

9/3/15

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;
- 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;

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 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.

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

DATE: September 3, 2015

Carolyn Cummins, Board Secretary

I hereby certify this to be a true copy of the Branin Resolution adopted by the Borough of Highlands Zoning Board of Adjustment on September 3, 2015.

Board Secretary