



MEETING MINUTES

Wednesday, May 24, 2023

7:00 p.m.

Hybrid – in person and via ZOOM

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

Staff Present: Heather Zaring, ZBA Clerk; Jonah Temple, Deputy City Solicitor; Katie Whewell, Director of Current Planning; Alyssa Sandoval, Deputy Chief Planner, and Cat Kemmett, Senior Planner.

A public hearing of the Newton Zoning Board of Appeals was held as a hybrid meeting in person and virtually via Zoom on Wednesday, May 24, 2023, at 7:00 p.m. on the following petitions:

1. **#03-23** Linda Blacksmith of 25 Breamore Road, Newton, is requesting a variance from Section 7.6 of the Newton Zoning Ordinance to allow a rear setback of 8.4 feet where a rear setback of 15 feet is required and to allow a 42.1% lot coverage where a lot coverage of 30% is required. The petitioner seeks to construct a one-story addition to provide an accessible living space. The subject property is located at 25 Breamore Road within a Single Residence 3 (SR-3) zoning district and consists of a 5,239 square foot lot.
 2. **#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.
 3. Review and approval of minutes for April 26, 2023 meeting.
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Agenda Item 1: #03-23 Linda Blacksmith of 25 Breamore Road, Newton, is requesting a variance from Section 7.6 of the Newton Zoning Ordinance to allow a rear setback of 8.4 feet where a rear setback of 15 feet is required and to allow a 42.1% lot coverage where a lot coverage of 30% is required. The petitioner seeks to construct a one-story addition to provide an accessible living space. The subject property is located at 25 Breamore Road within a Single Residence 3 (SR-3) zoning district and consists of a 5,239 square foot lot. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, Stuart Snyder, Jennifer Pucci, and Denise Chicoine (alternate-remote)

Documents Submitted:

1. Variance Application dated April 20, 2023.

Testimony:

Zdenek Radouch and Linda Blacksmith, owners of 25 Breamore Road, Newton seek a variance to to build an accessible addition to their home for their 26-year-old son, who was injured three years ago and is quadriplegic, so that he may move home and they can care for him. He is confined to a power wheelchair. The applicants wish to build improved access to the house, an accessible area within the house, and a climate-controlled area necessary to accommodate their son's difficulties breathing and regulating his body temperature. The owners stated that they have explored other options by bringing in architects and considered possibly an elevator and rebuilding the second floor, but the existing bathroom would not be able to accommodate a wheelchair so the second floor would have to be completely rebuilt. Due to their son's breathing issues, new construction would be ideal to enable the cleanest air. Also, an elevator may not be feasible given the weight of the wheelchair (400 pounds). The best solution would be to have ground floor access. The owners consulted with an architect and considered guidelines set out by occupational and physical therapists and other caregivers for living space and a bathroom. The owners stated that the plans submitted would be the best solution for their situation.

Chair Rossi stated that the Board understands that this is a very difficult situation for the family and that it is difficult to come before the Board and share personal information. He asked for some clarification of design.



Mr. Radouch and Ms. Blacksmith stated that the plans are to convert an existing half bathroom and pantry to a full accessible bathroom and add a one-story accessible bedroom with a lift and large, special bed, which helps with mobility and prevention of bed sores. The plans also call for an accessible office area with a large accessible desk and computer, accessible via wheelchair. There is also a living room and gathering area for social interaction and a medical equipment storage area. There is a covered entrance with a ramp to access to the outside. The ground level is much safer in case of fire. Their son cannot use an elevator himself. The ramp is situated where it is because other areas of the property have a slope.

Public Comments:

Tabitha McCartney, 155 Hunnewell Ave, Newton, stated she is the direct abutter to the left. Her driveway runs along that property line. She stated that her family was very upset when the accident happened and supported the family during that time. She also has great empathy for the family since her sister died of Huntington's Disease and was confined to a wheelchair and needed care the last years of her life. She has three concerns for the project. It doubles the first floor of the property. She works for an organization that builds fully accessible two-bedroom apartments with a kitchen and it can be done with 800 square feet. She is further concerned that in the future, once this addition is built, it would be easy to convert it to an accessory apartment and there is very little parking. She noted an existing issue with water, and the basement and garage flood. She is concerned there will be even less area for the water to go because the impervious surface will increase by 14%. Ms. McCartney stated that she spoke with an engineer at her organization, and believes she has a right to be concerned about the digging of the foundation which will be 15 feet from her 123-year-old fieldstone foundation and could cause damage from the equipment and vibration. The building will be within eight feet of the property line. She believes that there are other ways to accomplish what is needed with mini-splits and that 800 square feet is excessive and will have a negative effect on her property and if approved wants some sort of mitigation factors for potential damage to our property.

Thomas and Jane Kenslea, 170 Oakley Road, Newton, stated that the plan seems like a very good plan and hopes that the family will be able to mitigate concerns for those that have them. In terms of the water concerns – they are uphill from the family so they do not believe it will be an issue.



They hope the Board will approve it.

There were no further public comments.

Chair Rossi asked if the addition was to be used by the owner's son, who is disabled, and whether the addition is necessary to make housing available to him.

