

Bulk variances for side and rear yard accessory structure setback, rear yard accessory coverage, setbacks between accessory structures, accessory structure height and fence height

**RESOLUTION
LEONIA PLANNING BOARD
APPLICATION OF FISH FISH WING WING, INC.
CALENDAR NO. 2023-05**

WHEREAS, Fish Fish Wing Wing, Inc. (hereinafter referred to as the “Applicant”) applied for bulk variances for side and rear yard accessory structure setback, rear yard accessory coverage, setbacks between accessory structures, accessory structure height and fence height (hereinafter referred to as the “Application”), as further described herein; and

WHEREAS, the property subject of the Application is identified on the Tax Map of the Borough of Leonia as Block 509, Lot 4, and is more commonly known as 452 Broad Avenue, Leonia, New Jersey (the “Property”); and

WHEREAS, the Property is located in the D Zone; and

WHEREAS, the Property is improved with a commercial building that is intended to be used for restaurant purposes; and

WHEREAS, the application was called for a public hearing on October 25, 2023 on proper notice, at which time the Applicant was sworn and testified in support of the Application; and

WHEREAS, the Applicant was represented by Charles Lange, Esq.; and

WHEREAS, the Applicant presented the sworn testimony of its principal, Hee Pak, and its architect and professional planner, Peter Pulice, who was qualified as an expert in the fields of architecture and planning; and

WHEREAS, the following exhibits were marked into evidence at the hearing on October 25, 2023:

- A-1 Photo package prepared by Peter Pulice, dated October 25, 2023
- A-2 Survey prepared by Schmitt Surveying, dated November 13, 2019
- A-3 Photograph of accessory structures taken by Mr. Pak

WHEREAS, the Applicant submitted in support of the Application a one page Site Plan entitled “Oh-Gul Restaurant” prepared by Pulice/Williams Architects, dated September 13, 2023 and last revised October 4, 2023 that depicted the buildings and structures on the Property and contained a detail schematic section that depicted the accessory structures; and

WHEREAS, no members of the public appeared at the hearing and either asked questions or provided comments; and

WHEREAS, the Board has carefully considered the testimony of the Applicant; and

WHEREAS, the Board has made certain findings of fact and conclusions with respect to this Application.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Borough of Leonia that the following facts and conclusions of law are made and determined.

1. All of the recitals set forth above are incorporated herein by reference.
2. The Applicant is a tenant at the Property.
3. The Property is located in the Borough of Leonia’s D Zone.

4. The Property has an area of 1,385 square feet. Although the D Zone contains no bulk regulations, the Board notes that the Property is exceptionally narrow, being that its dimensions are 13.85' x 100'.

5. The Property is improved with a one-story commercial building that the Applicant is utilizing as a take-out restaurant. Given the narrow width of the Property, the interior of the building is 11.4 feet wide.

6. Mr. Pulice described the kitchen area, which he noted had minimal storage space for the food products that would be offered for sale. As a result, the Applicant requires exterior cold storage to maintain the viability of the business.

7. The Applicant constructed, without permits or approvals, a wooden deck in the rear yard of the Property and a fence that surrounds the rear yard. The deck surface is approximately 1'10" above grade and the fence is 7'10" above grade. The purpose of the deck was/is to elevate the exterior refrigeration units that the Applicant placed in the rear yard, also without approval.

8. Given the minimal interior storage space, having the external refrigeration units will provide needed storage and allow the Applicant to store product on-site rather than getting frequent deliveries, which would need to come in through the main entrance because the side and rear yards are landlocked.

9. The Board is authorized, pursuant to *N.J.S.A. 40:55D-70(c)(1)* to grant relief based upon a hardship arising from the physical conditions of the Property or an extraordinary situation caused by the lawfully existing structures on the Property. Here, the Applicant seeks variances from the requirements for side (0.32 feet for deck and 1.92 feet for the refrigeration unit, 3 feet required) and rear yard (2.92 feet, 3 feet required) accessory structure setback, rear

yard accessory coverage (83.06%, 25% permitted), setbacks between accessory structures (1 foot, 10 feet required), accessory structure height (10.87 feet, 10 feet permitted) and fence height (7'10", 6 feet permitted) because the Property is too narrow to permit the Applicant to store the products for its restaurant use. In particular, the two refrigeration units are 96 and 64 square feet respectively, and each have a width of 8 feet and lengths of 12 feet and 8 feet, respectively. The kitchen area within the restaurant is 11.4' x 28', so if the refrigeration units were within the building, they would occupy more than half of its area and the Applicant would not be able to conduct its business because there would be insufficient room for other kitchen equipment and aisles and work areas for employees in the kitchen.

