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January 5, 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 received your letter dated December 19, 2017, and we received a copy of your email to Brian Murphy dated January 3, 2018. Contrary to the assertions in your letter and email, the Comprehensive Permit Application complies with the state regulations and with the local regulations to the extent enforceable. The Applicant has been working in good faith to address the Town's concerns and is updating the application with materials that are beyond the minimum requirements of the regulations. We hereby specifically respond to each point of your letter, using the same numbering and formatting, and incorporating comments to your email.

1. The Applicant and Board verbally agreed to update the timeline attached to your letter as Exhibit A during the hearing on December 19, 2017. We sent the updated Continuation and Extension Request that contains the agreed-to dates on December 20, 2017, and we believe the attached form reflects the new hearing timeline.

2. The Applicant has satisfied the obligations of G.L. c. 40B, 760 C.M.R. 56.00, and the Rules and Regulations of the Hingham Zoning Board of Appeals (the "Local Rules") to the extent they are enforceable under the state regulations. The Applicant has been working in good

faith to accommodate, where feasible, the concerns raised by the Town in connection with this Project. At the request of you and your attorney, Susan Murphy, the Applicant met with you both on November 21, 2017 and thereafter revisited the plans so that it could more comprehensively respond to concerns raised.

The Applicant's reevaluation of the plans is what prompted my request for a continuance of the December 19, 2017 hearing, stating that the Applicant would require a little more time to complete the revisions. In response to my request, you did not grant the time request and required the Applicant to attend and present at the December 19, 2017 hearing. Although a continuance was not granted, the Applicant assented to an extension of the 40B hearing timeline dates to represent the number of days between the December 19, 2017 and January 11, 2018 hearing dates. We agreed and sent you a Continuation and Extension Request form on December 13, 2017. The Board required the Applicant to submit revised plans on December 21, 2017, and the Applicant's engineer timely submitted the revised plans.

The Applicant has also timely paid the peer review fee of \$11,450. Although your letter states that the Board anticipated that it would receive the peer review fee on November 22, 2017, the fee was not due under Local Rule II-F until ten (10) days after the Applicant received notice that the plans had been submitted for independent review. The Applicant and Board had agreed to extend the date on which revised plans were due to December 21, 2017, and the fee was not due until at least ten days after that date. Thus, the fee was timely paid. As previously noted, the hearing timeline has been extended in accordance with the date the Applicant submitted revised plans.

In your email dated January 3, 2018, you assert that the Applicant promised to submit a complete set of plans that would be updated in accordance with the revised Site Plan. The Applicant only promised to deliver a revised Site Plan, and that is what it delivered.

You also assert that the Applicant promised a Stormwater Management Report and drainage calculations by January 2, 2018. The Applicant has agreed to provide these items, although not required by the 40B regulations, and will be providing the same before the January 11, 2018 hearing. The Applicant's engineer advised the Board that it "hope[d]" to have the report completed by January 2nd, but that is a far cry from a promise. In any event, the Applicant has timely satisfied the 40B regulations by showing drainage facilities on its preliminary Grading and Drainage Plan that it submitted with the original application. The Applicant has agreed to provide a preliminary Stormwater Management Report although it exceeds the requirements of 760 C.M.R. 56.05(2)(f) and the enforceable provisions of Local Rule E.1.c, as more specifically addressed in the Local Rules section below.

3. As the Applicant has repeatedly asserted, its submissions comply with the requirements of 760 C.M.R. 56.05. Although the Board asserted areas of noncompliance at the public hearing on May 11, 2016, the Board notified the Applicant by letter the following day that the Board denied the Application as inconsistent with local needs under the Statutory Minima

provisions of 760 C.M.R. 56.03(1). The Appeal that ensued ended on October 31, 2017, when the Housing Appeals Committee found that the Town of Hingham had not achieved Statutory Minima at the time the Applicant filed its Comprehensive Permit application. The application was effectively stalled during this appeal period. Shortly after the appeal ended, the Applicant agreed to meet on November 21, 2017 with you and the Town's special counsel, Susan Murphy, in response to your request, and in an effort to streamline the application process and attempt to address any local concerns that are reasonable and feasible. Accordingly, the Applicant is now working to respond to the Board's concerns, all while maintaining that the application complies with the state regulations under 760 C.M.R. 56.00 and the Local Rules that are enforceable under those regulations.