Ms. Blacksmith stated that it was for her son who has a C4 quadriplegic injury, and it is to make housing available to him with his family. The family does not wish to put him in a nursing home or a building where everyone is disabled. He wants to feel normal. The family members are his full-time PCAs.

Ms. Blacksmith stated that the addition would face the neighbor's driveway and garage and there are no rooms facing it except a hallway. The neighbor is on a hill at a higher elevation. Water would flow downhill. She stated the foundation on their house is also fieldstone and they spoke with their architects and builders, and they stated there was no concern and no crumbling. She stated that they could not afford a larger place in Newton, they do not want to leave Newton and the support system here. Their current home is close to good hospitals for their son when he occasionally needs to be rushed in, and its located close to Spaulding Rehab.

Ms. Lipsitt stated the Board is sympathetic to the owner's situation, but the task is to recognize if this a reasonable accommodation under the standards; there is an obligation to maintain dimensional requirements of the Zoning Code while still meeting the applicant's needs. She asked if there was a way reduce the addition while meeting the owner's needs, so as to reduce the impact.

Mr. Radouch stated that they spent two years looking for another house and this was the best solution they could come up with to make their son comfortable.

Ms. Blacksmith stated that there could possibly be some reduction, but they are trying to make it as nice as possible for someone that can never leave. She stated that had the accident never happened they would not be changing the house. She stated she understands the Boards position is staying within the parameters of the ordinances, but also does not want her son to just have the bare



minimum and that if it had a kitchen, it would be considered an accessory apartment and it would follow the rules.

Ms. Lipsitt stated that she understands, but that the Board is required to grant the least relief that will meet the need.

Ms. Lipsitt made a motion to close the public hearing. Mr. Snyder seconded the motion. The motion passed unanimously.

Deliberation:

Chair Rossi stated that the usual criteria for variance is not satisfied with hardships, topography, soil conditions and so forth, but in his view that is not what we are discussing here. Chair Rossi as well as the law department believe the request is for a reasonable accommodation and that Newton does not have a formal procedure for residents or homeowners in the applicant's position to make a reasonable accommodation request under federal or state housing laws or to seek a variance outside of the zoning. There is no other process or procedure in Newton other than seeking a variance. Chair Rossi stated that this should be treated not as a request for a variance but as a request for a reasonable accommodation.

Ms. Lipsitt asked for clarification if the Board should not consider the standard normally used as the least relief from the ordinance as required.

Chair Rossi stated that the language of the statute is a reasonable accommodation and deferred to Attorney Temple.

Attorney Temple stated that the burden is on the applicant to show that it is reasonable and necessary to afford a disabled person the equal opportunity to use and enjoy the dwelling. For the Board to deny the application it would have to make a finding that the accommodation would impose a financial or administrative burden on the city and that it would require a fundamental alteration in the nature of the City's land use zoning program.

Mr. Snyder stated that the memo is inconsistent with accommodating a reasonable request, but doing it as minimally as exceeds the zoning rules otherwise. He stated that he agrees with Ms. Lipsitt's questions and what parameters the Board should use. Can the Board add conditions if



granting the request?

Chair Rossi asked what conditions Mr. Snyder proposes.

Mr. Snyder responded that the concerns of the neighbor seem legitimate. Work to be done is properly insured and supervised and damages would be responsibility of the applicant.

Chair Rossi stated that construction liability concerns the rights of two private parties and he would not be comfortable imposing that obligation. Standard inspectional process and permits should cover proper construction items.

Mr. Snyder asked if the plans could be minimized in terms of encroachment into the setbacks.

Mr. Rossi asked the applicant if the plans could be minimized at all.

Mr. Radouch stated that the setback in question is not the neighbor to the left, but half is onto City land by the MA Pike and the other half is a neighbor does not have an issue.

Ms. Blacksmith stated that they want to give their son the space he needs.

Chair Rossi asked if this would be the smallest, least restrictive way to meet their needs.

Ms. Blacksmith responded that the window at the rear could be gone, but it would still violate the setback.

Ms. Pucci asked for clarification of the legal standard of the memo and feels that it does not require that the Board go with the least restrictive option. It is a variance rubric and this a reasonable accommodation.

Chair Rossi stated he agrees with Ms. Pucci.

Ms. Lipsitt asked for clarification whether this is a variance or a reasonable accommodation and what the standard is to judge a reasonable accommodation other than listen to the applicant.

Chair Rossi stated that normally for a variance the Board goes to the statutory criterion. As part of the analysis, it is required to be the least restrictive solution possible. That analysis is not applied with a reasonable accommodation.



Chair Lipsitt stated that she was unclear that since the applicant did not have to meet the normal criteria for a variance because the reasonable accommodation meets that exception, but that the Board still had to look at the least restrictive solution to meet the accommodation.

Attorney Temple responded that the Board is substituting the reasonable accommodation for the variance criteria, and the standard is reasonable and necessary, not least restrictive. It can be viewed similar or different, but he finds it more relaxed.

Chair Rossi stated that it would be difficult for the Board to change the plan. The Board has been presented with an accommodation and the Board can determine if it's reasonable and necessary. There has been testimony from the petitioners that it is reasonable and necessary and is sufficient to find that the accommodation is reasonable.

Ms. Lipsitt stated that she was not in agreement with the interpretation by the Chair or the Law Department but accepts both.

