

Town of Amherst
Zoning Board of Appeals - Special Permit
DECISION

Applicants and Owners: Rob Eaton and Touria El Jaoual
43 South Prospect Street, Amherst, MA 01002

Date Application filed with the Town Clerk: December 19, 2007

Nature of request: Petitioner seeks a Special Permit under Sections 3.3241 and 9.22 of the Zoning Bylaw to convert a barn into a dwelling unit.

Location of property: 43 South Prospect Street, Map 14A, Parcel 232, R-G Zone.

Legal notice: Published in the Daily Hampshire Gazette on December 26, 2007 and January 2, 2008, and sent to abutters on December 26, 2007

Board members: Thomas Simpson, Barbara Ford and Albert Woodhull

Submissions:

The applicant submitted the following documents:

- Sample Lease – Massachusetts Residential Lease Agreement
- Management Plan
- Affidavit regarding tenant notification dated December 19, 2007.
- Plans prepared by Ford Gillen Architects, including the following:
 - L-1 Locus Map, dated 9/14/07
 - A-1.0 Existing Site Plan, dated 9/25/07
 - A-1.1 Proposed Site Plan, dated 9/17/07
 - A-1.2 Proposed Plans, dated 9/25/07
 - A-2.0 Existing Elevations, dated 9/14/07
 - A-2.1 Proposed Elevations, dated 9/18/07

Town of Amherst staff submitted the following documents:

- Special Permit ZBA 84-15, granted to Joann Scott, to convert a one-family house to a two-family house, at 43 South Prospect Street;
- Memorandum from the Planning Department, dated January 4, 2008, commenting on the application;
- Letter from the Town Engineer, Jason Skeels, dated January 3, 2008, commenting on the application;
- Massachusetts Historical Commission “Form B”, dated June 1988, containing historical information about the property;
- Excerpt from the Amherst Zoning Bylaw, amended May 1984, regarding the modification of dimensional requirements for converted dwellings in the R-G zone in 1984;

Site Visit: January 8, 2008

At the site visit the Board observed the following:

- The location of the property on a quiet side street, close to the center of Amherst, and across the street from properties owned by Amherst College;
- The long, narrow, sloping site, which begins at a high point in the front of the property and slopes to a low point at the rear of the property;
- The existing wood-frame, two-story, two-family house at the front of the site and the existing wood-frame barn, formerly a livery stable, behind the house;
- The garden areas at the side and rear of the yard;
- The arbor on the south side of the house where trash and recycling will be stored;
- The parking area between the house and the barn that can accommodate two to three cars.

Public Hearing: January 10, 2008

At the public hearing, Rob Eaton and Touria El Jaoual presented the petition. They presented the following information and made the following statements:

- The barn will be converted into a single dwelling unit with three bedrooms;
- The barn is deteriorating and needs repair; part of the impetus for the conversion is that the owners wish to save the barn;
- The historic character of the barn will be maintained;
- There will be no substantial change to the exterior, except for the windows;
- The barn door will be kept for aesthetic reasons, but will not be used as a garage or barn door;
- The foundation will be repaired and will look the same when it is complete;
- There will be no changes to the grading or storm water flow around the barn;
- The garage area on the first floor is proposed to become a bedroom; frosted glass will be used in the first floor bedroom windows to maintain tenant privacy;
- Parking on the site will be limited to current parking; there will be parking for the owners' two cars;
- There will not be any on-site parking offered to tenants, although a third car would be able to fit in the driveway, to accommodate an occasional visitor;
- The two owners' cars will be parked as shown on the plan;
- When the apartment is advertised the ad will clearly state that there is no parking for tenants available on site;
- The owners have had ten years of experience renting to tenants in the second unit of the main house;
- The house is located near the downtown area and near the bus lines;
- The tenants in the main house are usually associated with Amherst College, located within walking distance of the house; the owners expect that the same will be true for tenants of the new unit;
- In addition, Amherst College operates a parking lot for students and faculty across the street;
- Many of the tenants are international students who do not own cars;
- The owners will continue to live in the main house.

The Board and the applicants discussed the placement of the parking spaces vis-à-vis the location of the doors to the new unit. The Board questioned whether cars should be parked in front of the doors. There was also discussion about the slope of the driveway. Mr. Eaton acknowledged the need to repave the driveway. He and the Board discussed the issue of emergency access to the converted barn. The Board noted that the fire trucks carry hoses that are long enough to reach the barn from the street and that ambulances will have access to the barn via the driveway.

Mr. Eaton stated that he intends to limit parking on the site, to install a bike-rack and to make the site “non-car-friendly”. Mr. Simpson noted that it was the Board’s responsibility to look beyond the current owner and to consider the future of the site as well as the present.

Mr. Eaton stated that he would like to rent the converted barn to three separate people who would share the kitchen. Mr. Eaton and Ms. Jaoual stated that the international people to whom they rent may be individual students or families.

Ms. Ford noted that owner-occupancy would be important in this case.

Mr. Woodhull stated that he had no concerns about the basics of the application, that the barn was a nice historical building and that it would be better to convert it to a dwelling unit rather than demolishing it. He asked about the letter from the Town Engineer.

Mr. Eaton stated that Jason Skeels, the Town Engineer, had visited the property on the day of the hearing. He and Mr. Eaton had talked about the issues contained in the Town Engineer’s letter. Ms. El Jaoual noted that the sewer line may need to be re-routed and that this may increase the cost of renovation.

Mr. Eaton stated that each unit will have its own electric service but that the water supply will come from the main house. Bonnie Weeks, Building Commissioner, commented that there needs to be 24 hour access to the water service for repair purposes.

Ann Walton of 27 Gaylord Street stated that she supports what the applicants are proposing. The future of the town will involve more compact development. People who live in the town center can walk to the businesses downtown. Filling in existing space in the center of town is a good thing to do.

Ms. Ford asked if the gardens and other spaces around the house will be available to the tenants. Ms. Jaoual stated that the tenants are welcome to be outside in the yard and to share the garden. Mr. Simpson asked about a deck or patio. Mr. Eaton stated that the barn will not have a deck or patio, but that the tenants will be able to use the lawn area behind the barn.

Ms. Ford asked about landscaping in the front of the barn. Mr. Eaton stated that there will be flowers in front in containers and that there are grape vines in front of the barn. He described the existing plantings and the gardens and said that the existing deck on the main house is covered with grape vines. He plans to dig up the area around the barn and install plants in the soil and also place planters in front of the barn.

Ms. Weeks expressed concern about the parking situation and suggested that the Board might wish to craft a condition about the parking. Mr. Simpson noted that the municipal parking zone was located across the street. The Board discussed including a condition stating that there would be no tenant parking provided on site and that the tenants would need to seek parking elsewhere. There was further discussion about the issue of parking and whether tenants should be allowed to park on the street. Ms. Weeks recommended that parking should be provided on site or elsewhere, but that tenants should not be permitted to park on the street. She recommended that the issue be dealt with in the conditions of the permit.

Mr. Simpson stated that the lot is non-conforming. He noted that 12,000 square feet is required for a single-family dwelling in the General Residence District, with 2,500 square feet required for each additional dwelling unit. Therefore the requirement for this property with two existing dwelling units would be 14,500 square feet. With the addition of one more dwelling unit the requirement would be 17,000 square feet.

The site currently contains 12,250 square feet, which is a non-conforming condition for the existing two dwelling units. The condition will be more non-conforming if a third unit were to be added.

Section 3.3241 of the Zoning Bylaw (Condition # 7) allows the Zoning Board to modify the dimensional requirements for a converted dwelling “one time only for any parcel” to allow a conversion “that would add one additional unit, only if it finds the modification would be in accordance with the provisions of Section 9.22”. Condition # 7 was not available to the Board when Special Permit ZBA 84-15 was granted. At that time the Board was authorized to grant a modification of the dimensional requirement under Footnote “a” of Table 3, Dimensional Regulations, which it did. Therefore the dimensional modification allowed by Condition # 7 has not yet been used and is available for the Board’s use for this application.

