



H2M Associates, Inc.

119 Cherry Hill Road, Ste 110
Parsippany, NJ 07054 | tel 862.207.5900

May 23, 2023

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

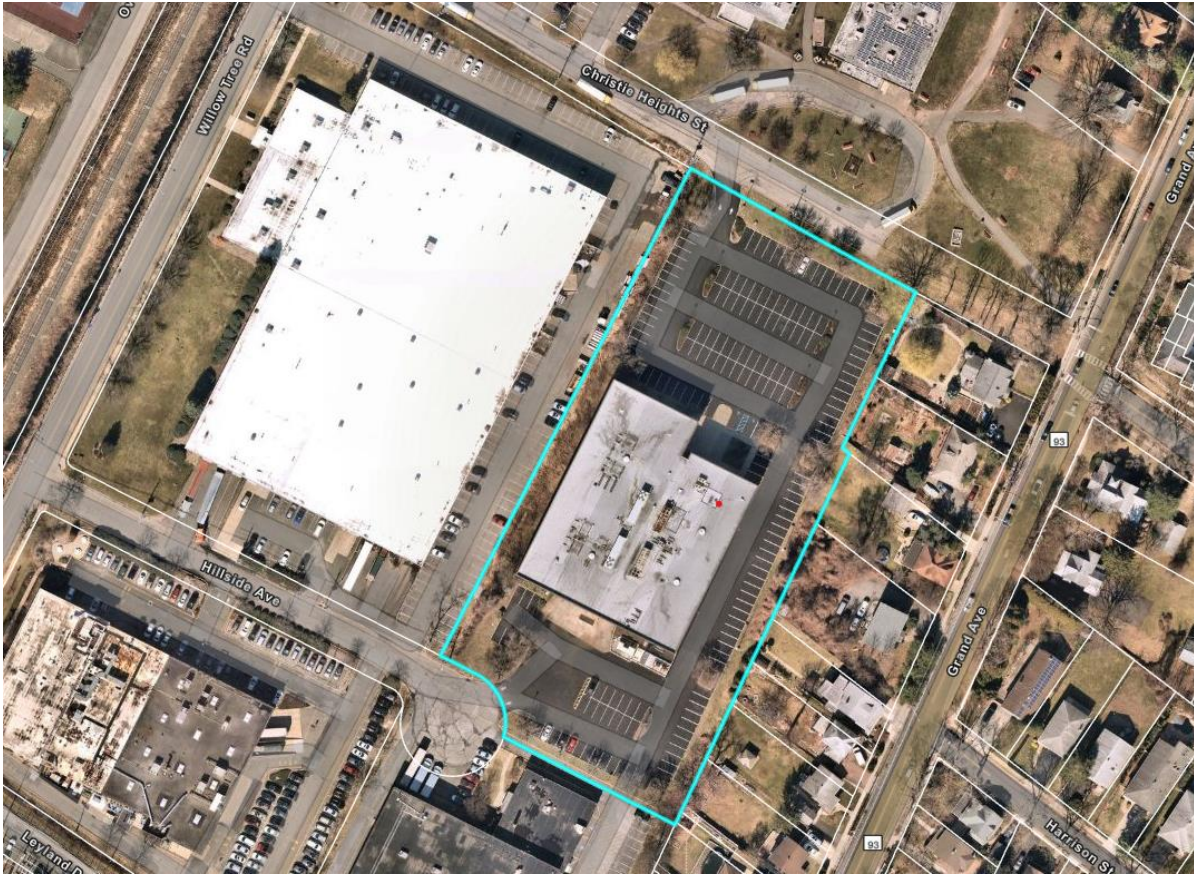
**Re: Reuten Ventures, LLC
Preliminary and Final Site Plan with Use Variance
Block 503, Lot 2
2 Christie Heights Street
H2M Project No.: LEON2303**

Dear Borough of Leonia Zoning Official:

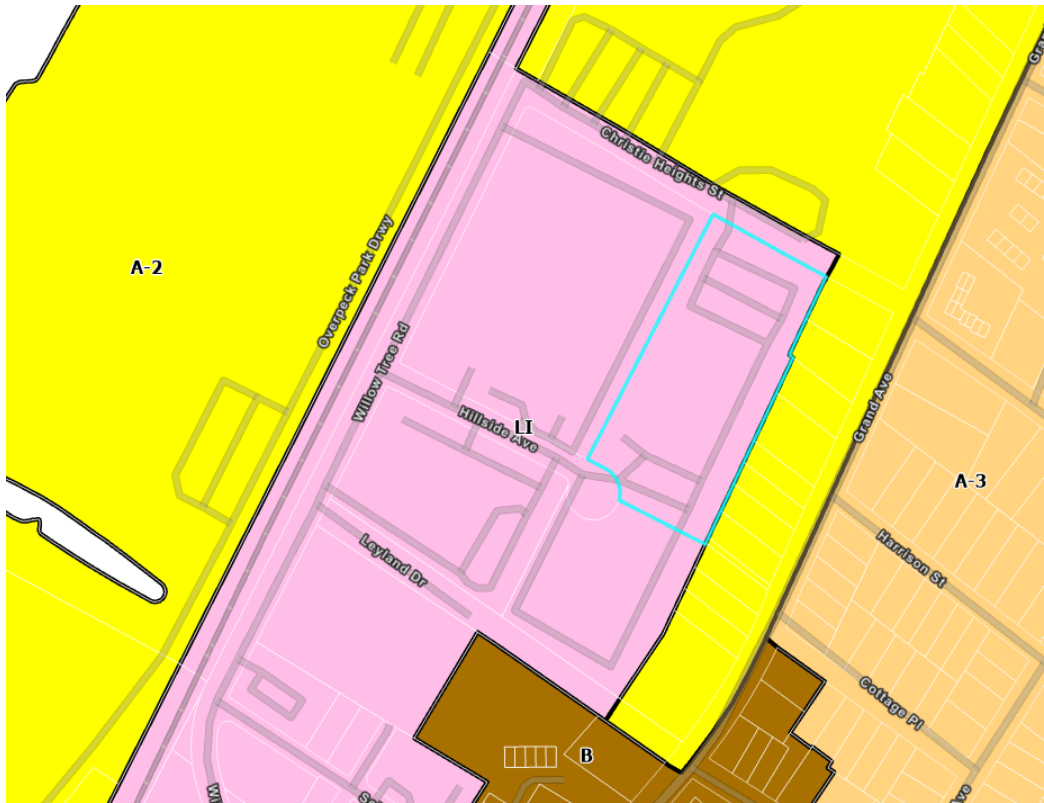
In preparation of this review letter, I have reviewed the application materials provided to our office below, reviewed the Borough Land Use Ordinance and Master Plan. H2M reserves the right to continue to review and provide additional technical comments as the application progresses through the process.

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

- Field Survey titled "Boundary & Topographic Survey", prepared by Kenneth J. Job, P.E., P.L.S., P.P., of Job & Job Consulting Engineers, PA, dated January 27, 2023, consisting of one (1) sheet.
- Site Plan titled "Proposed Adult Day Care Facility", prepared by Kenneth J. Job, P.E., P.L.S., P.P., of Job & Job Consulting Engineers, PA, dated February 9, 2023, consisting of one (1) sheet.
- Architectural drawings titled "Leonias Adult Day Care", prepared by Thomas J. Degraw, R.A., of Degraw & Dehaan Architects, LLP., dated February 9, 2023, consisting of eight (8) sheets.
- Notice to Appeal before the Borough of Leonias Planning Board for a Variance Application, prepared by David M. Repetto, Esq., dated April 13, 2023.



- 1. Project Overview.** The applicant, Reuten Senior Ventures, LLC, has submitted a site plan application with use and bulk variances for one parcel located at Block 503, Lot 2 for a change of use to allow for the interior of the first floor to be reconfigured to accommodate an adult day care use while the second floor office space will continue to be used as such. The lot is located in the Light Industrial (LI) Zone, which does not principally permit adult day care uses. The area is primarily light industrial in nature with the adjacent uses being a warehouse use to the west and a light industrial use to the south. The area to the east of the property is primarily residential and the Leonia High School building and athletic fields are located to the north of the property. The site is currently a vacant office building with access driveways from Leyland Drive and Christie Heights Street and surface parking on the northern, eastern, and southern sides of the building.



2. Zone District. The site is located in the Light Industrial (LI) Zone.

The permitted uses for the LI Zone are as follows:

- Public utility and telephone installations
- Offices for administrative, executive or professional purposes
- Scientific or research laboratories
- Warehousing and storage of products
- Assembly, fabrication and packaging of products from previously prepared materials or components
- Places of worship subject to the requirements in § 290-25G

The proposed adult day care use is not permitted in the LI zone and as such will require a d(1) use variance that is discussed in greater detail below. In addition to non-compliance with the permitted uses in the LI zone, the proposed application also requires bulk variances, pursuant to N.J.S.A. 40:55D-70(c), as detailed in the Variances table below.