A motion was made by Ms. Lipsitt for approval for the petition with the condition that at no time in the future should this space be converted into an accessory apartment and duly seconded by Mr. Snyder. Ms. Blacksmith agreed to this condition. The motion passed unanimously. Therefore, the request for a variance was granted as a reasonable accommodation.

Agenda Item 2: #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. Sitting Members: Michael Rossi (Chair), Brooke Lipsitt, Elizabeth Sweet, Stuart Snyder, Jennifer Pucci, and Denise Chicoine (alternate-remote)

Documents Submitted:

1. Application for Comprehensive Permit dated April 27, 2023
2. Supplemental materials from Applicant dated May 3, 2023.
3. Letter from City Councilors Downs, Bowman, Lipof, Kalis, and Ryan



4. Memorandum with attachments from the Planning Department dated May 17, 2023.

Testimony:

Attorney Steve Buchbinder, Schlessinger & Buchbinder, 1200 Walnut Street, Newton, representing the petitioner, Toll Bros., for a potential development at 528 Boylston Street, Newton pursuant to M.G.L Chapter 40B. The petitioner received project eligibility letter from MA Housing on February 1, 2023.

Attorney Buchbinder introduced the team that would be presenting on the different areas of the project.

Attorney Buchbinder stated that they have been engaged in community outreach over the last several months. A virtual meeting was held on October 13, 2022 and they have committed to hold another similar meeting after tonight but before the next meeting. Additionally, since September 2022, Toll Bros. has held 14 smaller meetings with individual abutters and small groups of neighbors. There have been two meetings each with the Urban Design Commission, Green Newton, and Engine 6. They have met with the Fire Department, the Housing Partnership, and Conservation Commission.

Attorney Buchbinder presented an overview of the project via PowerPoint.

Tim Hayes, Civil Engineer, Bohler Engineering, 45 Franklin Street, Boston, presented the stormwater project overview demonstrating existing conditions and future considerations for planning via PowerPoint.

Tom Schultz, Associate, GAT, 50 Commandant's Way, Chelsea, MA, presented the building and site design plan progression and current plan created from MA Housing and neighborhood resident feedback via PowerPoint.

Jay Emporer, Landscape Architect, Bohler Engineering, 45 Franklin Street, Boston, presented the landscape plan and amenities including dog park, courtyards, visitor and delivery areas, children's



play area, swimming pool, fitness area, fire access, and walkways via PowerPoint.

Paul Eddowes, Sustainability Consultant, New Ecology, 294 Washington Street, Boston, presented the project sustainability goals including Passive House certification, MassSave incentives, feasibility studies, Energy Star certification, DOE certification, and EPA certification via PowerPoint.

Attorney Buchbinder stated that they have hired Robert Michaud from MDM Transportation Consultants, 28 Lord Road, Marlborough, to take a fresh look at transportation in particular the issues raised by the neighbors.

Robert Michaud, Managing Principal, MDM Transportation Consultants, Marlborough, MA, presented the traffic study including new traffic counts from May 2023 at 10 locations via PowerPoint.

Attorney Buchbinder called attention to the requested waivers sought but did not review them since they will be reviewed in future meetings. He stated he will provide responses to the ZBA Memorandum dated May 17, 2023 and updated landscape plan at the next meeting. Also, a shadow study, detailed lighting plan, fencing information, retaining walls, bicycle/pedestrian improvements, and parking ratio will be discussed at future meetings.

Attorney Buchbinder stated he agreed with City of Newton Planning Department's request for peer reviews on transportation, stormwater, sustainability, parking, civil engineering, traffic circulation, site access, and overall site design.

Cat Kemmett, Planner, City of Newton Planning Department, presented an overview of the comprehensive permit application and proposed plans, existing site conditions, zoning relief waivers needed, areas of concern, materials requested from the applicant, and peer review requests via PowerPoint.

Chair Rossi asked for input from the Board regarding the peer reviews requested.



Ms. Lipsitt stated her concern about the landscape design. Location of the dog park, access to/from Hagen Road for pedestrians, cyclists, and emergency vehicles and how that intersects with the number of trees and plantings. She would like the landscape to be included in the peer reviews.

Ms. Sweet motioned to authorize all needed peer reviews and Ms. Lipsitt seconded the motion. The motion passed unanimously.

The Board requested a 3D model and a site visit, to be scheduled.

Chair Rossi asked for feedback to the applicant from the Board.

Ms. Pucci asked what the mix of the 61 affordable units will be and if there is a way to increase the number of total affordable units, add more two- and three-bedroom units, and provide a deeper level of affordability in the mix.

Ms. Pucci stated she will be interested to see the peer review on landscaping and what kind of buffer between the project and the residential homes.

Ms. Sweet asked for clarification on the synthetic lawn. She would like to see more electric car capacity, transportation flow design, more pollinators in landscape design, and a community garden area.

Mr. Snyder stated a concern regarding traffic flow in the area and visitor parking and is interested to see the plans.

Ms. Lipsitt stated that the grade changes on the site within the neighborhood makes it imperative to have a model to understand how everything will sit. She stated a concern of the proximity to Rte. 9, that the building did not look residential, and hope that solar and green roof will be incorporated into the project.

