



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:

- #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.
 - #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.
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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).

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 a 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 at the end of the journey and have had many interactions with code enforcement; throughout the process they have not been made aware of the possible zoning violation until completion of the sports court and the masonry steps 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 cited as unique lot characteristics and topography that the property drops sharply from the street to the rear, therefore 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 of the zoning code requirements. The worst is at 9 feet from the boundary in a small wedge-shaped area.

Attorney Sipperley stated his 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 do this 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, it stands to reason the sports court would also have been approved had the clients' 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 appreciates her comments as to 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.

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 Attorney Sipperley is suggesting 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.

Attorney Sipperley stated that he was only mentioning that 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 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 would have insisted that the property owner apply 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.

Chair Rossi stated that he looks at these types of situations as if the client came to the Board in 2018 to ask for a 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 variance. The motion passed five in favor (Rossi, Lipsitt, McLaughlin, Sweet, Snyder), and none opposed. Therefore, the request for a variance 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).

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.

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.

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.

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 then 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.

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 than 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 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