

**Borough of Kinnelon**

**Board of Adjustment**

**May 3, 2022**

The regular monthly meeting of the Kinnelon Board of Adjustment was called to order by Chairman John Carpenter at 8:00p.m., Tuesday, May 3, 2022 in the Municipal Building.

It was posted that adequate notice of this meeting had been given in accordance with the Sunshine Law by posting a notice on the municipal bulletin board, by publication of a legal notice in the Suburban Trends on February 2022 and by sending the meeting date to the Daily Record and Herald News on February 2022.

Present and answering roll call were Mr. Carpenter, Mr. Bender, Mr. Lockwood, Mrs. Minett, Mrs. Maletsky and Mrs. Canale. Mr. Ott and Mrs. Herrington were absent from this meeting.

Mr. Carpenter asked if everyone would please rise for the Pledge of Allegiance.

A motion to approve the April 5, 2022 was offered by Mrs. Maletsky, second by Mr. Lockwood with the affirmative "yes" vote of all on roll call.

**Application #1535 DaVita Kidney Care, 1481 Route 23 South.** The applicant is seeking checklist waivers and a type D(1) variance to provide medical service to dialysis patients. This is carried from the April 5, 2022 meeting.

A motion to deem this application complete was offered by Mrs. Maletsky, second by Mr. Lockwood with the affirmative "yes" vote of all on roll call.

The Engineer Report was read into the record.

RE: Kinnelon Zoning Board of Adjustment Application No. 1535  
for Site Plan and Use Variance Approval  
Project Location: 1481 NJSH Route 23 South  
Block 45301, Lot 102 on Kinnelon Tax Map Sheet #53.01  
Block 54, Lot 1.03 on Butler Tax Map Sheet #9  
Borough of Kinnelon, Morris County, New Jersey  
Restricted Commercial Zone (Borough Code § 207-18 & 207-31)  
Applicant: DaVita Kidney Care c/o Lawrence Calli, Esq. of Calli Law, LLC  
170 Kinnelon Rd, Suite 6, Kinnelon, NJ 07405  
Owner: Butler Bowl, Inc.  
1049 Red Hawk Dr., Lake Ariel, PA 18433

Dear Chairman Carpenter and Members of the Board:

We have received the following documents in support of the above-referenced application:

1. New Account Escrow Information Sheet, dated September 14, 2021;
2. W9 Form, Request for Taxpayer Identification Number and Certification, signed by the Applicant's Attorney, dated February 3, 2020;

3. Cover Letter from the Applicant's Attorney, Lawrence A. Calli, dated September 13, 2021;
4. Cover Letter from the Applicant's Attorney, Lawrence A. Calli, dated February 2, 2022;
5. Letter from the Applicant's Engineer, Menlo Engineering, dated January 25, 2022;
6. Letter from the Borough Tax Collector indicating no delinquent taxes, signed by Judi O'Brien, dated August 9, 2021;
7. Kinnelon Zoning Board of Adjustment Application for Development, signed by the Applicant;
8. Affidavit of Accurate Representation, signed by the Applicant, dated September 3, 2021, notarized;
9. Kinnelon Zoning Board of Adjustment On-Site Inspection Statement, signed by the Applicant's Attorney, Lawrence A. Calli, dated August 30, 2021;
10. Application Addendum, prepared by the Applicant's Attorney, Lawrence A. Calli, stamped received September 14, 2021;
11. Corporate Ownership Disclosure Statement, no date;
12. OPRA Request, including Kinnelon Board of Adjustment Resolution #1517 and Kinnelon Planning Board Resolution #775;
13. Letter of Exemption from the Morris County Planning Board, dated October 8, 2021;
14. Report of Title for the subject property, prepared by Evident Title Agency, Inc., dated October 29, 2021;
15. Copy of the USDA Web Soil Survey, consisting of three (3) pages, dated July 28, 2021;
16. Copy of a survey, prepared by DAB Surveying, Inc., consisting of one (1) sheet, dated April 30, 1998, bearing no revisions;
17. Topographic Map of a Portion of 1483 Route 23, prepared by Alfred A. Stewart, Jr. of Stewart Surveying and Engineering, LLC, dated March 19, 2021;
18. Architectural Floor Plan and Elevation, prepared by Tecton Architects, consisting of one (1) sheet, bearing seven (7) revisions, last revised November 22, 2021;
19. Generac SD080 Generator Operating Data, stamped received September 14, 2021; and,
20. Preliminary/Final Site Plan, prepared by William A. Lane, PE of Menlo Engineering Associates, Inc., consisting of five (5) sheets, dated July 26, 2021, bearing one (1) revision on January 24, 2022.

