



CITY OF NEWTON, MASSACHUSETTS

City Hall
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ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

MEETING MINUTES

Wednesday, January 24, 2023.

7:00 p.m.

HYBRID

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

Staff Present: Brenda Belsanti, ZBA Clerk; Jonah Temple, Deputy City Solicitor; Barney Heath, Director of Planning; Katie Whewell, Director of Current Planning (remote); Cat Kemmett, Senior Planner (remote).

A public hearing of the Newton Zoning Board of Appeals was held a hybrid meeting on Wednesday, January 24, 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. Discuss and/or adopt changes to the City of Newton Rules of the Zoning Board of Appeals, any necessary briefing from the Law Department about items in litigation.

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)



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Documents Submitted:

1. Letter from Attorney Winters with attachments dated January 12, 2024.
2. Planning Department Memorandum dated January 17, 2024.
3. Resident emails
4. Resident video
5. Scott Horsley Report

Testimony:

Attorney Stephen Buchbinder, Schlessinger & Buchbinder, 1200 Walnut Street, Newton, reviewed the redesigns and updates on the project.

Tom Schultz, architectural team, 50 Commandant's Way, Quincy, presented the decrease in massing and units comparing the first, second, and current third version of the smaller project design.

Steve Martorano, Bohler Engineering, 45 Franklin Street, Boston, presented the updates on stormwater improvements, ledge and topography, landscaping, fire access, buffers, pathways, and abutter views.

Robert Michaud, MDM Transportation Consultants, Marlborough, presented his responses to the peer-reviews, enhancements for pedestrian and bicycle traffic, commercial vehicle circulation, and Mass DOT plans.

Ms. Kemmett presented the Planning presentation with a review of the current project updates.

Alan Mountjoy, Architect, NBBJ, Boston, stated he is satisfied that the building has been significantly reduced. The project is consistent in size with other 40B projects but the footprint does exceed the size in Village Center 3 Zoning. The height questions were resolved with the



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Village Zoning. The courtyards helped reduce the massing and the step downs reduce the impacts which also had an impact on reducing shadows. Likes the multi-use path and to incorporate into Safe Routes to School. Advocates to keeping the mature trees for buffer. Satisfied with the movement of the bike room. The parking ratio is inline with where it should be,

Jeff Maxtutis, BETA Group, Norwood, gave a presentation and stated he reviewed transportation and mitigation with the applicant and there have been several improvements. Mass DOT is responsible for Rte. 9. Each driveway will include a median to reduce speed. Minor vehicle delays in the area. Parker Street design will be done for traffic timing. There will be delivery vehicle monitoring done after occupancy to work with the City for solutions. Signage program for visitors and deliveries. There will be a transportation plan needed during construction. Guardrail installation for pedestrian safety will be discussed. Pedestrian and bicycle multi-use path connectivity.

Janet Bernardo, Civil Engineer, Horsley Witten, stated the applicant is required to meet the ten standards. The applicant has responded to the majority, but there are a few outstanding items. She is also looking for some clarification on some aspects of the design and further documentation.

Ms. Kemmett reviewed next steps for the applicant of refining design, responding to NBBJs concerns, responses to traffic and stormwater, identify areas of mitigation, review the traffic demand management plan, updated lighting plan, sustainability plan, and details for tree removal and replacement.

Ms. Sweet stated that this was a great update. Appreciative of the 50% affordability and would like to know the breakdown of unit types. She would like to know about the pond due to the increase in flooding. What impact will be on the neighbors if there is 2.5 feet of water in the pond. She wants to know why applicant would use synthetic turf when there is so much evidence that it is toxic and would like to see something else used.

Attorney Buchbinder stated that they are looking for lighting recommendations for the multi-use path and the applicant will act accordingly. Of the 50% AMI units three will be three-bedroom units.



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Mr. Martorano stated that the pond is meant to slow the water down for a couple of hours during the peak of the storm and then it will empty into Paul Brook to reduce impact to the neighborhood. There is more capacity than a 100-year storm. The synthetic turf was just for the Fire Department so whatever we use needs to be drivable.

Ms. Pucci stated that she appreciates the neighbors' input and it's been incredibly helpful. She asked if more of the 80% AMI could go deeper to 50% and how many of the units would be accessible to families with disabilities. The peer reviewer noted for stormwater that it planned for a 25-year event, but we know that this site has flooding today and these events are continuing. We need to use the 100-year benchmark to make sure we have what we need there in terms of impervious surface. The landscaping berm plan as proposed will actually function and thrive with minimal maintenance of the years.

Attorney Buchbinder stated that the affordability will be looked at. Out of the total affordable units 58 of the 148 are three-bedrooms which is 1/3 of the units so the project is very heavy on the three-bedrooms.

Mr. Martorano stated that the 25-year is a DOT standard approach, but will look at the 100-year and see the impacts. The landscape berm build up material will provide better growth and providing drainage so there will not be the ponding there is now that is harming the vegetation today. The intent is to make it a native and healthy buffer that will not need a lot of maintenance.

Ms. Pucci asked if the maintenance will be part of the ongoing maintenance plan of the project.

Mr. Martorano stated it would be maintained.

Ms. Lipsitt stated that she supports the statements from Ms. Sweet and Ms. Pucci and feels there needs to be a maintenance condition. She also strongly agrees with not having synthetic turf. There are two issues she wants clarity and it is flooding and traffic. She wants to hear that there will be less flooding impacting the neighbor's property there is today. She understands the standard is not making worse, but she wants to hear it will be better. She continues to be concerned about traffic. It is a difficult situation at Parker Street and Rte.9 and the surrounding



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streets. She is concerned about the two driveways. She is concerned about people not knowing where to go and wants to see the signage package that will explain how to navigate the site. She wants to hear that in practice this will not be an issue. In the NBBJ written materials it states that there may be a removal of the concrete channel in Paul Brook as an opportunity to reduce flooding. She wants to hear from the Conservation Commission if this is a realistic possibility, if it a meaningful change, and how would we go about having Toll Bros. make it happen.

Mr. Martorano stated that definitively that there would be less flooding at the neighboring properties than there is today. We are at 200% storage instead of the requirement of 100% standard and 110% by the City.

Chair Rossi asked Ms. Bernardo if what Mr. Martorano said is correct.

Ms. Bernardo agreed that is what is the intent is, but she wants to make sure she agrees with the numbers before making that statement and confirming.

Chair Rossi stated he was trying to see this from the perspective of the neighbors and wants to know if it will be better or worse.

Mr. Mountjoy stated that the engineers are addressing onsite storm treatment. They are not addressing the larger issue of Paul Brook as a stormwater conveyance structure. The comment is to what degree will the remaining land that is within the flood plain of Paul Brook be used to enhance or reduce downstream impacts by having more storage within that area. The applicant cannot touch it because it's in the flood plain. The challenge may be outside the applicants purview, but it is in the Conservation Commission say to ask how can the area of Paul Brook be harnessed to help reduce the impacts downstream to the neighbors that are probably going to experience flood events in the future due to increased rainfall. He wanted to make the distinction of what the project is doing and what might be done to the remainder of the site that they are not touching.

