



Application for Waiver from Regulation

City of Rochester, New Hampshire

Project name **Apple Ridge**

Case # **134-5-R2-16**

Subdivision: _____ Lot line revision: _____ Site Plan: **X** Minor Site Plan: _____

Section and subsection of the Subdivision Regulations from which the waiver is requested (including identifying number, title, and description of provision):

See attached.

OR - Article, section, and subsection of the Site Plan Regulations from which the waiver is requested (including identifying number, title, and description of provision):

Reason/justification(s) for waiver request _____

See attached.

Name of applicant or agent filling out this form **Francis X. Bruton, Esq.**
Bruton & Berube, PLLC

Applicant? _____ Agent? **X** Today's date **3/23/2020**

----- Office use below -----

Waiver approved: _____ Waiver denied: _____

Comments: _____

Signature: _____ Date: _____



Modification to Approved Project

City of Rochester, New Hampshire

Case # **134-5-R2-16** Property Address **114 Rochester Hill Road**

Type of project: Site Plan **X**; Subdivision _____; Line Adjustment _____; Other _____

Project name **Apple Ridge**

Date of original Planning Board approval **June 6, 2016**

Description of modification: **See attached.**

Name of applicant or agent filling out this form **Francis X. Bruton, Esquire**

Mailing Address **Bruton & Berube, PLLC, 601 Central Avenue, Dover, NH 03820**

Phone Number: **603-749-4529** Email Address: **fx@brutonlaw.com**

Please check box: Applicant ☒ Agent ☐

Signature of person completing form: _____ Date: _____

DR Lemieux Builders, Inc.

Signature of property owner (if different): _____ Date: _____

By: David Lemieux

Please note: Modifications are reviewed by the Planning Board but no public hearing is held and no notices are required. (In contrast, projects, which are considered to have a potential impact upon abutters, are considered amendments for which notice and a public hearing is required.) There is a \$125.00 fee for a modification. For very simple matters ("administrative modifications") approved by staff, there is no fee.

FRANCIS X. BRUTON, III
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OF COUNSEL
JAMES H. SCHULTE

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March 23, 2020

Jim Campbell, Chief Planner
Second Floor, City Hall
31 Wakefield Street
Rochester, New Hampshire 03867-1917

RE: D. R. Lemieux Builders
114 Rochester Hill Road, Rochester, NH

Dear Mr. Campbell:

Please accept this letter in support of the Application for Waiver from Regulation submitted by D.R. Lemieux Builders (the "Applicant"), the owner of the Apple Ridge project located at 114 Rochester Hill Road, tax map 134, Lot 5. As you are aware, the Apple Ridge project was approved for the construction of 102 multi-family units by the Rochester Planning Board on June 6, 2016. The project specifically was approved for three phases. As you may further be aware, this project has been financed through the New Hampshire Housing Finance Authority, as it represents affordable housing.

This request for waiver is submitted pursuant to Section 275-27.3, (G)(2) of the Rochester Zoning Ordinance as the project has vested pursuant to the terms of NH RSA 674:39, as further set forth herein.

NH RSA 674:39 permits a project to achieve the status of vesting for a period of five (5) years, including protection from the implementation of impact fees, to the extent the project has started "active and substantial development." The statute provides that "active and substantial development" be commenced either within 24 months (2 years) or as required by the Planning Board during the approval process. In this instance, the Planning Board required "active and substantial development" to occur within three (3) years after the certification of the Site Plan by the Planning Department. Certification of the Site Plan was obtained on August 20, 2018. Thus, "active and substantial development" is to have been completed by August 20, 2021.

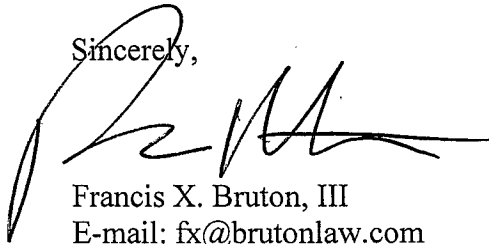
Pursuant to NH RSA 674:39, the Planning Board is permitted to define the improvements necessary in order to achieve "active and substantial development." In this instance, the Planning Board defined "active and substantial development" as follows: "Active and Substantial Development for this project is defined as follows: Based on the phasing plan submitted by the applicant, active and substantial development will be considered the active construction of Phase One including the access drive, parking and the first building." As you may be aware, these Phase One improvements were fully constructed as of November 25, 2019 thus satisfying the "active and

substantial development” requirement either under the 2 year provision of NH RSA 674:39 and the 3 year provision under the project approval in order to be vested and entitled to the five-year exemption provided by NH RSA 674:39.

Section 275-27.3, (G)(2) of the Rochester Zoning Ordinance provides that an applicant may be granted a full waiver from the imposition of impact fees provided the Planning Board finds that the proposed construction is entitled to the five-year exemption provided by RSA 674:39. Although the Zoning Ordinance does not permit a waiver where a phase has not commenced, in this instance, “active and substantial development” for the entire project (all three phases) is achieved by construction of Phase One, which has occurred as stated in the approval. As you are aware, although the Applicant is seeking this waiver, it is believed that the project is also exempt from impact fees based upon the statutory provision of NH RSA 674:39. Specifically, the requirements of the statute have been met, thus vesting the project as a whole, based upon the requirements set forth by the Planning Board at the time of approval, making the waiver unnecessary. However, without waiving this position, the Planning Board waiver is being sought as requested.

Given the above, and in light of the fact that the project as a whole has obtained the five-year exemption pursuant to the provisions of the approval and pursuant to NH RSA 674:39, the Applicant seeks a full waiver of impact fees associated with construction of the 102 multi-family units. The Applicant submits that such a waiver is appropriate given the fact that the project is providing affordable housing, which it could not do should the impact fees be imposed.

Sincerely,



Francis X. Bruton, III

E-mail: fx@brutonlaw.com

FXB/mas

cc: D.R. Lemieux Builders
Norway Plains Associates, Inc.

