

Town of Hamilton  
Planning Board Meeting  
September 20th, 2022

Date: September 20, 2022  
Location: Memorial Room for Planning Board Members and the Planning Director;  
all other Participants via Zoom  
Members present: Pat Norton (Associate), Jonathan Poore, Bill Wheaton Emil Dahlquist,  
Rick Mitchell, Richard Boroff, Cory Beaulieu (Associate) and Marnie  
Crouch  
Members Absent: Beth Herr

A full recording of the Hamilton Planning Board Meeting can be found at  
<https://www.youtube.com/watch?v=11Ne-N4fMaU>

Planning Board Chair call the meeting to order at 6:43 PM and took roll call.

1. Final vote on the Special Permit Application of Chebacco Hill Capital Partners LLC and related Stormwater Management Permit Application.

Ms. Crouch indicated that all members, except Cory Beaulieu and Beth Herr, were entitled to vote on the Special Permit application and the related Stormwater Management application.

Ms. Crouch set forth her findings with respect to the special permit application as follows. Section 8.2.31.1 is informed by section 8.2.16.2 and 8.2.16.3, the building and design standards. The first finding is whether the project is compatible with the adjacent land uses and with the character of the neighborhood in which it is located. The first question to ask with respect to this finding is what the adjacent land uses are and what is the character of the neighborhood. The second question is whether the project is compatible with the neighborhood.

The adjacent land uses are residential homes which vary in size; there are small, medium, and large homes existing in the neighborhood. Most are characterized by natural landscape buffering along Chebacco Road and all have limited lawn space.

The character of the neighborhood is unique in Hamilton. Chebacco Road is a scenic road, and the neighborhood is rural even by Hamilton standards. Chebacco Road has a remote ambience owing to the extensive woodlands, ponds, and Chebacco Lake, as well as the Chebacco Woods conservation area. Moreover, the neighborhood is quiet, not well lit by street lighting, and residents describe walking their dogs in the middle of the street because of the absence of through traffic on Chebacco Road, which is unpaved in the east towards Chebacco Woods.

In contrast, the entrance to the project outlined in this application will be Boarded by a sheer, 20-foot cliff face, topped with a chain link fence on one side and a stormwater management feature (BMP) on the other side. There will be significant disturbance of the existing landscape buffering Chebacco Road. Jonathan Poore calculated 230 linear feet, and even if the trees and

shrubs that the applicant proposes to plant survive drought and deer pressure, given the unknown duration of the project and the length of time necessary for the trees to mature and provide any type of buffer, the entrance to the development will be unlike anything in the existing neighborhood.

Dwelling units stacked along the development roadway will likely be visible over or through the tree canopy for many years. Moreover, roadway lighting will not be obscured near the entrance. The addition of 50 condominium units, coupled with the denuded forested land, together with the newly landscaped entranceway and potential glare from light emanating from the site, interiors of the units, as well as lights on porches and sidewalks, will be incompatible with the character of the neighborhood and an urban form will be imposed on a rural neighborhood.

The architectural design does not reflect vernacular New England architecture. However, this is not significant. It is how these units fit within the landscape and as designed. The units do not reflect traditional sighting of homes, as the units are situated on steep slopes rather than areas sheltered from the weather. The use of over 1,600 linear feet of riprap to armor slopes for erosion control, again as calculated by Jonathan Poore and shown in erosion control maps C13 through C15, would be particularly unappealing as the riprap would be visible from the proposed trail that circumnavigates the south and west portions of the site and likely would be visible from Essex Street particularly in the winter, owing to sun glare from the rocks.

Ms. Crouch concluded that it would be possible to design a project that would be compatible with adjacent land uses. Had unprotected natural landscape features been protected, the need for unsightly riprap and forest destruction could have been at least substantially reduced. Nevertheless, the existing proposed entrance and the sheer ledge cliff and nearby riprap is completely antithetical to the character of the neighborhood and completely inconsistent with adjacent land uses that fit unobtrusively within the landscape. Ms. Crouch found that the development does not comply with section 8.2.31.1.

The second finding relates to whether the project mitigates impact to abutting land and natural resources by reason of air or water pollution, noise, dust, vibration, or stormwater runoff. In considering this finding, section 8.2.13.2, general requirements regarding minimizing disturbance and maintenance of as much of the site as possible in its natural state, and Section 8.2.17, lighting, are pertinent. The Planning Board Rules and Regulations concerning design plans, specifically Section 3.d.ii.2 provide for an analysis of environmental impacts, including measures to protect air quality, minimize noise, prevent noxious emissions, and damages or threats to the visual environment with respect to lighting. Emil Dahlquist has noted that the project will likely be a very bright spot in an otherwise very dark area that has a remote feel, especially when walkway lighting, porch lighting, and interior lighting from residences is added to the roadway lighting.

The applicant contends that because it is preserving farmland in portions of the site containing wetlands and buffer areas, it is entitled to remove all the hillside and granite ledge from the 16-acre development site presumably because it impedes its preferred development model. This model was employed at the Village of Magnolia Shores and the Village of Canterbrook Farm, a

site which contained virtually no trees, no ledge and was, at the time before the development, an eyesore in Hamilton owing to the neglect of the farm property.

