

Town of Amherst
Zoning Board of Appeals

DECISION

Applicant/owner: Alpha Chi Omega, Inc.
5939 Castle Creek Parkway North Drive
Indianapolis, Indiana 46250
c/o
James Heffernan, Esq.
Bacon Wilson
6 South East Street, Amherst, MA 01002

Date application filed with the Town Clerk: September 1, 2011

Nature of request: Appeal of the Building Inspector's Cease and Desist order, regarding the use of the premises as a fraternity house, under Section 10.1 of the Zoning Bylaw

Address: 38 Nutting Avenue (Map 11A, Parcel 87, R-G Zoning District)

Legal notice: Published on September 28, 2011 and October 5, 2011 in the Daily Hampshire Gazette and sent to abutters on September 28, 2011

Board members: Barbara Ford, Hilda Greenbaum, Eric Beal

Staff members : Jeff Bagg, Senior Planner and David Waskiewicz, Building Inspector

Submissions:

1. Appeal form, ZBA FY2012-00005, filed with Town Clerk on September 1, 2011
2. Letter, from James Heffernan, Esq., dated September 1, 2011, outlining the reasons for the appeal
3. ZBA FY1962-23, "to construct a sorority house"
4. ZBA FY1962-15, "to construct a sorority"
5. Town GIS map and property information
6. Certificate of Service
7. Project Application Report, dated October 7, 2011
8. Cease and Desist order, dated August 26, 2011
9. Fraternity/Sorority Zoning History (in one packet):
10. 1954 Town Meeting Vote
11. 1954 Planning Board Report
12. 1962 Town Meeting Vote
13. 1962 Map
14. 1988 Planning Board Report
15. 1988 Map
16. 38 Nutting Avenue – Zoning and Use History (in one packet):
17. ZBA FY2005-00005 and materials
18. Zoning History – Other Similar Cases
19. ZBA FY1988-52, 382 North Pleasant Street
20. ZBA FY1979-38, 11 Phillips Street
21. ZBA FY2006-00042, 11 Phillips Street
22. Town GIS map
23. Email from Town Counsel, Joel Bard, October 13, 2011
24. Zoning Bylaw excerpts, Planning Department, October 13, 2011
25. Chart of Permits (1960-1981), Planning Department, October 13, 2011
26. ZBA FY1978-54, Planning Department
27. Petitioner packet with Exhibits A-K, October 13, 2011

28. Pi Kappa Phi, Theta Mu Chapter Housing Bylaws
29. Pi Kappa Phi, Alcohol Philosophy
30. Handbook of Ma Land Use and Planning Law, Chapter 6 – Nonconforming uses and structures (provided October 14, 2011)
31. Pi Kappa Phi and NHC Lease agreement (received October 14, 2011)
32. Petitioner's memorandum, dated November 1, 2011
33. Project Application Report, dated November 1, 2011
34. Lease between National and local sorority chapter, submitted by petitioner
35. Police Department, Police Calls, dated October 28, 2011
36. Fire Department, Sample letter to Fraternities and Sororities, dated August 8, 2011
37. Fire Department, Citations, dated October 28, 2011
38. Health Department, Fraternity and Sorority Inspections
39. Health Department, Nuisance Calls
40. Inspection Services, Inspection List for Fraternities and Sororities
41. Inspection Services, Semi Annual Inspection Totals
42. Planning Department, UMass Office of Fraternities and Sororities online information, November 1, 2011
43. Planning Department, Updated Zoning Chart, revised November 1, 2011
44. Planning Department, ZBA FY1982-78 (social dormitory, boarding house)
45. Planning Department, Updated list of documents submitted, revised November 1, 2011

Site Visit: October 12, 2011

Hilda Greenbaum and the Senior Planner met the applicant's attorney, James Heffernan, House Director, Joe Fox, and Fraternity President, Mike DiPietro, on-site. The other Board members observed the exterior of the premises separately at different times. The following aspects of the site were observed:

