

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

*DECISION*

**Applicant:** Arthur and Teri Hebb

**Date application filed with the Town Clerk:** September 27, 2005

**Nature of request:** A Special Permit to convert a two-family house into a three-family residence on a non-conforming lot under Sections 3.3241 and 9.22 of the Zoning Bylaw

**Address:** 15 Hazel Avenue (Map 13D, Parcel 32, R-N Zoning District)

**Legal notice:** Published on October 5<sup>th</sup> and 12<sup>th</sup>, 2005 in the Daily Hampshire Gazette and sent to abutters on October 4, 2005.

**Board members:** Tom Simpson, Ted Rising and Hilda Greenbaum

**Submissions:** The petitioner initially submitted with the application:

- A drawing of the proposed third floor apartment, with two means of egress
- A drawing of the lot, showing the house and parking area
- A GIS site plan of the lot in relation to other lots on the street, with dimensions
- A management plan for a three-family dwelling

For the continued hearing of 11/14/05 the petitioner submitted another set of plans with more complete dimensions for the lot, setbacks and size of the apartment, dated 11/10/05.

Town staff submitted:

- A memo from the zoning assistant that noted the dimensional requirements for a three-family dwelling, previous Special Permits, and zoning requirements for conversions, dated 10/14/05.
- A letter to the applicants from Mark Snow, Assistant Building Commissioner, dated 10/28/05, outlining the history of the property in terms of ZBA Special Permits, building permits and inspections. Mr. Snow also listed seven building code and safety issues that should have been addressed when the property was first converted to a three-family house, via Special Permit FY00-07, but were not addressed.

**Site Visit:** October 18, 2005

The Board met with Mr. Hebb at the site and observed the following:

- Hazel Avenue itself, a short, dead-end street with six houses located on it, all on very small lots except the 3-unit residence under consideration
- Open farm fields, both to the east and west of Hazel Avenue. Northampton Road is adjacent to Hazel Avenue to the north, and the Norwottuck Rail trail abuts Hazel Avenue to the south.
- Multiple means of egress for each apartment – 2 for the first-floor apartment, 3 for the

second-floor apartment and 2 for the third-floor apartment.

- The third-floor apartment, with two small bedrooms and occupied by two tenants

**Public Hearing:** October 20, 2005

Arthur and Teri Hebb represented themselves at the hearing. They stated that they would like a Special Permit for a three-family house on Hazel Avenue. A Special Permit had been issued earlier for a three-family dwelling, FY00-07, but it had expired upon change of ownership. They would like to re-activate the permit, and change condition #1, which stipulates that one of the apartments be owner-occupied.

The petitioners live next-door, at 29 Hazel Avenue. They stated that they acquired the three-family house in May, 2003, but didn't realize that the Special Permit had expired. Mr. Hebb stated that he thought that the Special Permit went with the land, not the owner. Moreover, the permit was not included in the deed when they bought the house.

The Board inquired about the front dimensions of the lot, which were not indicated on the GIS map. Frontage is one of the dimensional requirements considered for Special Permits. It was estimated to be about 175 feet, which exceeds the 120-foot frontage required in a Neighborhood Residential District.

Ms. Greenbaum asked if the property was a double lot. It is twice as big as the other lots on the street. The answer is yes, but the Town Assessor combines adjacent lots when one or both are non-conforming. In this case, each lot is approximately 12,000 square feet, and 20,000 square feet is required in an R-N zoning district for a single-family house. The two lots together comprise 24,774 square feet, but 32,000 square feet is needed for a three-family house. Hence the lot size is non-conforming.

Board Chair Mr. Simpson noted that in the FY00-07 Special Permit request, Mr. Hebb spoke in opposition to the application on behalf of his mother and grandmother. Mr. Hebb complained that there was too much light from the parked cars shining into the grandmother's windows. A fence was required for the parking lot in the previous Special Permit, but was never installed.

Ms. Greenbaum observed that now the abutters are also the petitioners. Mr. Hebb agreed. He stated that his family has lived on the street for many generations, and that he owns five houses on Hazel Avenue (out of 6 houses on the street)

Mark Snow, Assistant Building Commissioner, stated that his office has had concerns about the house under consideration since 2000. He stated that no building permits were issued related to the conversion of a two-family dwelling to a three-family dwelling. Moreover, there are no records of inspections done by the Town's Inspection Services for the conversion, or for an earlier building permit for an extension of an external stairway to the ground floor. Hence there may be building code issues and fire safety rules that have not been met.

In a subsequent letter to the applicant, dated 10/28/05, Mr. Snow outlined 7 areas of information that should have been included with a building permit application for conversion from a two-family to three-family dwelling. Particularly relevant in this case are the fire separation and hourly ratings between each dwelling unit, details on the mechanical systems, and details as to whether or not a sprinkler system is required.