Choices made at the outset directly lead to problems associated with the duration of the project, with its concomitant noise and dust. The duration of the project is unknown. The applicant's construction sequence spreadsheets are confusing, and the duration of the project is tied to the sale of 50% of the units in phase one; further there was an absence of time allocated to weather delays other than for road paving and blasting. Moreover, the construction sequence is based on a five-day workweek, but proposed conditions submitted by the applicant contained a provision for a six-day work week: 7:00 AM to 7:00 PM Monday through Friday and 7:30 AM to 7:00 PM on Saturday. The shorter work [sic] week adds to the noise, dust, and Poore air quality. The longer work week [sic] adds to the duration of the project. Accordingly, the best-case scenario for the duration of the project which I accepted for the purposes of my findings, is four years as set forth by the applicant.

I find the impacts to the neighborhood are untenable. The disruption owing to the scale of the project and noise from construction and from truck traffic would place an intolerable burden on abutters and residents in proximity to the site. The duration of the project, in and of itself, is problematic but more significantly, the applicant did not demonstrate by way of credible or convincing evidence, any effective ways of mitigating noise and diesel fumes from truck traffic as well as dust. With respect to noise mitigation in particular, the applicant stated that it will place the rock crusher, which likely would have a 95-decibel level, at the lowest portion of the development. However, the location of the rock crusher is a bit of a mystery as it does not appear on phase A of the construction management plan, nor does it appear on phase two of the construction management plan. It does appear in two different places on two phase B construction management plans, both of which are dated March 8, 2022, one in the phase two portion of the development and one in the phase one portion of the site.

The location of the rock crusher, which the applicant said would be at the lower portion of the site, is unclear from the construction management plans. It's indeterminate and the noise from the rock crusher could be a real problem. John Durkin of Onyx Corporation indicated that he was not an expert on noise and stated that the rock hammer used for blasting had a noise dampening enclosure, but he did not address noise from the rock crusher. I note here that OSHA lists construction activities on a site at 100 decibels. John Durkin also didn't address noise from chainsaws, the truck traffic entering and exiting the site, or construction activities such as road paving, rock distribution, and grading.

The applicant did not address the level of noise associated with truck traffic on Chebacco Road for the four-year duration of the project. The noise level associated with large trucks entering and leaving the site, including Bentley Warren 18-Wheel trucks, which most likely have a decibel level of 90 to 95, was also not addressed. Applicant did not produce any written materials with specific commitments as to when and how it would measure noise. Also, it did not directly address the provisions of the Code of Massachusetts regulations 310 CMR 7.10 and the Massachusetts noise policy other than to indicate that there would be complying and words to the effect that noise dissipates with distance. The calculations related to measuring noise, however,

are different for sound pressure and sound intensity and are by no means as simplistic as stated by Miss Mann.

Miss Mann stated that berms would be constructed to mitigate noise, but she is an attorney not an engineer, and there was no expert testimony as to where the berms would be located and how effective they would be. In short, the applicant provided woefully insufficient evidence that it could comply with 310 CMR 7.10, in view of how quiet Chebacco Road is relative to the decibel levels of the equipment to be used on the site. "Trust us" is insufficient evidence to enable a finding as to mitigating impacts to abutting land from noise. Parenthetically, no peer reviewer addressed noise or for that matter dust.

With respect to dust mitigation, the rock drills for blasting are self-contained and fitted with vacuum filters. Water can be added to ensure removal of heavy or silica dust. The rock crusher can also be sprayed with water. Nevertheless, there was an agreement that there would be some level of dust at the site. The question is how much, and this is unknown.

Upon consideration of these observations, I find the project fails to satisfy section 8.2.31.2.

Turning to section 8.2.31.3, Ms. Crouch stated that she must determine whether the project provides safe and convenient access to the site from existing or proposed roads and to proposed structures thereon with reference to pedestrian and vehicular safety, traffic flow and control, and access in case of fire emergency. Section 8.2.31.3 implicates section 8.2.19, site access roadway design and management.

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 who are "generally vibrant, active individuals." They are indicated to be healthy individuals who no longer want to bear the burden of single-family ownership, these are the words of Jill Mann. The applicant also touted the concept of aging in place but did not discuss the ramifications of what aging sometimes entails after 55 years of age. I note hip replacements and heart conditions as a few examples of what aging after 55 years of age can look like. The applicant did not address what individuals who experience those conditions would do to overcome the challenges of the slopes that riddle the property, other than relocating.

In sum, because of the imposition of the project on the site, the sidewalks and roadways, a portion of which contain 10% grades, will likely pose challenges for the residents if they intend to age in place at the Village of Chebacco Hill. For example, the Town peer reviewer, TEC, observed that the sidewalk adjacent to the internal roadway had a slope equaling the roadways level up to 10%. It also observed that sidewalks with the running slope of over 5% are considered ramps and must comply with 521 CMR. 24, and ramps may not have slopes over 8.3%, without landings provided for turning and resting every 30 feet and must provide hand rails. TEC added that the applicant should discuss the need for a waiver request from the Massachusetts AAB requirement of 521 CMR.24. In response the applicant indicated that the Village of Chebacco Hill project does not fall under the jurisdiction of any accessibility codes, including the Massachusetts Architectural Access Board, the Fair Housing Act or the American

With Disabilities Act. TEC's response was to recommend that the accessibility requirements be met "to the greatest extent possible" within the site due to the proposed senior housing use.

