



CITY OF NEWTON, MASSACHUSETTS

City Hall
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Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS
Brenda Belsanti, Zoning Board Clerk

MEETING MINUTES

Wednesday, November 8, 2023.

7:00 p.m.

HYBRID

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

Staff Present: Brenda Belsanti, ZBA Clerk; Jonah Temple, Deputy City Solicitor; Jennifer Wilson, Asst. City Solicitor; Katie Whewell, Director of Current Planning; Cat Kemmett, Senior Planner and Jennifer Steele, Chief Environmental Planner.

A public hearing of the Newton Zoning Board of Appeals was held a hybrid meeting on Wednesday, November 8, 2023, at 7:00 p.m. on the following petitions:

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 in the SR1, SR2 Zoning Districts. The proposal includes 61 affordable units and 385 parking stalls.
2. **#10-23** Alta Development LLC, requesting a variance from Section 3.1.3 of the Newton Zoning Ordinance to reduce the minimum lot size requirement and reduce the frontage requirement. The subject property is a 22,251 square foot lot located at 949 Dedham Street within a Single-Residence 2 (SR-2) zoning district. Petitioner seeks to raze the existing single-family dwelling and subdivide the lot into two lots of 11,189 square feet and 11,062 square feet, each with 84 feet of frontage.

Agenda Item 2: #10-23 Alta Development LLC, requesting a variance from Section 3.1.3 of the Newton Zoning Ordinance to reduce the minimum lot size requirement and reduce the frontage requirement. The subject property is a 22,251 square foot lot located at 949 Dedham Street within a Single-Residence 2 (SR-2) zoning district. Petitioner seeks to raze the existing single-family



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dwelling and subdivide the lot into two lots of 11,189 square feet and 11,062 square feet, each with 84 feet of frontage.

Documents Submitted:

1. Variance Application dated September 19, 2023.

Testimony:

Kevin Hennigan, 27 Champa Street, Newton, gave a presentation with the history of the lot, sewer easement through the center of the lot, topography, set backs needed, design, and character of the neighborhood.

Chair Rossi asked for clarification for the three hardships being addressed in the application for this property.

Mr. Hennigan stated that main hardship is the placement of the proposed building due to the sewer easement. It would place the build either far right or far left of the site. When the street was widened in 1956 it cut off a large portion of the property. The topography with the sewer easement directly in the center of the lot is being mitigated on June Lane and Esty Farm Road there is a lot on either side of the easement. It would also add much needed housing.

Ms. Lipsitt asked for clarification regarding the 1100 square feet of property that was taken by the City.

Mr. Hennigan presented the plans from 1956 before the road was widened showing the corner that was cut off. The lot size would have been larger therefore when dividing the lot the two halves would have been bigger. This pushed us back from the variance that would have been required.

Ms. Lipsitt asked if the lots would have been conforming lots prior to the widening of the road.

Mr. Hennigan stated they would not be.

Ms. Pucci asked for clarification for the substantial hardship and asked how he does not have reasonable use of the property presently without a variance. There is currently a single-family house on the property. Is the hardship not being able to build a second house there?



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Mr. Hennigan stated that the hardship is not being able to place a build in the center of the lot which would be the normal placement of a home especially in the Oak Hill area due to the easement.

Ms. Pucci asked how that would entitle him to the relief he is asking for.

Mr. Hennigan replied that he is just looking for a way to work with Board to see if there is a way to do this. There are a number of projects going on to add housing to the stock in the City.

Public Comments:

There were no public comments.

Ms. Lipsitt moved that that the public hearing be closed and the motion was seconded by Mr. Snyder. The motion passed unanimously 5-0.

Deliberation:

Mr. Snyder stated that the presentation does not establish a potential hardship that he can find.

Accordingly, a motion was made by Stuart Snyder, duly seconded by Elizabeth Sweet, to deny the variance. The motion passed five in favor, and none opposed. Therefore, the request for a variance was denied.

Agenda Item 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. Letter from Attorney Buchbinder dated October 25, 2023.
2. Revised Massing Plan dated October 25, 2023.



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3. Memorandum and responses from MDM Transportation Consultants dated October 25, 2023.
4. Memorandum from TAT and Bohler dated October 20, 2023.
5. Planning ZBA Memorandum dated November 1, 2023.
6. Resident emails and Newton Impact PowerPoint dated September 27, 2023-November 5, 2023.

Testimony:

Attorney Stephen Buchbinder, Schlessinger & Buchbinder, 1200 Walnut Street, Newton, reviewed the order of the presentation and stormwater and massing changes and future meeting topics.

Tom Schultz, architectural team, 50 Commandant's Way, Quincy, presented the decrease in massing comparing the old to the new, smaller project design.

Attorney Kathy Winters, Schlessinger & Buchbinder, 1200 Walnut Street, Newton, stated that the new design compares favorably to other 40B projects approved by this Board in the City. She presented other approved 40B projects within the City and compared them to the Tolls Bros. project.

