

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.

351

352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394

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

395 nothing will change with respect to that. There will be no exterior changes to the
396 property. The tax card says both that it's a two-family and a single-family with an
397 in-law. In the zoning ordinance, she didn't see a definition of an in-law. She's
398 proposing that the home be converted into two condominiums.

399 Ms. Marshall went through some of the special exception criteria: A) The
400 use is a permitted special exception as set forth in Article 4.2, Schedule 1; yes,
401 this is in the R2 zone, which allows condominiums. Another property about ½
402 mile away has three condominiums, and there are other two-families on Court
403 Street. B) That the use is so designed, located and proposed to be operated that
404 the public health, safety, welfare, and convenience would be protected; yes, the
405 minimum lot size is 15,000 square feet, while this lot is 29,990 square feet. Most
406 of the property is fenced. Each unit has separate laundry facilities and kitchens.
407 The small unit is 864 square feet, and the large is 2400 square feet. D) That
408 adequate landscaping and screening are provided; yes, the front yard is a bit of a
409 wreck but that will be addressed in the spring. The septic line was clogged up
410 with trees, so we dug that up. There are new sills, roofs, skylights, and siding.
411 We want the place to look as good as possible. Having separate condominiums
412 will improve the integrity of the neighborhood because of pride of ownership of
413 each property. E) That adequate off-street parking and loading is provided and
414 ingress and egress is so designed as to cause minimum interference with traffic
415 on abutting streets; there are separate doors with a common breezeway. Use of
416 the garage would be split down the middle. There's plenty of parking, with two
417 spots inside the garage and more spots outside. Mr. Eastman said three spots
418 are required.

419 Mr. Prior said it meets the guidelines for an accessory dwelling unit. Was
420 it approved as an ADU by the Zoning Board? Ms. Marshall said she didn't know.
421 When the initial permits were taken, it was built with this as a separate unit. Mr.
422 Prior said until two years ago, it was required that an ADU be less than 700
423 square feet, but now this meets the definition. As an ADU, it requires one of the
424 two units to be owner-occupied. With the condo unit, neither is required to be
425 owner-occupied, so it would not increase pride of ownership. Ms. Marshall said
426 she would write into the condo docs that they can't be rented. Mr. Prior asked if
427 she were planning on occupying one of the units herself, and Ms. Marshall said
428 no.

429 Mr. Baum asked if it was under single ownership with an in-law, it
430 wouldn't need to be permitted? Mr. Eastman said that's correct. It does meet the
431 conversion criteria and could be either rentals or condos. If it's rentals, one has to
432 be owner-occupied, but condos would not. Ms. Pennell asked if the initial permit
433 when it was constructed was for a two-family house, and Mr. Eastman said no.
434 The understanding is that it was for an in-law and was not a two-family. Mr. Prior
435 said on the tax card, it's a two-family, so at some point the deed must have been
436 changed. Ms. Pennell said on the tax card, it says "number of kitchens: 1." Mr.
437 Eastman said what happened in 1985 is irrelevant, we're trying to clean this up.
438 Mr. Baum said the property meets size and open space requirements.

439 Mr. Prior said that Ms. Marshall mentioned other uses on Court Street
440 that are condos, would this be the first on Riverbend Circle? Ms. Marshall said
441 yes, she thinks so.

442 Ms. Pennell said she drove by and saw a chimney. Ms. Marshall said
443 that's the vent for the furnace for the small unit, which is in the garage. There's a
444 fireplace in the main house, but not in the garage or the smaller unit. Ms. Pennell
445 asked how the garage will be separated, and Ms. Marshall said the smaller unit's
446 furnace is on the left, so the left side will go to the smaller unit, and the right side
447 will go to the bigger unit.

448 Mr. Prior went through the special exception criteria: A) The use is a
449 permitted special exception as set forth in Article 4.2, Schedule 1; yes. B) That
450 the use is so designed, located and proposed to be operated that the public
451 health, safety, welfare, and convenience would be protected; yes, there's really
452 no difference between the existing usage as an accessory dwelling unit and the
453 proposed use as a condominium or residential two-family conversion. Mr. Baum
454 said he agrees. It's also screened from the neighborhood and there's plenty of
455 parking. C) That the proposed use will be compatible with the zone district and
456 adjoining post-1972 development where it is to be located; Mr. Prior said there
457 are many ADUs in the R2 zones and some condominiums on Court Street, so
458 he's a little shaky on this one but it's ok. Ms. Davies said there's no physical
459 change. Mr. Baum said it won't impact the neighborhood. The lot's large enough.
460 Mr. Prior asked if as a condominium, the individual owners would have the right
461 to make exterior changes to their property, and Mr. Baum said it would be up to
462 the condominium docs, not the ZBA. D) That adequate landscaping and
463 screening are provided; Mr. Prior said this doesn't really apply as there are no
464 exterior changes. Mr. Baum said the unit is screened by the garage anyway. E)
465 That adequate off-street parking and loading is provided and ingress and egress
466 is so designed as to cause minimum interference with traffic on abutting streets;
467 yes, ingress and egress are immaterial and we've heard testimony that off-street
468 parking is sufficient given the number of bedrooms. F) That the use conforms
469 with all applicable regulations governing the district where located; yes, it seems
470 to. G) The applicant may be required to obtain Planning Board or Town Planning
471 approval; he does not believe this review would be required, since there's no
472 external change being made. H) That the use shall not adversely affect abutting
473 or nearby property values; yes, we've had no testimony to that effect. I) and J) do
474 not apply.

475 Mr. Prior said for conversions, there are additional 8 criteria that have to
476 be met: 1) The number of spaces for off-street parking comply with article 5.6; it
477 does comply. 2) Minimum lot size; it does meet that. 3) The structure shall have
478 been a residence for 10 years; it has. 4) The lot must meet a minimum of 20%
479 open space; it does. 5) For conversions intended to be rental units, one of the
480 units must be owner-occupied; that is not an issue here, since they are not
481 proposed to be rentals. 6) The proposal may require Planning Board review;
482 that's not appropriate here, because there's no site plan for the outside of the

483 property. Conversions of three or more units require Planning Board approval;
484 this is for two. 7) We may allow expansion to an existing structure for the purpose
485 of providing additional area to the units; that's not part of the proposal. 8) Septic
486 requirements; Mr. Baum said it's on public sewer. Ms. Davies added that they
487 fixed the issue with the pipe.

488 Mr. Prior said it does meet all of the criteria for a special exception.
489

490 Mr. Prior made a motion to approve the application of River Bend Trust for a special
491 exception to permit the existing single family home at 2 River Bend Circle to be
492 converted to a two-family residential structure. Ms. Davies seconded. Ms. Davies, Ms.
493 Olson-Murphy, Mr. Baum, Mr. Prior, and Ms. Pennell voted aye. The motion for approval
494 passed 5-0.

495
496 **II. Other Business**

497 A. Approval of Minutes

498 1. December 20, 2022

499 Ms. Davies said regarding one of the residents who testified, in line 184, "Colley"
500 should read "Cully."

501 Ms. Davies moved to approve the minutes of December 20, 2022 as amended. Mr. Prior
502 seconded. Ms. Davies, Ms. Olson-Murphy, Mr. Baum, Mr. Prior, and Ms. Pennell voted
503 aye. The motion passed 5-0.

504
505 **III. Adjournment**
506

507 Mr. Prior moved to adjourn. Ms. Davies seconded. All were in favor and the meeting was
508 adjourned at 10 PM.

509
510 Respectfully Submitted,
511 Joanna Bartell
512 Recording Secretary
513
514