

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.

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

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

280 Attorney Somers said the applicants can come back on January 17th with
281 the documentation.
282

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

285 Mr. Baum said he would prefer formal motions for each case.
286
287

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

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

295 Ms. Davies, Ms. Petito, and Mr. Baum voted aye, and the motion passed 3-0.
296

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

301
302 The Board recessed at 9 PM, and reconvened at 9:07 PM. Mr. Prior and
303 Ms. Pennell rejoined the Board for the following applications.
304

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

307 Article 5, Section 5.2 for a change of use to permit the existing church on the
308 property at 12 Little River Road to be used as a Montessori Early Childhood
309 Education Center. The subject property is located in the R-2, Single Family
310 Residential zoning district. Tax Map Parcel #62-90. ZBA Case #22-20.

311
312 Paige Libbey of Jones and Beach Engineers, Sara Greenshields of Little
313 Tree Education, and Nick Jewett of Jewett Construction were present for the
314 discussion of this application.

315 Ms. Libbey said this is a 4.4 acre property within the R2 Single Family
316 residential zone. The applicant is here for a special exception to change the use
317 from an existing Baptist Church to a facility for early childhood education. The
318 existing building is 5,000 square feet, which could serve 80 students. It only
319 needs minor renovation work for this purpose. The church has had childcare
320 since the late 90s, although the documentation is not in place because there
321 weren't as many licensing requirements at that time. There would be limited
322 sitework, if any.

323 Ms. Greenshields said they currently have two locations, one in Madbury
324 and one in Dover, for children six weeks through six years. The schools follow
325 the Montessori philosophy, and Exeter does not have a Montessori school now.
326 We cater to infant care, of which there is a shortage; we have 300+ families on
327 our waitlists. Regarding the volume of traffic coming into the property, at our
328 existing schools, families sign up for a drop-off and pick-up time, and we cap that
329 at 10 families per 15 minute increment. About 60% of families have siblings, so
330 vehicle trips are further reduced. We limit our family events to classroom-specific
331 events to limit traffic.

332 Mr. Baum said some abutters were concerned about the hours of
333 operation. Ms. Greenshields said at the current centers, we operate from 7 AM to
334 5:30 PM. We require that all children are in the building by 9 AM. There's a half
335 day schedule that ends at 12:30, which covers about 15% of families; the
336 majority have a 4 PM end schedule; and maybe 10 children or so stay until 5:30.
337 There is one professional development activity for staff per month after hours or
338 on the weekends. There are 6-8 family events per year, which are usually not
339 beyond the 5:30 PM time. There is no childcare offered on the weekends. There
340 would be about 15 staff members at this facility and 80 children.

341 Mr. Prior asked if they would make a commitment to continue the pickup
342 scheduling that started during Covid. Ms. Greenshields said absolutely, it works
343 really well for everybody. Sometimes parents will miss that window and they
344 have to wait another 10 minutes, but they understand how we operate. Mr. Baum
345 asked if there would be queuing off-site. Ms. Greenshields said no; parents park
346 and get out of the car, so they're not lined up waiting in their cars. We greet them
347 at the front door, and they don't come inside.

348 Mr. Prior asked if any changes are planned to the structure or parking.
349 Ms. Libbey said there are no changes planned to the site, only to the building.
350 There will be some exterior facade changes such as removing the steeple and

351 installing new windows. There will be no drainage or changes to the impermeable
352 surface area. Ms. Greenshields said there's an existing exterior play area in the
353 back that we would want to increase the size of. They removed the playground
354 equipment. Any new equipment and landscaping would look beautiful.

355 Ms. Pennell asked if the parking lot would be resurfaced, and Ms.
356 Greenshields said the parking surface is in ok condition so we'd be looking not to
357 resurface at this time.

358 Ms. Pennell asked about the house on the property. Ms. Libbey said
359 there's a separate house which was subdivided off from the church last year. It's
360 not part of this project. Mr. Baum said they came through this Board for a
361 frontage variance. Ms. Libbey said there's an access easement. Mr. Prior said
362 there's a gas line easement as well.

363 Ms. Davies asked about licensure, and Ms. Greenshields said we will
364 comply with whatever requirements are necessary. There will be two means of
365 egress from each classroom. This building doesn't have fire suppression, but we
366 will determine if it meets the threshold for having it installed.

367 Ms. Pennell asked about delivery trucks. Ms. Greenshields said the main
368 delivery drop-off is in Greenland, and there's a van that couriers supplies
369 between the locations. WB Mason would be doing paper deliveries every other
370 week. Trash is removed once per week. For food, we do Hannaford to Go, so it
371 would be by car.