Steve Martorano, Bohler Engineering, 45 Franklin Street, Boston, presented the updated landscape design for greenspace, buffers, and paths. The focus of the presentation was on drainage, stormwater, and wetlands.

Ms. Lipsitt asked if the retention pond in the corner was a real pond.

Mr. Martorano stated that it was a real, shallow retention pond that could get as deep as 2-3 feet with water at peak 100 year event storm.

Ms. Lipsitt asked if the water through the pipes from the drainage system to the edge of the wetlands and then over land to Paul Brook would be the best way to treat water and if there would be additional erosion of the wetlands.



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Mr. Martorano stated that the same amount of water that would be flowing to that area today. It would slow the water down and spread it out when it comes out of the pipes. There is still study to be done.

Ms. Lipsitt commented that she worries with comments such as it will not be worse than today. The situation today is terrible so the goal is to not make it worse but to make it better.

Mr. Martorano stated that as part of the Conservation Commission process there is a lot of invasive species down in the wetland area that they will remove and revegetation of native species and focus on where there is some erosion today which should help reduce erosion. They have no stormwater plan there today so the existing conditions will go away due to the nature of the development so there should be a vast improvement to the area.

Ms. Sweet stated that the neighbors complain about the flooding in the neighborhood and she is not seeing where the improvement is occurring. Things will get worse and wants explanation of how things will get better for the residents.

Mr. Martorano stated that the flood plain is a challenge and the responsibility is to not make it worse and try to improve it. It is a very large flood plain and the project is very small. There will be an improvement, but the project is a very small part of it. The compensatory area is about 75% better than the requirement. Still working on it and will work with Conservation.

Mr. Snyder asked to what extent is flood mitigation meeting requirements. It was stated that it was 75%, but is it possible to get more.

Mr. Martorano stated there is a balance. We would need to regrade the land which would mean removal of trees and vegetation. Increase the flood storage further can happen, but it would be removing earth and trees. We are trying to preserve as much vegetation as possible. We are looking at more, but we will work with Conservation to see what is possible for more.

Mr. Snyder encouraged them to keep exploring more options.



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Mr. Snyder stated he has empathy for immediate abutters. Is there anything to be offered to the abutters and their properties in flood mitigation that the developer can do for them.

Mr. Martorano stated that engineering is currently working just on the site for now and the current design will capture and relieve the situation as much as possible.

Mr. Martorano presented slides of conversation and progress with MA DOT with the intersections and pedestrian areas.

Attorney Buchbinder stated they will look at the issues on Old Field Road.

Ms. Kemmett, Senior Planner, reviewed the new design and massing. Still waiting on a full architectural plan. Waiting on responses for question previously asked. Reviewed the ten standards for stormwater management. No waivers have been requested for stormwater management. There are still questions for Conservation if stormwater requirements have been met and still waiting on information.

Janet Bernardo, Civil Engineer, Horsely-Witten Group, 112 Water Street, Boston, presented a peer review report dated October 4, 2023.

Ms. Lipsitt asked how the water will be redirected from the ledge wall to the catch basin.

Ms. Bernardo stated that the applicant is proposing a swale to redirect the water, but there is more work to be done for this particular area.

Ms. Lipsitt stated that during a large storm she envisions a waterfall effect.

Jennifer Steele, Chief Environmental Planner, presented a review the State Wetland Regulations since the Commission has not received an application from the applicant team, but this is the performance standards we will use during our review for this particular site and where it would be applied.



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Ms. Lipsitt asked if the project does not have to be submitted to Conservation until after it goes through the ZBA,

Ms. Steele stated that the project does not come to the Commission for conditions until after approval.

Attorney Buchbinder stated that there is nothing to file with the Commission until after approval because the project is constantly changing until approval. The applicant is willing to meet with the Commission during for guidance during the ZBA process if it was okay with Ms. Steele.

Chair Rossi stated that it is troubling that the Commission can't advise us if the applicant isn't speaking with you during the process.

Ms. Steele stated she would be willing to do an informal meeting with the applicant and make suggestions and advise the Board.

Ms. Pucci asked if Paul Brook is able to handle the capacity of the stormwater that is going to be diverted to it.

Mr. Martorano stated that they looked at the capacity of Paul Brook and the pipe with go to the wetland area and slow and spread. Then to the brook. Currently it is just flowing to the yards on Hagan Road and the brook, but this will be slowing it down.

Chair Rossi stated that the massing changes and design are positive and improved, but not gone. Its not the Board's job to design the building, but the applicant has listened to the comments and the applicant has said that this is as small as it can get.

Mr. Snyder stated he agreed with the Chair and asked if the model will be revised to the new design.

Ms. Pucci stated that she agrees on the movement of the size of the project and moving it back



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from Hagan Road and the idea of a robust barrier to Hagan Road. Will the mix and deep affordability of affordable units be affected with the new design.

Will Adams, Toll Bros., the intent is to keep the number of units at 20% and keep the larger two- and three-bedroom units remaining for families, but have not landed on exact numbers.

Ms. Lipsitt stated she continues to be concerned about the eastern side of the building and the distance between the building and the wall/ledge. Concerned about the water flow, how it will look visually, and any sun to the lower apartments.

