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June 3, 2024

VIA ELECTRONIC MAIL ONLY

Mr. Phillip DeMartino
Community Assistance Unit
Executive Office of Housing and Livable Communities
100 Cambridge Street, Suite 300
Boston, MA 02114
phillip.demartino@mass.gov

Re: ***Objection to Late Filing/Adoption of Stricken Memorandum***
Appeal of Notice of Safe Harbor
Village at Chebacco Hill Comprehensive Permit Application
133 Essex Street, Hamilton, MA

Dear Mr. DeMartino:

Reference is made to the above identified matter. In that regard, this office serves as counsel to Chebacco Hill Capital Partners, LLC (“Chebacco”). As indicated in prior correspondence, on Wednesday May 29, 2024, this office was copied on a submission by Daniel C. Hill, Esq. entitled “Memorandum in Defense of the Hamilton Zoning Board of Appeals’ Invocation of the ‘Related Application’ Safe Harbor” (the “Third-Party Memorandum”) purportedly submitted on behalf of Heather Ensworth, an individual with no standing in these proceedings.¹ On Friday, May 31, 2024, Town Counsel sent email correspondence stating the ZBA wishes to adopt the position and arguments set forth in the Third-Party Memorandum, or alternatively, to hereafter file its own memorandum, despite having already had the opportunity to explain its position in its purported notice of safe harbor dated May 2, 2024. For the reasons explained more fully below, Chebacco objects to the ZBA’s request.

Pursuant to 760 CMR 56.03(8)(a), “the Department shall...review the materials provided by both parties and issue a decision within 30 days of its receipt of all materials.” Under this regulatory framework, a Board’s opportunity to be heard is limited to the written notice it must provide within 15 days of opening its public hearing. An Applicant’s opportunity to be heard is then limited to the written appeal it may file with the Department within 15 days of receiving notice from the Board, at which point the record is closed and the Department has 30 days to render a decision. Looking more broadly

¹ By written correspondence dated yesterday, May 30, 2024, Chebacco respectfully requested that the Third-Party Memorandum and its accompanying correspondence be stricken from the record of proceedings in this matter on the grounds that Attorney Hill’s client lacks standing in these administrative proceedings.

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at the regulatory framework, the Procedural Regulations for Appeals to the Housing Appeals Committee set forth in 760 CMR 56.06 permit evidence to be received post-hearing, or for hearings to be re-opened, but only in certain limited circumstances expressly permitted by those regulations. The absence of any such provisions within 760 CMR 56.03(8)(a) makes clear that submissions thereunder are limited to a Board's initial written notice and to an Applicant's subsequent written appeal filed within 15 days. As such, there is no legal basis for the ZBA to now request that it be permitted to argue twice in these proceedings (while Chebacco is only allowed to argue once), particularly where the ZBA's attempted second bite at the proverbial apple raises no new facts or arguments that were unknown at the time the ZBA provided written notice. Accordingly, Chebacco respectfully objects to the ZBA's request to adopt arguments from the Third-Party Memorandum (which Chebacco still requests be stricken), similarly objects to the ZBA's alternative request to file an additional memorandum, and respectfully requests that the ZBA's May 31, 2024 requests be denied.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Very truly yours,

Stephen J. Chaplin

Stephen J. Chaplin, Esq.

SJC/

Encl.

cc: Patrick Reffett, Director of Planning and Inspectional Services (via *email* only)
Town of Hamilton Building Department (via *email* only)
Amy E. Kwesell, Esq. (via *email* only)
Chebacco Hill Capital Partners, LLC (via *email* only)
Daniel C. Hill, Esq. (via *email* only)