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**PUBLIC HEARING MEMORANDUM**

**DATE:** March 6, 2024  
**MEETING DATES:** March 13, 2024  
**TO:** Zoning Board of Appeals  
**FROM:** Barney Heath, Director of Planning and Development  
Jennifer Caira, Deputy Director of Planning and Development  
Katie Whewell, Chief Planner for Current Planning  
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**COPIED:** Mayor Ruthanne Fuller  
City Council

In response to questions raised at the Zoning Board of Appeals public hearings on May 24, July 24, September 27, November 8 in 2023, and January 24, 2024, the Planning Department is providing the following information for the upcoming continued public hearing/working session. This information is supplemental to staff analysis provided at previous public hearings.

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**PETITION #04-23**

**528 Boylston Street**

Toll Bros. Inc., requesting a Comprehensive Permit, pursuant to M.G.L. Chapter 40B, to construct a six-story all-residential development with 184 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 50 affordable units and 227 parking stalls.

The Zoning Board of Appeals (Board) opened the public hearing on this petition on May 24, 2023. This item was held open at that meeting and subsequent meetings for the petitioner to respond to questions and concerns raised by members of the public, the Board, and the Planning Department.

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## **EXECUTIVE SUMMARY**

The applicant, Toll Brothers, Inc., is seeking a Comprehensive Permit pursuant to Massachusetts General Laws Chapter 40B, Sections 20 through 23, to develop 528 Boylston Street, currently used as the Sam White and Son's landscape yard, into an all-residential multifamily development. The subject property comprises approximately 253,454 square feet (5.82 acres) on seven lots in the Single Residence 1 (SR-1) and Single Residence 2 (SR-2) zoning districts on the eastbound side of Boylston Street (Route 9) in the Chestnut Hill area of Newton.

To date five public hearings have been held for this item. The applicant has made several revisions to the original project based on feedback provided at those meetings. The current building design consists of a six-story building in an "H" shape facing out on Boylston Street. 184 units are proposed with forty-six (46) of the units (25%) designated as deed-restricted to remain permanently affordable. 227 parking stalls are proposed, with the majority in the garage which spans three levels and is partially exposed along the eastern edge of the building and several surface parking stalls at the front of the site at the main entrance on Boylston Street.

On February 24, 2024 the applicant submitted the following new materials:

- Revised civil plans
- Peer review response and compensatory exhibits prepared by Bohler
- Revised landscape plans and graphics
- Landscape plan and renderings
- Lighting plans
- Parking Protocols Description
- Revised drainage report
- Analysis of mechanical noise control by Acentech
- Updates to sustainability report by The Architectural Team
- Wayfinding site plan prepared by The Architectural Team

The project materials submitted for review [can be found on the City's website here](#). Staff from Horsley Witten, the City's Chief Environmental Planner, and the City's Associate City Engineer will join Planning staff at the public hearing on March 13 to answer questions related to the stormwater and drainage plan on the site.

### **I. Analysis of Revised Design**

On February 24, 2024 the applicant submitted revised plans which reflect a number of changes to the proposed building and site. Planning staff note the following changes shown in these new plans:

**Landscaping:** The revised site plan and landscape plans show that materials and flow of the rear green space has been updated. The amount of synthetic turf proposed has been reduced, with some of the area replaced with stabilized stonedust creating a path for fire access, and sodded lawn in a landscaped area at the southwest corner of the building. The patio seating previously proposed adjacent to the playground area has been removed.

**Sustainability:** An updated sustainability narrative has been submitted. The sustainability features proposed include:

- The Project will meet the City of Newton's Sustainable Development Zoning Article by achieving PHIUS CORE 2021 certification
- all-electric sourced heating, water, and cooling systems
- EV charging parking stalls at the Project for at least 10% of the project's parking
- 10% of parking stalls to be electric vehicle-ready
- will incorporate low embodied design features into the project and will document compliance with the carbon reporting requirements of the LEED Building Life Cycle Impact Reduction credit. A minimum reduction of 10% in kg CO2e will be targeted

**Mechanical noise:** The applicant has provided a report compiled by The Architectural Team (TAT) analyzing mechanical noise on the site. The applicant intends to comply with the state and city noise limits as set forth in the City's Noise Ordinance. TAT recommends the following measures to mitigate noise associated with the project: strategic equipment selection and location, equipment noise barriers or screens, sound attenuation devices.