A. State Regulations.

- The Applicant is required to show proposed landscaping improvements on its preliminary plan under 760 C.M.R. 56.05(2)(a), and it has done by showing the proposed lawn areas on the Proposed Site Layout Plan dated October 7, 2015 and on the revised plan dated December 20, 2017 (the "Site Plan").
- Enclosed herewith is plan A5, dated October 14, 2015, showing building sections for two to three bedroom units. If the Board did not previously receive this plan, it has not been prejudiced thereby as the Applicant submitted building elevations and an architectural description, which permit the Board to review the architectural details on a preliminary basis sufficient to meet 760 C.M.R. 56.05. As set forth in 56.05(2), failure to submit a particular item does not necessarily invalidate an application.
- The Applicant submitted an anticipated list of requested waivers, and that list has not changed from the original application.

As to the Tabulation, the Applicant acknowledges that it inadvertently typed "Acres" after "10" for the "number of buildings" line item. Although the typographic error could be intuitively understood by reviewing two lines down where the total units and buildings are described, the entry was otherwise correct. After its original application, the Applicant reduced the total units for the project, which increased the number of buildings from 10 to 13, in response to concerns raised by the Board. Accordingly, a revised Tabulation of Proposed Buildings is enclosed herewith.

Enclosed herewith are clerically updated floor plans, which state the current, approximate square footage of the units and reflect the information shown on the updated Tabulation. As above, these are somewhat minor clerical errors that do not invalidate its application under 760 C.M.R. 56.05(2).

B. Local Rules. The Applicant complies with the Local Rules to the extent enforceable under 760 C.M.R. 56.05. Under 760 C.M.R. 56.05(2), the Board may not adopt Local Rules that exceed the review requirements of other applications that are submitted under other avenues than the Comprehensive Permit regulatory scheme.

- The Local Rules requiring Roadway and driveway profiles, sections, and details (Local Rules E.1.b. and c.) exceed analogous local regulations; specifically, the Town of Hingham Zoning Bylaws for Common Driveways, Section V-I, and Residential Multi-Unit Development, Section IV-E, both of which require the applicant to layout the width, length, location of all proposed ways, and applicable turnarounds. The Applicant has sufficiently met these requirements on its Site Plan. Moreover, the Applicant has already submitted a typical roadway cross section and a Traffic Impact and Access Study to the Board.
- The Applicant shows the location and dimensions of the proposed parking spaces on its Site Plan, with two spaces available in each driveway, two spaces available in each garage, and seven visitor parking spaces that are noted to be 9'x18'. The Site Plan therefore complies with Local Rule E.1.d.
- The Applicant has adequately displayed the open space and recreation area on its Site Plan and sets forth the open space and density calculations in a table contained therein in compliance with Local Rule E.1.e.
- The Applicant has demonstrated sewage disposal and drainage systems on its Site Plan, and has thus complied with Local Rule E.2.b. and c. to the extent enforceable. The Applicant has provided a grading plan showing proposed utility and drainage that would comply with the requirements for a Residential Multi-Unit Development, which is an analogous review scheme. Under 760 C.M.R. 56.05(2), the Board is not permitted to require information that would not have been required under a similar review scheme. Nonetheless, the Applicant has agreed to submit an updated Grading and Utility Plan, preliminary drainage calculations, and a Stormwater Management Report as requested by the Board, which will be submitted at or before the January hearing.
- The Proposed Site and Layout Plan submitted with the original Application addressed fire protection and access for the site. In response to concerns from the Fire Prevention Officer and from the Town, the Applicant has updated its plan to allow a connecting street with two exits and a turnaround on the longest driveway. As this Site Plan was submitted two days after your letter, we believe this line item was satisfactorily resolved, above and beyond the minimum requirements of Local Rule E.2.d. that were met with the original filing.

- As with the prior item, the Applicant revised its Site Plan from a cul-de-sac to a connecting way, thus further detailing the traffic circulation patterns required under Local Rule E.2.e. This modification and the traffic report submitted by the Applicant satisfies this rule.

The Site Plan depicts a connection to public drainage infrastructure in the Ward Street layout. This drainage connection has been in existence since the 1970s and was connected to Ward Street in connection with the Town's approval of the Plan of Lots Viking Lane by vote at a Town Meeting held August 17, 1970. The drainage ultimately drains into land controlled by the Applicant. The Applicant disagrees that an easement is required for this existing drainage connection, but the Board could issue the applicable approvals if deemed necessary by the Board. The regulations grant the Board authority to issue all approvals, consents, or affirmative actions that would be available from a Local Board, which includes the Board of Selectmen. See 760 C.M.R. 56.05(10)(a) and 56.02.

