

**Borough of Highlands
Zoning Board of Adjustment
Regular Meeting
September 3, 2015**

Meeting Location: The meeting was held at the Highlands Fire House located at 17-1 Shore Drive, Highlands, NJ.

Mr. Braswell called the meeting to order at 7:34 P.M.

Mr. Braswell asked all to stand for the 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. Fox, Mr. Kutosh, Mr. Mullen, Mr. Braswell, Ms. Ziamba

Absent: Mr. Knox, Mr. O'Neil, Ms. Pezzullo, Mr. Booth

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

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

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

**RESOLUTION APPROVING BULK VARIANCES, AND
PRELIMINARY AND FINAL SITE PLAN APPROVAL
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 received use variance approval on August 6, 2015 for 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-type facility in the smaller building (hereafter referred to as Building B), subject to conditions, including the obtaining of bulk variances and site plan approval; and

WHEREAS, the applicant now seeks various bulk and parking variances, together with preliminary and final site plan approval; 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 August 6, 2015, which hearing was a continuation of the use variance hearing on July 2, 2015; and

WHEREAS, the Board heard the testimony of the applicant, KERI BRANIN, but no other persons appeared; and

WHEREAS, the applicant submitted the following documents in evidence:

SUBMITTED AT JULY 2, 2015 HEARING:

- 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;

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A-6 Photograph of site;

A-7 Photograph of site;

A-8 Photograph of site;

SUBMITTED AT AUGUST 6, 2015 HEARING:

A-9 Two photographs of structures with awnings;

A-10 Two photographs of signs;

A-11 Conceptual minor site plan by JAMES B. GODDARD, of Land Controls Services, dated 5/21/15, revised July 20, 2015;

A-12 Parking and site plan summary and proposal by applicant (3 pages) with 2010 ADA standards for accessible design attached;

AND, WHEREAS, the following exhibit was previously marked into evidence as a Board exhibit:

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, for which use variance approval was granted on August 6, 2015 to permit limited commercial uses on the first floor and a residential use on the second floor of building A; and an ice cream-type facility in building B.

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

3. The Board Engineer reported that since no parking is proposed for either of the two commercial uses on the site, and since the ADA requirements for parking are indexed to the number of commercial parking spaces on site, there is no requirement for ADA parking in this case, nor any need for variance approval of the same.

4. The applicant is seeking bulk variance relief for the following:

A. Lot area of 3,510 s.f., where 5,000 s.f. are required (a preexisting condition);

B. Lot depth of 60 feet, where 100 feet is required (a preexisting condition);

C. Front yard setback of .95 feet for Building B and 17.5 feet for Building A, where 20 feet are required (both preexisting conditions);

D. Rear yard setback of -.45 feet for Building A, where 20 feet is required (a preexisting condition);

E. Side yard setback of 1 foot for Building B, where 6/8 feet are required (a preexisting condition);

F. Building coverage of 37.42%, where 30% is permitted (a preexisting condition).

G. A parking variance for 9 spaces. Applicant proposes no spaces for the commercial use in Building A or the use in Building B. The Building A requirement would be 4 parking spaces (1 space for every 300 s.f.), and the parking requirement for Building B would be 5 spaces (1 space per 4 seats for food use);

H. A sign variance for the sign on Building B.

I. Sign location on Building B, because of its encroachment onto the sidewalk;

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5. As to the parking requirement, the applicant agrees to pay the borough ordinance-required fee for the shortage of 9 parking spaces, the payment of which fee shall be a condition of the issuance of any construction permits.

6. The Board has been made aware of the encroachment of the rear portion of Building A over the property line onto the neighboring (borough-owned) property. The Board has no jurisdiction to permit such an encroachment. Though aware of the encroachment, this resolution shall not be read to give approval for the encroachment or be used to support any claim for adverse possession by the owner of the subject property. The applicant understands and agrees to the same.

7. Ordinance 21-65.27(E) requires that awnings, if they project into the public right-of-way, as this proposed one does, be at least 7.5 feet high from the ground to the lowest portion of the awning. The applicant agrees to comply with this condition, as a result of which no variance relief is required.

8. The Board Engineer commented upon the patio. The plans submitted do not show the proposed elevations. The patio must comply with the ADA requirements regarding slope.

9. On the plans submitted by the applicant there is no ramp access to Building A; however one shall be provided. The applicant agrees to construct that access similar to deck construction, in which case no lot coverage issue is implicated. The ramp shall be ADA compliant.

10. During the hearing, the applicant agreed to reduce the height of the fence shown on her proposal to 6 feet, as a result of which the fence will meet the requirements of the ordinance, and no variance is required.

11. The Board discussed the lighting of the property, both with respect to Building A and Building B. The applicant agrees to comply with Ordinance 21-65.11 as to any lighting requirements.

12. The applicant also testified that the bathroom in Building B will be ADA compliant.

13. As to the sign on Building B, the applicant agrees to meet the height requirements. As a result, no variance is required for the height; however, since signs are not permitted in this zone, a variance is required. The Board finds that the proposed sign is not obtrusive in any way and does not pose any adverse impact to the neighboring properties or the community in general.

