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December 16, 2021

Fairlawn Zoning Board of Adjustment
Attn: Ann Peck, Assistant Zoning Officer
8-01 Fair Lawn Avenue
Fair Lawn, NJ 07410

**Re: iLearn Schools Inc.
Amended Site Plan with “d” & “c” Variances
33-00 Broadway
Block 2218, Lot 13
Application No. 2021-37
Our File No. HFLZ2218.01
Planning Review # 1**

Dear Board Members:

In accordance with your authorization, our office has reviewed materials for the above-referenced site including the following:

- Application package and cover letter from Wells, Jawarski & Liebman, LLP, dated October 6, 2021
- Denial letter dated October 19, 2021.
- Cover letter for revised plans submission, Wells, Jawarski & Liebman, LLP, dated November 24, 2021
- Preliminary and Final Major Site Plan iLearn Schools, Block 2218, Lot 13 #33-00 Broadway, consisting of six (6) sheets, prepared by Dykstra Walker Design Group, revised 11/19/2021.

The property is subject to prior approvals as follows:

- Use Variance, Resolution of Approval dated 7/5/1983
- Amended Site Plan and Fence Variance, Resolution of Approval dated 11/7/1983

We offer the following comments for the Board's consideration:

1. Project Description

The amended preliminary and final site plan for 33-00 Broadway being Block 2218, Lot 13 proposes to adding a secondary egress point from the existing surface parking lot to 34th Street.



Amended Site Plan with Variances
RE: 33-00 Broadway
Block 2218 Lot 13; Planning Review #1

December 16, 2021
Our File No. HFLZ2218.01
Page 2

Per the site plans last revised 11/19/2021 (the "site plans") and Exhibit A (Description of Application) the 144¹ space parking lot will be reconfigured, resulting in a reduction in parking spaces to 139, and five (5) picnic tables will be placed in the southern (rear) portion of the property. The two (2) existing ADA parking spaces will be relocated and replaced with five (5) ADA spaces. One (1) tree shall be removed along the 34th Street frontage to facilitate the installation of the secondary egress, and shall be replaced with a maple tree SE of the current tree's location. Impervious coverage is proposed to be reduced by 53 square feet, resulting in an impervious coverage of 69.4%. Signage is proposed related to the proposed exit. No changes to existing lighting, drainage, grading utilities or landscaping (except for the proposed replacement tree) are indicated.

The site was subject to prior applications approved by the Zoning Board of Adjustment ("ZBA") in July and November 1983. These prior approvals ("Prior Approvals") are more fully described in Section 3 (Prior Approvals) below.

2. Site Description and surrounding uses

The property is a 1.862 acre (81,112 square foot) corner lot located in a B-2 (General Business) and R-1-3 (One-Family Residential) zone on the south side of Broadway (NJ Route 4) in the southeastern portion of the Borough. The property has frontage along Broadway (NW) and 34th street (SE). The property consists of an existing three-story commercial building ("building") containing 32,606 square feet of gross floor area with a lobby and building equipment on the first floor and occupied space on floors 2 and 3. Portions of the parking lot are located in an unscreened area underneath the second floor. Landscaped areas are located along both frontages. Access and egress to the site are provided from the southern (eastbound) side of Broadway via an existing 25 foot wide entranceway located in the western corner of the property. The northern and southern sides of this section of Broadway are separated by a concrete divider. A stone and concrete wall is located along the southwestern side lot line abutting Block 2219 Lots 15 and 16.

The building, majority of property and most of the parking lot are located within B-2 zone. Portions of the parking lot located within the R-1-3 zone contain a total of 38 parking spaces, 21 of which are wholly within this residential zone. The rear yard area located within the R-1-3 zone contains

¹ There are discrepancies between parking data as presented in the site plan and as described in Exhibit A, more fully described in Section 6 (Planning Comments)



Amended Site Plan with Variances
RE: 33-00 Broadway
Block 2218 Lot 13; Planning Review #1

December 16, 2021
Our File No. HFLZ2218.01
Page 3

a wooded area abutting R-1-3 zoned areas located to the south and east (Block 2219 Lot 15, Elden Place and Block 2218 Lots 6 & 7).