**Wayfinding plan:** A site plan clarifying the location of proposed signage and wayfinding on the site has been provided. The signs proposed include two blade signs and a monument sign along the Boylston Street frontage, directional parking signs, and wayfinding signs for the multi-use path. Because the applicant has requested a waiver of the requirements of Section 5.2 for the number, size, location, and types of signs, the sign permit procedures, and any hearing or procedure before the Urban Design Commission, staff request details regarding the size of the proposed signs that would be subject to the sign ordinance.

**Lighting:** A lighting fixture plan and revised photometric plan was included in the revised landscape plan. 29 freestanding lights are proposed on the site, and 13 wall-mounted lights. All lighting proposed is designed to be Dark Sky compliant, and bollard lights will have 180-degree shields. Five lighting fixtures are proposed around the perimeter of the surface parking area at the front of the building. The applicant has requested a waiver from the requirement to provide security lighting maintaining a minimum intensity of one-foot candle for outdoor facilities containing more than 5 stalls pursuant to Section 5.1.10. Staff recommend providing some low-level lighting along the multi-use path for safety and visibility, which may be limited to certain hours of operation. This could take the form of downward facing bollards, low-profile directional path lighting, or similar fixtures which will provide adequate lighting levels while remaining unobtrusive to abutters.

## **II. Drainage Updates**

The applicant has shared a revised drainage plan prepared by Bohler which responds to comments and questions posed by the City's stormwater peer reviewer, Horsley Witten (HW). These changes include the following:

- The plans and details have been revised to include the apron dimensions in table format.
- drainage analysis has been updated to reflect this change.
- The crushed stone swale detail has been updated to include a range of acceptable slopes within the swale and a minimum depth of stone has been added to the detail.
- Proposed grading at the rain garden has been revised to match the HydroCAD model.
- The height of Outfall 3 has been increased to discharge at an elevation of 127.5 feet, and now aligns with the 100-year Zone AE floodplain elevation.
- Pond 3P has been relocated to the access drive as recommended by HW.
- Several explanatory details including manufacturer information, sizing specifications, and illustrative graphics have been added per HW's request.

City Staff anticipate a forthcoming response from HW that indicates compliance with State and City stormwater standards.

## **III. Flooding and Stormwater FAQ**

**Is this project located in a flood zone?**

Paul Brook, a channelized open brook that serves as an outlet for Crystal Lake, runs along the western property line. The western portion of the site is located within the FEMA Floodplain Zone AE, 100-foot Inner Riparian Zone, 200-foot riverfront area, and a bordering vegetated wetland. The proposed development is within the jurisdiction of the Newton Conservation Commission and will require an Order of Conditions issued by the Commission. The proposed building is carefully located away from any wetland area. In part because of the close proximity to these wetlands coupled with recent storms with faster and more intense rainfall in a shorter period of time some parcels in the area experience recurring flooding.

**What is the applicant required to do legally regarding flooding and stormwater?**

The applicant has not requested relief from the city's stormwater ordinance, so the project must comply with city and state stormwater regulations which includes the ten standards of the Massachusetts Stormwater Handbook (MSH) and the City's Stormwater Ordinance, adopted in May 2022. These regulations include but are not limited to the following:

- Stormwater runoff from the city's 100-year storm event (8.78 inches over a 24-hour period) must be collected and infiltrated and/or detained to the maximum extent practicable.
- The city requires 110% compensatory storage for fill in a city floodplain.
- Required to comply at a minimum with the performance standards required by the [Massachusetts Stormwater Management Standards](#).

**What stormwater management features are included in this project?**

This project proposes adding roughly 240 cubic yards of new flood storage capacity (equivalent to about six full 40-yard dumpsters) to the site. The proposed design addresses stormwater via infiltration systems, a rain garden, providing compensatory flood storage, and planting trees in the buffer zone and outer riverfront area.

**What impact will this have on the 100-year flood plain on the site?**

In its current state, the site has no stormwater management measures, and consists of mostly dirt, compacted soil, and greenery. Though a significant amount of impervious surface is proposed, the proposed redevelopment of the site triggers the city's stormwater ordinance which requires that surface water created by the project be contained and treated on site.

