



Ruthanne Fuller
Mayor

CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

MEETING MINUTES

Wednesday, May 24, 2023.

7:00 p.m.

Hybrid – in person and via ZOOM

Board Members Present: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, Stuart Snyder, Jennifer Pucci, and Denise Chicoine (alternate-remote)

Staff Present: Heather Zaring, ZBA Clerk; Jonah Temple, Deputy City Solicitor; Katie Whewell, Director of Current Planning; Alyssa Sandoval, Deputy Chief Planner, and Cat Kemmett, Senior Planner

A public hearing of the Newton Zoning Board of Appeals was held as a hybrid meeting in person and virtually via Zoom on Wednesday, May 24, 2023, at 7:00 p.m. on the following petitions:

1. **#03-23** Linda Blacksmith of 25 Breamore Road, Newton, is requesting a variance from Section 7.6 of the Newton Zoning Ordinance to allow a rear setback of 8.4 feet where a rear setback of 15 feet is required and to allow a 42.1% lot coverage where a lot coverage of 30% is required. The petitioner seeks to construct a one-story addition to provide an accessible living space. The subject property is located at 25 Breamore Road within a Single Residence 3 (SR-3) zoning district and consists of a 5,239 square foot lot.
2. **#04-23** Toll Bros. Inc., requesting a Comprehensive Permit, pursuant to M.G.L. Chapter 40B, to construct a six-story all-residential development with 244 residential units on 5.82 acres of land located at 528 Boylston Street in the SR1, SR2 Zoning Districts. The proposal includes 61 affordable units and 385 parking stalls.
3. Review and approval of minutes for April 26, 2023 meeting.

Agenda Item 1: #03-23 Linda Blacksmith of 25 Breamore Road, Newton, is requesting a variance from Section 7.6 of the Newton Zoning Ordinance to allow a rear setback of 8.4 feet where a rear



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

setback of 15 feet is required and to allow a 42.1% lot coverage where a lot coverage of 30% is required. The petitioner seeks to construct a one-story addition to provide an accessible living space. The subject property is located at 25 Breamore Road within a Single Residence 3 (SR-3) zoning district and consists of a 5,239 square foot lot. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, Stuart Snyder, Jennifer Pucci, and Denise Chicoine (alternate-remote)

Documents Submitted:

1. Variance Application dated April 20, 2023.

Testimony:

Zdenek Radouch and Linda Blacksmith, owners, 25 Breamore Road, Newton stated that they would like to build an accessible addition to their home for their 26 year old, quadriplegic son that became injured three years ago so that he may move home so they can care for him. He is confined to a power wheelchair and will need to build access to the house, an accessible area to the house, and climate-controlled area due to only 50% capable of breathing and cannot regulate his body temperature. The owner stated that they have explored other options by bringing in architects and they suggested maybe an elevator and rebuilding the second floor, but the bathroom would not be able to accommodate the wheelchair so the second floor would have to be completely rebuilt. Due to the breathing issues new construction would be ideal to enable the cleanest air. Speaking with elevator representatives since the wheelchair weighs 400 pounds an elevator would have to hold 600-800 pounds plus accommodate stretcher if there is an emergency transport. The best solution would be to have ground floor access. The owners consulted with an architect with the guidelines of the occupational, physical therapists, caregivers for living space and bathroom. The plans submitted would be the best solution for our situations.

Chair Rossi stated that the Board understands that this is a very difficult situation for the family and that it is difficult to come before us and share this information. He asked for some clarification of design.

Mr. Radouch and Ms. Blacksmith stated that plans to convert the half bathroom and pantry to a full accessible bathroom and add a one-story accessible bedroom with a lift and large, special bed with



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

the capability to turn him and prevent bed sores. There is also an accessible office area with a large accessible desk and computer for him to have the ability slide his wheelchair up. There is a living room area for a gathering area for social interaction and medical equipment storage area. There is a covered entrance with a ramp to access to the outside. The ground level is much safer in case of fire to get him out. He cannot use an elevator himself. The ramp is situated where it is because other areas of the property have a slope.

Public Comments:

Tabitha McCartney, 155 Hunnewell Ave, Newton, stated she is the direct abutter to the left. The property line on the left side of the house and our driveway runs along that property line. She stated that her family was very upset when the accident happened and supported the family during that time. She also has great empathy for the family since her sister died of Huntington's Disease and was confined to a wheelchair and needed care the last years of her life. There are three concerns for the project. It doubles the first floor of the property. She works for an organization that builds fully accessible two-bedroom apartments with kitchen and it can be done with 800 square feet. Further concerned that in the future once this addition is built that it would be easy to convert it to an accessory apartment and there is very little parking. We already have a water issue and the basement and garage flood. Concerned there will be even less area for the water to go because the impervious surface will increase by 14%. Ms. McCartney stated that she spoke with an engineer at her organization, and she has a right to be concerned about the digging of the foundation which will be 15 feet from her 123-year-old fieldstone foundation and could cause damage from the equipment and vibration. The building will be within eight feet of the property line. She believes that there are other ways to accomplish what is needed with mini-splits and that 800 square feet is excessive and will have a negative effect on our property and if approved wants some sort of mitigation factors for potential damage to our property.

Thomas and Jane Kenslea, 170 Oakley Road, Newton, stated that the plan seems like a very good plan and hopes that the family will be able to mitigate concerns for those that have them. In terms of the water concerns – they are uphill from the family so he does not believe it will be an issue. He hopes the Board will approve it.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

There were no further public comments.

Chair Rossi asked if the addition was to be used by the owner's son, clarification of injury, and is it her position that the addition is necessary to make housing available to him.

Ms. Blacksmith stated that it was for her son with a C4 quadriplegic injury, and it is to make housing available to him with his family. The family does not wish to put him in a nursing home or a building where everyone is handicap. He wants to feel normal. The family members are his full-time PCAs.

Ms. Blacksmith stated that the addition would face the neighbor's driveway and garage and there are no rooms facing it except a hallway. They neighbor is on a hill above us. Water would flow downhill. She stated the foundation on their house is also fieldstone and they spoke with their architects and builders, and they stated there was no concern and no crumbling. She stated that they could not afford a larger place in Newton, they do not want to leave Newton and the support system here, it's close to good hospitals for their son when he occasionally goes into AD and needs to be rushed in, and its proximity to Spaulding Rehab.

Ms. Lipsitt stated the Board is sympathetic to the issue, but the task is to recognize if this a reasonable accommodation under the standards and there is an obligation to maintain to dimensional requirements of the Zoning Code while still meeting your needs. She asked if there was a way reduce the addition while meeting the needs to reduce the impact.

Mr. Radouch stated that they spent two years looking for another house and this was the best solution they could come up with to make their son comfortable.

Ms. Blacksmith stated that there could possibly be some reduction, but they are trying to make it as nice as possible for someone that can never leave. She stated that had the accident never happened they would not be changing the house. She stated she understands the Boards position is staying within the parameters of the ordinances, but also does not want her son to just have the bare minimum and that if it had a kitchen, it would be considered an accessory apartment and it would follow the rules.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Ms. Lipsitt stated that she understands, but that the rules are to give the least exception to the ordinances. The Board is required to the least relief that will meet the need.

Ms. Lipsitt made a motion to close the public hearing. Mr. Snyder seconded the motion. The motion passed unanimously.

Deliberation:

Chair Rossi stated that the usual criterion for variance is not satisfied with hardships, topography, soil conditions and so forth, but in his view that is not what we are discussing here. Chair Rossi as well as the law department believes the request is for a reasonable accommodation and that Newton does not have a formal procedure for residents or homeowners in the applicant's position to make a reasonable accommodation under federal or state housing laws or to seek a variance outside of the zoning. There is no other process or procedure in Newton other than seeking a variance. Chair Rossi stated that this should be treated not as a request for a variance but as a request for a reasonable accommodation.

Ms. Lipsitt asked for clarification if the Board should not consider the standard normally used as the least variance from the ordinance as required.

Chair Rossi stated that the language of the statute is a reasonable accommodation and deferred to Attorney Temple.

Attorney Temple stated that the standard is the burden is on the applicant to show that it is reasonable and necessary to afford a disabled person the equal opportunity to use and enjoy the dwelling. For the Board to deny the application it would have to make a finding that the accommodation would impose a financial or administrative burden on the city and that it would require a fundamental alteration in the nature of the city's land use zoning program.

Mr. Snyder stated that the memo is inconsistent with accommodating a reasonable request, but doing it as minimally as exceeds the zoning rules otherwise. He stated that he agrees with Ms. Lipsitt's questions and what should the parameters be for the Board to use. Can the Board add conditions if granting the request?



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS
Brenda Belsanti, Zoning Board Clerk

Chair Rossi asked what conditions Mr. Snyder proposes.

Mr. Snyder responded that the concerns of the neighbor seem legitimate. Work to be done is properly insured and supervised and damages would be responsibility of the applicant.

Chair Rossi stated that rights of two private parties and construction liability and he would not be comfortable imposing that obligation. Standard inspectional process and permits should cover proper construction items.

Mr. Snyder responded that are in the setbacks imposed and if the plans can be minimized.

Mr. Rossi asked the applicant if the plans could be minimized at all.

Mr. Radouch stated that the setback in question is not the neighbor to the left, but half is onto City land by the MA Pike and the other half is a neighbor does not have an issue.

Ms. Blacksmith stated that they are giving him the space he needs.

Chair Rossi asked if this would be the smallest least restrictive way or is everything here necessary.

Ms. Blacksmith responded that the window at the rear could be gone, but it would still violate the setback.

Ms. Pucci asked for clarification of the legal standard of the memo and feels that it does not require that the Board go with the least restrictive option. It is a variance rubric and this a reasonable accommodation.

Chair Rossi stated he agrees with Ms. Pucci.

Ms. Lipsitt asked for clarification whether this is a variance or a reasonable accommodation and what the standard is to judge a reasonable accommodation other than listen to the applicant.

Chair Rossi stated that normally for a variance the Board goes to the statutory criterion. As part of the analysis, it is required to be the least restrictive solution possible. That analysis does not get done with a reasonable accommodation.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Chair Lipsitt stated that she was unclear that since the applicant did not have to meet the normal criteria for a variance because the reasonable accommodation meets that exception, but that the Board still had to look at the least restrictive solution to meet the accommodation.

Attorney Temple responded that the Board is substituting the reasonable accommodation for the variance criteria but is the standard reasonable and necessary not least restrictive. It can be viewed similar or different but finds it more relaxed.

Chair Rossi stated that it would be difficult for the Board to change the plan. The Board has been presented with an accommodation and the Board can determine if it's reasonable and necessary. There has been testimony from the petitioners that it is reasonable and necessary and is sufficient to find that the accommodation is reasonable.

Ms. Lipsitt stated that she was not in agreement with the interpretation by the Chair or the Law Department but accepts both.

A motion was made by Ms. Lipsitt for approval for the petition with the condition that at no time in the future should this space be converted into an accessory apartment and duly seconded by Mr. Snyder. The motion passed unanimously. Therefore, the request for a reasonable accommodation was granted.

Ms. Blacksmith agreed to this condition.

Agenda Item 2: #04-23 – Toll Bros. Inc., requesting a Comprehensive Permit, pursuant to M.G.L. Chapter 40B, to construct a six-story all-residential development with 244 residential units on 5.82 acres of land located at 528 Boylston Street in the SR1, SR2 Zoning Districts. The proposal includes 61 affordable units and 385 parking stalls. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, Stuart Snyder, Jennifer Pucci, and Denise Chicoine (alternate-remote)

Documents Submitted:

1. Application for Comprehensive Permit dated April 27, 2023
2. Supplemental materials from Applicant dated May 3, 2023.
3. Letter from City Councilors Downs, Bowman, Lipof, Kalis, and Ryan



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

4. Memorandum with attachments from the Planning Department dated May 17, 2023.

Testimony:

Attorney Steve Buchbinder, Schlessinger & Buchbinder, 1200 Walnut Street, Newton, representing the petitioner Toll Bros. for a potential development at 528 Boylston Street, Newton pursuant to M.G.L Chapter 40B. The petitioner received project eligibility letter from MA Housing on February 1, 2023.

Attorney Buchbinder introduced the team that would be presenting the different areas of the overview of the project.

Attorney Buchbinder stated that they have been engaged in community outreach over the last several months. A virtual meeting on October 13, 2022 and have committed to hold another similar meeting after tonight but before the next meeting. Additionally, since September 2022 Toll Bros. has held 14 smaller meetings with individual abutters and small groups of neighbors. There have been two meetings each with the Urban Design Commission, Green Newton, and Engine 6. We have met with the Fire Department, the Housing Partnership, and Conservation Commission.

Attorney Buchbinder presented an overview of the project via PowerPoint.