Application Variances and Exceptions

Ordinance Requirement	Regulation	Required	Existing	Proposed	Status
Use	§290-25	Permitted uses identified in §290-25	Office	Adult Day Care and Office	Requires d(1) variance
Minimum Lot Area	§290-26D	40,000 square feet	146,333 square feet	146,333 square feet	Compliant
Minimum Width	§290-26D	150 feet	251.4 feet	251.4 feet	Compliant
Minimum Depth	§290-26D	150 feet	139.27 feet	139.27 feet	<i>Existing non-conformity</i>
Minimum Front Yard Setback	§290-26A	35 feet	211.9 feet (Christie Heights St.); 100 feet (Leyland Dr.)	211.9 feet (Christie Heights St.); 100 feet (Leyland Dr.)	Compliant
Minimum Side Yard Setback	§290-26B	25 feet	26.22 feet	26.22 feet	Compliant
Minimum Rear Yard Setback	§290-26C	50 feet	N/A	N/A	N/A
Maximum Lot Coverage	§290-26E	50% of total lot area	75.2%	75.2%	<i>Existing non-conformity</i>
Landscaping & Screening	§290-26F	15 feet	8 feet	8 feet	<i>Existing non-conformity</i>
Off-street parking requirements	§290-96A	See Planning Comment #4	185 spaces	185 spaces	Requires "c" variance
Sign Area	§232-8	36 sq ft. (wall sign) 15 sq ft. (freestanding sign)	N/A	N/A	N/A

Variance Comments

1. **d(1) Use Variance.** The applicant is proposing a change of use to the two-story site located on Block 503, Lot 2, to reconfigure the first floor to accommodate an adult day care use while continuing to use the second floor as an office space. Section 290-25 of the ordinance sets forth the uses permitted in the LI Zone. The list of permitted uses does not include adult day care uses. As such, the proposed use requires a d(1) Use Variance. While this office defers to the Board attorney in advising the Board on the application of relevant variance criteria, this report identifies the variance criteria for the purposes of establishing a framework for review. For a Board to consider an application for a d(1) variance, the use has to be inherently beneficial or the site shall be peculiarly suitable to contain the proposed use. The applicant has to satisfy both the positive and negative criteria. If the Board finds the use to be inherently beneficial then it presumptively satisfies the positive criteria and the enhanced standard established in *Medici v. BPR Co.* does not apply.

- A. **Positive Criteria:** To satisfy the positive criteria, also known as “special reasons”, the applicant must demonstrate that a proposed project carries out a purpose of zoning OR that there is a substantial practical hardship to the development of a conforming structure on the property. The board must keep in mind that only “special reasons” can be considered are those which promote the general purposes of zoning.

“Special reasons” – In *Burbridge v. Mine Hill Twp* the court instructed that the term “special reasons” takes its definition from the purposes of zoning.

- 1) Promotes purposes of MLUL
- 2) Promotes purposes of Master Plan
- 3) Promotes purposes of SDRP
- 4) Site must be particularly suited to the proposed use.

- B. **Negative Criteria:** Should the applicant satisfy the positive criteria; it must also be demonstrated that the granting of the variances 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. Impact to the public good typically relates to any substantial detriment to the adjoining neighbors or within the surrounding neighborhood. Substantial detriments are usually nuisance related such as noise, dust, trash, parking, traffic, visual distraction, light and aesthetics that cannot be adequately mitigated. The applicant should address any impacts to the character of the neighborhood resulting from the proposed change of use to the proposed adult day care use. Testimony should be provided to address the following:

- 1) Will not cause a substantial detriment to the public good.
- 2) Impacts on the surrounding properties and the character of neighborhood should be evaluated.
- 3) Will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

- C. **Inherently Beneficial Use:** The Municipal Land Use Law (M.L.U.L.), pursuant to N.J.S. 40:55D-66.1, permits adult day cares in residential zones but not in a non-residential zone thus requiring a use variance. Furthermore, N.J.S. 40:55D-4 defines inherently beneficial uses as “a use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to, a hospital, school, child care center, group home, or a wind, solar or photovoltaic energy facility or structure.” Thus the MLUL doesn’t explicitly identify it as an inherently beneficial use but also the definition of an inherently beneficial use is not exclusive. Should the Board determine that the use is inherently beneficial then the positive criteria is presumptively satisfied; but, the

applicant is required to satisfy the negative criteria as per *Sica v. Board of Adjustment of Tp. Of Wall*, which puts forth a four prong test as follows:

- 1) Identify the public interest at stake;
- 2) Identify the detrimental effects that may ensue from the grant of the variance;
- 3) Determine any reasonable conditions imposed to ameliorate the impacts;
- 4) Weigh the positive and negative criteria and determine whether the grant of a variance would cause a substantial detriment to the public good.

