

**COMMENTS FOR THE ZONING BOARD OF APPEALS RE: COMPREHENSIVE
PERMIT APPLICATION OF CHEBACCO HILL CAPITAL PARTNERS, LLC**

- The Applicant has obtained an extension of its Purchase and Sale Agreement with Country Squire Realty, Inc. to January 15, 2025. Essex County Greenbelt also has contracted to purchase the Property from Country Squire Realty, Inc., meaning that, if that sale is completed, the Applicant will no longer have site control. The Zoning Board of Appeals should consider whether it should expend time and resources reviewing an Application that may be rendered moot if the Essex County Greenbelt is successful in raising \$3.7 million to complete the sale by the end of the year. The Greenbelt's website reveals that it has already secured \$1 million in private donations.
- The Application for a Comprehensive Permit does not contain sufficient information about site conditions, including difficult topography and steep slopes to refute the findings made by the Planning Board in its decision, dated October 11, 2022, denying the Applicant's request for a Special Permit under the Senior Housing Bylaw. Ramifications of the following have not been adequately addressed in Chebacco Hill Capital Partners, LLC's Application:
 - extensive blasting and rock crushing;
 - well monitoring on and off site;
 - extensive ledge removal
 - traffic and other safety concerns on Chebacco Road, which is a Scenic Road, as well as Essex Street and other nearby streets;
 - noise levels;
 - prolonged project duration; and
 - subsurface runoff

Accordingly, the Applicant's extensive request for Waivers, particularly of provisions of the Conservation Bylaw, Article XVII of the Hamilton General Bylaw. and the Stormwater Management Bylaw, Article XXIX of the Hamilton General Bylaw, should be denied.

- As noted above, the Applicant is requesting numerous Waivers to proceed with its project which is, in substance, identical to the project for which the Planning Board denied its Application for a Special Permit under Hamilton's Senior Housing Bylaw, particularly in terms how the project is integrated into the landscape and how units are situated on the site.
- Compounding that problem, many of the attachments to the Application reference plans which are "preliminary," and an Operations and Maintenance Plan and a Long-Term Pollution Prevention Plan are not attached the Application. Accordingly, the Planning Board urges the Zoning Board of Appeals to defer consideration of the Application until all materials are final, and reschedule the currently scheduled hearing until the Application is complete and all attachments are final, not preliminary.

- If the Zoning Board of Appeals elects to consider the Application, it should require that the Stormwater Management Report and other technical aspects of the Application be finalized and submitted before the issuance of any rulings and that all reports be peer reviewed.
- The Regulations addressing Comprehensive Permits, 760 CMR 56.00 et seq., require a balancing test with respect to granting Waivers. It provides at 760 CMR 56.05(7) the following:

(7) Waivers from Local Requirements and Regulations. The Applicant may request Waivers, as listed in its application or as may subsequently arise during the hearing, and the Board shall grant such Waivers as are Consistent with Local Needs and are required to permit the construction and operation of the Project. Zoning waivers are required solely from the “as-of right” requirements of the zoning district where the project site is located; there shall be no requirement to obtain waivers from the special permit requirements of the district. If a Project does not request a subdivision approval, waivers from subdivision requirements are not required (although a Board may look to subdivision standards, such as requirements for road construction, as a basis for required project conditions, in which case the Applicant can seek Waivers from such requirements).

Consistent with Local Needs – means either that:

- (a) one or more of the grounds set forth in 760 CMR 56.03(1) have been met; or
- (b) Local Requirements and Regulations imposed on a Project are reasonable in view of the regional need for Low and Moderate Income Housing, considered with the number of Low Income Persons in the affected municipality and with Local Concerns, and if such Local Requirements and Regulations are applied as equally as possible to both subsidized and unsubsidized housing.

760 CMR 56.02.

Local Concerns “means the need to protect the health or safety of the occupants of a proposed Project or of the residents of the municipality, to protect the natural environment, to promote better site and building design in relation to the surroundings and municipal and regional planning, or to preserve Open Space.

Id. (citing 760 CMR 56.07(3)(c)-(g)).