- The location of the property at the end of, and along the west side of Nutting Avenue and the associated parking area along the east side of Nutting Avenue. The parking area assigned to the Alpha Chi Omega property is in the northern section of the lot while the southerly section is used by the sorority at 32 Nutting Avenue.
- The first and second floor of the interior of the sorority building. The first floor included the common room, kitchen, dining room and the house director's apartment. The second floor included a total of 14 bedrooms comprised of mostly double occupancy rooms and several triple occupancy rooms.
- The exterior of the premises including the location of the driveway, parking area for the house director, dumpster area, walkways, and entrances and exits.

Public Hearing: October 13, 2011

Attorney James Heffernan of the law firm Bacon/Wilson in Amherst stated that he is representing Alpha Chi Omega in their appeal of the Building Inspector's Cease and Desist letter, dated August 26, 2011. His statements are summarized as follows:

- His client, Alpha Chi Omega sorority, is a Greek fraternal organization of women who have been operating at the premises as such for 49 years. The sorority leased the property to another Greek fraternity of men, Pi Kappa Phi, this past semester. A Cease and Desist order was issued on August 26, 2011, on the grounds that a Special Permit is required for a change in use from a sorority to a fraternity. The sorority believes that this does not constitute a change in use and that treating it as such would be discriminatory under State and Federal Laws.
- This location was zoned Campus Residence from 1962 to 1988 which allowed fraternities, sororities and similar institutions. In 1962, Alpha Chi Omega was granted a Special Permit, ZBA FY1962-23, for the construction of a sorority house. In 1988, the area was rezoned to

General Residence thus prohibiting new fraternities and sororities. The result of the rezoning was that existing fraternities and sororities became pre-existing non-conforming uses. In 2005, Alpha Chi Omega applied for and was granted a Special Permit to alter the non-conforming building. Also that permit reduced the occupancy of the building from 60 students to 43 students.

- The Pi Kappa Phi fraternity, which now occupies the building, has only 31 residents and has not extended the use or made any structural changes to the building or premises. Therefore, there is no change in use.
- Section 3.326 of the Zoning Bylaw lists fraternities and sororities within the same category and the email from Town Counsel indicates that the Zoning Bylaw does not differentiate between the two groups. They are both Greek fraternal organizations; the University of Massachusetts regulates each group in the same way, and Pi Kappa Phi and Alpha Chi Omega operate under essentially the same house rules and management.
- The Cease and Desist order violates Massachusetts and Federal Fair Housing Laws that make gender-based discrimination illegal. The order both prevents the sorority from leasing the premises to a similar organization and prevents the fraternity from occupying the building.
- The Cease and Desist order also violates the Equal Protection Law in that there must be a justified reason for regulating similar uses differently. The determination that a fraternity is a change in use requiring a Special Permit violates that principal.

Ms. Ford stated that because the petitioner is arguing that a fraternity and a sorority are the same use and not a change in use, the responsibility of the Board is to determine if there is a distinction between fraternities and sororities in general. The decision is not whether this specific fraternity, Pi Kappa Phi, operates the same as this specific sorority, Alpha Chi Omega.

Ms. Greenbaum asked when the fraternity began occupying the property and how the rules and regulations are enforced. Jennifer Crotty, 74 Water Street, Saugus, MA, stated that she is the Chapter Advisor for Alpha Chi Omega and explained that the sorority leased the premise to the fraternity last semester. Joe Fox, 38 Nutting Avenue, stated that he is the House Director for the fraternity. He explained that there are several layers of regulation including enforcement of the local chapter rules by the Chapter President and Executive Officers. The House Director enforces the rules of the fraternity's National Organization as well as the rules of the sorority required by the lease agreement.

