



TOWN OF EXETER, NEW HAMPSHIRE

10 FRONT STREET • EXETER, NH • 03833-3792 • (603) 778-0591 • FAX 772-4709

www.exeternh.gov

LEGAL NOTICE EXETER ZONING BOARD OF ADJUSTMENT AGENDA

The Exeter Zoning Board of Adjustment will meet on Tuesday, August 20, 2024 at 7:00 P.M. in the Nowak Room located in the Exeter Town Offices, 10 Front Street, Exeter, to consider the following:

NEW BUSINESS: PUBLIC HEARINGS

The application Robert V. and Karen C. Prior and Kenneth Brown for an Appeal from an Administrative Decision made by the Town Building Inspector/Code Enforcement Officer on March 5, 2024, that as the result of a recent lot merger, the entirety of RiverWoods Exeter will now be located on one site and therefore, the presence of one on-site healthcare center providing skilled nursing will satisfy the requirement of Article 6, Section 6.1 of the Zoning Ordinance. Tax Map Parcel #97-23. ZBA Case #24-7.

OTHER BUSINESS:

- Approval of Minutes: June 18, 2024

EXETER ZONING BOARD OF ADJUSTMENT

Esther Olson-Murphy, Chairwoman

Posted 08/09/24: Exeter Town Office, Town of Exeter website

Town of Exeter
Zoning Board of Adjustment
June 18, 2024, 7 PM
Town Offices Nowak Room
Draft Minutes

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7 **I. Preliminaries**

8 **Members Present:** Chair Robert Prior, Vice-Chair Esther Olson-Murphy, Clerk Theresa
9 Page, Laura Davies, Laura Montagno - Alternate and Mark Lemos - Alternate
10 Town Code Enforcement Officer Doug Eastman was also present.

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12 **Members Absent:** Kevin Baum, Martha Pennell - Alternate

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14 **Call to Order:** Chair Robert Prior called the meeting to order at 7 PM.

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16 **I. New Business**

- 17 A. The application of I.S. Realty Trust for a variance from Article 4, Section 4.3
18 Schedule II: Density and Dimensional Regulations - Residential to permit the
19 subdivision of a 5.58-acre parcel into three (3) residential lots with two of the lots
20 having less than the required minimum lot frontage. The subject property is
21 located at 100 Linden Street (and Patricia Avenue) in the R-2, Single Family
22 Residential zoning district. Tax Map Parcel #104-71. ZBA Case #24-5.

23 Henry Boyd of Millennium Engineering spoke on behalf of the applicant.
24 He said years ago we went before the Planning Board to subdivide this parcel,
25 and it was conditionally approved. That proposal would have subdivided out lot 3,
26 which was called lot 5 at that time. In this plan, Patricia Ave was extended by 400
27 feet to produce 3 additional lots. The applicant decided not to proceed, partly
28 because of the cost of the construction of the road and also because the
29 applicant's father died of cancer. Their desire now is just to divide the parcel into
30 2 additional lots. There is an existing dwelling which is accessed from Linden
31 Street. Currently, this property has a well and septic system, which would go
32 away. Water and sewer have been run out here, which is nice because there are
33 adjacent wetlands. The remainder of the parcel would be divided into 2 lots, lots
34 1 and 2, each of which would have houses built on them. These lots don't have
35 adequate frontage without us producing a very expensive roadway. We only
36 have 50 feet of frontage at the end of Patricia Ave. We're hoping the ZBA will
37 grant a variance and the lots can share a driveway. Under this proposal, there's
38 no need to fill any wetlands. We would be working within the buffer so we'd have
39 to go to the Planning Board and the Conservation Commission. We think the
40 Conservation Commission would be thrilled with this proposal as opposed to the
41 impact of the previous proposal.

42 Ms. Davies asked if all three parcels would be hooked up to the sewer.
43 Mr. Boyd said yes. When the condo was put into the next lot, they ran the sewer

44 through this parcel out to it. We would be placing a new sewer line to tie into that
45 existing line.

46 Mr. Prior asked if this proposal also went to the ZBA when it went to the
47 Planning Board several years ago. Mr. Boyd said he doesn't think that plan
48 needed relief. Mr. Eastman said all the lots had the minimum frontage under that
49 plan. Mr. Boyd showed Mr. Prior the previous plan, and Mr. Prior observed that
50 they were going to put in a cul-de-sac from Patricia Ave.

51 Ms. Davies asked if the existing dwelling would remain in the family and if
52 the two additional homes will also stay in the family. Mr. Boyd said they would
53 probably sell the existing home, as they have no need for it.

54 Ms. Page asked what the frontage will be. Mr. Boyd said it's 25 feet for
55 each lot. Mr. Prior said the only frontage is where Patricia Avenue abuts the lot.

56 Mr. Prior asked if the lot line between lot 3 and lots 1 and 2 is already
57 recorded in the deeds. Mr. Boyd said no, we never finalized that so that would be
58 a new lot line as well. That subdivision needs no relief as it has adequate
59 frontage.

60 Mr. Prior opened for public comment.

61 Alan Mayo of 1 Patricia Avenue, which is next to the property in question,
62 said when this came up a couple years ago, there was a question of whether this
63 portion of Patricia Ave was going to be renamed as a circle or if there would be a
64 renumbering of all the homes along Patricia Ave. Mr. Prior said Patricia Avenue
65 won't be extended; there will be a driveway at the end of Patricia. It was intended
66 to be a cul-de-sac but that's no longer the case. Mr. Eastman said when the 5-lot
67 subdivision was going to go in at the end of Patricia, that road would have had a
68 different name. The E911 Committee is responsible for the addressing. We know
69 Patricia Ave is not numbered correctly. We will have to work with the applicant on
70 how to address that to make sure it complies with E911. The numbering should
71 start at Court Street when you turn in, but it starts at the end of the road.

72 Mr. Prior closed the public session and entered into Board deliberations.

73 Mr. Prior said this is straightforward. We have no objections from
74 abutters. He doesn't see the need to go through each of the variance criteria. Ms.
75 Davies said this is a low-impact solution. Given that none of the abutters object,
76 she has no objection.

77 Ms. Page asked if being on municipal water and sewer should be a
78 condition of the approval. Mr. Eastman said they legally would have to because
79 of the size of the lots. They would not be able to do a septic field on the small
80 lots. Mr. Prior said hooking up on lot 3 is an option, should that be a condition?
81 Will the existing leach field end up as part of the lot line adjustment? Mr.
82 Eastman said no, it can't.

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84 Ms. Davies made a motion to approve the application as presented for the 100 Linden
85 Street and Patricia Avenue subdivision. Ms. Olson-Murphy seconded. Ms. Davies, Ms.
86 Olson-Murphy, Ms. Montagno, Ms. Page, and Mr. Prior voted aye. Mr. Lemos did not
87 vote. The motion passed 5-0.

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B. The application of Dennis Biery for a variance from Article 4, Section 4.3 Schedule II: Density and Dimensional Regulations - Residential to permit the subdivision of a 4.47-acre parcel into two (2) single-family residential lots with both lots having less than the required minimum lot frontage. The subject property is located at 165A Kingston Road, in the R-1, Low Density Residential zoning district. Tax Map Parcel #115-12. ZBA Case #24-6.

Bruce Scammon of Emmanuel Engineering and James Barrett & Associates spoke representing the applicant Dennis Biery. He said he has a letter from the applicant stating that he can speak for him. Mr. Prior said the letter said "Planning Board" and this is the Zoning Board, but we'll be ok.

Mr. Prior said this parcel had an application we saw several months ago, but he believes it was a different application. Mr. Scammon said he was not involved in that.

Mr. Scammon said currently the applicant runs his excavating business from here. It has a long right of way that comes in. It's a rear lot and is over 4 acres. It's non-conforming in the residential zone. It will be an upgrade to put in homes with similar uses as the properties around them. The existing driveways and right-of-ways will be accessed to get the frontage. The private right of way creates 2 lots. The lot to the left of the plan could have adequate frontage, but we're trying to avoid putting the driveway near wetlands and to use the existing driveway instead. The lot to the right only has 25 feet of frontage. Mr. Prior said the tax map shows that the parcel does not have any road frontage. Mr. Scammon said it does not have public right-of-way frontage, it has a private right-of-way frontage. Mr. Prior asked Mr. Eastman how that impacts the case. Mr. Eastman said the frontage for the existing lot is 50 feet, the width of the easement. Mr. Prior said they're proposing splitting that between the 2 lots. Mr. Eastman said this is like what we just did [Case #24-5] and we've also done it on Highland Street, where they had 30 feet of frontage and it was the same situation. Mr. Prior asked if there would be a private road from Kingston Road all the way in. Mr. Scammon said it's more of a private driveway than a private road.

Ms. Davies asked if there's easement access to Route 111 rather than fee ownership. Mr. Scammon said that's correct. Ms. Davies said the easement has been for the benefit of these parcels, but now they would like to add another lot to that. Mr. Scammon said yes, and we would change the use. We did this 2 decades ago on 111A for Mr. Atwood; we used a private right-of-way for the frontage.

Mr. Prior asked if in the deed, there would be a shared right-of-way that would be maintained jointly by the two owners. Mr. Scammon said there's already an existing right-of-way for commercial use by Mr. Biery, and instead of that there would be residential use for two owners. Putting a full town road on that 50-foot right-of-way doesn't make sense environmentally or economically. That would be the hardship that we would encounter if we had to put a road out there. Mr. Prior said it could also remain a single-family parcel.

132 Ms. Davies asked if Mr. Eastman had reviewed the language of the
133 existing access easement to make sure it's legal, and Mr. Eastman said yes. It's
134 not fee ownership, so someone owns the property underneath. Mr. Scammon
135 said our abutter comes down the same driveway. It's her property.

136 Ms. Page asked if this is going to be on municipal water and sewer. Mr.
137 Scammon said no. We have done test pits to identify possible well areas. We
138 would have to get Planning Board approval.

139 Mr. Prior said there was a question about a wetland in the top right corner
140 of the map. Mr. Scammon said yes, there's a pond offsite also. The setbacks are
141 not near them. Gove Environmental did a wetlands delineation.

142 Mr. Prior said we're happy to have the residential use. It's better than
143 what was proposed several months ago and what's there now. Is there mitigation
144 coming from the previous industrial use? Ms. Montagno said she doesn't
145 remember mitigation from the previous application. Mr. Scammon said there are
146 some existing stockpiles of soils and crushed stone that would be leveled out
147 during the construction process.

148 Mr. Prior asked Mr. Eastman if Planning Board review needs to be a
149 condition of approval. Mr. Eastman said no, it will go automatically.

150 Mr. Scammon asked if the Board wanted him to read the reasons for the
151 variance from the application. Mr. Prior said no, the Board has already read
152 them.

153 Mr. Prior opened for public comment.

154 Caren Vencis of 163 Kingston Road said you have to go off 111 on her
155 driveway to get to this property. She asked the Board to explain the 50 feet of
156 frontage. Mr. Prior said that is an easement, so you could not build on that 50-
157 foot strip because that would isolate the parcel behind you. Ms. Davies said an
158 easement is a property right to travel over a property. You can't do anything to
159 block them from traveling over your property. Ms. Vencis asked if her address
160 number will change. Mr. Eastman said we would probably do a 165 A and B.
161 [The owner of 165 spoke up at this time.] Mr. Prior said the only number missing
162 is 167, but that would put it out of order and would require 165 to be renumbered.
163 He thinks it was reserved because there is a little triangular parcel on the road.
164 Mr. Eastman said it will be worked out if there must be any changes.

165 Mr. Prior closed the public session and entered Board deliberations.

166 Mr. Prior said this is a vastly improved application to the last use, which
167 we were not able to approve a few months ago.

168 Ms. Page said the application says 150 feet would be required by the
169 zoning, but under footnote 1 in schedule 2, because this is not on municipal
170 water and sewer, the minimum lot frontage is 200 feet, so the relief sought is 150
171 feet, not 100.

172 Ms. Davies said this application should make the abutters happier. Mr.
173 Prior said they were out last time but not this time, so that's a good sign. Ms.
174 Page said this use is more consistent with zoning and with the Master Plan's
175 description of that area.

176 Ms. Page made a motion to approve the application of Dennis Biery for a variance from
177 Article 4, Section 4.3 Schedule II: Density and Dimensional Regulations - Residential to
178 permit the subdivision of a 4.47-acre parcel into two single-family residential lots with
179 both having less than the required minimum lot frontage, which would be 200 feet in this
180 instance. The subject property is located at 165A Kingston Road, in the R-1, Low
181 Density Residential zoning district. Tax Map Parcel #115-12. ZBA Case #24-6. Ms.
182 Davies seconded. Ms. Davies, Ms. Olson-Murphy, Mr. Lemos, Ms. Page, and Mr. Prior
183 voted aye. Ms. Montagno did not vote. The motion passed 5-0.

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185 **II. Other Business**

- 186 A. RiverWoods Company of Exeter – ZBA Case #24-4 7 RiverWoods Drive, Tax
187 Map Parcel #97-23 Request for rehearing – Variance from Article 6, Section
188 6.1.2.D to permit parking within the required 100-foot landscape buffer, in the R-
189 1, Low Density Residential zoning district.

190 Mr. Prior and Ms. Montagno recused themselves from this case. Ms.
191 Olson-Murphy assumed the Chairship at this time.

192 Ms. Olson-Murphy said we have all received their explanation of why they
193 feel they should have a rehearing. Ms. Davies asked if there's a representative of
194 the applicant here. Mr. Eastman said no, and there's no testimony in this process
195 anyway. Ms. Olson-Murphy said we need to decide that there has been new
196 evidence provided or the decision was made in error. She said she didn't see any
197 new evidence, and the other Board members agreed. She asked if anyone feels
198 that an error was made. Ms. Davies said no. The second item in the request for
199 rehearing, under D, hardship, says the ZBA committed an error in determining
200 that there was no fair and substantial relationship between the purpose of the
201 ordinance and its application to the facts at hand; the Board failed to
202 acknowledge that failure to allow 11 spaces in the area would require a redesign
203 and would likely lead to putting parking spaces in the wetlands. Ms. Davies said
204 the Board was clear that RiverWoods has alternatives. They could build a smaller
205 building or locate their health facilities elsewhere on their very large site. They
206 just don't want those alternatives. In item 3, they say we made an error in
207 concluding that the proposed limited encroachment was unreasonable, and that
208 we conflated it with their question about the size of the proposed health center,
209 no portion of which encroaches into the buffer and which use and location is a
210 matter of right. Ms. Davies said that's incorrect, it's allowed by special exception.
211 They say we failed to take into account the "modest" amount of buffer they were
212 requesting, and they've parsed out the request for the 11 parking spaces from
213 their total request in this rehearing, but it wasn't parsed out in their request from
214 variance from the buffer, which was quite ambitious. The premise of the buffer is
215 to protect a low-density single-family neighborhood from large scale
216 development. This portion of the parcel is the most active of the site, and it was
217 provided with the least amount of buffer. She feels that the buffer should be
218 respected. She also disagrees that we committed an error in failing to understand
219 that the request was driven by the lack of alternatives on the site. Ms. Davies

220 said they don't need to build a health center, and were denied a variance for it in
221 the first place, but now have the merged lots. We've identified alternatives
222 including a smaller building or renovating and utilizing existing spaces. We insist
223 that alternative locations exist and they insist that they don't, so we just disagree.

224 Ms. Page said in reviewing the minutes, it's clear that the effect of
225 encroaching on the buffer was the primary consideration; not just the visuals of
226 the building, but also sound and light. The decision rested on the effect of having
227 those parking spaces inside of the buffer. That aside, the ordinance references
228 sufficient buffer and vegetation to shield the development. It's appropriate to
229 consider that. The Board did a healthy job of going through the criteria as to the
230 buffer itself.

231 Mr. Lemos said during the initial presentation, the Board was told that the
232 abutter, Ms. Hooten, was alright with the encroachment, but we then found out
233 that that was not the case. There was some hardship created on the surrounding
234 properties.

235 Ms. Davies said the whole thing is to determine whether the entire
236 proposal alters the essential character of the neighborhood. The reason that they
237 need relief is because they want to build something that is too big to fit into the
238 area they want to build it in. You can't separate those issues, they are tied
239 together.

240 Mr. Lemos said there are requirements on parking because of the size
241 and the number of residents in a building. If you can't fit the parking, then you
242 need to limit the size of the building.

243 Ms. Page said the size of the building was the driver into the buffer, but
244 the buffer was the focus of the conversation, in her review. There was a lot of
245 time given in the presentation to the amenities of the building and the size of the
246 rooms as the reason they need this space. There was a lot of size in the
247 discussion, but she thinks the decision was appropriate.