The issue with the roads and sidewalks gradient will be compounded in inclement weather, particularly as it is unclear where snow removal from sidewalks and driveways would be plowed other than into the street, or whether it would have to be trucked off site. Others have noted the 2 to 1 slope that exists between the front and the backyards of some units, which is a safety consideration.

TEC also observed in its August 30, 2020, report, that the existing roadway width of Chebacco Road is between 20 and 25 feet with no separate facilities for pedestrians or bicyclists. Pedestrian and bicycle safety may be impacted with the addition of project vehicular traffic volumes. The applicant should discuss any mitigation that may be appropriate for pedestrian and bicycle safety accommodations along Chebacco Road between the site driveway and Essex Street. The applicant responded to TEC's observations by stating it is not likely that project residents will be walking from the site along Chebacco Road. However, the project is proposing an on-site parking area where people can walk or bike the trails that connect to Chebacco Woods. Thus, the applicant did not address the safety of non-residents walking or biking on Chebacco Road after project completion. More importantly the applicant did not address pedestrian and bicycle safety during construction, when there will be at least 4,324 Bentley Warren trucks leaving the site and 4,324 Bentley Warren trucks returning to the site, along with countless other vehicles and trucks associated with the construction along Chebacco Road, Essex Street, and other streets in Town, not just the haul route to be used by Bentley Warren trucks.

Thus, I find the applicant fails to comply with section 8.2.31.3.

Turning to section 8.2.31.4, which requires a finding that the project provide for adequate capacity for public service facilities and utilities to service the proposed development, such as water pressure and sewer capacity. I find that the project does comply with section 8.2.31.4, but note, as Emil does, the Dewberry Study which should be of concern, not just for any future developments, but for every resident here in Hamilton.

Turning to section 8.2.31.5, Ms. Crouch indicated that she must find that the project provides visual and noise buffering of the development to minimize impact to abutting properties. Section 8.2.31.5 implicates section 8.2.13, general requirements, which require the use of low impact development techniques where applicable and minimizing disturbance. Visual and noise buffering is problematic. Section 8.2.22 requires a landscape buffer around the perimeter of the property. The buffer is interrupted in some areas, as Jonathan Poore has noted. The existence and maintenance of that buffer will be affected by the removal of ledge and the construction activities that likely will damage root systems and there's real potential for trees to experience stress and die. This project will not be entirely obscured from Chebacco Road even after trees and shrubs are planted at the completion of construction. Those trees are not mature enough to provide any kind of reasonable buffer for five to 10 years after completion of construction. Thus, there would be no effective screening of the site for at least 10 years. Moreover, the trees will not block the visibility of portions of the project below their canopies and above the shrubs, leaving views of the riprap at the gravel forebay and elsewhere visible.

As I noted, the noise associated with the years of construction has not been adequately or convincingly addressed, and the applicant did little more than ask the Board to trust that it would comply with applicable regulations. No peer reviewer weighed in on any of these issues.

I find that the application does not comply with section 8.2.31.5 of the Senior Housing Bylaw.

Turning to section 8.2.31.6, does the project provide for the perpetual preservation and maintenance of open space trails and recreation areas. I find that the applicant has complied in part with this requirement because it is proposing a conservation restriction which will provide for the preservation of open space and the regulated conservation areas outside the development area. Although the proposed condominium documents do not specifically provide for the maintenance of trails, they could be amended to do so. The only amenity for residents of this project is the trail state system, and it is not readily accessible to residents. They either must go to the entrance of the project or traverse areas of riprap.

I find that section 8.2.31.6 is partially satisfied.

Turning to section 8.2.31.7, which is a requirement that the project demonstrate compliance with the intent of section 8.1, the Open Space and Farmland Preservation Development Special Permit Design Process, in order to encourage cluster development. This has given the Board much pause so with apologies, I am going to review some matters before I make my finding. I think it's important to understand how bylaws should be interpreted. I look to Robert's Rules for interpreting bylaws and so in the first instance, if bylaws are not ambiguous, they should be interpreted as written. No interpretation of a bylaw should be made if the interpretation creates a conflict with another bylaw. If a provision of a bylaw has two reasonable interpretations and one interpretation makes another bylaw absurd or impossible to reconcile, the interpretation that has no negative effect should be made. Stated another way, the Board should give effect to provisions in a bylaw to avoid any construction that would make the language of another provision superfluous, inoperative, or insignificant.

So, with those principles in mind, I will address the issue raised by the prefatory language to Section 8.2.31 which states, in addition to the criteria set forth in Section [8.25.2], the Board must make its written findings. Section [8.25.2] provides that if the application contains an open space element the OSFPD special design process shall apply. We all know what is required by Section 8.1.12 and I'm going to just highlight the provisions of 8.1.12 that have directives in them. This is the content of 8.1.12 that is different from its caption, and it is the content not the caption that must control the process for 8.2.31.7. So here is the content of 8.1.12: *to the maximum extent feasible, the proposed development area shall consist of land outside the identified conservation areas and those areas are both regulated conservation areas and unprotected natural features, such as steep slopes as well as cultural features and the like. The location of dwelling units should account for proximity to common open space and other amenities, including community buildings for use by residents of the development. Toward this end the number of dwelling units with direct access to amenities of the development should be maximized. The layout of trails should anticipate internal and external connections to existing and other potential roads, trails, sidewalks.* So, in summary, those directives reflect the purpose