Mr. Snyder stated that 40B projects in general these projects all come with some level of controversy, but this one seems to have been the most controversial and has clean opposition to then project. There is a process that includes the balancing of negotiating in good faith with the applicants, but even if the Board feels it is too massive but it meets other criteria and the Board decides to reject it the applicant can take their appeal to the Housing Appeals Committee which means the community could end up with a result much worse than what we can achieve through this process.

Public Comments:

Wendy Landin, 20 Olde Field Road, Newton stated she is a direct abutter for 26 years. We submitted a slide deck comparing to other projects in the City and we would love to have a dialogue with the applicant. The Urban Design Commission meeting back on January 12, 2023, when the first set of changes were submitted and they said the changes are nimble and ten months later the looming massing continues. Concerns have been consistent – traffic safety. Her sister works at a publicly traded competitor of Toll. They looked at this property and did not bid on it because they couldn't make the parking work due to the number of spots required and the dangerous entry/exit. The flood risk is real. She had her architect look at the plans and compared it to their Everett Brook Plans. He was very complimentary of the architects and Bohler, but warned if they impact the flood plain her property will flood. As a financial professional she worries about being in a FEMA flood plain if the increased flooding continues or gets worse they may be required to get flood insurance. Toll may have to get flood insurance. It is difficult to get



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now. She worries of the impact to the abutting homes during construction. Flooding is already an issue. Toll Bros. in 2012 had an issue with this with the Justice Department and the EPA. She is worried about the environmental impacts and what is in the soil at this site that has been a mulch pit for decades. We can look at the Kendrick in Needham and their vapor barrier. These things must be addressed. Frankly, the size and the massing is what is creating a lot of these problems. Our suggestion for something more scaled down with multiple building is something that actually would work at this site. Affordability is something she is passionate about and if we cared about the socio-economic piece we can partner with Toll Bros. and not for profits creating a development that has income caps affordable for teachers, firefighters, essential workers, retail workers, restaurant workers, the people who serve our community and whose contributions are invaluable and whose incomes do not reflect those contributions. Reducing the size of the building to fit the 2.5 available acres is something that we need to do to mitigate the risks and meets the needs of our city and all stakeholders.

Rob Sellers, 60 Olde Field Road, Newton, states he is an abutter. Thanks to the perseverance of the neighbors who have been involved for more than a year. The Toll Bros. traffic impact study from the last meeting where the study showed the complex would be adding a negligible amount of cars to Rte. 9 and the neighborhood with a minimal impact on safety. This conclusion was dependent on the assumption that only 21% of the tenants will be commuting to work or taking kids to daycare during morning rush hour and we feel that it is a gross understatement given the target market is high income tenants with jobs. There was also an assumption that the decrease in trucks from Sam White will offset the tenant vehicles. That is not reasonable because landscaping trucks can choose when to come and go to avoid rush hours whereas tenants cannot. There are significant forever safety risks to be born for whomever Toll sells the project to the tenants, neighbors, and police if Tolls traffic assumptions are incorrect. As you know there are already safety concerns in the neighborhood. One neighbor tallied 20 accidents over the past year and there are more she has not captured. Another neighbor on Rte. 9 performed an informal tally for a week and counted an average of two near-accidents per day at the Olde Field-528 entrance during weekday hours. There were fifteen days of flooding this summer at the entrance of the proposed project measured with ½ inch or more of rain. After the proposed project is built it is expected that the massive size of the complex together with the Dudley Road townhouse project will double the number of cars already in the neighborhood. At an industry standard of 3 car trips per day is 240



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cars translates to 720 added car trips. Given the tenants can only head east on Rte. 9 those heading north, south, and west during morning rush hour are reasonably expected to take Dudley and route themselves past NSHS and Spaulding Elementary or Brown and Oak Hill Middle School just as kids are arriving at school. If the 528 parking is insufficient, too costly, or the Rte.9 merge is too dangerous or challenging we can expect to see tenants parking in the neighborhood and compounding the neighborhood accident risk. The traffic study does not seem to address these impacts on Dudley and the neighboring streets. Winter snow and ice will make a difference with not being able to accelerate up the hill. Consider moving the exit from 528 to the proposed delivery entrance away from the cars merging off Olde Field.

