



CITY OF NEWTON, MASSACHUSETTS

City Hall
1000 Commonwealth Avenue, Newton, MA 02459-1449
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www.newtonma.gov

Ruthanne Fuller
Mayor

ZONING BOARD OF APPEALS
Brenda Belsanti, Zoning Board Clerk

MEETING MINUTES

Wednesday, November 29, 2023.

7:00 p.m.

Remote via ZOOM

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

Staff Present: Brenda Belsanti, ZBA Clerk; Jennifer Wilson, Assistant City Solicitor; and Katie Whewell, Chief Planner

A public hearing of the Newton Zoning Board of Appeals was held as a hybrid meeting in person and virtually via Zoom on Wednesday, November 29, 2023, at 7:00 p.m. on the following petitions:

1. **#08-23** 41 TusNua LLC, requesting a Comprehensive Permit, pursuant to M.G.L. Chapter 40B, to construct a 16-unit residential development on a 25,902 square foot lot located at 41 Washington Street within a Single-Residence 3 (SR-3) zoning district. The proposed development would consist of reconfiguring the existing dwelling and constructing an addition. The proposal includes 4 affordable units.
2. **#10-22** MetroWest Collaborative Development, Inc. requesting to change the details of the Comprehensive Permit previously granted to the applicant on January 11, 2023, for a project located at 1135-1137 Washington Street in Newton, Massachusetts that consists of 43 affordable housing units. The applicant proposes changes to the basement slab elevation and building height and changes to the building layout, parking layout and site plan. Pursuant to 760 CMR 56.05(11), this item will be heard for the purpose of determining whether the proposed change is substantial or insubstantial.

Agenda Item 2: #10-22 MetroWest Collaborative Development, Inc.

Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, William McLaughlin, Stuart Snyder and Denise Chicoine (alternate).



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Documents Submitted:

1. Insubstantial Change Application Letter dated November 1, 2023.

Testimony:

Taylor Beardon, Partner at Civico Development, joint partner with MetroWest Collaborative, presented a PowerPoint detailing the insubstantial changes requesting.

Chair Rossi asked if the Planning Department had anything to add.

Ms. Whewell stated that the application was pretty straightforward and they had nothing to add.

Public Comments:

There were no public comments.

Mr. McLaughlin asked how far out the garage was after raising it three feet.

Mr. Beardon stated that it was based on the safety factors set by the engineers. They were working from the engineering report below grade to the ZBA decision of height above grade to fit the number of floors for the garage.

Mr. McLaughlin remembered there was concerns regarding ground water.

Ms. Lipsitt stated that the garage was some distance below street level and is now lowering the height she is concerned that someone with an SUV or rack will there be enough headroom.

Eric Chamberlain, Project Architect, DSA, Somerville, stated the ceiling height will be a minimum of seven feet which will accommodate an SUV which is higher than code for this type of garage.

Ms. Lipsitt asked when the car is going down the slope to the garage does it end up scraping the



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roof?

Mr. Chamberlain stated the garage door would also be seven feet so they would not be able to get into the garage and there would be plenty of signage. If it really could not fit it could get a designated outdoor space.

Ms. Lipsitt asked how many spaces there were outside.

Mr. Chamberlain stated there were currently four non-accessible parking spaces outside.

Chelsea Christiansen, Nitsch Engineering, stated that the raising of the garage elevation it also reduces the slope of the driveway so it is no longer a steep driveway pulling in.

Deliberation:

Ms. Lipsitt made a motion that the requested changes are not substantial. The motion was seconded by Ms. Sweet.

The motion passed unanimously 5-0.

Agenda Item 1: #08-23 41 TusNua LLC, Newton. This item was opened on September 13, 2023. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, William McLaughlin, Stuart Snyder, and Denise Chicoine (alternate).

Documents Submitted:

1. Letter from Attorney Buchbinder with shadow studies, revised landscape plans, and MDM Transportation comments to the City's peer review dated November 20, 2023.
2. Memorandum with attachments from the Planning Department dated November 20, 2023.
3. Resident emails (11) including from Councilors Leary, Greenberg, and Oliver.