Contiguous zoning is B-2 for a depth of 200 feet along the southern side of Broadway and an irregular depth along the north side and R-1-3 north and south of these B-2 zones. There are a mix of conforming business uses along Broadway, with non-conforming residential uses located north of the property along 34th Street (Block 2215 Lots 22 & 23). Uses south and east of the site along Elden Place and 34th Street consists of one-family residential homes reflective of the underlying R-1-3 zone.

3. Prior Approvals

As noted in the Resolution adopted on 7/5/1983, the applicant was granted the following approvals:

- a) Preliminary and Final Major Site Plan approval to construct an office building with a maximum height of 40 feet and off street parking for 142 vehicles;
- b) A use variance pursuant to N.J.S.A. 40:55D-70(d)(1) to permit non-residential parking in as residential area for portions of the parking lot located in the R-1-3 zone.

As noted in the Resolution adopted on 11/7/1983, the applicant was granted the following approvals:

- a) Amended Preliminary and Final Major Site Plan approval to construct an office building with a maximum height of 40 feet and off street parking for 142 vehicles;t;
- b) A variance pursuant N.J.S.A. 40:55D-70(c) to permit a seven (7) foot high vinyl clad fence along the southerly and westerly property lines, exceeding the permitted 6 foot high maximum fence height permitted.

4. Zoning Compliance

The proposed egress to 34th Street is not permitted pursuant to §125-42.B (Transition requirements/Business entrances on residential streets).

- As such a d(1) use variance is therefore required.

The existing use **is a use permitted by variance** involving the parking of non-residential vehicles in a Residential Zone which was a prohibited use under former Ordinance Section 26-8.(o), formerly Section 16-8(o). Under the current Ordinance parking for nonresidential uses in the R-1-3 Zone immediately adjoining the B-2 District is a permitted Conditional Use on the north side of



Amended Site Plan with Variances
RE: 33-00 Broadway
Block 2218 Lot 13; Planning Review #1

December 16, 2021
Our File No. HFLZ2218.01
Page 4

Route 4 (Broadway) pursuant to § 125-48.C(6) (Parking and loading areas/ Parking area design standards). This provision is not applicable to the property as it is located on the south side of Broadway.

Bulk or “c” requirements and variances, as well as design waivers are detailed in Section 5 (Variances and Waivers) below.

We are noting a “c” variance for loading zones in Table 1 (Bulk Standards), as this item was not specifically addressed in the Prior Approvals, as well as noting the variance for fence height previously granted as part of the Prior Approvals. In addition a variance for parking and screening are noted pending further testimony by applicant, further addressed in Section 6 (Planning Comments)

5. Variances and Waivers

“d” variances

As the applicant proposes to include an additional non-permitted use on the subject site, as per applicable case law, the applicant must seek a “Special Reasons” Use Variance pursuant to N.J.S.A. 40:55D-70d.

Per the State Supreme Court’s decision in the case of *Medici v. BPR Co.*, the applicant must be prepared to provide testimony demonstrating that there are special reasons to permit the nonconforming use, that the site in question is particularly suited to the use, and (in regards to the negative criteria) requires an enhanced quality of proof the grant of a use variance is not inconsistent with the intent and purpose of the master plan and zoning ordinance.

In the case of *Price v. Himeji, LLC*, the Supreme Court of New Jersey held that a Zoning Board should not determine that a property is particularly suited to the use simply because it is the most suitable site in the municipality for the use. The use should be appropriate and especially beneficial based on the unique conditions of the site and its surrounding area.

The applicant shall provide testimony demonstrating the following:

a. Positive Criteria

- i. That the site is particularly suited to the use.
- ii. That there are special reasons that allow a departure from the zoning regulations in this particular case. In general, to show special reasons, the grant of a variance must be shown to implement one or more of the purposes of the Municipal Land Use



Amended Site Plan with Variances
RE: 33-00 Broadway
Block 2218 Lot 13; Planning Review #1

December 16, 2021
Our File No. HFLZ2218.01
Page 5

Law (N.J.S.A. 40:55D(2)), and should promote the purposes of the municipality's Master Plan and the State Development and Redevelopment Plan.

b. Negative Criteria

- i. That the variance can be granted without substantial detriment to the public good. This requires an evaluation of the impact of the proposed use on surrounding properties and a determination as to whether or not it causes such damage to the character of the neighborhood, as to constitute a substantial detriment to the public good.
- ii. That the variance can be granted without substantially impairing the Zone Plan or Zoning Ordinance.