Bruce Jennings, Duxbury Road, Newton, stated he is a 65-year resident. Duxbury filters out to the ramp to Rte. 9 directly across from the 528 project. He is in hearing distance of everything that goes on at the site. Every truck, every back up siren, every dropped tailgate you can actually feel them on the ground. There are between 50-150 trucks that enter and exit there every day from March-November and he can hear most of them from his backyard. On occasion some of the larger supply trucks that go into the area as early as 5:30am and they are 18-wheelers dumping tremendous loads of stone that you can hear sliding down the back of the truck. He has spoken over the years to residents on Olde Field and Hagen that have gathered with the communities on Duxbury, Marshfield, and Mansion about shutting down the current operation that's there because they don't want that in the neighborhood. Obviously, nothing has come of that. He looks at the current use of land at the site and assume a non-conforming entity that would never be permitted by the City of Newton today and question why we would want to take something that was grandfathered in as opposed to a new, clean, well-kept development that will make the sidewalks better, create a usable pedestrian path, and provide much needed affordable housing. He understands that Newton is still under the affordable housing threshold and the land in question is a little over five acres which the amount that will be used will allow for plenty of greenspace on every side of the building with the exception of the Rte. 9 frontage. He was surprised at the last meeting that a City Councilor said on ZOOM that under no circumstances would he give this project a yes vote no matter what changes were made or modifications offered he would not vote yes. The Councilor went on the say that to his knowledge the Board had never voted down a 40B and felt this should be the one example. Mr. Jennings stated that he wondered if this predetermined approach was a healthy one. Perhaps at one point a project will be brought forth



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that is undeserving an approval, but this certainly is not the one. The gentleman that stated that going through the process to come up with the best solution is a great one.

Dante Ciliberti, 12 Marshfield Road, Newton, which is located across Rte.9 from the proposed project. He states he supports the project and affordable housing is needed in Newton.

Marie Frederick, 144 Hagen Road, Newton, stated that she has lived there with her family for 23 years and is a direct abutter. Approximately eight years ago the house across the street from her was leveled and a new house with a full finished basement was constructed. Six months later a pond began to form on the side of that property in the Dudley Woods after extensive rains and this has become worse each year. Is this pond forming from the non-porous rock ledge on the hill that is water sheeting rain or did the builder hit an underground stream and it is now backing up. The answer is unclear, but in our neighborhood the risks of underground streams, flooding, wetlands, the drainage brook, rock ledge, shifting sand, significant grade changes, and instability is the reality. While the risks of constructing a building one hundred times bigger than the homes around it across the street will they be successful at mitigating before and after construction. In the Horsley-Witten report numerous concerns were noted. Toll is proposing a significant amount of ledge removal. Will they encounter water during ledge removal? How will this impact the stormwater design. Will this amount of massing upset the sand our homes sit on? What if the ramifications show up months or years later? This could have a catastrophic impact on the neighborhood. The project site has a significant grade change on the eastern side of the site – 57,000 square feet. The grades along the eastern property boundary lies at elevation of 190 and slopes down to 135 along the southern property boundary 240 feet away. The proposed design has a large retaining wall along the eastern side of the building 90 feet from the property boundary. The wall is 430 feet long and is set within seven feet of the building and is over fifteen feet high in multiple areas. She is not an engineer, but from her research a retaining wall should be built in areas that are stable and have been properly assessed for potential risk. Incorrectly placed retaining walls can lead to dangerous situations and can be devastating downstream. Extreme flooding can cause a sudden catastrophic failure of a retaining wall. Groundwater and rainwater can cause overtime extreme events and damage a wall. Pressure against the wall is substantially increased if surface infiltrates into the backfill. Manmade systems need maintenance and can fail. With the advent of climate change, the loss of hundreds of trees, and the unprecedented flooding this



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summer in an area that is basically a flood zone filled in with sand constructing a building of this size and scope in this area will put the neighborhood and Rte.9 in unprecedented risk.

GuangYu Quian, 44 Olde Field Road, Newton, stated he was surprised to see a catch basin was planned and all the potential flood water and future water would be collected and distributed into the wetlands. He finds it interesting that there is no impact on current flood situation for abutters. He feels that so much water accumulated why is there no potential change. There must be a risk analysis because based on the presentations they have only put the future best scenario to the public. He would like to hear some risk analysis regarding the flooding situation, Reference to FEMA flood zone to my house, neighbors house, and all the direct abutters and all the potential impacts with even subtle changes. This is a very sensitive issue to this site so please do a risk analysis for all of us. As someone mentioned earlier this major issue has come because of the mass of the structure. This is well beyond what the land allows to fit for the size. We belief this will be bad for traffic, security reasons, and all the other reasons that will be impacted. He expects alternatives, reduce the size, mitigate the problems associated, carefully analyze the risk for the residents effected.

Dr. Ann Findeisen, 132 Hagen Road, Newton, stated she has lived there for 32 years and is a direct abutter. Flood damage and worsening traffic are major concerns with the project as proposed, but there is another category of impacts that as a long-term healthcare professional she feels the need to address and that is noise, light, and air pollution. Numerous studies have documented the dangers of noise pollution to human health. Traffic noise, construction noise, generator and air conditioner noise all contribute to the population living on or near the site. Research has consistently documented that individuals that live or work in loud environments are at elevated risk of developing very serious health problems including ischemic heart disease, diabetes, obesity, high blood pressure, tinnitus, low birth weight, disruptive sleep, cognitive impairment, and emotional issues. Chronic noise pollution has also been known to show interference with speech and language development in young children. Light pollution will also pose a danger to everyone in the neighborhood. Research shows that this leads to deceases melatonin production, which in turn causes sleep deprivation, increased fatigue, stress, anxiety, cognitive problems, and cancer. According to the American Psychiatric Association disruptions in sleep and circadian rhythm are linked to psychiatric disorders including mood swings, bipolar disorder, paranoia, and anxiety.