Chair Rossi appreciated the distinction and asked if it was the view of Mr. Mountjoy for the applicant to not make things worse.



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Mr. Mountjoy stated he believes they are enhancing the onsite flood storage on areas they are touching.

Chair Rossi asked if the overall impact of the project ends up exacerbating the flooding due to Paul Brook or any other feature the applicant is not really mitigating or sustaining the runoff.

Mr. Mountjoy stated that the applicant is improving the onsite. He is not a Civil Engineer. They are addressing the onsite stormwater, but it is a drop in the bucket compared to the conveyance of Paul Brook has to carry. He is only making the distinction that what else can be done to the wetlands to enhance to what they are doing on the site.

Mr. Heath stated that the conversation should be had with the Conservation Commission.

Chair Rossi stated that he asks what the impact on the abutters with the flooding.

Mr. Snyder stated that from a big picture standpoint he appreciated the presentations from the applicant, staff, and peer reviewers. We need to get to the point where the peer reviewers are satisfied with the responses and there are no outstanding questions. He is concerned about the effects on Paul Brook from this site and downstream. Is there a chance Paul Brook gets overtaxed? Has the applicant been in contact with direct abutters to see what could be mitigated on their property?

Mr. Martorano stated that there will be further conversation with Conservation Commission and Public Works regarding this. If there is an opportunity to put mitigation along the property lines may be more effective and they are looking at that because the dry wells could be more easily overwhelmed.

Mr. Snyder stated that he feels these are conversations worth having with the abutters.

Mr. Martorano stated that there will be some survey work done. Dry wells may work better if there is regrading done. What there is now is to put drainage in the area.



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Mr. Snyder asked for more clarification with parking and reasonable expectation for the nine stalls for deliveries and visitors. Will there be enough parking for visitors?

Mr. Michaud stated those are really for lease visitors or short-term for visitors that are picking someone up, or food delivery, or rideshare. They are really intended for come and then turnaround and leave. The nine spaces should be adequate to meet those needs. Longer visits would be put in the garage in supplemental spaces in an as needed spaces.

Mr. Stuart asked if there will be signage to direct people where to go to park for visit a resident.

Mr. Michaud stated that the spaces are at the management office and they would be able to direct and give a visitor pass.

Mr. Snyder asked what is a reasonable expectation for people visiting there. This could impact the surrounding streets and the pedestrian path.

Mr. Michaud stated that the MAPC studies suggest the demand ratios per unit during peaks and the supply here is 1.28 which is above for this type of projects. It is 20-25% higher than needed.

Attorney Buchbinder stated that they will come up with a parking protocol and signage plan.

Mr. Michaud state that in terms of the traffic there will be a combination of things that will let people know what driveway is appropriate for their use. Residents will use the primary driveway, package delivery, USPS, food delivery, and rideshare would use a different eastern driveway. Those needing the leasing office would use the auto court and short-term parking.

Mr. Snyder stated that the lighting on the multi-use path and sees that the applicant is looking for suggestions. This is important and is asking how decisions will be made.

Attorney Buchbinder stated that they need to get a lighting package together.



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Mr. Snyder stated many of the residential letters raised the questions of health risks for light, noise, and the blasting that will be going on. Concerns over blasting dust and damage that it may cause to the neighboring properties.

Ms. Whewell stated that blasting is regulated by the state and the City has a vibration ordinance. Everything would need to be monitored. There would be a construction plan that would be monitored by Inspectional Services that they take very seriously. Neighbors can file for zoning enforcement if these things are not being followed.

Mr. Martorano stated that there is a stormwater pollution prevention plan and meetings with the general contractor prior to the start of construction. The EPA requires a notice of intent that construction is going on and they have the ability to enforce the prevention plan. There will be dust control procedures that the contractors are required to implement.

Mr. Snyder stated that another letter from Newton Impact addresses the berm suggesting different plantings and ideas and asked if the applicant reads the letters.

Attorney Buchbinder stated that they do try to keep on top of the letters that come in.

Ms. Chicoine stated that she appreciates the redesign and the reduction in massing. How many electric car charging stations will be available and will there be a shuttle to the Greenline?

Attorney Buchbinder stated there will be 20% of stalls with charging stations on day one with the ability to go to 50%. There has been many discussions with the City about having a shuttle with other developments in the City along the Rte. 9 corridor to Chestnut Hill and they will continue.

Chair Rossi stated that some of the updates since the beginning of the project are great progress. He asked Ms. Bernardo she could provide more information on the standards for stormwater in following meetings. He stated to Mr. Mountjoy that the statement that this project is in scale to other 40B projects in the City is misleading because it does not take into account the setting that this project is in. It is a single residential district and surrounded on three sides by residential homes and there is not another project in the City that fit that criteria. Do you take the setting of



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the building when you consider the size of the massing and how does it factor into your analysis?

Mr. Mountjoy stated that he has worked on several 40B projects in the City and on a case by case basis when working on Charlemont we looked at a building that was nearly 400 feet long and decided in that setting that it was too big primarily because we wanted a smaller scale block structure to be supported within that district as part of the studies that Needham Street as being a walkable neighborhood. He didn't feel that breaking up the building mass in this case would help and the multi-use path was going around the side and provided the connectivity of the site adequately. There was no need to provide additional pathways through the site and it didn't challenge the size of the building because breaking it up would probably increase the height of the project. Even though it is one of the larger 40Bs breaking up the mass would benefit the community in any way for the connectivity. The buffering has been a beneficial aspect by not breaking it up.

Chair Rossi asked if in Mr. Mountjoy's view the building was too big as opposed to too big for the setting.

Mr. Mountjoy stated that with Charlemont they wanted to break it up for better pedestrian connectivity through the site whereas with this site the connectivity was satisfied with the multi-use path. There was no reason to increase connectivity through the site because the neighbors would not have appreciated any additional connections to any street other than the one there.

Chair Rossi asked if the concern at Charlemont was that it was one big building and if did not have the same concern here.

Mr. Mountjoy stated that was correct.

Chair Rossi asked if there were thoughts if this building was the appropriate size for the setting that it is in.

Mr. Mountjoy stated that he does not have his scale comparisons. They did a number in the City and from the Charlemont study he used the same precedence and many of the buildings were 400



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feet long and this building is approximately that so it is not unusual to see buildings of that size. The specifics of the site mandates if it should be broken up into pieces or not based on urbanistic principles as opposed to strictly massing.

Chair Rossi asked if the project make things better, worse, or no impact. The study showed that there would be a minor increase in delays at intersections. What does that mean in terms of time and what intersections were studied.

Mr. Maxtutis stated the intersections studied were along Rte. 9 from Parker Street down to Hammond Pond Parkway. Eight or so locations were done. Minor impacts would be if you are adding traffic it will make delay somewhat longer. In traffic engineering valuation if it does not change level of service it is said to be not significant.

