

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

- Applicant:** Sybilla & Howard Sonoda
- Date application filed with the Town Clerk:** July 24, 2008
- Nature of request:** To modify ZBA FY77-45, condition #2 to allow for a rooster as well as hens on the premises.
- Address:** 155 State Street (Map 5B, Parcel 39, R-N Zoning District)
- Legal notice:** Published on September 3 and September 10, 2008 in the Daily Hampshire Gazette and sent to abutters on September 3, 2008.
- Board members:** Tom Simpson, Barbara Ford and Jane Ashby
- Submissions:** The petitioner submitted a management plan and a map of the property.
- Site Visit:** September 16, 2008
The Board met with the applicant and observed the following:
- A single family residence on the corner of State Street and Sand Hill Road;
 - A mostly open and grass covered back yard;
 - Neighboring residences immediately adjacent to and across Sand Hill Road;
 - Seven hens and one rooster with free range throughout the back yard;
 - A constructed roosting area, or hutch, in the garage for the chickens in the evening;

Public Hearing: September 18, 2008
Ms. Sonoda noted that they had received a Special Permit to have 7 hens many years ago and would like to amend the permit to include a rooster. Ms. Sonoda said they have had the rooster for about two years. The rooster and hens are put in the garage every evening and are allowed outside during the day. She said that the rooster mainly crows between 6 A.M. and 7 A.M. in the garage and sometimes crows outside during the day.

Mr. Simpson confirmed that the applicant is keeping the hens for eggs and asked whether the rooster was necessary for the production of eggs or just to fertilize the eggs. The applicant said that they do not intend to breed chickens and that the rooster is used to fertilize the eggs, but the rooster is not required in order for the hens to produce eggs.

Ms. Ford confirmed that the hens and rooster stay in the garage at night and asked whether the applicant would consider sound proofing the garage. The applicant said they would consider soundproofing the garage.

Mr. Simpson opened the hearing for public comment.

Peter Diplock and Kathy Zeiben, 120 Sand Hill Road, said that they live southeast and immediately adjacent to the Sonoda's and strongly oppose the granting of the permit for the rooster. Mr. Diplock stated that the rooster crows consistently and randomly when it is outside and that the noise is disruptive and makes it difficult for them to enjoy their property. He noted that their property is the closest and most affected. He stated that roosters do not belong in a residential neighborhood and added that the applicant had 4-5 roosters on the property at one point this year.

Elizabeth Gilbert, 158 State Street, said that she lives nearby and hears the rooster in the morning. Otherwise, she hears the rooster randomly crow in the afternoon. She noted that the rooster and chickens add a lot to the neighborhood charm and supports the applicant keeping the rooster.

Peter Kibbler and Robin Morris, 115 Sand Hill Road, said that they do hear the rooster and are concerned about noise pollution in the neighborhood. Mr. Kibbler noted the topography of the area contributes to the way that noise travels. He expressed concern over the noise of the rooster and other noises in the neighborhood. Ms. Morris noted that the rooster crows in the morning and randomly throughout the day.

Steve Linburg, 171 State Street, stated that he is concerned about the effect on the neighborhood; that the rooster may become a matter that divides the neighbors. He added that he hears the rooster during the afternoon and does not see it as a problem and he thinks it adds to the character of the neighborhood.

Ms. Sonoda stated they had 4-5 Guinea hens, not roosters on the property, but got rid of them.

Mr. Sonoda stated that he had given Mr. Diplock his telephone number and asked him to call if there were any issues. He said they never got any calls.

Ms. Ashby asked the applicant if there were any measures they could take to keep the rooster quiet. The applicant responded that the rooster could be kept covered in a box in the garage for some of the day.

Mr. Simpson reviewed the original permit, Special Permit ZBA FY1977-45, and noted that the decision stated that the rooster should be removed due to complaints and concerns from neighbors.

Ms. Ashby made a motion to close the public hearing. Mr. Simpson seconded the motion and the Board voted unanimously to close the public hearing.

Public Meeting:

Mr. Simpson read Section 5.014 of the Zoning Bylaw and noted that a Special Permit is required to help resolve cases such as this one. Mr. Simpson noted again that the original Special Permit was for 7 hens and no rooster and stated that he believed the permit should remain as originally granted.

Ms. Ford agreed that people have different noise tolerances and people cannot fully enjoy their properties with a noise that occurs before 7:00 A.M. and occurs consistently throughout the day.

The Board discussed the merits of the application.

Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings, required of all Special Permits, that:

10.380 - The proposal is not suitably located in the neighborhood in which it is proposed because the noise produced is substantially different than the typical noise produced in the neighborhood and is intrusive to some neighbors.

10.381 - The proposal is not compatible with existing Uses and other Uses permitted by right in the same District. Based upon the testimony from abutters, there are no similar uses in the neighborhood.

10.382 - The proposal would constitute a nuisance due to the noise produced from the proposal.

10.383 - The proposal would be a substantial inconvenience to at least one abutter.

10.385 - The proposal does not reasonably protect the adjoining premises against detrimental or offensive uses on the site, including noise, based upon testimony and the free range aspect of the rooster.

10.398 - The proposal is not in harmony with the general purpose and intent of this Bylaw because it does not promote the health, safety, convenience and general welfare of the inhabitants of Amherst.

Public Meeting – Zoning Board Decision:

Mr. Simpson made a motion to DENY the application. Ms. Ford seconded the motion.

For the reasons enumerated above, the Board voted unanimously to DENY the request for modification of Special Permit ZBA FY1977-45, condition # 2, to keep a rooster, on the property of 155 State Street.

THOMAS SIMPSON

BARBARA FORD

JANE ASHBY

FILED THIS _____ day of _____, 2008 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2008.

NOTICE OF DECISION mailed this _____ day of _____, 2008
to the attached list of addresses by _____, for the Board.