372 Ms. Davies asked if they would be an owner or a tenant, and Ms.
373 Greenshields said both.

374 Ms. Pennell asked about security. Ms. Greenshields said they will work
375 with local Police and Fire before making any modifications to the building, and
376 come up with a fire safety plan. The doors are locked to the outside but people
377 can get out in the case of emergencies.

378 Ms. Pennell asked how many people on the waiting list are from Exeter.
379 Ms. Greenshields said she didn't have that number, but that the other childcare
380 facilities in Exeter also have waitlists. She was sad to see the other Montessori
381 School in Exeter close, and she thinks there's a need to be filled. The other Little
382 Tree schools are in Dover and Madbury, with an additional property in Greenland
383 that they're also looking to turn into a school.

384 Mr. Baum asked if all outdoor activities would be within the fenced play
385 area. Ms. Greenshields said yes. They would likely expand the fenced play area,
386 but not initially. The current size is sufficient for their licensing requirements. Mr.
387 Baum said there's an introduction of children and noise to the neighborhood, how
388 will that be contained? It looks like the play area would be behind the church
389 building itself? Ms. Greenshields said that's correct.

390 Mr. Baum opened the hearing to public comment.

391 Steve Blaisdell of 6 Little River Road said the property previously got
392 approval for a very small daycare center. The church has always had a small
393 congregation that met on Sunday mornings and Wednesday nights, and that was
394 all the traffic. It was minimal. At the Wallace/Brentwood Road intersection there's

395 little visibility and no sidewalks. There would be 1,600 additional trips a week
396 through the neighborhood. The other two daycare centers nearby exit on Epping
397 Road. He feels strongly that this application should be rejected.

398 Diane Perkins of 3 Wallace Road said traffic at the Little Tree in Dover
399 comes in off 108 and doesn't impact the neighborhood. The neighborhood has
400 one of the oldest sewer systems in the town. You're taking a church that was
401 there two days a week and increasing water usage and sewer to five days and
402 100 people.

403 Kathleen Taylor of 8 Penn Lane said this is like putting a large facility at
404 the end of a cul de sac. It will make the neighborhood dangerous for children.
405 The sewer system will also be a problem.

406 Richard Wiltemuth of 4 Little River Road said he never tries to make a left
407 turn onto Brentwood Road because of visibility. Both Wallace Road and Little
408 River Road will need to be used for access to that property. There would have to
409 be traffic lights. Traffic will be backed way up.

410 Julie Osburn of 3 Penn Lane said the church was a great neighbor, you
411 barely heard from them. The daycare was only for the church. Her biggest
412 concern is the traffic and possible accidents. She asked that the Board reject the
413 application. Ms. Pennell asked if those roads are not two-car roads. Ms. Osburn
414 said yes, especially in the winter.

415 Tiffany Matevski of 5 Penn Lane said the church is next to her backyard,
416 which has a pool with a chain link fence. If kids in the daycare see that pool, they
417 could try to go over the fence. Also, 80 kids would create a lot of noise. We can
418 hear people at the church talking now, and that's only 10-15 people.

419 Amy Farnham of 3 Little River Road said she moved there for the quiet
420 neighborhood. The other daycares are on busy roads. The Board should
421 consider whether this residential area is the right spot.

422 Karen Weeks of 7 Penn Lane said this is a substantial change of use.
423 The church was a minor thing in their neighborhood and quiet. It was only on
424 Sundays and Wednesday evenings. The chain link fence between the church
425 and their property doesn't keep anyone out. Her property has a right of way onto
426 their property. There's also a path through the church property to the apartments
427 that people like to walk on. Mr. Prior asked about the easement. Ms. Weeks said
428 she heard that there was an argument between the past owner and the church
429 on who owned that property, so an agreement was made that the owner of her
430 house could use it and garden on it, just not build anything substantial on it. Her
431 backyard's fence is on the easement line, not the property line.

432 Mr. Baum allowed the applicants to respond to public comment.

433 Ms. Libbey said regarding traffic, there's a schedule in place, and we're
434 open to making that a condition of the approval. Because of the schedule, there
435 are about 40 cars per hour, which is minimal when compared to the number of
436 cars that travel Brentwood Road in that timeframe. The R2 zone focuses on
437 residential but allows public high schools and middle schools by right, without
438 coming before the Zoning Board. This property could be subdivided into several

439 residential lots, maybe six or seven lots depending on the wetlands. Regarding
440 the existing chain link fence, we're willing to talk about replacing that and adding
441 landscape buffering. The fenced play yard would be in the back of the property.
442 This is the first that we're hearing about the path to the apartment building. It
443 might be good if we could use that as an emergency egress but we haven't
444 considered it fully.

445 Ms. Petito asked how many parking spaces there are. Ms. Libbey said it's
446 not striped currently, but could fit 46+ spaces.