### **Completeness Review**

We have reviewed the above referenced documents submitted, the Kinnelon Checklist "A" Requirements

for All Applications, Checklist "E" for Site Plans, Checklist "F" for Variances, and Checklist "H" for Traffic Impact Studies. We recommend the application be considered for completeness at the next available meeting, as well as a public hearing immediately following and pending the outcome of completeness. The following are outstanding completeness items for which compliance must be provided, or for which waivers are requested:

### **Checklist "A" Requirements for All Applications**

§176-37A (1), (2), (4), and (7) - Upon completeness, coordinate the correct number of applications forms,

site plans and supporting documents with the Board Secretary.

§176-37A (3) – Coordinate the correct Application Fees and Initial Escrow Deposit with the Board Secretary. The Attorney indicated Application Fees and Escrow Deposits were being paid; however, the amounts do not appear to be correct. Per Borough Code § 47-31, the following fees shall be paid:

### **Application Fees (Subsections D, G, J, & K):**

Site Plan = \$375.00

Use Variance = \$750.00  
Bulk Variances = \$500.00  
Total Application Fee = \$1,625.00  
Fees Paid to Date = \$825.00  
Total Additional Application Fee Due At This Time = \$800.00  
Escrow Deposit (Subsection M)  
Site Plan = \$5,500.00 (Building Floor Plan = ±5,950-SF)  
Variance (Type c) = \$500.00  
Variance (Type d) = \$1,500.00  
Total Escrow Fee = \$7,500.00  
Fees Paid to Date = \$5,000.00  
Total Additional Escrow Due at This Time = \$2,500.00

§176-37A (5) - A survey of the subject property, prepared not more than seven years from the date of submittal of the application, together with an affidavit of no change from what is shown on the survey. An applicant may submit a survey prepared more than seven years from the date of submittal, provided the survey contains the signature and seal of a certified surveyor attesting that it is an accurate representation of the current conditions on the subject property. The survey provided is from 1998 which doesn't provide an accurate representation of existing conditions and is outdated per Borough Code minimum requirements for surveys; however, the Applicant provided a supplemental partial survey of the areas proposed to be modified, dated March 19, 2021.

§176-37A (13) - Provide the lists of owners from Kinnelon Borough and Butler Borough, as certified by the Assessor for each municipality.

§176-37A (16) - ...wetlands shall be delineated on the plan per the requirements of Article XV of the Zoning Ordinance... A checklist waiver has been requested. We have no engineering objection to granting a checklist waiver given the developed nature of the site and immediate vicinity.

#### **Checklist "E" Requirements for Site Plans**

§176-37E (1) - All items per Section 176-37A

§176-37E (2) (d) - A survey of existing utilities within two hundred (200) feet. A checklist waiver has been requested. We have no engineering objection to granting a partial checklist waiver for utilities beyond the subject property if the existing electric, gas, sanitary sewer and water service within the subject property is depicted on the plan.

§176-37E (2) (e) - The location of all natural and man-made facilities on the subject property and adjoining properties within two hundred (200) feet and a showing of easements affecting the site. A checklist waiver has been requested. We have no engineering objection to granting a partial checklist waiver for all natural and man-made facilities beyond the subject property.

§176-37E (2) (j) - Type of surface, paving, curbing, sidewalks, storm drainage facilities, water mains and sanitary sewer lines and calculations. A checklist waiver has been requested. We have no engineering objection to granting checklist waiver this provision if approval from the PRBSA (Pequannock River Basin Sewerage Authority) is made a condition of any approval of this Application.

§176-37E (2) (k) - Any driveways within two hundred (200) feet accessing the street on which the subject property is located. A checklist waiver has been requested. We have no engineering objection to granting checklist waiver from this provision.

§176-37E (3) - A lighting plan. A checklist waiver has been requested. We have no engineering

objection to granting checklist waiver from this provision.

§176-37E (4) - A soil erosion and sediment control plan. A checklist waiver has been requested. We have no engineering objection to granting checklist waiver from this provision given the limited disturbance proposed.

§176-37E (5) (b) - All flood hazard areas, lakes, ponds, marshes, bogs, swamps, brooks, and perennial and intermittent streams, whether natural or man-made. A checklist waiver has been requested. We have no engineering objection to granting checklist waiver from this provision given the project location.

§176-37E (5) (c) - A wetlands delineation line prepared by a qualified expert A checklist waiver has been requested. We have no engineering objection to granting checklist waiver from this provision.

§176-37E (9) - Environmental Impact Statement. (See §176-37G). A checklist waiver has been requested. We have no engineering objection to granting checklist waiver from this provision given the limited disturbance proposed.

§176-37E (10) - Certification by Applicant that any required review and inspection fees have been placed in escrow deposit with the Borough. See above herein.