Chair Rossi asked to explain if lines are longer and people are delayed how does that not change level of service? If you live in the neighborhood and you're waiting longer how is that addressed?

Mr. Maxtutis explained that level of service is a report card for the intersection. Adding one or two seconds in delay that is in the margin of daily fluctuation it is hard to measure that impact. But if you trade a grade from level of service that means you have increased delay significantly by 30 seconds or more. This project is not in that area. It does not create a lot of trips. People find it hard to believe, but the actual trip generation for multi-family units is low. Trips are between 55-75 when the project was larger so now it will be less. So it's one per minute that is being added which is not a lot.

Chair Rossi asked if any of the intersections studied were already at level of service grade F.

Mr. Maxtutis stated that he did not believe so but would have to recheck.

Chair Rossi asked even though there will be an increase none of the studies showed a change in grade from one level of service to another.

Mr. Maxtutis stated that there may be a change if one was on the borderline, but as he recalled



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none did.

Chair Rossi asked specifically about Parker Street and asked if there would be an added significant delay.

Mr. Maxtutis stated that it experiences significant delays now.

Chair Rossi asked if it will get worse if the project is built.

Mr. Maxtutis stated any traffic will increase delay, but that intersection in particular is being addressed by Mass DOT Safe Routes to School Project with lanes and traffic signal optimization. The applicant does not take into account signal optimization at the intersections and has agreed to make improvements.

Chair Rossi asked Mr. Michaud the same questions and what his responses would be.

Mr. Michaud agreed with Mr. Maxtutis that any additional traffic would increase delay, but the level of that delay is in seconds and the changes are 3-4 seconds at most of the intersections which would be in a day to day fluctuation regardless of the project. In terms of the Parker Street intersection which on occasion the westbound ramp backs up, but putting in signal optimization, phasing, and lane assignments at that location. It is a one second of additional delay does not rise to the level of changing a nominal level of service now or future. The applicants commitment to working with the City for improvements should get better with the new projects. This is a very small part of a growth part along Rte. 9.

Public Comments:

Councilor Stephen Farrell, 30 Winton Road, Newton, asked a process question regarding the Conservation Commission and he was surprised at the January 24 hearing by the Conservation Committee to learn that it was undertaking only an informal overview with the project of many outstanding critical questions, stormwater management and flooding. It would only be after your decision and the zba that the Conservation Commission would and “closely



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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 Paul Brook itself, review a detailed construction sequence for ongoing construction erosion and stormwater controls". There are several things, but these are a lot of very significant concerns that have been addressed here this evening and others. Each of these is absolutely critical to understand prior to the ZBA approval in his opinion. Few of the answers to these questions about this project are more critical to immediate neighbors and in indeed City itself that knows about stormwater management and flooding. This is an area where the neighbors have consistently demonstrated to you that they suffer daily stormwater and flood warning flood management problems. It's not sufficient as Horsley and Witten suggests that it appears that the apparent the applicant can comply. It must be clear. There are substantial costs of the developer to do this now, but some water or flood or water problems cannot be corrected after the fact like safety, traffic congestion and public transportation to name a few. Therefore, he respectfully urges the ZBA to require that all stormwater and floodwater questions be answered now with the support of the Conservation Committee and not after your decision.

Chair Rossi stated he had similar questions about the order of operations and asked Planning for some insight.

Ms. Whewell stated the reason why it makes sense to come to the ZBA first is to really finalize what the site plan is going to be. Also, they have to comply with state requirements which the Conservation Commission is responsible for upholding and enforcing. The level of detail of those plans is just incredibly detailed on how they are going to meet the requirements of the Conservation Commission. The applicant could also add to this, but it's just the level of detail that is required for those plans and not knowing whether this project will be approved and in what iteration what form. So that is sort of the reason why that the process unfolds the way it has.

Wendy Landin, 40 Olde Field Road, Newton stated she is a direct abutter and thanked Toll and it's architects for their revised designs. She appreciates the changes in materials that are clearly an effort to respond to our concerns about the project fitting in with the neighborhood. She also



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appreciate the new median renderings, which have an accurate portrayal of Rte. 9 with chain link fence and not lush green mediums. She is not an engineer. She could apply and confidently on Toll Brothers cap structural liquidity and valuation, but I am a mere resident for 27 years old 40 Olde Field Road and have only lived experience and homeowner observations to rely on which formulate my concerns. For almost a year and a half my primary concerns remain the same. The negative impact on safety primarily increased traffic risks, not traffic delay, but traffic risk from getting from Olde Field Road, Sheldon, Philbrook merging onto a 50 mile an hour road which now we have to come to a hard stop because of this project. Waiting another minute is fine. Hitting a car is not fine. We're fortunate to have competent experts in Newton and Toll has also has very competent experts. Subsequent to the last meeting ZBA meeting, a few of us met with Mayor Fuller and Barney Heath to discuss our concerns and we found them very supportive and very sympathetic and we'll meet with Mr. Heath again. Vacations, holidays, and the teacher strike. All of this is weighing on our City. However, Scott Horsley formerly of Horsley-Witten, an expert in water resources management, is engaged by our group and confirmed our concerns are valid and real. Thank you to this committee for sharing those concerns and for recognizing that more needs to be done to reduce flood risks to our neighborhood and unroot Olde Field Road. He's made a bunch of suggestions, including groundwater mounding analysis, but what we're asking is do the analysis and use best practices. If things are fine, that's great. Our concerns will be alleviated. Similarly with traffic. We're concerned about the underlying assumptions. We're concerned about the risks. Let's do a scenario analysis. If the safety risks are not increased rate, we'll be happy and our concerns will be alleviated. If there are risks it can be mitigated and we can perhaps save a life. She is not going to discuss the impact on daily life other than to say Olde Field Road residents are very concerned and determined to maintain the maximum number of trees for our privacy. Similarly brought up today the lighting. We're concerned about the lighting and what that does to our privacy. Positive changes have been made, but I believe we have to come together as a community, support and protect each other, and compromise. Let's work together to achieve a project that we can all be proud of.