248 Mr. Lemos said they had a variance for 11 additional feet up, so talking
249 about size was going to happen.

250 Ms. Page moved to deny the request for rehearing by RiverWoods, ZBA Case #24-4 at 7
251 RiverWoods Drive, Tax Map Parcel #97-23 with the original case being a variance from
252 Article 6, Section 6.1.2.D to permit parking within the required 100-foot landscape buffer,
253 in the R-1, Low Density Residential zoning district. Mr. Lemos seconded. Ms. Davies
254 seconded. Ms. Davies, Ms. Olson-Murphy, Mr. Lemos, and Ms. Page voted aye. Mr.
255 Prior and Ms. Montagno were recused and did not vote. The motion passed 4-0.

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257 B. Election of Officers

258 Mr. Prior resumed the Chairship at this time and introduced the election of
259 officers. He said anyone can vote but only full members can hold office.

260 Mr. Prior nominated Esther Olson-Murphy as the Chair of the ZBA; Theresa Page as the
261 Vice-Chair; and Laura Davies as the Clerk, for the following year. Ms. Davies, Ms. Page,

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Mr. Prior, Ms. Montagno, Ms. Olson-Murphy, and Mr. Lemos voted aye. The nominations were approved 6-0.

Ms. Olson-Murphy assumed the Chairship at this time.

C. Approval of Minutes: April 16, 2024

Ms. Davies moved to approve the minutes of the April 16, 2024 ZBA meeting as presented. Ms. Page seconded. Ms. Davies, Ms. Page, Ms. Olson-Murphy, and Mr. Lemos voted aye. Mr. Prior and Ms. Montagno did not vote. The minutes were approved 4-0.

III. **Adjournment**

Ms. Davies moved to adjourn. Mr. Prior seconded. All were in favor and the meeting was adjourned at 8 PM.

Respectfully Submitted,
Joanna Bartell
Recording Secretary

July 29, 2024

To: Town of Exeter | Building and Planning Departments

Fr: Robert V. Prior
Karen C. Prior
Kenneth Brown

Re: Administrative Decision | RiverWoods Exeter

Please find attached an application for Appeal from an Administrative Decision dated March 5, 2024. We would like to highlight several issues concerning this Appeal.

1. As there was no public or abutter notification of the March 5, 2024 Administrative Decision, there is no established time frame limiting when an appeal must be submitted. For that reason, we believe that the 30 day time limit does not apply in this case.
2. No abutters were notified of the Administrative Decision therefore no abutters need to be notified of the appeal.
3. The applicants are abutters (Robert V. and Karen C. Prior) and a resident of RiverWoods (Kenneth Brown). As per RSA 676:5.1, "Appeals to the board of adjustment concerning any matter...may be taken by any person aggrieved..."

RECEIVED

JUL 29 2024

EXETER PLANNING OFFICE

Town of Exeter
APPLICATION FOR AN

**APPEAL FROM AN ADMINISTRATIVE
DECISION**

Case Number:	<u>2BA# 24-7</u>
Date Filed:	<u>7/29/24</u>
Application Fee:	\$ <u>100.00</u>
Abutter Fees:	\$ <u>N/A</u>
Legal Notice Fee:	\$ <u>50.00</u>
TOTAL FEES:	\$ <u>150.00</u>
Date Paid:	<u>7/29/24</u> Check # <u>6374</u>

Name of Applicant Robert V. Prior, Karen C. Prior, and Kenneth Brown
(If other than property owner, a letter of authorization will be required from property owner)

Address Robert V. and Karen C. Prior: 16 Pickpocket Road, Exeter, NH 03833
Kenneth Brown: 10 White Oak Drive, Apt. 205, Exeter, NH 03833

Telephone Number () Robert V. and Karen C. Prior: 603-772-0406
Kenneth Brown: 603-583-5596

Property Owner RiverWoods Company at Exeter, 7 Riverwoods Drive, Exeter, NH 03833

Location of Property 97/23: 7 Riverwoods Drive, 98/37: 5 Timber Lane, 80/18: 6 White Oak Drive,
97/29: 78 Kingston Road, and 97/44: 67 Kingston Road, all parcels in Exeter, NH
All 5 properties are located in the R-1 Low Density Residential Zoning District

(Number, street, zone, map and lot number)

Description of Property _____

(Area of entire tract, portion affected, frontage, depth)

Applicant Signature 

Date Monday, July 29, 2024

*NOTE: This application is not acceptable unless all required statements have been made.
Additional information may be supplied on a separate sheet if space is inadequate.*

**Current use and/or
situation:** _____

RiverWoods Company has been operating three Elderly Congregate Health Care facilities on three separate lots
which, along with 2 additional lots, have recently been merged. All of the parcels are in the R-1 Low Density
Residential Zoning District

THE UNDERSIGNED ALLEGES THAT AN ERROR HAS BEEN MADE IN THE DECISION, DETERMINATION OR REQUIREMENT, BY THE:

Town of Exeter Building Inspector/Code Enforcement Officer

ON: March 5, 2024

TO: Sharon Cuddy Somers, Esq., Donahue, Tucker, & Ciandella, PLLC

IN RELATION TO ARTICLE 2, SECTION 2.2.26, OF THE ZONING ORDINANCE AND HEREBY APPEALS SAID DECISION.

Also referred to in the Decision Letter of March 5, 2024 as Article 6, Section 6.1

Decision of the Enforcement Officer to be reviewed:

"This confirms our various discussions concerning the proposed health center to be located at RiverWoods Exeter and which will service the health needs of all residents at RiverWoods Exeter. As discussed, RiverWoods Exeter has now merged, for zoning and tax purposes, all of the lots on which the 3 RiverWoods campuses sit, together with 2 parcels more recently acquired which are located at 67 Kingston Road and 78 Kingston Road. As a result, the entirety of RiverWoods Exeter will now be located on 1 site. The presence of one health center on the merged lot, which will provide skilled nursing, satisfies the requirements of Article 6, Section 6.1 of the Zoning Ordinance which calls for on-site nursing home facilities and is now permitted as of right without further need of any use variance."

Applicant's Position:

See below

At their public meeting on January 23, 2023, the Exeter Zoning Board of Adjustment heard the applications of the RiverWoods Company for variances from Article 2, Section 2.2.26, listened to extensive public testimony, deliberated at length, and voted to deny the requested variances. This denial was based on a review of the variance criteria and it was determined that the request did not meet Variance Criteria 3 and 5. The discussion that led to the decision to deny the variances did involve the fact that there were 3 separate parcels but many other issues were also discussed and contributed to the Zoning Board of Adjustment vote to deny.

(See ZBA Minutes of January 23, 2023).

The Building Inspector/Code Enforcement Officer should not be permitted to simply waive the public ZBA process and decision aside with one non-public action. Our position is that the lot merger addressed only 1 of the failed criteria and did not respect the spirit or the substance of the ZBA decision.



TOWN OF EXETER, NEW HAMPSHIRE

10 FRONT STREET • EXETER, NH • 03833-3792 • (603) 778-0591 • FAX 772-4709

www.exeternh.gov

March 5, 2024

Sharon Cuddy Somers, Esquire
Donahue, Tucker & Ciandella PLLC
16 Acadia Lane
POB 630
Exeter, New Hampshire 03833

Re: Administrative Decision Regarding RiverWoods Exeter Health Center

Dear Attorney Somers:

This confirms our various discussions concerning the proposed health center to be located at RiverWoods Exeter and which will service the health needs of all residents at RiverWoods Exeter. As discussed, RiverWoods Exeter has now merged, for zoning and tax purposes, all of the lots on which the three RiverWoods campuses sit, together with two parcels more recently acquired which are located at 67 Kingston Road and 78 Kingston Road. As a result, the entirety of RiverWoods Exeter will now be located on one site. The presence of one health center on the merged lot, which will provide skilled nursing, satisfies the requirements of Article 6, Section 6.1 of the Zoning Ordinance which calls for on-site nursing home facilities and is now permitted as of right without further need of any use variance.

Additionally, the proposed health center calls for a three-story building. If the proposed building contains a flat roof, then the height of the building will not exceed thirty-five feet (35') feet and is therefore permitted as a matter of right. Should the proposed three-story building contain a gabled roof, then it will exceed the permitted height and will need a height variance.

Finally, I understand that the proposal calls for parking to service the health center and that some of these parking spaces will be located within the landscape buffer located on what was formerly 67 Kingston Road and that a portion of White Oak Drive will need to be relocated into the landscape buffer to reflect the as-built location of the gas line easement. These two proposals will call for variance relief from the requirement to have a one-hundred-foot (100') landscape buffer.

Please contact me if you have any questions.

