

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

9/3/09

FINAL

**RESOLUTION APPROVING BULK VARIANCES
FOR PITTSBURGH CHILI KINGS, LLC
AT 21 ATLANTIC STREET**

WHEREAS, the applicant, PITTSBURGH CHILI KINGS, LLC, is the owner of a single-family home at 21 Atlantic Street, Highlands, New Jersey (Block 69, Lot 9); and

WHEREAS, the attorney for the LLC filed an application to demolish the existing two-and-a-half story home, and construct a new three-and-a-half story single-family 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 August 6, 2009; and

WHEREAS, the Board heard the testimony of STEVEN SHERMAN, a member of the applicant LLC; his builder, MARTIN BRITTON; and his surveyor/planner, RICHARD STOCKTON; and

WHEREAS, the applicant submitted the following documents in evidence:

- A-1: Variance application (3 pages);
- A-2: Zoning Officer's permit denial dated 3/12/09;
- A-3: 2/26/07 survey by MICHAEL LYNCH, revised 4/16/09;

- A-4: Sketch plat by RICHARD STOCKTON dated 7/27/09;
- A-5 Architectural drawings on one sheet by DAVID C. WINTERS dated 7/17/09;
- A-6: Enlargement of tax map;
- A-7(a) through (g): Seven photographs of the subject property;
- A-8(a) & (b): Pictures of Lot 10 (neighbor to east);
- A-9: Picture of Lot 8 (neighbor to south);
- A-10: Picture of Lot 7;
- A-11(a) through (e): Five pictures of houses on the opposite side of the street of the subject;

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

- B-1: Email from DALE LEUBNER to the Board Secretary with his flood plain review comments;
- B-2: Board Engineer review letter dated 8/6/09 by JOSEPH MAY (4 pages);

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 applicant is the owner of a single-family home located in the R-2.02 Zone.
2. The applicant purchased this home approximately two years ago. At that time, they made the purchase in order to help out a local family.

They initially planned to develop the property in order to live in it during the summers, but the horrible condition it was in dictated against such an investment. Accordingly, the owner decided that the best course to follow would be to demolish the existing structure and rebuild a new home.

3. The applicant seeks variances for the following preexisting conditions: Minimum lot area of 2,700 square feet where 4,000 square feet is required; minimum lot frontage of 30 feet where 50 feet is required; and maximum lot coverage (building) of 37% where 33% is permitted.

4. The applicant also seeks a rear yard setback of 12 feet for the second floor and 17 feet for the third floor, where 20 feet is required; and for side yard setbacks of 5.1 feet on both sides, where 6 feet and 8 feet are required.

5. At the time of filing the application, it was thought that a height variance would be required. After review of the documents and listening to the testimony, it is determined that the applicant meets the height requirements. Accordingly, no height variance is required.

6. The proposed house to be built is similar to other homes which MR. BRITTON, the builder, has constructed in the Borough.

7. Though the architectural plans are to scale, they are not finished. They will need to be completed in order for a building permit to be issued.

8. There will be four levels of the proposed home. The first level will include a one-car garage and storage. Though not shown, flood vents will be installed. The main entrance will be on this level, but on the side of the home, not on the portion facing the street. There will be no porch or cover over the entrance, though the applicant may recess the door.

9. On the second floor there will be a kitchen, dining room, deck in the rear, living room, a place for the washer and dryer, a half bath, and a pantry/closet.

10. The third floor will contain the master bedroom, two full baths and a walk-in closet.

11. The fourth floor will contain the attic, the heater and air handler.

12. The compressor for the air conditioning system will be built on a platform at the rear of the home, but not in such a way as to further encroach on

any bulk area requirements. It will also be above the flood plain limit.

13. The garage floor and storage area will be slightly elevated, possibly a few inches above grade.

14. The existing fencing is proposed to be removed.

15. The Board was concerned with drainage on the property. The applicant agrees that all drainage will be constructed in such a way as to flow toward the street and not toward any neighboring property.

16. The applicant's planner testified that the neighborhood contains lots which were originally 30 feet in width. These lot sizes were retained since 1903.

17. The existing structure is not occupied and is in serious need of extensive renovation or reconstruction.

18. There is currently 3.3 feet between the subject house and the house on Lot 10. The applicant's plan foresees 6.5 feet in distance, or a doubling of the current distance.

19. The front yard setback is currently 19.4 feet. The plans propose a setback of 20 feet, or a slightly greater setback than currently exists. If you calculate the current setback from the existing

front porch, the new setback will be substantially further than the existing setback.

20. The applicant's plans will provide 5.1 feet for both side yards between the subject and Lots 8 and 10.

21. Though the Board is satisfied that the applicant's plans envision a height of the structure which does not violate the Borough ordinances, documentation will be needed to confirm that the house, when constructed, does not violate the height requirements.

22. The positive criteria, testified to by the applicant's planner, include the removal of an old sub-standard home; construction of a new home in accordance with the Borough's current codes; and providing additional safety to occupants and their neighbors.

23. The applicant's planner further testified that there was no substantial detriment. In further testimony regarding the negative criteria, the planner testified that this is a permitted use, and that Subsections 2b, 2e and 2i in N.J.S.A. 40:55D are all provided for in this plan. MR. STOCKTON further testified that this proposal will preserve the neighborhood character, which is a purpose of zoning.

24. The Board observes that the newer homes being constructed in the Borough are larger, primarily because they are higher than the older homes. This is happening because of the flood plain requirements. This proposal is consistent with that approach.

25. The Board finds that the applicant has met both the positive and negative criteria and that, therefore, the proposed new home will not be a substantial impairment to the intent and purpose of the zone plan and zoning ordinance. The Board is empowered to grant these bulk variances 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 August 6, 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 PITTSBURGH CHILI KINGS, LLC to demolish and thereafter construct a single-family home based on the plans submitted is hereby approved; and variances are hereby granted for the preexisting conditions of minimum lot area (2,700 square feet where 4,000 square feet are required), minimum lot frontage (30 feet where 50 feet is required), and lot coverage for the building of 37%

where 33% is permitted. In addition, variances are hereby granted for side yard setbacks of 5.1 feet on each side where 6 feet and 8 feet are required; and for rear yard setbacks of 12 feet (as to the second floor) and 17 feet (as to the third floor) where 20 feet are required.

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

1. The air conditioning compressor will be in the rear yard and shall comply with the flood plain requirements.

2. Drainage shall be to the street, via the driveway, and not toward the neighbors.

3. A concrete driveway to allow parking for two vehicles outside the garage will be provided.

4. The property owner shall be responsible to construct and maintain the sidewalk and driveway apron.

5. The applicant must provide a post-framing certification of height, in order to confirm compliance with the borough zoning ordinance and obtain a Certificate of Occupancy.

6. The fourth level may not be used as living space (storage is acceptable).

7. The first floor will be used for parking and storage only.

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

ROLL CALL:

AYES: Mr. Braswell, Mr. Anthony, Mr. Mullen, Ms. Tierney, Mr. Kutosh

NAYES: None

ABSTAIN: None

DATE: September 3, 2009

CAROLYN CUMMINS, BOARD SECRETARY

I hereby certify this to be a true copy of the Resolution adopted by the Borough of Highlands Planning Board on September 3, 2009.

BOARD SECRETARY