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February 1, 2018

*Via E-Mail: wentworthe@hingham-ma.gov
And First Class Mail*

Emily Wentworth, Senior Planner / Zoning Administrator
Town of Hingham
210 Central Street
Hingham, MA 02043

**Re: River Stone
Viking Lane, off of Ward Street, Hingham, MA**

Dear Ms. Wentworth:

We had an opportunity to review the letter from Jeffrey A. De Lisi, Esq., attorney for the Plymouth River Neighborhood Association, which was submitted to the Town of Hingham Zoning Board of Appeals the afternoon of the hearing that was held on January 25, 2018.

We write to clarify a few concerns set forth therein, primarily related to site control. As a preliminary matter, we note that the 40' Way connecting the Applicant's property to Autumn Circle was shown on the application for Site Approval submitted to MassHousing, the Subsidizing Agency. At the time, the development had a single point of egress on Viking Lane. The Project Eligibility letter issued by MassHousing noted concerns about the singular internal roadway and emergency access, and MassHousing instructed the Applicant to respond to the Town of Hingham's concerns about this issue. Accordingly, the Applicant created the second point of access by adding a connection between the two ways, Viking Lane and the 40' Way, that were shown on the Plan. The connection was added in an effort to mitigate and satisfy concerns raised by the Board and by MassHousing, not an attempt to deceive and avoid review as asserted in Attorney De Lisi's letter.

The Applicant is not obligated to notify MassHousing of the revised plan under 760 C.M.R. 56.04(5) because the change does not affect the project eligibility requirements. In issuing Site Approval, MassHousing found that the Applicant had site control based of Purchase and Sale Agreements. The Agreements include “all easements, restrictions, and rights of way being a part thereof” and therefore include the Applicant’s rights to the Way. The Applicant acknowledges that those rights are disputed by the clients of Attorney De Lisi, but the dispute does not affect site control. As set forth in decisions from the Housing Appeals Committee, complex title disputes are not within the purview of site control or the Board’s deliberations, especially where the dispute affects access and not the underlying property. Instead, an Applicant need only demonstrate a “colorable claim of title” to the site. Meadowbrook Estates Ventures, LLC v. Amesbury Bd. of Appeals, No. 02-21, slip op. at 17 (Mass Housing Appeals Committee Dec. 12, 2006) (“we have long held that even where not simply access but actual control of the site is at issue, the developer need only establish a colorable claim of title, and that adjudication of complex title disputes or similar matters are best left to the expertise of the courts”).

In Hollis Hills, LLC v Lunenburg Zoning Bd. of Appeals, No. 07-13, slip op. at 4-5 (Mass Housing Appeals Committee Dec. 4, 2009), the Housing Appeals Committee concluded that a dispute as to whether a 40B applicant could access its site over a privately owned avenue and whether the applicant could install sewer utilities under the avenue was not properly considered in the umbrella of site control because “those issues should be decided by the courts and resolved at closing or before construction begins.” Further, an Applicant need only make a “reasonable claim that it has the right to use” the ways accessing its site. See Autumnwood, LLC v. Sandwich Zoning Board of Appeals, No. 05-06, slip op. at 3 (Mass Housing Appeals Committee Nov. 4, 2005). In Autumnwood, the developer claimed prescriptive rights over two roads that were undeveloped and that would be used for access to the development. The Board of Appeals argued that the developer lacked site control because of a dispute regarding the claimed prescriptive rights and any rights to improve the ways. The Committee concluded that the Applicant satisfied the preliminary obligations of a Comprehensive Permit application by demonstrating a reasonable claim to access.¹ Here, the Applicant agrees with the solution proposed at the hearing to include the resolution of any such dispute as a condition of the Comprehensive Permit.

Attorney De Lisi also expressed concern about sight lines for the Ward Street access point. The Applicant submitted an original traffic study, and it submitted revised traffic information on January 25, 2018. In both, the Applicant’s traffic engineer confirmed that the sight distances comply with the requirements of the American Association of State Highway and Transportation Officials (AASHTO) (citing measurements revealing that “northbound Ward Street motorists

¹ This conclusion was upheld in a more recent appeal concerning the same development: “We need not address this matter in more detail, since we have long held that where access is at issue, the developer need only establish a colorable claim of title, and that the adjudication of the complex title or other issues will be left to the expertise of the courts.” Autumnwood, LLC v. Sandwich Zoning Board of Appeals, No. 05-06, slip op. at n.6 (Mass Housing Appeals Committee Mar. 8, 2010).

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Senior Planner: Zoning/Special Projects
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have 360 feet of SSD and southbound vehicles have in excess of 400 feet of SSD. The minimum requirements are 235 feet northbound and 215 feet southbound"). Attorney De Lisi's concerns about the abutting owners' actions and sight lines are tenuous. Section IV-C(7) of the Zoning Bylaws prohibits plantings that obstruct viewpoints for lots abutting more than one street.

We look forward to discussing these and other matters with the Board during future hearings.

Respectfully yours,

RIVER STONE, LLC
By its Attorney

WARREN F. BAKER

Cc: Susan Murphy, Esq.
Joseph M. Fisher, Vice-Chair, and members of the Zoning Board of Appeals

WFB:amg
Enclosures