Ms. Ford asked the Building Commissioner, Bonita Weeks, to comment on the Cease and Desist letter. Ms. Weeks stated that the Cease and Desist letter was based on the following:

- Section 9.22 of the Zoning Bylaw states that "*The Board of Appeals may authorize, under a Special Permit, a non-conforming use of a building, structure or land to be changed to a specified use not substantially different in character or in its effect on the neighborhood or on property in the vicinity*".
- The determination that a Special Permit was required was made because a change from one specified use to another specified use. Under Section 9.22, it is the Board's responsibility to determine the impact of a specified use and determine whether or not it is substantially different in character from the previous use.
- This determination is consistent with those made in other cases involving pre-existing non-conforming uses. For example, commercial uses in a residential district require a Special Permit for each change in use even when the uses are similar, for example, from one mercantile use to another mercantile use.

- Amherst has a long history of regulating fraternities and sororities as different entities. Permits were granted consistently for either a fraternity or a sorority and only two permits were found that permitted the use of a property for the more general class, "a fraternity, social dormitory, or similar use". Other cases were found where a Special Permit was required to change from a sorority to a fraternity.
- Current zoning regulations require that a Management Plan be provided as an integral part of any application for fraternity or sorority use. In this case, Inspection Services did not receive a Management Plan and the first notice of the change occurred during the scheduling of the fall inspections. If this had been a fraternity or sorority in Fraternity Residence Zoning District, where the uses are allowed by right, a Management Plan could have been submitted and the Site Plan Review process waived. However, because the use of the property is pre-existing non-conforming, all changes require a Special Permit under Section 9.22 where the determination can be made whether the use is substantially the same or different.
- Whether a group has on-site management or not is often correlated with the number of problems or violations that occur at its property. Observations made during the annual inspections confirm that sororities typically have on-site management where fraternities typically do not. If a vast difference in management style and impact of the use on the neighborhood is found, the uses should be considered different in terms of the Zoning Bylaw.

Mr. Beal asked who would have the burden of proof to determine whether there is a change in use and if there is any case law discussing this. Mr. Heffernan stated that he believes it his client's burden of proof and that the facts submitted support the argument that this is not a change in use. He stated that there was at least one case which determined that a mere increase, volume or intensity of a non-conforming use is insufficient to invalidate the use.

Mr. Bagg read a portion of the Town Counsel email, dated October 13, 2011, which stated that *"if the Board were to uphold the Building Inspector's determination that a change from a sorority to a fraternity constitutes a change in use under Section 9.22, the Board would need to identify some non-subjective, quantifiable differences between these two institutions. For example, testimony from police and fire departments, or from other Town officials, documenting the fact that fraternities are a more consistent drain than sororities on the resources of emergency responders or other officials could be a basis for specific findings that the two are different uses. Similarly, specific information concerning the differences between how sorority and fraternity houses are managed and the amount of oversight provided to the students residing therein would assist in documenting a quantifiable difference between the two. Such information could support a determination that a fraternity is a use sufficiently different from a sorority such that a special permit under Section 9.22 is required to convert a sorority to a fraternity. I would encourage the Board not rely on conclusory generalizations such as "fraternities are substantially different from sororities..."*

Mr. Beal asked about the Management Plan and whether the current tenants are complying with the Management Plan submitted in 2005. Mr. Heffernan stated that he believes they are in compliance and that a new Management Plan was not requested by Inspection Services.

Mr. Beal asked whether the fraternity or the sorority allow alcohol on the premises. Mike DiPietro, Fraternity President, stated that yes, alcohol is allowed on the premises and noted that the fraternity has a National Risk Management Policy which mirrors the requirements of the University. Jennifer

Crotty, sorority Chapter Advisor, stated that their rules and regulations prohibited alcohol on the premises.