Ms. Lipsitt stated that the entrance and exit should not be right next to each other so those attempting to exit will not be visually blocked by those entering.



Ms. Lipsitt stated there would need to be a signage package.

Ms. Lipsitt stated the Board will need information about ADA units and location.

Chair Rossi asked Attorney Buchbinder if the applicant was willing to provide a model.

Attorney Buchbinder agreed to a model.

Attorney Buchbinder stated that there is no plan for traffic to Hagen Road, but an enhancement of an existing foot path.

Chair Rossi asked for a site visit.

Attorney Buchbinder agreed to a site visit.

Chair Rossi stated that the project is jarring because of the proximity to a residential neighborhood. Traffic is also a concern especially for emergency vehicles to respond to the project as well as noise from construction and mechanical noise once the construction is completed.

Public Comments:

Jacob Silber, 47 Dudley Road, Newton, with Newton Impact, stated that 95% of the neighborhood is against the project. The project is too large, too many risks, traffic and safety issues, environmental issues, flooding issues, and it changes the character of the neighborhood. The project does not do enough to support the affordable housing issues that we all support. It is not pedestrian friendly. No one feels that Toll Bros is listening to the neighbors or providing enough helpful information.

Sharon Greenstein, 16 Old Field Road, Newton, stated the most serious issue is safety. The Rte. 9/Parker Street intersection is a large concern and will affect both the residents of this project and the existing Rte. 9 traffic. Old Field Road is a common access point for the neighborhood for Rte.



9 east including new student drivers from the high school. Merging onto Rte. 9 is already dangerous at 50+ mph or greater, plus navigating the cars coming down the ramp from Parker Street. Toll Bros. projects 1100 trips per day from the complex that will be merging onto Rte. 9 only 100 feet from Old Field Road. They will have an added challenge of a steep incline while trying to get up to speed with traffic. Hazard is amplified with deep flooding that we already see at Sam White's and there are coatings of snow and black ice in the winter. Those on Old Field Road already have issues navigating the existing Rte. 9 traffic but will now have to contend with 1100 more car trips from the complex that will be merging more slowly up the hill and only 100 feet from where we are accelerating up to speed. There are already serious accidents at Old Field and Rte. 9 and this complex will make it worse and cannot be reversed once built.

Councilor Lipof stated that this project is different than others in the City. Other projects are not situated in a single-family home area, right up against Rte. 9. He echoes Ms. Lipsitt's concerns and those of the UDC. The project is on 5.8 acres, but only about half is usable. The setbacks from Old Field Road are not bad, however the massing of the building makes the height problematic. The topography is difficult, the wetlands are difficult, the rock to blast is difficult. All these things lead to a site that should not have 244 units on it – it would have to be much less to have a proper setback and a proper height. It has always been a mulch site because it was too difficult to develop. The wall being created up along Rte. 9 is unacceptable and the development is as if they had a perfect five-acre developable site that gets proposed and then find that there are all these issues and still try to squeeze 244 units in. There are 15 acres on Dudley Road that may be talked about in the future and the number units being proposed is less than half of what is being proposed here. He stated he has been supportive of other large projects in Ward 8, but this must be reasonable to the neighborhood.

Heidi Werner, 30 Hagen Road, Newton, stated that they moved here 17 years ago into a beautiful residential area. Over the years she has witnessed a substantial increase in traffic, a significant number of car and pedestrian accidents on Hagen, Parker, and Rte. 9. An overwhelming amount of traffic comes with more accidents. She works from home, walks her dog, and visits the schools, and she witnesses a lot of car/pedestrian incidents and close calls. She is deeply concerned with pedestrian safety and the surplus of traffic that this will add to the residential area. Due to the number of accidents on the South side she created a log to justify a flashing light to be installed on



Parker and Hagen. In the past four months two people have been hit. One was someone walking their dog and the other was a student on a bicycle going home from school. People constantly drive through the six stop signs on Old Field and Haynes Road without hesitation which puts bikers, pedestrians, and students in jeopardy. Additionally, she sees impatient drivers in cars going the wrong way on Hagen and Great Meadow every day. Drivers speeding through the crosswalks while pedestrians wait until someone finally stops. Traffic backs up from Wheeler to Parker and people are trying to use the crosswalk and its like a video game dodging through traffic. Her husband saw a school bus to NSHS in the opposite lane in a sea of traffic, kids riding their bikes, students walking, and parents rushing into this potentially dangerous situation. There are some people that will not walk on Parker because of the fear of a car jumping the curb due to the high speeds and she can't understand how anyone feels residents of the new project would feel comfortable walking on Rte. 9. Her biggest concern are the students that bike and walk to and from school getting hurt. There are five schools within a one-mile radius. Two elementary schools, two middle schools, and one large high school filled with inexperienced drivers which increases the risk of accidents. The proposed building will add hundreds of cars and have 1100 trips, plus their delivery services, Ubers, and more. This will affect Parker, Dudley, Hagen, and Old Field. The increase in school bus fees this year will result in more children walking and riding their bikes.

Councilor Kalis stated his concerns are also with pedestrian and bicycle safety, the entrance/exit on Rte. 9 safety, and for the tree waiver not to be waived.