Sean Roche, 42 Daniel Street, Newton, he is a neighbor across Rte. 9 on the north side. He will not speak about the floodwater and the stormwater issue and clearly lots of people have raised it. He is here talking about housing and pedestrian access. He and in many in the housing advocacy community, don't necessarily consider it progress, that the project has fewer units. We need



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housing, and we need affordable housing. It's good that there are more three bedrooms and it's great that there's more deeply affordable housing, but I don't think it should be the province of the ZBA. As you as you said Chair, to commend a reduction in the number of units of housing that this will bring to our city. I understand many of the concerns of the neighbors. This is probably not what they imagined when they moved in, but we've had similar buildings built in Newton before and they haven't ruined Newton or the neighborhoods. He wants to address a question about how it fits in with the single-family residences. 40B is a mechanism the state created to deal with the shortage of housing in the state and in places like Newton. The reason we have a housing shortage is the preponderance of single-family neighborhoods. So you know that the clash between the size of this building and single-family neighborhoods is really a function of single-family neighborhoods. Really love the connection of the multi-use path to use to Hagen through the property. I have some specific suggested requirements that ZBA impose sidewalks along the east side of the auto court so that pedestrians traveling from the East don't have to cross the driveway entrance to stay on a sidewalk to the front door. The guardrail between Rte. 9 and the sidewalk I think is important for the perception of safety. Extending the guardrail from the east edge of the property to Dudley. There's an existing guardrail from Dudley to Langley that will create a safe corridor. Create a signalized pedestrian crossing at Dudley like there is Woodcliff. If we want to reduce auto traffic, one of the ways to do that is to create pedestrian alternatives for typical use cases, like getting to Bowen School. At Hagen in Adelaide, that is a an intersection desperately in need of a road diet that should be compressed and that would make it better both for pedestrians and the neighbors. And lastly, I get the desire to make the buildings look residential with a peaked roof. I really do. However, if we go half a mile down the road to Avalon at Rte. 9, there's a peaked roof to make it look residential. What ends up being is a gigantic mountain of asphalt roofing. Long term it would be better if this goes back to flatter roofs.

Sharon Greenstein, 16 Olde Field Road stated she is a direct abutter. Rick Lipof had been on the call until recently, just a few minutes ago and just wanted you to know that his comments will be emailed. She will speak about two different things tonight two of my concerns traffic safety and affordability. She spoke about traffic safety. Issues back at the May, 2023 ZBA meeting and believe there are still many open and unanswered issues. These are further detailed in a separate letter that we sent to the ZBA this week, so she will only mention a couple of things tonight. As has been discussed, the project's exit will be located at a treacherous merging of traffic from the



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Parker Street Bridge Olde Field, Sheldon and Philbrick Roads. How will safety concerns about tenant cars merging onto Rte. 9 and having to accelerate up a hill to 50 miles per hour mitigated? We have not heard adequate information about this. How can a sufficiently long merge lane be created while allowing for the planned sidewalk, building setback, and rock wall without reducing the current lanes? Mitigation has also not been proposed for the risks that Olde Field Road drivers as my colleague, Wendy said we'll face merging onto Rte. 9 and competing with an industry standard projection of 729 car trips a day and during at 528 Boylston for the 243 added cars. As the suggestion by BETA to having a separate entrance and exit been considered. Now switching over to affordability this also remains an issue. She knows several people in the chambers today have discussed this and stolen some of her fire but will still repeat what she wanted to say. Under the current design a total of 46 affordable units are proposed 9 at 50% of AMI, 37 at 80% AMI has also mentioned in the past it's highly debatable whether units priced at 80% of AMI are really affordable. Affordable \$2,700 per month two-bedroom family units are only affordable to households making \$110,000 per year and this is more than what Newton is paying many of our teachers. Nine units priced at 50% of AMI are truly the only affordable units. Sadly, four affordable units on Hurley place are being torn down to build this project, netting just five affordable units. Three of these units at on Hurley offer four-bedroom units. So you know if you were to do the math, and she does not know all the numbers, but it looks like there is only a net about five to 10 affordable bedrooms that this project will be creating. This is a missed opportunity to diversify Newton and incentivize those who work for our community and support our children. We welcome affordable housing, but it needs to be truly affordable housing that doesn't negatively impact the safety of our residents.

Rob Sellers, 16 Olde Field Road, Newton thanks everyone all of the time that you've put into this. He lives 50 yards away and 20 feet below the project so requests a rendering from his place because he's actually much closer to the project. Especially the winter view. We've sent some pictures you can see what that looks like from our yard. He really appreciate the design improvements as well, but we continues to have concerns about the impacts of the project on safety and the environment. We know that the ZBA and the neighborhood are aligned on the interest of providing affordable housing and ensuring that future generations feel that our work today that our work today made the neighborhood and Newton a better place to live. The burden of that responsibility is on us, not the developers. We take this very seriously and again, we want to make



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sure that concerns are addressed. On the safety front we feel that an independent traffic assessment is still needed to evaluate the impact of the project. The additional thought 238 cars and 729 car trips to the neighborhood. A couple of assumptions that we really want to challenge that just don't make any sense to us is that the fundamental no impact or negligible impact of cars is based on the assumption that only 8% of the tenant cars which is 19 vehicle trips divided by 243 will be commuting to work or taking their kids to daycare during morning rush hour. Maybe that's a 2021 COVID era benchmark, but this may seem reasonable in a mixed-use development, but we feel that the assumption may be a gross understatement given that the target market is a high-income tenants with jobs were paying for parking. The Vanesse and Associates earlier this year quoted some survey results by the American Community Survey that is 27% of our area contained in the project site reported they use an alternative mode of transportation or they work from home. So we're trying to figure out what the gap is. If 92% of the cars are not commuting, there's 27% in the survey so what's the difference? How did you arrive at the at the 8%? The other part is the level of service question. It's a C on the MDM survey but we know as we live there that it's frequently have an F during rush hour. They're saying a C during peak hours and we're noticing up to an F and that also was noted by Vanesse & Associates. There's more in the letter, but appreciate the time today.

Betsy Harper, 19 Fairmont Avenue, Newton stated speaking on behalf of herself and also Grant Newton's Building Standards Committee. Personally and as a committee, we have reviewed this project with the petitioner extensively and we are highly in support of it because of its strong sustainability plan. There is a new specialized building code, which some of you may be aware of has increased the requirements for all buildings to multifamily buildings of this size to be passive house and to be all electric and obviously the petitioners conforming with those, but they are going above and beyond that in three ways. Firstly, on their study and use of embodied carbon lower embodied carbon materials. Secondly, on the percentage of electric vehicle charging stations. Thirdly, on their exploration of rooftop solar. The embodied carbon analysis, they've hired an external consultant to look at the major contributors to embodied carbon from cement and brick and steel and are committed to using the lowest materials that they can to lower the amount of embodied carbon in those materials. Secondly, the code only requires 20% of the parking spaces to be EV ready, whereas the petitioner is looking at the newest types of smart shared electric utilization charging stations so that they can go as high as 50% of those parking spaces to be EV ready, without the need for a huge new transformer to be installed. Thirdly, rooftop solar is not



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required by the building code for all electric buildings, but they have unfortunately not had the time to present that plan today, but there is significant available rooftop that they are committing to put rooftop solar on. Those roofs are southern facing and we expect them to be highly productive in their generation of electricity. In short, we believe from a sustainability point of view that this building will add significantly to the Passive House units in the city and all electric buildings. With all the other additional components that I've mentioned about lowering embodied carbon below standard building material usage, the increase of EV charging stations and the addition of rooftop solar. Thank you very much.

