Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicant and Owner: 25-35 University Drive LLC
P.O. Box 678, Amherst, MA 01004

Date Application filed with the Town Clerk: August 17, 2007

Nature of request: Petitioner seeks a Special Permit for a flag lot, under Section 6.3 of the Zoning Bylaw.

Location of property: 390 Main Street, Map 14B, Parcel 18, R-G Zone.

Legal notice: Published in the Daily Hampshire Gazette on September 5 and September 12, 2007, and sent to abutters on September 5, 2007.

Board members: Russell Frank, Jane Ashby and Albert Woodhull

Submissions:
The applicant submitted the following documents:

- Information with regard to Section 10.38 of the Zoning Bylaw, Specific Findings;
- A Plan entitled "Flag Lot Special Permit" prepared by Harold L. Eaton and Associations, Inc. dated August 15, 2007, showing a flag lot to be created around the Henry Hills House.

Town of Amherst staff submitted the following documents:

- A copy of the ANR (Approval Not Required) Plan for the entire pre-existing parcel, prepared by Harold L. Eaton and Associates, Inc., dated July 24, 2006, showing the property divided into five frontage lots and one flag lot and showing a proposal for locating the Chapin-Ward House, which is to be moved from Kendrick Park;
- An aerial photograph of the site and its surroundings from the Amherst GIS Viewer;
- Historical information including photographs regarding the existing house on the property formerly known as the Amherst Boys and Girls Club (also known as the Henry Hills House or the Hills Mansion);
- A memorandum from the Planning Department, dated September 11, 2007, commenting on the application;
- A memorandum from the Fire Department, dated August 21, 2007, commenting on the application.

Members of the public submitted the following documents:

- A photograph of the location along Gray Street where the access strip for the flag lot is proposed to be created.

Site Visit: September 19, 2007
At the site visit the Board was met by Barry Roberts, a partner in 25-35 University Drive LLC, the applicant. The Board observed the following:

- The location of the flag lot near the corner of a busy street (Main Street) and a quiet side street (Gray Street) surrounded by single and multi-family homes, the Amherst Women's' Club to the west, adjacent frontage lots to the south and east, the Center for Cross-Cultural Study also to the east, commercial and office space located across Main Street and the nearby railroad tracks;
- The large size of the previously-existing corner lot which has recently been subdivided into six (6) lots, including the flag lot that is the subject of this application;
- The large Victorian house located on the flag lot, formerly used as the Amherst Boys and Girls Club, also known as the Henry Hills House and the Hills Mansion;
- The existing driveway, with access from Gray Street, which is now located on an adjacent frontage lot;
- The turnaround area on the flag lot located on the east side of the house;
- The existing small basketball court on the north side of the house;
- The large trees along the west and north sides of the flag lot;
- The location of the proposed access strip for the flag lot, on the north side of the flag lot (the Board measured the width of the access strip along the curb line of Gray Street);
- The property lines on the north and west sides of the flag lot.

Public Hearing: September 20, 2007
At the public hearing, Peter MacConnell, the attorney for the applicant, presented the petition. Barry Roberts and Laird Summerlin, partners in 25-35 University Drive LLC, were also present. Mr. MacConnell presented the following information:

- The flag lot is proposed to be created around the existing Hills Mansion;
- The property is in the R-G zoning district;
- Section 6.3 of the Zoning Bylaw allows the Zoning Board of Appeals to authorize a flag lot, with a Special Permit;
- In the R-G zone, the minimum lot area required is 12,000 square feet, with 100 feet of frontage;
- Flag lots are required to have two times as much lot area as that required in the zone and at least 40 feet of frontage;
- This proposed flag lot has over 55,000 square feet of lot area, which is in excess of the 24,000 square feet required;
- This proposed flag lot also has 40 feet of frontage on Gray Street;
- Thus the proposed flag lot meets the zoning requirements for flag lots;
- The lot already contains a building;
- The access strip or pole will contain a new driveway for the existing house.