Daniela Alvarez Bradley, 19 Old Field Road, stated she is a lifelong Newton resident, has three school-age children, and is a Newton Public School teacher. She went door to door asking for support, feedback, and signatures for the petition. Every person she spoke with signed the petition without reservation. The neighbors stated concerns over size, height, scale, and environmental impact. Almost unanimously people voiced concerns over the dramatic increase in traffic and decrease in safety were the primary concerns for the development. She stated it would be irresponsible to ignore the significant increase in traffic congestion by adding 385 cars and essentially doubling the number of homes in the neighborhood. NSHS, Brown, and Oak Hill schools are tucked into the neighborhood and access by tertiary roads and the state highway. Traffic regularly overwhelms Brandeis Road and Wheeler Road, accidents are common, and want



to know what the plan is for the streets to remain safe for residents, students, bikers, and pedestrians. Affordability is of great concern. She states as a teacher it is getting harder to recruit teachers to the great schools because many cannot afford to live here. A starting teacher's salary is not enough to pay for an affordable unit. This is a missed opportunity to diversify Newton and incentivize those who work for the community to support our children. The neighborhood welcomes responsible development, but its paramount that true affordable housing be incorporated and the neighborhood's concerns regarding safety and traffic be addressed.

Punam Sharma, 28 Old Field Road, Newton, stated she has many concerns about a project of this scope. She is an abutter and her property falls within the conservation area. She added a small addition to her home and despite removing no trees she had to plant a significant amount of greenery. She has spent many hours tending to the plantings to ensure the area remains vibrant. She does not understand how a project this massive will not damage the conservation area the City worked so hard to protect. The construction and debris will cause harm to the plantings. The building will dwarf the conservation area and block it from sunlight. The land is backfilled with sand and slight changes can be catastrophic to the trees and shrubs trying to survive there. The building is simply out of scale with the neighborhood. Everything needs a waiver and nothing seems to fit within the current zoning. This project is being forced into a space that does not suit it.

Melanie Girard, 32 Old Field Road, Newton, stated she has lived here for 23 years with multiple complaints regarding Sam White's property. The property is in Newton and Rte. 9 is state-owned. When there are issues with the property, Newton says to call the state and the state says to call Newton. It is referred to as "No Man's Land." Nothing gets done. There are decades of calls placed by residents regarding noise and adherence zoning regulations with nothing getting done, so what will the Board do about things being enforced before, during, and after this project for things on the property and the surrounding streets? The children have almost been hit by cars waiting for the school bus. There have been repeated requests for police patrols that never come because it is shift change. She states she wants to Board to consider enforcement as well as all the other requests.

Jay Portnoy, 60 Aberdeen Road, Newton, stated that it would be beneficial to have models from different perspectives and elevations of the project and surrounding neighborhood.



Michael Mindlin, 459 Dudley Road, Newton, stated that he, his wife, and three kids moved to Newton five years ago and were drawn to Newton's unparalleled residential charm and uniquely diverse community. Concerns about safety on what is known as "Deadly Road" is paramount. The scope of the building is totally out of sync with the neighborhood and character. He states he wants the Board to look at his project through the lens of the citizens. Appreciates Toll Bros for being in the meeting, but they are a for-profit developer, and he struggles with reconciling the views of a developer to ensure the statute of City affordability is met.

Geoffrey Norman, 53 Sheldon Road, Newton, stated he has lived at the address 32 years and all four of his kids went through the Newton school system. Two studies need to be done. Rte. 9 done by MA DOT and MEPA study and another independent study of the neighborhood streets. The plans do not show access to Hagen Road and there needs a permanent restriction from the neighborhood streets.

Ann Findeisen, 132 Hagen Road, Newton, stated she has lived at the residence for 32 years and is a direct abutter. Flooding is a major concern in the neighborhood that has reached a critical point in the last year. Rainstorms result in a rushing river through the yard and the next-door neighbor's yard which ends in a pool in her yard and onto Hagen Road. The trees and the grass in that area are dying from the flooding. Toll Bros. is saying the project will improve the situation, but the building as proposed covers such a large portion of the site that is currently a permeable area that will no longer be so. The site incorporates a stream, a wetlands area, a flood area, and a 70-foot drop. The houses on Hagen Road are at the bottom of the 70-foot drop. A WBUR report from May 4, 2023, stated that The Metropolitan Planning Council recently released a report warning that Greater Boston is susceptible to unpredictable storm water flooding. The FEMA maps which are the primary source of flood risk information have been poorly predictable of that. The number of intense storms has increased dramatically, and the heaviest rain events now drop 55% more precipitation than the rainiest days mid-century. A Boston Globe article dated May 10, 2023, quoted the Director of The Metropolitan Planning Council stating more attention was needed for the inland area flooding. Rivers, streams, and especially to areas of previously filled land, which there is a lot of in Newton. The authors wrote that in the analysis there is a clear link between filled wetlands and flooding in the area. The states climate assessment found that the damage to



inland buildings from heavy rain and overwhelmed drainage systems is one of the biggest risks Massachusetts faces from climate change. Researchers concluded that there were a few factors that could increase the risk of home flooding. Being built in the 100–500-year flood zone, being built between 1940-1980 which the neighborhood was built in the 1950's, being built near water, wetlands, or filled wetlands. FEMA flood maps have been criticized as by reliable sources including by the Director of FEMA who was quoted as saying the FEMA maps are outdated. She is asking the ZBA to take the flooding into account and what could happen to the neighborhood.