Patricia Burdick, 180 Dudley Road, Newton, stated she is concerned about the massive scale of this building, which makes it necessary to deal with the rock ledge. Her husband and her dealt with removal of ledge when the Atrium was built, which is the corner of Rte. 9 and Florence Street. The blasting there was very disruptive. You will hear a loud siren, then the ground would shake, and our house would shake. Then there would be another siren which would signal that was all clear at that time after that. What happened was that our chimney began to leak and it took a while for it to become serious enough so that we called in a mason. This was in the midst mid-80s and the mason discovered that our chimney was cracked. The chimney had to be torn down halfway and then rebuilt. It was never possible to prove that it was the blasting that had caused us, but since it hasn't happened again, and we haven't had any blasting it seems only logical. She would like to inquire what Toll Brothers will do to protect homes, and there are many homes in the vicinity of this project from damages, and what is any recourse if homeowners discovered damage to their properties? Thank you for your time

Stephen Friedenthal, 329 Parker Street, Newton, stated he appreciated the presentation. He has been to a couple so far. Probably reiterating some of the same concerns that other people have. One is on the traffic and he listens to the testimony. He's so serious. He does not find it credible and it's smug. He drives that road. He takes his wife into work every day. He already has a several minute backup coming up Rte. 9. He thinks when people do studies they do an a 10 or 11 am. Not during school hours and during school. Over the last 20 years Parker Street has turned into parking street because it is just stopped with traffic and trying to get on his driveway is often just waiting on the kindness of strangers. He does not see how adding more when the only possible route for students to get to Brown or Bowen or Oak or South is that Parker Street exit. He understands we have the



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safe walkways to school, but now you're expecting students, and I have a couple, to now walk to school and winter snow rain and it's not credible. They're going to drive. They're going to want to drive and it's going to add traffic and he thinks the assumptions are unfounded from what he's seen there. He is also worried about safety on that intersection. He was nearly t-boned a while ago and he still has recollections and he was nearly t-boned because people get frustrated by the backup already on Parker Street. So they blow past the red light and it creates a risk. He does think this is going to ameliorate that. He worries about the students walking as well. Yes, we have the walkway but it's more people it's incredibly dark at night. We had a fatality or near fatality just outside his house earlier in the year because of a darkness on Parker Street in the amount of traffic. Two the flooding. We all talk about it. It's not climate change, folks. We have three inches of snow and he has a sump pump that won't stop running every couple of minutes. A few years ago it was never an issue in the last year alone every yard out here is a pond. It's a swimming pool. And he does not see how that stormwater maintenance that you're doing, I notice the words, were very carefully coached, to say well on this site on this area, but the water's got to go somewhere and it's gonna go downhill and he happens to be in a low point of Parker Street. So unless Toll Brothers is willing to put up the money to fix the flooding issue, and he hasn't heard them volunteer that, he's skeptical and I'm worried about that. His last thing is he heard the testimony about the EV chargers. I know that makes us all feel good, but EV chargers actually put a phenomenal strain on our electrical grid. So as much as people like electric cars, modern electrical vehicle charger is going to do what 100 amps 480 volts and you're gonna put 20 plus of them out there. And we're gonna find that our existing electrical system is already strained to capacity and suddenly having a large number of electric cars charging things is going to cause a greater risk. So in short, he appreciates people trying to do and he doesn't feel like this project is ready and he's concerned that resident input is being blown off and that we're not being listened to.

Heidi Werner, 30 Hagen Road, Newton, stated she has spoken before is sure you're aware and it's unfortunate that many people are occupied with the school strike and could not attend tonight. With that said many people like herself in the community are even more concerned with the environment and flooding issues. It'll become more of a disaster than it already is with the extreme weather. She does not think you can accurately measure future storms since it's extreme and unpredictable. We can't control the weather, but we can control potential extra problems by not building this massive structure. The last major storm we had was on December 22, which left us



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with major flooding for weeks after. Lower line levels off the Parker which we just talked about Kendal Truman, they still have extended pipes and hoses to remove water and constant drainage out to the street and creating ice on the road during the winter. Just yesterday she saw a woman on Truman still addressing her runoff from her home and this is about a month after that last storm. Who is accountable? Who will shovel the sidewalks on Rte. 9 and the new biking paths? Because right now they're not taken care of. Who's going to help us with the constant flooding? It took the City four weeks to pick up my yard wastes from the last major storm with their extended pickup. One month ago and five phone calls later it was just picked up. So with that example she has little confidence that our flooding will be okay or get any better. The reality is even adding 10 units to that property will make a negative impact in this residential area. In addition, we're sacrificing the many homes in our whole neighborhood not just the abutters, but the taxpayers, the residential community we built. This massive building will dominate and take away the little green space that we have left in the neighborhood and in the city. Not to mention you create noise and light pollution that will affect all of us and potentially our health. The risks are too high and too many for this massive rental property. Thank you for your time

Maitriyi Shah, 109 Dudley Road, Newton, stated she an opposition of this massive project. She works as a trauma anesthesiologist, and she has humongous safety concerns about the Parker/Boylston intersection here. As previous members have of the community have said we've had near fatalities and fatalities along the road. She doesn't think it's appropriate at all to add more traffic to add more pedestrian traffic actually and then furthermore, congest the area. She thinks it's a huge risk and she thinks one life saved is going to be worth not making this project go forward. Subsequently, she thinks it's just a wrong location for a huge complex like this. We've heard so much about the flooding. She kind of just don't even care. She cares about saving lives. She cares about saving children's lives. And that's what she does is her job and she really doesn't want to see this project move forward as a trauma anesthesiologist.

Enrique Testa, 84 Ireland Road, Newton, stated although people are mentioned before the issue of flooding, He's a little bit upset that the vision of this issue is pertains only to the building site and the address when it affects as we guess heard areas as far away as Parker Street Adeline road when the repairs on Dudley Street about three years ago he had to put pumps in my house never had to do that before. Now there was a rainstorm on January 9 and in one



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of my neighbor's house, there was a brook coming from the sides that the empty space on the houses that have the backyard towards Adeline Road and there have been three new houses built in that area. And we never had seen a brook in that area. Now we have it. So if you don't take the whole neighborhood into consideration. Yes, the gentleman just said that he will make the immediate neighborhood better by probably pumping the water for the rest of us. Who live further downstream and that's not appropriate. That's not what the City should be doing. That's my concern and comment at this point.

Marie Fredrick, 24 Hagen Road, Newton, stated she is a direct butter. I've lived here for 24 years with my husband and two children. Thank you for letting us speak tonight. A large group of concerned neighbors joined in to listen to the Conservation Commission meeting two weeks ago we're told did a presentation about 528 projects and its current plan for drainage and flooding mitigation. Though, though it is still unsettling to the neighborhood that the Conservation Committee did not have to weigh in more formally on this site that has extremely challenging complicated topography, flooding and wetlands before the ZBA decides on the permit. We now have a better understanding of their process and their thoughts. We were told that engineering calculations and special systems are being put into place and that the neighbor should really not worry about our concerns being an issue. But when we gave examples of the Newton Public Library lot where trees were taken down for solar panels parking lot where calculations and special systems smart people and huge expenses were spent and it still instilled a lot flooded and the Mayor got more experts and calculations and then again the parking lot flooded this summer. We were told that the Conservation Commission must work within the wetlands law and cannot really address these unintended consequences. Consequences even though we have valid concerns, though we appreciate Horsley-Witten group's comments. We were still concerned so the group decided to hire another consultant to examine this project flooding systems data and the area on behalf of the neighborhood. Scott Horsley, a water resources consultant was provided all the documents on the Newton comprehensive permanent permit web website. Unfortunately, Scott is ill today and was unable to join us from the documents he examines it appears that on December 7 that test pit samples taken were not within the footprint of the proposed infiltration system. Is this understanding correct or do we miss or overlooked a report? His report was provided to this ZBA last week. We hope the ZBA will take Scott Worsley's recommendation and require the additional test pits pit locations and require the needed monitoring well from approximately late



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winter to early spring. In the 2P area in this area, the risk of severe flooding and a high water table and basement flooding is real. We are in favor of affordable housing but we also believe there is more that can be and should be done to protect us. We are hoping that the ZBA sees that the real risk outweighs the benefit and will help further protect our neighborhood ZBA thank you for your time and consideration.

Lucie Chansky, 259 Jackson Street, Newton, stated she lives across the street and diagonally closer to the Parker Street bridge. She has two questions. One is the impact on people coming from the east and going up to Parker Street on the ramp will certainly increase if this project is built. It's unclear how many cars she thinks that's the question how many cars will be added, but at this point, cars are constantly backed up right back into Rte. 9 in a really dangerous situation. They're just stuck and waiting for the lights and saying that they're going to fix this problem with adjusting the light is not reality in my opinion and addition to that issue she lives very close to the ramp on Jackson Street and I can never get out of onto the ramp if I need to go onto the bridge. Parker Street bridge to turn left the traffic never ends. What's going to be done about that. So that the impact is on all parts of the bridge and all the ramps are not just the one that leads to the project in question. And then my other question is will tenants be charged for parking? And if they're going to be charged for parking how many of them are going to try to avoid paying for parking and be parking on the neighborhood streets and what's going to stop them from parking in front of people's houses, particularly if the overnight parking ban is ever taken away which sounds like it possibly could be. Cars will be there forever and our neighbors will not be able to park in front of their houses.

Ann Findeisen, 132 Hagen Road, Newton, stated she is a direct abutter and has been living here for 32 years with my family. At the last meeting she spoke about the serious health risks associated with noise light and air pollution. She knows that Newton has zoning regulations regarding all of these and but tonight she is asking the ZBA to consider requesting impact studies in these three important areas in order to minimize the risk that the project will pose to the residents of the neighborhood. She knows this was addressed earlier in the meeting. She was a little concerned when she heard that well, if there's a problem you can ask the zoning committee to enforce the regulations. She'd rather address this before rather than after that there's a problem. So again, her concern is what will be done to protect the health of the residents during the process. Second



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concern she has also been mentioned but she wants to second it it's about the blasting and the potential damage to the homes and foundations in the area. She's wondering what is going to be put in place to protect residents from the impact of the blasting on our properties. She is really wonder there's a there hasn't been a lot of attention given to the blasting of the cliff but she really recently we learned that there is a significant portion of the cliff that's going to be blasted. She'd like to know what a significant portion means and how that's again going to affect flooding because flooding is another major concern. Her backyard is one of the ones that is it's a sea it's a river it's a see an ocean, every time there's a storm, and it's all frozen over now the skating rink so she knows that there's been a lot of attention and she appreciates all that's been done to look into this question of the flooding and the store the water storage but she can't help but wonder given that this project takes up every single every single bit of area that could possibly be used. That isn't technically wetlands or some other area that's off limits. There's so much of the permeable land being taken away being a both above and below ground. I really am still seriously concerned about how that's how that's going to play out. She had another question related to soil testing. The project is being built on land which now houses a landscaping business. She's a little concerned about what's underneath there. She doesn't know how you know what, what kinds of toxins could be underneath there that could be unearthed and she wonders if there are plans in place for soil testing. Once again, these are all questions about concerning the health and safety and property of the neighborhood. Thank you for hearing me out.

Carolyn Kraft, 295 Dudley Road, Newton, stated she spoke at the last meeting with grave concerns of the traffic coming through Dudley it's a scenic road with no sidewalks. It's a toboggan run - I call it a death road because people get almost get killed here. My daughter almost got killed in a car swerved, flipped over into a telephone pole, and it took that for the city to consider it going down to 20 miles per hour and then even then when it was 20 miles per hour and it's still a death road. It's a toboggan run of speeding cars during rush hour going both directions from Brookline Street to Rte. 9 and back. If this is going to happen, I'm going to advocate putting it as a one way from Rte. 9 to Greenwood so that we can prevent an onslaught of these new residents from like coming through. It's just not an appropriate location for that size of a development in this location. The fact that I put this as I press this as a traffic study last time no one has done anything about it. I'm wondering why not? Why is there no traffic study being done right now before they even consider putting this gigantic building in where it shouldn't be? So please consider a traffic study



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for the road and it's crucial for the safety of this neighborhood. Thank you.

Michael Gerard, 32 Olde Field Road, Newton, stated he has been here for 23 plus years. First of all, Olde Field Road. He wants to thank the Board. I want to thank the Zoning Board and other officials for even mentioning the area of Olde Field Road. I really wish Toll Brothers would address Olde Field Road a little bit more. We are right long the property. We heard things from Toll Brothers of less flooding will occur overall. He's heard that the berm that we're putting up no worries. Water will go into the pond, which is furthest from the neighbors. So we've heard a lot of things from that. He wishes to be a little bit more attention to this side. We see flooding constantly as arguments so much already talked about flooding, but please do pay a little bit more attention to the abutters over here. It's very concerned about the flooding and we see it over there. The second thing is that wetlands area in the pond. He mentioned this many times, my wife has, other folks have us and Olde Field Road, but he's seen no pictures, or a few pictures or views from Olde Field Road, looking towards this property. During the winter, I can almost see across the entire property from our backyard. The trees in that flooded area they're not doing well. They're falling down and in the Conservation Committee discussion. There was even suggestions that they take down some of those trees because they're invasive. So he's concerned about that. So it's going to be more noise pollution and more light pollution. The final thing is this light pollution issue. I haven't heard much of a discussion at all once again about us abutters on Olde Field Road, about the light pollution about the noise pollution, which direction lights will go and he even hears that there's a proposal of lights going along this multi-use pathway where everybody's going to be biking, rollerskating, rollerblading, walking, running, and so that's a concern as well. So please once again overall he thanks the Board for thinking of Olde Field Road not forgetting us here. We are at every meeting. We're talking. We're doing our best. So please, please do keep us advocating for us. Thank you.