The proposed impact of the project within the 100-year flood plain adds up an estimated total fill volume of 3,395 cubic feet. The city requires 110% compensatory storage for fill in the floodplain, equaling 3,734 cubic feet. The applicant has proposed a cut volume storage of 9,304 cubic feet, exceeding what is required, amounting to a net

new flood storage capacity on the site of 5,909 cubic feet. This is sufficient to meet the requirements of the ordinance regarding the 100-year flood.

The City's current flood ordinance elevation is 1-foot higher than the FEMA 100-year flood elevation. In regard to compensatory flood storage, these designs, which comply with the City's current flood ordinance, are more protective than would be required by the state Wetlands Protection Act alone.

With that said, some of the storms that have proved most damaging in recent years in Newton have caused flash flooding, with a large volume of rainfall in a more compressed timeline. At this time, the stormwater infrastructure required by the ordinance does not require runoff absorption and treatment for the extreme weather conditions of flash flood events.

#### **Will this project make flooding in the area worse?**

The city's stormwater regulations require that all stormwater created on the site by impervious surfaces that prevent water from infiltrating through underlying soil (including parking lots, driveways, rooftops, etc.) must be retained on-site and is not allowed to drain on to abutting properties or streets. No net increase in volume or rate of runoff from the site to any boundary is allowed.

This means that all water that comes down on site will be retained and treated. Because there are no existing stormwater management systems on the site now, the project will not make flooding worse on the site itself or in the immediate vicinity of the project site, where some runoff does happen now. The new stormwater storage and absorption from trees that will be planted may also have a modest positive impact on stormwater management for neighbors.

However, there is no guarantee or requirement legally for this project to improve the flooding situation on neighboring properties. The applicant does not have control of or responsibility for water that originates outside of the boundaries of the site that might flow from elsewhere onto to neighboring properties. Offsite stormwater improvements are possible but would need to be coordinated with neighboring property owners.

Overall, if abutters are experiencing flooding now, those issues are likely to continue whether or not this project is permitted. Many communities like Newton are now facing more frequent and disruptive flooding, which is worsened by changing weather and water cycles affected by climate change. Much of the infrastructure communities in the region currently have in place to deal with surface water is technologically outdated, or

unable to meet the increasing volume of water which cannot be quickly absorbed into existing systems.

**Shouldn't this project go to the Conservation Commission first? What is their role in this process?**

Under the Wetland Regulations, it is best practice for an applicant to receive the comprehensive (40B) permit from the Zoning Board of Appeals before filing a Notice of Intent with the Conservation Commission. The applicant may, at their own risk, undertake the processes concurrently.

The applicant went before the Conservation Committee for a preliminary discussion in January. Should the project be approved by the ZBA, it will be formally reviewed by the Conservation Commission. In that process, the Commission will closely examine the project for compliance with the Wetlands Protection Act and other relevant regulations. The project will need to exhibit an overall improvement ecologically and hydrologically for the Riverfront Area

The Commission will consider the potential for improvements to Paul Brook itself, review a detailed construction sequence plan for ongoing erosion and stormwater controls, and will require a Stormwater Pollution Prevention Plan. Calculations for the degraded areas will be required of the applicant, and the subsequent restoration and mitigation needed to offset that work. The Commission will also address invasive species control on the site, tree cutting and planting, trash and debris removal, and other related topics.

**Will the developer rehabilitate Paul Brook?**

Design consultants that the city worked with in reviewing this petition suggested considering several improvements to Paul Brook as one of the mitigation aspects for this project. These suggestions included the possibility removing the concrete bottom of the channel along this portion of the brook, removing invasive species, cleaning up debris, etc. The City's Engineering staff have some concerns about the potential for erosion associated with removing the concrete bottom, but the potential improvements and mitigation for Paul Brook will be discussed in greater depth by the Conservation Committee should this petition be approved.

**IV. Mitigation**

The City Engineer has recommended that an abatement of 75% of the mitigation cost for sewer infiltration and inflow associated with this project be used to benefit the

health and well-being of the public. For this project, that amount is \$1,746,550. In concert with the transportation related mitigation recommendations noted below, given the concentration of schools and recreation areas in the immediate vicinity of the proposed project, City staff recommend that a sum of \$750,000 be reserved for improvements to schools and parks and recreation areas south of Boylston Street.

