



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.
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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 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, abutter to the subject property.

Chair Rossi stated that the Board had reviewed all documents Attorney Starkey submitted and were very familiar with them.

Attorney Starkey stated that there are two primary issues with the issuance of the permit by the Inspectional Services Department at 129 Grasmere Street, Newton. The 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. The 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 on 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.

Attorney Starkey stated that there are 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 suggest 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 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. It is 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 he 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 of how many 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. The city will do another inspection when it is time for a 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 Marrys 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 premature 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 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 affidavit states that if the occupant 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.

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 signed leases 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.

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 an as of right use because they are out of compliance with the ordinance.

Attorney Wilson stated Legal Department were unable to find any legal support for that contention. The Legal Department's view is that even if it is being used out of conformity it is still in 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.

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 that 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 was issued on May 2, 2023.

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 whether the permit would have to be reissued if it was revoked.

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 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 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.

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 Wilson's statements about the past unlawful use. She does not see 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's 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.

Ms. Chicoine stated she had no questions.

Ms. Lipsitt 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 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 Michaud, 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 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 he 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 these 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.

Public Comments:

Andrew Philips, 30 Hagen Road, Newton, thanked everyone for the site visit. He would like to



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 $\frac{1}{4}$ 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 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 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 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 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 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.

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, 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.

Carolyn Kraft, 295 Dudley Road, Newton, stated that 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