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Given the height of the proposed building and the fact that it is on a 70 foot incline lights from the building will permanently pollute a very large area of the surrounding neighborhood. Regarding air pollution a large recent study in the US and Denmark showed that a higher level of air pollution is significantly associated with depression, bipolar disorder, and other personality disorders. A Harvard study published in March, 2023 connected exposure to higher than normal air pollution to an increased risk to dementia. The research suggests that all of these illnesses may be caused by an inflammatory process provoked by pollutants in the air. Once again children and adolescents are particularly vulnerable because they are undergoing critical periods of brain development. Neuro imaging studies have actually documented structural and functional changes in the brain and numerous high-quality studies most recently by UCLA have linked air pollution exposure during pregnancy to elevated risk of autism spectrum disorders in children. Other negative health effects of course include heart and lung diseases, heart attacks, strokes, asthma, COPD, and cancer. Blasting of the ridge as planned will also put both neighbors and residents at risk of developing silicosis a fatal pulmonary disease. In culmination the combination of these factors produce significant health risks to the entire neighborhood including the thousands of children that attend the three schools located just two to three blocks away. The project as proposed is simply too large and ill-conceived and poorly located to be a credit to Newton. She hopes the City can do better.

Rachel White, 124 Hagen Road, Newton, stated she has lived here for 25 years and is a direct abutter. She appreciates the applicant's efforts to reduce the building to the smallest possible footprint to make the project work. The additional 50-foot buffer to her and the other abutters on Hagen Road is certainly an improvement along with the natural berm that will allow better and deeper vegetation and the fence. She continues to be concerned about the size and the massing of the building and that it will continue to loom over their houses. She stated that the applicant's comparison of the density of the project to other approved 40B projects in the City takes advantage of the fact that only half the site is actually buildable. The reason that the building is as massive as it is that half of the site is not buildable. The comparison does not fully capture or undersells the impact of the building that it will have on abutters. She has a lot of questions about the drainage plan. Her house is directly behind one of the infiltration chambers and one of the outlets to the wetland is very close to her property. What assurance do she and other abutters have that the system will work properly and what recourse do they have if it doesn't? Curious as to why the path to Hagen Road will be impervious. Several Board members asked the applicant to not just not



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make the flooding worse, but to focus on how to make it better and she echoes this view. So many of the neighbors have raised concerns not only of the flooding they currently have, but the risks of what could happen during and after construction. As others have said the concerns are raised by the scale and size of the building. If this is the smallest size building Toll can make work she's very concerned how everyone who already live there can be reassured that the fears they have particularly about the flooding will not be realized.

Pat Irwin, West Street, Newton, stated is very concerned in traffic and the study pointed to an inadequacy. It is just not possible that there will not be an exponential increase in traffic in that area and it's intolerable and traffic is already bad in the City and there does not seem to be enough emphasis on that. She is concerned about the process around this and the administration and Planning Department are encouraging the developer to make modifications, but is not questioning the narrative of too big and are not taking the abutters concerns seriously in her opinion.

Punam Sharma, 28 Olde Field Road, Newton, stated she is a direct abutter with her husband and three school age children. She echoes what her neighbors have said and welcome a change to the 528 property. This is a close-knit community and would prefer to be surrounded by neighbors rather than sand and mulch. She understands the need for affordable housing and welcomes it, but struggles with the idea that it must be in this form. Toll Bros. does not acknowledge that the area surrounding the property is all residential even though their own models and pictures show just that. It does not just back up to a residential neighborhood it is surrounded by them including single-family homes across Rte. 9. In addition, Toll Bros. states that Rte. 9 is a state highway it is not a city street like Washington Street. Traffic impacts of a property of this size in this particular location cannot be compared to other 40B projects. The question is why not continue with what is already existing at Harley Place and create more townhouse-style, multi-family homes. That type of housing will not have catastrophic traffic, environmental, and safety impacts that have repeatedly been raised. It will align with the neighborhood and make those residents living there feel a part of the neighborhood rather than living in a giant apartment complex bubble that is self-contained and crammed into a neighborhood it does not fit into. Having townhouse-style multi-family homes will create more of a community and when you know your neighbors you work together to address issues such as traffic, safety, and flooding. Newton Impact Committee has produced a PowerPoint presentation where you can see what such a model would look like. We



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Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

ask you move the project in that direction and give a project the neighborhood can get behind. Lastly, Paul Brook opens up and flows into yards on Olde Field Road. This happens routinely these days. That is not something that happens in a rare 100 year storm, but happens all the time. We have pictures documenting that. She is skeptical of the storm water drainage plan that was brought up today and cannot see how this will not cause further harm to the Olde Field abutters when it does inevitably overflow.