Rachel White, 124 Hagen Road, Newton, stated her family has lived at the address for 25 years. She is a proponent of affordable housing and a sustainable building practitioner and a direct abutter to the project. As a proponent of affordable housing, she favors development to increase diversity of the housing stock and accessibility for households making less than the AMI, but it is hard to support this project due to the complexity of the site, the size and bulk of the building, and that there is only minimal affordability offered. It would be important to see an increase in the number of affordable units offered and deeper affordability. She is co-owner and CEO of Byggmeister Design Build, Newton, a remodeling firm of 40 years and serves on the board of New England Sustainability Energy Association and is pleased with many aspects of the proposal including the commitment to Passive House Certification and fully electric building. More can be done including increased EV parking spaces. She is skeptical of the sustainability narrative around transportation as designed because it will not decrease automobile use but increase it. This is not good from a sustainability perspective or a traffic and safety perspective. Rte. 9 is a nightmare for bicyclists and pedestrians and the project as designed does not address that. As an abutter that has poured heart and financial resources into her home, she is concerned on the day to day impact the project will have on her home and yard. It is closer to the property line than the two-family house that is currently there. It will be more than twice as tall at its highest point and go from four neighbors to 244 neighbors many of whom will have direct sightlines into her home. If the use of the footpath to Hagen Road is retained the pedestrian traffic through my property line will increase exponentially. Concerned about only 10 visitor parking spaces at the site so visitors will park on Hagen Road. She reached out to Toll Bros. and their team to come visit her backyard to see the impact the project would have and asked them if they would want to live behind this building. None have ever directly answered my question, but after their initial visit they made several tweaks to the design which were showed tonight. She appreciates their responsiveness and hopes it's the



beginning and not the end. She would like the Board to visit her backyard during the proposed Site Visit.

Marie Fredrick, 144 Hagen Road, Newton, stated she has lived there with husband and two daughters for 23 years and are immediate abutters to the site. They are in favor of affordable housing, but this project proposed is expensive luxury apartments with some affordable units sprinkled in is not that. They welcome development that is truly affordable and a project that balances local health, safety, open space, and building concerns. They remain optimistic that during this process the ZBA can get this project to that point. It is a close neighborhood that cares and looks out for each other's health, safety, and well-being all of them love their outside spaces and wildlife. Trees eat the greenhouse gases to fight climate change, boost mental and physical health, clean the air to breathe more easily, give a home to the wildlife we love, cool the earth, and filter the water making the drinking supply cleaner and more reliable. These statements may be obvious, but important to remember for this enormous project will transform a part of Newton's native landscape forever. A quote from Green Newton's website "mature trees sequester a substantial amounts of carbon something that saplings cannot accomplish for decades". Every loss of a mature tree contributes to climate change crisis. The loss of a single tree impacts air quality and storm water drainage for half a city block. The developers are seeking a relief of the tree ordinance for the project and the landscape plan indicates that 2575 diameter inches will be removed from the site with only 307 inches proposed to replace them. Mr. Welch, City Director of Forestry, noted plants slated for removal are native trees and those close to Rte. 9 helps combat pollution in the air caused by traffic. Requests that the developer retain more trees and increase plantings to make up for the net loss of the mature trees. There is no proposal to transplant mature trees to other areas of the property as an option. There is not enough tree coverage in areas of the property to provide health and privacy to the abutters and the neighborhood. On the south side of the there is not enough room for trees to be planted and a natural green transition to develop. By the time the new plantings grow to provide a health benefit and cover for light, noise, and privacy it would take years. The neighborhood wants to believe Toll Bros. will work with them to get to a harmonious place for the neighborhood and the project, but when reading statements in the application such as "the immediate surrounding neighborhoods comprised primarily of single-family residences the proposed building would provide a visual and physical buffer between Rte.9 and the single-family homes serving as a residential transition place" they are perplexed. The



transition to Rte. 9 is hundreds of mature trees, two historic homes, and a myriad of wildlife. ZBA members thank you for all your time, consideration, and hard work for our Garden City of Newton.

Steven Farrell, 30 Winston Road, Newton, stated he is concerned about safety. The proposed development is 200 yards away from the intersection of Parker Street and Rte. 9. It is historically crowded and dangerous at high traffic times. Thousands of citizens of Newton, Needham, Wellesley, and other towns are trying to get to work right past the entryway of 528 Boylston, but more importantly every school day morning and afternoon 3500 students, ¼ of Newton's school-age population travel in this area in cars, bicycles, buses, or on foot to reach NSHS, Oak Hill, Brown, and Countryside each less than ½ mile from the site. Buses divert from Rte. 9 to Sheldon and Old Field Roads right near the entry of 528. The area is so dangerous the City of Newton applied for and received \$627,000 Safe Street School Grant from the DOT to implement improvements to the Parker Street and Rte. 9 section. The application was before the Toll Bros. project was initiated. The improvements hope to make it safer for students traveling to and from school by enabling drivers to see students in the crosswalks and to assist students and other pedestrians crossing Rte. 9. The addition of 400 vehicles, primarily at the morning and evening rush hour, will add immeasurably to the congestion, frustration, and dangerousness in the area as those cars try to enter Rte. 9 to go East even if they must go a mile to go West. We fear that some cars will try to turn illegally left, as some trucks from the site do now, creating more dangerous havoc. We are also concerned the residents will start parking in the neighborhood to avoid the Rte. 9 chaos thus creating more congestion on these narrow streets in the morning and evening. Asked the ZBA to ensure that the neighbors are included in all the serious discussions about the potential safety hazard that will be created by this development. Too many children's lives depend on it.