and intent of the process as set forth in the caption to 8.1.12. The process is not just an exercise that can be undertaken and then jettisoned. There was a purpose to the process and those are in section 8.1.12.2, .3, and .4. Were the Board to interpret the process as merely an exercise, the purpose and intent would be superfluous and irrelevant and section 8.1.12 and section 8.2.31.7 could not be read in harmony. Reading them narrowly with a focus on the caption leads to an absurd result of sanctioning a process that can conceivably have no meaningful outcome. Requiring the applicant to expend funds to comply with section 8.1.12, soliciting comments from the Board with respect to section 8.1.12, but in the end permitting the applicant to do whatever it wants with the site if the site does not contain regulated conservation areas is an interpretation that makes it impossible to reconcile all the provisions that I have outlined in sections 8.1.2, [8.25.5], and 8.2.31.7.

Turning to Section 8.2.4, which implements the Senior Housing Bylaw and that is the Planning Board Rules and Regulation, and that section states: *the Planning Board shall adopt and from time to time may amend Senior Housing Special Permit Rules and Regulations to implement this section. Such regulations shall include but not be limited to submission requirements fees, plan requirements, such as size, form, number and content, development standards, site standards, and standards for building placement and design. Such Rules and Regulations are required and authorized under G.L. c. 40A, section 9, and shall be adopted after voting by the Planning Board.*

A mention was made of section 8.1.16 of the Open Space and Farmland Preservation Development Bylaw and that is the section captioned, special permit design standards, and it contains 5 mandatory provisions. But the Open Space and Farmland Preservation Development Bylaw has a provision identical to Section 8.2.4, namely section 8.1.5, and what is more significant is that the substantive rules and regulations that implement both the Open Space and Farmland Development Bylaw and the Senior Housing Bylaw are identical in all material aspects. Accordingly, I find that to satisfy 8.1.12 and the directions embedded in it, the applicant must be guided by the identical provision of the Rules and Regulations that implement both bylaws regardless of whether the Senior Housing Bylaw lacks a similar provision to the mandatory provision of section 8.1.16. I conclude that the site specific and sensitive design is the first step in the development of the senior housing project, and it is derived from reading all the sections, 8.1.12, 8.2.25, 8.2.31.7, in harmony with one another and considering the applicable Rules and Regulations. Because developable land is scarce in Hamilton, development should be guided by principles of sustainability and resiliency, not merely increased density, and short-term fiscal benefits without consideration of planning principles embedded in our bylaws, as well as in the Stormwater Management Bylaw. I note that the term fiscal appears exactly twice in our bylaws applicable to senior housing, once in section 8.2 and once in section 10.5.2. Fiscal concerns are not exclusive drivers in this process. Rather they are considerations that must be contextualized where the thrust of the bylaws is to provide the Town with environmentally sensitive development plans that emphasize sustainability and resiliency, not perpetual maintenance, and oversight with their unknown costs. So rather than follow the spirit and intent of the Senior Housing Bylaw and its design provisions as implemented in the Planning Board Rules and Regulations with respect to the site, the applicant imposed its development on the upland portion of the site instead of attempting to integrate it into the landscape. That decision led to a cascade of issues, most notably, in my view, safety, lack of adequate visual and noise

buffering, and ramifications to abutters in the wider neighborhood from years of construction. While all construction has its disruptions, a project spanning at best four years with associated noise, diesel fumes, and voluminous truck traffic is in the words of the Planning Board member from the neighboring town “too big a dig” and evidence is disregarded for the design provisions replete in section 8.2.12.

Accordingly, I find that the applicant’s project does not satisfy section 8.2.31.7.

Addressing sections 10.5 and 10.5.2, I find that the adverse effects of the proposed project outweigh its beneficial impacts to the Town or to the neighborhood in view of the characteristics of the site and of the proposal in relation to the site.

I find that the issuance of the special permit is not for use in harmony with the general purposes and intent of the Senior Housing Bylaw. I believe this section of Massachusetts law undercuts any notion that the purpose and intent of our Senior Housing Bylaw can be considered aspirational. To hold otherwise would violate state law and suggest that when the Senior Housing Bylaw was adopted by the citizens of Hamilton, it did not mean what it says and was going to be interpreted in a manner that produced development at any cost so long as there was increased density and a nod to open space and fiscal benefits. Nothing could be further from the truth.

Pat Norton’s Findings:

Mr. Norton first addressed Section 8.2.31.1, the compatibility of the project with adjacent land uses. He stated: I understand and recognize that the Senior Housing Bylaw is meant to allow for some variety of land use, but I do not believe that the intent of the bylaw would be to do that at the consequence of the neighborhood and the adjacent land, which I believe this project and its design and scope does. So, I find that it does not comply with Section 8.2.31.1.

In terms of mitigation to the impact of abutting land and natural resources. air quality, noise, dust, vibration, stormwater runoff, and the rest of it, by design and owing to the scope of the development, the project results in it being a difficult thing to engineer as far as mitigating solutions. Mitigating solutions are available for a site like this, and I do believe there are some conditional elements we could impose to further mitigate whatever the engineers and project team have proposed. So, on this point, I am in the middle, but I would lean towards it not complying with the intent of basically because of, again, the scope and design of how the site is utilized.