10. The Board concludes that the request for relief will not cause substantial detriment to the public good because the refrigeration units are screened by the fencing and so there is no impact to adjacent properties, which are the rear yards of other businesses. The additional fence height is warranted because of the type of accessory structures that the Applicant installed, which should not be placed directly onto the ground, but rather, are level with the interior of the building to facilitate smooth and safe access. The proximity of the accessory structures to the side and rear lot lines does not cause significant impacts to light, air and open space.

11. For these same reasons, the Board concludes that the grant of the requested variances will not substantially impair the intent and purposes of the zone plan and zoning ordinance. Moreover, the Borough's Master Plan encourages efforts to maintain attractive and thriving business and commercial districts. Given the practical difficulties associated with using a building that is 11 feet wide on its interior, the variances are in furtherance of this goal because they will enable the Applicant to productively use the Property.

NOW THEREFORE, BE IT RESOLVED the Application of Fish Fish Wing Wing, Inc. for side and rear yard accessory structure setback, rear yard accessory coverage, setbacks between accessory structures, accessory structure height and fence height variances as set forth herein is hereby approved, subject to the following conditions:

1. **Location and Type:** The Applicant shall be permitted to construct the improvements shown on the Site Plan entitled “Oh-Gul Restaurant” prepared by Pulice/Williams Architects, dated September 13, 2023 and last revised October 4, 2023 subject to the following conditions:

A. The Borough of Leonia Building Department shall inspect all structures installed within the rear yard of the Property, with particular attention to the footings for the deck. The Applicant shall cooperate with and facilitate this inspection.

B. In the event that any of the accessory structures are removed from the Property, the variances granted for said structure shall be deemed null, void and of no force and effect. This includes if the Borough of Leonia Building Department discovers that the deck is not constructed in accordance with all applicable codes. In such an instance, if the deck is removed, all variances granted herein shall be invalid.

2. **Legal and Engineering Fees:** The Applicant shall be responsible for all legal and engineering fees of the Planning Board in connection with this application and no Certificate of Occupancy shall be issued until all such fees are paid.

3. **Other Fees:** All additional fees, if any, required by the Borough Ordinances shall be paid.

4. **Reliance by Board on Testimony and Application:** This approval is specifically granted based upon the testimony of the Applicant, the exhibits, the application, any

and amendments to same, submitted to the Board, all of which have been relied upon by the Board.

5. **Compliance with Ordinance:** Except for the variance(s) approved herein, the Applicant shall comply with all other provisions of the Zoning Code of the Borough of Leonia.

6. **Compliance with Laws:** The Applicant shall comply with all Borough Ordinances, and any and all State and Federal laws and applicable regulations.

7. **Non-Severability of Conditions:** The relief granted to the Applicant is specifically made subject to the conditions referred to herein. In the event any condition is held to be invalid, unenforceable, or unlawful, the entire variance shall be unenforceable. It is the intent of the Board that the variance(s) not be approved if any condition is invalid, and that the conditions are not severable from any variances or relief granted herein.

8. **Appeal Period:** The Applicant has been advised that there is an appeal period for the relief granted herein for a period of forty-five (45) days from the date of publication of notice of the relief granted pursuant to this Resolution in a newspaper of general circulation approved by the Board. Accordingly, any work or construction done prior to the expiration of the appeal period is accomplished at the sole risk of the Applicant.

The Board rendered its decision at the meeting prior to the adoption of this Resolution by the following vote:

Moved by: Vice Chairman Gold
 Seconded by: Mr. Ford

	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>	<u>Not Qualified To Vote</u>
Michael DeGidio, Chairman	X				
Mayor Zeigler				X	
Councilman Fusco	X				
Ira Gold, Vice Chairman	X				
William Russell	X				
Ron Wolf		X			
Patrick Botten			X		
Timothy Ford	X				
Sean Thompson	X				
Haesok Ko	X				
Damee Choi					X

Said Resolution was adopted by the following vote:

Moved by: *Vice Chair Gold*
Seconded by: *Mr. Ford*


	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>	<u>Not Qualified To Vote</u>
Michael DeGidio, Chairman	X				
Mayor Zeigler					X
Councilman Fusco	X				
Ira Gold, Vice Chairman	X				
William Russell	X				
Ron Wolf					X
Patrick Botten					X
Timothy Ford	X				
Sean Thompson	X				
Haesok Ko	X				
Damee Choi					X

Dated: 11/21/2023

LEONIA PLANNING BOARD

By: 
Michael DeGidio, Chairman

CERTIFIED TO BE A TRUE COPY

By: 
Michael Greco, Administrative Secretary to
the Planning Board