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BY EMAIL: Pdeschenes@walpole-ma.gov

Walpole Zoning Board of Appeals
135 School Street
Walpole, MA 02081

Re: Darwin Commons comprehensive permit application, 32 Darwin Ln, Walpole MA

Dear Members of the Board:

Please consider these further comments submitted on behalf of the abutters whose names and addresses are copied below.

A couple of months ago, I urged the Board to invoke safe harbor, which you did. The Applicant challenged the safe harbor status, which was upheld – for the first time ever – by DHCD based on the Town’s compliance with its Housing Production Plan (“HPP”). As stated in DHCD’s November 24, 2021 letter, its safe harbor determination was appealable within twenty days. No appeal was filed.

Now, at the hearing last week, Applicant invited the Board to reconsider its safe harbor determination in exchange for modifying the application to reduce the density to a dozen units. The Board must decline that invitation. The law, 760 CMR 56.03(8), empowered this Board to invoke safe harbor within 15 days after opening the public hearing. You voted unanimously to do so. That’s a historical fact. Then, the Applicant appealed your determination to DHCD, a state agency with the legal authority to reverse your safe harbor determination. Instead, DHCD affirmed safe harbor, which is now legally binding as it was not appealed. You as the ZBA of Walpole do not have the legal authority to reverse the binding safe harbor determination of DHCD. Plus, it is well beyond the required 15 days from opening the public hearing. You cannot undo your own invocation of safe harbor now, nor reverse DHCD’s.

Safe harbor applies to a particular project application. Once invoked, upheld and not appealed, it cannot be revisited. The only way safe harbor might again be within your discretion is if the current application is rescinded and withdrawn, and a new application is filed. A new application would trigger a new public hearing, and the opportunity for the Board to consider safe harbor anew, as required by the regulations.

Very truly yours,

/s/ Dennis A. Murphy

Dennis A. Murphy

cc: George Pucci, Esq.
Jay Talerman, Esq.
David & Jo-Anne Vlacich - 31 Darwin Lane, Walpole MA 02081
Joe & Bernadette Moriarty - 28 Darwin Lane, Walpole MA 02081
Jim & Yasemin Herlihy - 3 Darwin Lane, Walpole MA 02081
Michael & Laurie Moore - 4 Darwin Lane, Walpole MA 02081
Michael & Caroline Farley - 15 Darwin Lane, Walpole MA 02081
Mike & Marianne Stanton - 19 Darwin Lane, Walpole MA 02081
Mario & Susan Corso - 24 Darwin Lane, Walpole MA 02081
Corey Greenburg & Kathryn Fisher - 27 Darwin Lane, Walpole MA 02081
Denna Horne & Jim Howley - 23 Darwin Lane, Walpole MA 02081
Sean & Amy Radley - 12 Darwin Lane, Walpole MA 02081
Mark & Jacqueline Mannion - 8 Darwin Lane, Walpole MA 02081
Paul & Caroline Truland, 15 Queens Court, Walpole MA 02081
Tom & Peg White, 20 Darwin Lane, Walpole MA 02081