

August 30, 2023

Hingham Planning Board
Kevin Ellis, Chair
Hingham Town Hall
210 Central Street
Hingham, MA 02043

Re: Hingham Woods Condominium, 150 Beal Street, Hingham, MA
Application for Special Permit A-3

Dear Chair Ellis:

This office represents the Hingham Woods Condominium Association (the "Association"), which Association is the organization of unit owners of the Hingham Woods Condominium (the "Condominium") located at 150 Beal Street, Hingham, MA. Please accept this letter in connection with the Association's Application for Special Permit A-3, under §V-A of the Town of Hingham (the "Town") Zoning By-Law.

The Condominium consists of 277 residential condominium units. There are 556 parking spaces located at the Condominium; of those, 277 parking spaces are designated as easements for the exclusive use by specific unit owners, 28 parking spaces are designated as handicap accessible parking spaces, and the remaining 251 parking spaces are open for guests or for use by residents on a first-come-first-serve basis.

The Condominium is undertaking a resurfacing project, in which all of the roads and parking lots located at the Condominium will be resurfaced. There will be no changes in the number, layout, or location of the parking spaces or parking lots. The Association was recently informed that due to the resurfacing project, the Condominium must comply with §V-A, 5.p of the Zoning By-Law. Said §V-A, 5.p requires a minimum of 25% of parking spaces to be equipped with infrastructure to make the spaces compatible with electric vehicle charging, and a minimum of 10% of the parking spaces to be equipped with electric vehicle charging stations. The Application for Special Permit A-3 submitted with this narrative seeks a deviation from the Design Standards as contained in said §V-A, 5.p.

Prior to discussing the reasons why the Association believes its Application for Special Permit A-3 to obtain a deviation from the Design Standards as contained in §V-A, 5.p should be approved, we first want to bring to the Planning Board's attention the fact that in our opinion, the

recently adopted provisions contained in §V-A, 5.p should not apply to the Condominium's resurfacing project. As such, the Planning Board should not consider this Application as an admission by the Association that §V-A, 5.p applies, nor is the Association, by submitting this Application, waiving any rights to contest the applicability of §V-A, 5.p.

The Design Standards in §V-A, 5.p do not Apply to the Condominium.

The Condominium was built in 1985. The Design Standards contained in §V-A, 5.p were adopted by the Town in 2023. The Association was informed that the resurfacing project that it intends to undertake triggers compliance with §V-A, 5.p. As noted above, the resurfacing project will not result in any changes to the number, layout, or location of parking spaces or parking lots at the Condominium.

As stated in §V-A, 5.p, these Design Standards are intended to apply to "New or redeveloped parking lots containing 20 or more parking spaces..." The resurfacing of the parking lots at the Condominium is certainly not a new parking lot, nor is it redeveloped, as there will be no changes to the number, layout or location of the parking spaces and parking lots. In addition, §V-A, 2 of the Zoning By-Law states that "These parking requirements shall be met for new construction, the enlargement or increase in gross floor area of an existing building, the development of a use not located in a building, or the change from one type of use to another." In our opinion, the reference to "These parking requirements" is intended to refer to all parking requirements as contained in §V-A, including the Design Standards in §V-A, 5.p. Given that the resurfacing project at the Condominium does not (i) constitute new construction, (ii) an enlargement or increase in gross floor area of an existing building, (iii) the development of a use not located in a building, or (iv) the change from one type of use to another, in our opinion the requirements contained in §V-A, 5.p should not apply to the Condominium as a result of the resurfacing project.

Finally, and perhaps most significantly, in the comments from the Town which were provided in connection with the Article 34 Amendment to the Zoning By-Law (which adopted the provisions contained in §V-A, 5.p), the Town states "The updated By-Law requiring EV infrastructure will only be applicable to newly constructed or redeveloped parking areas that have 20 or more parking areas. It will not be triggered by resurfacing or repainting a parking lot." Thus, the Town's own commentary on the By-Law amendment adopted earlier this year makes it abundantly clear that it was the intent that the Design Standards contained in §V-A, 5.p not be triggered by the resurfacing of a parking lot. As such, for the reasons stated herein, it is our opinion that the Design Standards contained in §V-A, 5.p do not apply to the Condominium.

The Association's Application for Special Permit A-3 Should be Approved.