Sincerely,

Douglas Eastman
Building Inspector/Code Enforcement Officer

DE:bsm

Exhibit 1B: Shaded Version of Plan Showing Merged Lots



RiverWoods Exeter - Consolidated Properties

Town of Exeter
Zoning Board of Adjustment
January 23, 2023, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

Members Present: Chair Kevin Baum, Vice-Chair Robert Prior, Clerk Esther Olson-Murphy, Laura Davies, and Martha Pennell - Alternate. Code Enforcement Officer Doug Eastman was also present.

Members Absent: Dave Mirsky - Alternate, Joanne Petito - Alternate,

Call to Order: Chair Kevin Baum called the meeting to order at 7 PM.

I. **New Business**

A. Continued discussion on the application of RiverWoods Company of Exeter for a variance from Article 2, Section 2.2.26, Definition of "Elderly Congregate Health Care" to permit skilled nursing care off site on related campus. The subject property is located at 7 RiverWoods Drive in the R1, Low Density Residential zoning district. Tax Map Parcel #97-23. ZBA Case #22-15.
[Considered with 22-16 below]

B. Continued discussion on the application of RiverWoods Company of Exeter for a variance from Article 2, Section 2.2.26, Definition of "Elderly Congregate Health Care Facilities" to permit skilled nursing care off site on related campus. The subject property is located at 5 Timber Lane, in the R-1, Low Density Residential zoning district. Tax Map Parcel #98-37. ZBA Case 22-16.

Robert Prior and Martha Pennell recused themselves from cases #22-15 and 22-16. Mr. Baum said he's reopening the public hearing for these cases. The Board will continue to consider the cases together, and he asked for public comments on both cases at the same time.

Attorney Sharon Somers of DTC was present to represent Riverwoods. Riverwoods CEO Justine Vogel and Interim Executive Director Kim Gaskell were also present.

Attorney Somers presented correspondence from Attorney Mark McCue of Hinckley Allen, who serves as Healthcare counsel for Riverwoods. Attorney Somers said that during the last meeting, the Board asked whether Insurance Commissioner review was required. Attorney Somers characterized Attorney McCue's opinion as definitively indicating it was not, and he further indicated in his letter that this proposal is in compliance with the resident contract. Regarding the issue that the variance runs with the land, Attorney McCue said it's not practical that it would be divided in the future, but we also asked the Trustees to

45 pass a resolution that if Riverwoods is to be conveyed to a third party at any time
46 in the future, then the corporation must convey together all three parcels of land
47 on which the retirement community is operated, and no parcel may be sold
48 individually. This resolution is dated Jan 6, will be effective on the date the
49 variance is granted, and is not appealable or modifiable while the variance is in
50 effect. Attorney Somers added that Administration was contacted by numerous
51 residents at the Woods, who were concerned that the ZBA may have a one-sided
52 view of what residents think of this proposal. Many of them vigorously support
53 this proposal, and there is a petition in favor signed by 140 residents of the
54 Woods. Finally, she noted that the application is proceeding tonight with less
55 than a full Board, and she sent a letter to the Select Board that the choice to
56 proceed tonight with less than a full Board is not a substantive choice. Mr. Baum
57 said there is a quorum, but he appreciated her letter because he thinks they need
58 more members on the Board.

59 Ms. Davies asked about the phrase "a going concern reservation" in the
60 letter from Attorney McCue. Attorney Somers said she doesn't think it has a
61 bearing on this discussion. Ms. Vogel said "a going concern reservation" means
62 you would not be able to continue as a going concern. We could not put our
63 invested assets at risk, we'd have to have enough liquid assets to continue our
64 business.

65 Mr. Baum opened the discussion to the public.

66 Ellen Kingsbury of the Woods said the current Healthcare Facility at the
67 Woods is out of code, and it's wasteful and unsustainable to have three separate
68 facilities. There's a standard of care that must be delivered. Nurses must be
69 experts and adapt to new technology. Consolidation would have a positive effect
70 on nursing staff.

71 Nancy Caudette of the Woods read a statement from another Woods
72 resident, Joan Caldwell, who couldn't be present. Ms. Caldwell's husband is in
73 the long term care facility at Monadnock, and while visiting him he had dementia
74 patients aimlessly wandering into his room. The facilities are outdated and
75 residents spend time staring out the window instead of being involved in
76 activities. Riverwoods should build one new Healthcare Facility with dedicated
77 memory care and a central space for recreation.

78 Nancy Caudette read another letter from Paul Henchy of 16 Sandstone
79 Way at the Boulders. He and his wife live in a cottage at the Boulders campus.
80 He supports a centralized Healthcare Facility. He has spoken with healthcare
81 staff who talked about the burden of three facilities and how it makes staffing and
82 retention more difficult. Long term quality care can only be ensured if Riverwoods
83 creates a centralized facility.

84 Nancy Caudette said we sent 140 letters, including three from retired
85 MDs and three from residents who have spouses in Monadnock who see the
86 advantage of a combined Healthcare Center. We feel we are one community with
87 three campuses.

88 Deanna Graham of 5 Douglas Way, who is the Director of Community
89 Engagement at Riverwoods, said we pride ourselves on being a vibrant
90 community for both residents and staff. There has been a staffing crisis since
91 Covid that's not going away. This is how we will give the best level of care to our
92 residents.

93 Bob Cully of the Boulders said the Riverwoods campuses are separate
94 communities, not one big community. Boulders residents receive healthcare on
95 the Boulders campus. When he came to Riverwoods, he was told he would have
96 a home campus with on-site healthcare. Centralized healthcare would isolate
97 patients from the Boulders community. There's nothing close to the type of
98 transportation that would be needed to ferry people around. Regarding criteria
99 #3, substantial justice is not done. Residents moved to Riverwoods with the
100 understanding that lifetime healthcare would be provided there. The current
101 congregate healthcare design should not be eliminated based on their general
102 statements. There will be four fewer beds than the combined health centers of
103 each campus, 145 instead of 149, and there will be a 25% increase in the
104 residential population from the conversion of Health Centers to residential
105 facilities. The Riverwoods Exeter resident handbook was updated in Jan 2023,
106 and states the composition of individual campuses, such as healthcare units, and
107 also states that campuses function as individual neighborhoods within the
108 Riverwoods Exeter community. He asked that the variance request be denied.

109 Tracy Jeffers of 12 Ridgewood Terrace, an employee of Riverwoods, said
110 Riverwoods has three campuses in one community. Change is hard. The
111 majority of residents and staff appreciate that this is needed in order to have a
112 state of the art facility and quality care for our residents.

113 Pete Cameron of 15 Sandstone Way at the Boulders said he thought that
114 there were going to be two parts to this hearing. Mr. Baum said no, his intent was
115 to hear both applications together, but they will be deliberated and voted on
116 separately. It was the applicant's choice to present the applications this way and
117 it's the most efficient way to do it. The concerns are very similar for both
118 variances. Mr. Cameron said he's not against optimizing healthcare, but the
119 Board must focus on the five variance criteria and whether Riverwoods has met
120 the burden of proof.

121 Roy Cheney of the Boulders said he believes that people have been
122 getting first-class healthcare. Relocating all healthcare to the Woods, across NH
123 111, is against the public interest because it will create a public safety hazard at
124 that intersection. It will alter the character of the small residential neighborhood
125 adjacent to the campus. More residential housing will also be created, resulting in
126 more traffic. There could be 200 more crossings per day just by residents who
127 have spouses in health care, which was not accounted for in the traffic study. We
128 are permitted as a congregate elderly health care facility; moving skilled nursing
129 off-site from the Boulders campus substantially changes the living environment
130 for current residents. Physically separating loved ones and friends and is a
131 violation of the understanding residents had when they moved in. Without

132 healthcare on-site, the Boulders will become an active adult community, which is
133 not what they signed a contract for. The physical connection and emotional
134 benefits of on-site care can't be duplicated with off-site care, so substantial
135 justice is not done and the request for a variance should not be approved.

136 Arthur Freeman of the Boulders said he doesn't feel that he has enough
137 information to support or oppose this. There will be more need for staff to
138 accommodate the extra independent living residents added, and no presentation
139 has been made on decreased nursing staff or increased residential staff. When
140 he signed up to be a resident, the understanding was that healthcare would be in
141 the same campus as he lived in.

