



105 Grove Street, Suite 3
Montclair, NJ 07042
www.Nishuanegroup.com
973.954.2677

October 28, 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**
33 Mount Pleasant Ave
Block #88, Lot #26
Application for Appeal of Action of Zoning Office and D Variance
ZB-24-12

Dear Ms. Chandler-Zimmerman,

This office has reviewed the application submitted by *Zinnia Health, LLC*. (**"Applicant"**). The Applicant filed an application with the West Orange Board of Adjustment for approvals for a D Variance in connection with a behavioral health facility located within the OB-2 Zone.

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

1. Correspondence from William C Sullivan, Jr.
2. Township of West Orange Application Form for the Planning Board or Board of Adjustment, dated September 5, 2024.
3. Application and Escrow Fees.
4. Rider to Application for Interpretation/Use Variance.
5. Property Survey, prepared by Swanson, Halsey & Associated, LLC, dated July 6, 2017.
6. 200' Buffer Report, dated September 5, 2024.
7. W-9, Zinnia Health, LLC, dated May 15, 2024.
8. Memorandum by Gienec Gary-Adams, Township of West Orange Director of Planning and Development/Zoning Official, dated July 25, 2024.
9. Verification of Taxes and Sewer Charges Paid, dated September 11, 2024.
10. Prior Resolutions and associated documents in connection with 33 Mount Pleasant Avenue.

Property Information

The property that is the subject of this Application is commonly known as 33 Mount Pleasant Ave and identified as **Block #88, Lot #26** in the municipal tax records for the Township of West Orange. The site is the location of the vacant Canterbury Village Nursing Home. The site is bounded by Mount Pleasant Avenue Avenue to the south, a multi-tenant office building to the west, residential homes on Wildwood Ave to the north, and a two-family residential property on Terrace Ave and parking lot for the multi-tenant office building at 80 Main Street to the east.



Figure 1: Aerial Image of the site at 33 Mount Pleasant Avenue is outlined in yellow.
Source: NJ-GeoWeb

Site Photos (taken October 21, 2024)



Figure 2: Entrance to site from Mount Pleasant Ave Avenue



Figure 3: Front of Building



Figure 4: Side of Building



Figure 5: Side entrance at rear building



Figure 6: Parking area in rear of site

Project Overview

The Applicant, Zinnia Health, LLC, proposes to open and operate a residential behavioral health facility at the Former Canterbury Village, a residential nursing home. As described in the application,

"Applicant proposes to lease the property to Zinnia Health LLC, for the purpose of operating a residential behavioral health facility for the treatment of mental health disorders and other, often co-occurring disorders like substance abuse. The facility would operate as an extended stay facility where patients would typically remain for a period of approximately 30 - 60 days. For many years, the property was used for the Canterbury Assisted Living facility, which closed in 2023 and has been vacant since."

The applicant applied for the use as a "Hospital", which is a permitted use within the OB-2 zone, which was denied by the Zoning Officer. The applicant requests an appeal of that decision.

If the Board finding the proposed use does not meet the definition of a "Hospital", the Board must consider if the proposed use requires a D-1 Use Variance or



whether it may be considered as a Conditionally Permitted Use within the OB-2 zone.

Zoning Interpretation

Our office has reviewed all the materials provided associated with the application. The Rider to application provides two definitions for a Hospital, one provided by the Zoning Officer from the New Jersey Department of Health, which defines a hospital as,

Facilities for the diagnosis, treatment or care of individuals suffering from illness, injury or deformity and where emergency, outpatient, surgical, obstetrical, convalescent or other medical and nursing care is rendered for periods exceeding 24 hours.

The applicant relies on the New Jersey Department of Health Hospital Licensing Standards, which defines hospitals as,

An institution, whether operated for profit or not, whether maintained, supervised or controlled by an agency of the government of the State or any county or municipality or not, which maintains and operates facilities for the diagnosis, treatment or care of two or more non-related individuals suffering from illness, injury or deformity and where emergency, outpatient, surgical, obstetrical, convalescent or other medical and nursing care is rendered for periods exceeding 24 hours.

Generally, we find both to be similar in nature and neither supercedes the other.

Further, under its “Facility Types” page, The New Jersey Department of Health notes “it licenses many different types of facilities.” It provides definitions for these facility types, including the following:

Behavioral Management Program

Provides specialized long-term care for residents with severe behavior management problems, such as combative, aggressive, and disruptive behaviors.

Drug abuse treatment

Methadone detoxification, methadone maintenance, and/or drug-free counseling programs.



Based on the description of the proposed use provided by the applicant, the differentiation of facility types, it appears these definitions are better suited to the type of facility that will be located at the site, and not as a Hospital, as previously defined.

As a result, it is recommended the Board support the Zoning Officer's determination the proposed use does not meet the definition of a Hospital, and therefore it is not a permitted use as such.

In our analysis of the Zoning Code, we note that the following uses are permitted conditional uses within the OB-2 zone:

NURSING HOME AND/OR LONG-TERM CARE RESIDENTIAL HEALTH CARE FACILITY - Shall mean a facility, licensed by the Department of Health of the State of New Jersey as a facility, to provide health care under medical supervision and continuous nursing supervision and nursing home level care for 24 or more consecutive hours to two or more residents who are not related to the governing authority by marriage, blood, or adoption. The residents require continuous nursing care and services above the level of room and board because of their physical condition.

