

**Town of Amherst**  
**Zoning Board of Appeals - Special Permit**

*DECISION*

**Applicant/owner:** Primo Pizza Too, Ismael Alvarado & Alfonzo Martinez  
255 Triangle Street, Amherst, MA 01002

**Date application filed with the Town Clerk:** October 28, 2010

**Nature of request:** To extend hours of operation to 1:00 A.M. thereby establishing a Class II restaurant under Section 3.352.1 of the Zoning Bylaw

**Address:** 231 Triangle Street (Map 11C, Parcel 265, B-L Zoning District, MPD & DR overlay districts)

**Legal notice:** Published on November 3, 2010 and November 10, 2010 in the Daily Hampshire Gazette and sent to abutters on November 4, 2010

**Board members:** Tom Simpson, Barbara Ford, Tom Ehrgood

**Town Staff:** Jeffrey Bagg, Senior Planner & Bonnie Weeks, Building Commissioner

**Submissions:**

- ZBA application, filed with Town Clerk on October 28, 2010;
- Letter and Project Summary, dated October 15, 2010;
- Business Plan and Management Plan, undated;
- Floor Plan;
- ZBA FY2003-00007, submitted by staff;
- Town GIS Zoning Map, submitted by staff;
- Business Plan and Management Plan, received November 18, 2010;
- A packet of letters from abutters, received on November 18, 2010.

**Site Visit:** November 17, 2010

The Board members and the Senior Planner met the applicant's consultant, Hilda Rivera, and the applicant, Alfonzo Martinez, on site. The Board members observed the following:

- The location of the property on the north east side of Triangle Street with two (2) buildings containing mixed commercial and business uses.
- The location of the existing restaurant between two (2) businesses, a 24 hour convenience store and a bank.
- The location of approximately six (6) parking spaces in front of the restaurant adjacent to Triangle Street and a large parking area at the rear, which serves the restaurant and other businesses on the property.
- The interior of the restaurant, including the location of seating, restrooms, the general location of the kitchen and the rear entrance/exit door.

**Public Hearing:** November 18, 2010

The applicant, Alfonzo Martinez, was accompanied by his consultant, Hilda Rivera. The applicant submitted an updated Business Plan, received November 18, 2010. Ms. Rivera's statements are summarized, as follows:

- She is a business consultant for the applicant and has submitted an amended version of the Management Plan. The amendment reflects that there are currently 46 seats in the restaurant in compliance with the Certificate of Inspection.
- The owners of Primo Pizza Too are seeking a Special Permit to establish a Class II restaurant with hours of operation until 1:00 A.M. on Thursdays, Fridays, and Saturdays.
- The property is located in the Limited Business Zoning District and the Municipal Parking overlay district. The existing business is located adjacent to Amherst Market, which is open 24 hours per day, and within three (3) blocks of other businesses, including the Sub, which is open until 2:00 A.M. Based upon its location, the extended hours are compatible with other similar uses in the area.
- There is no outdoor dining proposed and the applicants do not anticipate any increase in noise to neighbors or abutters.
- The Management Plan states that any congregation of patrons outside will be discouraged by an employee monitoring the area. Police will be notified if there are any problems.
- There are no changes to the structure, ventilation system, parking, and lighting. The refuse will be handled in accordance with the Management Plan and all deliveries of goods and supplies will occur from the rear parking lot.
- The request for extended business hours is important to the business as there is ample demand for food services after 11:30 p.m. on Thursdays, Fridays and Saturdays.

Ms. Rivera noted that a similar request for extended hours was denied in 2003. She reviewed how this application is different:

- There will not be an increase in traffic on Cottage Street. She noted that there is an entrance on Cottage Street, but that most of the traffic enters and exits from Triangle Street.
- Most of the patrons arriving by foot during the extended hours will likely be coming from other establishments on North Pleasant Street and will use the front entrance. As such, there will likely be little impact on neighbors and abutters that would arise from ~~due to~~ patrons using the back door.
- The proposal would extend the hours of the restaurant to 1:00 A.M. which is at least ½ hour before the other restaurants and bars in the area close and therefore, the applicant does not expect an influx of patrons before the closing of those establishments.
- Although the parking lot is close to the adjacent residences, the restaurant is approximately 500 feet from the residences.
- There were no police records regarding complaints from this area and there will be no major issues created by the extension of the hours.

The Board members confirmed the following:

- The only change will be the extension of the hours.
- The pizza delivery service would operate to the extended hours.
- No alcohol is served on the premises.
- Most of the patrons currently arrive in vehicles and enter through the rear door, but the extended hours would be expected to draw greater foot traffic, which would most likely enter through the front.

Ms. Rivera indicated that the applicant would be willing to make the rear door an emergency exit only after 11:00 p.m. in order to prevent patrons from leaving out the back door and reduce the impact on adjacent residential properties.

The Board members questioned how employees could manage patrons gathering outside and expressed concern with the ability of an employee to safely and effectively manage crowds. Ms. Rivera stated that the Police Department could be contacted if necessary and also highlighted that some of the responsibility is that of the property owners. Mr. Martinez stated that the restaurant does not usually have 46 people in it at any one time.

Sandra Knightly, 33-37 Cottage Street, spoke against the application. She submitted a petition signed by 38 people on Cottage Street opposing the proposal. Her statements are summarized as follows:

- The objective of the Limited Business District is to create an area of gradual transition from the downtown businesses ~~and~~ to the residential neighborhoods. The applicant should have been aware of the existing regulations when the business was purchased.
- The petition opposing the proposal is based on the expectation of increased noise disturbances, increased bad behavior from the late night crowd, and increased trash.
- The people who are out late at night in the downtown area will stop at this location if it is open later. This will add to the disturbances which already occur on and around Cottage Street and are worse on Thursday, Friday and Saturday nights.
- The disturbances directly related to the business would be additional traffic, loud noises, loud music and additional people congregating.