With respect to Section 8.2.31.3, providing safe and convenient access to the site and all the other elements that the Chair has taken great lengths to describe, Mr. Norton indicated that the Board can look at this a couple of different ways. During construction, and the nature of the job is going to make this very dangerous, and its location makes it even more dangerous, it's going to be difficult to manage the site in all elements and phases with the control of materials during the excavation process and ultimately through construction of the site and the comings and goings of all the traffic that's been discussed at length. As far as the design of the site and the buildings, once construction is done, there are conditional elements that could be imposed, such as 521

CMR 24 for ramps and elements of that nature. These are design considerations that would have to be revisited and should be seriously considered and potentially a condition that could be imposed. So again, I am in the middle on this one but, I do not believe that the design and scope of the site and how it has been laid out complies with the intent of the requirement in the bylaw.

With respect to Section 8.2.31.4, regarding adequate capacity for public services. I agree with everybody, that there is the capacity to support a project of this size in that location. So, I would find that it does comply with the intent of this bylaw

Mr. Norton addressed Section 8.2.31.5, regarding the provision of visual and noise buffering of the development to minimize impact to abutting properties. The design and scope of the site makes this very difficult. I do think there are elements of the job and in the way some space has been preserved and some of the engineering elements that will help provide some visual and noise buffering. Maximizing the utilization of the 16-acre site and the way the site is located makes this a very difficult thing to impose. Erecting berms and planting trees are not going to block this site from the adjacent properties. I find that this application does not comply with the intent of the bylaw.

Turning to Section 8.2.31.6, providing for the perpetual preservation and maintenance of open space trails and recreation areas. I think this project could and will comply with the intent of this condition. I think conditional approval of the development will allow for the preservation of trails and open spaces.

With respect to Section 8.2.31.7, which is a requirement that the project demonstrate compliance with the intent of section 8.1, the Open Space and Farmland Preservation Development special permit design process in order to encourage cluster development, Mr. Norton indicated that every project starts with the definition of goals. Before jumping into design, site planning, engineering capacity, analysis for financial benefit, the goals of a project should and must comply and align with the culture and values of the Town and ultimately the intent of this bylaw. I find that the project, the development, the scope, the location does not ultimately comply with these criteria.

Addressing Section 10.5.2, Mr. Norton stated that the Board had discussed at length the financial benefit in the near or somewhat near term with the full utilization of the site. There is a projected 2% increase in the Town revenue as it relates to property tax revenue and that is a benefit once the site is fully utilized four to five years from now. That's a significant increase but I don't believe that the benefit outweighs the adverse impacts of this next five years of disruption or the long-term establishment of this development.

Turning to M.G. L. ch. 48 section 9. I would say that this project is not in harmony with the Senior Housing Bylaw.

Richard Boroff's findings:

Mr. Boroff stated: I am hearing a lot of negative statements about this project, and I do not think these are supported by the quality of people who are running the project. Larry Smith is a very dependable, very honest, very open person who will do whatever he must, as a contractor, to

make everything correct and copacetic. I believe that Mrs. Mann is a very honest, legal representative and will do the same thing. I'm not going to be against this project. I don't see a problem with it.

The Chair asked if Richard Boroff wanted to address any of the specific findings. Mr. Boroff stated that he felt that the discussion was one sided and that Mrs. Mann should be here to rebut this.

The Chair pointed out that the Board concluded the public hearing on July 26th and that the applicant's attorney did proceed to make opening remarks and arguments, that Attorney Eliason responded, and then attorney Mann was able to rebut. The Chair then asked Mr. Boroff if he wanted to address Section 10.5.2. Mr. Boroff declined.

The Chair then asked Robin Stein, who was available on zoom, what the effect would be of Mr. Boroff's failure to indicate a position on Section 10.5.2 and M.G.L. ch. 48, § 9. Miss Stein responded that while it is helpful for Board members to share their thoughts, ultimately the Board was going to take a vote so it is not required that Mr. Boroff do anything else.

Mr. Boroff responded, referencing Section 10.5.2, stating that he did not believe the negatives outweigh the benefits. He stated the benefits are going to be much greater than the negatives. A discussion then followed between the Chair and Mr. Boroff regarding M.G.L. ch. 48, § 9 and Mr. Boroff initially felt that he would be unable to state whether the proposed use outlined in the project was in harmony with the general purposes and intent of the Senior Housing Bylaw. However, after some discussion he was able to state that he felt it was in harmony.

#### Discussion and Vote

The Chair then stated that the Planning Board at this juncture has a motion pending to grant or deny the special permit for Chebacco Hill Capital Partners. Because the motion was pending the Board could proceed to vote.

At this point, Patrick Reffett asked to make a few comments. He stated that one of the important things that members wrestled with regarding other senior housing special permit projects was the comparison of their cluster design with a conventional subdivision design. Mr. Reffett was not sure that the Board had really addressed that in a robust way. Another item Mr. Reffett referenced was Bill Wheaton's request for a map and an aerial view of the property, specifically the area where the clearance would take place. A map did come before the Board with an aerial illustration, and Mr. Reffitt recalled that the Board talked extensively about and heard extensively about why the roadway access met Chebacco Road at the location that it did. This specific topic is important to Board members because the wetlands buffer is located sort of surrounding the property at the swales. That is exactly why the applicant located the access to and from the property as it did because it was evident from those graphics, the map, and the aerial view. Mr. Reffett also stated that he had heard comments that the 16-foot lights are too high and that they have the potential to produce glare and other kinds of light pollution. He stated that it is absolutely within the Board's purview to be able to reduce the height and require the

lights to be specifically non-glare. Also, there were comments about lighting on the buildings and the level of glare that would precipitate, but again that he stated that that was an item that the Board has in its discretion to address as it goes to public safety and the safety of the residents who might live in the facility.