142 Mr. Baum asked the applicant to make closing comments.

143 Attorney Somers said the Board must weigh the evidence on the variance
144 criteria and not the emotional items presented tonight. Regarding comments that
145 we have not met the burden of proof, the resident objections have not described
146 the variance criteria accurately under NH law relative to public purpose, spirit,
147 and intent, diminution of property values, or hardship. Regarding "public interest,"
148 the variance must not be contrary to the public interest by being unduly or to a
149 marked degree violating the relevant ordinances' zoning objectives, which in this
150 case is to ensure that the healthcare service provided is at the locality rather than
151 across town. This ordinance was created many years ago, and they were
152 probably concerned about creating an assisted living facility with healthcare way
153 off-site. The basic zoning objective is to make sure the healthcare provided is not
154 far away. The other half of the variance criteria for public interest is whether it will
155 alter the essential character of the locality or threaten public health, safety, or
156 welfare. That doesn't reflect the comments that have been made by abutters.
157 Riverwoods will still be there, and will still have healthcare and assisted living.
158 The residential perimeter of the facility will still be there.

159 Regarding traffic, she looked at the traffic study, and it was prepared
160 solely for the purpose of studying the impact of the 35 potential independent
161 living units, not the impact of having a centralized health center. It was included
162 when they thought they needed a variance for those additional units, but they
163 don't, and perhaps it should not have been included in the materials. The traffic
164 issue will be examined by the Planning Board if this variance is granted, and a
165 further study done at that time will examine traffic and the impact to abutters.

166 There was some concern in resident letters about there not continuing to
167 be a "mini health care center" on each campus, but that service will continue.
168 Another resident concern is that the nursing shortage is being exaggerated or is
169 temporary, but statistics presented at a recent Hospital Association meeting, a
170 statement from the Chairman of the Reserve, and a recent report by McKenzie
171 and Company projecting nursing shortages in 2025 suggest otherwise. Lots of
172 opinions have been presented by residents, but when it comes to contracts,
173 according to NH case law, pure opinion cannot supersede evidence. Also
174 according to case law, any comments made as part of marketing are not to be
175 considered part of residential contract agreements.

176 Attorney Somers said regarding resident support, we haven't done a poll,
177 but we have 600 residents; we had no comments from the Ridge, 140 from the
178 Woods in support, another 20 from the Boulders in support, and 10 from the
179 Boulders against, which indicates how the residents feel. The concern that
180 residents would not be able to visit those in the healthcare center and the
181 uncertainty of transportation will not apply, because the language of the criteria of
182 whether the benefit to the applicant will be outweighed by the detriment or loss to
183 any individual. It's not a question of degrees of discomfort expressed; that is not
184 a detriment or loss. The benefit to the applicant is moving forward with what it
185 has determined will provide the best care possible, with consistent nursing staff.
186 It's not a loss, since there would be the same or even a better level of service. A
187 sense of disappointment is not a loss.

188 Attorney Somers said regarding the idea of a poll, this is not a condo
189 association where people vote on how they want to operate. Riverwoods is run
190 by a nonprofit manager with a duty to current and future residents. The
191 transportation element we recognize as an issue. We will commit to having a
192 transportation plan for the Planning Board submittal.

193 Attorney Somers said that Riverwoods has as a matter of right the ability
194 to merge the Boulders lot and the Ridge lot, meaning that one facility could be
195 created for both of those campuses without ZBA approval.

196 Attorney Somers said there's a sense of disappointment expressed by
197 some people. If they confer with us, Riverwoods would try to address that
198 disappointment in a way that's tailored to the individuals. However, that's not the
199 Board's jurisdiction; their only consideration should be whether they meet the
200 criteria, and she thinks they do.

201 Ms. Davies said she thought this was about the consolidation of skilled
202 nursing beds, but does this also include all assisted living? Attorney Somers said
203 yes, "Health Center" includes both skilled nursing and assisted living. Part of the
204 confusion may be in the terminology of the ordinance, which references a
205 "nursing home facility" needing to be on the same lot of the service. Ms. Davies
206 said it reads "on-site nursing home facilities as licensed by the State of NH", but
207 that doesn't say all assisted living and skilled nursing would be consolidated into
208 one place. Attorney Somers said the Health Centers currently contain all assisted
209 living and skilled nursing. We talked about it extensively at the last meeting, and
210 also indicated that it would include memory care. The purpose is to centralize
211 everything for the purpose of efficiency.

212 Ms. Davies asked how many units are currently in assisted living. Ms.
213 Vogel said 150, including assisted living and nursing. We haven't determined
214 how many units would be in the centralized building, but an actuarial study
215 suggested we need 27% of population number, which is 111 units for the current
216 population. Mr. Baum said that doesn't account for any increased units, and Ms.
217 Vogel said that's correct. Currently, Riverwoods sells the extra 30 units to people
218 who are not Riverwoods residents, but in the future we would allocate those beds
219 to Riverwoods residents. It will be less than 150 units, but it will be an appropriate

220 number for our population. Ms. Davies said there's a big difference between
221 assisted living and skilled nursing, will they have a certain number of each type of
222 unit? Ms. Vogel said we will have the appropriate number for each, although we
223 can provide a higher level of care for a resident without them moving units. We
224 started out projecting 144: 36 memory support beds, 20 skilled nursing beds, 60
225 assisted living 2, and 28 assisted living apartments. Some of the numbers may
226 be a little lower, but not lower than the actuarial minimum that we need, including
227 projections for a future increase in residents.

228 Mr. Baum asked if the new facility will be at the Ridge, and Ms. Vogel said
229 yes, it will be on the Ridge parcel, likely on the site of a current Admin building,
230 not attached to the Ridge building. Based on feedback, the residents of the Ridge
231 preferred it in the separate location.

232 Ms. Vogel said the requirement is that we have a nursing home on site.
233 We've come to ask for a variance for the Woods and Boulders because there will
234 no longer be a nursing home there. Ms. Davies said there will no longer be one
235 as part of the Ridge building either. Ms. Vogel said we hear resident
236 disappointment, but we have to consider what's right for the whole in the long
237 term, which is centralizing healthcare in a new building that provides the kind of
238 amenities that allow residents to live their best lives. We will work out the details
239 of transportation etc.

240 Recused Board member Robert Prior asked to speak as a member of the
241 public, but Mr. Baum said public comment was closed.

242 Ms. Gaskell, the Interim Executive Director of Riverwoods, said involving
243 residents doesn't mean that they are the ultimate decisionmakers moving
244 forward. We've done our due diligence to evaluate whether or not this is worth
245 moving forward on. We heard resident feedback in the Ridge because they didn't
246 want to move twice, once during construction and once it was complete. With this
247 proposal, we can move all healthcare residents when needed. We had design
248 charettes where we brought in our architects to talk to residents. We have a
249 dedicated email for feedback and we have 44 pages of suggestions submitted by
250 residents. There will be a resident task force to help us solve challenges with this
251 proposal. There are five resident Trustees that are full Board members. She
252 added that Riverwoods is one community that needs to move forward with one
253 health care facility.

254 Mr. Baum closed the public session and brought the discussion back to
255 the Board.

256 Ms. Davies went through the variance criteria. 1) The variance will not be
257 contrary to the public interest and 2) The spirit of the ordinance will be observed;
258 the ordinance is clear that there has to be a nursing facility associated with these
259 communities. Although they like to call it one community, it's three parcels on two
260 sides of a State route, and they can't be tied together as a single entity. Mr.
261 Baum said they are tied together as a single entity. He agrees that this is
262 contrary to the ordinance, which is why they are here for the variance, but this
263 sounds like there is significant overlap between the campuses in ownership and

264 activities. Does this meet the spirit of the ordinance by providing nursing facilities
265 as part of the overall facility of Riverwoods? It's not what the members bought
266 into, and they have a valid argument, but ultimately we can't pass judgment on
267 what their contract says or what was marketed to them. Mr. Baum said he does
268 think this meets the criteria. Ms. Davies said it's not about emotional issues,
269 these are real concerns related to real estate and zoning. This ordinance was
270 created for Riverwoods, and they are the only ones in town under it. She
271 understands the need to find a solution to the shortage of healthcare workers, but
272 it's not something we can resolve with a variance. This doesn't fit "the spirit of the
273 ordinance is observed," because the heart of this special exception was that the
274 levels of care be available to residents in the same facility. Mr. Baum said it's the
275 same "site," not the same "facility." It does not have to be attached to meet the
276 definition, which is why no variance is required at the Ridge. He's comfortable
277 considering the three campuses as a site, given the overlapping administration.
278 He would be more comfortable if there were more details to the plan. Ms. Olson-
279 Murphy agreed, saying they're saying "we'll figure it out," "we'll have security do it
280 on weekends", there are so many little details that should be fleshed out to prove
281 there will be the same level of safety and care. Ms. Davies said the labor
282 shortage also affects food service, housekeeping, and transportation. For the
283 Board to make a permanent change in the only user that avails itself of these
284 provisions, it affects a lot of people. This is a management and workforce
285 problem, and the variance is not a tool to address that. Mr. Baum said it makes
286 sense to give the applicant flexibility to manage that. It comes down to the intent
287 of this provision; was it only that these smaller distinct facilities based on the lots,
288 or does it contemplate a larger unit? If they were adjoining, it would be an easier
289 decision. He'd like to have a traffic study, but this is a constant battle in ZBA and
290 Planning Board; the Planning Board is in a better position to consider this aspect
291 and can put in conditions of road and intersection improvements.

