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NEW YORK, NY

August 20, 2021

Chairman Dewey Burleson  
and Members of the Planning Board  
Borough of Hillsdale  
380 Hillsdale Avenue  
Hillsdale, NJ 07642

Regarding: **Block 1104, Lot 5, Borough of Hillsdale  
416-432 Hillsdale Ave. & 424 Hillsdale Ave.  
Major Site Plan with Use & Bulk Variances Application PZ-8-21  
Applicant & Owner: 1 HWW, LLC**

Dear Chairman Burleson and Members of the Board:

We are in receipt of a Site Plan application with Variances that was submitted to the Borough on July 21, 2021. The applicant also submitted a survey, architectural drawings, and photographs.

The survey is prepared by Christopher Lantelme, L.S. and dated December 2, 2020. The architectural plans are prepared by Vincent J. Cioffi Architect and consist of the following seven sheets dated May 25, 2021:

- Drawing 1 of 7 entitled, "Title, Notes."
- Drawing 2 of 7 entitled, "Existing Site Plan."
- Drawing 3 of 7 entitled, "Proposed Site Plan."
- Drawing 4 of 7 entitled, "Site Plan."
- Drawing 5 of 7 entitled, "Site Plan Details."
- Drawing 6 of 7 entitled, "First Floor Plan, Second Floor Plan."
- Drawing 7 of 7 entitled, "Elevations."

This application is to appeal a June 15, 2021 of the Zoning Official for construction of residential apartments on the second level of an existing retail development. The application requires a "d" variance because apartments are not permitted in the downtown commercial zone, and because the proposed building exceeds the maximum permitted height by 10%, as well "c" bulk variances for not meeting the zone district's bulk requirements. The Mayor and Council

Representative should recuse themselves from the application deliberations due to the use variances that are involved with the application.

### **General Site Description**

Lot 5 contains two commercial buildings and a plastic covered greenhouse. The site is located on the north side of Hillsdale Ave, the west side of Winkler Ave., and the south side of Park Ave and has frontage on all three streets. The property consists of 24,145 SF (0.55 acre), and is located in the Commercial/"C" Zone District (7,500 SF minimum lot size).

The lot is improved with a one-story retail masonry building fronting on Park Ave. and Winkler Ave.; a greenhouse also fronts on Winkler Ave. The second building fronts on Hillsdale Ave. and Winkler Ave. that contains both one and two stories. The one-story section is to the east of the two-story building. The one-story area contains retail uses, and the two-story building consists of retail use on the first level and one apartment and retail use on the second level. A propane filling station, as well as various macadam areas and fencing are located on the property.

An 18 ft. wide access easement, beginning at Hillsdale Ave., is located on the western property line. Eight feet of the easement are located on the subject property and the remaining 10 ft. of the easement are located on adjacent Lot 4. The easement is used for access to the rear of the adjacent commercial building as well as the subject site.

### **The Application**

The applicant proposes to construct five new two-bedroom apartments above the one-story retail building that fronts on Hillsdale Ave. Of the five new units, one would be an affordable apartment.

The applicant also is requesting a 'Certificate of Nonconformance' for the two existing apartments pursuant to N.J.S.A. 40:55D-68. The applicant has the burden of proof to show that the apartments existed before the adoption of the ordinance which rendered them nonconforming. Units 430B and 432B are located above the retail uses. One of these units is used as an apartment and the other is used in connection with the retail use located on the first level.

Residential apartments are not permitted in the Commercial Zone. Therefore, a use (d1) variance is needed for the proposed five new apartments. In addition, if the Board denies the 'Certificate of Nonconformance,' a d1 use variance is also needed for the two existing units.

The application also involves the relocation of a propane tank filling station. Eleven parking spaces are proposed; one will be next to the propane filling area and the remaining ten spaces are proposed on the side of, and behind the existing building that fronts on Hillsdale Ave.

The applicant proposes that traffic will enter off of Hillsdale Ave., circulate around and behind the building, and then exit the site on Winkler Ave.

### Completeness Review

The application is also considered a Major Site Plan and has been reviewed against the requirements contained in Land Use Section 310-88, 89, 91 & 92 for Major Site Plan approval, as well as the completeness requirements for use variance applications. The following items are deficient:

#### Major Site Plan

Sections 310-88, 310-89, 310-91 and 310-92 for Preliminary and Final Site Plan requirements. The following items are deficient:

1. 310-88C: Referrals must be made to the municipal officials listed at least **30 days prior to the public hearing.**

310-88D: Proof by affidavit of the date the department referrals were made (provide proof at the public hearing).