"c" variances

The B-2 and R-1-3 standards are summarized within Table 1 (Bulk Standards) below:

Table 1: Bulk Standards (General Business and Mixed Uses, B-2 Zone, R-1-3 Zone)					
Standard	Required / Permitted		Existing	Proposed	Ordinance Section
	B-2	R-1-3			
Minimum Lot Area	10,000 s.f.	6,500 s.f	81,112 s.f.	81,112 s.f.	§ 125-12 *
Minimum Lot Width (Corner Lot)	50 ft.	75 ft. **	236.1 ft.	236.1 ft.	§ 125-12 *
Minimum Lot Depth	100 ft.	100 ft. **	342.4 ft.	342.4 ft.	§ 125-12 *



Amended Site Plan with Variances
RE: 33-00 Broadway
Block 2218 Lot 13; Planning Review #1

December 16, 2021
Our File No. HFLZ2218.01
Page 6

Table 1: Bulk Standards (General Business and Mixed Uses, B-2 Zone, R-1-3 Zone)

Standard	Required / Permitted		Existing	Proposed	Ordinance Section
	B-2	R-1-3			
Maximum Height	35 ft. (45 feet including rooftop equipment)	30 ft., 2 ½ stories	44.5 ft. ²	44.5 ft.	§ 125-12 *
Minimum Front Yard (corner lot):					
Broadway	13.9 ft. (E)	25 ft.	20.2 ft.	20.2 ft.	§ 125-12 *
34 th Street	20 ft. (E)	25 ft.	51 ft. **	51 ft. **	§ 125-12 *
Minimum Side Yard (Interior)	10 ft.**	10 ft.	40.2 ft.	40.2 ft.	§ 125-42.C(1): B-2 zone; § 125-12: R-1-3 Zone *
Safety Access (F)	10 ft. **	N/A	>10 ft. **	>10 ft. **	§ 125-12 *
Minimum Rear Yard	66.75 feet (B)**	20 ft. **	182.2 ft.	28 ft.	§ 125-12 *
Maximum Building Coverage	35 %	25 % **	19.8 %	9.61 %	§ 125-12 *
Maximum Impervious Coverage	90 %	35 % **	69.5 % (PA)	69.4 %	§ 125-12 *

² Building height is discussed further in Section 6 (Planning Comments)



Amended Site Plan with Variances
RE: 33-00 Broadway
Block 2218 Lot 13; Planning Review #1

December 16, 2021
Our File No. HFLZ2218.01
Page 7

Table 1: Bulk Standards (General Business and Mixed Uses, B-2 Zone, R-1-3 Zone)

Standard	Required / Permitted		Existing	Proposed	Ordinance Section
	B-2	R-1-3			
Maximum Fence Height	N/A	3 ft.	7 ft. (PA)	7 ft. (PA)	§ 125-38.A
Off Street Parking:					
Office (4 spaces per 1,000 GFA)	95.3**	N/A			§ 125-48.A ***
Medical Office (5 spaces per 1,000 GFA)	43.9	N/A			§ 125-48.A ***
Total	139 (139.2 rounded down)	N/A	144	138 (V)**	§ 125-48.A ***
Loading Zones	1	N/A	0	0 (V)	§ 125-48.B
Parking areas under a building on stilts	Decorative masonry or other architectural treatment	N/A	None	None (V)	§ 125-48.C(5)

* § 125-12: Schedule of Area, Yard and Building Requirements.

** Differs from Site Plan Bulk Table

*** § 125-48A(2): Off-Street Parking Schedule II

B: Minimum Front Yard Setbacks, Note B, Schedule of Area, Yard and Building Requirements

E: Minimum Front Yard Setbacks, Note E, Schedule of Area, Yard and Building Requirements

F: Minimum Safety Access, Note F, Schedule of Area, Yard and Building Requirements

PA: Previously Approved



Amended Site Plan with Variances
RE: 33-00 Broadway
Block 2218 Lot 13; Planning Review #1

December 16, 2021
Our File No. HFLZ2218.01
Page 8

Waivers

We note the following waivers applicable to this application as contained in §125-47.1.O(8) (General design standards for commercial, mixed-use and multifamily residential development/Parking).