Mr. MacConnell noted the following information with respect to the newly created adjacent frontage lots:

- The Chapin-Ward House, the last house on Kendrick Park, will be moved to one of the frontage lots along Gray Street;
- The applicant would prefer to move the Chapin-Ward House to the most northerly of the frontage lots, where the existing driveway is currently located;
- The Chapin-Ward House would then be set back from Main Street approximately the same distance as the Hills Mansion;
- This can only occur if the flag lot is approved;

- Otherwise the Chapin-Ward House will be moved to the lot directly to the east, shown as Lot 3 on the plan showing the frontage lots;
- Moving the Chapin-Ward House to the most northerly frontage lot (Lot 2) is preferable because it is more sensitive to the location of the Hills Mansion.

Mr. Frank asked whether the existing driveway would be used to serve the house on the flag lot. He also asked about the turnaround that exists on the east side of the Hills Mansion. Mr. MacConnell stated that a new driveway would be constructed along the access strip to serve the flag lot and the existing house. Mr. MacConnell stated that there is no solid plan for the turnaround. The applicant hopes that the mansion will be renovated and that the new driveway will be designed to end at the back of the house.

Mr. Frank asked about the five (5) frontage lots on the ANR plan. Mr. MacConnell stated that the applicant purchased the entire property in June. In order to avoid the consequences of a potential rezoning of the property the applicant filed an ANR plan and recorded it at the registry. He further explained that if the flag lot is denied the lot shown as Lot 2 on the ANR plan will be needed for frontage for Lot 1, which contains the Hills Mansion and Lot 2 would therefore not be available to accept the relocated Chapin-Ward House.

Mr. MacConnell noted that there were multiple ways in which to subdivide the entire lot. He pointed out that right now the Board has before it one proposal for a flag lot. He asked the Board to focus on that proposal.

Mr. MacConnell also noted that if someone wished to demolish the Hills Mansion the Historical Commission could impose a one (1) year demolition delay.

Mr. Woodhull commented that placing the Chapin-Ward House on Lot 2 (the northernmost lot) would preserve views of the Hills Mansion from Main Street.

Mr. Roberts stated that there is currently no plan as to how the Hills Mansion will be used. Mr. MacConnell stated that he believes that it will be used as a residence and noted that a Special Permit from the Zoning Board of Appeals is required to use the house for anything but a single-family house.

Members of the public spoke as follows:

Ed Wilfert of 48 Gray Street stated that he owns the property directly to the north of the flag lot. He understands that there is an intention to construct condominiums on the property and he is concerned that the driveway will become larger and busier. He would be happy to have the house from Kendrick Park next to his property. He is not concerned with how Mr. Roberts might develop the property but he is concerned about what another owner might do, if Mr. Roberts sells the property.

Mr. MacConnell reiterated that the only use currently allowed on the flag lot, without a Special Permit from the Zoning Board of Appeals, is a single-family house. The driveway is planned to be only 12 feet wide and the access pole is 40 feet wide.

Christina Wasch of 48 Gray Street, Mr. Wilfert's wife, asked why the driveway for the Hills House could not be closer to Main Street rather than running along the northern border.

Mr. Wilfert presented a photograph of the curb line along Gray Street, where the driveway and the access pole are proposed to be located.

Rob Okun of 33 Gray Street, lives right across from frontage Lot 3, as shown on the submitted plan. He would also like the driveway for the Hills Mansion to be closer to Main Street, across from the driveway to the Center for Cross Cultural Study, to minimize traffic on Gray Street.

Mr. MacConnell stated that the driveway has not yet been designed. The applicant could decide that another driveway design might be better. It is possible that there could be a common driveway in the future, but if that is proposed the applicant would need to come back to the Zoning Board for approval.

Ms. Ashby asked why the access pole needs to come down on the north side of the lot. She asked if it could come down in another location. Mr. MacConnell stated that the applicant does not wish to pave a larger portion of the front yard and would like the driveway to be as short as possible.

Fred Griffiths of 21 Gray Street asked if the carriage house will be turned into a "habitation". He also asked where the Chapin-Ward House will be situated on the property.

Mr. MacConnell stated that the Chapin-Ward House will be placed at least 15 feet back from the front property line, as required by the Zoning Bylaw.

Mr. Roberts stated that he has not prepared a site plan for the Chapin-Ward House, but he is certain that it will move to Gray Street.

The Board discussed with Mr. MacConnell the status of the driveway and whether there could be a common drive to serve both the Chapin-Ward House and the Hills Mansion.

Mr. Woodhull asked about fire access if the Hills Mansion were to become condominiums. He is concerned about the width of the driveway.

Mr. MacConnell noted that the Fire Department had stated that the access appears to be adequate for a single-family house.

Mr. MacConnell distributed answers to the criteria set forth in Section 10.38 of the Zoning Bylaw. He commented that the frontage lots are considered to be "by right" and that the Board should consider the flag lot only. He also noted that, if the Board approves the flag lot, the Chapin-Ward House will move to Lot 2.

Mr. Wilfert asked that the abutters be kept informed.

Adrienne Bemak of 33 Gray Street stated that many of the residents of Gray Street had lived there for a long time. For example, she had previously owned 35 Gray Street and had lived on Gray Street for 27 years.

Ms. Ashby MOVED to close the evidentiary portion of the public hearing. Mr. Woodhull SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Public Meeting – Discussion

At the public meeting the Board discussed its findings and the conditions that would be imposed if the Board were to approve the application.

Mr. Woodhull stated that he would like to tie the placement of the Chapin-Ward House to the approval of the flag lot. Mr. Frank stated that he did not believe that the Board could do this. Christine Brestrup of the Planning Department stated that the Board needed to decide on the flag lot on its own merits. However, she noted that the Historical Commission favored placement of the Chapin-Ward House on Lot 2, the northernmost frontage lot, in order to preserve the view of the Hills Mansion from Main Street, and that this would become more feasible with the approval of the flag lot.

The Board discussed the placement of the proposed driveway within the forty (40) foot wide access strip. Mr. Woodhull stated that the driveway should be placed as close to the southern edge of the access strip as possible.

Public Meeting – Findings:
Under Section 6.3 of the Zoning Bylaw of the Zoning Bylaw, Flag Lots, the Board found that:

6.32 – The flag lot, exclusive of access strip, is at least double the minimum lot area normally required for the R-G district, because the minimum lot area required is 12,000 square feet; twice the minimum is 24,000 square feet, and the flag lot is over 55,000 square feet.

6.33 – The flag lot has a minimum street frontage of forty (40) feet and a minimum width of forty (40) feet for its entire length. There is no change in direction greater than 45 degrees.

6.34 – The width of the flag lot where the building is located is over 100 feet; the minimum street frontage required in the R-G district is 100 feet.

6.35 – The portion of the flag lot where the building is located can contain a building circle of at least 100 feet.

6.36 and 6.38 – There are no more than three flag lots adjacent to each other at the street line and there will be no more than three (3) flag lots created from this parcel because there is only one flag lot being created.

6.37 – The access to the lot will meet the requirements of Section 7.7 because a final site plan for the driveway will be submitted to the Board for review and approval.

The Board reviewed and accepted the draft of Specific Findings under Section 10.38 of the Zoning Bylaw submitted by Attorney Peter MacConnell.

Under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, the Board found that:

10.380 – The proposal is suitably located in the neighborhood in which it is proposed because the neighborhood is zoned General Residence which requires a minimum lot size of 12,000 square feet and a minimum of 100 feet of frontage. The lot currently contains a building. The lot is larger and contains less coverage than most lots in the neighborhood.

10.381 – The proposal is compatible with existing uses and other uses permitted by right because the proposal is for residential use in a residential neighborhood and therefore is compatible with the existing uses.

10.382 – The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features because the proposal is for a lot more than four times the required size and there is no change in the use; therefore, it will not constitute a nuisance.

10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians because the lot and placement of the driveway does not create any inconvenience or hazard.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the lot is serviced by Town water and Town sewer.

10.385 – The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features because the lot is large and the building is already constructed on the lot. Therefore, allowing this proposal would not constitute a change with respect to protection of adjoining premises.

10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the Bylaw because there are no changes proposed to parking and there are no signs proposed for the site.

10.387 – The proposal provides convenient and safe vehicular and pedestrian movement within the site, and in relation to adjacent streets, property or improvements because the new driveway to the building will provide adequate, convenient and safe vehicle and pedestrian movement. The new driveway will be reviewed and approved by the Zoning Board of Appeals.

10.388 – The proposal ensures adequate space for the off-street loading and unloading of vehicles because there is ample space in the driveway.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes resulting from the uses permitted or permissible on the site, and methods of drainage for surface water because the premises are connected to the Town sewage system. Refuse and recyclables will not change as a result of this proposal nor will the drainage change.

10.390 – The proposal ensures protection from flood hazards as stated in Section 3.228 because there are no new structures planned for this lot.

10.391 – The proposal protects, to the extent feasible, unique or important natural, historic or scenic features because the proposal provides a large lot for the existing structure and allows the placement of the Chapin-Ward House as far north as possible on an adjacent lot, protecting the unique historic features of the Henry Hills House.

10.392 – The proposal provides adequate landscaping because, other than the driveway, there will be no change in the landscaping in the buffers of the site.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting, through the use of cut-off luminaries, light shields, lowered height of light poles, screening, or similar solutions because there is no proposal to change the lighting.

10.394 – The proposal avoids, to the extent feasible, impact on steep slopes, floodplains, scenic views, grade changes and wetlands because the proposal does not change grading or slopes other than the driveway.

10.395 – The proposal does not create disharmony with respect to terrain and to the use, scale and architecture of existing buildings in the vicinity which have functional or visual relationship thereto because the proposal does not change the scale or architecture of the existing building and leaves the existing building on a 1.26 acre lot.

10.396 – The proposal provides screening for storage areas, loading docks, dumpsters, rooftop equipment, utility buildings and similar features because there is no proposal to change the structure at this time.

10.397 – The proposal provides adequate recreational facilities, open space and amenities for the proposed use because there is an adequate area of open space for recreational facilities.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw because it promotes the health, safety, convenience and general welfare of the inhabitants of the Town of Amherst.

Public Meeting – Zoning Board Decision
Ms. Ashby MOVED to approve the conditions as drafted. Mr. Woodhull SECONDED the motion. The Board VOTED unanimously to approve the conditions as drafted.

Ms. Ashby MOVED to approve the application, with conditions. Mr. Woodhull SECONDED the motion.

For all the reasons stated above the Board VOTED unanimously to grant a Special Permit to create a flag lot under Section 6.3 of the Zoning Bylaw, as applied for by 25-35 University Drive LLC, at 390 Main Street (Map 14B, Parcel 18, R-G Zone), with conditions.

_____	_____	_____
RUSSELL FRANK	JANE ASHBY	ALBERT WOODHULL

FILED THIS _____day of _____, 2007 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____2007.

NOTICE OF DECISION mailed this _____day of _____, 2007
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____day of _____, 2007,
in the Hampshire County Registry of Deeds.

 Application No. ZBA FY2008-00007

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to create a flag lot, under Section 6.3 of the Zoning Bylaw, as applied for by 25-35 University Drive LLC (Map 14B, Parcel 18, R-G Zone), with the following conditions:

1. The house number for the flag lot shall be clearly displayed in accordance with Town of Amherst Fire Department recommendations.

2. The new driveway to serve the flag lot shall be located as close to the south edge of the access strip as possible.

3. Care shall be taken, when constructing the driveway, to preserve the existing natural screening on the north edge of the access strip.

4. A final site plan for the driveway, including location, materials, grading and drainage, turnaround area, landscaping and screening shall be submitted to the Board for review and approval at a public meeting.

5. The final site plan for the driveway shall be submitted to the Fire Department for its review and comment prior to submitting the plan to the Zoning Board of Appeals for approval.

6. All exterior lighting shall be downcast.

_____ _____

RUSSELL FRANK, Chair DATE
Amherst Zoning Board of Appeals