Melane Gerard, 32 Olde Field Road, Newton, stated that she is concerned about parking. The parking situation that was referenced earlier because she's confident that these people are going to the new residents will park on Olde Field Road on Hagen on Adeline using the new crosswalk on Rte. 9 and the new walking path to get to the property. We already know that these roads are congested and incredibly dangerous during the school hours, where cars are lined up on all of the roads in this neighborhood to get to South into Bowen and in the schools. Kids are walking and riding their bikes in the street. We've got these safe streets and in the safe sideways and these new



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bike lanes but it's not enough the sidewalks are bumpy. With routes the kids are jutting out into the street unexpectedly on their bikes and then their backpacks and it's just it's a mess. I'm really nervous when the parking now hits the sidewalk as well and there's nowhere for these kids to go or for cars to go like the safety is just really a big concern for all of our neighbors. Secondly, we talked a little bit about lighting on a path there was a request for neighbors to chime in. She can say sort of informally that we have been talking about that while this call is going on. Overall, she thinks consensus from the immediate abutters is that we'd like to not have lighting and certainly she will let my neighbors chime in on that as well, but we're just concerned about the light pollution. As mentioned, we already see a lot of the lights from Rte. 9 coming in and as well as the additional the residents that are there on Hurley Road now when they're parked, we see lights coming into our backyard. She can't imagine what 300 cars coming in would look like as well as people walking on a path with lights and the shadows that will cast over our homes and what kind of pollution that'll make. We talked a little bit about massing of greens on Adeline and on Hagen and how that will help provide some privacy. She'd love to see how that might be done on the walkway as well just to offer some evergreens as well facing the Olde Field Road side and if that's a viable solution to help screen a little bit on this side of the property as well. Thank you.

Margaret Zaleski, 11 Marshfield Road, Newton, stated she has lived here about 40 years. She is just on the other side of Rte. 9 in the neighborhood that nobody wants to talk about, which is the fourth neighborhood. This building has four neighborhoods on all sides. We're over here and please acknowledge that we're over here. She's concerned about traffic safety very much. I walked up to the Parker Street Bridge to watch the traffic that comes up from Rte. 9 going toward the west. She watched the cars in a very long line that moved very slowly and I watched every time the light changed. I watched those last two cars in line run the red light time after time after time. This is a very unsafe situation. Even with the current traffic, people are running the red lights. What are people going to do when the line is extended much further down Rte. 9 and it takes much longer to get up over the bridge. She is concerned also about cars coming from 528 and merging onto Rte. 9. She was at Wegmans the other day she was about the 15th car in line and to get onto Rte. 9 and took literally forever. We crept along and crept along and crept along and finally the cars were able to merge. She thinks about the people, my neighbors, and the people in this monster building who are going to be underground and maybe the 50th car in line, maybe the 60th car in line, trying to take their child to daycare and they're going to be creeping out as cars try to merge into a very



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dangerous situation and they're all going to be inside with CO2 being formed. It just seems to her that she wouldn't want to be there. It seems very unsafe and very dangerous. On drainage. She is very concerned, and she very much appreciate Mr. Snyder's suggestion, that Toll work with the immediate abutters and see if there's some pumps or some something that could be done to help the immediate abutters as others have said it's not only the immediate abutters, it's all of us in this neighborhood, including those of us on the north side. She can tell you from everyone she knows in this neighborhood, everyone already has sump pumps, and all the sump pumps are running continuously. People are running hoses out to sewer lines now because there's no place else to put the water. It's a real problem and she really, really appreciates that you're beginning to take it more seriously. She is also very concerned about noise and light. We all know that sound bounces off of things and when this massive building seven stories high is sitting there the noise that usually dissipates from Rte. 9 in all directions is now going to bounce up against that building and come over to us on the north side and she thinks it's going to make our homes very unpleasant. She's asking the ZBA to order both light impact and noise impact for the residents in the area. The last thing I want to mention the shadows on Dudley finally coming out from under the shadows with the new design. There are still shadows that will be on Rte. 9 during the worst months of the year and when there's a dip and there's often water and now it's going to be frozen water because it'll be in constant shadow. People come down Rte. 9 and they're going to slide right through that ice or they're going to you know get stuck in that water.

Bob Kavanagh, 69 Court Street, Newtonville, stated he's been before the ZBA before and once and he will be under three minutes this time. He just wanted to say he was very heartened to listen to this ZBA ask very hard and pointed questions about guest parking, to use it side streets, and traffic generated by 528. I was really heartened by that.

Barry Bergman, 18 Walter Street, Newton, stated couple of questions. One is really about the parking. You know we talked about the nine parking spots and it really bothers him. He's talking about 184 units and nine parking spaces. He thinks if someone dies and one of the families that are having a condolence calls, that's ten to fifteen cars. If another apartments having a party that's another seven or eight cars. Someone else having Mahjong game and that's three additional cars. There has to be people going to park on Olde Field Road. He knows if he was driving up and saying should he take a chance on one of those nine spots being open so why not just stop at Olde



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Field Road and walk over. That's an issue that really needs to be addressed. The other thing is really this flooding. He lives north of the project and so he knows the Lantern Lane is a street that's really dealing with a lot of this flooding. He doesn't know if it's really been adequately addressed. The one thing he does like is that there's a good plan at least to make a Paul Brook that area a little bit better than what it is today. However, he thinks the footprint for this project has to be substantially reduced. He thinks it really should be reduced in half because the runoff that's going to go into Paul Brook, which is going to cause the problems for all the neighbors in this area both north and south of Rte. 9. Thank you

Mike Midlin, 459 Dudley Road, Newton, stated he lives there with his wife and three young children. We keep coming back to this. This has been going on now for nearly a year and a half. We all saw what we've been doing now we're going to continue to go along with this project conversation, but this development continues to be burdened with a myriad of issues environmental structural, logistical, safety, and otherwise. He listened to experts on both sides and residents and members of the ZBA and he appreciates everyone's input, but this is really just comes down to we're trying to fit a square peg into a round hole. With all due respect to everybody's work over here, this project does not just does not belong in the neighborhood. It is we're just working really hard to try to make it work and he appreciate the Chair especially asking pointed questions such as can you get your name on the dotted line that this will improve and this will get better and it's easy for an expert sitting back to say yes we've done our numbers, but at the end of the day, the impact to the folks by the time the shovels go on the ground it will be too late. Just picking up what Barry said just a few minutes ago. He finds it extremely preposterous and naive that 184 unit building needs nine spots and we're going to rely on Toll Brothers doorman in the building to be responsible for traffic management. There's just the utmost and sheer cavalier disregard by the development and the founders of this project to the community and the needs of what all of us want. He really just strongly urges everyone involved that this just isn't the right project for the community. Safety, traffic, and other reasons. He appreciates all of us working hard to try to make it work but sometimes it just doesn't belong. He thinks this is unfortunately one of these instances.

Chair Rossi closed the public comment.

The next hearing for this project will be March, 2024.



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ZONING BOARD OF APPEALS

Brenda Belsanti, Zoning Board Clerk

Agenda Item 2: Discuss and/or adopt changes to the City of Newton Rules of the Zoning Board of Appeals, any necessary briefing from the Law Department about items in litigation. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, Stuart Snyder, Jennifer Pucci, Denise Chicoine (alternate) and Ms. Reilley

Chair Rossi stated that there is a discussion of an adaption to changes to the city of Newton Rules of the Zoning Board of Appeals and any necessary briefing from the Law Department about items in litigation. We were here two weeks ago it was late and we punted on this and kicked it over and given what's on our docket over the next couple of months. That's going to happen every week. It's 10:15 and he proposed to give 15 minutes to kick off the discussion and see if we can give some guidance to Attorney Temple perhaps on rule changes and then wrap up at 10:30. Is everyone okay with that? Ms. Pucci? Ms. Sweet? Mr. Snyder? Ms. Lipsitt? We reviewed the rules. Does anybody have any items that they would like to raise that may merit some revision?

Chair Rossi stated that one issue he wanted to raise is the way we handle submissions. He knows that's caused some confusion in the past and by this he means what is the deadline for the submissions? At what point do we instruct Ms. Belsanti not to circulate things? At what point can we continue to receive submissions? Do we treat submissions differently from the applicant versus abutters versus City Staff? He proposed is something along the lines of because the submissions from the applicant tend to be more substantial we need more time to read them. So he would be in favor of having a different deadline for submissions from the applicant. Perhaps five business days prior to the hearing and then allow submissions from members of the public up to say 48 hours prior to the hearing. His suggestion would be to get rid of this situation where the Chair has discretion whether or not to accept things into the record because he thinks that just creates a lot of ambiguity and it's arbitrary. He'd rather just have a deadline where Ms. Belsanti could say it's in or it's not in given the time. Any comments on that?

Ms. Lipsitt stated the Chair suggested that there'd be five days for things from applicants and 48 hours for the public but did not mention what is suggested for City Staff.

Chair Rossi asked Attorney Temple if it would be appropriate to limit it to five business days for City Staff.

Attorney Temple stated that it would be fine, but have it be five days not business days.

Mr. Snyder asked why it would not be the same across the Board.



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Mr. Rossi stated that the agenda does not even need to be posted until 48 hours before the meeting so to cut off public comment six days before would be pretty onerous, and it would really impose a little bit of a burden on members of the public to get up to speed on what we're going to be discussing and then get us their comments. The other distinction in his mind is the stuff we get typically from an applicant is substantial, it requires a lot of time to read, and that's why we need a longer period of time, whereas the stuff we get from members of the public tends to be emails and he thinks those can be more easily distributed and consumed in the 48 hours. Just based on experience, just given people's day to day lives, they tend to get to this during the week of the hearing. Isn't it the case that Monday is a pretty heavy day in terms of what we get stuff?

Ms. Lipsitt stated that it gives members of the public time to respond to the materials of the applicant. She believes a hard deadline is the critical piece.

Ms. Pucci asked when the agenda deadline is and if 48 hours was enough time for the public to comment if that is when the agenda posted.

Chair Rossi stated that it is usually up prior to then, but that's the deadline. That's the last possible time that the agenda has to be published is no later than 48 hours, but it typically comes out before. There may be circumstances where what you're describing would be the case, but he knows that it's not logistically really feasible for us to accept comments that come in after Monday night because Ms. Belsanti has to compile them, get them out to people, and then just think about what you're doing in your day to day lives. If you're running around on Tuesday afternoon or Wednesday, and you don't have time to review the stuff.

Ms. Pucci agreed with the Chair and that she just wanted clarification. We can receive them after that for the next round, except there's nothing closed at any point.

Chair Rossi stated the only time that would be an issue is sometimes obviously we have things that are for one hearing like a variance or something like that it, but that's just a risk people run. We have to balance all the different interests.

Ms. Reilley asked for public comment deadline would be in writing because they can also show up to the hearing and speak.

Chair Rossi agreed that the public can always come and speak at the hearings to be heard.



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Ms. Reilley stated that the issue is if they they're not aware of the deadline, even though that is a rule, and they submitted anyway and then because of that they didn't know to show up at a Zoom meeting to voice their opinion they have missed a deadline. She sees that could be a problem. She is leaning towards not having a deadline or not much of a deadline, maybe 24 hours or something for the public. She feels like if someone of public just submitted comments, without being aware of there's a deadline of 48 hours, and then and then not having their comment being considered that could be a little problematic.

Chair Rossi agreed. He thinks the onus will be on us to make clear to the members of the public what our rules are and that they may be revised. He will certainly plan to do that at each of our upcoming meetings just to make it clear that that we do have these deadlines. Where he may disagree with you just a bit is there has to be some lead time because if we're getting materials say 24 hours before hearing, that could be Tuesday night at 6:30. If Ms. Belsanti comes to work on Wednesday morning and she's got all these materials that were submitted the evening before she then has to compile them, send them out to all the members of the Board, and we would be responsible for reading them prior to the hearing. He does not think that's practical for people who may be working or who have childcare obligations or family obligations to know you'll be able to dedicate the necessary time on Wednesday. So that's why just his own preference would be to build in that extra day and make it 48 hours.

Ms. Reilley agrees and just wants to make sure the public is aware.

Mr. Snyder stated that he thinks about it in this context. It's one thing when we're dealing with an ongoing project that will have subsequent hearings in which you can say to someone hey, listen you didn't make the deadline on submitting your written material to be presented to the Board for this meeting, but we'll capture it for the following meeting. That wouldn't apply in a one-off situation and so for that reason, even though he does support a firm deadline he does not love the idea of not giving the Chair discretion. You could even couch it with language that says and "only in rare cases will the Chair exercise its discretion to allow material to be accepted beyond the stated deadline" or something to that effect.

Ms. Lipsitt stated that we don't usually get an awful lot of public testimony on variances. And people who are interested in those tend to actually show up actively because they are immediate abutters who have been notified of the hearing. The hearing notice could say you're welcome to come testify, but if you want to submit written materials they have to be in 48 hours in advance.



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Ms. Sweet echoed Ms. Lipsitt's comments. Maybe in an automatic message it can say your materials cannot be submitted in writing, but you're welcome to come to the hearing. We really, really need time to be able to read them if we're not going to be hearing them here. 48 hours is necessary. She does not think we need discretion. We need to have those deadlines from her perspective.

Chair Rossi stated that there seemed to be consensus from the Board and asked Attorney Temple if he had enough to work with to put together perhaps a draft that we could consider at the next meeting.

Attorney Temple stated he had enough to put a couple of drafts together for options.

Mr. Snyder stated that this isn't a change to the rules, but just to let Attorney Temple know in Section 4, page 16. There's under filing the application. There's ABCDE F but C is blank. I think that just needs to be revised and removed. There isn't a C because there's nothing after it.

Attorney Temple stated that he would review it.

Ms. Lipsitt stated that now that people send this testimony via email, people don't always include their addresses. If we have a rule that says people need to give us their name and address we need to follow that rule. We either have to say we don't care where they come from or we need to say we're not going to distribute it if we don't have your address.

Chair Rossi agreed with Ms. Lipsitt.

Mr. Rossi concluded the meeting.

Adjourned 10:30 p.m.

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