Heidi Werner, 30 Hagen Road, Newton, stated even with slight reductions and modifications combined with other additional and nearby developments and now with reduced parking cars will start to park on Hagen and Olde Field. There are still concerns about traffic and will address some numbers related to these issues. There have been three formal ZBA meetings prior to tonight and one Toll neighborhood meeting. To put things in perspective during these four meetings only two people spike up in favor of this luxury rental property. We have had 150+ ZOOM attendees and dozens of people in the Chamber these past meetings. Approximately 20-25 people have voiced their concerns to the ZBA about this development at these meetings. Less than 1% agree with this massive project from these numbers. Over 1200 people have signed the petition opposing 528 and while getting signatures less than 1% declined to sign. Regarding accidents based on frequency and location there are three high crash areas less than ¼ of mile from 528 – Dudley/Rte. 9, Olde Field/Rte.9, and Hagan/Parker. In order to access or leave the property you will be at Dudley and Rte. 9. If it is not multiple sirens we hear daily it is the high volume of cars and trucks that go barreling up a one-way street which is Hagen or Great Meadow and blow through the stop sign at Olde Field to bypass the accident that has just happened to avoid even more traffic. She has seen approximately twenty accidents since last November as well as hit pedestrians and bikers in this concentrated area. Outside of her personal experience she is sure there are many more. She recently worked with Safe Routes Program to observe Hagen and Parker before school and it is pure mayhem at Paker and Hagen. There are cars squeezing around stopped cars for pedestrians, people are not stopping for people in the crosswalks, and there were multiple close calls. As we wait for 2027 for more flashing lights on the south side of Rte. 9 how many more accidents will it take until enough is enough. If we run into severe flooding issues with this potential property how many years will it take to address this flooding and who is responsible. Is it the City or the State? Additionally, some quick comments from the community through letters, calls, and social media are traffic is the worst ever seen, the roads are simply not designed for this volume of traffic not to



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mention flooding, the type buildings should be built where there is open space and can handle volume near commercial areas. Our current infrastructure does not support it and increasing density has a goal of decreasing quality of life. This plan is reckless and irresponsible. The numbers shared and the community voice is clear that this project does not belong in this residential area.

Enrique Testa, 84 Adeline Road, Newton, stated he is not a direct abutter and has lived here for 36 years. He is disappointed that the question he asked at the last meeting was not answered at this meeting as promised which was what the depth of the water table is. No one seems to know what it is, but everyone in the neighborhood knows that it is very high because pumps are going 24/7. According to the maps and plans of the drainage this will be adding for storms that are 100 years. The 100 years is here as evidenced by the flooding and the ponding in the yards and the roads all the time. They will not make it better, but saying they won't make it worse, but there are no assurances. We don't know the extent of the ledge or depth yet they will be building in there and find out as they go. At that point changes will be irreversible for the whole neighborhood. At one point there was work done on Dudley Road and the pumps had to start working all the time after the work was done. We want answers before they start digging.

Margaret Ward, 957 Washington Street, Newton, stated that the design illustration showed mature trees, but one cannot plant mature trees so it would be decades before the saplings had a mature root system in the ground that would absorb water. Also, in the plans there was a suggestion of removal of mature trees which does not make sense. Regarding stormwater management she refers to the Newton Public Library and the construction of the solar canopy in the parking lot. Historically the site was always known for flooding and at the time of the construction proposal there was arguments that stated removal of a handful of mature trees while increasing the impervious surface will exacerbate the flooding situation. The City's response was not to worry that there is time to design a robust drainage system. She is sure all the designs for stormwater management by the civil engineers were in state compliance, but unfortunately the design and construction was a massive failure. In August there was a catastrophic flooding event that caused a damage loss of thirty cars. The library parking lot is small in scale compared to this development and we couldn't get a parking lot right in terms of flooding and mitigation so she is very concerned about what could happen if the draining and mitigation plans fail on this particular development.



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The course of not making things worse than they already are today seems like a very risky venture.

Dr. Sue Bergman, 18 Walter Street, Newton, stated she has lived here for 37 years. Her main concern with the proposal despite the modifications is its destructive impact on the environment. Even in the best case this projects alters the ecosystem. Mitigation efforts may meet the letter of the law, but are likely not enough. Heat islands and flooding are already posing a major threat. Hotter weather and more frequent storms flooding on Rte. 9 and local neighborhoods will only get worse. Planting more trees and preserving the trees we already have provides the best opportunity to mitigate the damage. Even so-called invasive trees play a role in controlling heat and flooding. Wetlands and mature deciduous trees play a major role in combatting climate change. They provide shade the cools and cleans the air, the roots help prevent soil erosion, keep groundwater clean, and absorbs some storm runoff. It provides habitat for birds, pollinators, and other wildlife. Lawns and the evergreen arborvitae that developers seem to favor do not provide shade or habitat. Fertilizers and pesticides needed for lawn care typically wind up in the groundwater and the risk to Paul Brook is clear. Regrading the land, removing the trees, and adding wastewater containing toxic substances to Paul Brook will only speed up environmental deterioration. This project is simply not appropriate for this location.

