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HAND DELIVERED

June 21, 2017

Sean Starkey, Chairman
Zoning Board of Adjustment
Town of Durham
8 Newmarket Road
Durham, NH 03824

OF COUNSEL
NICHOLAS R. AESCHLIMAN

Re: Variance Application Under Article XII, Section 175.54
for ADA Compliant Ramp/Walkway
The Riverwoods Group, 56 Dover Road, Map 11, Lot 8-0

Dear Chair Starkey & Board Members:

Enclosed please find a variance application to construct an ADA compliant ramp and walkway no less than 42' from Route 108 where the required front yard setback is 100'. Also enclosed is the relevant filing fee and abutter information as well as the proposed site plan submitted to the Planning Board and which depicts the location of the proposed ramp/walkway, architectural plans showing the proposed layout and architectural renderings depicting the proposed ramp/walkway in relation to the existing barn.

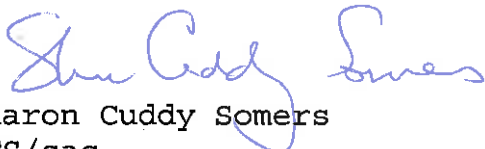
As a threshold matter, please note that because the construction includes a "reasonable accommodation" pursuant to RSA 654:33 (V), that I request that the ZBA dispense with making a finding concerning hardship in accordance with their authority under the statute. That said, should the ZBA for whatever reason determine that the walkway/ramp does not qualify under the statute, then I will be prepared to present evidence on the hardship criteria together with the remainder of the variance criteria.

DONAHUE, TUCKER & CIANDELLA, PLLC
16 Windsor Lane, P.O. Box 630, Exeter, NH 03833-4924
111 Maplewood Avenue, Suite D, Portsmouth, NH 03801
Towle House, Unit 2, 164 NH Route 25, Meredith, NH 03253
83 Clinton Street, Concord, NH 03301

Sean Starkey, Chairman
Zoning Board of Adjustment
Town of Durham
June 21, 2017
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We respectfully request that this matter be placed on the Board's July 11, 2017 agenda. If there are any questions, do not hesitate to contact me.

Very truly yours,
DONAHUE, TUCKER & CIANDELLA, PLLC



Sharon Cuddy Somers
SCS/sac
Enclosures

cc: Justine Vogel
Alyssa Murphy
Jeff Clifford
Audrey Cline

S:\RA-RL\RiverWoods Group\Town of Durham\Marketing Center\ZBA\cover letter.docx

Please send this form with Plot Plan and List of Abutters to the Town of Durham, 15 Newmarket Rd., Durham, NH 03824, Attn: Zoning Board of Adjustment.

Appeal for Applicant

State of New Hampshire

Strafford, SS

To: Zoning Board of Adjustment, Town of Durham NH 03824

Name of Applicant: The Riverwoods Group

Address: 7 Riverwoods Dr., Exeter, NH 03833 Phone # _____

Email: jvogel@riverwoodsrc.org

Owner of Property Concerned: Land Options, LLC

(If same as above, write "Same")

Address: 96 Cliff Road, Portsmouth, NH 03801

(If same as above, write "Same")

Location of Property: 56 Dover Road

(Street & Number, Subdivision and Lot number)

Description of Property (Give Tax Map number, length of frontage, side and rear lines and other pertinent descriptive information) Tax Map 11, Lot 8-0

frontage 390' +/-, rear 469'+/-, northerly sideline 156' +/-

southerly sideline 264' +/-

Fill in Section 1, 2, 3 or 4 below as appropriate. Do not fill in more than one section. This application is not acceptable unless all required statements have been made. Additional information may be supplied on separate sheets if the space provided is inadequate.

SECTION 1: APPEAL FROM AN ADMINISTRATIVE DECISION

Appeal must be filed no later than 30 days from the date of the original decision.

Relating to the interpretation and enforcement of the provision of the Zoning Ordinance.