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Testimony:

Attorney Steve Buchbinder, Schlessinger & Buchbinder, 1200 Walnut Street, Newton, opened the applicant's presentation and indicated that the applicant would discuss stormwater, landscape plans, and transportation.

Blair Hynes, Verdant Landscape Architect, Harvard Street, Brookline presented the landscape plan.

Robert Michaud, MDM Transportation, presented the responses to the peer review reports and the Planning Memo comments.

John Pears, Design Architect, 102 Parker Street, Newton, presented the shadow studies.

Attorney Buchbinder stated they are open to more discussion on parking. The stormwater issue is huge on this site and they are taking extra time to study the issue.

Ms. Whewell presented a PowerPoint regarding the points made in the Planning Memo, peer reviews for traffic, landscape plan, stormwater, and other updates.

Ms. Sweet stated the parking situation seems like a big issue for this. Could another approach be taken so that one or two spaces could be shared. The landscaping is an ongoing thinking process especially the issue with the trees. The trees do not go to the calculation of those being removed.

Attorney Buchbinder stated they will discuss the shared parking.

Mr. Hynes stated that one option that we could do is narrow, high deciduous trees, but they had assumed a year-round barrier would be preferred by the abutters. They will look at having deciduous trees as replacements. There are a number of attractive trees that can be used to reach the caliber inches that have been removed.

Attorney Buchbinder stated they could come up with something for the next meeting.



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Mr. Snyder stated that not all the issues have been properly vetted yet, but feels Plannings presentation highlighted some concerns like the open space issue contemplates an FAR that is three times that would normally be allowed. The project covers by a lot of area and is not assisted by the amount of parking that is being proposed impervious or not. It is a building and parking and that's about it. The plantings that seem to be proposed by the applicant seem to be right on the lot lines. How will this impact the neighbors? Visually having an issue where all the trees are located. Eight two bedroom and eight three bedroom are being proposed and four are to be affordable, but have not heard what the breakdown will be. The massing needs to be fundamentally rethought because it seems massive regardless of what the shadow study states.

Attorney Buchbinder stated that it is a for-sale product and not for rental and should be roughly 1/3 or less of market rate. He believes that it will be two two-bedroom and two three-bedroom for affordable units.

Mr. Hynes stated that the location that the trees beyond the property line were not surveyed in, but believes the final conditions will be to protect the trees and have no equipment on the root zones for this property or abutting properties.

Ms. Lipsitt stated that the site visit was extremely informative. Standing on the site and envisioning the extension of the current building to the north felt overpowering. She is convinced that a lot of issues can be addressed reducing the size of this project. At the least one floor should come off the addition. Reducing the size would have additional benefits – the lack of open space, the entire site covered in parking, and is not convinced that much parking is needed. If it were rental units and you were renting three-bedroom apartment to three unrelated people you may need three spaces, but if someone is buying a three-bedroom condo for a family. There may be one or two drivers, but there will not be three drivers with three cars. The parking analysis needs to be done on condo and not rental units. The comparables that have been used in the study seem to be in much less urban sites and much less transit friendly sites than the site here. Reducing the size of the project can reduce the massing, reduce the parking demand, and they need to relook at the parking calculations because they are far too high. An additional benefit will be landscaping. Putting a bunch of trees on the perimeter of the property is not a landscape plan. It is a landscape



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excuse. There needs to be something done to make this look like a residential site not a commercial site. This is in the middle of an SR-3 district. A district with small lots with houses that have been there a very long time. The site plan as proposed it is totally disrespectful of the environment and thinks there needs to be a great deal of work done.