Tim Hayes, Civil Engineer, Bohler Engineering, 45 Franklin Street, Boston, presented the stormwater project overview demonstrating existing conditions and future considerations for planning via PowerPoint.

Tom Schultz, Associate, GAT, 50 Commandant's Way, Chelsea, MA, presented the building and site design plan progression and current plan created from MA Housing and neighborhood resident feedback via PowerPoint.

Jay Emperor, Landscape Architect, Bohler Engineering, 45 Franklin Street, Boston, presented the landscape plan and amenities including dog park, courtyards, visitor and delivery areas, children's play area, swimming pool, fitness area, fire access, and walkways via PowerPoint.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Paul Eddowes, Sustainability Consultant, New Ecology, 294 Washington Street, Boston, presented the project sustainability goals including Passive House certification, MassSave incentives, feasibility studies, Energy Star certification, DOE certification, and EPA certification via PowerPoint.

Attorney Buchbinder stated that they have hired Robert Michaud from MDM Transportation Consultants, 28 Lord Road, Marlborough, to take a fresh look at transportation in particular the issues raised by the neighbors.

Robert Michaud, Managing Principal, MDM Transportation Consultants, Marlborough, MA, presented the traffic study including new traffic counts from May 2023 at 10 locations via PowerPoint.

Attorney Buchbinder called attention to the requested waivers behind sought but did not review them since they will be reviewed in future meetings. He stated he will provide responses to the ZBA Memorandum dated May 17, 2023 and updated landscape plan at the next meeting. Also, a shadow study, detailed lighting plan, fencing information, retaining walls, bicycle/pedestrian improvements, and parking ratio will be discussed at future meetings.

Attorney Buchbinder stated he agreed with City of Newton Planning Department's request for peer reviews on transportation, stormwater, sustainability, parking, civil engineering, traffic circulation, site access, and overall site design.

Cat Kemmett, Planner, City of Newton Planning Department, presented an overview of the comprehensive permit application and proposed plans, existing site conditions, zoning relief waivers needed, areas of concern, materials requested from the applicant, and peer review requests via PowerPoint.

Chair Rossi asked for input from the Board regarding the peer reviews requested.

Ms. Lipsitt stated her concern about the landscape design. Location of the dog park, access



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

to/from Hagen Road for pedestrians, cyclists, and emergency vehicles and how that intersects with the number of trees and plantings. She would like the landscape to be included in the peer reviews.

Ms. Sweet motioned to authorize all needed peer reviews and Ms. Lipsitt seconded the motion. The motion passed unanimously.

The Board requested a 3D model and a site visit to be scheduled.

Chair Rossi asked for feedback to the applicant from the Board.

Ms. Pucci asked what the mix of the 61 affordable units will be suitable for families and if there is a way to increase the number of total affordable units, more two- and three-bedroom units, and provide a deeper level of affordability in the mix.

Ms. Pucci stated she will be interested to see the peer review on landscaping and what kind of buffer between the project and the residential homes.

Ms. Sweet asked for clarification on the synthetic lawn. She would like to see more electric car capacity, transportation flow design, more pollinators in landscape design, and a community garden area.

Mr. Snyder stated a concern regarding traffic flow in the area and visitor parking and is interested to see the plans.

Ms. Lipsitt stated that the grade changes on the site within the neighborhood makes it imperative to have a model to understand how everything will sit. She stated a concern of the proximity to Rte. 9, that the building did not look residential, and hope that solar and green roof will be incorporated into the project.

Ms. Lipsitt stated that the entrance and exit should not be right next to each other so those attempting to exit will not be visually blocked by those entering.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Ms. Lipsitt stated there would need to be a signage package.

Ms. Lipsitt stated the Board will need information about ADA units and location.

Chair Rossi asked Attorney Buchbinder is the applicant was willing to provide a model.

Attorney Buchbinder agreed to a model.

Attorney Buchbinder stated that there is no plan for traffic to Hagen Road, but an enhancement of an existing foot path.

Chair Rossi asked for a site visit.

Attorney Buchbinder agreed to a site visit.

Chair Rossi stated that the project is jarring because of the proximity to a residential neighborhood. Traffic is also a concern especially for emergency vehicles to respond to the project as well as noise from construction and mechanical noise once the construction is completed,

Public Comments:

Jacob Silber, 47 Dudley Road, Newton, with Newton Impact, stated that 95% of the neighborhood is against the project. The project is too large, too many risks, traffic and safety issues, environmental issues, flooding issues, and it changes the character of the neighborhood. This project does not do enough to support the affordable housing issues that we all support. Working with both the City and the State for several years in regards to the accidents on Rte. 9. It is not pedestrian friendly. No one feels that Toll Bros is listening to us or providing enough helpful information.

Sharon Greenstein, 16 Old Field Road, Newton, stated the most serious issue is safety. The Rte. 9/Parker Street intersection is a large concern and will affect both the residents of this project and the existing Rte. 9 traffic. Old Field Road is a common access point for the neighborhood for Rte. 9 east including new student drivers from the high school. Merging onto Rte. 9 is already



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

dangerous at 50+ mph or greater plus navigate the cars coming down the ramp from Parker Street. Toll Bros. projects 1100 trips per day from the complex that will be merging onto Rte. 9 only 100 feet from Old Field Road. They will have an added challenge of a steep incline while trying to get up to speed with traffic. Hazard is amplified with deep flooding that we already see at Sam White's and there are coatings of snow and black ice in the winter. Those on Old Field Road already have issues navigating the existing Rte. 9 traffic but will now have to contend with 1100 more car trips from the complex that will be merging more slowly up the hill and only 100 feet from where we are accelerating up to speed. There are already serious accidents at Old Field and Rte. 9 and this complex will make it worse and cannot be reversed once built.

Councilor Lipof stated that this project is different than others in the city. Other projects are not up to a single-family home area, right up against Rte. 9, and there is better access for traffic flow. He echoes Ms. Lipsitt's concerns and those of the UDC. The project is on 5.8 acres, but only about half is usable. The setbacks from Old Field Road are not bad, however the massing of the building makes the height problematic. The topography is difficult, the wetlands are difficult, the rock to blast is difficult. All these things lead to a site that would not have 244 units on it – it would have much less. If there was a proper setback, a proper height, and a proper number of units. It has always been a mulch site because it was too difficult to develop. The wall being created up along Rte. 9 is unacceptable and that the development is as if they had a perfect five-acre developable site that gets proposed and then find that there are all these issues and still try to squeeze 244 units in. There are 15 acres on Dudley Road that may be talked about in the future and the number units being proposed is less than half of what is being proposed here. He stated he has been supportive of other large projects in Ward 8, but this must be reasonable to the neighborhood.

Heidi Werner, 30 Hagen Road, Newton, stated that they moved here 17 years ago into a beautiful residential area. Over the years she has witnessed a substantial increase in traffic, a significant number of car and pedestrian accidents on Hagen, Parker, and Rte. 9. An overwhelming amount of traffic comes more accidents. She works from home, walks her dog, and visits the schools and she witnesses and lot of car/pedestrian incidents, close calls, and accidents. She is deeply concerned with pedestrian safety and the surplus of traffic that this will add to the residential area. Due to the number of accidents on the South side she created a log to justify a flashing light to be installed on Parker and Hagen. In the past four months two people have been hit. One was someone walking



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

their dog and the other was a student on a bicycle going home from school. People constantly drive through the six stop signs on Old Field and Haynes Road without hesitation which puts bikers, pedestrians, and students in jeopardy. Additionally, she sees impatient drivers in cars going the wrong way on Hagen and Great Meadow every day. Drivers speeding through the crosswalks while pedestrians wait until someone finally stops. Traffic backs up from Wheeler to Parker and people are trying to use the crosswalk and its like a video game dodging through traffic. Her husband saw a school bus to NSHS in the opposite lane in a sea of traffic, kids riding their bikes, students walking, and parents rushing into this potentially dangerous situation. There are some people that will not walk on Parker because of the fear of a car jumping the curb due to the high speeds and can't understand how anyone feels residents of the new project would feel comfortable walking on Rte. 9. Her biggest concern are the students that bike and walk to and from school getting hurt. There are five schools within a one-mile radius. Two elementary schools, two middle schools, and one large high school filled with inexperienced drivers which increases the risk of accidents. The proposed building will add hundreds of cars and have 1100 trips, plus their delivery services, Ubers, and more. This will affect Parker, Dudley, Hagen, and Old Field. The increase in school bus fees this year will result in more children walking and riding their bikes.

Councilor Kalis stated his concerns are also with pedestrian and bicycle safety, the entrance/exit on Rte. 9 safety, and for the tree waiver not to be waived.

Daniela Alvarez Bradley, 19 Old Field Road, stated she is a lifelong Newton resident, has three school-age children, and is a Newton Public School teacher. She went door to door asking for support, feedback, and signatures for the petition. Every person she spoke with signed the petition without reservation. The neighbors stated concerns over size, height, scale, and environmental impact over the new development. Almost unanimously people voiced concerns over the dramatic increase in traffic and decrease in safety were the primary concerns for the development. She stated it would be irresponsible to ignore the significant increase in traffic congestion by adding 385 cars and essentially doubling the number of homes in our neighborhood. NSHS, Brown, and Oak Hill schools are tucked into our neighborhood and access by tertiary roads and the state highway. Traffic regularly overwhelms Brandeis Road and Wheeler Road, accidents are common, and want to know what the plan is for the streets to remain safe for residents, students, bikers, and pedestrians. Affordability is of great concern. She states as a teacher it is getting harder to recruit



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

teachers to the great schools because many cannot afford to live here. A starting teacher's salary is not enough to pay for an affordable unit. This is a missed opportunity to diversify Newton and incentivize those who work for the community to support our children. The neighborhood welcomes responsible development, but its paramount that true affordable housing be incorporated and the neighborhood's concerns regarding safety and traffic be addressed.

Punam Sharma, 28 Old Field Road, Newton, stated she has many concerns of a project of this scope. She is an abutter and her property falls within the conservation area. She added a small addition to her home and despite removing no trees she had to plant a significant amount of greenery. She has spent many hours tending to the plantings to ensure the area remains vibrant. She does not understand how a project this massive will not damage the conservation area the City worked so hard to protect. The construction and debris will cause harm to the plantings. The building will dwarf the conservation area and block it from sunlight. The land is backfilled with sand and slight changes can be catastrophic to the trees and shrubs trying to survive there. The building is simply out of scale with the neighborhood. Everything needs a waiver and nothing seems to fit within the current zoning. This project is being forced into a space that does not suit it.

Melanie Girard, 32 Old Field Road, Newton, stated she has lived here for 23 years with multiple complaints regarding Sam White's property. The property is in Newton and Rte. 9 is state-owned. When there are issues with the property Newton says to call the state and the state says to call Newton. It is referred to as "No Man's Land". Nothing gets done. Decades of logs placed by residents regarding noise and adherence zoning regulations with nothing getting done so what will the Board do about things being enforced before, during, and after this project for things on the property and the surrounding streets. The children have almost been hit by cars waiting for the school bus. There have been repeated requests for police patrols that never come because it is shift change. She states she wants to Board to consider enforcement as well as all the other requests.

Jay Portnoy, 60 Aberdeen Road, Newton, stated that it would be beneficial to have models from different perspectives and elevations of the project and surrounding neighborhood.

Michael Mindlin, 459 Dudley Road, Newton, stated that he, wife, and three kids moved to Newton five years ago drawn to Newton's unparalleled residential charm and uniquely diverse community.



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

Concerns about safety on what is known as “Deadly Road” is paramount. The scope of the building is totally out of sync with the neighborhood and character. He states he wants the Board to look at his project through the lens of the citizens. Appreciates Toll Bros for being in the meeting, but they are a for-profit developer, and he struggles with reconciling the views of a developer to ensure the statute of City affordability is met.

Geoffrey Norman, 53 Sheldon Road, Newton, stated he has lived at the address 32 years and all four kids went through the Newton school system. Two studies need to be done. Rte. 9 done by MA DOT and MEPA study and another independent study of the neighborhood street. The plans do not show access to Hagen Road and there needs a permanent restriction from the neighborhood streets.