- One shade tree for every 10 parking spaces: no shade trees existing or proposed in the open-air parking areas

6. Planning Comments

a) Use Variance: Business Entrance on Residential Streets

- i) We defer to the Board Engineers to address the operational aspects and design elements of the proposed new entrance onto 34th Street (a side street), which requires a use variance as business entrances on any side streets extending through residential districts are not permitted.
- ii) Mitigation related to the requested variance could include limiting to prohibiting vehicles from turning right onto 34th Street and heading toward the R-1-3 zone, pending further input from the Board's Traffic Engineer.

b) Parking Areas and Loading Zones

- i) Applicant should reconcile discrepancies between our count of proposed parking spaces (138) with that indicated on the Parking Requirements Table located on Sheet 1 of the site plan (139), and request an additional variance if the proposed parking does not meet the 139 spaces required.
 - i. Our count indicated 20 proposed spaces in the parking aisle adjacent to the proposed picnic tables; the site plan indicates 21.
 - ii. We note that the Previous Approvals described the proposed parking lot area as containing 142 spaces, while the site plans indicated 144 spaces are provided in the current parking lot.
- ii) Applicant should provide a more detailed list of current uses in the building and clearly demonstrate parking calculations for each use.
- iii) Applicant should provide screening of the parking area under the building as required, or justify this omission in testimony and request an additional variance.



Amended Site Plan with Variances
RE: 33-00 Broadway
Block 2218 Lot 13; Planning Review #1

December 16, 2021
Our File No. HFLZ2218.01
Page 9

- iv) We defer to the Board Engineers to address the following operational aspects and design elements of the proposed parking lot re-configuration:
 - i. The proposed new entrance does not align with any existing drive aisles
 - ii. It appears that two (2) adjacent parking spots located perpendicular to each other may have maneuverability issues.
 - iii. Applicant should provide testimony to support the continued absence of the required loading zone for the site. § 125-48.B requires that in space be proved for buildings of 2,000 square feet of floor area or more.
- c) Building Height
 - i) Applicant should demonstrate it complies with the height requirements of the B-2 zone. Maximum building height is 35 feet, with roof appurtenances permitted to exceed permitted building height by no more than 10 feet per §125-42.A.
 - i. Calculations as to permitted appurtenance height should be provided using the maximum height as specified by Ordinance (35 feet) not the approved height noted in the Previous Approvals (40 feet)
 - ii. We recommend that elevations elevation drawings be provided to illustrate height calculations, specifically noting roofline height and appurtenance height.
- d) Green Design Features
 - i) Provide testimony regarding the provision of green design features and amenities as described in § 125-47.1.B (Green building practices), such the provision of bike racks, establishing and maintaining pedestrian connections, as well as providing electric vehicle charging stations (EV Stations) as recommended in the Master Plan (pg. 45, Item 5).
 - ii) In regards to EV Stations, per the recently passed and signed S-3223 (P.L. 2021, c.171) , municipalities are required to follow a model ordinance (“An Ordinance Authorizing and Encouraging Electric Vehicle Supply/Service Equipment (EVSE) & Make-Ready Parking Spaces”) for electric vehicle Make-Ready and Electric-Vehicle Supply/Service Equipment (EVSE) parking spaces.