Mr. McLaughlin stated that he feels Ms. Lipsitt is correct. He has lived in the shadows of the dorms of Boston College that are four stories straight up and has seen this play before. When visiting the site this is what it felt like. This feels inappropriate and there is no question that it is too dense and too tall. One story needs to come off and it will help in terms of the necessary parking, the impervious area, and the overall massing. He believes the ratio of parking is appropriate for the size of the units and for home ownership. In his experience home ownership demands more parking than rental units. Typically, in rental there is more of a shared parking situation, but not so in the condo world where people like to own their own space. It's a challenge to reduce the ratio and be comfortable that you are not dumping a bunch of cars out onto Washington Street. It is clear that sixteen units is too big a number and maybe it should be twelve and it frees up the challenges this project faces. The shadow study was remarkable how September, December, and March looked similar and he has never seen that and should be relooked at. Traffic generation would be less of an issue. The buffer and landscaping for the neighbors without a doubt stormwater which looks like they are doing half of what the regulation would be. A one inch storm versus a two inch storm is very concerning. It would have to be pumped and over to Washington Street which is open to mechanical failure. He has serious concerns about the technical pieces and there needs to be a smaller development.

Ms. Chicoine stated that it is a thoughtfully designed project but agrees that the concerns raised by Planning and flagged by her colleagues. She feels it could be a great project if the applicant made some accommodations.

Chair Rossi stated that in the Planning presentation that there was hope the project would be more contextual with the neighborhood and asked for clarification on that from the Planning Department standpoint.

Ms. Whewell stated that zoning dimensions are compared to the other things that are in the zone



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they are in. Open space numbers, the FAR, there are not a lot of non-conforming properties in the City, but the neighborhood could have some larger FAR then what is allowed but it would depend on lot size compared to scale, it is an SR-3 neighborhood so it is single-family and some two-family in the neighborhood. So it would be trying to bring it into alignment with those properties.

Chair Rossi stated that his comments align with Ms. Lipsitt and Mr. McLaughlin comments and he also feels that a story should come off the project.

Public Comments:

James Meigs, 80 Elmhurst Road, Newton, stated that he is an immediate abutter and will be substantially impacted by the project. He asked where the snow will go when it snows. Fire safety is an issue. How will the trucks get to the back of the building?

James Fair, 20 Burton Street, Newton, stated that he is a direct abutter behind the project. Stormwater will be a big issue for them since they are downslope.

Jodi Vito, 128 Grasmere Street, Newton, asked for a digital 3D of the plans. The dumpsters will be within two feet of or patio and want to know how that will be addressed for smells and rodents and would like to see it moved to a different area. Also, she is concerned about spotlights shining on her property. The balconies will be right over her backyard and is concerned about privacy. The pumps for the stormwater will there be a maintenance plan on them, what will happen if they fail, and who would be responsible. The peer review study shows pollution to the Charles River and she does not understand why risk it for four or less affordable units.

Andy Gluck, 19 Merchant Street, Newton, stated that he is not a direct abutter. He cannot think of another neighborhood in the City where a dumpster has been allowed. There should only be green and blue barrel pick up of trash in the City. It is too large. That should be a non-starter and whatever it takes to reduce this project to allow for City trash pickup is where the project should be started. If the motivation is truly to provide affordable housing why are they not doing deeper affordability. 80% AMI does not make a dent. Lets see how we can really provide affordable housing by choosing units that allow people to live in the Garden City.



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Christopher Perruzzi, 4 Copley Street, Newton, stated that he shares all the concerns raised by Ms. Lipsitt and Mr. McLaughlin and the direct impact this will have on the abutters. There is no plan for snow removal or the impact of stormwater. We all get water in our basements and is happy this Board does not appear to be in favor of this project, but we are not at the end. He feels the parking is overzealous. The impact of the development is more than three times the FAR is ridiculous. The project will overshadow the neighborhood in such a way that no one will want to be around it. The traffic analysis does not take into consideration from Oak Square through the neighborhood or the construction just over the border that will have traffic going to the MA Pike right through our neighborhood every morning. If you have not been in our neighborhood in the morning or the evening trying to get home is ridiculous. He comes late at night because it is easier to get home. He realized the owner of the property wants to make the most use of his property as he can, but it should not be at the expense of the neighborhood. He opposes the project.

