

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Peter Grandonico

Date Application filed with the Town Clerk: June 30, 2005

Nature of request: Petitioner seeks a Special Permit, under Section 6.20 of the Zoning Bylaw to install a fence in the B-G Zone.

Location of property: Behind 37, 39 and 41 North Pleasant Street, adjacent to 31 Boltwood Walk, (Map 14A, Parcel 49, B-G Zone)

Legal notice: Published in the Daily Hampshire Gazette on July 13 and July 20, 2005, and sent to abutters on July 12, 2005.

Board members: Tom Simpson, Ted Rising and Susan Pynchon

Submissions:

The applicants submitted the following documents:

- An aerial photograph showing the site, the location of existing chairs and tables and the proposed fence location.
- Catalogue information on the proposed fence
- A colored plan showing the buildings and property owned by Peter Grandonico, the easement over the Knights of Columbus property, the "passageway" and the proposed fence location.
- A document granting an easement over Knights of Columbus property to Denison H. Jones.
- A series of 8" x 10" colored photographs of the site showing the surrounding area and the proposed fence location.
- A series of 4" x 6" colored photographs of the site showing the surrounding area and the proposed fence location.
- A Narrative describing the proposed fence.

The Planning Department submitted a Memorandum dated July 19, 2005, commenting on zoning, previous permits, dimensional requirements, lot ownership and easement issues, the management plan and review by the Design Review Board.

The Planning Department also submitted a plan, based on one provided by Town Counsel, Alan Seewald, showing the "Easement" and the "Licensed Passageway" and the revised location of the proposed fence.

The Fire Department submitted a Memorandum dated July 27, 2005, commenting on access and water supply.

The Zoning Board also received a copy of a letter addressed to Peter Grandonico, from Michael J. Serduck, an attorney representing the Knights of Columbus, dated July 22, 2005, requesting removal of site improvements and an underground pipe that had been installed by Mr. Grandonico on property owned by the Knights of Columbus.

Site Visit: July 26, 2005

At the site visit the Board was met by Peter Grandonico, Sr., Kathy Grandonico and Peter Grandonico, Jr. The Board observed the following:

- The proposed location of the fence.
- The paved area proposed to be enclosed by the fence, currently containing flowers and movable chairs and tables.
- The surrounding buildings, including those containing the Green Farm Market and Thai Corner Restaurant.
- The proximity of the recycling and trash sheds.
- The proximity of the parking garage.

Public Hearing: July 27, 2005.

Kathy Grandonico, the wife of the applicant, presented the petition. She made the following comments and explanations:

- Ms. Grandonico explained that the fence would be 48 feet long.
- She referred to the town's intentions in creating the parking garage – that businesses were to have their rear doors open onto the space created by the parking garage and that it was to become a lively backyard for these businesses.
- She mentioned the location of the garbage sheds and that outdoor dining is incompatible with the smell and look of the sheds.
- The fence is proposed to hide the garbage sheds and also to hide the electrical box near the entrance to the Green Market.
- She and her husband want to put chairs and tables in the area for people to dine outside and to make a nice area for people to sit.
- The Grandonico's have an easement and a right of way over the property behind their buildings.
- Ms. Grandonico presented the colored drawing showing the easement and the property owned by the Grandonico's.

- She explained that the placement of the fence would allow space for vehicles and pedestrians to pass by.
- The fence will be 6 feet tall and the top 18 inches of it will be lattice work so people will be able to see through it.

The Board inquired about where pedestrians will walk. Ms. Grandonico explained that pedestrians would walk where it is paved and flat and that the pavement, installed by the Grandonico's, has helped to correct previous drainage problems in the area.

The Board inquired about the location of the tables and chairs that were out on the site. Mr. Grandonico, Sr., explained that the Green Market put some tables and chairs near their building for their customers and the public.

The Board discussed the need for a better site plan, showing the location of the chairs and tables. Mr. Grandonico, Sr., noted that, in his opinion, if the tables and chairs were for the use of the general public and not associated with a particular business, that no permit was required.

The Board noted that the fence would be 6 feet tall, made of PVC vinyl, beige in color and able to be removed in winter.

Mark Snow, Assistant Building Commissioner, noted that the fence must not obstruct egress from any doorways. Mr. Grandonico stated that no doorways would be obstructed by the fence.

Mr. Snow also noted that the fence would need a Building Permit in order to be constructed and that to obtain a Building Permit, the applicant would need "proof of ownership" of the property on which the fence is to be installed. Mr. Snow went on to say that he would check with Town Counsel about this issue. He further noted that the Zoning Board of Appeals does not issue building permits, but that issuance of Building Permits is the responsibility of the Building Commissioner's office.