### **Brief Project Summary**

The Applicant, DaVita Kidney Care, seeks land use approvals to occupy an existing vacant building which was formerly used as a movie theater. The Applicant would provide medical services to dialysis patients, including outpatient treatment rooms, training rooms, and offices. The interior of the building would be renovated. The improvements to the exterior of the building include painting the CMU and brick facades, and refacing the front of the building. Site improvements include restriping parking spaces, a new refuse enclosure, and an emergency generator. New windows, a service door, and an egress door are also proposed.

The subject property is located within the "Restricted Commercial" (RC) zone. The proposed use is not permitted within the RC zone. As such, the Applicant is seeking a type d(1) "use variance" and site plan approval from the Kinnelon Zoning Board of Adjustment. Additional variance relief is required for: the number of parking spaces; width of drive aisles; and, lot coverage. A variance is also required for the proposed eight (8') high vinyl fence enclosure proposed around the emergency generator.

### **Technical Comments**

1. The most recent approval for the subject property that received a certificate of occupancy is Kinnelon Planning Board Application #775 in the matter of New York Sports Club. Although Kinnelon Zoning Board of Adjustment application #1517 was approved to convert the movie theater to a dog boarding facility, the project wasn't constructed.
2. Variance relief was previously granted by the Kinnelon Planning Board under Application #775 to allow the following parking ratios:
  - a. Retail: 9,000 SF; 1 parking space for every 200 SF where 100 SF is required by Borough Code; 45 spaces previously approved where 90 spaces required;
  - b. Health Club: 25,000 SF; 1 parking space for every 300 SF where no specific requirement exists in the Borough Code, defaulting to the retail requirement of 100 SF; 83 spaces previously approved where 250 required;
  - c. Restaurant: 1 parking space for every 3 seats required by Borough Code; 11 spaces required;
  - d. Movie Theater: 1 parking space for every 4 seats required by Borough Code; 63 spaces required; and,
  - e. NJ Transit has 60 leased spaces to the south of the movie theater building which are included as part of the New York Sports Club spaces.
  - f. Summary: Kinnelon Planning Board Application #775 approved 202 parking spaces

whereas the ordinance requires 414 parking spaces.

3. The Applicant currently proposes the following number of parking spaces:

a. Retail and Bank: 7,700 SF; 1 parking space for every 100 SF = 77 spaces required; 38.5 spaces proposed using previously approved ratio of 1 space per 200 SF;

b. Health Club: 27,738.5 SF; 1 parking space for every 100 SF = 278 spaces required; 92.5 spaces proposed using previously approved ratio of 1 space for every 300 SF;

c. Restaurant: 44 seats; 1 parking space for every 3 seats required by Borough Code; 15 spaces required;

d. Medical Treatment Facility: 5,083.9 SF; No specific requirement in the Borough Code; Applicant proposes a ratio of 1 space per 400 SF which would be 13 spaces required; however, there are 10 patient stations and 7 employees per shift which equates to 17 spaces or more potentially required during peak times; Applicant to provide further testimony; and,

e. NJ Transit has 60 leased spaces to the south of the movie theater building which hasn't been recognized on the plans submitted by the Applicant's Engineer.

f. Summary: Using previously approved parking ratios, 146 parking spaces are required, not including the movie theater building whereas 198 parking spaces are proposed, leaving 52 parking spaces potentially available for the proposed kidney care center. Note: This summary doesn't include the 60 NJ Transit leased spaces, which are presumed to be counted within the Health Club spaces. Applicant to provide further testimony.

4. We recommend the plans are revised, as may be required, to recognize the parking information outlined above, including the spaces leased to NJ Transit. We recommend the Applicant provides testimony on the demand for commuter parking at the various times of day, and the parking demand for retail, bank, restaurant, health club and medical uses.

5. Borough Code requires a minimum parking aisle width of 30 feet whereas 24 feet exists and is proposed. The drive aisle adjacent to the southerly side of the building is actually 20 feet wide because of an existing fire zone, and the proposed egress landing. A variance is required to allow for a reduction in the aisle width.

6. The Engineer's plan indicates lot coverage percentage would remain unchanged; however, the refuse enclosure and generator pad would be constructed in areas not currently paved. Confirm the lot coverage and request variances as may be required.

7. A variance is required to permit an 8' high solid vinyl fence around the emergency generator.

8. Sheet #2 of the Engineer's plan shows a "List of Variances Request." However, this list appears to be checklist waivers, not variances.

9. It is unclear whether the existing conditions meet accessibility requirements for disabled persons between the ADA parking spaces and the front door. Engineer shall revise the plans to show spot elevations and dimensions along the accessible paths between parking spaces and front door. If required, revise plans to show how areas will be reconstructed to meet current ADA requirements.

10. Architect shows new downspouts to convey roof runoff. No information is shown on the Engineer's plan to indicate how the downspouts will be connected to stormwater facilities.

11. Stormwater piping and inlets are proposed near the egress door on the south side of the building. No construction details have been provided. Revise plans to provide all necessary pipe and inlet details.

12. The building mounted identification sign details on Architect's plan and Engineer's plan should be coordinated. The Architect doesn't show the non-illuminated "Kidney Care" wording.

Additionally, provide complete sign information regarding colors, method of illumination, and timer with on/off schedule. Borough Code prohibits signs from being operated between 12:00 midnight and 6:00 a.m. We recommend digital timers to ensure any illumination will turn off

automatically at the required time.

13. The refuse enclosure detail on the Engineer's plan indicates 6' high chain link mesh with vinyl slats. We recommend this be revised to match the natural cedar plank wood fencing behind the Meadtown building. Details for the enclosure are part of the record for Kinnelon Planning Board Application #804 (Marshall's retail renovations).

14. Specifications for the generator enclosure should be provided. The information provided indicates "Level 2" enclosure although no details were provided. Confirm the level of sound attenuation to be achieved at the property lines, including manufacturer documentation. Provide calculations to show whether or not an NJDEP air permit is required.

15. Bollards are proposed around the emergency generator; however, the number, location and spacing of the bollards is not clear. Revise site plan view, and construction details to show and note.

16. Architect to show the location and details of all existing and proposed building mounted lighting required by code, and any other lighting for security and safety. Provide the fixture model numbers, illumination details, mounting height, and timer information. We recommend digital timers to ensure any outdoor lighting will turn off automatically at the required time. Any new or replacement fixtures shall be downward facing with concealed bulbs/diodes.

17. No mechanical information has been provided. It is not known where exhaust systems and air conditioning units will be installed on the roof or on the ground. We recommend this information be provided and screening be considered, if necessary.

18. We recommend any approvals be made subject to the Applicant securing approvals from the following outside agencies: a) Kinnelon Police Department; b) Kinnelon Health Department; c) Kinnelon Fire Prevention Officer; and, d) PRBRSA.

19. If the application is approved, the Applicant shall agree to revise Engineering and Architectural plans as may be required to address any items contained within this report, and any items required by the Kinnelon Zoning Board of Adjustment. Revise plans shall be submitted for review and approval prior to the issuance of construction permits.

20. If this application is approved, applicant/owner and all contractors are responsible for contacting the Borough Engineer for site inspections prior to and during the construction of all exterior improvements, including but not limited to parking striping, outdoor lighting, refuse enclosure, and ADA routes. Adequate notice of at least three business days shall be provided prior to beginning construction of these improvements. This office will not approve improvements which have been constructed and backfilled without inspections.

21. If this application is approved, an as-built survey, prepared by a licensed professional land surveyor and a final site inspection by the Construction Official and Borough Engineer will be necessary prior to issuance of a certificate of occupancy to ensure all items of construction are in conformance with the approved plans. The as-built survey shall provide the location of all aboveground and below ground improvements.

22. If this application is approved, the applicant's escrow account should be kept current during the construction and until as-built drawings and a final site inspection are completed. Stop work orders will be issued on projects that do not maintain sufficient escrow for inspections.

23. If this application is approved, we recommend the Applicant agrees to post performance guarantees to the extent required by the Borough Code and NJSA 40:55D-53.

Darmofalski Engineering Associates, Inc.  
Thomas A. Boorady, PE, PP, CME, CFM

A motion to approve this application subject to the Borough Engineer report, the responses to the letter report of the Board Engineer of March 15, 2022, as set forth in the Memorandum from William A. Lane, P.E., to the Zoning Board Secretary, dated March 10 17, 2022, in which Mr. Lane responds to technical comments 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15 and 17;; all testing of the emergency generator shall take place during normal business of 8:00 a.m. to 5:00 p.m., Monday through Friday only and all lighting shall be LED lighting, and shall face downward in all locations was offered by Mrs. Maletsky, second by Mr. Lockwood with the affirmative “yes” vote of all on roll call.

A motion to approve Resolution #1536 was offered by Mrs. Maletsky, second by Mr. Lockwood with the affirmative “yes” vote of all on roll call.

The Board then went into close session to discuss litigation. A motion was made to approve the change of Attorney to Mr. Tombalakian for litigation and to defend the Board of Adjustment regarding application #1524 Klein Outdoor Advertising, LLC was offered by Mrs. Maletsky, second by Mr. Bender with the affirmative “yes” vote of all on roll call.

A motion to adjourn was offered by Mrs. Maletsky, second by Mr. Carpenter with the affirmative “yes” vote of all on roll call.

Submitted by:

Jennifer Highers  
Board of Adjustment

Cc: All Board Members  
Board Attorney