292 Ms. Davies continued with the variance criteria: 3) Substantial justice is
293 done; she does think the applicant is genuinely trying to solve a problem.
294 Independent units are more profitable than assisted living or skilled nursing, and
295 consolidated units would be a benefit to management, but she thinks their
296 overriding concern is how to serve their community. However, she doesn't know
297 if this proposal as a zoning variance will solve problems of management and
298 workforce. This is a big change to what many residents wanted when they
299 bought in. Ms. Olson-Murphy said this variance will fix one issue, but there are a
300 lot of other issues that will come behind it, and she would feel better if there were
301 plans to address those. Mr. Baum said he can live with it given the suggested
302 conditions by the applicant that the transportation plan be part of the Planning
303 Board review. They need this first approval before they make a major investment
304 in design. Ms. Olson-Murphy said she had first-hand experience of a shortage of
305 care units there. Mr. Baum said that's a reason to give them flexibility on how and
306 where they provide this. Regarding substantial justice, the benefit to the applicant
307 is not outweighed by the harm to the general public. The applicant showed that

308 there is a benefit to them. We've had vocal opponents speak to us, but there's
309 also a counter. Ms. Olson-Murphy said she can see that they're meeting this
310 criteria. Ms. Davies said there's room to agree, but it's not clearcut. 4) The value
311 of surrounding properties will not be diminished; Ms. Davies said she's not
312 worried about this criteria. Mr. Baum said there had been no testimony on this
313 point. 5) Literal enforcement of zoning ordinance will result in an unnecessary
314 hardship; Ms. Davies said that one part of the definition of "unnecessary
315 hardship" is that the property cannot be reasonably used in strict conformance
316 with the ordinance. Mr. Baum said that isn't the case, since it's currently being
317 used in conformance. Ms. Davies said there is a hardship here but it comes from
318 a workforce concern and not from the property. Mr. Baum said this is the hardest
319 criteria. It comes down to whether you think it's reasonable to consider the three
320 campuses as a "site" according to the intent of the ordinance, given the close
321 location and common administration between the three campuses. Ms. Davies
322 asked if Mr. Baum would have an issue if he were being asked to create the
323 whole of Riverwoods as a single site, and Mr. Baum said that's why they need a
324 variance. When we vote, we should break out the two requests. The Boulders
325 request is far easier, as they are adjoining and could be merged. The three
326 parcels have common ownership and administration. There are residents that go
327 between campuses. The intent of the ordinance is to provide care in close
328 proximity and not have people being shipped off-site. It's harder for the Woods,
329 but it's a short jump between the two in terms of transportation. Ms. Davies said it
330 makes sense to have a central memory care facility. That's not part of the
331 requirements of the ordinance. She does have trouble with the hardship piece of
332 it. Ms. Olson-Murphy said she has an easier time with hardship with the Ridge
333 and the Boulders because they're in close proximity. The Woods is across the
334 street. Ms. Davies said it's a big process to leave a building and go to a separate
335 building when you're in that stage of life. That's why this ordinance was created.
336 Mr. Baum said leaving the building isn't a factor, this is about "on-site nursing
337 facilities." Ms. Davies said being in the same building was in the Planning Board
338 language, but she agreed that the ordinance only said "on-site."

339 Ms. Davies moved to deny the application for a variance from Article 2, Section 2.2.26,
340 Definition of "Elderly Congregate Health Care" for 7 Riverwoods Drive, ZBA Case #22-
341 15, based on not meeting variance criteria 3 and 5. Ms. Olson-Murphy seconded. Mr.
342 Baum asked her to elaborate the reasons. Ms. Davies said regarding criteria 3, it's
343 difficult to weigh the benefit to the applicant and whether it's outweighed by harm to
344 individuals, especially existing residents. It would be a benefit to the applicant and some
345 members of the community, but other members of the community have said it would be
346 a harm to them. Regarding 5, she doesn't think there are special conditions unique to
347 the property that create a hardship. There's a hardship related to the labor force and the
348 management of the facility, but it's not a property hardship. Ms. Olson-Murphy said
349 they're currently operating it, so it can't be a hardship in that way. Ms. Davies and Ms.
350 Olson-Murphy voted aye, and Mr. Baum voted nay. The motion to deny passed 2-1.

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Ms. Davies moved to deny the application of RiverWoods Company of Exeter for a variance from Article 2, Section 2.2.26, to permit skilled nursing care off site on related campus for property is located at 5 Timber Lane, ZBA Case 22-16, for the same reasons, that it doesn't meet criteria 3 and 5: the benefit to the applicant would not outweigh the harm to individuals, and the property does not meet the hardship criteria. Ms. Olson-Murphy seconded. Mr. Baum asked if the reasoning was the same. Ms. Olson-Murphy said criteria 3 regarding impact is not as clear-cut for her because of the proximity of these parcels. Riverwoods could make these one parcel if they chose, whereas the other property is across the way. The impact on residents here would be less, since it is just an extra 100 feet to get from the Ridge to the Boulders. For her, the issue for this application is more criteria 5. Ms. Olson-Murphy asked if she should amend the motion. Ms. Davies said if she supports one criteria to deny, that's all she needs to vote aye. The reasoning was included for clarity to the applicant. Ms. Davies and Ms. Olson-Murphy voted aye, and Mr. Baum voted nay. The motion to deny passed 2-1.

Mr. Baum told the applicant that their applications had been denied, and they have 30 days to request a re-hearing. The Board took a brief recess and reconvened at 9:24 PM. Mr. Prior and Ms. Pennell rejoined the Board.

- C. The application of 107 Ponemah Road LLC for a special exception per Article 4, Section 4.2, Schedule I: Permitted Uses and Article 5, Section 5.2 to permit the conversion of the existing single-family dwelling and attached barn located at 50 Linden Street to a three-family home. The subject property is situated in a R-2, Single Family Residential zoning district. Tax Map Parcel #82-11. ZBA Case #22-17.

Mr. Baum said this applicant has asked to continue the application to the meeting of Feb 21.

Mr. Baum made a motion to continue ZBA Case #22-17 to the meeting of February 21, 2023. Ms. Olson-Murphy seconded. Ms. Davies, Ms. Olson-Murphy, Mr. Baum, Mr. Prior, and Ms. Pennell voted aye. The motion for continuance passed 5-0.

- D. The application of River Bend Trust (Peter Mahar and Keri Marshall, Trustees) for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses to permit the existing single family home (with an in-law unit) at 2 River Bend Circle to be converted to a two-family residential structure. The subject property is located in the R-2, Single Family Residential zoning district. Tax Map Parcel #104-34. ZBA Case #23-2.

Applicants Keri Marshall and Peter Mahar, the owners of 2 Riverbed Circle, were present to discuss the application for a special exception. Ms. Marshall said the property was constructed in 1985 as a two family home. There's a breezeway that connects a garage to the main house. The smaller unit is to the back of the garage, so it's not visible from the front of the property, and

Town of Exeter
Zoning Board of Adjustment
December 20, 2022, 7 PM
Town Offices Nowak Room
Final Minutes

I. **Preliminaries**

Members Present: Chair Kevin Baum, Vice-Chair Robert Prior, Laura Davies, Martha Pennell - Alternate, Joanne Petito - Alternate. Code Enforcement Officer Doug Eastman was also present.

Members Absent: Clerk Esther Olson-Murphy, Dave Mirsky - Alternate

Call to Order: Chair Kevin Baum called the meeting to order at 7 PM.

I. **New Business**

A. The application of RiverWoods Company of Exeter for a variance from Article 2, Section 2.2.26, Definition of "Elderly Congregate Health Care" to permit skilled nursing care off site on related campus. The subject property is located at 7 RiverWoods Drive in the R-1, Low Density Residential zoning district. Tax Map Parcel #97-23. ZBA Case #22-15.

B. The application of RiverWoods Company of Exeter for a variance from Article 2, Section 2.2.26, Definition of "Elderly Congregate Health Care Facilities" to permit skilled nursing care off site on related campus. The subject property is located at 5 Timber Lane, in the R-1, Low Density Residential zoning district. Tax Map Parcel #98-37. ZBA Case 22-16.