Ms. Ford MOVED to close the public hearing. Mr. Simpson SECONDED the motion. The Board VOTED unanimously to close the public hearing.

Public Meeting – Discussion

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

Mr. Simpson noted that the Board would need to waive the dimensional requirements one time, as authorized by Condition # 7, if it wished to grant the permit. He noted that the property is non-conforming as to frontage, front setback and side setback, in addition to lot area, as stated during the public hearing. The property conforms to the Bylaw in terms of building coverage and lot coverage. The Board noted that if parking were required to be added at the back of the site the property would become non-conforming as to lot coverage.

Mr. Simpson reviewed the requirements of Section 3.3241 of the Zoning Bylaw. He noted that the R-G Zoning District is meant for medium to high density development.

He also noted that the property is adjacent to the Educational Zoning District and is near heavily-traveled roads and that the Board is authorized to waive the dimensional requirements.

The Board discussed the parking requirements.

Public Meeting – Findings:

Under the Conditions of Section 3.3241 of the Zoning Bylaw, the Board found that:

1. The barn is a detached structure and therefore may be converted into a dwelling unit; all other zoning requirements which would apply to converted dwellings are met, with the exception of lot area and setback requirements, which are non-conforming, and may be modified as authorized by Condition # 7, below.
2. The total number of dwelling units will be three (3), which is less than the maximum of six (6) units allowed in the R-G Zoning District.
3. Not applicable.
4. There will be no significant change in the exterior of the barn building.
5. The proposed conversion is suitably located in the neighborhood because it is located in an area that is close to heavily-traveled streets (Route 9 and South Pleasant Street) and is close to the General Business and Educational Districts.

6. The existing dwelling units are connected to the public sewer and the proposed dwelling unit will also be connected to the public sewer.
7. The Zoning Board of Appeals voted to authorize a modification of the dimensional requirements of Table 3, specifically the lot area requirement, one time, to allow the conversion that will add one additional unit, because the Board found that the modification will be in accordance with the provisions of Section 9.22 of the Zoning Bylaw, i.e. the modification will not be substantially different in character or in its effect on the neighborhood or on property in the vicinity and will not be substantially detrimental to the neighborhood than the existing non-conforming use or non-conforming building.
8. The barn has an exterior footprint of approximately 1,000 square feet, which is in excess of the 500 square feet minimum size required.
9. A Management Plan has been submitted with the application.
10. There is existing landscaping on the site and the owners plan to add more landscaping near the barn;
11. Not applicable.

Under Section 9.22 of the Zoning Bylaw the Board found that the conversion of the existing barn to a third dwelling unit on the site will not be substantially different in character or in its effect on the neighborhood or on property in the vicinity and will not be substantially more detrimental to the neighborhood than the existing non-conforming use or building because the site is located in the densely developed R-G Zoning District, adjacent to densely-developed land owned by Amherst College, many of the residential lots nearby are already non-conforming and the site is close to the B-G Zoning District which is even more densely developed than the R-G Zoning District.

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

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed, and is compatible with surrounding uses, because the site is located in a densely-developed residential neighborhood on the edge of the General Business Zoning District.

10.382 – The proposal would not constitute a nuisance because there will be no re-grading of the site, no additional building and no additional paved areas and therefore no additional stormwater run-off and the lights will be downcast.

10.383 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians because the tenants will be discouraged from owning cars and will be prohibited from parking on-site.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because floor plans indicate that the barn is large enough to provide adequate room for a three-bedroom apartment.

10.385 – The proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site because the use will be similar to the residential uses already existing on adjacent properties and the property will be owner-occupied.

10.386 – The proposal is in conformance with the Parking and Sign regulations because the Board has authorized a modification of the parking requirements under Section 7.9 of the Bylaw, so that no tenant parking will be permitted on site and no signs are being proposed.

10.387 – The proposal provides convenient and safe vehicular and pedestrian movement within the site because no tenant on-site parking will be permitted and the passage of pedestrians will not be impeded.

10.389 – The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables, and other wastes because the new dwelling unit will be connected with the town sewer and the trash will be stored in an enclosure on the south side of the house and will be removed once a week by a trash-collection contractor.

10.391 – The proposal protects, to the extent feasible, unique or important natural, historic or scenic features because there will be no substantial changes to the exterior of the barn, other than the addition of doors and windows, which will be compatible in style with the historic building.

10.392 – The proposal provides adequate landscaping because there is existing landscaping on the site and the applicant intends to install plantings along the front of the converted barn.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because all exterior lighting will be downcast.

10.395 – The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity because the terrain will not be altered and the exterior of the barn will not be substantially altered and the barn will maintain its historic character.

10.397 – The proposal provides adequate recreational facilities because there is a large open area to the south and west of the barn that is shared by tenants and owners of the property.

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

Public Meeting – Zoning Board Decision

Ms. Ford MOVED to waive the dimensional requirements for this application as authorized by Condition #7 of Section 3.3241 of the Zoning Bylaw. Mr. Simpson SECONDED the motion. Mr. Simpson noted that the parking requirements for three (3) units would be six (6) spaces. He further noted that the Board had considered the layout of the property, the proximity to the Municipal Parking District and stated that the Board was willing to waive the parking requirements and impose a condition that no tenant vehicles would be allowed to park on site. There was further discussion about parking requirements.

Mr. Simpson MOVED to waive the parking requirements. Ms. Ford seconded the motion. The Board VOTED unanimously to waive the parking requirements.

Mr. Simpson MOVED to approve the application with the conditions and findings as drafted. Mr. Woodhull SECONDED the motion.

For all the reasons stated above the Board VOTED unanimously to grant a Special Permit with conditions and findings as drafted, under Sections 3.3241 and 9.22 of the Zoning Bylaw, to convert a barn into a dwelling unit, as applied for by Rob Eaton and Touria El Jaoual, at 43 South Prospect Street, Map 14A, Parcel 232, R-G Zone.

THOMAS SIMPSON

BARBARA FORD

ALBERT WOODHULL

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.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2008,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to grant a Special Permit with conditions, under Sections 3.3241 and 9.22 of the Zoning Bylaw, to convert a barn into a dwelling unit, as applied for by Rob Eaton and Touria El Jaoual, at 43 South Prospect Street, Map 14A, Parcel 232, R-G Zone, with the following conditions:

1. The current Special Permit for converting a barn into a dwelling unit will stand in conjunction with the previously-issued Special Permit ZBA 84-15, for the conversion of a one-family house to a two-family house. All conditions of Special Permit ZBA 84-15 shall remain in effect with the exception of Conditions # 6 and # 7 which are superseded by the current Special Permit.
2. In accordance with Condition #2 of Special Permit ZBA 84-15, one of the apartments in the main (converted) house must be owner-occupied.
3. There shall be no tenant parking for either of the rental units on the site. There shall be no regular tenant parking for either of the rental units on the street.
4. The property shall be managed in accordance with the Management Plan approved by the Board at the public meeting on January 10, 2008.
5. The dwelling unit in the converted barn shall be built in accordance with the plans approved by the Board at the public meeting on January 10, 2008, as listed below:
Plans prepared by Ford Gillen Architects, including the following:
 - o L-1 Locus Map, dated 9/14/07
 - o A-1.0 Existing Site Plan, dated 9/25/07
 - o A-1.1 Proposed Site Plan, dated 9/17/07
 - o A-1.2 Proposed Plans, dated 9/25/07
 - o A-2.0 Existing Elevations, dated 9/14/07
 - o A-2.1 Proposed Elevations, dated 9/18/07
6. The external appearance of the converted barn shall remain barn-like as to color and detail.
7. No more than three (3) unrelated people shall live in the barn unit.
8. All exterior lighting shall be downcast.
9. The street address shall be clearly shown on a reflectorized street sign with the numbers visible from both sides, for this barn dwelling unit.

THOMAS SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE