

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: David Clark

Date Application filed with the Town Clerk: July 14, 2005

Nature of request: A Special Permit, under Sections 3.352.1, 5.041 and 5.042 of the Zoning Bylaw to operate an Italian-style coffee shop serving light European fare, with alcohol, seasonal outdoor dining and live entertainment, open until 1 a.m.

Location of property: 28 Amity Street, The Amherst Cinema Building, (Map 14A, Parcel 254, B-G Zone)

Legal notice: Published in the Daily Hampshire Gazette on July 27th & August 3rd, 2005, and sent to abutters on July 28, 2005.

Board members: Tom Simpson, Ted Rising and Barbara Ford

Submissions:

The applicant submitted the following documents with his application:

- A Management Plan; it was revised and resubmitted on August 24, 2005
- A plan entitled "Amherst Cinema Building and Site Plan", dated 3/24/05, prepared by Kuhn Riddle Architects.
- The cafe floor plan, dated 8/8/05, prepared by Kuhn Riddle Architects.
- A sample menu for "Amherst Coffee"

The Planning Department submitted a memorandum dated August 3, 2005, which discussed zoning, previous permits, dimensional requirements, parking, plantings, lighting, signs, outdoor dining, and management plan of the building and restaurant.

The Fire Department submitted a memorandum dated August 9, 2005, commenting on access, water supply, building code and address issues.

Site Visit: August 9, 2005

At the site visit the Board observed the following:

- The location of the building in the downtown area, surrounded by banks, stores, restaurants and other businesses and the town library.
- The exterior of the Amherst Cinema building, currently under renovation.
- The two parking places along Amity Street, where deliveries are proposed

- The front easterly space in the building, facing Amity Street, where the coffee house is proposed to be located.
- The interior molding, tin ceiling and etched windows of the historical building that will be retained in this space.
- The location of the two accessible lavatories located within the proposed café.
- The proposed 8-foot walkway that will run along the east side from Amity Street to the rear of the building.
- The location where the new directory sign for the building will be on the east façade, close to Amity Street.

Public Hearing: August 11, 2005.

ZBA Chair Tom Simpson began the hearing by declaring that his company has EV Realty as a customer (owned by Barry Roberts), but that he has no financial interest in the Amherst Cinema project or the applicant's project.

Present at the public hearing were the petitioner David Clark, his business partner Mukunda Feldman, and building owner Barry Roberts.

Mr. Clark presented a floor plan for the restaurant and terraced outdoor seating area. He made the following statements:

- The building is under renovation by Barry Roberts.
- Two management plans are submitted, one outlining that Barry Roberts will maintain the building, and the other that the petitioner will maintain his own business.
- The proposed café is located in one of the two existing front sections of the building, which previously housed two shops.
- There are two means of egress, one along Amity Street, and one along the new covered walkway along the eastern side of the building.
- The proposed hours of operation are 6:30 a.m. to 1 a.m., 7 days/week. The late closing will not be often – usually it will be midnight - but will be scheduled around the movie theater schedules.
- The proposed kitchen will not be a full kitchen, but the setup will meet the victualer license and other health codes.
- The morning menu will consist of pastries, bread, fruit, juice and coffee
- The proposed day and evening menu will consist of Italian “small tastes”, antipasti and sandwiches.
- Forty-five (45) seats are requested indoors, and four (4) chairs outdoors.
- The location of the proposed outdoor two tables is on the walkway to the east of the building. The tables will not be located along Amity Street.
- The location of the outdoor trash receptacles for this business will be presented to the Board when the general site plan comes back for final approval.

- The Design Review Board has a copy of the outdoor table/chair types, and will consider the petitioner's request on September 19, 2005.
- A full liquor license will be requested, and food will be served the entire time that alcohol is served.
- Alcohol will be served inside only, not at the tables outdoors.
- The petitioner is "Tips" certified, and is qualified to train other servers.
- There will always be one person who has "Tips" training to serve the alcohol.
- Alcohol will not be served in the 15 minutes to half-hour before the café is closed.
- The petitioner is certified in food "ServSafe" as well.
- Live entertainment is requested, but will be limited to 3 or 4 musicians. The music will be background jazz, not featured shows. Sometimes small amplification may be needed.
- The musicians will be located in the south-west corner of the café, and care will be given to contain the noise within the café space.
- The petitioner will police the outside area to keep it clean from litter.
- The petitioner will use the dumpster provided on site, which is shared with the other tenants of the building. The property owner is responsible for regular trash/recycling pickups.
- Deliveries to the café will be made from Amity Street between 8 & 11 a.m. They will be made in small 16 ft. box trucks from the petitioner's warehouse located off-site (in Northampton).