Barry Roberts, of 200 Bay Road, who owns the Cook Block building to the south of the proposed fence location, spoke in support of the application. He stated that he had remodeled the Cook Block and put store fronts on the alley in back of the building. He had worked with Peter Grandonico to improve the alley and the Boltwood Walk area and he was happy to see the improvements being made to the space behind the buildings.

Ted Rising MOVED to close the evidentiary portion of the public hearing. Susan Pynchon SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

Tom Simpson MOVED to continue the deliberative portion of the public hearing to Wednesday, August 10, 2005, at 8:00 p.m. Ted Rising SECONDED the motion. The Board VOTED unanimously to continue the public meeting (the deliberative portion of the public hearing) to August 10, 2005.

Public Meeting continued to August 10, 2005

At the public meeting the Board discussed the application. The Board asked Mark Snow whether there were any safety problems with the proposal. Mr. Snow responded that outdoor furnishings may not be located so as to obstruct a means of egress.

Currently there are seats and tables located in the area of the Green Market. The owner of the Green Market owns the chairs and tables but has stated that they are for public use.

The Board asked if the Building Commissioner could make a statement that the fence would not be a safety hazard. Mr. Snow declined to make such a statement and noted that there is a public way which is defined as the road around the parking garage and that the sidewalks in the area are also considered public ways since they are open to the public for passage.

The Board discussed a plan which had been prepared by Alan Seewald, Town Counsel, and submitted by the Planning Department, which showed the "Easement" area and the "Licensed Passageway" area. The Board discussed the fact that the Licensed Passageway was no longer available for use by the Grandonico's. The Board noted that, according to Mr. Seewald, the Grandonico's did not have any rights over the Licensed Passageway, but that they may have rights over the Easement area.

After the public hearing on July 27, 2005, the applicant submitted a revised plan showing the fence moved to the south out of the Licensed Passageway. The Board noted that the fence could be an asset to development of the area if the fence did not obstruct the public way.

The Board further noted that the Zoning Board could grant a Special Permit for the fence but that a Building Permit would still need to be issued by Inspection Services.

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, because the location of the fence has been changed, moved to the south and outside of the public passageway and the fence will provide screening of the recycling sheds and create a space for outdoor seating that will be in keeping with the town’s plans for public use of the open space around the parking garage.

10.382 & 10.385 – The proposal would not constitute a nuisance due to flood, noise, lights or visually offensive structures since the fence was now located out of the public passageway, no lights are proposed and the fence will not produce flood or noise problems.

10.383 & 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians since it was located out of the passageway, and thus would not obstruct passage, and the conditions of the permit will require that the applicant establish a right to install a fence in the proposed location.

10.392 – The proposal provides adequate landscaping and screening since the fence itself will act to screen the recycling sheds.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw in that it enhances the parking garage area by creating a seating space for the public and promotes the convenience and general welfare of the inhabitants of Amherst.

Zoning Board Decision

Ted Rising MOVED to approve the application and the revised fence location, with conditions. Susan Pynchon 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, with conditions, to Peter Grandonico to install a fence in the B-G Zone., behind 37, 39 and 41 North Pleasant Street, adjacent to 31 Boltwood Walk, (Map 14A, Parcel 49, B-G Zone).

TOM SIMPSON

TED RISING

SUSAN PYNCHON

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, with conditions, to Peter Grandonico to install a fence in the B-G Zone., behind 37, 39 and 41 North Pleasant Street, adjacent to 31 Boltwood Walk, (Map 14A, Parcel 49, B-G Zone), with the following conditions:

1. The fence shall be removed between November 1 and April 1, in accordance with the regulations for other furnishings for seasonal outdoor dining.
2. The fence shall be sturdy enough so that it will be able to withstand a 200 pound impact load without substantial deflection.
3. The fence style shall be as shown in the catalog information approved by the Board on August 10, 2005, and shall be tan in color.
4. The location of the fence shall be as shown on the plan approved by the Board on August 10, 2005.
5. The fence shall not obstruct any required means of egress.
6. This permit is conditioned on the applicant establishing a right to locate the proposed fence either by: 1) a final judgment of a court of competent jurisdiction, or 2) by stipulation or agreement with the Knights of Columbus Home Association.

TOM SIMPSON, Chair
Amherst Zoning Board of Appeals

DATE