447 Mr. Baum asked if they are open to site plan review from the Planning
448 Board, and Ms. Libbey said yes.

449 Ms. Greenshields said she wants to be collaborative with the
450 neighborhood and will work with the Police and Fire Departments to mitigate
451 traffic. Regarding noise, we contain the hours between 7 AM and 5:30 PM. We
452 go outside twice a day when the weather allows. Many of the children are under
453 the age of 3, so there's less noise than a traditional childcare center. Regarding
454 pool safety, we would replace the fence and create a double-fenced area around
455 the front door and play area. Children are always supervised when they're
456 outdoors. We share a driveway with our neighbors in Dover. We are willing to
457 work to coexist together.

458 Mr. Baum closed public comment and the Board began deliberations.

459 Ms. Davies asked if Public Works has reviewed the road or the traffic.
460 Doug Eastman said there's a bicycle and pedestrian survey going on and
461 Brentwood Road was brought up for a potential sidewalk. The roads meet our
462 regulatory size of 24 feet of pavement. Ms. Davies said 111A is a State Route,
463 and that hasn't been reviewed; Mr. Eastman said that's correct. Mr. Baum said
464 site plan review would include consideration of those issues.

465 Mr. Prior said there are significant wetlands, including a 75 foot setback in
466 which there can be no structure. That takes the site down to the existing property
467 and pavement. You might get four homes in there, not seven.

468 Ms. Davies said from the "highest and best use" standpoint, this property
469 is uniquely well-suited to this use. There is also a strong need for this use. Her
470 concern is the traffic issues and the burden it would place on the neighborhood.
471 The property owner has the right to use the property in some manner; if not this,
472 then what would happen there? Mr. Baum said right now, it's permitted as a
473 church. It has been low-use, but there's no guarantee of that. Mr. Prior said
474 church use would never be 5 days a week from 7 to 5:30 PM. Mr. Baum said
475 church use does go beyond Sundays.

476 Ms. Petito said she made a left turn from Little River Road to Brentwood
477 Road and it was scary. Mr. Baum said that's outside of our purview.

478 Mr. Prior went through the special exception criteria. A) The use is a
479 permitted special exception as set forth in Article 4.2, Schedule 1; yes. B) That
480 the use is so designed, located and proposed to be operated that the public
481 health, safety, welfare, and convenience would be protected; no, he harbors
482 significant concerns there. Residents mentioned traffic, safety, and noise. He

483 does not believe that it meets criteria B. Ms. Pennell said if the facility opened up
484 onto a larger street, she'd feel better. This is a road that's 1 ½ cars wide. Ms.
485 Davies said the noise could be addressed with screening, but she's concerned
486 about the traffic. Maybe it should be passed to the Planning Board. Mr. Prior said
487 there's a significant delta between the existing use and the plan. Mr. Baum said
488 yes, between the existing use, but not between the permitted use. The church
489 has the right to operate. Mr. Baum said based on the number of parking spaces,
490 it's 3.5 fixed seats per space, so 160 seats in the church, although he doesn't
491 know if the church would fit that. It wouldn't be five days a week though. Ms.
492 Petito said the activity during rush hour and the consistency would mean much
493 more use. Mr. Prior said no one on the Board is comfortable that we have
494 enough information on B. C) That the proposed use will be compatible with the
495 zone district and adjoining post-1972 development where it is to be located; Mr.
496 Prior said post-1972 development is the apartment complex to the rear, from
497 which we've had no comment. The use is compatible with the zoned district and
498 it's a use which is allowed. D) That adequate landscaping and screening are
499 provided; we've had testimony from the abutters that there is not significant
500 landscaping or screening, but we could make that a condition of approval. E)
501 That adequate off-street parking and loading is provided and ingress and egress
502 is so designed as to cause minimum interference with traffic on abutting streets;
503 Mr. Prior said off-street parking and loading is addressed on the property, but
504 ingress and egress is a problem. There would be significantly more traffic
505 approaching and leaving the property on a regular basis. This will change the
506 nature of the traffic flow on Little River Road, Penn Lane, and Wallace Road.
507 Every person in that neighborhood has signed a petition of concern regarding the
508 traffic. F) That the use conforms with all applicable regulations governing the
509 district where located; yes, it seems to. G) The applicant may be required to
510 obtain Planning Board or Town Planning approval; yes, we would want to
511 condition a site plan review. With 100 people on site, Police and Fire would need
512 to be consulted before any occupancy permit is issued. H) That the use shall not
513 adversely affect abutting or nearby property values; Mr. Prior said the testimony
514 here has been anecdotal and not from professional real estate appraisers. If he
515 lived in that neighborhood, he would be concerned about a negative impact to his
516 home, but if he had children who could walk to that school it might be a bonus.
517 Ms. Davies said now, there's a use that has fallen into some disrepair, and that
518 can be considered a negative. If this is a well-managed property with screening,
519 daycare isn't necessarily a negative use. However, if traffic is a problem and
520 there are safety concerns, it will be a negative. The property needs a change; if
521 this use is overburdening the roads, it shouldn't be permitted, but she doesn't feel
522 qualified to make that determination. Mr. Prior said I) and J) do not apply.