Alex Pogrebnyak, 96 Olde Field Road, Newton, states he lives next to Paul Brook and several times a year it fills to the brim and in July and August it overflowed. He is very concerned that instead of the current soils on the site the currently stops the water from going down to Paul Brook. It will then all dump to the Brook and overflow and cause flooding for everyone on Olde Field. In the presentation the applicant said some properties may require flood insurance, but it is already required where he lives so everyone that lives on the street will probably have to get it. He questions the estimate of 0.5 inches per storm but that is not the case last summer or couple of summers before so it is really much more now. The traffic study mentions that it was done during school time, but they did it when school was already in session and at the end of May when the seniors were already out of school. Had they done it a couple of weeks earlier when all the seniors were driving to school they would have seen that Olde Field Road is filled with parked cars by seniors and the addition of the great amount of traffic and how it exacerbates it for everyone on the street. Nobody is talking about the additional traffic from delivery vehicles. Now on Olde Field road it's not necessarily residents driving, but a constant stream of delivery trucks. Was this part



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of the estimates for the traffic studies or not because it seems its very hard to get in and out of this property so most residents will order everything from Amazon to lunch to dry cleaning. All of this will increase traffic in the area as well.

Barry Bergman, 18 Walter Street, Newton, stated he feels the project needs a much smaller footprint. This summer we had pretty intense rain and it is only going to get worse. We saw the disaster that took place in Leominster and he can only imagine that kind of rain here. Certainly the 0.5 inch stuff is not true anymore. It is no longer the case that these storms are once every hundred years and we are seeing things getting worse. This project has a lot of impervious surfaces and this will lead to more water going into Paul Brook creating a flooding issue for all the neighbors. We need more land for drainage not more for building. The importance of saving the deciduous shade trees that absorb the CO2 from the atmosphere and not tearing them down to put up arborvitae which are worthless. The environmental concerns are very important.

Paul Stein, 8 Olde Field Road, Newton, stated the traffic study is not correct. Tonight it took him 25 minutes to get from Dudley Road to Parker due to the back up of traffic. The traffic study is totally irrelevant of what it is doing on the road. The number one catch basin they want to put up will be two to three feet deep with one fill up when the reality is that every time we have a storm Rte. 9 fills up to the top of the brim of the curbstone in any storm that we have. The fact is that basin will fill up and overflow and cause more flooding in the area. The traffic is another major issue. Is it a state issue or a Newton issue? He lives on the corner and every time he calls with a problem the state says it is a Newton problem. Who is going to police this increased traffic flow in the area? Toll Bros. is making a lot of promises here that they say they will fulfil but what guarantees are they giving us that they aren't moving on as soon as they have completed this project, sell the project off, and then all the promises they made are null and void because they are no longer the property owner. If they give it to us in writing that they will stand by their promises for the next 10-15 years we may be a bit more amenable to what they are promising.

Jacob Silber, 47 Dudley Road, Newton, asked who is left holding the bag when this project is finished? We have a lot of obligations coming from the Commonwealth to us, but we don't see the Commonwealth supporting the community. Firstly, we regularly see flooding and as a result there are accidents and traffic slowdowns and nothing has been done to address this by the



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Commonwealth. This summer there was a tree down over the sidewalk for two to three weeks until the Commonwealth finally came to remove it. Poison ivy all along the sidewalk was only trimmed once this summer. These are risks that he thinks will end up falling on the community and impacting the supposed walkability of this space. Secondly, he was surprised to learn there would be blasting and what can the abutters do to make sure their houses are not damaged by the blasting. They would like some assurances that their investment, their home, will not be damaged. Finally, the pathway down from Dudley to Parker is currently a wildlife highway. There is constantly animals going down across from the Dudley Woods area or from the large Kennard Park area down through the abutter properties and down further. He guesses that the wildlife highway will be demolished and this will increase the encroachment of wild animals into our yards.

David Fredrick, 144 Hagen Road, Newton, stated he is an abutter. It occurred that if this is built with 220 units and an average of two people per unit and currently 80% of the people in the neighborhood work that makes 360 people that are commuting. Hypothetically, 180 need to go east into Boston. You need to go west to get to Wellesley, Natick, Framingham, or the Pike they are not going to go all the way down Rte. 9 to get to Wegman's and turn around to go through six sets of lights that on a good day takes 20 minutes. If you put into navigation it will direct you to go down Dudley Road. If you are commuting at 7:00 or 8:00 in the morning it will direct you to Dudley Road, take the right, and it will dump you right into NSHS, Oak Hill, and Brown with hundreds of kids trying to get to school safely conflicting with 180 commuters rushing to get to work to get to Parker to get to Rte. 9 heading west. He cannot sit still and not bring up the issue of child safety in this town should trump environmental issues, accidents, traffic which are all important, but statistically if you have 180 commuters going through school zones 180 days a year when kids are there at the very same time they are rushing to get to work it is not going to end well. A car accident would be a good outcome, but god forbid something really unfortunate happens to a poor student trying to get to school. This is the most important thing. It's a public safety issue and if you live there and had to go west that is the only way you are going to go. This is not being talked about enough because people are going to be cutting right through a school zone. The kids that will live at this site that will go to the schools are not going to walk down Rte. 9. They are going to cut through the back onto Hagen Road through private property like people are already doing. This needs to be thought about because once it is done you cannot undo it. One



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child at risk is one child too many.