1. **Bulk and Area Variance (“c” variance).** The applicant requires **one (1)** bulk and area variance 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 LI Zone.

The Board should consider the extent to which the variances may result in any substantial impairment of the intent and purpose of the LI Zone.

Planning Comments

1. General. The applicant should provide testimony regarding the adult day care facility's intention and ability to comply with N.J.A.C. 8:43F *Standards for Licensure of Adult and Pediatric Day Health Services*.

2. General. N.J.S. 40:55D-4 defines inherently beneficial uses as the following:

A use which is universally considered of value to the community because it fundamentally serves the public good and promotes the general welfare. Such a use includes, but is not limited to, a hospital, school, child care center, group home, or a wind, solar or photovoltaic energy facility or structure.

Testimony should be provided regarding the nature of the proposed use in order to determine whether the use meets the above definition of an inherently beneficial use. It should be noted that if the proposed use is determined to meet the definition of an inherently beneficial use, the applicant has met the positive criteria for the granting of a d(1) use variance. However, the applicant must still provide testimony addressing the negative criteria to ensure that a granting of the variance will not result in substantial detriment to the public good not substantial impairment of the zone plan.

3. Parking. §290-96.A. details a list of required parking spaces for a variety of uses. However, the ordinance does not have a standard for adult day care nor an equivalent type of use. The ordinance further states that other uses not provided herein are to be determined by the approving authority. As a parking standard for the proposed use is not given in the ordinance, it is at the Board's discretion to determine if the site provides adequate parking for the proposed use.

For the Board's reference, below are examples of similar municipality's off-street parking requirements for the proposed adult day care use:

Paramus, New Jersey: Nursery schools, day care, child learning and adult day care centers — 1 space per 350 gross square feet plus 1 space for each employee during peak hours. Utilizing this standard, the applicant would need to provide 90 spaces based on the floor area (31,327 square feet / 350 square feet) plus spaces for employees during peak hours.

Sunnyvale, California: Adult day care center – 2.5 spaces per 1,000 square feet. Utilizing this standard, the applicant would need to provide 79 spaces.

It should be noted that per §290-96.B. the applicant is required to meet the combined parking space requirements for all uses in the building. The Borough's ordinance requires one parking space for each 250 square feet of floor area for office spaces. Based on the second floor's floor area of 31,256 square feet, the applicant must provide 125 parking spaces in addition to the spaces required by the proposed adult day care use on the first floor of the building.

4. Parking. Per §290-96.C., if the applicant can demonstrate the parking requirements identified in §290-96.A. are unnecessary or excessive, the Board of Adjustment may grant relief allowing for less parking that required.

Testimony should be provided with regard to the breakdown of space utilization to indicate how much second floor office space is being used by adult day care staff as well how much of an overlap there is, if any, of adult day care staff that utilize the office space on the second floor and staff that provide services on the first floor. The applicant should also provide testimony to confirm adequate parking exists for both the adult day care and office uses.

5. General. Testimony should be provided regarding the capacity to accommodate adults requiring this service, total number of staff, and medical professionals.

6. General. Testimony should be provided regarding the modes of transportation used by persons receiving services from the adult day care (e.g., bus or shuttle service, dropped off and picked up by a family member).
7. General. Testimony should be provided regarding the anticipated times of arrival and departure for persons receiving services from the adult day care in comparison to times of arrival and departure of students and staff at Leonia High School to ensure adequate circulation of both sites. The site plan indicates that the hours of operation of the facility are from 8:00 A.M. to 5:00 P.M. Monday through Friday.
8. General. Testimony should be provided to indicate the nature of the sublessee of the second-floor office space, specifically the amount of office space the day care use will utilize as compared to the office space being sub-leased.
9. Signage. The applicant has not provided details regarding the site's existing and proposed signage. Testimony should be provided regarding proposed signage, if any, and compliance to the Borough's regulations for signs in the LI Zone §232-8.
10. General. For all other aspects of this application regarding the site layout and design, this office defers to the Board Engineer.

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.