Ann Findeisen, 132 Hagen Road, Newton, stated she has lived at the residence for 32 years and is a direct abutter. Flooding is a major concern in the neighborhood that has reached a critical point in the last year. Rainstorms result in a rushing river through the yard and the next-door neighbor’s yard which ends in a pool in her yard and onto Hagen Road. The trees and the grass in that area are dying from the flooding. Toll Bros. is saying the project will improve the situation, but the building as proposed covers such a large portion of the site that is currently a permeable area that will no longer be so. The site incorporates a stream, a wetlands area, a flood area, and a 70-foot drop. The houses on Hagen Road are at the bottom of the 70-foot drop. A WBUR report from May 4, 2023, stated that The Metropolitan Planning Council recently released a report warning that Greater Boston is susceptible to unpredictable storm water flooding. The FEMA maps which are the primary source of flood risk information have been poorly predictable of that. The number of intense storms has increased dramatically, and the heaviest rain events now drop 55% more precipitation than the rainiest days mid-century. A Boston Globe article dated May 10, 2023, quoted the Director of The Metropolitan Planning Council stating more attention was needed for the inland area flooding. Rivers, streams, and especially to areas of previously filled land, which there is a lot of in Newton. The authors wrote that in the analysis there is a clear link between filled wetlands and flooding in the area. The states climate assessment found that the damage to inland buildings from heavy rain and overwhelmed drainage systems is one of the biggest risks Massachusetts faces from climate change. Researchers concluded that there were a few factors that could increase the risk of home flooding. Being built in the 100–500-year flood zone, being



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

built between 1940-1980 which the neighborhood was built in the 1950's, being built near water, wetlands, or filled wetlands. FEMA flood maps have been criticized as by reliable sources including by the Director of FEMA who was quoted as saying the FEMA maps are outdated. She is asking the ZBA to take the flooding into account and what could happen to the neighborhood.

Rachel White, 124 Hagen Road, Newton, stated her family has lived at the address for 25 years. She is a proponent of affordable housing and a sustainable building practitioner and a direct abutter to the project. As a proponent of affordable housing, she favors development to increase diversity of the housing stock and accessibility for households making less than the AMI, but it is hard to support this project due to the complexity of the site, the size and bulk of the building, and that there is only minimal affordability offered. It would be important to see an increase in the number of affordable units offered and deeper affordability. She is co-owner and CEO of Byggmeister Design Build, Newton, a remodeling firm of 40 years and serves on the board of New England Sustainability Energy Association and is pleased with many aspects of the proposal including the commitment to Passive House Certification and fully electric building. More can be done including increased EV parking spaces. She is skeptical of the sustainability narrative around transportation as designed because it will not decrease automobile use but increase it. This is not good from a sustainability perspective or a traffic and safety perspective. Rte. 9 is a nightmare for bicyclists and pedestrians and the project as designed does not address that. As an abutter that has poured heart and financial resources into her home, she is concerned on the day to day impact the project will have on her home and yard. It is closer to the property line than the two-family house that is currently there. It will be more than twice as tall at its highest point and go from four neighbors to 244 neighbors many of whom will have direct sightlines into her home. If the use of the footpath to Hagen Road is retained the pedestrian traffic through my property line will increase exponentially. Concerned about only 10 visitor parking spaces at the site so visitors will park on Hagen Road. She reached out to Toll Bros. and their team to come visit her backyard to see the impact the project would have and asked them if they would want to live behind this building. None have ever directly answered my question, but after their initial visit they made several tweaks to the design which were showed tonight. She appreciates their responsiveness and hopes it's the beginning and not the end. She would like the Board to visit her backyard during the proposed Site Visit.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Marie Fredrick, 144 Hagen Road, Newton, stated she has lived there with husband and two daughters for 23 years and are immediate abutters to the site. They are in favor of affordable housing, but this project proposed is expensive luxury apartments with some affordable units sprinkled in is not that. They welcome development that is truly affordable and a project that balances local health, safety, open space, and building concerns. They remain optimistic that during this process the ZBA can get this project to that point. It is a close neighborhood that cares and looks out for each other's health, safety, and well-being all of them love their outside spaces and wildlife. Trees eat the greenhouse gases to fight climate change, boost mental and physical health, clean the air to breathe more easily, give a home to the wildlife we love, cool the earth, and filter the water making the drinking supply cleaner and more reliable. These statements may be obvious, but important to remember for this enormous project will transform a part of Newton's native landscape forever. A quote from Green Newton's website "mature trees sequester a substantial amounts of carbon something that saplings cannot accomplish for decades". Every loss of a mature tree contributes to climate change crisis. The loss of a single tree impacts air quality and storm water drainage for half a city block. The developers are seeking a relief of the tree ordinance for the project and the landscape plan indicates that 2575 diameter inches will be removed from the site with only 307 inches proposed to replace them. Mr. Welch, City Director of Forestry, noted plants slated for removal are native trees and those close to Rte. 9 helps combat pollution in the air caused by traffic. Requests that the developer retain more trees and increase plantings to make up for the net loss of the mature trees. There is no proposal to transplant mature trees to other areas of the property as an option. There is not enough tree coverage in areas of the property to provide health and privacy to the abutters and the neighborhood. On the south side of the there is not enough room for trees to be planted and a natural green transition to develop. By the time the new plantings grow to provide a health benefit and cover for light, noise, and privacy it would take years. The neighborhood wants to believe Toll Bros. will work with them to get to a harmonious place for the neighborhood and the project, but when reading statements in the application such as "the immediate surrounding neighborhoods comprised primarily of single-family residences the proposed building would provide a visual and physical buffer between Rte.9 and the single-family homes serving as a residential transition place" they are perplexed. The transition to Rte. 9 is hundreds of mature trees, two historic homes, and a myriad of wildlife. ZBA members thank you for all your time, consideration, and hard work for our Garden City of Newton.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Steven Farrell, 30 Winston Road, Newton, stated he is concerned about safety. The proposed development is 200 yards away from the intersection of Parker Street and Rte. 9. It is historically crowded and dangerous at high traffic times. Thousands of citizens of Newton, Needham, Wellesley, and other towns are trying to get to work right past the entryway of 528 Boylston, but more importantly every school day morning and afternoon 3500 students, ¼ of Newton's school-age population travel in this area in cars, bicycles, buses, or on foot to reach NSHS, Oak Hill, Brown, and Countryside each less than ½ mile from the site. Buses divert from Rte. 9 to Sheldon and Old Field Roads right near the entry of 528. The area is so dangerous the City of Newton applied for and received \$627,000 Safe Street School Grant from the DOT to implement improvements to the Parker Street and Rte. 9 section. The application was before the Toll Bros. project was initiated. The improvements hope to make it safer for students traveling to and from school by enabling drivers to see students in the crosswalks and to assist students and other pedestrians crossing Rte. 9. The addition of 400 vehicles, primarily at the morning and evening rush hour, will add immeasurably to the congestion, frustration, and dangerousness in the area as those cars try to enter Rte. 9 to go East even if they must go a mile to go West. We fear that some cars will try to turn illegally left, as some trucks from the site do now, creating more dangerous havoc. We are also concerned the residents will start parking in the neighborhood to avoid the Rte. 9 chaos thus creating more congestion on these narrow streets in the morning and evening. Asked the ZBA to ensure that the neighbors are included in all the serious discussions about the potential safety hazard that will be created by this development. Too many children's lives depend on it.

Ben McGraw, 50 Old Field Road, Newton, stated he is a life-long resident of Newton and NPS teacher. He states his concerns are the limited visitor parking and the overflow parking that will happen in the neighborhood with the pedestrian traffic that will happen through the homes to get up to 528 and that the project will only have eastbound access to Rte. 9 and the residents will look for other ways to access the westbound side other than going down to Wegman's in Chestnut Hill and circling back. Perhaps the residents will park overnight on Hagen Road and walk up to 528 which will add to the traffic to the side streets in the morning or leave 528 and turn onto Dudley Road which is quite narrow and will not be able to handle the influx of additional cars trying to weave their way through the back streets to go west again.

Daniel Herring, 77 Old Field Road, Newton, stated the Parker Street bridge is a major intersection



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

in the neighborhood. His two boys will be walking to the middle and high schools for the next several years, so he shares in all the traffic and safety concerns that have already been raised. Due process is essential for effective governments. In particular hopes the ZBA will play an active role in supporting openness and balance between Toll Bros. and the community. As a first step he asked that the ZBA solicit community input on the scope and purpose of any independent studies before they are performed. Not doing so early in the process can lead to consequences later such as a lack of trust, duplication of work, and unnecessary conflict and delay. The Boston area has had a housing crisis for decades and Newton cannot solve all of it. Growing up in the mid-west home ownership was over 90% because land was cheap. A recent college graduate with a good job could easily buy a starter home. This gave a sense of pride, economic stability, and belonging in the community that renting does not provide. Moving to the Boston area was a shock. Housing was twice as expensive outside Rte. 495 and just crazy inside I-95. He rented and saved carefully for over 10 years prior to buying the house. Along the way met many other renters from students to single parents to multi-generational households. He was one of the lucky ones with good careers and a plan to escape. Felt particular compassion for those in affordable housing. In addition to the usual struggles of life they would face long waits to win a placement lottery, grant quarters, and landlords often provide minimal maintenance, towed their cars, and tried to evict them so the unit could be rented at a higher rate. The Sam White location is prime for development. It would be a shame if 40B enabled a Fortune 500 corporation to come in, extract millions in profit, and leave the community burdened with an expensive rental complex all in the name of affordability. He hopes that all can work together to achieve a better outcome. Affordable garden-style townhouse would be a welcome addition to the neighborhood. It would give tenants a taste of Newton lifestyle not just the zip code and a long-term fixed lease or purchase option would give them stability.

Bruce Landon, 40 Old Field Road, Newton, stated he has lived at the residence 25 years with his wife and two daughters. He states he is a direct abutter and in the pictures from Toll Bros. there is a line going to the corner of the house. There is a forest of trees between Old Field Road and the development, but when the site was walked Toll Bros. stated that they would be taking down most of the trees because they were either non-native or not in great shape. They are old growth trees that are 100-150 feet tall so any tree taken will be an issue concerning shade and visibility to the site so there is a concern that the trees will be taken with no plan to replace them. If they are



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

replaced it will be 50 years before they are tall enough to be anything. The application states accessibility to public transportation but the site is not accessible to public transportation. The stops are not walkable or safe. The bus on Parker Street is not heavily used. The Newton Center T stop is over a mile away. Any assumptions the developer had for the use of public transportation is an over-assumption. The traffic study really needs to address that because there will be more trips by car than they were thinking about.

Rob Sellers, 16 Old Field Road, Newton, stated that he and his family have lived there for 24 years. He stated that he collected signatures and Newton residents that drive their kids to school not just the neighborhood is concerned about this project. The affordable housing planned calls for \$110,000 per year to afford to live in one of the family units. That is more than civil servants makes and he is one of them. That is more than teachers and entry level jobs pay. People are leaving Boston because it is too expensive so affordable housing is important. Traffic is a major concern especially with the merging. To go West you have to go East and then turn around. That is twice the traffic at 1100 car trips per day and people will use their GPS apps which directs cars to Dudley and then to Brandeis. It will direct through the neighborhood. He stated he had met with Toll Bros. to show how close the development was to the homes and the proposal showed no tree buffer on the west side of the project despite the fact that the project is 100 feet away.

Lucy Chansky, 259 Jackson Street, Newton Center, stated her sympathy for the neighbors and how difficult this project must be. The presentation showed a dog park, but would prefer there to be trees instead of a dog park. The design of the building is inappropriate and too massive and does not fit into the neighborhood in any way. It needs to be redesigned and made smaller. Paul Brook comes through the backyard and wonders what the impact of the development will have on the yard from the water that runs off into Paul Brook. There is already a water problem when they get rain and is concerned this will make it worse. People will cut through Jackson to Langley to avoid traffic on Parker Street Bridge from Rte. 9 and then would have to turn left and again left onto Rte. 9 and it is a blind turn. There should be more lower cost apartments; 80% of the income level is not enough and there should be a much lower-level income for the apartments. The swimming pool is practically in the backyard of the people living on Hagan Road. The noise will be awful all summer. The small family next door to her has a pool and it can get very noisy so imagine an entire development.



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

Rick Levin, 48 Little Field Road, Newton, asked if the Board could make a request for what the City Assessors think the future, estimated tax revenues and related City expenses for the proposed project versus the gross tax revenues and expenses for projects in other parts of the City that have a lower community impact of the same number of units and wonders if the Board would find that helpful when contemplating these types of projects+

Chair Rossi responded that the Board is required and entitled certain items to consider under Chapter 40B and assured Mr. Levin the Board will receive those items and gather all the information and will consider everything they are allowed to consider under the statute.