Ms. Hebb stated that the house had been a three-family dwelling since 1988. She had complained about the illegal apartment to Bill Start, then Building Commissioner, but Mr. Start said that it was classified as a 2-family dwelling. In 1990, Ms. Hebb wrote a letter to Mr. Start, but Mr. Start again responded that it was classified as a two-family dwelling. The applicants have letters from the Building Inspector from 1990 and 1992 stating that the house was a two-family, even though the applicants had a different view.

Later, at the foreclosure, it was evident that the house was set-up as a three-family, they stated. When the applicants bought the house, the Fire Department inspected the building, and the Fire Department approved it as a three-family, Mr. Hebb stated.

Mr. Snow said that, since a proper building permit had never been submitted, the applicants must now apply for building permits along with obtaining a Special Permit.

The Board agreed. Mr. Rising added that the fire separation for the walls, for example, will help with the safety for the tenants and the neighborhood.

The Board requested scaled floor plans for the third unit, and a more clear parking plan.

Ms. Greenbaum moved to continue the hearing until November 14, 2005. Mr. Rising seconded the motion, and the vote was unanimous.

**Continued Public Hearing:** November 14, 2005

At the continued public hearing, the applicants were represented by their attorney Peter MacConnell.

Mr. Snow stated that the applicants are making a good faith effort, and he's confident that they will correct the building code problems that may arise. The applicants have met with Mr. Snow a few times already since the continuation of the hearing, and they are in the process of getting the house evaluated by an architect and a structural engineer.

Attorney MacConnell stated that there are two issues here – a Special Permit to address zoning, and Building Permits, to address safety and building code issues. He said that Mr. Snow had given an excellent summary letter concerning the history of issuance of Building and Special Permits for the property, plus Mr. Snow presented a list of the outstanding building code issues that must be addressed.

Mr. Rising noted that the challenge is to frame a Special Permit so that the safety and building code issues will be addressed this time. Mr. MacConnell suggested that conditions attached to the permit have a time line for meeting the code.

Mr. MacConnell stated that the former owner of the house made the third apartment a legal unit via a Special Permit in FY2000, and did apply for a building permit at that time for roof repairs and an extension of the outside staircase. However, no work was done on the third apartment, since it was already completed, and no inspections were done by the Town Inspection Services either. The previous owner might have assumed that all building codes and inspections were met as well. So, when the Hebb's bought the house, they unknowingly bought a problem as well.

Mr. MacConnell stated that the Board does have the information it needs to grant a Special Permit.

The application meets the conditions of Section 3.3241 for a converted dwelling and Section 9.22 as an extension of a non-conforming lot and use. Specifically, for Section 3.3241:

1. The structure is existing, and will not change
2. The total number of dwelling units requested is 3; four units are allowed in an R-N district.
3. n/a
4. There will be no significant change to the exterior of the building
5. The property is located close to a heavily traveled road (Route 9), and is close to both an educational district and business districts,
6. The dwelling is connected to the public sewer.
7. The Board can modify dimensional regulations as long as the conditions of Section 9.22 are met. In this case, history has shown that the house can contain three dwelling units without becoming detrimental to the area.
8. There is no detached structure
9. A Management Plan has been submitted
10. A screening plan for the parking will be a condition of the Special Permit
11. The large lot has more than a minimum of 1,000 square feet of useable open space per dwelling unit

Mr. MacConnell stated that there is a certificate of inspections from the Fire Department stating that the smoke alarms are properly placed and in good working order. Also, Mr. Hebb has asked an electrician to install emergency lighting for the residential units.

Mr. MacConnell stated that the two outstanding issues for this case deal with the building code:

- The hourly rating for firewalls between the units
- Whether a sprinkler system is needed for the house

Mr. Snow responded that Chapter 34 of the State Building Code requires an analysis of what the conditions are and what is needed to bring the building up to State standards. Chapter 9 outlines the fire protection systems. Thus, there may be more issues than raised at this time.

The petitioner has met the standards for zoning, Mr. MacConnell stated, and requests two things:

1. That the owner-occupied condition of the previous Special Permit be deleted
2. That there be no expiration on change of ownership

Board Chair Mr. Simpson asked if a set of architectural drawings would be forthcoming. The applicant replied that they would submit them to both the Board and the Building Commissioner when finished.

Mr. Simpson asked if the Board needed additional information before making a decision. All were satisfied that a decision could be reached.

Mr. Rising made a motion to close the evidentiary part of the hearing. Ms. Greenbaum seconded the motion, and the vote was unanimous to close the hearing.