The following members of the public spoke regarding the application. All statements are summarized:

1. Elisa Rubenstein, 38 Fearing Street, noted that the zoning change in 1988 occurred due to the impact of vandalism and excessive noise created by fraternities and cited cases from 1988 and 2006 where Special Permits were required to change from a sorority to a fraternity. She stated that not all fraternities are the same and expressed concern with the potential for different fraternities to create different effects on the neighborhood.
2. Kevyn Smith, 13 Nutting Avenue, stated that the national rules for sororities prohibit alcohol where the national rules for fraternities allow responsible alcohol consumption and that this is a substantial difference in their operation.
3. Winnifred Manning, 61 Fearing Street, stated that the existing fraternity in the neighborhood is poorly maintained when compared to the existing sororities.
4. Kristin Kardis, 177 Rolling Green Drive, is the inter-fraternity advisor for the sororities on campus and stated that the fraternity, Pi Kappa Phi, is a model fraternity with respect to filing paperwork with the University and their philanthropic activity in the neighborhood.
5. Michael Wiseman, Director of the Office of Fraternities and Sororities for the University, stated that the University Code of Student Conduct applies to student behavior off campus and noted that fraternities and sororities are subject to additional requirements, such as their individual national rules and inspections by the Town. The University regulates fraternities and sororities the same and each must follow the same rules and guidelines established by the University.
6. Sarah Holtzer, 30 Hobart Lane, Panhellenic President, observed that only one local sorority chapter is allowed to consume alcohol on their premises. The governing bodies for fraternities and sororities are structured the same with Presidents, Councils, and function in the same manner with respect to infractions and other matters.
7. Maria Dellafemina, President of Alpha Chi Omega, has met with representatives from Pi Kappa Phi and noted that they follow the same procedures for enforcement of the rules as the sorority.
8. Paul Vasconsuellos, 33 Kellogg Avenue, stated that he is a retired Dean of Students for the University. In 2005 he began serving as the chapter advisor for Pi Kappa Phi because of their good behavior and philanthropic activity in the community. He noted that he would not have agreed to advise a fraternity that violates regulations or policies.
9. Louis Brown, Director of Home Sweet Home Program at Stavros noted that the Pi Kappa Phi fraternity has created handicapped accessible ramps for Stavros and other community improvements.
10. Ralph Carlstrom, 73 Fearing Street, stated that fraternities and sororities will have a different impact on the neighborhood. He noted that maintaining a review process for this type of change is critical because not every group is the same and some may have a greater impact on the neighborhood than others.

Mr. Beal asked the Building Commissioner what types of records Inspection Services maintains. Ms. Weeks stated that Inspection Services conducts joint annual inspections with the Fire Department and Health Department. Records of any Building Code and/or life safety violations based on these inspections are available.

The Board members requested additional information from the applicant regarding the Powers case. They also requested records of inspections from Inspection Services, Police Department, Fire Department and Health Departments.

Ms. Greenbaum MOVED to continue the evidentiary portion of the public hearing to November 3, 2011. Mr. Beal seconded the motion and the Board VOTED unanimously to continue the public hearing.

Public Hearing: November 3, 2011 (Continued from October 13, 2011):

Mr. Heffernan presented to the Board a memorandum, dated November 1, 2011, analyzing the Powers v. Barnstable case, based on the request of Mr. Beal. Mr. Heffernan spoke in terms of the memorandum. His statements are summarized as follows:

- The case refers to pre-existing non-conforming structures or uses with respect to any change or substantial extension of use. The case enumerates three tests to determine if a change in use has occurred:
 - Whether the resulting use does not reflect the nature and purpose of the nonconforming use prevailing when the zoning took effect;
 - There is a difference in a quality or character as well as degree of the resulting use;
 - The resulting use is different in its kind and effect on the neighborhood.
- The fraternity use is the same as the sorority use for the following reasons:
 - Both are Greek fraternal organizations;
 - Both are connected to the University of Massachusetts
 - Both are part of similar national organizations, the fraternity under the Inter-fraternity Council and the sorority under the Pan-Hellenic Council;
 - Both have very similar control mechanisms;
 - Despite the fact that one might have more violations, the statistics show that the two uses are the same in that they are both likely to result in the same type of violations.
- Referring specifically to Pi Kappa Phi and Alpha Chi Omega, he stated that:
 - Both have similar bylaws;
 - Both have a house manager/house mother;
 - The fraternity residents do not exceed the allowed 43 residents; in fact, the number of residents is less.

Julie Federman, Health Director, stated that the Health Department, Fire Department and Inspection Services inspect fraternities and sororities twice per year. The Health Department data provided represents the nuisance complaints for things such as overflowing dumpsters or litter. She stated that most sororities have on-site management responsible for maintaining the interior and exterior of the property and most fraternities do not. She noted that having on-site management typically results in less nuisance complaints and/or violations.

Scott Livingstone, Police Chief, stated that the data provided represents general responses by the Police Department for fraternities and sororities.

Ms. Greenbaum asked about the number of fraternity members living on-site and how the kitchen is used. Joe Fox, House Director for Pi Kappa Phi, stated that there are a total of 31 people residing on the premises, including the House Director. He stated that the kitchen is used daily by the fraternity members with assigned chores each week.

Ms. Ford stated that since 1962 there were 66 Special Permits applied for or granted for a specified use as either a fraternity or a sorority. Of those, only two were granted for a range of uses and two other permits were applied for or granted to change from a sorority to a fraternity.

Mr. Beal stated that because this case raises a legal claim on the general classification of fraternities and sororities, it is no longer related to a specific group, such as Pi Kappa Phi, but more about the two groups as a whole. He cited the statistical information submitted by the Police Department, Fire Department, Health Department and Inspection Services and noted that:

- From 2006-2011, the Fire Department identified 31 violations and \$1,000 in fines for fraternities and one violation and \$100 dollars in fines for sororities;
- From 2006-2010, the Police Department identified a total of 661 total calls for fraternities and a total of 266 calls for sororities;
- From 2009-2011, the Health Department identified 58 calls regarding fraternities and 2 regarding sororities;
- From 2001-2011, Inspection Services identified a total of 1,169 violations for fraternities; 835 life safety violations and 334 violations for maintenance; and, a total of 240 violations for sororities; 195 life safety violations and 45 maintenance violations.

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

Public Meeting

Ms. Greenbaum cited testimony that using the data from the Amherst Police Department could be fallacious because it includes all calls, some of which may or may not be directly linked to activity of this specific group but rather, might include other disturbance calls from the general vicinity.

The Board discussed the enforcement process and whether strict timelines for action should be dictated. Ultimately, the Board determined that the mechanisms under Section 11.4 of the Zoning Bylaw should be followed and implemented by the Building Commissioner.

Conclusion/Findings

1. The petitioner argued that a fraternity and sorority are both Greek fraternal organizations and are therefore not different uses under the Zoning Bylaw.

The Board finds that the two uses are not the same under the Zoning Bylaw for the following reasons:

- The petitioner bears the burden of proof for proving the uses are the same, as noted in Cape Resort Hotels v. Alcohol Licensing Bd. Of Falmouth, 385 Mass. 205, 212 (1982).
- As a matter of law the petitioner's interpretation of the Zoning Bylaw - that the use as a fraternity is the same as a sorority - renders those terms meaningless and superfluous, contrary to well-established principles of statutory construction.
- The Board cited Framingham Clinic, Inc. v. Zoning Bd. Of Appeals of Framingham, 382 Mass. 283, 415 N.E.2d 840 Mass., 1981, which concludes that in the absence of an express definition, the meaning of a word or phrase used a zoning bylaw should be derived from the words' usual and accepted meanings. The definitions of fraternities and sororities reflect the common understanding that sororities are composed of females, and fraternities composed of males.

- Section 3.3 of the Zoning Bylaw states that each use of land must fall into only one category and it does not classify fraternities and sororities generally as Greek fraternal organizations, as is argued in this case, but rather are listed individually.
 - Chapter 40A, Section 6 and pertains to both uses lawfully begun prior to zoning and/or uses under a Special Permit. The use of the premises by Alpha Chi Omega sorority was authorized under a Special Permit in 1962 and was not a pre-existing non-conforming as of right-use established before zoning.
 - Citing the following cases, the Board finds that a use under a Special Permit was limited to that use explicitly allowed in the Special Permit: Cohasset heights v. ZBA of Cohasset, 53 Mass. App. Ct. 116 (2001); Town of Winchendon, 13 Mass L. Rep. 217 (2001); and, Moreis v. Board of Appeals of Oak Bluffs, 62 Mass. App. 53 (2004).
 - Citing Aberjona Valley v. Paris, 2005 WL 2847467 (Mass Land Ct. 2005) and Cape Resort Hotels, the Board finds that documents submitted with applications can be used to determine use. The leases and house rules for Alpha Chi Omega and Pi Kappa Phi show that the fraternity and sorority are subject to different rules and regulations. Specifically, the lease, 2005 Management Plan, and rules and regulations for Alpha Chi Omega prohibit the possession and/or consumption of alcohol on the premises. Conversely, the fraternities' lease and rules and regulations allow the possession and/or consumption of alcohol on the premises. The difference of one group allowing alcohol and another group not allowing alcohol is a substantial, meaningful difference between the two uses as a fraternity or sorority and represents broadly the potential for any fraternity or sorority to have different rules and regulations and a potentially different character or effect on a neighborhood.
2. The petitioner argued that considering fraternities and sororities as different uses would be a violation of the equal protection clauses under the Massachusetts and United States Constitutions.

The Board finds that there is a pronounced difference between fraternities and sororities in terms of complaint calls and violations of life safety and maintenance requirements and the corresponding amount of Town resources expended on fraternities and sororities. The Board cited the following data in determining that fraternities have a different impact on neighborhoods and Town resources that justifies the gender-based distinction in the Zoning Bylaw:

- From 2006-2011, the Fire Department identified 31 violations and \$1,000 in fines for fraternities and one violation and \$100 dollars in fines for sororities;
- From 2006-2010, the Police Department identified a total of 661 total calls for fraternities and a total of 266 calls for sororities;
- From 2009-2011, the Health Department identified 58 calls regarding fraternities and 2 regarding sororities;
- From 2001-2011, Inspection Services identified a total of 1,169 violations for fraternities; 835 life safety violations and 334 violations for maintenance; and, a total of 240 violations for sororities; 195 life safety violations and 45 maintenance violations.

The Board finds that these data provide a rational basis for a gender-based classification in the Zoning Bylaw. The Fire and Health Department data indicate that of six sororities, five

have an on-site manager; of six fraternities, only one has an on-site manager. The evidence shows objectively that the differing management styles and the limited amount of oversight of fraternities results in a greater burden on Town resources than sororities. Collectively, this information counters the claim that there is no constitutionally-valid basis for considering and regulating the two groups distinctly in terms of the Zoning Bylaw.

- 3. The petitioner argues that the cease and desist order violates Massachusetts and Federal Fair Housing Law and Massachusetts Civil Rights Act.

The Board finds that the petitioner did not present evidence showing discriminatory intent; disparate impact; or threats, intimidation or coercion, or any scheme of harassment. The petitioner also failed to provide any meaningful substantive guidance other than reciting statutory language. The Board finds that in 1962, both fraternities and sororities required a Special Permit. In 1988, both fraternities and sororities were made non-conforming uses in this area, with the result that a Special permit is required to change the occupancy from a fraternity to a sorority. Nothing in the record shows that there is any discrimination based on gender. The Chart of Permits from 1960-1981 shows that there is no pattern of discriminating against or denying permits to fraternities or sororities. The permit history shows that both groups complied with the same application and approval process and in the vast majority of cases in the available history, both sororities and fraternities were granted permits for their respective uses.

Zoning Board Decision

Ms. Greenbaum moved to DENY the appeal, ZBA FY2012-00005, thereby upholding the Building Inspector's Cease and Desist order regarding the use of the premises as a fraternity house, under Section 10.1 of the Zoning Bylaw. Mr. Beal seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously.

Barbara Ford Hilda Greenbaum Eric Beal
BARBARA FORD HILDA GREENBAUM ERIC BEAL

FILED THIS 9th day of December, 2011 at 6:08 p.m.
in the office of the Amherst Town Clerk Vanessa J. Burgess
TWENTY-DAY APPEAL period expires, December 29, 2011.
NOTICE OF DECISION mailed this 9th day of December, 2011
to the attached list of addresses by Jeffrey R. Bagg, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2011,
in the Hampshire County Registry of Deeds.

BOARD OF APPEALS
AMHERST, MASSACHUSETTS
RECORD OF APPEALS AND DECISION RENDERED

Petition of ZBA FY2012-00005, Alpha Chi Omega, Inc.
5939 Castle Creek Parkway North Drive
Indianapolis, Indiana 46250

To Appeal of the Building Inspector's Cease and Desist order, regarding the use of the premises as a fraternity house, under Section 10.1 of the Zoning Bylaw

On the premises of 38 Nutting Avenue
At or on 38 Nutting Avenue, Amherst, MA 01002
Map 11A, Parcel 87, R-G Zoning District

NOTICE of hearing as follows mailed (date) September 28, 2011
to attached list of addresses and published in the Daily Hampshire Gazette
dated September 28, 2011 and October 5, 2011

<p style="text-align:center">LEGAL NOTICE</p> <p>The Amherst Zoning Board of Appeals will meet on *Thursday, October 13, 2011*, at 6:30 PM. In the TOWN ROOM, Town Hall, to conduct the following business:</p> <p>PUBLIC HEARING: ZBA FY2012-00005 - Alpha Chi Omega - Appeal of the Building Inspector's Cease and Desist order, regarding the use of the premises as a fraternity house, under section 10.1 of the Zoning Bylaw, at 38 Nutting Avenue (Map 11A, Parcel 87, R-G Zoning District) ZBA FY2012-00006 - Winnifred Manning - To install a five foot fence within the required front yard setbacks under Section 6.29 of the Zoning Bylaw, at 61 Fearing Street (Map 11c, Parcel 99, R-G Zoning District)</p> <p style="text-align:center">BARBARA FORD, CHAIR AMHERST ZONING BOARD OF APPEALS September 28, October 5</p> <p style="text-align:left">3192639</p>

Hearing date and place: 10/13/11 & 11/3/11 (vote taken) Town Room, Amherst Town Hall

SITTING BOARD and VOTE TAKEN: To **DENY** the appeal, ZBA FY2012-00005, thereby upholding the Building Inspector's Cease and Desist order regarding the use of the premises as a fraternity house, under Section 10.1 of the Zoning Bylaw.

Barbara Ford – YES Hilda Greenbaum – YES Eric Beal – YES

The Zoning Board of Appeal decision shall constitute a **DENIAL** of the Appeal.

Town of Amherst Abutter List

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/Zip</i>
11A-44	28 ALLEN ST	SHAFIE ARDESTANI, REZA & SHOHREH		99 WILDFLOWER DR	AMHERST, MA 01002
11C-97	85 FEARING ST	WELCOME, WARD		85 FEARING ST	AMHERST, MA 01002
8C-13A	NORTH PLEASANT ST	COMMONWEALTH OF MASS	C/O JUANITA HOLLER ASSOC VICE CHANCELLOR	337 WHITMORE UMASS	AMHERST, MA 01003
11A-31	NORTH PLEASANT ST	RESEARCH SUPPORT FUND	C/O GERALD EPSTEIN - GORDON HALL	418 NO PLEASANT ST SUITE 1	AMHERST, MA 01002
11A-30	418 NORTH PLEASANT ST	RESEARCH SUPPORT FUND	C/O GERALD EPSTEIN - GORDON HALL	418 NO PLEASANT ST SUITE A	AMHERST, MA 01002
11A-29	434 NORTH PLEASANT ST	FIRST BAPTIST CHURCH		434 NORTH PLEASANT ST	AMHERST, MA 01002
11A-88	NUTTING AVE	ALPHA CHI OMEGA HOUSE CORP	C/O CATHERINE ZEINER	5939 CASTLE CREEK PKWY DR	INDIANAPOLIS, IN 46250-4343
11A-42	NUTTING AVE	KAPPA KAPPA GAMMA INC		270 ALPINE DR	AMHERST, MA 01002
11C-101	18 NUTTING AVE	SLAKEY, LINDA L		18 NUTTING AVE	AMHERST, MA 01002
11C-105	19 NUTTING AVE	SOONS, ROSALIE S	HUMPHREY, NICOLAS A S	19 NUTTING AVE	AMHERST, MA 01002
11C-102	22 NUTTING AVE	WASKIEWICZ, RICHARD D TRUSTEE OF REV TRU		199 GLENDALE RD	AMHERST, MA 01002
11C-104	25 NUTTING AVE	MALEKNIJAZ, MOHAMMAD H & SIMIN D		474 SPRING ST	LEEDS, MA 01050
11C-103	28 NUTTING AVE	WASKIEWICZ, RICHARD D TRUSTEE OF REV TRU		199 GLENDALE RD	AMHERST, MA 01002
11A-43	32 NUTTING AVE	KAPPA KAPPA GAMMA INC	C/O RUTH GREEN	15 WASHBURN TERR	SPENCER, MA 01562

<i>Parcel_ID</i>	<i>Parcel_Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>CityStZip</i>
11A-87	38 NUTTING AVE	ALPHA CHI OMEGA NATIONAL HOUSING CORP		5939 CASTLE CREEK PKWY N DR	INDIANAPOLIS, IN 46250-4343
11A-33	11 PHILLIPS ST	KNIGHT PROPERTIES LLC	C/O STEPHAN GHARABEGIAN	405 WALTHAM ST # 396	LEXINGTON, MA 02421
11A-34	19 PHILLIPS ST	BRIGGS,GREGORY	PAUL, HOWARD R	29 HENRY ST	AMHERST, MA 01002-3016
11A-35	23 PHILLIPS ST	TURNER, JAMES R		23 PHILLIPS ST	AMHERST, MA 01002
11A-36	27-29 PHILLIPS ST	BELCHERTOWN ROAD PARTNERS LLC	C/O EAGLECREST MNGMT	73 MAIN ST	AMHERST, MA 01002
11A-37	33 PHILLIPS ST	KNIGHT PROPERTIES LLC	C/O STEPHAN GHARABEGIAN	405 WALTHAM # 396	LEXINGTON, MA 02421
11A-38	37 PHILLIPS ST	COLLEGE ST PROPERTIES LLC	C/O GHARABEGIAN, STEPHAN	405 WALTHAM ST #396	LEXINGTON, MA 02421
11A-93	41 PHILLIPS ST	HAUGHTON, LAURA J & REGINALD C JR		110 BALDWIN HILL RD	PHILLIPSTON, MA 01331
11A-40	45 PHILLIPS ST	KNIGHT PROPERTIES, LLC	GHARABEGIAN, STEPHAN	405 WALTHAM ST # 396	LEXINGTON, MA 02421
11A-41	51 PHILLIPS ST	SHAFIE-ARDESTANI, REZA & SHOREH		99 WILDFLOWER DR	AMHERST, MA 01002-3436