Karen Weissel, 99 Hagen Road, Newton, stated she is directly across from the proposed development and has lived there for 22 years. There is no proposed road to connect the development to Hagen Road, but there is a proposed pathway to Hagen Road. Residents and guest would easily walk around to Hagen Road and the neighboring roads. Residents of the development to get in and out onto Rte. 9 would have to drive back and forth in heavy traffic. The alternative is to use Dudley Road and travel through the congested Newton South area. The easiest alternative would be for residents and their guests to park on Hagen Road and take the pathway. Even today residents on Hurley Road choose to park in a circle at the end of Hagen Road and Adeline Road to make it easier to get to Rte. 9 West. Today it only consists of 3-4 cars, but with a 244-unit development and a limit of 10 visitor parking spaces the potential issues grow exponentially. As Hagen and Adeline Road are the main access roads for Newton South High School and they are already busy morning and afternoon with car, bicycle, and student pedestrian traffic. There is already significant truck, bus, and car traffic as well as street parking. The concerning safety issue has not been appropriately addressed in the development plans. Ms. Weissel asked what the plan is to address this dangerous situation and ensure the safety of school children walking and biking to school.

Simon French, 47 Glen Ave, Newton, stated in the planning presentation it showed the space between the buildings of the development and the existing homes not the lot lines and hopes that will be addressed. Toll Bros. touts itself as luxury, premiere home builders, but this is being presented as a Chapter 40B aimed at affordability. This seems contradictory. This is primarily a



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

single resident district and wonder if the ZBA will be asking for a pro-forma to see if the project can be achieved with less density and still be financially feasible. It is his understanding that 40B should only be provided relief to make the project financially feasible.

Margaret Zaleski, 11 Marshfield Road, Newton, stated she is directly across Rte. 9 from the project. She agrees with much of what has been said. As proposed the residents would drive up the hill on Rte. 9 towards Hammond Pond Parkway and then turn around to go west. There is also another project being developed on the other side of Rte. 9 across from this project a little further towards Hammond which will also be adding cars to the area. Flooding is also a concern. There is water in the backyard similar to what happens on the other side of Rte. 9. This development will back up more water into my backyard and cause even more flooding than it already has which would be intolerable. Ms. Zaleski is also concerned with light pollution. The six-story building across from her house will now cause her view to be an urban landscape not the trees and the homes and the soft lighting of the neighborhood that she currently sees. There seems that the building has no softness, no balconies, and no trees that the noise coming off Rte. 9 will bounce over to her side of Rte. 9 and it will be difficult to live in the neighborhood with the additional noise. This development is totally out of place with the community and hopes the Board will consider everything that has been said this evening.

Monty Shah, 109 Dudley Road, Newton, stated that talking about the magnitude of the project safety, traffic, landscaping, wetlands, and conservation lands, but it is also the magnitude of the project is the impact it will have on Rte. 9 and all the surrounding areas including Dudley Road and there is another project that may be getting approved on Dudley Road. This is a huge project on six acres of land and another potential project on fifteen acres of land which will also impact the area with traffic, safety, and landscaping like this project. In the future he would like the applicant to revisit the studies of traffic and safety and apply it to the future project that may or may not get approved with this project that will affect the entire Dudley/Rte. 9 corridor. He's not sure if this will be discussed in future meetings how these potential projects in tandem could affect the area.

Attorney Buchbinder stated it was very informative to hear from both the Board and the community.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Ms. Lipsitt stated that the neighbors have been appropriately concerned about the flooding in the neighborhood which the Board is aware of and it is the responsibility of the Conservation Commission, but the Board needs to hear from the Commission and any other appropriate divisions/department before we get too far down the process because the map the applicant shows is in the FEMA 100 year floodplains that are out of date. He would like Conservation Commissions input early on for the help for the developer as well as the Board. The concerns of students getting to and from school and what routes are they taking while walking or on the bus. Do garbage trucks, deliveries, etc all access this site through this one pair of drives?

The next hearing for this project will be July 24, 2023.

Agenda Item 3: Review and approval of minutes for April 26, 2023 meetings.

A motion was made by Brooke Lipsitt to approve the minutes as circulated. This motion was duly seconded by Jennifer Pucci. The motion passed 5-0.

Mr. Rossi concluded the meeting.

Adjourned 10:25 p.m.

ZBA DECISIONS can be found at www.newtonma.gov/ZBA



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS
Brenda Belsanti, Zoning Board Clerk

MEETING MINUTES

Monday, July 24, 2023.

7:00 p.m.

VIRTUAL ONLY

Board Members Present: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, Stuart Snyder, Jennifer Pucci, and Denise Chicoine (alternate)

Staff Present: Brenda Belsanti, ZBA Clerk; Jonah Temple, Deputy City Solicitor; Jennifer Wilson, Assistant City Solicitor; Katie Whewell, Director of Current Planning; Alyssa Sandoval, Deputy Chief Planner, Cat Kemmett, Senior Planner; Anthony Ciccariello, Zoning Commissioner; and Andrew Mavrelis, Zoning Enforcement Agent

A public hearing of the Newton Zoning Board of Appeals was held as a virtual meeting via Zoom on Monday, July 24, 2023, at 7:00 p.m. on the following petitions:

1. **#05-23** Liam M. Ryan of 125 Grasmere Street, Newton, Massachusetts, pursuant M.G.L. c. 40A, § 8 and 15, appealing the May 2, 2023 issuance of a building permit by the Commissioner of Inspectional Services for the interior remodeling of the subject property and the May 5, 2023 Decision of the Commissioner of the Inspectional Services granting an accessory apartment. The subject property is at 129 Grasmere Street, Newton, Massachusetts within a Single-Resident 3 (SR-3) zoning district.
2. **#04-23** Toll Bros. Inc., requesting a Comprehensive Permit, pursuant to M.G.L. Chapter 40B, to construct a six-story all-residential development with 244 residential units on 5.82 acres of land located at 528 Boylston Street in the SR1, SR2 Zoning Districts. The proposal includes 61 affordable units and 385 parking stalls.

Agenda Item 1: **#05-23** Liam M. Ryan of 125 Grasmere Street, Newton, Massachusetts, pursuant M.G.L. c. 40A, § 8 and 15, appealing the May 2, 2023 issuance of a building permit by the Commissioner of Inspectional Services for the interior remodeling of the subject property and the May 5, 2023 Decision of the Commissioner of the Inspectional Services granting an accessory



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

apartment. The subject property is at 129 Grasmere Street, Newton, Massachusetts within a Single-Resident 3 (SR-3) zoning district. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, Stuart Snyder, Jennifer Pucci, and Denise Chicoine (alternate)

Documents Submitted:

1. Appeal Application dated April 20, 2023.
2. Letter with exhibits from Attorney Hugh Starkey dated June 30, 2023.
3. Opposition Letter from Attorney Peter Harrington dated July 18, 2023.

Testimony:

Attorney Hugh Starkey, 33 Broad Street, Boston, representing Liam Ryan, 125 Grasmere Street, Newton, adjacent to the subject property.

Chair Rossi stated that the Board had received all documents Attorney Starkey submitted and were very familiar with them so Attorney Starkey did not have to feel he would need to repeat the presentations.

Attorney Starkey stated that the two primary issues with the issuance of the permit by the Inspectional Services Department at 129 Grasmere Street, Newton. First issue is whether the reconfiguration of the dwelling on the permit plans and the ownership of the property comply with the accessory apartment ordinance. Second concern is the zoning status of the property where it has been used for 40 years as an unlawful multi-family dwelling in a single-residential district and sits on a non-conforming lot.

Attorney Starkey stated that the first issue the property owner concedes that the co-owner of the property who intends to reside in the accessory apartment will be Mark Marry, who owns only a 25% interest in the LLC. The accessory apartment ordinance requires that a majority owner must occupy at least one of the units in the reconfigured dwelling. On this basis alone with only a 25% owner interest residing in the dwelling approval of the accessory apartment by ISD was erroneous and the permits must be revoked by the Board.



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

Attorney Starkey presented the exhibits of the plan and some are subject to doubt on the first floor are arbitrarily designated as common area and excluded from the 1000 square foot maximum unit size for a by-right accessory apartment. That will require some interpretation of the ordinance which is somewhat vague on what is included and what is not.

Attorney Starkey stated that there were five bedrooms shown on the plans with a combined second and third floor unit. The first floor would be the accessory unit occupied by the owner of the property. The second and third floor will be combined into a second unit and the plans suggests there will be five bedrooms. This seems to be more than permitted of three lodgers in the ordinance which indicates that residential dwellings can only have three lodgers and the plans indicate five bedrooms, so it is unclear. The reason his client objected to the previous illegal multi-family use was the excessive number of residents and the effect it had on his and his family's enjoyment of their property with the excess traffic, parking, and other activities generated by the number of residents there.

Attorney Starkey stated that the Board should revoke the permits issued by ISD and instruct compliance with the ordinance particularly the ownership and occupancy limitations.

Attorney Starkey stated the current zoning status of the property of the house is on a lot that pre-dates zoning. The zoning use districts were first set in 1920 and the house is on a lot from the 1890's with the house being built around 1900. The lot does not meet the minimum lot size for frontage requirements for the new or old lots. The lot is 6947 square feet with 60 feet of frontage where an old lot requires 7000 square feet and 70 feet of frontage. During the time the house was used as a single-family residence until about 1979 it was a protected, pre-existing, non-conforming lot and structure. However, that type of protection is not perpetual and may be lost by abandonment of non-use of the single-family use in favor of the unlawful multi-family dwelling for over 40 years. The owners are trying to cure that by returning it to a single-family and adding the accessory apartment, but that does not cure the persistent, zoning non-compliance issues. Zoning ordinance addresses abandonment and discontinuance of non-conforming use in structures and sets out a threshold of two years of abandonment or discontinuance. Land is not protected in the increased zoning requirements under the ordinance and as a result and under the zoning act because those protections apply to vacant land and the lot has had a house on it since 1900. In the



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

view of the petitioner ISD should not issue any permits to the property until the lot is made to conform with the dimensional requirements of the zoning ordinance. Its beyond the scope of this appeal if it appears the lot can be reconfigured with the adjacent lot at 55 Washington Street, Newton, which is also owned by a member of the Marry family, to cure the zoning deficiencies on the property.

Commissioner Ciccariello stated that the plan submitted is under 1000 square feet which is required. The ordinance does not require a maximum or minimum number of bedrooms it can be as many different rooms as the owner wants so does not see why there is an issue with the bedroom count.

Mr. Mavrelis stated that Mr. Starkey is referring to bedrooms on the second and third floors when the plans clearly show that the accessory apartment is on the first floor with one bedroom. Regardless on how bedrooms are on the higher floors the accessory apartment has one. The accessory square footage is 978 square feet. There is common area on the plans that would have usage from both apartments. The process is still on-going, there is currently a stop-work order while waiting for additional paperwork and received an owner affidavit from Mark Marry requirement. The city will do another inspection when time for certificate of occupancy and there will be another affidavit required from the owner as to who will be living there. All documents can be viewed on the NewGOV portal.

Attorney Peter Harrington, 505 Waltham Street, Newton, representing Marry Grasmere Realty LLC, stated the property has been used in its previous fashion before the Marry's bought the home. They were assured that it could still be used in that fashion until Mr. Ryan filed his complaint. The first complaint is immature because the decision they are seeking an opinion on is not made until the issuance of the occupancy permit. If a builder builds a house with an accessory apartment, they do not need to define who the buyer or occupants are going to be while the house is under construction. The owners understand that they may need to change who owns what of the house and land in terms of interest owned and they are willing and able to change the form of ownership to comply with any requirements the City of Newton has. It was the owners understanding under the rulings of the previous Commissioner that they were in conformity. That Mark Marry was an occupant of the house and to the degree that the documents of forming the LLC that they require



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

there be a joint decision of the two managers that Mark Marry had control over what happens and he had to agree to any change. If the Commissioner decides that rule should be interpreted differently the owner is ready to make any changes necessary, submit proof of changes, and apply for the occupancy permit. This matter should be dismissed because it is immature and not ripe for decision at this time.

Attorney Harrington stated that ISD has already pointed out the second issue of the bedrooms. If the room has a closet ISD like to have it labeled as a bedroom, but it can be used as a sitting room or game room. If it's a bedroom they will check window sizes, closets, and it meets the building code definition of a bedroom. If ISD would like the designation of the room changed it is not a problem. He does not believe you can lose an as of right use of a piece of property. State law states that if a person owns a lot of 5000 square feet the owner must be allowed to build a single-family house which trumps City zoning in Massachusetts. If an owner has a single-family house in Newton and a single-family house is allowed to have an accessory apartment as long as it meets certain requirements as it stands today for normal occupancy and use. There is not an issue with the right to preserve an as of right use in any zoning district. The statutory reference the petitioner makes only applies to non-conforming uses not as of right uses.

Public Comments:

Chair Rossi asked for comments from the public.

There were no public comments.

Chair Rossi asked for comments from the Board.

Ms. Lipsitt stated that the issues raised in this appeal have been addressed so she had no further questions.

Mr. Snyder asked ISD for their thoughts on occupancy and ownership.