#### **Public Meeting:**

The Board agreed that a Special Permit for a three-family dwelling was warranted, but they wanted specific time limits for completing any needed work for meeting the building code.

Mr. Snow stated that the Hebbs bought the property believing that it was a legal three-family dwelling. He does not want to cause the Hebbs undue hardship or put the tenants out on the

streets. Since the Fire Department had been there to inspect, any egregious code violations would have been picked up by them. Hence Mr. Snow feels that any upgrades can be made in a timely manner. An architectural study could be completed within six months, and the needed upgrades or repairs could be completed within a year, he estimated. The Board agreed that a review of the architectural plans and changes made could be scheduled for September, 2006, and was appropriate in this case.

Ms. Greenbaum brought up the conditions of Special Permit FY00-07. Condition #2 - screening of the parking area was never done - and should be included in this permit, she noted. Condition #6 – expiration of the permit upon change of ownership – should remain in some form as well. She also said that the trash/recycling containers should be better screened; she recommended an animal-resistant enclosure to protect against raccoons and rodents.

The Board discussed whether a time limit on the Special Permit itself was in order, since the “time limit” condition was how the lack of proper building permits and inspections was discovered. On the other hand, the Board noted that they did not wish to place more of a financial burden on the petitioner. Hence, they agreed that a one year review of the conditions of the Special Permit was in order.

The Board agreed that the owner-occupied condition of the previous Special Permit was not needed, since the owner lived next door and all of the other conditions of Bylaw Section 3.3241, #5 were met – i.e., the property is located near a heavily traveled street and is close to both educational and business districts.

### **Findings:**

The Board finds 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 located and is compatible with existing uses, because the immediate area abutting Hazel Avenue (Route 9) has many multi-family homes. Moreover, the property under consideration is much larger than the others in the area.

10.382, 10.383 & 10.385 – The proposal would not constitute a nuisance due to noise, lights, etc. or be a substantial inconvenience to abutters, since the three-family dwelling has existed for some time without problems, the owners live next-door and can control nuisances, and the intrusive lights from the parking lot will be controlled by a condition of this Special Permit.

10.384, 10.386 & 10.389 – Adequate and appropriate facilities would be provided for the proper operation because the premises are serviced by the municipal water and sewer systems, the owner provides for refuse removal/recycling, six parking places are provided as required under the Zoning By-law, which will be adequately screened by the conditions of this permit.

10.387 & 10.388 – The proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets, and provides adequate space for off-street loading and unloading, since the property is large, the driveway is wide, there are few houses on the street, visibility is good in all directions.

10.391 & 10.396 – The proposal protects, to the extent feasible, unique or important historical or scenic features, because no changes are proposed for the building or vicinity. Hazel Avenue, developed in the late 1800's, is part of the Westside National Register District. The open land and corn fields, combined with the historic homes are unique to the Town.

10.397 – The proposal provides adequate recreation facilities and open space, since the property is a double lot, with adequate open space for the three units.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw, because a Special Permit with conditions will ensure that safety codes are met, which will promote the health, safety and general welfare of the Town’s inhabitants.

**Zoning Board Decision:**

Mr. Rising moved to approve the proposal, with conditions. Ms. Greenbaum seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit to Arthur and Teri Hebb to convert a two-family house to a three-family house on a non-conforming lot under Sections 3.3241 and 9.22 of the Zoning Bylaw, on the premises at 15 Hazel Avenue (Map 13D /Parcel 32, R-N Zoning District), with conditions.

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TOM SIMPSON

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TED RISING

\_\_\_\_\_  
HILDA GREENBAUM

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2005 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2005.  
NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2005  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2005,  
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 convert a two-family house to a three-family house on a non-conforming lot under Sections 3.3241 and 9.22 of the Zoning Bylaw, on the premises at 15 Hazel Avenue (Map 13D /Parcel 32, R-N Zoning District) as requested in the application by Arthur and Teri Hebb, subject to the following conditions:

1. This Special Permit shall be reviewed by September 1, 2006 for compliance with the Building Code.
2. A copy of the architectural plans shall be submitted to the Board prior to September 1, 2006.
3. A site plan showing delineated parking for six spaces, appropriate screening for the parking area, exterior lighting, and the location of a screened refuse/recycling area shall be submitted to the Board by September 1, 2006
4. Exterior lighting shall be downcast.
5. The three-unit residence shall be maintained and managed as described in the Management Plan approved by the Board at a public meeting November 14, 2006 and on file in the zoning office.
6. A review of the Special Permit conditions and the Management Plan shall be reviewed at a public meeting of the Board in three years or upon sale of the property.

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TOM SIMPSON, Chair  
Amherst Zoning Board of Appeals

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DATE