Mr. Baum allowed these applications to be considered together. Martha Pennell and Bob Prior recused themselves from considering these applications.

Sharon Somers of DTC Lawyers was present to represent RiverWoods; Justine Vogel, Kim Gaskell, and Dave Brownell of RiverWoods and Erik Saari of Altus Engineering were also present.

Attorney Somers said the applicant is seeking to take the existing Health Centers at each of the three campuses and turn them into one Health Center at the Ridge Campus. Both variances are related to this request. Initially they thought they also needed a density variance for the Woods Campus, but it was determined by Code Enforcement Officer Doug Eastman that it was not required.

Ms. Vogel said RiverWoods is one legal entity on three campuses. Each of the campuses has a Wellness Center with a Nurse Practitioner and a Nurse doing "light primary care" for the residents of that campus, and those Wellness Centers will remain in each campus. There are additionally Health Centers on each campus which provide long-term nursing care, and those Health Centers are what we are looking to centralize. By centralizing, we can add memory care units with a smaller and home-like environment. Also, there's a nationwide

45 shortage of healthcare workers. We've been using agency nurses to fill staffing
46 gaps, which is hard on the team. Centralizing would allow us to reduce our need
47 for staff and increase the consistency of the healthcare providers. There will be
48 less duplication of effort. Currently, those who live in the Health Centers don't
49 tend to take advantage of the amenities of the campuses. They should have an
50 environment that's more aligned to their wants and needs. If we have another
51 Covid-like event where we need to isolate our Health Centers, having a self-
52 contained space will allow as full a life as possible for this population. The
53 personal space at the current centers are very small, about the size of a hospital
54 room. The new building would allow more room for visitors in order to maximize
55 visiting.

56 Ms. Vogel said that these improvements would come with trade-offs.
57 Married people with a spouse in a Health Center would lose the ability to walk
58 down the hall to visit. Cross-over between the campuses would be more
59 challenging. Residents have expressed concerns that this wasn't what they
60 expected when they signed up. We're working to address those concerns, and
61 will provide transportation to the Health Center 24 hours a day, as well as
62 encouraging communication and connection in other ways.

63 Attorney Somers said that according to the special exception granted to
64 RiverWoods in 1991, there was a condition that it have on-site "Nursing Home
65 Facilities," so a variance is necessary to maintain this special exception.

66 Attorney Somers went through the variance criteria. 1) The variance will
67 not be contrary to the public interest and 2) The spirit of the ordinance will be
68 observed; yes, continuing care will be provided that is not divorced from the daily
69 life of the rest of the community. Nursing care residents will enjoy as high a
70 quality of life as possible. The Health Center will have a central location to reflect
71 the changing needs of the health services, but it will be on one of the campuses
72 and not outside the RiverWoods community. The proposal will not alter the
73 essential character of the community in that RiverWoods will continue to be
74 comprised of independent living, assisted living, and nursing care. There will be
75 no alteration to the existing neighborhood of single-family houses. The proposal
76 will not be a threat to public health, safety, or welfare. The same level of high-
77 quality health care will continue to be provided to RiverWoods residents. A traffic
78 study indicated that there will be no negative impact from the change.

79 Mr. Baum asked if this study was relevant only to the Woods, not to the
80 Boulders campus, and Attorney Somers said yes, we focused on the Woods
81 because that change would impact a public road, Route 111.

82 Attorney Somers continued with the criteria. 3) The value of surrounding
83 properties will not be diminished; no, there is a pre-existing package of uses on
84 all three campuses, and there's no change to the overall mix of these uses.
85 Whatever impacts arise from RiverWoods have been present since 1991. More
86 independent living may be added, but this remains an allowed use. 4) Substantial
87 justice is done; yes, this acknowledges the existing environment of providing
88 health care. Centralized healthcare will ensure those residents have a high

89 quality of life and more of a sense of community with family and friends who will
90 be visiting. There's no public harm to the public or private parties, including the
91 residents of RiverWoods. While some inconvenience may occur, as has been
92 expressed in some resident letters, we're taking this perceived inconvenience
93 into account by providing transportation. 5) Literal enforcement of zoning
94 ordinance will result in an undue hardship; yes, this property is unique. It's
95 operated as a single entity but consists of three separate lots or campuses. We
96 seek to have the Health Center centralized on one of the campuses. The
97 Harborside case stands for the proposition that the Board can consider unique
98 aspects of the property in order to find hardship; the RiverWoods property is one
99 of those cases. An operation on the three lots being owned and operated as one
100 is a unique aspect of the property which will enable the Board to find hardship
101 here. Regarding the criteria that there is no fair and substantial relationship
102 between the intent of the ordinance and the application of it to this proposal, the
103 ordinance is silent on the intent of the nursing home facility having to physically
104 be on site. The 90s were a completely different era of healthcare, and didn't have
105 in mind a situation that we have now with multiple lots owned and operated by
106 one party. The ordinance may not even apply, but the ordinance calls for the
107 Board to consider whether on-site care is met for us to qualify for the special
108 exception. The ordinance was likely designed to prevent residents receiving care
109 to be shipped somewhere across town, away from the other residents. Here, the
110 proposed Health Center will still be at RiverWoods, so for all practical purposes it
111 will still be on site.

112 Ms. Davies said RiverWoods was regulated by the Insurance
113 Commission due to the financial structure. Has the Insurance Commission
114 reviewed this plan? Ms. Vogel said the Health Centers are regulated by Health
115 and Human Services, and our contract is regulated by the Insurance
116 Commissioner, but we do not believe this is something that requires Insurance
117 Department oversight, because this is still legal per our contract with our
118 residents. We've had that discussion with our Attorney. Mr. Baum asked if this
119 proposal requires any waiver from Health and Human Services. Ms. Vogel said
120 no, but when we build a centralized Health Center it will be re-licensed by HHS.

121 Mr. Baum said it sounds like the Board is being asked to treat the three
122 campuses as a single site; how will the three campuses interact so that the intent
123 of the ordinance of providing on-site services will be met? Ms. Vogel said that
124 RiverWoods operates as one site now. Residents can dine at other campuses.
125 There are buses and transportation between them 12 hours a day, 7 AM to 7 PM,
126 or residents can drive themselves between the campuses. In the future, we could
127 support 24 hour access to spouses in the Health Centers via the security team,
128 an additional "transportation shift," or another plan that the residents have a say
129 in. Ms. Davies asked how the bus transportation works now, and Ms. Gaskell
130 said it's both on demand and scheduled. We had an annual holiday party last
131 week that was held at the Woods campus, and residents from the Ridge and
132 Boulders were shuttled there. Tomorrow we have a residents' committee meeting

133 at the Ridge, and we will offer transportation there. It's also on an as-needed/on-
134 call basis from campus services. There's an active and full calendar of events
135 open to any resident. The centralized Health Center would almost be like a fourth
136 campus.

137 Ms. Petito asked how much shuttling residents actually do on a day-to-
138 day basis. Ms. Gaskell said each campus has its own culture, community, and
139 activities, but most are open to all residents. Those shuttles are running
140 continuously throughout the day. We also offer trips to local churches and
141 provide transport to off-site medical appointments. Centralizing the Health Center
142 would allow pickups in a single location and require fewer escorts from the
143 Health Care staff. Ms. Vogel added that if the question is how much of one
144 community does it feel like now, it *is* one community. Everything is open to
145 everyone. The only time we shut things down between the campuses was at the
146 height of Covid to reduce risk. Ms. Gaskell added that when the campuses were
147 isolated, the residents of the Health Center didn't have the same amenities that
148 other residents have, like a fitness center, salon, or library. We'd like a building
149 that makes those amenities available.

150 Mr. Baum asked if ownership of the land and the operation are under a
151 single entity. Ms. Vogel said yes, RiverWoods Exeter is a single 501c3 and owns
152 all parcels, with one tax ID number. It operates under a single Medicare license.
153 Mr. Baum said if we were to grant a variance, Attorney Somers should give some
154 thought to why we would treat three pieces of land as a single site. These
155 variances run with the lots, so how would these be tied together in perpetuity?