In the event the Planning Board determines that §V-A, 5.p applies to the Condominium, for the reasons stated herein the Association's requests that the Planning Board approve its Application for a Special Permit A-3 to obtain a deviation from the Design Standards as contained in §V-A, 5.p. The Association's Application should be approved as it is impractical for the Association to meet the requirements contained in §V-A, 5.p, and a waiver of this Design Standard will not result in or worsen parking, traffic or pedestrian safety problems at the

Condominium or on the surrounding streets, or adversely affect the value of abutting lands and buildings. Furthermore, the granting of this Special Permit is consistent with the intent of this By-Law, in that it is not intended to apply to resurfacing projects.

As noted above, the Condominium contains 556 parking spaces, and of those, 277 are deeded as easements for the exclusive use of unit owners (as such, those spaces are not within the control of the Association when it comes to whether charging stations can be installed). Assuming the Town uses all 556 spaces in its calculations, as opposed to only those spaces which are available for guests, based on the Design Standards contained in §V-A, 5.p, in order to fully comply with the requirements contained in §V-A, 5.p, the Condominium would have to have 139 parking spaces equipped with infrastructure to make the spaces compatible with electric vehicle charging, and the Condominium would have to have 56 parking spaces equipped with electric vehicle charging stations. Full compliance is cost prohibitive. It is estimated that full compliance would cost approximately \$134,400.00 per year (\$200 per charging station per month). That is just the cost for the 56 charging stations. Obviously, the cost to equip 139 parking spaces with infrastructure would be even more. The Association would likely have to levy a special assessment upon all unit owners to cover this unfunded mandate. This is a serious financial burden upon the Unit Owners, most of whom are seniors. In addition, requiring such a significant number of parking spaces to be equipped with EV infrastructure or EV stations is simply unnecessary for this Condominium given that as of today, to the best of the Condominium Board's knowledge, not a single resident of the Condominium has an electric vehicle.

In addition to full compliance with §V-A, 5.p being cost prohibitive, there is another significant hurdle which makes full compliance with §V-A, 5.p impractical. Pursuant to M.G.L. c. 183A, §18 (and Court cases interpreting said statute), when a condominium undertakes an "improvement" to the common areas of the condominium, such improvement must be approved by at least 75% of the unit owners. An "improvement" is generally defined as adding new features or amenities to a condominium. The installation of electric vehicle charging stations, and the related equipment and infrastructure, is considered an improvement. Therefore, even if the Planning Board denies this Application, it will still be an impractical for the Condominium to achieve full compliance with §V-A, 5.p, unless 75% of the unit owners approve. Given the significant cost to achieve full compliance, it is highly unlikely that such a vote would be obtained.

Notwithstanding the fact that arguably §V-A, 5.p does not apply to the Condominium, coupled with the fact that full compliance with §V-A, 5.p is impractical, the Association, recognizing that it is likely some residents will obtain electric vehicles in the future, the Association proposes a compromise for the Planning Board's consideration.

Approximately two years ago, as part of the Association's considerations related to the parking lot resurfacing project, the Association undertook and obtained the required vote of the unit owners to install electric vehicle charging stations at the Condominium. Specifically, pursuant to the 2021 Improvement Vote, the Association is authorized to install four electric vehicle charging stations at the parking lot adjacent to the Clubhouse, and the Association is authorized to install conduit in each cluster at the Condominium so that the parking spaces in the

August 30, 2023


Page 4

clusters are equipped with infrastructure to make the spaces compatible with charging stations in the future. Any deviation from this prior authorization by the unit owners would require a new vote of the unit owners since the costs for any additional charging stations or infrastructure would exceed the costs approved by the unit owners in 2021. Therefore, in an effort to resolve this matter, the Association requests the Planning Board approve its Application for a Special Permit A-3 such that the Association is only required to install four electric vehicle charging stations at the Clubhouse, and install conduit for charging stations in each cluster. We would also note that it is the Association's intent to monitor usage of the charging stations installed as well as whether the number of electric vehicles at the Condominium increases, and if necessary, the Association will increase the number of charging stations as necessary (and as approved by a vote of the unit owners).

Thank you for your consideration of this Application.

Very truly yours,

MARCUS, ERRICO, EMMER
& BROOKS, P.C.



Matthew W. Gaines

cc: Hingham Woods Condominium Association (via email)