Zoning staff assistant Carolyn Holstein reported that Bonnie Isman, Jones Library Director, spoke of her concern that take-out service could result in litter on the library lawn or inside the library. Barry Roberts replied that he's seen people with Antonio's pizza boxes on the lawn, Starbuck's coffee cups and other food wrappers on the lawn. It's impossible to control where people will eat, or to impose regulations on this. There will be outside trash receptacles for this café.

Tom Simpson asked if there was other outside dining proposed for the building, and would this interfere with the walkway. Mr. Roberts responded that there will be one other place with outdoor seating – Margarita's at an open patio area at the opposite end of the walkway. Trash receptacles will be located there as well. As for interfering with pedestrians, the walkway is 8 feet wide, and the tables are small, only about 2 1/2 feet wide, so there will be room for pedestrians as well.

Bonnie Weeks, Building Commissioner, asked if there would be any special lighting within the restaurant. She reminded the petitioner that there cannot be any dimming of lights, including for entertainment, because then the café becomes a nightclub. Building code issues are much more stringent for nightclubs than for cafes or restaurants, and the entire building would then be subject to the more stringent regulations. Mr. Roberts assured the Building Commissioner that he does not want nightclub codes for the building, and that the lights would not be dimmed.

Barbara Ford asked about landscaping in terms of planters along the walkway. She wondered if it would be impossible with outdoor tables. Mr. Roberts replied that he is hoping to put planters at the edge of the walkway instead of bollards.

The Board inquired about signs. The petitioner said that his café sign would be along Amity Street, and also on the directory sign on the east side of the building. These signs will be submitted for approval at a later time.

The petitioner asked if the two parking places along Amity Street in front of the cinema building could be reserved for deliveries to the building. Other places in the business district have such designated delivery spaces. The Board responded that those two particular spaces are very popular with library patrons and others throughout the day, and it is not in their purview to reserve delivery parking places. The Town Manager would make the determination.

Barbara Ford moved to close the evidentiary portion of the public hearing. Ted Rising seconded the motion, and the Board voted unanimously to close the public hearing.

Public Meeting

At the public meeting the Board discussed the application. The Board had no objections to the proposed café, especially since a Special Permit for a similar type of restaurant had already been issued to be located in the cinema building. In addition, the petitioners have successfully operated a similar café in Northampton, and have had experience in dealing with alcohol and young patrons from the five-college area; this bodes well for a carefully controlled operation.

The Board noted that no on-site parking is needed in the B-G/Municipal district, and Class II restaurants with later hours and alcohol service are allowed by Special Permit in the B-G zoning district. Seasonal outdoor dining and live entertainment are allowed in a B-G zone as an accessory to the principle use as a restaurant. The location of the proposed small tables will not interfere with the two doorways to the café or the pedestrian walkway along the easterly side of the building.

Findings:

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

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed, since the cinema building is part of the downtown business district, with banks, bookstores, art galleries, etc. The building itself will become a mix of uses (restaurants, shops, offices and theaters) compatible with similar uses in the district.

10.382 & 10.385 – The proposal would not constitute a nuisance due to flood, noise, lights or visually offensive structures since the building will be restored with

upgraded drainage for the surrounding buildings as well. Lighting will be downcast. The conditions of the Special Permit will control the broadcast of music and noise, 10.383 & 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians since abutters will have continued access to the back of their buildings, emergency vehicles can reach all sections of the building as well as surrounding buildings, and pedestrians will have two covered walkways for accessing the restaurants, shops and/or theaters.

10.384 – Adequate and appropriate facilities would be provided for proper operation in that the space is large enough to accommodate the needs of the restaurant, including seating, kitchen space and two restrooms.

