**CITY OF NEWTON**

**IN BOARD OF ALDERMEN**

**LAND USE COMMITTEE REPORT**

**TUESDAY, MARCH 18, 2003**

Members of Committee present: Ald. Basham, Chairman; Ald. Bryson, Fischman, Linsky, Merrill, Salvucci, and Samuelson.
Member of Committee absent: Ald. Lipsitt.
Other Aldermen present: Ald. Coletti, Mansfield, Parker.
City officials present: Nancy Radzevich, Chief Planner; Eric Jerman, Planner; Linda Finucane, Chief Committee Clerk; Ouida Young, Associate City Solicitor.

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**REQUEST FOR WITHDRAWAL WITHOUT PREJUDICE**

126-02(4) YELENA IVNITSKAYA petition to AMEND SPECIAL PERMIT/SITE PLAN APPROVAL #126-02, granted on 8/12/02, for creation of a new rear lot subdivision to be used for the construction of a new single-family dwelling at 554 GROVE STREET, Ward 4, on approximately 23,199 sf of land known as Section 42, Block 32, Lot 75A, in a district zoned SR3.

ACTION: Approved 5-0 (Ald. Samuelson and Fischman not voting).

**REQUEST FOR EXTENSION OF TIME**

428-01(3) 100 WELLS AVENUE, INC., AS TRUSTEE OF 100 WELLS AVENUE REALTY TRUST, REQUEST FOR EXTENSION OF TIME TO EXERCISE SITE PLAN APPROVAL #428-01, filed on February 21, 2002, to add 506 sf to an existing building by enclosing a loading area at 100 WELLS AVENUE, Ward 8, to be used for office space and utilities.

ACTION: Approved 6-0 (Ald. Fischman not voting).

NOTE: The Committee reviewed the request as stated in a letter dated February 14, 2003 from William Shaevel, counsel for the original petitioner. Among other things, the petitioner has been delayed by the turnover in four tenants, the illness of the project manager, and the severe winter weather. The Committee found that these circumstances constituted good cause for delay pursuant to Section 30-239(c)(4) of the Newton Ordinances.

**SPECIAL PERMIT/SITE PLAN APPROVAL PETITIONS**

37-03 DAVID R. AND JULIE MARCUS petition for SPECIAL PERMIT and SITE PLAN APPROVAL to alter by more than three feet the existing contours of land in order to construct stone walls and fill in the rear yard at 294 CHESTNUT STREET, Ward 3, on approximately 36,950 sf of land known as Section 32, Block 39, Lot 4, in a district zoned SR1.

ACTION: Approved 4-0-2 (Ald. Linsky and Salvucci abstaining, Ald. Fischman not voting).

NOTE: The petitioners require a special permit as part of an extensive renovation to their property, which includes filling in the rear yard. One part of the filled area alters the grade by more than three feet, while the rest of the work is proceeding as of right. At the public hearing on February 11, 2003, the Committee heard the testimony of the rear abutter, Amy Klein, who described the petitioners' sudden removal of mature vegetation, the devastating impact on her family's enjoyment of their yard, and her concerns about drainage and the need for replacement landscaping and fencing to restore the aesthetics. Following the public hearing, Ms. Klein and Brian Lefsky provided a memorandum to the Committee dated March 17, summarizing the concerns that had been addressed in follow-up conversations with the petitioners and asking the Committee to pay special attention to the landscaping between the two properties.

At the working session, the Committee reviewed the site plan, noting the relatively small area next to the house where the grade is altered by more than three feet, the retaining walls that have been installed as part of the filling of the yard, the increased size of the proposed privet hedge between the Marcus and Klein/Lefsky properties, and the fencing as proposed. Ald. Salvucci raised a concern about the "fire pit" shown in the design, asking for Fire Department review of the plan. Other members of the Committee disagreed that this is an issue in the petition, comparing it to a backyard grill or barbecue pit. Ald. Linsky asked whether the drainage plan captures the 100 year storm for the entire site or only the new construction. Joe Porter, the petitioner's engineer, stated that he is required to meet the standard for the new construction but his design actually is "over-designed" and doubles the new capacity over what is required. He pointed out that he had added a new dry well on the east side to address the concerns raised by Ms. Klein.

Ald. Merrill moved approval, finding that the public convenience and welfare will be served by allowing the change of grade where it is accompanied by other site improvements including additional drainage, landscaping and vegetation. Ald. Basham said she was not prepared to vote against the petition where the actual area of the grade change is relatively small, but she stated her dislike of petitions like this one where neighbors behave so selfishly and wreak havoc on their surroundings. The Committee supported the motion 4-0-2.

17-01(4) WILLIAM AND MERLE ROSE petition for SPECIAL PERMIT and SITE PLAN APPROVAL to subdivide an existing lot into two lots and construct a new single-family

house with garage at 91 WINSTON ROAD, Ward 8, on approximately 61,375 sf of land known as Section 81, Block 51, Lot 22, in a district zoned SR2.

ACTION: Approved 5-0-1 (Ald. Linsky abstaining; Ald. Fischman not voting).

NOTE: The petitioners seek a second approval of a rear lot subdivision at 91 Winston Road so that they can substitute a different design for the new residence on the rear lot, and a slightly different lot configuration, from the plans approved previously. If this petition is not successful, the previously-approved petition is still viable and will not expire before May 13, 2003. At the public hearing on February 11, 2003, counsel for the abutter at 21 Burdean Road brought to the Committee's attention a certain private agreement made with the petitioners and stated that several of its conditions had not been met to date.

The Committee reviewed the site plan, noting the more regular configuration of the rear lot as compared with the previously-approved lot, and the location of the house closer to the driveway, which eliminates some paving. The lot has an unusual configuration, with technical frontage on Winston Road but access from Burdean Road over a shared driveway. This driveway will be paved and widened to service other residences, including 21 Burdean Road. At the request of the Committee, following the public hearing, the petitioner met with Fire Department officials and agreed to reduce the width of the driveway to 16' from 18'. The Committee found that the new residential design is more attractive generally, with better detail and more character. The petitioners have offered to abandon the other special permit if this one is approved, and they have entered into easements concerning the shared driveway for a sixty-year period.

Ald. Samuelson moved approval, finding that the public convenience and welfare will be served by approving the petition because the new design and lot configuration are preferable to the former plans. They require less pavement and will result in a more regular lot, better design, improved drainage, and a narrower driveway, with comparable landscaping. She adopted the applicable findings and conditions from the prior board order. The Committee approved the motion 5-0-1, Ald. Linsky abstaining.

75-03 GALAXY AUTO BODY, INC., DANIEL GENTILUCCI, JR. and CAPELLO BROS, INC. petition for SPECIAL PERMIT TO EXTEND NONCONFORMING STRUCTURE and SITE PLAN APPROVAL for the relocation of an auto body shop, including a first floor addition of approximately 240 sf in the side yard, at 30-36 BORDER STREET, Ward 3, on approximately 14,448 sf of land known as Section 33, Block 15, Lot 234, in a district zoned Manufacturing.

ACTION: Approved 7-0.

NOTE: The petitioners wish to relocate an auto body shop that has operated in the neighborhood for many years but has outgrown its principal location, and they wish to add a 240 sf spray booth. They require a special permit for this type of business in a Manufacturing district. The subject structure is nonconforming as to front, side and rear setbacks and will be expanded by the petition, although the specific nonconformities will not be affected. In addition, they seek waivers from the dimensional requirements for parking, based on the actual requirements of the type of business they operate. There was no public testimony at the hearing held on March 8, although the Committee did receive one letter in support from Tom Terrio.

The Committee's discussion focused on the site plan and the proposed uses on the site. At present, a roofing company occupies part of the building, but the petition seeks approval based on the occupancy of the entire building by Mr. Gentilucci's auto body business. Michael Peirce, counsel for Mr. Gentilucci, stated that the roofing company operates from one side of the site and there will be no conflict in site access or parking. Although the occupancy of the entire site by Galaxy Auto Body technically requires 22 parking spaces, the Committee took note of the fact that the public does not drive into the lot and that tandem spaces are appropriate in an auto body business where the cars not being worked on are left parked. The Committee recalled drainage problems in Border Street that came up in its review of the Langione petition across the street and noted that this plan includes certain drainage improvements that will capture additional runoff and environmental contaminants. In addition, the petitioners have offered to install curbing along the frontage consistent with the recommendations of the Engineering Department as to the type that would be best, given the fact that the culvert is only 3' below the surface.

At the public hearing, Mr. Peirce had described the state-of-the-art spray booth that will be constructed in the new addition, and he provided a letter from Newton's Health Commissioner approving of the design. Ald. Fischman had several additional questions about smells that may emanate from the booth, and Mr. Peirce provided information explaining the level of control available and required capture of emissions. The Committee determined that although there are state and federal regulations concerning fumes and emissions, there are none specific to smells, and any complaint would be subject to investigation. In fact, Mr. Gentilucci has operated in the neighborhood without complaint since the mid-1990s and this new spray booth will capture even more potential smells than his present operation.

Several members of the Committee stated that Mr. Gentilucci provides an important service in Newton and has a good reputation. Ald. Salvucci moved approval of the petition, finding that the public convenience and welfare will be served by allowing this business to continue in the general vicinity of its present operation, in a Manufacturing district; the proposed nonconforming structure will not be substantially more detrimental to the neighborhood than the existing nonconforming structure since it will be accompanied by site improvements, environmentally safer operations, and no extension of the nonconformities; and the parking waivers are justified given the nature of the business. As conditions of approval, the Committee

added that front façade improvements may be delayed until 2004 when the current tenant moves out, and that the parking waivers will expire if a business other than an auto body or auto repair sort of business occupies the site. The motion was approved 7-0.

The meeting was adjourned at 9:20 p.m.

Respectfully submitted,

Ald. Susan M. Basham
Chairman