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October 8, 2024

Ms. Diana Chandler-Zimmerman
Board Secretary
Township of West Orange Zoning Board of Adjustment
66 Main Street
West Orange, NJ 07052

Re: **Planning Review Letter**
481 Eagle Rock Ave
Block #152.01, Lot 1445.01
Application for D Variances, Preliminary and Final Major Site Plan
Approval
ZB-24-11

Dear Ms. Chandler-Zimmerman,

This office has reviewed the application submitted by *Wonder Group, Inc.* ("**Applicant**"). The Applicant filed an application with the West Orange Board of Adjustment for a preliminary and final site plan approvals with D variance in connection

In preparation of this memorandum, the following documents were reviewed:

1. Township of West Orange Application Form for the Planning Board or Board of Adjustment, dated August 29, 2024.
2. Amended Application Letter from James Fant, dated September 25, 2024.
3. Checklist of Required Items "C" and "D" Applications and Sustainability Checklist Form.
4. Preliminary and Final Site Plan, prepared by Bohler, dated January 3, 2024, last revised on August 22, 2024.
5. List of property owners to be served notice, prepared on December 29, 2023.
6. W-9, Wonder Group, Inc., dated January 26, 2023.
7. Spec Sheet for refrigerated trailers.
8. Spec Sheet for carport.
9. Verification of taxes and sewer charges paid, dated December 27, 2023.
10. Property Survey, prepared by Control Point Associates, Inc., dated December



- 12, 2023.
11. Statement of Principal Points, prepared by Hardin, Kundla, McKeon & Poletto, undated.
 12. Planning Report, prepared by Stonefield Engineering, dated September 10, 2024.
 13. Justification Transmittal Letter, prepared by James Fant, dated September 11, 2024.
 14. Exhibit 3 – Aerial Imagery, sourced from Google Earth, aerial date June 19, 2022.

Property Information

The property that is the subject of this Application is commonly known as 481 Eagle Rock Ave and identified as **Block #152.01, Lot #1445.01** in the municipal tax records for the Township of West Orange. The site is the location of the vacant Mayfair Farms Banquet Hall. Wonder Group, Inc. currently operates their catering facilities in the rear of the building. The site is bounded by Eagle Rock Avenue to the south, West Orange Plaza, a multi-tenant commercial shopping plaza, to the east, a wooded area to the north, and single-family residential properties on Terrace Ave to the west. There is a wooded area that serves as a buffer between the facility and the residential land uses.



Figure 1: Aerial Image of the site at 481 Eagle Rock Avenue is outlined in yellow.
Source: NJ-GeoWeb

Site Photos (taken October 1, 2024)



Figure 2: Entrance to site from Eagle Rock Avenue



*Figure 3: Access driveway to rear of the site and Wonder Group, Inc to the right of the stone outbuilding.
Driveway to the left leads to the front of the banquet hall*



Figure 4: Rear of building used by Wonder Group, Inc. for food preparation



Figure 5: Location of the two existing refrigerated coolers on site



Figure 6: Location of existing outdoor cooking area for wood-fired smokers



*Figure 7: View to rear of site from front parking lot area.
The location of the facilities is not visible from the street or from the front of the site.*



Project Overview

The Applicant, Wonder Group, Inc, proposes to expand their existing catering facilities which consists of indoor food preparation facilities to the rear of the building on site, and an outdoor cooking facility with two smokers. The application propose to expand the outdoor cooking operations with additional canopies for 10 smokers constructed on concrete pads. Additionally, the applicant proposes a canopy to be used as a carport for the loading of food, and two walk-in coolers and a blast chiller for additional food storage.

Completeness

Our office has reviewed the checklist of required items for C and D Variance Applications.

The Applicant requests waivers for the following items:

#18. Location and dimensions of any existing or proposed streets.

*Justification: The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area. **We have no objection to this waiver request.***

#19. All proposed lot lines and area of lots in square feet.

*Justification: The proposed improvements are generally minor in nature and in a small portion of the existing site. An 'Aerial Exhibit' plan has been included within the submission to illustrate the general outline of the property. **We have no objection to this waiver request.***

#20. Copy and/or delineation of any existing or proposed deed restrictions of covenants.

*Justification: The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area. **We have no objection to this waiver request.***

#21. Any existing or proposed easement or land reserved for or dedicated to public use.

Justification: *Not applicable, improvements are within an existing parking area internal to the site.* **We have no objection to this waiver request.**

#22. Development stages or staging plan. (For GDP – general staging)

Justification: *The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area.* **We have no objection to this waiver request.**

#34. Drainage Area Map.

Justification: *The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area.* **We have no objection to this waiver request.**

#35. Drainage Calculations.

Justification: *The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area.* **We have no objection to this waiver request.**

#36. Proposed utility infrastructure plans.

Justification: *The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area.* **We have no objection to this waiver request.**

#37. Proposed utility infrastructure plans.

Justification: *The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area.* **We have no objection to this waiver request.**

#38. Soil Erosion and Sediment Control Plan

No justification provided. Testimony shall be provided for this requested waiver.



#40. Construction details as required by ordinance.

We have no objection to this waiver request. Only required for major applications.

#41 Road and paving cross-sections and profiles.

*Justification: The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area. **We have no objection to this waiver request.***

#42. Proposed street names.

*Justification: The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area. **We have no objection to this waiver request.***

#44. Lighting plan and details.

*Justification: The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area. **The applicant shall describe the operations envisioned with the proposed expansion of the business, including the planned hours of operation. If food preparation may occur during later hours of the day, consideration should be given to requiring outdoor lighting for the safety of workers and catering vehicles and a lighting plan provided. At this time, we do not recommend this requirement be granted a waiver.***

#45. Landscape Plan

*Justification: The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area. **We have no objection to this waiver request.***

#46. Solid waste Management Plan.

