



BOARD OF ADJUSTMENT

MINUTES

February 23, 2023

The Board of Adjustment of New Castle County held a public hearing on February 23, 2023 utilizing ZOOM Webinar and located at the Multi-Purpose Room at the Gilliam Building at 67 Reads Way, New Castle, Delaware, beginning at 6:00 p.m.
Chairman David H. Burt,
presiding:

CALL TO ORDER – 6:00 p.m.

David Burt

Terry Parker

Nina David

Richard Farmer

Edward Thomas (Absent)

Comprising a quorum of the Board; also:
Aysha Gregory, Office of Law
Melissa Hughes, Department of Land Use
Klesa Achaibar, Department of Land Use
Janet Vinc, Department of Land Use

MINUTES

The minutes of December 8, 2022 were presented for approval and Mr. Parker motioned to **Grant** December 8, 2022 minutes and Mr. Burt seconded the motion, and the minutes were approved.

The minutes of December 15, 2022 were presented for approval and Mr. Parker motioned to **Grant** December 15, 2022 minutes and Mr. Burt seconded the motion, and the minutes were approved.

The minutes of January 12, 2023 were presented for approval and Mr. Parker motioned to **Grant** January 12, 2023 minutes and Mr. Burt seconded the motion, and the minutes were approved.

The minutes of January 19, 2023 were presented for approval and Mr. Parker motioned to **Grant** January 19, 2023 minutes and Mr. Burt seconded the motion, and the minutes were approved.

The minutes of January 26, 2023 were presented for approval and Mr. Parker motioned to **Grant** January 26, 2023 minutes and Mr. Burt seconded the motion, and the minutes were approved.

PUBLIC HEARING

NEW BUSINESS

1. App. #2023-0021-A – DRPD. LLC.

Mr. Burt moved to Continue after Item 4; Mr. Parker seconded the motion.

VOTE: 4-0

ACTION: Continue after Item 4 - Area variances to facilitate the recordation of a Land Development Plan: **1.** To permit a 3.80 acre lot size exclusive of protected resources for Lot 1 (5.00-acre minimum lot size exclusive of protected resources) see UDC Table 40.04.110.B. The gross area for Lot 1 will be 6.39 acres. **2.** To permit a 4.00 acre lot size exclusive of protected resources for Lot 2 (5.00-acre minimum lot size exclusive of protected resources) see UDC Table 40.04.110.B. The gross area for Lot 2 will be 5.03 acres. SR Zoning. CD 6. (App 2023-0021-A) TP 14-022.00-024.

Mr. Burt moved to Grant with Condition; Dr. David seconded the motion.

VOTE: 4-0

ACTION: Grant with Condition– Area variances to facilitate the recordation of a Land Development Plan: **1.** To permit a 3.80 acre lot size exclusive of protected resources for Lot 1 (5.00-acre minimum lot size exclusive of protected resources) see UDC Table 40.04.110.B. The gross area for Lot 1 will be 6.39 acres. **2.** To permit a 4.00 acre lot size exclusive of protected resources for Lot 2 (5.00-acre minimum lot size exclusive of protected resources) see UDC Table 40.04.110.B. The gross area for Lot 2 will be 5.03 acres. SR Zoning. CD 6. (App 2023-0021-A) TP 14-022.00-024.

CONDITION: The Applicant shall provide an additional .5 acres of WRPA will be protected.

2. App. #2022-0811-A – Orthopaedic Properties LLC

Mr. Burt moved to Grant; Mr. Parker seconded the motion.

VOTE: 4-0

ACTION: Grant– Area variance: To permit paving 20 feet from the Ogletown Stanton Road right-of-way (40-foot paving setback) see UDC Table 40.04.110.B. BP Zoning. CD 1. (App 2022-0811-A) TP 09-018.00-065.

3. App. #2023-0047-A – Oekos Kirkwood, LLC.

Mr. Burt moved to Grant with Condition; Dr. David seconded the motion.

VOTE: 4-0

ACTION: Grant with Conditions– Area variances to facilitate the recordation of a Land Development Plan: **1.** To maintain a 0.0 bufferyard opacity along the Kirkwood Highway right-of-way (0.4 bufferyard opacity required) see UDC Table 40.04.111.B. **2.** To maintain a 0.0 bufferyard opacity along the westerly side lot line (0.5 bufferyard opacity required) see UDC Table 40.04.111.B. & 40.04.320.A. **3.** To maintain a 0.0 bufferyard opacity along the rear property line (0.5 bufferyard opacity required) see UDC Table 40.04.111.B. & 40.04.320.A. **4.** To maintain a 0.0 bufferyard opacity along the easterly side lot line (0.4 bufferyard opacity required) see UDC Table 40.04.111.B. & 40.04.320.A. **5.** To maintain 0 street trees along the Kirkwood Highway right-of-way (20 street trees required) see UDC Table 40.04.111.C. **6.** To permit 0 on-lot plant units (8 plant units per acre, total plant units) see UDC Table 40.04.111.A. **7.** To permit 0 parking lot plant units (1 plant units per 12 parking spaces, total plant units) see UDC Table 40.04.111.A. **8.** To permit 1,384 square feet of sign aggregate (695-square feet ground sign aggregate maximum) see UDC Table 40.06.060. **9.** To permit 2 additional shopping center identification ground signs (Signs 1 & 4), for a total of 3 (Signs 1, 3 & 4) along the Kirkwood Highway right-of-way (1 shopping center identification sign per street frontage) see UDC Table 40.06.060. **10.** To permit 429 square foot shopping center identification Sign 1 (300-square foot maximum sign area) see

UDC Table 40.06.060. **11.** To permit 730 square foot shopping center identification Sign 3 (300-square foot maximum sign area) see UDC Table 40.06.060. **12.** To permit additional ground Sign 2, 54 feet from an existing ground sign (100-feet required between ground signs) see UDC Table 40.06.060. CR Zoning. CD 9. (App 2023-0047-A) TP 08-044.20-028.