Amended Site Plan with Variances
RE: 33-00 Broadway
Block 2218 Lot 13; Planning Review #1

December 16, 2021
Our File No. HFLZ2218.01
Page 10

- e) Architectural & Landscaping
 - i) No changes are proposed to the existing building.
 - ii) Applicant should provide justification for a waiver from providing one (1) shade tree per parking area, or revised the site plan to provide these trees. As noted in §125-47.1.O(8):
 - i. At least 50% of the parking area should be shaded at tree maturity which should be demonstrated by the applicant.
 - ii. This can be accomplished through the use of landscaped peninsulas, end islands and linear strips.
 - iii) Applicant should provide testimony and demonstrate compliance with landscaping requirements for parking areas as well as those of § 125-47.1.I (Circulation) regarding Street Trees and §125-47.1.M (Landscaping).
 - i. The site plan should be revised to show compliance with landscaping and circulation requirements, or request and provide justification for a waiver.
- f) Split Zone Lot
 - i) §125-42.A (Transition requirements / Lots in two districts) is applicable to the application, as the property is located in a two (2) zoning districts and fronts the less restrictive (B-2) zone along Broadway:
 - i. The regulations for the less restricted portion of such lot shall extend not more than 20 feet into the more restricted portion, provided the lot has frontage on a street in the less restricted district".
- g) Impervious Coverage.
 - i) We recommend that applicant provide a separate breakdown of impervious surface for the R-1-3 portion of the site to demonstrate compliance with the 35 % maximum impervious coverage permitted in this zone. This calculation may exclude the first 20 feet of this R-3-1 portion as specified in §125-42.A
- h) Zone Limit Line
 - i) Applicant should confirm the accuracy of Zone Limit Line as indicated on Sheet 3 of the site plans. Our review of the Zoning Map indicates the B-2 Zone extends



Amended Site Plan with Variances
RE: 33-00 Broadway
Block 2218 Lot 13; Planning Review #1

December 16, 2021
Our File No. HFLZ2218.01
Page 11

200 feet south from Broadway in this area of the Borough. The Zone Limit Line indicated on the site plans follows the side Lot line of Block 2215 Lot 21, a parcel located east of the property abutting 34th Street that appears to be less than 200 feet from Broadway.

i) Zoning Table

i) There are discrepancies between the Schedule of Area, Yard and Building Requirements (General Business and Mixed Uses, B-2 Zone, 1 Family Dwelling R-1-3) and that listed within the Bulk Table on Sheet 1 of the site plans, as well as additional information requested Review and revise as follows:

- i. Minimum Lot Width (Corner Lot – R-1-3 Zone): revise to indicate 75 feet required (150 feet is currently indicated)
- ii. Minimum Lot Depth (Corner Lot – R-1-3 Zone): revise to indicate 100 feet required (120 feet is currently indicated)
- iii. Add Front Yard Setback requirements and calculations for 34th Street Front Yard Area.
- iv. Add Safety Area requirements (Note F, Schedule of Area, Yard and Building Requirements) and calculations for the interior side yard area (B-2 section) abutting Block 2219 Lot 16.
- v. Minimum Rear Yard (B-2 Zone): revise to indicate 1 ½ times the height of the building, as indicated in Note B, Schedule of Area, Yard and Building Requirements required (25 feet is currently indicated). Our current calculation in Table 1 (Bulk Standards) of 66.75 feet is based upon applicant's current height calculation of 44.5 feet.
- vi. Maximum Building Coverage (R-1-3 Zone): revise to indicate 25% permitted (20% is currently indicated)
- vii. Maximum Impervious Coverage (R-1-3 Zone): revise to indicate 35% permitted (45% is currently indicated)

j) Miscellaneous

- i. Except for traffic signage related to the proposed exit onto 34th Street, no additional signage is proposed at this time. A separate application will be needed for any building



Amended Site Plan with Variances
RE: 33-00 Broadway
Block 2218 Lot 13; Planning Review #1

December 16, 2021
Our File No. HFLZ2218.01
Page 12

- identification signage associated with the development. The Board should retain jurisdiction on signage if the Board acts favorably on the proposal.
- ii. Confirm all utility wiring will be located underground. All utilities will be screened and generators and transformers located below grade or within a building enclosure.
 - iii. We defer to the Board Engineer and Traffic Engineer regarding lighting, grading, drainage, utilities and traffic.
 - iv. Provide testimony regarding the status of outside agency approvals.

We reserve the right to present additional comments, variances, and/or design waivers pending the receipt of revised plans and/or the testimony of the applicant before the Board.

Should you have any questions or require additional information, please do not hesitate to contact us.

Very truly yours,

CME Associates

Ronald J Reinertsen, PP, AICP
Professional Board Planner

RJR:rr

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