Decision of the enforcement officer to be reviewed: _____
Number _____ Date _____

Article _____ Section _____ of the Zoning Ordinance in question.

SECTION 2: APPLICATION FOR SPECIAL EXCEPTION

****Any Special Exceptions granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.****

Description of proposed use showing justification for a Special Exception as specified in the Zoning Ordinance Article _____ Section _____

SECTION 3: APPLICATION FOR EQUITABLE WAIVER

The undersigned hereby requests an Equitable Waiver of Dimensional Requirements as provided in RSA 674:33-A of the New Hampshire Planning and Land Use Regulations.

Please give a brief description of the situation: _____

SECTION 4: APPLICATION FOR A VARIANCE

STANDARD OF REVIEW: Prior to seeking a variance, the property owner must have been DENIED a building permit by the Building Inspector or approval by the Planning Board.

****Any Variances granted shall be valid if exercised within 2 years from the date of final approval, or as further extended by local ordinance or by the zoning board of adjustment for good cause, provided that no such variance shall expire within 6 months after the resolution of a planning application filed in reliance upon the variance.****

A Variance is requested from Article _____ Section _____ of the Zoning Ordinance to permit _____

see attached

The New Hampshire Legislature has declared that each of the following conditions must be found in order for a variance to be legally granted. Please answer the following questions in support of the variance request either on this form or on a separate sheet of paper.

1. No decrease in value of surrounding properties would be suffered because:
see attached

2. Granting the variance would not be contrary to the public interest because:
see ~~attached~~ attached

Current law requires the existence of unnecessary hardship for the granting of any variance, whether that is for a use not allowed in a particular zone or a deviation from a dimensional requirement.

3(A). Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:

- a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

see attached

and

- b. the proposed use is a reasonable one because:

see attached

Or

3(B). Owing to special conditions of the property that distinguishes it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.

see attached

4. By granting the variance substantial justice would be done because:
see attached

5. The use will not be contrary to the spirit and intent of the ordinance because:
see attached

THE RIVERWOODS GROUP

MARKETING CENTER

APPLICATION FOR VARIANCE

A variance is requested from Article XII, Section 175-54 of the Zoning Ordinance to permit the construction of an ADA compliant walkway/ramp no less than 42 feet from Route 108 where the required set back is 100'.

The applicant proposes to remove a portion of the existing pavement and construct the raised walkway/ramp as depicted on the enclosed plans over a permeable surface.

STANDARD OF REVIEW:

1. No decrease in value of surrounding properties would be suffered because:

The Applicant is proposing a very minimal change to the existing improvements which already encroach into the 100' front setback. The Applicant intends to remove the existing pavement in the area of the proposed ramp/walkway creating better site conditions than that which exists now. Accordingly, there will be no decrease in the value of surrounding properties. Further, creating ADA compliant access to the property will allow the property to be more easily utilized for permitted uses and will actually enhance the value of abutting properties.

2. Granting the variance would not be contrary to the public interest because:

Improvements already exist within the 100' front setback. The applicant merely seeks to create an ADA compliant link between the two existing buildings; there will be no further encroachment into the 100' setback. Further, due to the proposed removal of pavement, the site conditions will improve and therefore serve the public interest. There will be no alteration of the essential character of the neighborhood by the construction of the walkway/ramp nor will the walkway/ramp threaten public health, safety or welfare.

3(A). Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in an unnecessary hardship because:

a. no fair and substantial relationship exists between the general public purpose of the ordinance provision and the specific application of that provision to the property because:

Pursuant to the provisions of RSA 647:33,V, this variance application does not require that the ZBA make a finding concerning the hardship criteria. The application proposes the construction of an ADA compliant walkway/ramp which constitutes a "reasonable accommodation" under the terms of the statute. The walkway/ramp will be used by prospective residents of Riverwoods who use assistive devices (such as walkers and canes), therefore the application meets the criteria that the reasonable accommodation is necessary for persons who regularly use the premises. Finally, the application also meets the criteria in that it is in harmony with the general purpose and intent of the zoning ordinance. As is stated in our discussion of "spirit and intent" of the ordinance, the proposed construction will not create any further encroachment within the setback and the removal of the existing pavement under the walkway minimizes the effect, if any, of the walkway.

b. the proposed use is a reasonable one because:

See above, the proposed use is reasonable.

4. By granting the variance substantial justice would be done because:

Granting the variance will allow the Applicant to use the property as a marketing center for the proposed Riverwoods development on the abutting property. Having ADA compliant access for both existing buildings will allow for potential residents who use assistive devices, such as canes and walkers, to enjoy the full benefit of the marketing center. There is no benefit to the public by denying this variance and, therefore, granting the variance will do substantial justice.

5. The use will not be contrary to the spirit and intent of the ordinance because:

Again, because improvements already exist within the 100' front setback and because there is a need to allow ADA compliant access to the premises by persons using assistive devices,

granting the variance will not be contrary to the spirit and intent of the ordinance.

S:\RA-RL\RiverWoods Group\Town of Durham\Marketing Center\ZBA\2017 06 19 variance narrative.docx

**Abutter List
for
RiverWoods Durham
Marketing Center**

**Map 11, Lot 8-0
56 Dover Road**

Durham, New Hampshire

Abutters:

Map 10 Lot 11-5
Thomas Merrick Rev. Trust
7 Canney Road
Durham, NH 03824

Map 10 Lot 16-2
Mary & Roger Jaques
47 Dover Road
Durham, NH 03824

Map 11 Lot 9-2
Town of Durham
8 Newmarket Street
Durham, NH 03824

Map 11, Lots 8-1 through 8-16
Rockingham Properties 1, LTD
PO Box 423
Belmont, MA 02478

Owner:

Map 11 Lot 8-0
Land Options, LLC
96 Cliff Road
Portsmouth, NH 03801

Applicant

The RiverWoods Group
7 Riverwoods Drive
Exeter, NH 03833

Architect

Manypenny - Murphy Architecture
96 Penhallow Street,
Portsmouth, NH

Civil Engineer

Altus Engineering, Inc.
133 Court Street
Portsmouth, NH 03801

Land Surveyor

Atlantic Survey Company
25 Nute Road
Dover, NH 03820

Soil/Wetland Scientist

James Long
GZA Environmental
5 Commerce Park N #201
Bedford, NH 03310

Attorney

Sharon Cuddy Somers, Esq.
Donahue, Tucker & Ciandella, PLLC
P O Box 630
Exeter, NH 03833

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7 Canney Road
Durham, NH 03824

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47 Dover Road
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Town of Durham
8 Newmarket Road
Durham, NH 03824

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Town of Durham
8 Newmarket Road
Durham, NH 03824

Land Options, LLC
96 Cliff Road
Portsmouth, NH 03801

Land Options, LLC
96 Cliff Road
Portsmouth, NH 03801

Land Options, LLC
96 Cliff Road
Portsmouth, NH 03801

The Riverwoods Group
7 Riverwoods Drive
Exeter, NH 03833

The Riverwoods Group
7 Riverwoods Drive
Exeter, NH 03833

The Riverwoods Group
7 Riverwoods Drive
Exeter, NH 03833

Manypenny-Murphy Architecture
96 Penhallow Street
Portsmouth, NH 03801

Manypenny-Murphy Architecture
96 Penhallow Street
Portsmouth, NH 03801

Manypenny-Murphy Architecture
96 Penhallow Street
Portsmouth, NH 03801

Jeff Clifford
Altus Engineering
133 Court Street
Portsmouth, NH 03801

Jeff Clifford
Altus Engineering
133 Court Street
Portsmouth, NH 03801

Jeff Clifford
Altus Engineering
133 Court Street
Portsmouth, NH 03801

Atlantic Survey Company
25 Nute Road
Dover, NH 03820

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Dover, NH 03820

Atlantic Survey Company
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Dover, NH 03820

James Long, GZA Environmental
5 Commerce Park N #201
Bedford, NH 03310

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