523 Mr. Prior said since it doesn't meet criteria B or E, the motion would likely
524 be to decline the application, or to allow the applicant to withdraw and bring back
525 another plan. Mr. Baum said the applicant could do a traffic study, but he doesn't
526 know what a different version of this would be. Ms. Davies said she would want

527 to see a review by Public Safety, more than a traffic study. Mr. Prior said even if
528 Police and Fire said it's fine, it still wouldn't meet criteria B and E.

529 Mr. Prior made a motion to deny the application based on the fact that it does not meet
530 criteria B and E of the special exception. Ms. Pennell seconded. Mr. Prior, Ms. Pennell,
531 and Ms. Petito voted aye. Ms. Davies and Mr. Baum voted nay. The motion passed 3-2
532 and the application was denied.

533
534 D. The application of Twenty-Nine Garfield Street, LLC for a variance from Article 4,
535 Section 4.4 for relief from side and rear yard setback and building coverage
536 requirements; and a variance from Article 6, Section 6.19.3.A.5 to exceed the
537 maximum height requirement for the proposed construction of a three-story, 36-
538 unit apartment building, parking and a first floor "Ambassador Station" providing
539 services for patrons of the abutting train station. The subject property is located
540 at 29 Garfield Street, in the C-1, Central Area Commercial zoning district. Tax
541 Map Parcel #73-225. ZBA Case #22-21.

542 This case was not heard at this meeting.

543
544 E. The application of Charles Fincher for a special exception per Article 4, Section
545 4.2 Schedule I: Permitted Uses and Article 5, Section 5.2 to permit an accessory
546 dwelling unit in the existing detached garage on the property located at 340
547 Water Street. The subject property is in the R-2, Single Family Residential zoning
548 district. Tax Map Parcel #64-35. ZBA Case #22-22.

549 Mr. Fincher said the use conforms to a one-family lot. The buildings are
550 already in place; the apartment would be added to an existing garage. The
551 appearance of the existing building would be unchanged. The size would be 750
552 feet. One unit will remain owner-occupied. There are 6 parking spaces off-street
553 and three cars could fit in the garage. It's not a condominium; it doesn't have
554 separate ownership; and there is an existing town sewer and water connection.
555 Occupancy approval will be done by the town inspector. This proposal would
556 contribute to more housing in the community. This doesn't impact neighbors. The
557 driveway is on Water Street. The property is almost an acre. There won't be
558 additional noise. Other properties nearby already have apartments.

559 Ms. Pennell asked how the apartment's residents would get to their
560 storage. Mr. Fincher said a short door, maybe 5 feet tall, behind a neat wall. Mr.
561 Eastman said that's excluded from the square footage.

562 Mr. Prior asked if the garage is within the setbacks, and Mr. Fincher said
563 yes.

564 Mr. Baum asked for public comment, but there was none. He brought the
565 deliberation back to the Board. He asked if they had comments or concerns, but
566 there were none.

567 Ms. Davies made a motion to approve the application at 340 Water Street, Case #22-22,
568 for an accessory dwelling unit in the existing detached garage. Mr. Prior seconded. Mr.

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Prior, Mr. Baum, Ms. Davies, Ms. Pennell, and Ms. Petito voted aye, and the motion passed 5-0.

II. Other Business

A. Approval of Minutes

1. September 20, 2022

Mr. Prior made a motion to approve the minutes of September 20, 2022 as presented. Ms. Pennell seconded. Mr. Prior, Ms. Pennell, and Mr. Baum voted aye; Ms. Davies and Ms. Petito did not vote, as they were not present at the September meeting. The motion passed 3-0-2.

2. November 15, 2022

Corrections: Ms. Pennell said the Board didn't meet in the Nowak Room. We were in Town Hall.

Ms. Davies moved to approve the minutes of November 15, 2022 as amended, to reflect the Town Hall location. Ms. Pennell seconded. Ms. Pennell, Mr. Baum, and Ms. Davies voted aye; Mr. Prior and Ms. Petito did not vote, as they were not present at the November meeting. The motion passed 3-0-2.

III. Adjournment

Mr. Prior moved to adjourn. Ms. Petito seconded. All were in favor and the meeting was adjourned at 10:43 PM.

Respectfully Submitted,
Joanna Bartell
Recording Secretary