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October 24, 2023

Borough of Leonia Planning Board
312 Broad Ave
Leonia, NJ 07605

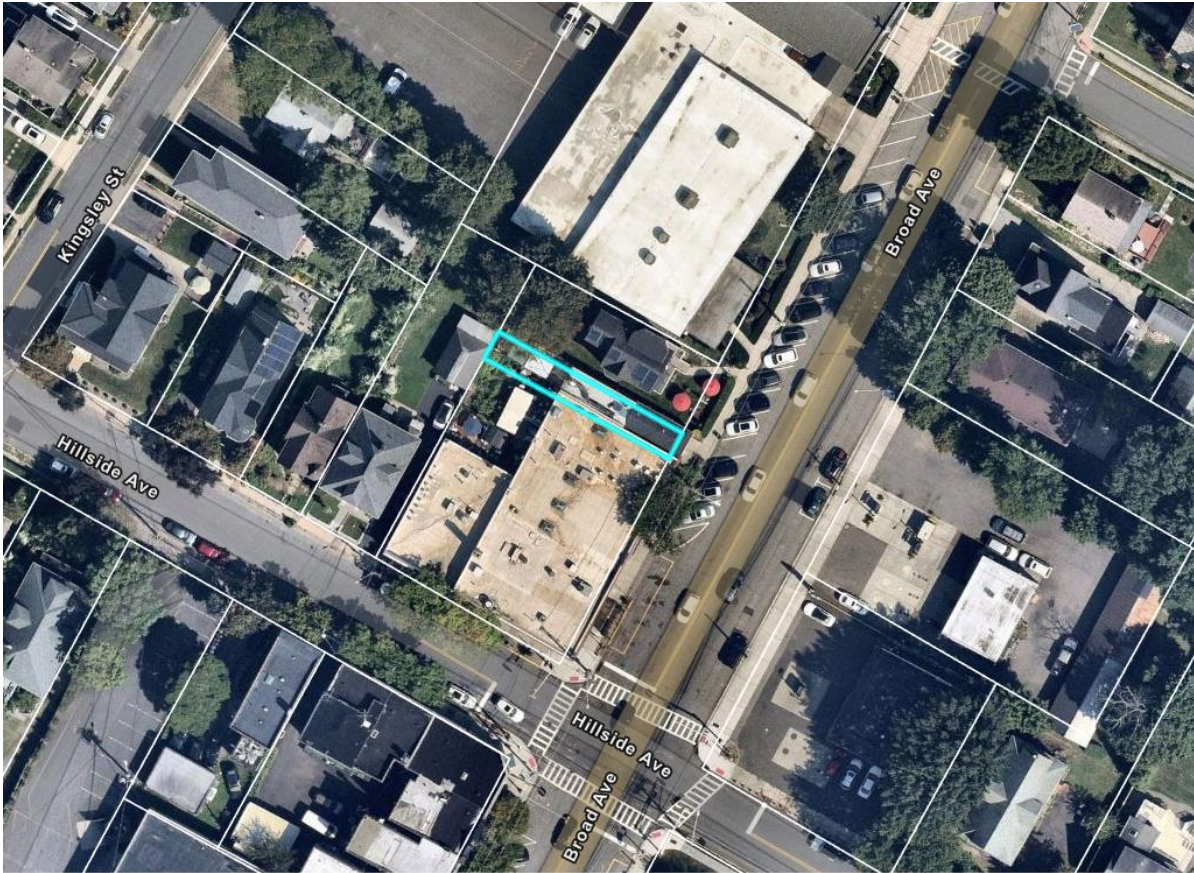
**Re: Fish Fish Wing Wing LLC
Preliminary and Final Site Plan
Block 509, Lot 4
452 Broad Avenue
H2M Project No.: LEON2305**

Dear Borough of Leonia Zoning Official:

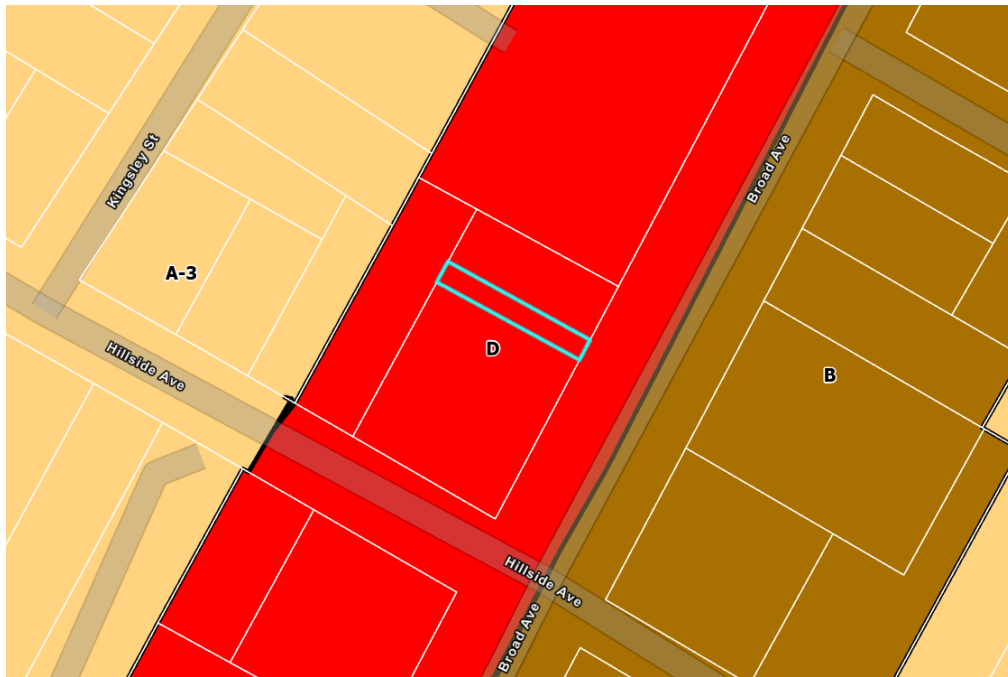
In preparation of this review letter, I have reviewed the application materials provided to our office below, reviewed the Borough Land Use Ordinance and Master Plan. H2M reserves the right to continue to review and provide additional technical comments as the application progresses through the process.

I am in receipt of the following items submitted in connection with this application:

- Site Plan titled "Existing Conditions Plan / Zoning Summary Schematic Section", prepared by Pulice / Williams Architects, dated September 13, 2023 and revised through October 4, 2023, consisting of one (1) sheet.
- Site Plan Application Checklist dated September 14, 2023.
- Zoning Official Denial dated September 5, 2023.
- Notice to Appeal before the Borough of Leonia Planning Board for a Variance Application, prepared by Charles J. Lange Jr., Esq., dated September 5, 2023, along with Tax Certification Form and Campaign Disclosure Form.



- 1. Project Overview.** The applicant, Fish Fish Wing Wing LLC, has submitted a site plan application with accessory structures bulk variances to contain an outdoor walk-in refrigerator and storage shed on a rear yard deck that is raised 1'10" off the grade. The lot, identified as Block 509, Lot 4, is located in the D Business Zone District. The area is primarily nonresidential business keeping with the main street like character of Broad Avenue with commercial uses on the adjacent properties. The uses immediately opposite, to the east of Broad Avenue, contain an auto repair and gas station. The existing, one-story building currently houses a restaurant use.



2. Zone District. The site is located in the D Business Zone.

The permitted uses for the D Zone include, among others, the following:

A. Business uses of a strictly retail sales and service type, conducted entirely within the confines of a building and involving the sale of goods or rendering of services directly to the ultimate consumer and limited to the following:

(3) Restaurants, but not including drive-in restaurants.

The restaurant use is permitted in the zone district. Chapter 290, Article XIII, General Regulations, sets forth additional standards that the application does not comply as noted in the following table.