156 Ms. Davies asked if the residents had been polled to express their
157 opinions on this. The Board received some letters, but that doesn't always
158 represent a good cross-section of opinions. Ms. Vogel said we didn't poll people,
159 but had multiple meetings with residents, starting in November 2021. Some are
160 vehemently opposed and some understand the need. On the Woods Campus,
161 the Monadnock Lodge Health Center is 30 years old and needs to come down.
162 There are those who live there that understand the healthcare worker crisis and
163 are concerned about there being enough nursing care. There are many other
164 issues where residents' opinions matter strongly, but this is an absolute need in
165 order to provide the best quality of healthcare. There's inefficient sizing between
166 the three campuses. There's a drastic need for healthcare workers, and that will
167 not change. Ms. Petito asked if the current Health Centers are adequately
168 staffed. Ms. Vogel said they are, but it's done with agency nursing, so there are
169 inconsistent faces.

170 Ms. Gaskell read an email from RiverWoods VP of Health Services Cindy
171 Martin, who was not present, which said the current structure and approach to
172 staffing is not sustainable.

173 Mr. Brownell, the Chairman of the RiverWoods Board of Trustees, said
174 the Board has looked at what Health Centers are doing in other communities and
175 discussed the issue, and it voted unanimously that centralized healthcare is the
176 best approach for RiverWoods residents.

177 Ms. Petito asked how a centralized Health Center would reduce the
178 sense of isolation that came with Covid. Ms. Vogel said nobody at RiverWoods
179 had visitors during the pandemic. The real challenge was that there were no
180 amenities in the Health Center. The new building would have the amenities
181 attractive to those living in health care, as well as technology and courtyard
182 space that would allow visits in a safe way.

183 Mr. Baum opened the discussion to the public.

184 Bob Cully, a resident of the Boulders, said common practice has been for
185 Boulders residents to receive health care on that campus. There is a social
186 benefit to remaining on one campus throughout one's lifetime. There will also be
187 increased traffic from this project. The spirit of the ordinance is not observed
188 because the community is diminished by removing family and friends. Substantial
189 justice is not done. Residents moved to RiverWoods with the understanding that
190 lifetime care would be on the same campus. Regarding neighboring property
191 values, the siting of the consolidated facility has not been set, so it's difficult to
192 determine. Regarding unnecessary hardship, we need more specifics on the
193 congregate Health Center design. The proposed use is unreasonable because
194 residents moved to campus with one understanding and they're trying to switch it
195 now. People will not walk or bike to the new Health Center, particularly if it means
196 crossing Route 111.

197 Bob Prior of 16 Pickpocket Road said he's concerned as an abutter and
198 as a member of the ZBA. The three separate campuses are separate, and they
199 have been litigated through this Board whenever construction was proposed. Ms.
200 Gaskell is calling the Health Center the "fourth campus," but they only have
201 zoning approval for three campuses, each of them distinct, even though a single
202 corporate entity owns all three. Residents identify as members of their
203 campuses. RiverWoods has made commitments to the residents and to the
204 community of Exeter, including the many single-family homes in the
205 neighborhood. The Board has very few specifics on this proposal. Although they
206 said they had an analysis of traffic and said there will be no impact, of course
207 there will be impact. We need more specifics.

208 Roy Cheney, a resident of RiverWoods, said no other facility he looked at
209 had a congregate health care facility like RiverWoods does. He's against the
210 proposal to move all assisted living into the central Health Center. Currently
211 residents can see their spouse in assisted living multiple times a day just by
212 walking down the hall. The zoning for elderly congregate health care facilities
213 requires that there's an on-site nursing home as licensed by the State of NH, but
214 only the Ridge is licensed as a nursing home. The traffic analysis was flawed
215 because they only looked at the number of healthcare workers going to the
216 Woods and the increased number of independent living residents, and said there
217 would be a net loss in traffic. They didn't look at everyone who has a spouse in a
218 healthcare facility traveling back and forth.

219 Mr. Baum asked if the applicants wished to respond to the public
220 comments.

221 Attorney Somers said a number of letters in the packet show resident
222 support, noting the importance and the value of the Wellness Centers in each
223 campus, which would be retained. The Wellness Center is an office for people to
224 come in and have minor health issues addressed. Ms. Gaskell said each
225 Wellness Center is staffed by a Licensed Nurse Practitioner and a Wellness
226 Nurse who is an RN. These clinics operate under a separate Home Health
227 license that will be retained. The Health Centers have an 803 and 805 license;
228 Wellness Centers are under 809 or 822.

229 Attorney Somers said the traffic study focused on what would happen if
230 the Nursing staff weren't at the Woods any longer. There may be visitors needing
231 to go across the street to the Ridge, but it's not a fatal flaw to the study. People
232 from the Woods or the Boulders may already be coming and going to the Ridge.
233 Ms. Davies said the description indicated many more trips between campuses.
234 Attorney Somers said the applicants need to know if there is basic approval for
235 the concept of a central Health Center before creating specific designs. That's
236 when we will come back with a report which will address all traffic impacts.

237 Attorney Somers said that contrary to Bob Prior's statement, there will not
238 be a 25% increase in independent living units. She added that Mr. Prior has
239 recused himself, so can speak as an abutter but not as a member of the ZBA.

240 Attorney Somers said that regarding Mr. Baum's concerns, the three
241 campuses are financially inextricable. It's not likely that separating them could
242 ever happen. Mr. Baum said his concern is that the lots could be transferred to
243 two separate entities, one of which would no longer provide congregate
244 healthcare facilities. Ms. Vogel said we have one mortgage for all of the land, so
245 splitting it out may be possible but is highly unlikely. If we were to sell off the
246 Woods, the new organization wouldn't be able to get licensure. If we could link
247 the campuses, we would be all for it, but we don't know how to do that.

248 Ms. Petito said a big draw of RiverWoods is that there is on-site health
249 care. Ms. Vogel said the contract doesn't say it's in the exact same building. Ms.
250 Petito said that's the understanding. Ms. Vogel said it's a necessary change and
251 will provide better healthcare. The way things always have been is no longer a
252 viable option.

253 Ms. Davies asked how many residents are in the three campuses, and
254 Ms. Vogel said about 600.

255 Resident Pete Cameron asked if there will be a separate proceeding with
256 respect to the Boulders. Mr. Baum said the applicant presented them together,
257 but he would re-open public comment specifically on the Boulders.

258 Pete Cameron of 15 Sandstone Way, who is also a member of the
259 Planning Board, read part of the Planning Board approval letter from 2008 for the
260 construction of the Boulders: "to approve the construction of an additional elderly
261 congregate care facility including independent living units, skilled care units, and
262 assisted living units *within the central facility*." Mr. Cameron said that this
263 suggests another order that will have to be addressed.

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Mr. Baum closed public comment for the application regarding the Boulders.

Ms. Davies said the financial structure of RiverWoods is tied up with the promises made to the residents and their financial investments. She's uncomfortable that there was no effort made to seek approval with the Insurance Board. It's a big change and to determine this wasn't necessary seems like a stretch. Attorney Somers said another Attorney was consulted on that issue, and it was determined that no insurance licensing process was necessary. Ms. Davies said documentation of that would go a long way. Mr. Baum said the contracts between RiverWoods and the residents are not the approval of this Board, but he wants to make sure that if the approval is granted, it can go forward. Attorney Somers asked if having the documentation of that decision could be a condition of approval or if it would need to be rendered prior to the Board making a decision. Ms. Davies said her preference would be to read the opinion. Ms. Vogel said she just texted the Attorney and he will provide a record of that opinion.

Attorney Somers said the applicants can come back on January 17th with the documentation.

Ms. Davies moved to accept the request to continue and put it on the January 17th agenda. Ms. Petito seconded. [Not voted]

Mr. Baum said he would prefer formal motions for each case.

Ms. Davies moved to accept the applicant's willingness to continue the application for Case #22-15 to the January 17th ZBA meeting. Ms. Petito seconded.

Ms. Petito asked if that documentation will be necessary to our decision. Mr. Baum said we have not made that determination, the applicant chose to request to continue rather than go forward tonight. Ms. Petito asked why we asked for that information. Ms. Davies said her understanding of the contract is that it involves various elements, and she was curious if there was permission needed to change that contract.

Ms. Davies, Ms. Petito, and Mr. Baum voted aye, and the motion passed 3-0.

Ms. Davies moved to accept the applicant's willingness to continue the application for case #22-16 for the property located at 5 Timber Lane to the January 17th ZBA meeting. Ms. Petito seconded. Ms. Davies, Ms. Petito, and Mr. Baum voted aye, and the motion passed 3-0.

The Board recessed at 9 PM, and reconvened at 9:07 PM. Mr. Prior and Ms. Pennell rejoined the Board for the following applications.

- C. The application of Jewett Construction Co., LLC (on behalf of Craig Jewett) for a special exception per Article 4, Section 4.2 Schedule I: Permitted Uses and