Mr. Ciccariello stated that when an application is received there is an affidavit attached. The



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

affidavit states that if he is not the owner of the property ISD will require it when applying for a certificate of occupancy. There was an enforcement done on this property due to it being used as a three family. The reason why the City has the accessory apartment ordinance is for Newton residents to age in place and to get illegal apartments that don't have adequate egress or other issues up to code and safer.

Mr. Snyder asked if Attorney Harrington was conceding that there may be an issue with the certificate of occupancy and ownership and are prepared to rectify that if needed.

Mr. Harrington stated if the property is taken out of the LLC then Mark Marry is the owner. The family is willing to break up the LLC to meet the requirements of the City if needed. The property was bought by them specifically to be a retirement home for family members.

Mr. Snyder asked Attorney Starkey where he differs on ownership from Mr. Harrington and ISD.

Attorney Starkey stated that the owner would be in the accessory apartment not the second and third floors. ISD stated that there is no limitation of the number of people that can live in the dwelling, but the total combined individuals in the principal and accessory apartments may not exceed the number allowed in the principal unit alone. There can be up to three lodgers in the residence. It is the building as a whole.

Ms. Sweet asked if it was accurate that there are not necessarily five bedrooms which means there are not necessarily more than three lodgers.

Mr. Starkey stated that he didn't believe that the rooms would not necessarily be used as bedrooms but that ISD had to do their due diligence to make sure that were not used as bedrooms. Also, as part of the accessory apartment ordinance the owner of the property has to make an annual certification of compliance with the City so there is ongoing oversight of this.

Ms. Sweet asked if that had to do with the building permit or the occupancy permit or after occupancy for regular compliance.



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

Attorney Starkey stated that it is directed at compliance of the accessory apartment ordinance primarily, but it is with continued compliance as well.

Ms. Sweet asked if that was after people are living in it which is not what the Board is doing now with the building permit.

Mr. Starkey stated that was correct, but ISD needs to make sure occupancy is not exceeded.

Ms. Sweet asked how ISD is to know what will happen in the future at this time.

Mr. Starkey stated that people have not moved in or leases signed but occupancy limitations should be made clear to the owners of the property.

Ms. Pucci asked ISD if the ownership requirement been met. The LLC submitted materials to get the permit, but ISD does not render a final decision until the certificate of occupancy.

Mr. Ciccariello stated that was correct and that the job is not complete yet. When the project was completed as planned to meet the ordinance. The finalizing of the building permit itself really happens all at the end.

Ms. Pucci asked if it is at that point of the end of the process when issuing occupancy that it's determined if the particular apartment is in compliance with accessory apartment ordinance.

Mr. Ciccariello stated that was correct and it is verification that the project was completed as planned to meet the ordinance.

Mr. Mavrelis stated that it would also have to meet state building code and the architects as built drawings. ISD does not see a limitation in the number of bedrooms. It is the question of use and how many people are going to be in those spaces. That is an enforcement issue. That is how the issue came up in the first place is that the property was being misused. This is the solution that was rendered to correct the situation.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Mr. Ciccariello stated that the three lodgers rule is for people that are unrelated. A family of five can move into that apartment and that would not be an issue of more than three people because it would be a family unit. Only if renting to three unrelated person would the rule apply.

Ms. Pucci asked if there was any legal support that an owner can abandon as of right use because they are out of compliance with the ordinance.

Attorney Wilson stated Legal Department was unable to find any legal support for that contention. The Legal Department's view that even if it is being used out of conformity it is still use and as such would not be abandoned.

Ms. Chicoine stated that her questions have been addressed.

Chair Rossi asked Attorney Starkey for clarification of what exactly the client is appealing from. The application does not reference the issuance of a building permit, but references the decisions of ISD and the agenda does reference the building permit.

Attorney Starkey stated that there was a set of plans that were stamped as "permit approval" and shortly after a letter approving the accessory apartment. Permits are subject to appeal. The process may not be wrapped up, but if he did not appeal he may be waiving his rights in the number of aspects of the accessory apartment ordinance and zoning ordinances. This is not just a by-right use, but also a non-conforming lot. The cases cited clearly indicate that where a single-family dwelling on a non-conforming lot where the dwellings were destroyed and after a number of years the property owners wanted to rebuild a single-family dwelling as by-right usage the zoning authorities in those towns as well as the appeals court ruled abandonment as a matter of law due to the passage of time. In Newton more than two years is considered abandonment or discontinuance and building permits were denied in those cases.

Chair Rossi asked for further clarification and asked if he could rely on the application.

Attorney Starkey stated that was correct.



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

Chair Rossi asked if the issue of abandonment would be relevant because that would go to the issuance of the building permit and not a determination if this was an accessory apartment.

Attorney Starkey stated that he believes that the first stamp “permit approval” on the plans is the issuance of the building permit.

Chair Rossi asked if it was his position that the building permit that was issued on May 2, 2023, because that is not the understanding.

Attorney Starkey stated that is what he believes. It is he understanding that a building permit was issued at an earlier point, then it was revoked due to the infirmaries in the accessory apartment application, and then reinstated with the stamped approval on the plans.

Chair Rossi asked if the permit was revoked wouldn't it have to be reissued.

Attorney Starkey stated he was not sure what ISD practices were in that regard.

Mr. Ciccariello stated that the permit was issued after an enforcement. Received the plans and they were not in accordance with the accessory apartment ordinance because the planned space was too large. A stop work order was issued. A compliant set of plans were submitted and the a decision was written since the plans were now in compliance and the stop work order was lifted.

Attorney Harrington stated that the Marry family is doing at their house is the same thing Mr. Ryan has done next door at his house. The difference is Mr. Ryan and his family live in the main apartment and not the accessory apartment. Mr. Marry is going to live in the accessory apartment which is allowed under the ordinance. The cases Attorney Starkey referred to are the raising of buildings on substandard lots and losing the right to rebuild the buildings. That is not the case here. They did not raise the building or give up a single-family use. There was a main occupant. They had too many people living there in an arrangement that was not satisfactory. The arrangement was not due to the number of occupants. The arrangement was due to the number of kitchens. Attorney Starkey's arguments do not apply to Newton Zoning.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Attorney Starkey stated that the allegation the Mr. Ryan is using the house as a two-family is unsubstantiated. It is a single-family and has always been used that way.

Ms. Lipsitt made a motion to close the public hearing. Ms. Sweet seconded the motion. The motion passed unanimously.

Deliberation:

Ms. Lipsitt stated that she appreciated Attorney Starkey's thoughtful appeal and arguments, but ISD has made clear that the size of the unit is in compliance with the ordinance. There doesn't seem to be a timely question about the occupancy either by the owner or by potential occupants to the apartment. She understands Attorney Wilsons statements about the past unlawful use. She does not seem how she can support the appeal.

Mr. Snyder asked Chair Rossi if he believes there has been a building permit issued to appeal.

Chair Rossi responded that he believes yes. He also stated that he agrees with Ms. Lipsitt, on the abandonment issue in particular, that there is no case law that can be applied to this case. Going beyond that if the appeal is only on the decisions of the Commissioner that only have to do with the accessory apartment than the abandonment argument is only for the building itself not the accessory apartment. We get to the same result a different way.

Mr. Snyder stated he agrees with both Ms. Lipsitt and Chair Rossi.

Ms. Sweet stated she is in agreement so far.

Ms. Pucci stated that the application was complete and thoughtful, but also agrees with her colleagues. The challenge around the ownership of the property is not at that stage yet and there is no legal support for the abandonment issue.

Mr. Snyder stated that the only question would be if the appeal is rejected at this stage would Mr. Ryan be able to bring an appeal at a later stage of the process without prejudice.

Chair Rossi stated he also appreciated the petitioner application and that it was well done. Some of the issues raised could be addressed later in time through enforcement actions if these issues come to pass.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Ms. Chicoine stated she had no questions.

Ms. Lipsett made a motion to deny the appeal. Mr. Snyder seconded the motion. The motion passed unanimously 5-0.

Agenda Item 2: 1. #04-23 Toll Bros. Inc., requesting a Comprehensive Permit, pursuant to M.G.L. Chapter 40B, to construct a six-story all-residential development with 244 residential units on 5.82 acres of land located at 528 Boylston Street; 0, 502-504, 516 Boylston Street; 0 Hagan Road; and 24-26, 32-34 Hurley Place in the SR1, SR2 Zoning Districts. The proposal includes 61 affordable units and 385 parking stalls. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, Stuart Snyder, Jennifer Pucci, and Denise Chicoine (alternate)

Documents Submitted:

1. Revised set of conceptual plans from the applicant dated July 7, 2023
2. Revised site plan from the applicant dated July 17, 2023.
3. List of responses from the applicant dated July 17, 2023.
4. Letter from NBBJ peer reviewer
5. Memorandum with attachments from the Planning Department dated July 17, 2023.
6. Memorandum from the Associate City Engineer dated June 7, 2023
7. Packet of compiled emails, letters, and comments from the public.

Testimony:

Attorney Kathy Winters, Schlessinger & Buchbinder, 1200 Walnut Street, Newton, representing the petitioner Toll Bros. for a potential development at 528 Boylston Street, Newton pursuant to M.G.L Chapter 40B. The revised design plans were a result of the public comments from the previous meeting and the planning departments memorandum dated May 17, 2023. Attorney Winters stated that the revised designs changes include massing, reduction in size to 198 units with 50 affordable units, and future studies based on the new design.

Tom Schultz, architectural team, 50 Commandant's Way, Quincy, presented a PowerPoint



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

focusing on the site plan and revisions made including setbacks, height, massing, main entrance, and parking.

Steve Martorano, Bohler Engineering, 45 Franklin Street, Boston, presented landscape design including site constraints, plantings, courtyards, walking paths, fire egress, play area, and pool area. Mr. Martorano also touched on stormwater topics.

Robert Misho, Managing Principal, MDM Transportation Consultants, 28 Wood Road, Marlborough, presented the updated traffic report with feedback from the planning department, City initiatives, and neighbor concerns which will be submitted to the peer reviewers. Topics included improving and increasing pedestrian accessibility and flow at intersections, school access, and public transportation access, widening sidewalks, ADA compliance, and parking ratios.

Will Adams, Toll Bros, 160 Gould Street, Needham, thanked the Board, City, and neighbors for their feedback and ideas that went into the new project design.

Attorney Winters concluded the presentation.

Cat Kemmett, Planner, City of Newton Planning Department, presented an overview of the proposed 40B housing development and the revised plans for the building, landscaping, and site design. Full plan set has not been submitted at this point.

Alan Mountjoy, Principal NBBJ, 1 Center Plaza, Boston, reviewed submitted memo and presented a PowerPoint including topics of open space, massing, accessibility, setbacks, pedestrian walkways, safety, connectivity, and buffering, bike storage, water areas, and connectivity to natural areas on site.

Brooke Lipsitt asked how visitors will be directed to non-resident parking. She also stated that she would like to see more trees, but that a solution is needed for the wetness in certain areas to survive. Ms. Lipsitt stated she wants to see the potential risk of cars turning westbound onto the eastbound lanes of Rte. 9 as a quick cut-through to Old Field Road rectified. She also stated that the developer may want to consider an emergency egress from Hagen Road in case of a major



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

accident on Rte. 9 or an emergency where Rte. 9 is impassible.

Stu Snyder stated he is pleased by the changes in the plan. He is interested to see what the developer will be able to achieve for pedestrians, the open space on Rte. 9 for noise reduction plan, and surface parking area plans.

Jennifer Pucci stated that she likes the decreased footprint. She is interested to see what the affordability plan is and would like to see deeper affordability. Traffic and stormwater plans are very important, and she looks forward to seeing them.

Denise Chicoine stated she thinks adding to the housing stock is important and would like to see deeper affordability. She wants to see the feasibility studies on flooding and traffic. She would like to see bike storage, pedestrian safety, and shuttle service discussed.

Chair Michael Rossi stated the presentations were thorough and helpful. The design is a big improvement and would like to see peer reviewer ideas incorporated more into the design. Transportation and traffic will be a major concern and a reduction in parking should help. Noise concerns of traffic and mechanicals have been mentioned by neighbors and he would like to see the peer reviewers and developers present solutions for the issues.

Ms. Lipsitt asked what the usability will be for the new roof lines for installing solar panels. She stated she would like to see the brook on site beautified, made more natural, and used to aid in flood control. She stated that the traffic study should be done in the critical hours of the beginning and end of the school day not necessarily rush hours of 9:00am and 5:00pm.