- CONDITIONS:**
- 1. The landscaping shall be consistent with the renderings submitted into evidence.**
 - 2. The proposed ground signs shall be generally consistent with the renderings submitted into evidence, with decorative structural elements, consistent color background, and similar style and color lettering for the tenant panels, except for certain tenants' rights to use their font or color in the lettering on their panel.**
 - 3. There shall be no duplicate tenant names on any of the three shopping center identification signs (Signs 1, 3 & 4) except for national or regional tenants with stipulations within the lease agreements.**
 - 4. No ground signs, other than an instructional sign, shall be permitted along the stub road off of the Farrand Drive right-of-way.**
 - 5. The existing wall signs for the various tenants on the smaller building's façade facing Kirkwood Highway (the south facing wall on the 18,000-square foot retail building) shall be removed in exchange for a tenant panel on Sign 4, except for the proposed bank logo for the bank that has a storefront along this façade.**
 - 6. If any area of the Subject Property that is subject to the relief provided in variances 3, 4, 5, 6, or 7 is developed or redeveloped in the future, the relief granted herein shall be subject to reconsideration by the Department of Land Use so that it may determine to what extent the disturbed area shall be subject to the Code's bufferyard and landscaping requirements. It should be notes that during the discussion of theses variances, the Applicant agreed to this condition.**

4. App. #2022-0631-A - Lisha Brown

Mr. Burt moved to **Grant with Condition**; Mr. Farmer seconded the motion.

VOTE: 4-0

ACTION: Grant with Condition; Area variances to establish a day care center: **1.** To permit a day care center 320 feet from a package store (500-foot minimum distance required) see UDC Section 40.03.309.A. **2.** To permit a landscape surface ratio (LSR) of 0.00 (0.17 minimum LSR) see UDC Table 40.04.110.A. **3.** To maintain Building C, 11 feet from the westerly side lot line (30-foot minimum side yard setback) see UDC Table 40.04.110.B. **4.** To maintain Building A, 23 feet from the rear property line (40-foot rear yard setback) see UDC Table 40.04.110.B. **5.** To maintain Building B, 27 feet from the Fir Avenue right-of-way (40-foot rear yard setback) see UDC Table 40.04.110.B. **6.** To maintain Building A 32 feet from the Fir Avenue right-of-way (40-foot rear yard setback) see UDC Table 40.04.110.B. **7.** To maintain Building B, 36 feet from the Seymour Road right-of-way (40-foot rear

yard setback) see UDC Table 40.04.110.B. **8.** To maintain Building C, 36 feet from the Seymour Road right-of-way (40-foot rear yard setback) see UDC Table 40.04.110.B. **9.** To maintain paving 0 feet from the Franklin Schoolhouse Road right-of-way (20-foot street yard paving setback) see UDC Table 40.04.110.B. **10.** To maintain paving 0 feet from the Fir Avenue right-of-way (20-foot street yard paving setback) see UDC Table 40.04.110.B. **11.** To maintain paving 0 feet from the Seymour Road right-of-way (20-foot street yard paving setback) see UDC Table 40.04.110.B. **12.** To maintain paving 0 feet from the westerly side lot line (10-foot other yard paving setback) see UDC Table 40.04.110.B. **13.** To maintain paving 0 feet from the rear property line (10-foot other yard paving setback) see UDC Table 40.04.110.B. **14.** To provide 0 on-lot plant units (6 plant unit per acre, total of 9.6 plant units required) see UDC Table 40.04.111.A. **15.** To provide 0 open space plant units (6 plant unit per acre, total of 9.6 plant units required) see UDC Table 40.04.111.A. **16.** To provide 0 parking space plant units (1 plant unit per 12 parking spaces, total of 11 plant units required) see UDC Table 40.04.111.A. **17.** To provide 0.0 bufferyard opacity along the Franklin Schoolhouse Road right-of-way (0.5 bufferyard opacity required) see UDC Table 40.04.111.A. **18.** To provide 0.0 bufferyard opacity along the Fir Avenue right-of-way (0.3 bufferyard opacity required) see UDC Table 40.04.111.A. **19.** To provide 0.0 bufferyard opacity along the Seymour Road right-of-way (0.3 bufferyard opacity required) see UDC Table 40.04.111.A. **20.** To provide 0.0 bufferyard opacity along the westerly side lot line (0.2 bufferyard opacity required) see UDC Table 40.04.111.A. **21.** To provide 0.0 bufferyard opacity along the rear property line right-of-way (0.2 bufferyard opacity required) see UDC Table 40.04.111.A. **22.** To provide 0 street trees along the Franklin Schoolhouse Road right-of-way (5 street trees required) see UDC Table 40.04.111.C. **23.** To provide 0 street trees along the Fir Avenue right-of-way (7 street trees required) see UDC Table 40.04.111.C. **24.** To provide 0 street trees along the Seymour Road right-of-way (5 street trees required) see UDC Table 40.04.111.C. NC6.5 Zoning. CD 6. (App 2022-0631-A) TP 10-034.10-008.

CONDITION: If any portion of the Subject Property is redeveloped, the relief granted by variances 2 through 24 shall be subject to further review at the discretion of the Department of Land Use:

Melissa A. Hughes
Melissa Hughes
Department of Land Use
4/21/2023