Application Variances and Exceptions

Ordinance Requirement	Regulation	Required	Existing	Proposed	Status
Use	§290-23	Permitted uses identified in §290-23	Restaurant	No change	Compliant
Accessory Structures height	§290-45.A.1	10 feet	-	Greater than 10 feet	Requires c variance
Accessory Structures Street setback	§290-45.A.2	50 feet	-	Greater than 50 feet	Compliant
Accessory Structures side yard setback	§290-45.A.4	3 feet	-	1.08 feet (1'1")	Requires c variance
Accessory Structures rear yard setback	§290-45.A.4	3 feet	-	8.5 feet	Compliant
Accessory Structure distance from principal building	§290-45.A.5	10 feet	-	8.375 feet (8'4½")	Requires c variance
Distance between accessory structures	§290-45.A.5	6 feet	-	1 feet	Requires c variance
Rear yard area devoted to accessory structures	§290-45.A.7	25% (Rear yard 37.5' * 13.85' =519.38. 25% of 519.38 = 129.8 or 130)	-	30.8% (160 SF)	Requires c variance
Fence Height	§290-47.D	6 feet	6 feet	7.58 feet (7'10")	Requires c variance

Variance Comments

1. **Bulk and Area Variance (“c” variance).** The applicant requires **six (6)** variances, pursuant to N.J.S.A. 40:55D-70(c), as outlined in the table on page 4. While this office defers to the Board attorney in advising the Board on the application of the relevant variance criteria, this report identifies the variance criteria for the purposes of establishing a framework for review. The applicant bears the burden of proof, which is divided into two parts, in the justification of the “c” variance.

A. Positive Criteria. The applicant bears the burden of proof (which is divided into two parts – positive criteria and negative criteria) in the justification of the “c” variance. To satisfy the positive criteria for a “c” variance, the applicant has two choices. First, known as “c(1)” variance relief, the applicant may demonstrate that strict application of the regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship due to one of the following:

- 1) By reason of exceptional narrowness, shallowness or shape of a specific piece of property;
- 2) By reason of exceptional topographic conditions or physical features uniquely affecting the specific piece of property; or
- 3) By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

The applicant should provide testimony regarding any peculiar and exceptional practical difficulties or exceptional and undue hardship if seeking c(1) variance relief for the proposed variances.

Alternatively, and known as “c(2)” variance relief, the applicant may demonstrate the following positive criteria in support of the request for relief:

- 1) Where in an application or appeal relating to a specific piece of property the purposes of the Act (N.J.A.C. 40:55D-2) would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.
- 2) The applicant should provide testimony regarding any public benefits of the project if seeking c(2) variance relief.

B. Negative Criteria. Should the applicant satisfy the positive criteria, it must also be demonstrated that the granting of the variance can be accomplished without resulting in substantial detriment to the public good and without substantial impairment of the intent and purpose of the zoning ordinance and zone plan.

- 1) Negative Criteria: Impact to the public good. Impact to the public good, typically relates to any substantial detriment to the adjoining neighbors or within the surrounding neighborhood. The applicant should provide testimony regarding any potential negative impacts to the character of the neighborhood resulting from the proposed variance relief and any proposed mitigation measures to reduce potential negative impacts to the public good.
- 2) Negative Criteria: Impact to the zone plan. In considering the potential negative impacts to the zoning ordinance and zone plan, the Board should consider potential impact of the variances on the zoning standards of the D Zone.

Planning Comments

1. General. The applicant should provide testimony regarding the reason for the inability to locate the two accessory structures further apart than the proposed one-foot distance.
2. General. Testimony should be provided regarding the necessity for a six-foot fence on the 1'10 high deck than reducing the height of the fence to four feet resulting in a total height of 5'10' than the proposed 7'10". The fence height of 5'10" would be just two inches shy of the maximum permitted height of six feet.
3. General. Testimony should be provided regarding the ability of fire or other emergency services/professionals to access and navigate this area.
4. General. For all other aspects of this application such as the stormwater management concerns this office defers to the Board Engineer.
5. General. The plans show that it is an existing deck while note #1 indicates that the deck is proposed. Upon review of the aerial mapping, it appears that there isn't an existing deck on site. Testimony should be provided clarifying whether the deck is proposed or existing.

H2M reserves the right to provide additional comments as we continue through the review of this application. If you have any further questions regarding the above letter, please contact the undersigned at (862) 207-5900 extension 2285.

Very truly yours,



Sanyogita Chavan PP, AICP
Practice Leader
H2M Associates, Inc.