Mr. Snyder stated that the neighborhood on Hagen Road is very concerned with water flow and the issues they already have and would like to see the developer go beyond the requirements for storm water management and actually improve the condition of the site and the neighbors. Doing the minimum is insufficient.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Public Comments:

Andrew Philips, 30 Hagen Road, Newton, thanked everyone for the site visit. He would like to know who this project benefits and what is the value add to the City of Newton and the neighborhood. Long time residents in SR-1 and SR-2 neighborhoods and they are asking to put an entire neighborhood on top of another neighborhood and it's aggressive. There are signs all over town. No one wants this not just the neighbors. Everyone wants housing but this is not the right spot for it. It's in a flood zone in an unsafe area with high traffic. Cut-through paths to a residential neighborhood. There is not enough parking and then want to add an emergency egress. You are talking about bike storage, but it's not safe to walk never mind ride a bike. There should not be talk about downsizing the project because should just be eliminated. The neighborhood is diverse, and we welcome a lot of things, but this is not one of them. It's unsafe for the people you will put in this building.

Barry Bergman, 18 Walter Street, Newton, stated there is work to be done to reduce the footprint of the project. The number of trees is being reduced dramatically in a time where we see climate change is giving us the hottest summer ever. The last thing we should be doing is tearing down trees. The number of trees should remain the same for the project to be approved. Less parking on site will lead to residents parking on Old Field Road. There is not the mass transit infrastructure to support less parking which means the scale of the development needs to be cut down. Also, 80% AMI is no bargain of affordability. If it is only ¼ of the units there is zero benefit for a structure this large. If it becomes smaller to fit into the neighborhood it will be fine, but this is too large.

Victor Lee, 110 Nardell Road, Newton, thanked everyone for the site visit. He agrees with Mr. Philips that the project is still much too large. This is an SR-1 and SR-2 area that he has grown up in. NBBJ compared this project with Riverdale and Northland, but those are mix-use areas not residential so they cannot be compared. This feels dramatically out of place. He credits the developer for reducing to 198 units, but in his opinion, it should not be considered at all. 198 units is still too large compared to what would have been seven single family dwellings. Mr. Lee is happy that there was a push to consider the neighborhood environment when doing the traffic study. Floods are also a concern for traffic. The flooding on Rte. 9 slows traffic down considerably. There have been several cars that have crashed into the Dudley Road church sign



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

over the last few years. Drivers are accelerating and decelerating at the same time. The study needs to consider the specifics of this location. He hopes that with MA DOT being engaged there will be improvements that come out of this, but hope is not a strategy and the people that will suffer the results are the residents of the neighborhood.

Rachel White, 124 Hagen Road, Newton, is pleased with the reduction in the size and scale of the building. She asked the developers to reduce the impact to the three direct abutters by increasing the set-back, increase the tree buffer, to decrease the height on the Hagen Road side by one story to be more in line with the homes, and pitch the roofs for the back of the building to look more welcoming. The foot path is against her property, and she understands the desire to retain the path, but wants care to be given that Hagen Road does not become a parking lot for the development.

Punam Sharma, 28 Old Field Road, Newton, stated she is a direct abutter with her husband and three school age children. She states her family was excited for the Sam White property to be developed and had hoped for more multi-family homes like those that will be demolished. The unit number was reduced in the new plans, but it is deceiving because the height and square footage has not been reduced. The footprint has increased on the west side. The height is still beyond comprehension and is larger than anything in the vicinity. The project built as is so many trees and vegetation will be destroyed and not be replaced. In a city that prides itself on the protection of the environment it is hard to comprehend how that is possible. The loss of the greenspace and the addition of a large building in an already flood prone area flooding will increase. A building of this size will bring with it noise and light issues. Balconies have been proposed, but how will you address noise from balconies that tower over the houses in the neighborhood. The building will cast enormous shadows that will affect sunlight in the yard and the conservation area that all the abutters attend to. The shadow impact on Hagen Road and Rte. 9 will lose sunlight and in winter, where there is already standing water, it will freeze and there is no sun to help melt it. The roads will be more dangerous for cars, school buses, and students walking to and from school. To decrease the impact on the community there should be a reduction in square footage and height of the project.

Wendy Landon, 40 Old Field Road, Newton stated she is a direct abutter who has lived there for 26 years. She is a supporter of more housing stock in Newton at affordable prices. Our daughter is



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

doing her medical residency and even if she was accepted to the affordable housing at this project she could not afford to live there at 80% AMI. She appreciates the changes made to the plans, but it does not address the concerns of safety, traffic, environmental, and impact to the community. One of the focusses of the traffic study should not be increased car volume, but the nuances of living on Old Field Road, learning to turn and accelerate to 55 mph, and merging quickly with the Parker Street bridge merging, at a corner that is extremely dangerous. Her architect reviewed the plans and said any impact to the flood plain could cause her house to flood. She is concerned not just at completion of project, but during construction where there will be potential impermeant solutions for stormwater and run-off. In 2012 there was a consent decree by the DOJ, which Massachusetts was part of, where Toll Bros was not sufficiently doing construction to EPA standards so should this project go through there needs to be sufficient monitoring throughout the construction process. If this project results in this area becoming a flood zone this would require all of us to get flood insurance which we currently don't need to do. Climate change is real, there is increased volatility with weather, there is going to be an increase in storms and 100-year floods, and we need to look at this proactively and take into account the changes that will happen. It's just too big. It needs to be smaller, shorter, and even in the Village re-design the City is calling for 2 ½ to 4 stories. It's not consistent with the neighborhood or the City standard.

Ann Findeisen, 132 Hagen Road, Newton, stated she is a direct abutter and has lived there for 32 years. She thanks everyone for the comments and presentations, and she has learned so much. Flooding is a huge concern already. Most of the neighborhood already have 1-2 sump pumps operating constantly. Last Friday there were two rivers flowing down Old Philips Road and across the backyards on Hagen Road. It is particularly bad in the spring with the melting snow and rain. In the winter the dead end of Hagen Road is a sheet of ice making it difficult to get up and down the street. There has been a huge increase in the flooding in recent years especially in the last two years. Toll Bros. has done a lot of work talking about storm water mediation and that they will make the situation better and she appreciates that, but she is still very concerned with the increase in storm conditions that they won't even be able to keep it as it is now. The plan to blast to the east and decrease the permeable land area because of the expansive building, the downsizing of the greenspace, and reduction of the large buffer of trees, she is afraid the containment systems will be overwhelmed. She is very concerned that a project of this size will expand the flood zone that already exists. Her front yard is in the flood zone, but her house is not. The whole property is built



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

on sand, which is great for drainage, but not for building. It leads to erosion so the houses will settle. The US government current gold standard was created by NOA back in 2013 and it only considered the precipitation through 2011. That is what developed the 100-year flood plain project. The First Street Foundation released a report in June 2023 which captures the climate driven changes and the rain events and describes the implications of flood risk across the country. The study stated that anything currently in the 100-year flood plain are actually much more vulnerable being as severe as one flood every 8 years. Nature alone is causing enough risk to the fragile environment of our neighborhood, and I am concerned of the size of the plan making it much more difficult for us.

Stephen Farrell, 30 Winston Road, Newton, stated the neighbors are very thankful for the site visit and that Toll Bros. listened to their various concerns. The proposed solutions do not significantly address the neighbor's concerns. He has been amazed how the community has coalesced around this project. There are over 1000 residents in the immediate area that are concerned about this project for a variety of reasons. During the peer review process, we would like to have representatives of the community with specific interest in the areas you are working on. There are people who have specific knowledge of the environmental concerns in this neighborhood. They can tell you about the parking and traffic concerns. The residents can bring you from theory to reality. He encourages that the peer reviewers reach out to some. Some communication concerns exist as well. The City of Newton was awarded \$627,000 for safe street to school grant to work on the Parker Street/Rte. 90 interchange. No one in the neighborhood knew about it and he's not sure if the Board knows about it. Traffic that was seen on the site visit does not even begin to reflect what you would see in the school year when parents and buses are ferrying more than 3500 students to NSHS, Brown, Oak Hill, and an elementary school. This is ¼ of all of Newton's students. The traffic in this area becomes mind-boggling. Traffic is not just about people getting in and out of the development, but its about all of the rest of the neighborhood. ZBA needs to require Toll Bros. provide a 3D representation of the project including the neighborhood homes.

Michael Gerard, 32 Old Field Road, Newton, stated they do want more affordable housing, but need to understand the safety for the neighborhood. The few times in 25 years that we have walked along Rte. 9 it has been terrifying. The back up of traffic and cars have crashed into 8 Old Field Road so there is a concern for people living there. Walk to bus 50 it is over 1 ½ hours to get



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

into Boston and it's horrible. The bus is not frequent and it's undependable. People aren't going to do it. Is it safe to have only one access to this building? Emergency vehicles can't get into the front part. The renderings make it look like the trees are over the buildings and the project is in the middle of nowhere which is not the case. Glad to see there will be a 3D model.

Councilor Lipof stated that he grateful the petitioner has decreased the number of units however the massing and size has not decreased. He wished this project was in front on the Land Use Committee because they don't want to say no, they look for a way to get to yes. When developers choose to jump over the City and go to the state in the name of increased affordable housing the City loses control. As a Ward 8 Councilor, who drives on Rte. 9 and Parker Street every day, he can have an open mind on any land use petition over the last 22 years and he works in real estate. When he looks at the site there is a reason why this was a mulch site all of this time. It's because it's really 2 ½ acres not 5 acres. The access is horrific. A lot of times these developments don't bring as much traffic as we think, but from this site people will be using the Rte. 9/Parker Street bridge to turn around every single time. That currently backs up to Hagen and sometimes to Wheeler. It is extremely dangerous. He is extremely concerned about this project. No need to ever press anything up against the street. It has been pulled back 10 feet, but it is not enough. There is 15 acres on Dudley Road that the City is working with a developer to use that 15 acres the best way possible. Much larger projects were rejected, and it is currently at roughly 100 units as townhouses. This site is not right for a 4-6 story building. He realizes that the developer is trying to make the financial numbers work, but this is not the right project. The neighbors want affordable housing and can see something on this site, but this is too big. The number should be more like 75-100 units only, 3-4 stories, and setback. He is against this project as proposed. The developer can keep making changes and the Board can say they have tried but the neighborhood hasn't, but he thinks the neighborhood has been very reasonable. He supports everything that has been said tonight.

Sharon Greenstein, 16 Old Field Road, Newton, stated the size of the building has not changed. The number have units has gone down, but the square footage is down 14% and the number of bedrooms has only decreased by two. Environmental issues are proportional to the building footprint so there is not much of an improvement here. Visual issues are also proportional to building height so no improvement here either. Traffic safety is a concern with traffic merging



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

from Parker, Sheldon, and Old Field onto Rte. 9 with the existing traffic. The entrance as proposed is 100 feet from Old Field Road compounded by the entrance being on an incline and add flooding which is ice in the winter the cars coming out of the site will have to navigate onto Rte. 9 with traffic going 50 mph. There may be a short merge lane added, but she does not think that will fix all of the safety issues. The second entrance being contemplated perhaps that would be a better place to have a main entrance.

Silvia Testa, 84 Adeline Road, Newton, stated that her main concerns are water and traffic. To turn around cars will have to go down to Hammond or Dudley and take all the side streets in the neighborhood through to Parker. The traffic pattern will change in the whole neighborhood. She has two sump pumps that work nearly all year round especially in spring and winter. There has been basement flooding in the past and the pumps are helping to solve the current situation. The water table is very high and she is concerned Toll Bros. capture storage and interception system will not be sufficient. When the water table is so high it is not big enough to hold the water. Dig 10 inches and there is running water and that is the water that comes into the neighborhood basements. There are four houses on Adeline Road near Hagen that have flooded basements and all have sump pumps. It's great to say they will capture the water, but there have been no studies of the soil or water tables around the project.

Daniel Herring, 77 Oakdale Road, Newton, stated he is concerned about traffic and safety of the children going to school. He thinks the conversation thus far has been good. Some other things he expected to hear such as mitigation for construction dust and debris, litter and trash, shadows, light pollution, bird strikes into glass, and other concerns. Used Google maps to see how traffic would be routed at different times. He feels that many of the community concerns were not being asked in the independent peer reviews. He would like more community information sessions with the City and Toll Bros. to stay updated and for better communication.

Chair Rossi stated that Mr. Herring or anyone from the community to feel free to contact the Board with any questions or concerns as it helps the Board form questions to ask the petitioner. Chair Rossi stated that the Board encourages the developer to have community meetings and open communication with neighbors, but it is up to the developer.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Barbara Sird, 125 Pond Brook Road, Newton, stated thanks to the ZBA for taking public comment. She looked at the assessor's database at the lots and they are listed as vacant and unbuildable. It's a horrible site. She can't believe Toll Bros. is considering a building of this size in this location. She feels horrible for the abutters because it's too close to them. The site is not near a T station and the City of Newton is trying to get more housing closer to the subway and Village Centers which the neighbors understand. The petition was signed by 1000 people that oppose this. The traffic is already horrendous. Ms. Sird stated she wants to approve something for this site like some townhomes or single-family homes, but something that fits into the neighborhood. That is all they are asking.