C. Project Eligibility Letter and Local Concerns. The Applicant has received comments from various Local Boards and the Subsidizing Agency, and it has addressed those concerns to the extent feasible. There is no requirement that the Applicant address every concern. Neither the Applicant or the Board are bound by any of those concerns raised, see 760 C.M.R. 56.05(8)(a). As you have requested a response, however, we hereby detail the Applicant's attempts to satisfy the outlined concerns:

Project Eligibility Letter:

- Flood plain management, protection of wetlands, river and wildlife habitat / conservation areas and local and state requirements related to public water supply, storm water runoff, wastewater treatment, and hazardous waste safety:

The Project Eligibility letter specifically calls for the Applicant to comply with the listed concerns before a building permit is issued, but not at the preliminary application stage. The Site Plan shows drainage and wastewater facilities for the property that will comply with the Title V regulations, as required by the Project Eligibility letter. Moreover, the Applicant is developing a Stormwater Management Report. The Applicant is not required to demonstrate compliance with this condition at the application stage under the express terms of the Project Eligibility letter and as set forth in 760 C.M.R. 56.05(8)(a) ("the securing of approval of any state or federal agency with respect to the Project which the Applicant must obtain before building, provided, however, that the Board shall not delay or deny an application on the grounds that any state or federal approval has not been obtained" (emphasis added)). The Applicant has demonstrated that its proposal complies with generally recognized design

standards, it does not need to demonstrate at this junction that it complies with environmental issues under state and federal law.

- Traffic volume, circulation, and safety, and pedestrian improvements:

The Applicant has responded to these concerns through its Traffic Impact and Access Study, the recent addition of sidewalks and a cross-through street in the development, and its agreement to update the traffic study.

Local Concern Letters:

- Fire Prevention Officer: The Applicant has addressed the concerns raised by the Fire Prevention Officer by connecting Viking Lane to Autumn Circle, thus allowing two-way connecting traffic. On the other way, Road C, the Applicant added a turnaround to allow emergency vehicles space to reverse direction.
- Planning Board Chairman: The Planning Board takes issue with the waivers sought in connection with the Application. The Applicant has taken steps to reduce the density of the development and to address other concerns raised, but the waivers are, of course, an integral and permissible component of 40B developments. The Planning Board discusses the same and additional similar concerns as raised by the Chief of Police and discussed below. The Applicant has addressed internal circulation and emergency vehicle access by adding sidewalks, creating a turnaround, and opening Viking Lane through Autumn Circle. The Planning Board also raises stormwater and drainage concerns that are more appropriately detailed after the Comprehensive Permit is issued, but before the building permit can be obtained. Similarly, the litany of detailed concerns about lighting, pavement, and wetland resources, and snow removal are more properly addressed in connection with final approval and permits.
- Chief of Police: The letter expresses safety concerns related to traffic on Ward Street, noting a significant increase in traffic on Ward Street that is completely unrelated to the proposed development. The Applicant has addressed concerns related to increased traffic by creating a traffic study and by opening a second ingress and egress point on Autumn Circle to limit the effect on Ward Street. The letter also expresses concern with the 18' Viking Lane, which the Applicant has addressed by increasing the existing roadway to 20' in its current Site Plan, which the letter acknowledges is the minimum requirement for private drives. The Applicant has also added sidewalks in response to the pedestrian concerns raised. Although the letter expresses concern with amount and location of

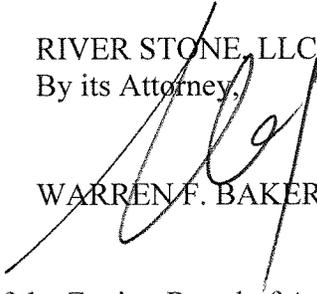
visitor parking, the Site Plan demonstrates that there are four parking spaces available for each unit, using the driveway and garage, although Section V-A of the Zoning Bylaw only requires two spaces for residential units. The Applicant has also added one turnaround in Road C and created a connecting road between Viking Lane and Autumn Circle in response to concerns about the lack of turnarounds. Additional detail that is requested for dimensions of driveways and bus stops are more properly handled at the building permit stage.

- Conservation Officer: The Applicant has worked to design the development with minimum impact in the buffer area, but acknowledges there would be some entry in the buffer area as allowed under 40B.
- Executive Health Officer: The letter expresses concerns over the suitability of the wastewater system and proposes soil evaluations, percolation testing, and review of sewage disposal plans. These tests and reviews are appropriate before a building permit is issued, but not at the application stage. The Applicant's submission meets all preliminary design requirements applicable to this stage. The Applicant has agreed to create a Stormwater Management Report to help address these concerns.

As noted previously, the concerns raised by Local Boards are above and beyond the requirements of 760 C.M.R. 56.05, but the Applicant has attempted in good faith to address those concerns to the extent feasible.

We look forward to discussing these and other matters with the Board during the hearing scheduled for January 11, 2018.

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