*Justification: The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area. **The***

proposed expansion of food preparation facilities appears likely to result in additional waste being created. The applicant shall testify to the expansion of the preparation of food and shall provide a solid waste management plan if the Board determines that the proposed improvements shall generate additional waste. At this time, we do not recommend this requirement be granted a waiver.

#47. Site identification signs, traffic control signs, and directional signs.

Justification: *The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area. We have no objection to this waiver request.*

#48. Site triangles.

Justification: *The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area. We have no objection to this waiver request.*

#49. Vehicle and pedestrian circulation patterns.

Justification: *The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area. We do not recommend this waiver, the inclusion of a carport for food loading to be used for offsite catering indicates new vehicle circulation patterns which should be reviewed for safe operations.*

#50. Parking plan.

Justification: *The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area. We do not recommend this waiver. The current parking situation in the rear of the site, and location of the improvements is haphazard and disorganized. The site should be improved to formalize parking arrangements with striping. Further, applicant shall testify as to any planned increase in the number of employees as a result of the expansion.*

#51. Preliminary architectural plan and elevations.

Justification: *The proposed improvements are generally minor in nature and the limits of the improvements are within a small portion of the site and in previously impaired areas of the rear of the existing building, mostly within an existing gravel parking area. **We do not recommend this waiver. As permanent structures, elevations shall be provided for the additional canopies with smokers.***

Zoning (§25-7.1)

The site is located within the B-2 General Business zone and IHO-1 Inclusionary Housing Overlay Zone.

Permitted uses within the B-2 zone are as follows:

- Retail Store
- Personal Service store or studio
- Office or office building
- Business or vocational school
- Restaurant
- Bar
- Massage, bodywork or somatic therapy establishment
- Fitness center/health club

Permitted Accessory Uses include:

- Required accessory parking
- Signs
- Vending Machines

Permitted Conditional Uses include:

- Motor Vehicle fueling station
- Public utility building or structure
- Telephone exchange
- Senior citizens housing project
- Hotel
- Private club, other than a golf club
- Video or amusement arcade
- Fast food restaurant



- Commercial antenna
- Microbreweries, craft distilleries and wineries
- Licensed Cannabis Retail
- Licensed Medical Marijuana Dispensary

The following are the bulk standards for the B-2 zone:

- Maximum Height: 2.5 stories and not to exceed 35 feet
- Minimum Lot Area: 10,000 square feet
- Minimum Lot Width: No minimum
- Minimum Front Yard: 30 feet
- Minimum Side Front Yard - Corner Lot: 25 feet
- Minimum Side Yards: 10/10 feet
- Minimum Rear Yard: 30 feet
- Maximum Building Coverage: 40%
- Maximum Lot Coverage: 60%

Planning Comments

The applicant requests an interpretation of zoning as Wonder Group, Inc.

If determined by the Board to require a D1 Variance - Use

N.J.S.A. 40:55D-70(d) permits a Board of Adjustment “in particular cases for Special Reasons” to grant a variance to permit “a use or principal structure in a district restricted against such use or principal structure.” This represents the Positive Criteria of the statute. In addition, a showing of the Negative Criteria is necessary to obtain a “d” variance. The applicant must demonstrate that the proposed variance can be granted “without substantial detriment to the public good and will not substantially impair the intent and the purpose” of the Master Plan and Zoning Ordinance.

When considering the granting of a “d” variance, an applicant must demonstrate that special reasons are satisfied by either showing that the proposed use “inherently serves the public good” or that it promotes the general welfare because the proposed site is particularly suited for that use. It was held in *Medici v. B.P.R. Co.*, 107 NJ 1 (1987) that the only “special reasons” which can be considered are those which promote the general purposes of zoning, as listed in N.J.S.A. 40:55D-2. The court emphasized in *Burbridge v. Mine Hill Twp.*, 117 NJ 376 (1990),



however, that the MLUL includes all the zoning purposes listed in N.J.S.A. 40:55D-2, not only the promotion of the general welfare. Therefore, each of these listed purposes may support an application for a “d” variance

If determined by the Board to require a D2 Variance – Expansion of an existing non-conforming use.

In the case of a D2 variance, the Board has the power to grant the expansion of a lawfully created pre-existing nonconforming uses in particular cases and for special reasons. Because the use is lawfully pre-existing, the applicant shall show the positive criteria related to the advancement to the Municipal Land Use Law, but does not need to demonstrate suitability, as the use already exists. In *Burbridge v. Mine Hill*, the Court noted that applications to expand lawfully created preexisting nonconforming uses offer boards opportunities to impose conditions, frequently aesthetic, which will help integrate the use with its surroundings, an especially important consideration for uses which are thriving and therefore not likely to end soon.

In addition, a showing of the Negative Criteria is necessary to obtain a “d” Variance. The applicant must still demonstrate that the proposed variance can be granted “without substantial detriment to the public good and will not substantially impair the intent and the purpose” of the Master Plan and Zoning Ordinance.



Conclusions

The application involves the expansion of existing operations at the rear portion of the site at 481 Eagle Rock Avenue, which according to the applicant was verbally approved by the zoning officer in 2021. While the applicant has not provided any material evidence to that statement, Wonder Group, Inc., current operations without any zoning violations may be considered by the Board this existing use is legally pre-existing as approved as part of an extension of the banquet hall, which has since ceased operations. The proposed expansion of a legally pre-existing nonconforming use must still demonstrate the positive and negative criteria, but there is already a presumption of site suitability. If the Board determines this use is not legally pre-existing because the applicant fails to provide material evidence, the applicant must also demonstrate site suitability.

Respectfully submitted,

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Erik DeLine, PP, AICP, LEED AP
Associate, Nishuane Group, LLC.