Roger Spingarn, 76 Oakdale Road, Newton, stated he echoes everyone's concerns. He is against the project in its entirety. He would like to see affordable housing, but this unaffordable and a colossal mistake to support anything of this magnitude. The land could be developed as conservation land which would serve a larger number of Newton Residents. The project serves the interests of the developers, but there is no benefit to the community or the City. The Parker Street turnaround is a mess now. He is not sure how far traffic backs up Rte. 9 Westbound, but Rte. 9 Eastbound backs up because the Parker Street lights can not process the already high volume. The school will not handle the new influx of students in the already overcrowded conditions. An override was just turned down. How are the students crossing over Rte. 9 and how are students getting to Countryside Elementary? Parking is woefully inadequate. There is no way for commuters to get to the T. Bus service is severely limited. There is bike storage in the design, but he would discourage anyone from riding their bike along Rte. 9 because there will likely be fatalities.

Heidi Werner, 30 Hagen Road, Newton, stated she has been following the project since its inception. 98% of the people she discusses the project while going door to door collecting signatures are opposed to it. Even though it has been slightly reduced it is still out of scope and size and wedged into five acres most of which is unbuildable. It is not realistic and it will be problematic for the surrounding neighborhood. It should be several multi-family homes to accommodate the affordable housing need and that we welcome. The current affordable housing that abuts the property will be demolished to make way for the construction of this project. The minimal changes do not solve the extreme height of the building, the pedestrian safety, the traffic,



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

tree removal, or anything else that has been discussed. It is just too large and massive of a building and trying to sprinkle in some affordable housing. It is jeopardizing the safety of the roads with the excess cars and parking coming onto the area roads. The property will not have enough parking. The extra cars parking on the area roads how will the fire trucks and emergency services get down the streets. It is currently an issue with the high school kids parking on the side of the road that will get worse. There will be more traffic around the schools which mean more people ignoring the stop signs and traffic signals and fly through. How is the construction even possible on the wetlands and in a 100-year flood plain. There is a reduction in the single units, but more two to three-bedroom units which are expensive and defeats the purpose of affordability. 1070 signatures that support a reduction in this development. This needs to be reduced and oppose the site for this height and massive a building. Many years ago there was an attempt to build in proximity to this proposed development and the community had the same concerns and it was not developed. She feels they are not being heard and this is not the Garden City anymore.

Rob Sellers, 16 Old Field Road, Newton, stated they are abutters about 20 yards away from the 528 property line. He is right off Rte. 9 and witness the traffic, safety, noise, and flooding impacts that will also impact the tenants. The neighborhood has knowledge of the challenges of the site. It is different from other sites with developments of this size are being built. There was a letter sent to the ZBA June 2nd that raised similar concerns raised by MA Housing and there were ten asks on it. We ask for deeper levels of affordability. The project is too big for the site and does not fit with a single-family neighborhood. Require an independent and transparent traffic study. Require a plan for a merge lane. Require a light impact study. Require an independent and transparent noise study. Require preventing access to Hagen Road in perpetuity. Given the property is in a flood plain and it's an outdated FEMA map there should be extra scrutiny given to the study and the no worse flooding goal is unacceptable and there needs to be more that just protecting the site from flooding. Don't allow zoning exceptions for wetland or setbacks. Maintain a tree buffer with full-sized trees. Require a transparent construction impact assessment of dust, debris, and hazardous materials release. What did Toll Bros. learn from the toxic chemical exposure at the Kendrick site project in 202 that they can apply to this situation? We ask that you review the photos and study from the environmental consultant that we have sent to understand the facts and realities of those that live here.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Carolyn Kraft, 295 Dudley Road, Newton, stated that the project six stories is too high. The Lifetime/Atrium Mall is only four stories high so this would be even bigger. Living on Dudley Road the speed limit of 20 mph is not respected and to think of additional traffic going through like a 60 mph toboggan run through a road with no sidewalks would be a detriment to the community. We have had many close call pedestrian-auto incidents when people are crossing the street and don't want even more cars using it as a throughway.

Attorney Winters appreciated all the comments and will have responses for the next meeting.

The next hearing for this project will be September 13, 2023.

Mr. Rossi concluded the meeting.

Adjourned 10:33 p.m.

ZBA DECISIONS can be found at www.newtonma.gov/ZBA



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS
Brenda Belsanti, Zoning Board Clerk

MEETING MINUTES

Monday, July 31, 2023.

7:00 p.m.

Hybrid – in person and via ZOOM

Board Members Present: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet (remote), Stuart Snyder, William McLaughlin, and Denise Chicoine (remote - alternate)

Staff Present: Brenda Belsanti, ZBA Clerk; Jennifer Wilson, Assistant City Solicitor; Barney Heath, Director of Planning; Katie Whewell, Chief Planner; and Michael Gleba, Senior Planner

A public hearing of the Newton Zoning Board of Appeals was held as a hybrid meeting in person and virtually via Zoom on Monday, July 31, 2023, at 7:00 p.m. on the following petitions:

1. **#06-23** GC Dedham LLC of 564 Dedham Street, Newton, requesting a variance from Sections 3.1.3 and 3.4.3.B of the Newton Zoning Ordinance to reduce the rear setback requirement to 9 feet for an accessory structure. The petitioner constructed an 800 square foot sports court in the rear of the property without the benefit of a permit. The subject property is located at 564 Dedham Street within a Single-Residence 2 (SR-2) zoning district and consists of a 15,315 square foot lot.
2. **#09-22** Northland 160 Charlemont, LLC, requesting a Comprehensive Permit, pursuant to M.G.L. Chapter 40B, to construct a nine-story mixed-use development with 410 residential units and approximately 10,689 square feet of ground floor commercial space on 6.98 acres of land located at 160 Charlemont Street and 56 Christina Street in the Mixed Use 1 Zoning District. The proposal includes 103 affordable units and 486 parking stalls.

Agenda Item 1: #06-23 – GC Dedham LLC of 564 Dedham Street, Newton. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, William McLaughlin, and Stuart Snyder, Denise Chicoine (alternate).



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Documents Submitted:

1. Variance Application dated July 12, 2023.

Testimony:

Attorney Andrew Sipperley, Tompkins & Bevins, 255 Bear Hill Road, Waltham, stated that his clients started a project in 2018 to add a perimeter masonry wall and the sports court. The clients relied on their contractor to do the proper paperwork and subsequently found out that the contractor had not. The clients have spent well over \$75,000 to try to remediate the issues and get the property back into compliance. They are on the end of the journey and have had many interactions with code enforcement and throughout the process has not been made aware of the possible sports court violation until completion of the court and the masonry steps had been installed around the perimeter of the property. At this point they are looking for a variance to remediate the set-back infringement and prevent having the hardship of the cost to remove the court and the steps on either side of the property. Inspectors had been on-site throughout the process had given no notice that there may be an issue or possible violation prior to completion.

Attorney Sipperley stated the unique lot characteristics and topography that the property drops sharply from the street to the rear, therefor the only flat surface to put in a play area is the rear of the property. This is why the rectangular play area at certain points goes into the set-back area. The retaining walls make it impossible to place the play surface anywhere but where it was constructed. There is a minimal infringement from the zoning code. The worst is at 9 feet from the boundary in a small wedge-shaped area.

Attorney Sipperley stated the clients have tried to pull permits to add more permeable surfaces to the property to remediate the non-permeable surface of the sports court, but are unable to until this issue is rectified. There is no evidence of erosion or storm water issues or other adverse effects in the four years the court has been installed or any complaints from neighbors. Other homes in the neighborhood have large, non-permeable driveways and parking areas, large patios areas around pools, and a much larger tennis court around the corner that falls into the set-back so this sports court falls into the character of the neighborhood. If the tennis court was approved in a similar process than it stands to reason the sports court would also have been approved had the clients



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

contractor applied prior to construction.

Public Comments:

John Yee, 556 Dedham Street, Newton, asked if a construction plan was submitted for approval.

Attorney Sipperley stated that there were engineering plans and site plans for the initial building permit at the beginning of the process. The clients relied on the contractor to submit paperwork properly throughout the process.

Mr. Yee asked if the Board received any plans for approval prior to construction.

Chair Rossi does not have the answer to that question.

Heidrun Jacobi, 138 Arnold Rd, Newton, stated she shares the wall between the respective properties and asked if she should be concerned about anything other than water. She stated there has not seemed to be any drainage issues on her property due to the sports court.

Chair Rossi stated that the Board could not give advice or input on the management of her property, but understands her comments of what she has observed and her concerns.

Bruno Alves, 146 Arnold Road, Newton, stated he has lived in the home that is diagonal to the property for one- and one-half years and have had no issues with drainage including the enormous amount of water this summer.

There were no further public comments.

Mr. McLaughlin stated that if the Board were to allow the variance it should be conditioned that the City has full review concerning drainage. It is an 800 square foot impervious area added to a site that is already fairly covered and although the neighbors don't seem to be upset or concerned with drainage, he would like to make sure there is not a future problem and make it a condition.



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

Mr. Snyder asked Attorney Sipperley to clarify because in the application there was nothing consistent with the presentation he gave regarding plans or materials that were provided to ISD during the process.

Attorney Sipperley stated that the engineering drawing there were quite a few notations regarding the wall heights and working with ISD to bring the property back into compliance on all the issues. One of the issues already resolved was the wall.

Mr. Snyder asked for clarification about getting the property back into compliance and if it refers to what is before the Board today.

Attorney Sipperley stated that Mr. Snyder was correct, but plans were submitted to ISD throughout the process of all construction including the sports court and the issue with the setback was never brought up previously.

Mr. Snyder stated that this seems like an application seeking forgiveness rather than permission and it does not sit well with him.

Ms. Sweet asked for more detail if the Attorney is implicating that it is the City's fault because the City knew about this and did not let the applicant know they had setbacks to adhere to and therefore it's the City's problem.

Attorney Sipperley stated not necessarily he was only mentioning the City had been there dozens of times during the process and now that all the other work has been done it's impossible to remove the sports court without removing the other work, including the stairs, to get the heavy equipment in. It will add thousands of dollars to the process to get compliance. It was not to say the City was at fault, but that the order in which the zoning rules were enforced added to the cost.

Ms. Sweet asked if it was the way the zoning ordinance is being enforced or that they are being enforced.

Attorney Sipperley stated that it was that the first notice of violation was after all the other work



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

was done rather than earlier in the process. He is not disputing that there is a violation, but saying that the way it was enforced makes it much more expensive to remediate than if they had been given notice of the violation when the City first saw it.

Ms. Sweet stated that the City would have had to measure the area and asked if the City was asked to do the measurement. She stated that it is an assumption that the City should have noticed the five foot violation and should have done something at that point.

Attorney Sipperley stated only that the previous inspections to that point had all been regarding the perimeter wall and not the sports court, but when inspecting the walls, the City is walking and standing on the play surface and the issue was never raised. Not to say that they were wrong in enforcement, but that it is much more expensive to do it now rather than the dozens of times the City had been to the property prior and to fix it before completion of everything else.

Ms. Sweet stated that if the City is not at fault then it would seem the contractor is at fault so shouldn't they be paying for the removal and not your clients for their mistake

Attorney Sipperley stated that it would be something they would have to consider pursuing, but the responsibility is with the property owner at this point. The issue of hardship and enforcement is just one of the issues. There are also issues with the lot characteristics.

Ms. Lipsitt asked if the property owner or the contractor received building permits from the City.

Attorney Sipperley stated that it was his clients understanding that the sports court and wall were covered in the permit that was submitted.

Ms. Lipsitt asked if it included the sports court because the City would not have approved it to be in the setback and insisted for the property owner to go for a special permit. Therefore, she presumes no building permit was issued for this structure. She agrees with Mr. Snyder that there is no justification to come and ask forgiveness after it has been built and believes the issue is between the client and the contractor.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Chair Rossi stated that he attempts to look at these types of situations as the client came to the Board in 2018 to ask for the variance for the sports court. So with that being the posture what would be the hardship to justify the variance in that instance.

Attorney Sipperley stated there are no areas of the property where a sports court of any size could fit and be enjoyed by the family.

Ms. Lipsitt stated that given there is no other appropriate place maybe there is no opportunity to have a sports court on this property.