CONGREGATE CARE- Shall mean housing which is specially designed multi-unit housing for independent to semi-independent people including community social and dining facilities. Individual living units include at a minimum, a living room/bedroom, bathroom, and kitchenette. These facilities must offer at least one hot meal per day to each occupant and some housekeeping services within each unit.

In her May 10, 1995 Review Letter of ZB-95-16 for the Canterbury Village, the former Planning Director states, "Zoning and land use is a dynamic field which continually has new terms and types of businesses. While the Zoning Ordinance does not include new terms, the intent of the ordinance must be reviewed. I think the intent of the Zoning Ordinance is to permit hospitals, nursing homes, and sanitariums, including uses similar to these being proposed, such as licensed residential health care, extended care and congregate care."



We concur with this view. While not specifically addressing the issue of behavior health or drug treatment, it appears the proposed use may be better considered as a long-term residential health care facility, and believe application be may be adjudicated by the Board on the basis of it being a permitted conditional use as a long term-residential health care facility, rather than as a hospital.

Conditional Uses (§25-24.2)

- a. General Requirements. Pursuant to the provisions of the Municipal Land Use Law, the Planning Board shall have the power to grant conditional uses on particular sites, according to the definite specifications and standards set forth in Subsection 25-24.2b. Such use shall be one which is specifically authorized as a conditional use by the Table of District Regulations, for the location in the district within which such particular site is located.
- b. Specific Requirements. Subject to the stipulations, guiding principles and conditions contained in this section, the Planning Board shall have the power to grant conditional uses authorized by the Table of District Regulations, in specified districts, as follows:
 1. In districts where only residential uses are authorized except as noted.
 - (g) Nursing Home/Long-Term Care Residential Healthcare Facility. In an R-T, R-G, R-M, OB-1 and OB-2 District, a nursing home or long-term care residential healthcare facility shall be permitted only as a conditional use authorized in each case by the Planning Board and subject to the following conditions:
 - (1) Lot Area. The minimum lot area shall be five acres.
 - (2) Lot Width. The lot width at both the street line and the building setback line shall be not less 350 feet.
 - (3) Front Yard. There shall be a front yard of not less than 150 feet of natural vegetation or landscaping. No parking of motor vehicles shall be permitted in the front yard.

- (4) Side Front Yard. There shall be a side front yard of not less than 150 feet of natural vegetation or landscaping. No parking of motor vehicles shall be permitted in the front side yard.
- (5) Side Yards. There shall be two side yards, each with a 150-foot buffer of natural vegetation or landscaping.
- (6) Rear Yard. There shall be a rear yard of not less than 150 feet of natural vegetation or landscaping. The off-street parking of motor vehicles as required may be permitted in the rear yard, except not within the required 150-foot buffer area.
- (7) Building Height. The building height shall not be more than 35 feet and 2 1/2 stories.
- (8) Building Coverage. The building coverage shall not exceed 25%.
- (9) Lot Coverage. The lot coverage shall not exceed 35%
- (10) Street Frontage. The site must have 350 feet of street frontage.
- (11) Storage of Vehicles. No resident shall be permitted to store or park a motor vehicle(s) at the facility, either permanently or temporarily, unless the motor vehicle(s) is used on a regular basis to conduct the normal daily affairs of that resident.

If found by the Board to be a Permitted Conditional Use, the applicant shall testify as to how the proposed use meets the above conditions. We do note, according to the applicant, there are no external site changes being made, and the previous use was approved as a Conditional Permitted Use as a Nursing Home.

Planning Comments

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

The applicant, absent a decision by the Board that the proposed use is a hospital, or our recommendation that the Board may consider this a permitted conditional use, must be approved by the Board as a D-1 Use Variance, which the applicant submits the proposed use is an “inherently beneficial use”, which is defined 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.”



If the use is held to be inherently beneficial, it presumptively satisfies the positive criteria for grant of a use variance. There still must be a consideration of the negative criteria. In *Sica vs. Board of Adjustment of Township of Wall*, a new balancing test was advanced for such uses. As outlined in the court decision,

1. The board should identify the public interest at stake.
2. The Board should identify the detrimental effect that will ensue from the grant of the variance.
3. In some situations, the local board may reduce the detrimental effect by imposing reasonable conditions on the use.
4. The Board should then weigh the positive and negative criteria and determine whether, on balance, the grant of the variance would cause a substantial detriment to the public good.

If the Board finds the proposed use to be inherently beneficial, the applicant shall provide the testimony in accordance with the Sica test to the Board's satisfaction.



Conclusions

Based on our review of the application, we recommend the Zoning Officer's decision be upheld that the proposed use is not a permitted use as a Hospital. We, however, recommend the Board give consideration of the proposed use is a Permitted Conditional Use as a Long-term Residential Healthcare Facility instead. If the Board determines that a D-1 Use Variance is required, the applicant, must provide sufficient testimony to the Board for such a use, which the applicant submits is an inherently beneficial use. We reserve the right to offer further comments and review should additional information be provided, or testimony given during the hearing.

Respectfully submitted,

George Wheatle Williams, PP, AICP
Principal, Nishuane Group, LLC.

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