Julia Talcott, 80 Elmhurst Road, Newton, stated that she is the little house in the shadow of the project. The shadow study does need to be corrected. She is familiar with all the trees and they are a little bit of paradise. There are owls and the kids always played in that area. She applauds Ms. Lipsitt on her comments regarding the landscaping plan. The plan is to cut down the biggest tree on the property and if they just made the project smaller they could keep the tree and it would be much nicer. The owner of the building is illegally renting units out to many people. It is a two-family and multiple families are living in there including his son on the top floor. They are being told they can have apartments there when he builds the building. She doubts this owner and project and the intentions.

Jen Murphy, 112 Grassmere Street, Newton, stated that she is downhill from the property. She thanked the City Councilors for being involved. She agrees that the massing and height are inappropriate for the setting. She supports affordable housing, but this is grossly oversized. We will be flooded with light, noise, water, and loss of privacy. Unlike the other large, professional 40Bs in the City this developer has done little to work with us collaboratively to make this a more mutually acceptable project. She asked the ZBA to see if that can happen. The west side of the property at the driveway they are looking to put in deciduous trees that only grow to 12 feet. She feels year-round screening is important. Fire safety is an issue. There is no way a fire vehicle will



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have enough room for turning. The national safety laws require they have an appropriate turning radius. Pervious driveways can not support the weight of fire vehicles.

Jingbo Ye, 47 Washington Street, Newton, stated that he is a direct abutter to the west. Impervious area requirement of 50% and 36% FAR for SR-3 neighborhood. This looks at historical data but he asks the Board and City to look forward to the extreme rain conditions that have been happening more frequently in the area. A quick Google search US Global Climate Change Program report says the Northeastern US has seen more of an increase in extreme precipitation than anywhere else in the US. The Northeast has seen a 70% increase in the amount of precipitation falling in the very heavy events. We need to think forward not just for building standard, but while evaluating the stormwater impacts for the future. We should look at five inches plus of precipitation. Over the last six decades it has two plus inches of precipitation increased 50% and five plus inches of precipitation increased 103%. These extreme weather events is what we need to be looking at.

Kevin Vito, 128 Grassmere Street, Newton, stated he is opposed to the construction of the apartment building behind 41 Washington Street. Water damage to the abutters homes is unavoidable. One resident had four inches of water in her basement after the new complex on Washington Street was constructed. She had never had water in her basement since living in her house starting in the 1970's. These were very experienced contractors that constructed the new duplex and they still could not control the water to protect the residents homes. Our situation is much worse with the high-water table. There is literally a circle of homes surrounding the property. Groundwater is extremely unpredictable which is why cities only cover surface water. The damage that will be caused to the abutters homes will undoubtedly result in numerous lawsuits and it will be a very messy situation. After the proposal to build a large single-family home on the property was voted down the original straw-buyer to 41 Washington Street who is an affiliated partner to the owner told the abutters that they would get us all back by building a low-income apartment building on the site. 40B was not put into place for contractors to use as a loophole to get past restrictions. The City of Newton needs to protect its long-time residents from obvious schemes like this. The current owner has posted 5-10 "No Trespassing" signs on his property. Ironically the owners crew were walking around our backyard measuring and hammering stakes. They never notified us or asked for permission to come into our backyard. He thinks that is a good indication of how the project is going to go.



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Paul Fair, 20 Merton Street, Newton, stated that he lives directly behind the property. There is an issue of erosion on his property. His neighbors have the same thing. He was there when they dug a test pit. He was offered \$5000 to do what he wanted to help protect the water issue for the previous project and he said no. They threatened him with low-income housing behind him. He would like to see how they will address the erosion issue. They show a wall in the plans, but on the property are mature trees and they are also on his property. The evergreens have been there since before he was born in 1958. His grandfather built the house and there has always been water issues. A pool was dug eleven feet deep and water poured into it from the ground. He wants to hear what they are going to do about the erosion. He has to dig out every five years. Parking lots and cars are just going to add to the problem. He is concerned about the maintenance for the pumps. The project is just too big. The developer is doing this because he was denied for the single-family and now he is just trying to stick it to the neighbors.

Chair Rossi continued the hearing until January 10, 2024.

Chair Rossi concluded the meeting at 8:53 p.m.

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