10.386 – The proposal ensures that it is in conformance with Parking and Sign regulations since the restaurant will be located in the municipal parking district and does not need extra parking. Signs will be submitted for approval at a business meeting of the Board.

10.388 – The proposal ensures adequate space for off-street loading and unloading of goods and products in that off-street loading/unloading can be done on the east side of the building, where there is adequate access. There are two parking spaces along Amity Street for front access as well.

10.389 – The proposal provides adequate methods of disposal in that the property is serviced by Town water and sewer lines. The building owner will provide receptacles for refuse and recyclables for each shop, and will have a dumpster at the back of the property. The conditions of this permit require that the inside and outside trash receptacles associated with the restaurant shall be emptied at least three times a day.

10.391 – The proposal protects, to the extent feasible, unique and important historic features in that the original 100+ year old building will be respectfully restored, not demolished. The design of the restaurant will respect the historic features of the building as well.

10.392 – The proposal provides adequate landscaping and screening to the extent that it can. The site currently is non-conforming as to coverage, with almost 100% coverage. The proposal does not change this fact, but the building owner said that he would provide plantings in as many areas as possible.

10.396 – The proposal provides screening for storage areas, dumpsters, and similar features since the dumpsters will be screened, the rooftop equipment will be screened, and other storage will be done within the building or basement area.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw in that the restoration of the building and the addition of this new restaurant will promote the economic viability of the downtown. It will enhance the creative offerings in Amherst and promote the general welfare of the inhabitants of Amherst.

Zoning Board Decision

Ted Rising MOVED to approve the application with conditions. Barbara Ford SECONDED the motion. The Board VOTED unanimously to approve the application with conditions.

For all the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit to David Clark under Sections 3.352.1, 5.041 and 5.042 of the Zoning Bylaw to operate an Italian-style coffee shop serving light European fare, with alcohol, seasonal outdoor dining and live entertainment, open until 1 a.m., on the premises at 28 Amity Street (Map 14A, Parcel 254, B-G Zone), subject to conditions.

TOM SIMPSON

TED RISING

BARBARA FORD

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 David Clark under Sections 3.352.1, 5.041 and 5.042 of the Zoning Bylaw to operate an Italian-style coffee shop serving light European fare, with alcohol, seasonal outdoor dining and live entertainment, open until 1 a.m., on the premises at 28 Amity Street (Map 14A, Parcel 254, B-G Zone), subject to following conditions.

1. A revised Management Plan shall be submitted for review and approval by the Board at a public meeting September 22, 2005.
2. Seating shall be limited to 45 seats indoors, including musicians, and 2 tables, 4 seats outdoors.
4. Hours of operation of the café shall be 6:30 a.m. to 1 a.m. seven (7) days/week.
5. Food shall be served until closing.
6. There shall be a maximum of 6 employees on the premises at one time.
7. All staff people who are involved with the service of alcohol shall be certified from TIPS or ServSafe Alcohol training.
8. No alcohol shall be served in the outdoor dining area or taken to the outside area.
9. The petitioner shall be responsible for maintaining the outdoor dining area, keeping it clean and free of litter and debris. Trash receptacles on site shall be emptied at least three times daily
10. Outdoor furniture shall be removed from the outdoor dining area and stored between November 1 and April 1.
11. Live entertainment inside the restaurant shall be limited to five musicians total. Recorded music may be used inside the restaurant. There shall be no music broadcast outside the restaurant. The volume of sound generated by music from the restaurant shall not exceed average background sound levels outside the restaurant.

12. The conduct of patrons waiting outside to enter the establishment shall be supervised by restaurant staff.
13. There shall be no disposable utensils, plates or cups used in the outdoor dining area.
13. Vendor deliveries shall be made during the hours of 6 a.m. to 11 a.m.
15. Proposed signs and outdoor dining chairs/tables/canopies, including colors, sizes, materials and graphics shall be submitted to the Design Review Board for review prior to being presented to the ZBA for review and approval at a public meeting September 22, 2005.
16. The building shall be managed according to the plan submitted by Barry Roberts and approved at a Board business meeting May 18, 2005.
17. The proposed café shall be built according to the plan drawn by Kuhn Riddle Architect, dated 8/8/05 and approved by the Board on August 11, 2005.

TOM SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE