeared to ask questions, object or support the application; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2 Elevation certificate by KEITH M. LUDWIG dated 3/21/14;
- A-3 3/26/15 "Project Exempt" letter from Freehold Soil Conservation District;
- A-4 Zoning Officer denial email dated 4/24/15, with handwritten zoning permit application and denial attached (2 pages);
- A-5 Survey by KEITH M. LUDWIG dated 3/21/14;
- A-6 2 Pages of "Elevation Mitigation" plot plan by EVAN D. HILL dated 4/18/14;
- A-7 Building photographs (2 pages);
- A-8 6/15/15 Authorization letter from Gravelly Point Beach Association, Inc.

AND, WHEREAS, the following exhibit was also marked into evidence:

- B-1: Board Engineer and Planner review letter dated 5/28/15 (5 pages with aerial photo).

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

1. The applicants are the owner of a single-family home located in the R-2.03 Zone.
2. This home was substantially damaged during Super Storm Sandy. As a result of the damage, and considering the age of the structure, the applicants felt it would be more prudent to demolish the existing structure and rebuild.
3. The applicants seek a use variance for building height. The ordinance limits the building height to 20/22.5 feet, whereas the proposed structure has a proposed building height of 25.85 feet.
4. The applicants also seek a side yard setback for the front stairs of 2.8 feet, where 3 feet is required.
5. The proposed use as a single-family home is in conformance with the R-2.03 Zone requirements.

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6. The prior dwelling encroached on the front yard setback requirements and the side yard setback requirements, the latter of which had no setback at all.

7. This home has been approved by the REM Program because of the substantial damage to the home as a result of Superstorm Sandy and the need for reconstruction.

8. This property has a narrow width and narrow depth. According to the applicant's engineer, there was only one prototype home that would work for this site, a approved by the REM Program. As a result, the applicant chose the only one available.

9. Because of the lack of parking on Gravelly Point Road, under-structure parking is proposed. In this case, there is space provided for two vehicles.

10. Though the applicant could build this home lower than 3 feet in excess of the variance, because the home is 4 feet over the base flood elevation it would not help the parking requirement if she did so.

11. Many homes in this neighborhood have undergone or are undergoing construction or reconstruction as a result of Superstorm Sandy.

12. This new construction will not be a prefab home.

13. The garage ceiling will be 8 feet to the clearance of the girder.

14. The lowest/ground level will be used for parking and storage, but is not set up for garage access.

15. Exhibit B-1 was modified during the hearing by the Board Engineer in two respects: (1) The existing side yard setback for the deck is 9.1 feet (as opposed to 9.5 feet), and there is no change under the new proposal; and (2) the rear setback for the shed is 5 feet (not 4.8 feet), where 3 feet are required, which is no change to the existing structure.

16. The Engineer described that the base flood elevation is 11 feet, so you start at 12 feet. Since it is 37.85 feet to the midline of the roof, the height of the building is 25.85 feet, as reflected on page 3 of the Engineer's report.

17. The Board Planner testified that the property was and will be a residential use, which is permitted under the zoning ordinance. There is a need in the community for off-street parking, which is met by this application. A hardship is created because of the limited nature of the REM Program. For instance, the roof peak and outside footprint cannot be modified. The home was previously a 2-bedroom home and will continue to be a 2-bedroom home, so no additional bedrooms are being added. The other possible 2-bedroom homes approved by the REM Program would not fit on this lot.

18. The Board Planner further testified that there will not be a substantial detriment to the public good, that there is no negative impact, and that the height of the property will not obstruct any view of neighboring property owners. He further testified that this structure will not be out of character in the neighborhood.

19. The applicant testified that the neighboring home is 3 times the size of the applicant's proposed home and 10 feet taller than the applicant's proposed home.

20. The existing structure was demolished in March 2014. The existing parking was previously to the left of the structure, but will no longer be there.

21. The rebuilding of an old home, meeting new construction requirements, will be a significant improvement to the lot, as well as to the neighborhood and the borough as a whole. As a result, the applicant's plan will serve the purposes advanced by the Municipal Land Use Law, particularly (b) secure safety on the property from flood and other natural and manmade disasters; and (i) promoting a desirable visual environment. In addition, the positive and negative criteria have been met, as testified to by the board's planner, as reflected above.

WHEREAS, the application was heard by the Board at its meeting on July 2, 2015, 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 ANDREW and CHRISTINA FITZPATRICK

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to rebuild their existing flood-damaged single-family home and construct a new dwelling in accordance with the plans accepted in evidence be and the same is hereby approved, and a use variance is hereby granted for the height of 25.85 feet; as well as a bulk variance for the side yard setback for the front stairs of 2.8 feet where 3 feet are required.

AND BE IT FURTHER RESOLVED that this approval is made subject to approvals by (1) the Flood Plain Administrator; (2) the Construction Official; (3) the New Jersey Department of Environmental Protection; and (4) any other agencies or departments having jurisdiction. Seconded by Mr. Knox and adopted on the following roll call vote:

ROLL CALL:

AYE: Mr. Kutosh, Mr. Knox, Mr. Mullen, Ms. Ziemba,
Ms. Pezzullo

NAY: None

ABSTAIN: None

**ZB#2015-5 Branin, Keri
66 Miller Street – Block 59 Lot 8
Adoption of Resolution**

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

**RESOLUTION APPROVING USE VARIANCES
FOR BRANIN**

WHEREAS, the applicant, KERI BRANIN, is the owner of property at 66 Miller Street, Highlands, New Jersey (Block 59, Lot 8); and

WHEREAS, the applicant filed an application for use and bulk variance relief, together with an application for site plan review, seeking to permit a commercial use on the first floor and residential use on the second floor of one building (hereafter referred to as Building A), and an ice cream shop in the smaller building (hereafter referred to as Building B); and

WHEREAS, during the hearing, the applicant requested, and the board allowed, the matter be bifurcated and for the board to hear only the use variances portion of the application, deferring the bulk variance and site plan relief until after the board determined whether to approve the use variances; 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 July 2, 2015; and

WHEREAS, the Board heard the testimony of the applicant, KERI BRANIN; and the board engineer, ROBERT KEADY, and the board planner, MARTIN TRUSCOTT; and also heard questions and testimony from a neighbor, MRS. RUGG; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1 Variance application (3 pages);
- A-2 Zoning Officer denial dated 5/22/15;
- A-3 Site plan review application (2 pages);
- A-4 Conceptual minor site plan by JAMES B. GODDARD, of Land Control Services, dated 5/21/15 (1 page);
- A-5 Picture of string lights and light fixtures;
- A-6 Photograph of site;

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A-7 Photograph of site;

A-8 Photograph of site;

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

B-1 Revised 6/29/15 Board engineer (ROBERT KEADY) and planner (MARTIN TRUSCOTT) review letter (6 pages with aerial photo attached);

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

1. The applicant is the owner of property located in the R-2.03 Zone, where only single family dwellings are permitted.

2. The subject premises currently contain 2 structures---Building A, a 2-story residential frame dwelling; and Building B, a smaller structure in the front left of the property. The applicant proposes to make the 2-story dwelling into a commercial use on the first floor and a residential use on the second floor; and make the smaller front building, which previously had a commercial use, into an ice cream shop.

3. The applicant also proposes an outdoor patio and seating area for the ice cream shop use.

4. The applicant's proposal creates the need for use variances. The commercial use on the first floor of the larger structure (Building A) is not a permitted use. Also, mixed uses are not permitted. Also, the proposed patio is an expansion of a preexisting non-conforming commercial use.

5. During the hearing the applicant modified her request for Building B to sell ice cream, novelty foods and soups; and modified her proposal for the commercial use on the first floor of Building A to be limited to a business, commercial or personal use establishment, excluding retail, as defined in the borough ordinances.

6. The applicant proposes to retain the existing footprint for both buildings A and B. The height of the buildings will not be changed.

7. During the beginning portion of the hearing, the Board discussed the various bulk variances requested and had some discussion regarding the proposed site plan. The applicant, however, requested that the Board limit its initial determination to the use variances requested, as a result of which, no determination has yet been made by the Board regarding the application for bulk variance relief or site plan approval.

8. The applicant is desirous of having this building and the general area of the borough become more attractive to the community, and provide services that currently either don't exist or minimally exist.

9. There is municipal parking available nearby, though very little parking is existing or available on the site.

10. The driveway on the right side of the property is planned to remain, and be used in part for the residential use in Building A.

11. Any ADA issues shall be referred to the Construction Official to determine whether or not there are any building code problems, since this is an alteration of an existing structure.

12. Among the other bulk variances to be considered at the next hearing are any variances required for signs, since signs are not permitted in the residential zone. That issue is not addressed at this time.

13. Access to the two levels in Building A will be through a door on the left-hand side of the structure. Once you enter the doorway, there will be two additional doors, one to access the downstairs commercial unit, and one to access the upstairs residential unit.

14. The applicant plans to install a privacy fence in the rear, with a gate to access the municipal parking lot. The municipal lot is approximately ten steps out the back side of the property.

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15. The applicant plans to put in pavers with sand in between them in the patio area. That issue will be completely addressed as part of the bulk variance and site plan hearing.

16. Questions were raised by a neighbor as to the hours of operation, trash created by the uses, and noise. By way of response, the applicant said she would close at or before 10:00 p.m. on weekday evenings and at or before 11:00 p.m. on weekend evenings; and that any trash left in the immediate area as a result of these uses will be cleaned up nightly.

17. According to the Borough's planner, this property is in the downtown area and next to a business zone. As a result, the site is particularly suited to the proposed uses. In addition thereto, the Master Plan (2009 reexamination report) sets forth a goal of developing expansion of the downtown uses.

18. The proposed use will preserve the desired downtown business neighborhood character, and also clean it up, and improve both the property and the downtown area. As such, the variance can be granted without substantial detriment to the public good and will not impair the intent and purpose of the zoning plan and zoning ordinance. In addition, the Board notes, as to the negative criteria for a d(2) variance to expand a non-conforming use, that "the negative criteria should be viewed with greater liberality in applications for expansion of preexisting non-conforming uses because they are less likely to involve substantial impairment of the zoning plan than are applications for wholly new non-conforming uses."

WHEREAS, the application was heard by the Board at its meeting on July 2, 2015, 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 KERI BRANIN to provide a new mixed use residential and commercial building as set forth on her plans and in her testimony at 66 Miller Street, for a commercial use on the first floor of building A, limited to business, commercial and personal use establishments, excluding retail, as defined by borough ordinances; and a residential use on the second floor of building A; and a ice cream-type facility in building B, limited to the sale of ice cream, novelty foods and soups; are hereby approved. Use variances are therefore granted for the variances described above and for the outdoor seating for building B, the specifics of the outdoor seating to be considered as part of the bulk variances and site plan applications.

AND BE IT FURTHER RESOLVED that this approval is conditioned upon the following:

- A. Approval of all required bulk variances and design waivers, which shall be the subject of a further hearing.
- B. Site plan approval, which shall be the subject of a further hearing.
- C. Approval for any signage.
- D. A design waiver for any required curb cut(s).
- E. Hours of operation for both the commercial portion of Building A and for Building B shall be limited to no later than 10:00 p.m. on weekday evenings, and no later than 11:00 p.m. on weekend evenings.
- F. Any trash left on the premises or in the immediate area shall be cleaned up nightly.

Seconded by Ms. Ziemba and adopted on the following roll call vote:

ROLL CALL:

**AYE: Mr. Kutosh, Mr. Knox, Ms. Pezzullo, Mr. Braswell,
Ms. Ziemba**

NAYE: None

ABSTAIN: None

**ZB#2015-5 Branin, Keri
66 Miller Street – Block 59 Lot 8
Unfinished Public Hearing**

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Present: Keri Branin

Conflict of Interest: Peter Mullen

Mr. Keady reviewed the plans and stated that there are two parking spaces on site for the residential use and that there were zero parking spaces on site for the commercial uses. The variances are needed for parking but no ADA handicap spaces are required. The applicant will have to contribute to the parking deficiency fund for nine spaces. The ADA parking is no longer an issue because it is offsite parking. He stated that the applicant extended the patio to the existing sidewalk and that there would be an ADA bathroom in building B.

Ms. Branin stated that building A could use the handicap bathroom that will be in building B.

The following documents were marked into evidence:

- A-9: 2 Photographs of structures with awnings.
- A-10: 2 Photographs of signs
- A-11: Conceptual minor site plan by James B. Goddard dated 5/21/15 and revised 7/20/15
- A-12: Parking and site plan summary and proposal by applicant.

Mr. Baxter read through the variances as follows:

1. Preexisting – lot area
2. Preexisting – lot depth
3. Preexisting – front yard of .095 feet building B and 17.5 ft. for building A
4. Preexisting – rear yard setback of 45 feet for building A
5. Preexisting – side yard of 1 foot for building B
6. Preexisting – building coverage of 37%
7. Parking – zero spaces for commercial uses in buildings A & B where 4 spaces are required for building A and five spaces are required for building B for a total of nine parking spaces.
8. Sign variance for building B where it's not permitted
9. Sign encroachment
10. Awning goes into public right of way and it must be 7 ½ feet above grade.

Ms. Branin stated that she will comply with the height requirement for the awning.

Mr. Keady stated that the patio, he needs the proposed elevations and it must comply with ramp access to building A.

Mr. Baxter stated that tonight's hearing is for the variances, minor site plan approval and final site plan approval.

Mr. Braswell spoke about the existing rear encroachment of the building which goes over a half foot and that it's been existing for years.

Mr. Baxter explained that the board could not approve an encroachment for legal purposes.

Mr. Braswell asked the board if there were any objections to the preexisting variances and there were none.

Mr. O'Neil stated that there are no houses on Miller Street that really comply.

Mr. Braswell questioned the location of the sign.

Ms. Branin stated that the sign will be above the awning and that she would pay into the parking deficiency fund.

Mr. Keady will provide the parking dollar amount to the Board Secretary.

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Mr. Keady stated that parking lot proposed so no light requirements are required.

Ms. Branin stated that there will be no light poles and that the sign won't light up. There are lights available above the door. She is not really sure about the lighting but she it will not blind any pedestrians.

Public questions and comments – there were no members of the public present.

Mr. O'Neil offered a motion to approve the application, seconded by Mr. Kutosh and approved on the following roll call vote:

ROLL CALL:

AYE: Mr. Kutosh, Mr. Knox, Mr. O'Neil, Ms. Pezzullo, Ms. Ziemba, Mr. Braswell

NAY: None

ABSTAIN: None

Approval of Minutes

The approval of the July 2, 2015 minutes was tabled to the next meeting.

Mr. Kutosh offered a motion to adjourn the meeting, seconded by Mr. Knox and all were in favor.

CAROLYN CUMMINS, BOARD SECRETARY