The Chair then reviewed the minutes to get the exact wording of the motion. There was a short discussion regarding conditions. A member stated that there were conditions that were drafted and provided previously. The Chair pointed out that those conditions would only apply if the project was approved. It was up to individual members if they were recommending approval to include conditions in their discussion. If the motion receives the requisite number of votes to approve, then the Board would discuss conditions.

The Chair found the motion in the minutes. Mr. Poore had moved to approve the special permit application of Chebacco Hill Capital Partners LLC. This was seconded by Mr. Mitchell. Voting proceeded as follows:

Jonathan Poore	No
Bill Wheaton	No
Rick Mitchell	Yes
Emil Dahlquist	No
Pat Norton	No
Marnie Crouch	No
Richard Boroff	Yes

The Chair requested a motion to approve the findings and that those findings will be set forth in a decision that would be circulated to Board members for their review and revision. Robin Stein then clarified that the vote on the motion is to essentially adopt the findings that have been articulated at the public deliberations by the members voting “no.” She added that to quickly review the process for members, a draft decision can be prepared, but it must be reviewed in common and commented on at a future open meeting. There cannot be any commenting by email. The draft would be based off the comments that were already stated at this public meeting recited into the record. Marnie Crouch as Chair is going to take the lead in preparing the document. The Board can then review it at a meeting in the future and make any changes.

The Chair requested that Robin Stein be available for consultation on the draft because of the necessity to note some of the nuances to the vote. Not every member who voted against this motion agreed on every single aspect of each finding. Robin Stein agreed to act in consultation with the Chair.

The motion set forth by the Chair is as follows: to adopt the findings of the Board as they will be set forth in a written decision, subject to review and revision, and based on the deliberations made by the Board. The motion was moved and seconded; there was some discussion about whether a motion to approve needed to restate the actual motion. Robin Stein said it was fine to simply say so moved. There was a statement from a Board member asking for clarification on what they were voting for in terms of this motion. The Chair reiterated: it is a motion to approve the findings of the Board denying the special permit as will be set forth in a written decision

consistent with the Board's deliberations that will then be circulated and subject to review and revision by the Board at a subsequent meeting. The Board member then asked if that meant people agreed with the findings. The Chair then stated that she will set forth all the findings by Board members who voted against the motion and will make note of findings that may not be consistent with that. Her intention is to indicate how the Board deliberated, but the findings that are going to be dispositive of the motion will be those reflected by all five of the Board members who voted against this motion. The vote then proceeded on the motion that was seconded and that was on the floor:

Jonathan Poore	Yes
Bill Wheaton	Yes
Rick Mitchell	Yes
Emil Dahlquist	Yes
Pat Norton	Yes
Marnie Crouch	Yes
Richard Boroff	Yes

2. The Stormwater Management Permit Application filed by Chebacco Hill Capital Partners LLC.

The Chair stated that the first order of business is to entertain a motion to approve the Stormwater Management permit for Chebacco Hills Capital Partners. Motion was moved and seconded.

Discussion:

The Chair framed the discussion by stating that this is a review of the applicable Stormwater Management Bylaw and regulations and the references within those documents to volume one and volume two of the Massachusetts Stormwater Handbook. The Chair suggested starting with a brief synopsis of those provisions. In terms of process, a Board member stated that since so much of Section 8.1.12 is environmental sensitive site design which is also the focus of the Stormwater Management Bylaw, essentially, the analysis is the same, just different words. He questioned how much of this needed to be repeated. Perhaps simply highlighting the page numbers regarding environmentally sensitive site design or reading the information into the record of the things that apply to environmentally sensitive site design which is the central focus here might be more efficient.

It was agreed that the Chair would give an overview of the purposes of the Hamilton Stormwater Management Bylaw which is in Chapter XXIX of the Hamilton General Bylaw. She stated that one of the purposes is “to encourage the use of Low-Impact Development practices such as reducing impervious cover and the preservation of green space and other natural areas to the maximum extent practical.” She added that Low-Impact Development is defined as “[a] set of strategies that seek to maintain natural systems during the development process. The idea is to create homes and businesses that are integrated into the landscape not imposed on it. Natural areas are important features to be protected and stormwater is managed with a distributed network of swales and rain gardens rather than a centralized systems of pipes and ponds.”

Another purpose In subsection F is to “comply with state and federal statutes and regulations relating to stormwater discharges.” Section five of the Town Bylaw regarding stormwater management, and this leads to what Jonathan Poore will reference, provides that the Permit Authority, in this case is the Planning Board, is “to utilize the policy, criteria, and information, including specifications and standards of the latest edition of the Massachusetts Stormwater Management Handbook policy to execute the provisions of this Bylaw. This policy includes a list of acceptable stormwater treatment practices, including the specific design criteria for each. The policy may be updated and expanded periodically based on improvements in engineering science, monitoring and local maintenance experience. Unless specifically altered in the Regulations, stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to be protected of Massachusetts water quality standards.