Pamela Rooney, 42 Cottage Street, spoke against the application. Her statements are summarized as follows:

- She lives three houses from the rear of the parking lot.
- The Limited Business District is intended to act as a buffer and the extension of the hours would set a negative precedent, and further erode the protections of this Zoning District.
- The later hours would effectively increase social gatherings in the area. She noted that although Amherst Market is always open, it does not promote the gathering of patrons in the same way as a restaurant.
- The proposal will increase the number and frequency of disturbances. This will have a detrimental effect on the residential neighborhood directly behind this property.

Sarah Ross, 61 & 82 Cottage Street, spoke against the application. Her statements are summarized as follows:

- The application shows that the business owner is trying to compete with other businesses in a different Zoning District. In this case, the parking lot is directly adjacent to a residential neighborhood. The extension of the hours would further erode the purpose of the Limited Business District.
- The more people who coming to this area will create more noise and make a bad situation worse.

Jeff Van Peski, 50 Cottage Street, spoke against the application. His statements are summarized as follows:

- Although the current late night traffic cannot be attributed to the existing business, any extension of hours would increase traffic and add to the disruption of the residential neighborhood.

Jeff Brown, 391 Bay Road, owns the subject property. His statements are summarized as follows:

- He has never received any specific complaints about any of the businesses on this property.
- He acknowledged there are people who use the parking lot later at night and acknowledged that there is foot traffic. He believes the extended hours would not significantly increase noise or traffic issues.

Alex Hoar, 42 Cottage Street, spoke against the application. His statements are summarized as follows:

- The behavior of people during the late evening hours is bad and would be worse if this business is allowed to be open later.
- He spoke against the 2003 application, which was denied.
- The current business owner should have purchased the business based on the income that could be produced under the existing hours.

Ms. Ford MOVED to close the evidentiary portion of the public hearing. Mr. Simpson seconded the motion and the Board VOTED unanimously to close the public hearing.

**Public Meeting:**

Mr. Simpson read the definition of the Limited Business District as being *“to provide for areas of mixed use an moderate density to serve as small centers providing goods and services within or near residential neighborhoods, or as a transitional zone between more densely-developed business areas and residential neighborhoods”*. He referred to the Town GIS map and noted that the property is located exactly between the General Business and General Residence District and that the argument to restrict business activity in this district is persuasive. He added that a business in the Limited Business District cannot necessarily expect to have the same benefits, later hours, as business located in the General Business Zoning District.

Mr. Ehrgood read from the prior Zoning Board decision, ZBA FY2003-00007, that *“extending the hours of the restaurant beyond 11:30 P.M. would exacerbate the situation which already exists in this neighborhood, through no fault of the management of the restaurant. The Board specifically noted that the community is experiencing problems related to anti-social student behavior all over town and did not want to worsen an already difficult situation in this neighborhood and in the parking lot”*. He stated his finding that there is currently a significant issue with noise and behavior, and stated that he believed it would be very difficult for the restaurant owner to limit disturbances by assigning an employee the responsibility to manage activity in the rear parking lot. He stated his conclusion that the testimony of the public confirms the appropriateness of the 2003 decision.

Ms. Ford stated that the Board’s decision should acknowledge the purpose of the Limited Business Zoning District. She expressed some concern with limiting only one business while the adjacent business may continue to potentially contribute to the impact on the neighborhood.

**Specific Findings:**

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

*10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed and is compatible with existing uses and other uses permitted by right.* The Board found that the proposal to extend hours of operation is not suitably located in the neighborhood or the other uses allowed by right in the Limited Business Zoning District. The Board determined that the extended hours are inconsistent with the purposes of the district and noted that the use would create a new social gathering place during the later hours. The proposal would exacerbate the existing issues of noise and traffic.

*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.* The Board found that the existing issues and problems with noise, behavior, and increased foot traffic would be exacerbated by the proposal. The Board noted that noise and poor behavior already exists, but that the proposal would effectively allow a new use to worsen the situation.

*10.384– Adequate and appropriate facilities would be provided for the proper operation of the use.* The Board acknowledged the applicant’s proposal to redirect foot traffic away from the rear parking lot, but found that because there are no windows in the back, the ability of staff to monitor the area would be limited. The Board found that one employee could not be expected to be able to disperse crowds.

*10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw and the Master Plan.* The Board found that the proposal is not consistent with the purpose of the Limited Business Zoning District. The Board noted that the Zoning District is linear in nature and was designed for the specific purpose of separating the dense business district from the dense residential district.

**Public Meeting – Zoning Board Decision**

Mr. Ehrgood moved to DENY the application for the reasons stated herein and based on the testimony received. Mr. Simpson seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to DENY the request for Special Permit, ZBA FY2011-00011, to extend the hours of operation to 1:00 A.M. and thereby establish a Class II restaurant under Section 3.352.1 of the Zoning Bylaw, at 231 Triangle Street (Map 11C, Parcel 265, B-L Zoning District, MPD & DR overlay districts)

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TOM SIMPSON                      BARBARA FORD                      TOM EHRGOOD

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2010 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.  
TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2010.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2010  
to the attached list of addresses by \_\_\_\_\_, for the Board.  
NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2010,  
in the Hampshire County Registry of Deeds.