Ben McGraw, 50 Old Field Road, Newton, stated he is a life-long resident of Newton and NPS teacher. He states his concerns are the limited visitor parking and the overflow parking that will happen in the neighborhood with the pedestrian traffic that will happen through the homes to get up to 528 and that the project will only have eastbound access to Rte. 9 and the residents will look for other ways to access the westbound side other than going down to Wegman's in Chestnut Hill and circling back. Perhaps the residents will park overnight on Hagen Road and walk up to 528 which will add to the traffic to the side streets in the morning or leave 528 and turn onto Dudley Road which is quite narrow and will not be able to handle the influx of additional cars trying to



weave their way through the back streets to go west again.

Daniel Herring, 77 Old Field Road, Newton, stated the Parker Street bridge is a major intersection in the neighborhood. His two boys will be walking to the middle and high schools for the next several years, so he shares in all the traffic and safety concerns that have already been raised. Due process is essential for effective governments. In particular hopes the ZBA will play an active role in supporting openness and balance between Toll Bros. and the community. As a first step he asked that the ZBA solicit community input on the scope and purpose of any independent studies before they are performed. Not doing so early in the process can lead to consequences later such as a lack of trust, duplication of work, and unnecessary conflict and delay. The Boston area has had a housing crisis for decades and Newton cannot solve all of it. Growing up in the mid-west home ownership was over 90% because land was cheap. A recent college graduate with a good job could easily buy a starter home. This gave a sense of pride, economic stability, and belonging in the community that renting does not provide. Moving to the Boston area was a shock. Housing was twice as expensive outside Rte. 495 and just crazy inside I-95. He rented and saved carefully for over 10 years prior to buying the house. Along the way met many other renters from students to single parents to multi-generational households. He was one of the lucky ones with good careers and a plan to escape. Felt particular compassion for those in affordable housing. In addition to the usual struggles of life they would face long waits to win a placement lottery, grant quarters, and landlords often provide minimal maintenance, towed their cars, and tried to evict them so the unit could be rented at a higher rate. The Sam White location is prime for development. It would be a shame if 40B enabled a Fortune 500 corporation to come in, extract millions in profit, and leave the community burdened with an expensive rental complex all in the name of affordability. He hopes that all can work together to achieve a better outcome. Affordable garden-style townhouse would be a welcome addition to the neighborhood. It would give tenants a taste of Newton lifestyle not just the zip code and a long-term fixed lease or purchase option would give them stability.

Bruce Landon, 40 Old Field Road, Newton, stated he has lived at the residence 25 years with his wife and two daughters. He states he is a direct abutter and in the pictures from Toll Bros. there is a line going to the corner of the house. There is a forest of trees between Old Field Road and the development, but when the site was walked Toll Bros. stated that they would be taking down most



of the trees because they were either non-native or not in great shape. They are old growth trees that are 100-150 feet tall so any tree taken will be an issue concerning shade and visibility to the site so there is a concern that the trees will be taken with no plan to replace them. If they are replaced it will be 50 years before they are tall enough to be anything. The application states accessibility to public transportation but the site is not accessible to public transportation. The stops are not walkable or safe. The bus on Parker Street is not heavily used. The Newton Center T stop is over a mile away. Any assumptions the developer had for the use of public transportation is an over-assumption. The traffic study really needs to address that because there will be more trips by car than they were thinking about.

Rob Sellers, 16 Old Field Road, Newton, stated that he and his family have lived there for 24 years. He stated that he collected signatures and Newton residents that drive their kids to school not just the neighborhood is concerned about this project. The affordable housing planned calls for \$110,000 per year to afford to live in one of the family units. That is more than civil servants makes and he is one of them. That is more than teachers and entry level jobs pay. People are leaving Boston because it is too expensive so affordable housing is important. Traffic is a major concern especially with the merging. To go West you have to go East and then turn around. That is twice the traffic at 1100 car trips per day and people will use their GPS apps which directs cars to Dudley and then to Brandeis. It will direct through the neighborhood. He stated he had met with Toll Bros. to show how close the development was to the homes and the proposal showed no tree buffer on the west side of the project despite the fact that the project is 100 feet away.

Lucy Chansky, 259 Jackson Street, Newton Center, stated her sympathy for the neighbors and how difficult this project must be. The presentation showed a dog park, but would prefer there to be trees instead of a dog park. The design of the building is inappropriate and too massive and does not fit into the neighborhood in any way. It needs to be redesigned and made smaller. Paul Brook comes through the backyard and wonders what the impact of the development will have on the yard from the water that runs off into Paul Brook. There is already a water problem when they get rain and is concerned this will make it worse. People will cut through Jackson to Langley to avoid traffic on Parker Street Bridge from Rte. 9 and then would have to turn left and again left onto Rte. 9 and it is a blind turn. There should be more lower cost apartments; 80% of the income level is not enough and there should be a much lower-level income for the apartments. The swimming



pool is practically in the backyard of the people living on Hagan Road. The noise will be awful all summer. The small family next door to her has a pool and it can get very noisy so imagine an entire development.

Rick Levin, 48 Little Field Road, Newton, asked if the Board could make a request for what the City Assessors think the future, estimated tax revenues and related City expenses for the proposed project versus the gross tax revenues and expenses for projects in other parts of the City that have a lower community impact of the same number of units and wonders if the Board would find that helpful when contemplating these types of projects+

Chair Rossi responded that the Board is required and entitled certain items to consider under Chapter 40B and assured Mr. Levin the Board will receive those items and gather all the information and will consider everything they are allowed to consider under the statute.

Karen Weissel, 99 Hagen Road, Newton, stated she is directly across from the proposed development and has lived there for 22 years. There is no proposed road to connect the development to Hagen Road, but there is a proposed pathway to Hagen Road. Residents and guest would easily walk around to Hagen Road and the neighboring roads. Residents of the development to get in and out onto Rte. 9 would have to drive back and forth in heavy traffic. The alternative is to use Dudley Road and travel through the congested Newton South area. The easiest alternative would be for residents and their guests to park on Hagen Road and take the pathway. Even today residents on Hurley Road choose to park in a circle at the end of Hagen Road and Adeline Road to make it easier to get to Rte. 9 West. Today it only consists of 3-4 cars, but with a 244-unit development and a limit of 10 visitor parking spaces the potential issues grow exponentially. As Hagen and Adeline Road are the main access roads for Newton South High School and they are already busy morning and afternoon with car, bicycle, and student pedestrian traffic. There is already significant truck, bus, and car traffic as well as street parking. The concerning safety issue has not been appropriately addressed in the development plans. Ms. Weissel asked what the plan is to address this dangerous situation and ensure the safety of school children walking and biking to school.

Simon French, 47 Glen Ave, Newton, stated in the planning presentation it showed the space



between the buildings of the development and the existing homes not the lot lines and hopes that will be addressed. Toll Bros. touts itself as luxury, premiere home builders, but this is being presented as a Chapter 40B aimed at affordability. This seems contradictory. This is primarily a single resident district and wonder if the ZBA will be asking for a pro-forma to see if the project can be achieved with less density and still be financially feasible. It is his understanding that 40B should only be provided relief to make the project financially feasible.

Margaret Zaleski, 11 Marshfield Road, Newton, stated she is directly across Rte. 9 from the project. She agrees with much of what has been said. As proposed the residents would drive up the hill on Rte. 9 towards Hammond Pond Parkway and then turn around to go west. There is also another project being developed on the other side of Rte. 9 across from this project a little further towards Hammond which will also be adding cars to the area. Flooding is also a concern. There is water in the backyard similar to what happens on the other side of Rte. 9. This development will back up more water into my backyard and cause even more flooding than it already has which would be intolerable. Ms. Zaleski is also concerned with light pollution. The six-story building across from her house will now cause her view to be an urban landscape not the trees and the homes and the soft lighting of the neighborhood that she currently sees. There seems that the building has no softness, no balconies, and no trees that the noise coming off Rte. 9 will bounce over to her side of Rte. 9 and it will be difficult to live in the neighborhood with the additional noise. This development is totally out of place with the community and hopes the Board will consider everything that has been said this evening.

Monty Shah, 109 Dudley Road, Newton, stated that talking about the magnitude of the project safety, traffic, landscaping, wetlands, and conservation lands, but it is also the magnitude of the project is the impact it will have on Rte. 9 and all the surrounding areas including Dudley Road and there is another project that may be getting approved on Dudley Road. This is a huge project on six acres of land and another potential project on fifteen acres of land which will also impact the area with traffic, safety, and landscaping like this project. In the future he would like the applicant to revisit the studies of traffic and safety and apply it to the future project that may or may not get approved with this project that will affect the entire Dudley/Rte. 9 corridor. He's not sure if this will be discussed in future meetings how these potential projects in tandem could affect the area.



Attorney Buchbinder stated it was very informative to hear from both the Board and the community.

Ms. Lipsitt stated that the neighbors have been appropriately concerned about the flooding in the neighborhood which the Board is aware of. The Board needs to hear from the Conservation Commission and any other appropriate divisions/department before we get too far into the process because the map the applicant shows is in the FEMA 100 year floodplains that are out of date. He would like Conservation Commissions input early on for the help for the developer as well as the Board. The concerns of students getting to and from school and what routes are they taking while walking or on the bus. Do garbage trucks, deliveries, etc all access this site through this one pair of drives?

The next hearing for this project will be July 24, 2023.

Agenda Item 3: Review and approval of minutes for April 26, 2023 meetings.

A motion was made by Brooke Lipsitt to approve the minutes as circulated. This motion was duly seconded by Jennifer Pucci. The motion passed 5-0.

Mr. Rossi concluded the meeting.

Adjourned 10:25 p.m.

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