2. 310-89A(2): Key Map showing the location of the tract with reference to surrounding properties and existing street intersections. The key map does not provide any street names.
3. 310-89A(5): Property owners within 200 ft.
4. 310-89A(9): Distances, measured along the ROW lines of existing streets abutting the property, to the nearest intersections with other public streets.
5. 310-89B(4): Lighting Plan
6. 310-89B (5): The location and elevation plan of existing and proposed signs (if any).
7. 310-89B(6): Landscape Planting Plan
8. 310-89C(1): Bulk Zone Table: The required parking needs to be clarified and totaled, i.e. total number of required parking spaces vs. total number of spaces provided.
9. 310-91F (1): Developer's Agreement (to be incorporated with resolution).
10. 310-91F (2): Performance guaranty for dedicated improvements and site safety (to be incorporated with resolution).

11. 310-91F (3): Maintenance guaranty for dedicated and on-site drainage improvements (to be incorporated with resolution).

Based on the submitted application materials, the application is incomplete and may not be scheduled for a public hearing.

### Zoning Review

The architectural plans include a bulk table.

The existing buildings encroaches into the required front and side yard setback areas. In addition, the following new variances are proposed in connection with the application.

#### Proposed

1. **Use Not Permitted in Zone District (d1) Variance:** Residential Apartments are not permitted in the Commercial Zone District; therefore a variance pursuant to N.J.S.A. 40:55D-70d(1) is required.
2. **Building Height (d6) Variance:** 30 ft. maximum building height permitted vs. 35 ft. proposed. Building height exceeds the maximum permitted height by 10%; therefore a variance pursuant to N.J.S.A. 40:55D-70d(6) is required.
3. **Front Yard Setback, Second Level Addition:** Approximately 0.5 ft. proposed vs. 5 ft. required. The existing building also encroaches into the required front yard setback area.
4. **Rear Yard Setback Variance, Propane Filling Station:** 1 ft. from property line.
5. **Size of Parking Space:** 175.5 SF proposed vs. 180 SF required.
6. **Required Parking:** 103 spaces required versus 11 provided.

Use or (d) variance:

A **use variance** pursuant to N.J.S.A. 40:55D-70d(1) is required when the proposed use is not permitted in the zone district. A use variance requires the applicant to show special reasons for the Board to approve the application. Special reasons are said to exist where the applicant has shown that the proposed project promotes one of the enumerated purposes of zoning that are listed in N.J.S.A. 40:55D-2 or, alternatively, where denying the variance would result in an undue hardship on the applicant.

The zoning purpose most often relied on to prove special reasons is the promotion of the general welfare. Inherently beneficial uses, such as hospitals and day care centers, are typically found to promote the general welfare. However, a use that is not inherently beneficial may be found to promote the general welfare if the proposed site is peculiarly suited for the proposed use.

Promotion of the general welfare requires “particular suitability” and a showing that the property in question must be the location in which the proposed use is to be located. The applicant must show that there is a need for the use in the municipality or in the region.

Additionally, all use variance applications must satisfy the conventional negative criteria, which is a showing that the variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

For the first prong of the negative criteria, the “detriment to the public good,” the focus is on the impact of the variance on nearby properties. The Board should evaluate the impact of the proposed use variance upon the nearby properties and determine if it will cause damage to the neighborhood character that establishes a substantial detriment to the public good.

For the second part of the negative criteria, “impairment of the zone plan and zoning ordinance,” the applicant must show that the use sought is not inconsistent with the intent and purpose of the Master Plan and Zoning Ordinance. As an added requirement, for all d(1) variances, such as the current application, an enhanced quality of proof is necessary. The enhanced quality of proof reconciles the proposed variance with the zoning ordinance’s omission of the use among those permitted in the zoning ordinance. This additional proof reflects the required periodic review of the municipal master plan and zoning ordinance.

### General Comments

In addition, we offer initial comments on the plans as follows:

#### Site Plan:

Since this is a site plan application, site planning issues need to be considered as any other site. Items which must be addressed are:

1. On-site stormwater management must be addressed. While no additional paved areas are proposed, the capture and control of stormwater from the site is a concern as the site accessways cross two commercial sidewalks. Can the building downspouts be routed to drainage structures in the street to prevent icing on the public sidewalks?
2. The property is currently deficient for on-site parking to address the existing commercial and residential uses (101 spaces required). The proposed residential expansion exacerbates that deficiency (103 spaced required). According to the site plan, three spaces currently exist on the site. A traffic report will be required to define the parking demand for the proposed uses versus the space deficiency.
3. It appears that the NFPA has separation requirements for propane storage tanks from property lines based on storage capacity and whether the storage tank is above ground or below grade. This must be checked by the design professionals as it may affect the propane filling location.
4. Is the propane filling area acceptable to the local fire department?
5. Are there any motor vehicle impact deterrents for the propane filling/exchange area needed for out-of-control vehicles?
6. No site lighting appears proposed. Since the aisle is being used for both commercial and residential use, adequate lighting is required.
7. The dumpster area for the entire site (both buildings) appears to be located west of the new two-story building. This area is confined by tenants parking and may be a challenge for front-loading refuse pickup vehicles. Also, separation may be required from building walls and wall openings.

There are no enclosures for the dumpsters.

8. The 'greenhouse' appears to be more akin to a temporary structure. Is it an approved, permanent structure by the construction code official and when was it constructed?

9. The existing outdoor bulk storage area is being displaced by the new tenant parking area. Where will the materials now be stored?
10. Is there privacy fencing proposed along the rear property lines?
11. New commercial sidewalks and curbs should be constructed along Winkler Way. If they are to be used in conjunction with fork lifts, the sidewalks must be of sufficient thickness to prevent damage.
12. Tactile warning mats are required flanking the exit driveway on Winkler Way with barrier-free ramps.
13. Parking prohibition signs, and a stop sign is required where the driveway crosses the public sidewalks.

Residential Housing:

1. The Site Plan appears to indicate an existing 2<sup>nd</sup> story use over “Existing Retail No. 3” on Hillsdale Avenue. This appears to be in error or clarified.
2. The submitted plans show, on the second level of the two-story building, “Existing Apartment F/Studio” and “Existing Retail 8.” However, existing Retail 8 is also located on the ground level, near the corner of Winkler Ave. and Hillsdale Ave.

The applicant should confirm the Retail Unit numbers. In addition, if the second level Retail space is proposed for residential use, it should be shown as a proposed apartment on Sheet SP-103 of the plans.

3. With respect to the ‘Certification of Nonconformance,’ it is the applicant’s responsibility to prove that the use was a permitted use at its inception, or that a variance was previously granted. Additionally, it appears that one of the units for which the Certification is requested is presently a retail, and not a residential, use.
4. The applicant proposes seven apartments, of which only one would be affordable. We recommend that two of the proposed units be set-aside as affordable to low and moderate income households. With seven units, a 15% affordable set-aside results in a 1.05 affordable housing requirement, rounded to two units.
5. The proposed affordable unit is a two-bedroom unit. Consideration should be given to confirming with both Fair Share Housing Center and the court-appointed Special Master that the proposed two-bedroom unit (rather than a three bedroom unit) would receive Round 4 credit.
6. The affordable unit should be designated as a low or very-low income unit.

We will provide additional comments upon submission of revised plans.

Very truly yours,

C. P. STATILE, PA

(original signed)

Christopher P. Statile, P.E.  
Planning Board Engineer

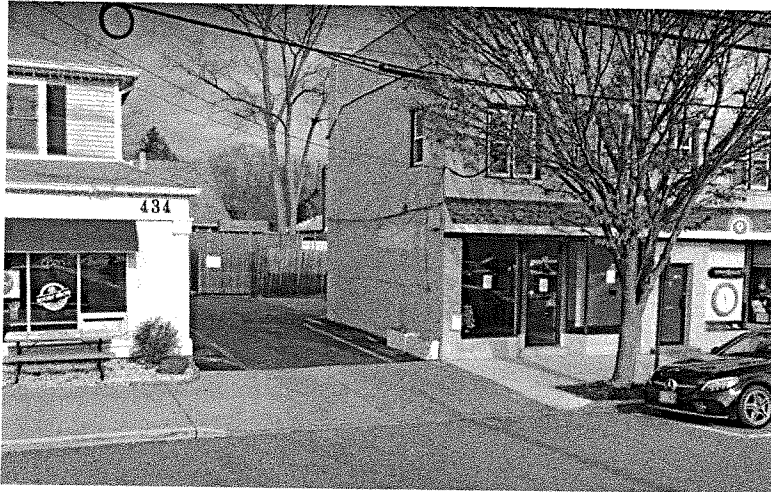
CPS/mr

cc: Stephen Sinisi, Applicant's Counsel

Vincent J. Cioffi, Architect

1 HWW, LLC, Applicant

1120.052/Site Plans



Two-Way Driveway off Hillsdale Avenue



Proposed Driveway Exit off Winkler Way.