Carolyn Kraft, 295 Dudley Road, Newton, stated she has lived there for 27 years and is very concerned about the project. It's unacceptable. It's too big. Its not the right place. She cannot believe the City is even entertaining this. Its outrageous. She has taken a lot of initiatives on the street. Received a truck exclusion on Rte. 9 several years ago. She has pleaded with the City for years to do something because it is a scenic road. There are no sidewalks and there are people driving down like a toboggan run at 60 miles per hour. It is literally a death road. Her daughter was jogging through Kennard Park, was walking across to the path, and a car going 50 miles per hour from Greenwood down 200 yards, swerved to avoid her daughter, almost hit the oncoming car, and then collided with the rock wall, and flipped over. The car was totaled. She took a picture of the car and sent it to the Council and was finally able to get the road deemed a "safe road" for 20 miles per hour speed limit. It has not helped and cars continue to go 60 miles per hour down on the road with pedestrians walking on the road and the police will not come to do speed traps. To think about a development like this right here the residents will be coming down Dudley Road to the schools it will be chaos. This is what is unacceptable that you would even consider putting a monstrosity right on Rte. 9 there. It should be something that has integrity to the neighborhood. We should get the Council on this. We should get the Mayor on this. This should be opposed.

Xiaolin Xu, 33 Sheldon Road, Newton, stated he has lived there for two years. The data about the traffic from applicant and is the data really that low. There will be a bottleneck. They will not drive around on Rte. 9 they will cut through the neighborhood. He stops for five minutes waiting for traffic light. Residents all come this way and it will back up severely. He does not believe the study is correct with the low number.

Michael Gerard, 32 Olde Field Road, Newton, stated affordable housing is needed but this is not the right project for this site. He has lived at his some for 23-24 years and this is not right for the neighborhood or the future residents that will live there. It won't be safe for the kids to walk to school. The pictures of installing sidewalks shows a utopia of no cars and beautiful space, but that is not the reality. We need to think more about the families that will live there and will it be a safe environment for them. Dudley Road is a death road. Also very concerned for the children walking along Olde Field Road. He had three kids go through the school system and he was deathly afraid



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for their safety. He saw one child get hit by a car while on a bike. He hopes the Board will continue to look at that and the proper traffic studies. He still has a big concern regarding flooding. Many times the water is going about the concrete lined channel. It's incredible how much flooding has happened and he feels for everyone downstream and it will only get worse. Finally, no one has touched on the sound and light pollution Old Field will receive. They hear Sam Whites during the day, but not at night or weekends. This is a big concern for lights and sounds at night especially in the winter when there are no leaves on the trees. He would like more attention given to that and the impacts of flooding to our property.

Margaret Zaleski, 11 Marshfield Road, Newton, stated she is across Rte. 9 from the project. She is concerned about the flooding on the north side of the property. She is trying to confirm if the water flows under the property, across Rte. 9, and into Paul Brook. She has tried to ask City Hall. Her concern is if Paul Brook is adjusted in any way if it will be even harder for water to flow. They have substantial flooding in the road and water ponding on Rte. 9 north of the site and no one mentions it in any of the presentation. She would like some understanding on this and any information that can be given to ease the concerns of more flooding over there. There is a small project on the north side of Rte. 9 being built and there will be more cars for that. Toll Bros. believes the timing of the lights could be adjusted for more cars to get onto Parker Street. Parker Street is jammed from the bridge to Newton Center. She was waiting, facing the bridge, trying to make a left hand turn to get home a long time until finally a car on the street she was trying to turn into pulled into traffic and a car coming the other way swerved to avoid and almost hit her head on. The two other cars collided. It would not have happened if that driver at any point had been able to get onto Parker Street. Its so congested you cannot pull out. How long will the blasting be? No one has answered this question.

Janet Sterman, Newton Corner, states she is a 36-year resident. Elections have consequences. There are horrible laws, 40B, the MBTA Communities Act and what is going on is draconian. Just because we have 40B as a law we have no say so on this project. Yes they say they will mitigate traffic, safety, flooding and so forth, but at the end of the day the only ones making out on this is the attorneys and the developers. The bottom line is that the people who invested their money to live in Newton peacefully and safely are the ones getting hurt. For some reason we keep reelecting these terrible people to state government who don't make any changes to these laws and now we



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are suffering the consequences of these bad legislators. Why should people be forced to live in this kind of environment when their biggest investment is in their primary residence and now they are stuck between a rock and a hard place in harmony and peacefully in a beautiful city like Newton and have now been put in a terrible position due to these laws. We can do better and the elections showed that with new people in City Hall. She hopes the ZBA will listen to the public that spoke tonight.

Chair Rossi closed the public comment.

The next hearing for this project will be January 24, 2024.

Mr. Rossi concluded the meeting.

Adjourned 10:16 p.m.

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