

8/6/15

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;
- 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.

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

DATE: August 6, 2015

Carolyn Cummins, Board Secretary

I hereby certify this to be a true copy of a Resolution adopted by the Borough of Highlands Zoning Board at a meeting held on August 6, 2015.

Board Secretary

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