Golnaz Movafaghi, property owner, stated that they know nothing about getting and maintaining permits and relied on their contractor. They received the building permit for the wall, but did not get the permit for the sports court and she was not aware. The company that installed it and the contractor put in the concrete pad. Ms. Movafaghi found out after everything was done. It is in the setback on one end because the backyard is oddly shaped and twisted so it is nine feet on one end and fifteen feet on the other end. So it is only a small obtuse angle where it is encroaching on the setback. Both neighbors have said they have had no issues with water, pooling, run-off rain so we are only encroaching a few feet that we did not know about.

Brooke Lipsitt made a motion to close the public hearing which was duly seconded by Stuart Snyder. The motion was unanimously approved 5-0.

Deliberation:

Mr. Rossi asked for a motion on the item.

Accordingly, a motion was made by Brooke Lipsitt, duly seconded by Stuart Snyder, to deny the request for a permit to the applicant. The motion passed five in favor (Rossi, Lipsitt, McLaughlin, Sweet, Snyder), and none opposed. Therefore, the request for a permit was denied.

Agenda Item 2: #09-22 – Northland 160 Charlemont, LLC, Newton. This item was opened on October 26, 2022. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, William McLaughlin, Stuart Snyder, and Denise Chicoine (alternate).



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS
Brenda Belsanti, Zoning Board Clerk

Documents Submitted:

1. Letter with supplemental materials from Attorney Katherine Adams dated July 19, 2023.
2. Letter with supplemental materials from Attorney Stephen Buchbinder dated July 21, 2023.
3. VHB stormwater report
4. Horsley & Witten (peer reviewer) stormwater report review
5. Letter of support from The League of Women Voters
6. Memorandum with attachments from the Planning Department dated July 24, 2023.

Testimony:

Attorney Katherine Adams, Schlessinger & Buchbinder, 1200 Walnut Street, Newton, stated that the attorneys and applicant have reviewed the Planning Department July, 2023 memo and stormwater review and will be submitting updated information in the future based on the review. A final waiver list will be submitted including proposed signage. Attorney Adams reviewed what would be presented in this meeting.

Chris Bridle, Stantech, 40 Water Street, Boston, presented a PowerPoint with an updated landscape plan, shuttle area, and signage.

BK Boley, Stantech, 40 Water Street, Boston, presented a PowerPoint with shadow study, courtyard connections, and exterior architecture plans.

Peter Standish, Senior VP Northland Investment Corporation, 2150 Washington Street, Newton, presented a PowerPoint with affordability breakdowns, public transit incentives, and Charlemont Street improvement plan with abutting property owner.

Michael Gleba, Senior Planner, presented a PowerPoint reviewing the July 24 Planning Memorandum concerning peer reviewer reports/questions, applicant responses, and future submissions needed from applicant.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Public Comments:

Nancy Sharpy, 38 Charlemont Street, Newton, stated she has lived there for 50 years and has watched the neighborhood get more encroached upon over time and feels she is living on an island. She has heard about the project, but was not aware of the prior meetings. What is proposed is lovely and she is sure it will be very attractive. The people who currently live on Charlemont Street, Christina Street, and Bernard Street. The residents of the development will go down Christina Street to avoid Needham Street. So all the little streets will become jam packed with cars. If you sit at Christina Street at 5:00pm it will take 10 minutes to get through the traffic light on Needham Street. We are adding this development on top of a development on the other side of the street. This is not a unitary structure; it is an addition of another 800 units. Where are we going to live, drive, or park. NewMo and rideshares are still automobiles and automobiles still take trips. She uses rideshares on a regular basis and even though it is not her car it is still a car. Heat generating buildings add to the pollution. Right now there are a lot of shading trees and fresh air instead of a nine-story building. She was told Newton only allows seven-story buildings so how is nine stories allowed. The pollution from all the cars will affect the neighborhood of young families and old people that cannot tolerate all of the air pollution. This will make a lot of money for a lot of people and generate a lot of tax revenue, but what are they offering to those that live in the neighborhood.

Mr. McLaughlin asked for clarification regarding the size and location of the signage.

Attorney Adams stated that there was nothing final regarding signage other than size and location and the applicant was planning on bringing design before the UDC.

Mr. Boley stated that there will be a more comprehensive signage package submitted for permitting.

Mr. James Gray, Stantec Architecture, 40 Water Street, Boston, stated sign D1 would be a monument sign at the front door of the community. The size is approximate and possibly built into a stone wall.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Mr. McLaughlin asked for clarification for sign R5 which is the flashing pedestrian crossing sign on Christina Street.

Randy Hart, VHB, stated that it would be a raised crosswalk with an extra pedestrian light for added safety.

Mr. McLaughlin stated he appreciates the added affordability and the reworking of the façade. He asked about the difference in the shadows between March and September in the shadow study.

Mr. Boley stated that he is not sure why.

Ms. Lipsitt stated she also appreciates the deeper affordability especially in units for families. She stated that she would like to see MBTA passes for more than three years and be permanent. She asked about the amount of impervious surface at the roundabout and pathways. She asked about the landscape area and the stairs to the neighborhood and to make sure they are ADA compliant and easy for bicyclists. Ms. Lipsitt asked for clarification regarding trash and recycling and what provisions were being made especially for recycling. She asked for dimensions of the balconies. She would also like the Planning Department to comment on the size of the proposed signs.

Mr. Snyder stated that 20% of parking spaces for electric cars, but considering the trend to more electric cars if more spaces could be electric and what amount would be appropriate for a project of this size. Mr. Snyder asked if there could be some sort of deterrent put in to keep residents of the development from travelling down Charlemont.

Chair Rossi stated that he would also like to know what can be done to deter cars from using the side streets in the neighborhood.

Mr. Bridle stated that there will be pervious surfaces along the edges/furnishing zones along the sidewalks and some at the roundabout area, but will have to explore the durability of the surface at the roundabout. The stairs will be designed to be ADA compliance in terms of grading and may be widened and will include a bike runnel.



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Mr. Boley stated the balconies are large enough to enter and turn around and enough for a small table and two chairs. The applicant will provide dimension at future meetings.

Mr. Standish stated that there is a recycling program. There are two shoots per building. One shoot is for recycling materials. Cardboard will most likely have collection area in the garage and will be broken up by staff and removed. Mr. Standish stated that the applicant will further research MBTA passes in perpetuity. He stated 20% for electric car charging parking is the requirement under the new Optim stretch goal which is a higher standard, but does not preclude them from adding more in the future.

Mr. Hart clarified that the pathways to the neighborhood are for pedestrian and bicycle only.

Ms. Sweet asked about the potential for solar and green roofs. If there is any type of landscaping that is better at absorbing CO2 than others or other solutions to aid in the pollution concern for the neighborhood.

Mr. Boley stated the current site is mostly all impervious or building and the buildings are the lowest in terms of energy efficiency. The two new buildings will be passive house buildings with the highest level of efficiency. Triple pane glass, all electric, and highly reflective roofs. There will be green roofs and some solar, but waiting to see where mechanical will go to determine where it will be placed.

Mr. Bridle stated that good and numerous street trees with appropriate spacing to allow the canopies to grow as large as possible will help with the CO2 absorption.

Ms. Chicoine stated her concerns had already been addressed.

Chair Rossi stated he was appreciative of the added affordability. He asked for clarification regarding the connection between this development and the one across the street in terms of transportation and shuttle. Chair Rossi would prefer to keep the projects independent in terms of requirements in case something with the other project is delayed or falls through.



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
Telephone: (617) 796-1060 Fax: (617) 796-1086
www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS Brenda Belsanti, Zoning Board Clerk

Mr. Standish stated they are open to providing details for the project separately and talk to the Planning Department about working this project independently.

Chair Rossi stated he would like to the commitment the applicant is willing to make to the shuttle separate from the project across the street. He also asked for clarification on the TDM plan that if it was widened and more accessible less people will utilize it.

Mr. Standish stated that Trio was providing Commuter Rail passes and the residents were not taking advantage of the program. He stated the applicant was hoping to incentivize car free residents with the program rather that offer it to everyone and have few people take advantage of it. They are trying to target those residents that are car-free.

Chair Rossi responded that anything that will keep a car off Needham Street at rush hour that is a win. He would also like clarification on the signage.

Mr. McLaughin asked when the traffic study modeled the trips from this site how many lefts onto Christina Street and through the neighborhood to get away from Needham Street did the study model. The concern expressed by the neighbors is the uptick in traffic onto Christina Street and into the neighborhood. What is the impact on the intersections on the side streets. Does it make sense to limit the left turn onto Christina Street.

Mr. Hart stated he would have to drill down into the numbers. The site is generating traffic today and the study showed the development would actually decrease traffic during morning peak hours and a slight increase in traffic during afternoon/evening peak hours; therefore, the traffic would be comparable. The number of lefts onto Christina Street was 6% in the study of a similar volume of today.

Ms. Lipsitt stated that the question of the amount of cars taking lefts onto Christina Street is of concern.

Chair Rossi stated that the Board would like to hear more about the traffic numbers at a future



CITY OF NEWTON, MASSACHUSETTS

City Hall

1000 Commonwealth Avenue, Newton, MA 02459-1449

Telephone: (617) 796-1060 Fax: (617) 796-1086

www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

meeting after Mr. Hart reviews them again.

Chair Rossi continued the hearing until September 13, 2023.

Mr. Rossi concluded the meeting.

Adjourned 8:40 p.m.

ZBA DECISIONS can be found at www.newtonma.gov/ZBA

From: Joshua Ostroff <jostroff@newtonma.gov>

Sent: Monday, October 23, 2023 9:56 AM

To: Brenda Belsanti <bbelsanti@newtonma.gov>

Cc: David Koses <dkoses@newtonma.gov>; Barney Heath <bheath@newtonma.gov>; Jonah Temple <jtemple@newtonma.gov>; Katie Whewell <kwhewell@newtonma.gov>

Subject: 409 Crafts comments from David Koses/Josh Ostroff

Hello Brenda,

Thanks for sharing this with the ZBA as staff input into the request for a variance for 409 Crafts. It reflects the views of me and David Koses.

It appears that only the garage location is before the ZBA. However, there has been discussion about creating a new curb cut and access onto Albemarle instead of the existing access from Crafts. 409 Crafts would presumably then have access over Albemarle northbound to North Street. The merits of this concept have been the focus of several discussions.

David Koses shared the following with me and Councilor Oliver, with whom we met recently to discuss the issue. I fully associate myself with David's statements, and will add that it is undesirable to effectively turn a road (Albemarle northbound from Crafts to North) that is on the verge of becoming a car-free, bicycle/pedestrian neighborway into a private driveway for a single residence. We are about to implement the Albemarle Road Traffic Calming and Bike Path project after years of planning, and this would be contrary to the goals of this initiative. For these reasons I hope that Traffic Council formalizes the closure of Albemarle in this area.

In addition, please note that the Crafts/Albemarle intersection will be signalized within a couple of years as a MassDOT project. The small amount of trips from 409 Crafts will then pose even less of an issue than it does now, which is negligible.

Thanks for your consideration.

Josh

Hi Councilor Oliver and Josh,

As far as I know, the homeowner has requested (that the ZBA allow them) to build a garage on a portion of their existing driveway off Crafts Street -- not to build a driveway and garage on Albemarle. See the photo below:



DPW Transportation Division Staff understands that they would use their existing paved driveway to turn in and out of their proposed detached garage, which would be constructed behind the existing trees in the photo shown above (and they would not pulling out directly from the garage onto Crafts Street). I don't think that our Division has any concerns.

I think that other staff still need to review the plan, but our initial thoughts are that no public right of way would be encroached on, and that sight lines are accommodated. So the garage would not block the view of the sidewalk and Crafts St as a vehicle pulls in and out.

Transportation Division staff do not think that it would be in the interest of public safety to construct access via Albemarle, and for Traffic Council to vote to reopen the currently closed section of Albemarle Road to traffic or to allow access the site via North Street. There is currently no curb cut and no driveway along this closed block of Albemarle Road, and Traffic Council most recently voted to continue with the temporary closure in order to allow time for the homeowner to look into constructing a garage on a portion of their existing driveway, via their existing Crafts Street curb cut. Transportation Division staff want to continue to provide for the overall safety benefits by permanently closing this block of Albemarle Road. Again, there is no curb cut on Albemarle Road at this time, and the Traffic Council vote to close that block was not accidental – it was a response to crashes, public input and our understanding that safety would be improved.

We did meet with the Law Department staff recently, and we understand that the Law Department staff is going to relay these thoughts to the ZBA. I'm not sure when the ZBA will meet again to discuss this request further, but at this point, I think that our hope is simply that the ZBA votes to approve the petitioner's request to construct the garage, as proposed, with access via Crafts Street.

Happy to discuss further.

Thanks,
David

Josh Ostroff
Director of Transportation Planning
Planning and Development Department
City of Newton, MA
617 796-1481 (o)
pronouns: he/him/his

Please note that the Secretary of State has determined that most email is a public record