The Chair added that our regulations, the ones that were in effect when this application was filed, do reference minimizing total area disturbance. Section 4D of our Regulations requires that any stormwater management plan “be designed to meet the Massachusetts Stormwater Management standards as set forth in Part B of this section and DEP Handbook, Volumes I and II,” or the most recent edition of that Handbook, and that regulations also require the use of low impact development techniques.

The Chair then asked Jonathan Poore to highlight the provisions of the Massachusetts Stormwater Management Handbook. Mr. Poore stated:

Paralleling the elements discussed regarding 8.1.12, what's key is the first decisions regarding site design are to be based on understanding, inventorying, and delineating protected and unprotected resource areas. Massachusetts defines that as environmentally sensitive site design. Mr. Poore then provided page numbers that should go into the findings, and he will also submit these in writing.

- Massachusetts Stormwater Management Standards, Volume I, chapter one, pages 1 through 4. These are elements that are non-engineering and they explain and elucidate environmentally site design.
- Massachusetts Stormwater Management Standards Volume II, chapter one, pages one through 6, and page 15
- Massachusetts erosion and sediment control guidelines for urban and suburban areas by DEP, part one, principles and planning, pages one through 50. Note, pages 42 and 43 literally mirror 8.1.12.

A Board member asked Mr. Poore if he was indicating that the project did not follow these guidelines. Mr. Poore responded that yes, it is excellent engineering, outstanding engineering, but that is not the first step. The Board member did point out that these are recommendations for good design. Mr. Poore responded that the recommendations are ranked. However, they're not statutory requirements. A discussion among Board members followed with reference to Volumes 1 and 2 of the Massachusetts Stormwater Management Handbook. Volume 1 references environmentally sensitive design 10 times and Volume II is not simply about meeting

the standards; it references how you meet those standards. Volume II which deals with those design issues and ranks what should happen is not really binding and is an elucidation of volume 1. Volume 1 is the governing document and that was the document the applicant used, and our peer reviewer team used, to determine whether in fact the applicant had met the requirements in Volume 1. The firms did, in fact, verify that those requirements had been met. However, our Stormwater Management Bylaw does not say that if you meet Volume I and a peer reviewer says that you met Volume 1, that that is all you had to do. That's the precise issue here. A point was made that a peer reviewer is assigned essentially to look at the BMP process, they're not assigned to look at the initial assumptions about design. Another Board member pointed out that the BMP process is designed with software so you could just check the box and say you have completed the software package and you have got 80% of the total suspended solids, but that is not what the Bylaw says; it is not what the standard says; it is not what our mandate is.

The Chair then read into the record from Volume I, page 3 the Massachusetts Stormwater Management Handbook:

*Project proponents seeking to demonstrate compliance with some or all the Stormwater Management Standards to the maximum extent practicable shall demonstrate that: ...*

[And: this is number 2]

*They had made a complete evaluation of possible stormwater management measures, including **environmentally sensitive site design**, low impact development techniques that minimize land disturbance and impervious surfaces, structural stormwater best management practices, pollution prevention, erosion and sedimentation control, and proper operation and maintenance of stormwater best management practices.*

A Board member made the point that this is not mandated. He agreed that the statute says “to the maximum extent possible.” He agreed that good design would be appropriate, but that it is not mandated. He wanted to make sure that this point was made.

The Chair then moved to the vote on the motion, adding that a “yes” vote means you approve the application and a “no” vote means you disapprove the application. Robin Stein noted for the record that the Board essentially incorporated into this discussion all the prior discussion on stormwater management that was raised in the discussion on the special permit.

Jonathan Poore	No
Bill Wheaton	No
Rick Mitchell	Yes
Emil Dahlquist	No
Pat Norton	No
Marnie Crouch	No
Richard Boroff	Yes

The Chair then asked for a motion to approve the findings of the Board members based on the deliberations, not just at this meeting, but at the prior meeting, which will be set forth in a written

decision that the Board will have an opportunity to review and revise if necessary. Motion was made and seconded and then moved on to a vote.

Jonathan Poore	Yes
Bill Wheaton	Yes
Rick Mitchell	Yes
Pat Norton	Yes
Marnie Crouch	Yes
Richard Boroff	Yes

Note: No vote recorded for Emil Dahlquist

The Board confirmed for Robin Stein that there are two meetings in October, October 11th and October 18th, and the intent is to have both documents detailing the findings of the Board for the October 11th meeting for discussion and revision.

3. Other Business:

Motion was made and seconded to approve the minutes of July 26, 2022. The minutes were approved by all Board members present as follows:

Jonathan Poore	Yes
Bill Wheaton	Yes
Rick Mitchell	Yes
Emil Dahlquist	Yes
Pat Norton	Yes
Marnie Crouch	Yes
Richard Boroff	Yes

The Chair noted that we cannot consider the minutes from September 13th until the meeting on October 11th since these minutes did not make it onto the agenda.