14. The vast majority of the bulk variances requested (items A through F of paragraph 4 above) are all for preexisting conditions. As to those conditions (lot area, lot depth, front yard setback, rear yard setback, side yard setback and building coverage), the Board finds that there is no adverse impact to the neighboring properties, since all of those conditions have preexisted for many years.

15. As to the parking variances requested (for both Building A and Building B), the Board finds that this property is adjacent to the downtown business area of the borough. Though there is municipal parking and street parking available, there is a paucity of parking available on site on the various properties in the downtown area. The borough has adopted an ordinance providing for an alternative for commercial property owners, that being the payment of a parking fee in lieu of providing on-site parking. The applicant has agreed to comply with those requirements.

16. The Board finds that the proposed changes to this property will promote a public purpose, as set forth in the Municipal Land Use Law, particularly N.J.S.A. 40:55D-2(i), to promote a desirable visual environment through creative development techniques and good civic design and arrangement. The Board further finds that the proposed changes to this property, as requested in the property owner's application, will provide improved community planning and will benefit the public. The benefits of the variance substantially outweigh any detriment.

17. The Board does not find any substantial detriment to the public good or any substantial impairing of the intent and purpose of the zone plane. To the contrary, the Board finds the applicant's proposal to be a significant improvement to the property and the downtown area of the borough.

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18. The Board finds that the impact of the proposed variances on surrounding properties, the bulk of which are preexisting conditions, will be minimal, if at all, and that the variances granted will not cause damage to the character of the neighborhood or any substantial detriment to the public good.

WHEREAS, the application was heard by the Board at its meetings on July 2 and August 6, 2015, and this resolution shall memorialize the Board's action taken at the latter meeting;

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Borough of Highlands that the application of KERI BRANIN for bulk variances as set forth in paragraph 4, subparagraphs A through I, together with preliminary and final site plan approval, in conformance with the applicant's plans, as well as modifications during the hearing, as set forth earlier in this resolution, are hereby approved.

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

A. The proposed awning on Building B shall be at least 7.5 feet high from the ground level to the lowest part of the awning where it encroaches on the public right-of-way.

B. All lighting requirements shall be in accordance with borough ordinances, particularly Ordinance 21-65.11.

C. The parking fee, as detailed earlier in this resolution, shall be paid by the applicant prior to any construction permits being issued.

D. The bathroom in Building B shall be ADA compliant.

E. The Construction Department is instructed to confirm that the slope of the patio is compliant with ADA regulations and all applicable codes.

F. The ramp access to Building A shall be constructed in accordance with ADA regulations and be of the type of construction similar to a deck.

G. This resolution shall not be interpreted as approval by the Board of the encroachment at the rear of the building over the neighboring property line, which is owned by the borough; and this resolution shall not be used in support of any future application by the property owner or any other interested party for a judgment of adverse possession against the borough.

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

ROLL CALL:

AYE: Mr. Kutosh, Ms. Ziemba, Mr. Braswell

NAY: None

ABSTAIN: None

**ZB# 2015-6 Anasoulis, Sandra
357 Shore Drive – Block 103 Lot 8
Hearing on New Business**

**Present: Sandra Anasoulis
Gregory Baker**

Conflict: Mr. Kutosh stepped down.

Mr. Baxter stated that he has reviewed the public notices and it appears that the applicant only noticed the County Planning Board and not the County as a property. This may not be an issue but could be considered a defect it's up to applicant if she wants to proceed.

Ms. Anasoulis stated that she wished to proceed.

The following exhibits were marked into evidence:

- A-1: Variance Application
- A-2: Elevation Certificate
- A-3: Zoning Denial
- A-4: Topographic survey
- A-5: Plot Plan
- A-6: Photo 8 ½ x 11
- A-7: Photo 8 ½ x 11

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Mr. Baxter then swears in Sandra Anasoulis, Greg Baker and Robert Keady.

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

1. He gave his professional background to the board.
2. The current house was damaged by Sandy and applied for REM funding and they were concerned with the condition of the home so he was hired by a Builder and it was determined that the foundation and framework is unsound and uneconomical.
3. They need to demolish the home.
4. They are proposing to demo and bring in a modular on piles, it's almost identical and is a one story structure.
5. The current home does not meet the zoning requirements.

Mr. Keady stated that there is a correction in his letter marked exhibit B-1 the side yard is 3.98.

Mr. Baxter read through the variances for this application.

- a) Lot area of 1,811 s.f. where 5,000 s.f. are required (same as existing condition);
- (b) lot frontage of 30 feet where 50 feet are required (same as existing condition);
- (c) lot depth of 60 feet, where 100 feet are required (same as existing condition);
- (d) front yard setback of 11.73 feet for the dwelling, where 20 feet are required (a very slight improvement over the existing setback of 11.65 feet);
- (e) rear yard setback of 6.0 feet, where 20 feet are required (a slight improvement to the existing setback of 4.01 feet);
- (f) side yard setback of 1.89 (left)/5.76 (right) feet, where 6/8 feet are required (these dimensions are very slightly less than the existing conditions of 3.98/4.38 feet);
- (g) building coverage of 48.59%, where 30% is required (a slight improvement over the existing 49.64%);
- (h) side yard setback for accessory structure (front stairs) of 1.89 feet where 3 feet are required;
- (i) side yard setback for accessory structure (side stairs/deck) 1.5 feet, where 3 feet are required.

14. The proposed use as a single-family home is in conformance with the R-2.03 Zone requirements.

15. The prior dwelling encroached over the rear property line as a result of an existing shed. That shed, however, will be removed and not replaced, removing the encroachment.

Ms. Anasoulis stated that yes the shed will be removed.

Mr. Baker stated that a parking slap will be under the home to provide for two off street parking spaces.

Ms. Anasoulis stated that her driveway will be stone

Mr. Baker no roof on front porch and grass is fine for the side yard.

Ms. Anasoulis described the photos to the board that were marked A-6 and A-7.

Mr. Keady so the porches don't have roofs so 1.89 feet is the correct number for the left side and 5.76 feet is on the right side. The front porch needs no variances because there is no roof on it.

Public Questions

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Dale Taber of 4 Fay Street stated he is happy that the shed is being removed but wants her fence removed that encroaches.

Ms. Anasoulis stated that the fence would be removed but she does not wish to address the replacement of a fence now.

Mary Ryan of 363 Shore Drive questioned the use of the space under the house.

Mr. Braswell responded that it would be for parking.

Mary Ryan asked if the underneath of the home could be used cats.

Ms. Anasoulis stated that she only feeds the cats and that at first the button of the house will be open until she has money to close in the sides.

Mary Ryan asked how can they have stop her from having cats under the house.

Ms. Anasoulis stated that she does not have cats living under her house.

Mr. Braswell explained that there is a feral cat ordinance and an Animal Control Officer and cats are not an issue for this board.

Neil Taber stated that the community manages space and shelters for cats.

Ms. Anasoulis stated that she does have a cat colony and is registered and that she does feed stray cats.

Mr. Braswell stated that the raising of the house may ease the situation with the cats but that cats are not under our jurisdiction.

Neil Taber stated that this is increasing the coverage space.

Mr. Baxter stated that the building coverage is 1% less and the lot coverage is 75%.

Mr. Braswell stated that the coverage is basically the same and that the new space will not have a crawl space.

Mrs. Cummins stated that there is a cat ordinance on the books but it's not active.

Neil Taber – so this is not the appropriate forum for cats.

Ellen Williams of 359 Shore Drive stated that this is not the appropriate forum for cat issues.

Public Comments

Neil Taber of 4 Fay Street stated that he is okay with the project but has concerns with bringing animals with high chances of rabies around and that he is very concerned with the wild animals and that he wants her to stop feeding them then he would support her.

Sandra Anasoulis stated that she does feed cats cat food and that to feed them and that she spoke with Animal Control and was informed that the SPCA is over run but if people are concerned she will go to the SPCA.

Unidentified Woman spoke of six raccoons and suggested that Animal Control catch the raccoons.

Sandra Anasoulis stated that she would speak with Kerry Gowan the Animal Control Officer.

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Neil Taber – limiting coverage and construction space he wants action to be taken.

Mr. Braswell explained that with the lifting that it should help the animal situation from living underneath the house.

Ellen Williams was sworn in and thanked the applicant for coming back and raising her home but stated pet management is critical. She commends the applicant for going through this process and fixing it.

Mary Ryan of 363 Shore Drive was sworn in and agreed with Ms. Williams. She supports the raising and it concerned with her enclosing the underneath of the house to house animals. There were four cats that moved under her house.

Sandra Anasoulis stated that there are cats all over.

Mary Ryan stated that she is allergic to cats but does support the project.

Mr. Braswell again explained that the Zoning Board cannot do anything about the cats.

There were no further public comments so the public portion was closed.

The board briefly discussed the application and testimony.

Mr. Mullen offered a motion to approve the application, seconded by Mr. Fox and approved on the following roll call vote:

ROLL CALL:

AYE: Mr. Fox, Mr. Mullen, Mr. Braswell, Ms. Ziemba

NAY: None

ABSTAIN: None

Approval of Minutes

Mr. Kutosh returned to the table.

Mr. Fox offered a motion to approve the July 1, 2015 minutes, seconded by Mr. Kutosh and approved on the following roll call vote:

ROLL CALL:

AYE: Mr. Fox, Mr. Kutosh, Mr. Mullen, Mr. Braswell

NAY: None

ABSTAIN: None

Mr. Kutosh offered a motion to approve the August 6, 2015 Minutes, seconded by Mr. Braswell and approved on the following roll call vote:

ROLL CALL:

AYE: Mr. Kutosh, Ms. Ziemba, Mr. Braswell

NAY: None

ABSTAIN: None

Mr. Kutosh offered a motion to adjourn the meeting, seconded by Mr. Fox and all were in favor. The meeting adjourned at 8:38 P.M.

Carolyn Cummins, Board Secretary

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