The applicant has proposed several on and offsite improvements as part of their mitigation package. These improvements include the following:

- A new multi-use path extending from the south end of the site up through to Olde Field Road
- Sidewalk improvements along Boylston Street frontage
- Sidewalk and crosswalk improvements near Adeline Road and Hagen Road
- Timing and phasing improvements for the Parker Street signal

The Newton DPW Transportation Division concludes that the developer's proposed mitigation program is heavily geared toward improving the frontage along Boylston Street. Based on the applicant's preliminary cost estimate for the mitigation program, the roadway improvements would account for \$1,125,000 out of a total mitigation program of \$1,575,000, or about 71 percent of the contribution. However, this mitigation measure seems to be primarily to improve access to and from the project site. There is a secondary benefit for traffic operations on Boylston Street, which is a Massachusetts Department of Transportation (MassDOT) facility.

The Transportation Division recommends that mitigation focus on multimodal safety, Complete Streets access, and traffic calming on nearby critical local Newton roadways, especially for streets that might experience significant increases in volume from site-generated traffic. Potential focus areas for traffic calming improvements include the following:

- Dudley Road
  - Due to right-of-way limitations on Dudley Road, the Transportation Division requests engineering review and contractor implementation of a speed feedback display as determined through an engineering process, subject to final DPW approval of location.
- Lions Road (formerly Brandeis Road)
  - Intersection reconstruction of the Lions Drive /Newton South High School entry loop, focusing on building out the current flex post setup and installing a raised crosswalk.
  - Design and construction should be the developer's responsibility, informed by DPW input, design review, and final approval.



- Hagen Road Improvements. The proposed mitigation program includes improvements at Hagen Road where the shared use path from the project site connects to the roadway network to the south of the site. However, this proposal could be improved:
  - The shared use path currently terminates at a proposed narrow side, with no accommodation for bicycle connectivity.
  - In general, the Hagen Road/Adeline Road intersection has an excess of pavement; the reconstruction plan should reduce the roadway area to the minimum required for safe vehicular access, and multimodal accommodation should be enhanced.

## **V. Transportation Demand Management**

The applicant has submitted a Transportation Demand Management (TDM) plan to support and mitigate the additional traffic generated by the project. The project will create a new multi-use path from Boylston Street through the site down to Hagen Road, increasing connectivity and safe access for pedestrians and bicyclists. Sidewalk connections adjacent to the property will be provided, and the frontage along Boylston Street will be improved, making for a safer and more pleasant experience. Weather protected bicycle parking and storage for residents and supplemental racks for visitors will also be provided.

EV chargers and EV ready parking spaces will be available. Tenant parking will be unbundled and paid for separately from the unit, with the exception of deed-restricted affordable units, which will each have use of one free parking stall. Preferential parking will be provided for low-emission vehicles. A TDM coordinator will be located on site, and information about sustainable transportation options will be made available to residents. The applicant proposes to advertise and offer a transit subsidy for two months for the cost of a Monthly Inner Express Bus Pass to all new tenants who move into the Project during years 1, 2, and 3, limited to two adults per unit.

The City is generally supportive of the proposed transportation demand measures. The TDM plan refers to a possible resident EV car share within the garage to support lower tenant vehicle ownership and EV use to/from the property. The applicant should provide further details about this potential car share to better understand how such an operation would work on the site. Staff also recommend the applicant consider expanding the timeframe and offerings for transit subsidies to include additional MBTA modes (the subway and commuter rail) and bike share memberships. Staff would also be supportive of an “alternative transportation fund” that allows for greater flexibility for residents and building employees to utilize, similar to a recently approved Comprehensive Permit. If not used, the alternative transportation funds would be

returned to the city after a period of five years to be put towards other improvements and/or initiatives. Additionally, staff recommend annual monitoring and reporting on the status of the TDM and survey of parking use and trip generation on the site.

**II. Next Steps**

The Planning Department will continue to review the proposal and provide updated and expanded memoranda in advance of future ZBA hearings.