A question was raised by a Board member related to new Board business. There is a series of developments going on Bridge Street, a string of adjacent Form A houses on extreme slopes, and the Board's initial pass was that each of these lots has had a surveyor say that less than one acre of each lot is being cleared. This has supposedly been certified although the Board member had not seen the certification. Therefore, they are exempt from our Stormwater Management Bylaw. But as the Board member read the Stormwater Management Bylaw on page 2, there is an application for smaller projects. There was some discussion on this, and it turned out that the Board member was referencing the Rules and Regulations and not the Bylaw. The Rules and Regulations do differentiate between small and large projects, and it says on the second page that you can file for an abbreviated smaller project, which is what they did. This is allowed if one is not clearing more than a certain amount of land and if the lot is not an ANR lot that is adjacent to other lots which are currently under construction and have not yet been issued occupancy permits. This is point #1 under the application for smaller projects. The intent here, according to the Board member, is to avoid someone stringing together a bunch of Form A's and treating them as independent and thus avoiding Planning Board oversight. There was concern raised that what is happening on Bridge Street should in fact be under the purview of the Planning Board. There is some confusion however in what is written in the Stormwater Management Bylaw, as follows:

*Permit authority shall be required for any construction activity, including clearing, grading, and excavation, that results in a land disturbance that will disturb equal to or greater than one acre of land or will disturb less than one acre of land but which is part of a larger common plan of development or sale which will ultimately disturb equal to or greater than one acre of land, draining to the town's municipal separate storm sewer system.*

The Rules and Regulations do elucidate this. There is some confusion about these lots. The lots contain houses that have not been built yet but they are being marketed as being similar in style by the same real estate agent. Does that mean they are part of a larger common plan of development or sale? The land was originally a single piece of land that was purchased by a limited liability company that was formed by an alumnus from Gordon Conwell Theological Seminary.

To the extent that there is a potential loophole in the Bylaw, or lack of clarity in the Bylaw, the Board needs to address this. A suggestion was made to get a formal opinion from the Town Counsel. Perhaps the Town Counsel can investigate when this provision, section 4A, was inserted.

There was also a discussion on what is meant by common plan of development or sale. In terms of Bridge Street, these lots are being sold directly to builders. Are lot owners trying to skirt the regulation by saying it is not part of a common development, but what does a common development mean? The Chair suggested the Town Counsel investigate this subsection of the Town Bylaw and its concomitant regulation and give the Planning Board an opinion as to whether it can be applied to what is happening on Bridge Street, or whether it cannot be applied. The Chair thought it might present something of an evidentiary issue because one builder is doing more than one lot. There are not nine builders so there is an evidentiary aspect to this and then a legal aspect as to what was intended by the insertion of this language. What advice would the Town Counsel have with respect to using this. However, whatever that advice may be, it does not stop the Board from trying to make this language more intelligible by defining what a larger common plan of development or sale is.

In fact, the Chair pointed out that since the Board is finishing up with the special permit with respect to 133 Essex, they can now turn their talents to looking at the Stormwater Management Bylaw and try to make it clearer and better in all respects. This is something the Board can put on its agenda after the meetings in October. We may not be able to have an impact on Bridge Street, but certainly going forward, if we amend this document, there would be no lack of clarity and we can then address some of the other issues with respect to this Bylaw.

Future Work:

One suggestion was to look at the Senior Housing Bylaw while it was fresh and explore what worked and what did not, what was ambiguous or contradictory. A point was made that a lot of time was spent on the flexible development bylaw and that this bylaw was crafted to track the Senior Housing Bylaw. So, in many respects the two could proceed simultaneously.

The Chair suggested that at the next meeting the Board dive into the Stormwater Management Bylaw. If everyone has an opportunity to read it through carefully, the Board could start making comments about what should be changed, what could be added, and whether this document is something that is workable or whether some of the aspects would have to be addressed by a zoning bylaw. We could really go through the Bylaw with a fine-tooth comb and the associated Rules and Regulations to try to get some clarity on what is intended. The Regulations must be the subject of a public hearing.

A Board member requested the opportunity at some future date to provide the Planning Board with a summary of the working group that the Chair tasked Emil and the Board member to form regarding the Gordon Conwell Theological Seminary. This is going to be an accelerated strategic analysis of options that provide the highest and best use for the Seminary and the Town, with the goal of providing the Planning Board with a template for potential bylaws encompassing uses that the Seminary, the Town, and abutters have agreed would be acceptable. The hope is that this can be considered by the Planning Board in public hearings with the bylaw potentially submitted for spring Town Meeting consideration. So, this report would be presented probably early to mid-January. The Seminary has agreed to contribute to the cost of this strategic study. The group includes the president, the project manager for moving the campus to some other location, and their attorney. They have agreed to participate with no preconceived notions of what may or may not happen. They are looking to maximize their revenue but they are also looking to be responsible citizens and have something developed that respects the wishes of the Town and the abutters. It's going to be an accelerated project that hopefully will yield something that we can all look at and agree on.

The Chair stated that these three topics could easily fill the Planning Board's agenda for the fall and early winter. A Planning Board member stated that as we go through all these bylaws, we keep an open mind to how these bylaws interlink, which ones are working, which ones are not working, and rank which ones are most in need of attention. This might not mean that we get to it very soon, but we should start thinking about ranking the priorities of which bylaws are most out of date, and which ones need the most attention. The result might be a plan of how to update and refresh these bylaws.

There is consensus to look at the Stormwater Management Bylaw first.

The Chair asked for a motion to adjourn. The motion was made and seconded. The Board voted unanimously to adjourn at 8:37 p.m.