To repeat, the grant or denial of Waivers require a balancing of the regional need for low- and moderate-income housing, the number of low-income persons in Hamilton, and the Town’s Local Concerns. Those Local Concerns are substantial as evidenced by the Town’s adoption of recently revised General Bylaws - a revised Conservation bylaw and a revised Stormwater Management Bylaw. Those Local Concerns are exacerbated because the plans attached to the Application are “preliminary,” despite the project

design being nearly identical to the project considered by the Planning Board in 2022. As stated by the Planning Board:

Approval of the project would require approval of the design choices the applicant made, and those choices negate a finding of compatibility with the character of neighborhood. Had unprotected natural features, such as steep slopes and mature forests, been at least partially maintained and units integrated into the site, the destruction of all mature forests and the need for unsightly rip-rap could have been significantly reduced and enabled the units to blend into the site and concomitantly into the neighborhood. The project, as designed, imposes itself on the site, undermining both the unprotected natural features and landscapes that make the neighborhood unique in Hamilton. The project is not comparable to the Village of Magnolia Shores and using its typology as the applicant proposes to do violates the design sensitivities required by Section 8.1.12 [of the Hamilton Zoning Bylaw].

In sum, the existing proposed entrance with the sheer ledge cliff and nearby rip rap is completely antithetical to the character of the neighborhood and completely inconsistent with adjacent land uses that fit unobtrusively within the landscape. The project is enormously over-engineered and will change the character and topography of the land. Blasting the hill, leveling it, and clear cutting all the trees exhibited a lack of sympathy for the neighborhood. As designed, the project, owing in part to its scale, imposes itself on the neighborhood. Rather than minimizing disturbance in accordance with Section 8.2.13.2, the project does just the opposite - - it maximizes disturbance. It would alter the terrain in ways no one could imagine and does not use low impact development techniques except as afterthoughts. The whole neighborhood would be changed, not for the better, but for the worse.

- Admittedly, Hamilton has not reached its goal for affordable housing. Recent discussions with Gordon Conwell Theological Seminary, however, may result in the inclusion of 209 units on the SHI enabling Hamilton to meet the 10% threshold for affordable housing *without any disruption of existing topography due to blasting and protracted construction*. The project proposed by the Applicant, would add 15 units to the Town's SHI, but at a significant environmental and social cost that does little to address the real needs of income strapped, elderly persons in Hamilton. The Applicant's target market is 55+ persons with income at 80% of AMI. It is unclear, however, whether families with small children are targets for the affordable units or seniors.
- There is no information about the sale prices at which market rate and affordable units will be offered, and how the condominium fees will be apportioned for the market rate and affordable units so that the affordable units will remain affordable to those residing in them with incomes at 80% of AMI or less, particularly in the event of unforeseen and extraordinary costs that may be incurred by the condominium association. *See G.L. Ch. 40B Guidelines, II.A.1. e.*

- There is no indication who will be designated to ensure compliance with all applicable rules and regulations governing marketing, residency, and potential sale of the affordable units in accordance with the M.G. Ch. 40B Guidelines, including the preparation of an Affirmative Fair Housing Marketing and Resident Selection Plan.
- The Town's most recent Housing Production Plan reveals the following demographic information about Hamilton residents.

As of 2015, Hamilton had 1,799 individuals over 65; 518 individuals between 55 and 64; and 755 between 75 and 84. The number of individuals over 75 far exceeded the number between 55 and 64. The age brackets for which there is the most need would benefit from services and amenities suited to their needs, but given the topography of the site and the necessity of driving to grocery stores, medical offices, and entertainment venues, the needs of lower income seniors will not be met through the construction of this project. This observation is buttressed by the data that indicates 25.9% of individuals over 65 have some form of disability. Adding to this data, in 2017, the median income of households over 65 was \$49,514.

- The conclusion that 15 units of "affordable housing" at undisclosed prices will address the real housing needs of Hamilton's aging population, particularly where the median income of individuals over 65 is less than \$50,000, suggests that the needs of seniors for ADA-compliant affordable housing will not be addressed.¹

¹ The following is from the Planning Board's decision:

The applicant's attorney was candid that the Village of Chebacco Hill is not for seniors in the familiar sense of the term; rather it is for "a younger segment of the senior population," those that are "generally vibrant, active individuals." In sum, they are "healthy individuals who no longer want to bear the burden of single-family home ownership." The applicant, however, also touted the concept of aging in place, but did not discuss the ramifications of what aging sometimes entails after 55 years of age: hip replacements and heart conditions, just to name a few. It also did not address what individuals who experience those or any other conditions associated with aging will do to overcome the challenges of the steep slopes that riddle the property, even between the front and backyards of some units, without relocating. (footnote omitted).