

**Hopkinton Zoning Board of Adjustment**  
**Minutes**  
**October 6, 2009**

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, October 6, 2009, at 7:00 PM in the Town Hall. Members present: Toni Gray, Harold Perkins, Gregory McLeod and Daniel Rinden.

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**I. Application.**

**Case #: ZO2009-11 Lisa & Graham Baynes** for a Special Exception to foster/shelter no more than four dogs, at any given time, as a home business. The property is located at 1445 Hatfield Rd in the R-4 district, Tax Map 216, Lot 4. The application was submitted in accordance with Table of Uses 3.6.A.7 of the Hopkinton Zoning Ordinance.

Mrs. and Mr. Baynes addressed the Board with Mrs. Baynes stating as follows: "We are here tonight seeking a special exception to the zoning ordinance to comply with our state issued permission to foster and shelter four rescue pups until such time as they are adopted. The dogs that are fostered at our home for which we have named Camp Kyra after our own dog which, unfortunately, we had to have put to sleep recently. The pups in question are rescued and temperament tested by Amy Giblin, founder of ADAR Rescue which stands for Alabamians Defending Animal Rights. ADAR is a small grass roots rescue that has no available funds and has no paid employees. ADAR does charge a \$400 adoption fee that helps cover their expenses. However, we provide the foster care on a voluntary basis.

Before each dog comes to our home it is fully vaccinated as required by New Hampshire State law; that is rabies, distemper, hepatitis, leptospirosis and parvovirus in addition we vaccinate against corona virus, bordatella. They are wormed, started on heartworm and flea and tick prevention, spayed or neutered, micro-chipped and eventually registered to their new owner. The USDA Health Certificate that is required for their transportation is issued by a licensed vet in Alabama. All dogs are wormed, fed and housed for a minimum of four weeks at Amy's house and generally six weeks to ensure that ADAR is adopting healthy pets to permanent homes. Dogs are then transported to the northeast and picked up by their new owners or come to our house if they are to be fostered. The foster dogs are then taken to a NH veterinarian for a second health certificate, as required by the NH Department of Agriculture. This, after there 48 hour quarantine period, which is also required by the NH Department of Agriculture. In the meantime, we post pictures and bios of the dogs and puppies on petfinder.com and on our website which was set-up by ADAR on our behalf.

Once in New Hampshire, we foster the dogs and puppies up to four as licensed by the NH Department of Agriculture. The dogs are then kept at our home for a minimum of 48 hours, as required by NH law and usually a maximum of one to three weeks, depending upon the interest in the particular dog.

Potential owners are able to meet the dogs on Sundays from 9 AM to noon or during early evening by appointment only. No one is allowed to just come to see the dogs. There application must be approved by the rescue before they are given our address since this is our home. As this is all strictly voluntary we receive no compensation for what we do. In fact, even the dog food is donated by various organizations.

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*Minutes are subject to Zoning Board of Adjustment review and approval.*

Mrs. Baynes explained how difficult it was for a determination to be made as to what section of the Zoning Ordinance closely resembled what she and her husband were doing at their home. Following discussions with Planning/Zoning Director Karen Robertson, it was decided that the closest provision of the Ordinance was that of a home business. Mrs. Baynes reviewed the requirements of section 3.7.3 of the Zoning Ordinance.

- (a) The use shall be carried out entirely within the dwelling or an accessory building located on the same premises as the dwelling, subject to the area limitations set forth in Section II, paragraph 2.1.H.1.

"The dog room and runs are attached to our home. They are located in the back yard, not visible from the street or even our driveway. You have viewed our purchase and sale agreement which states that the dog rooms and attached runs were installed prior to our buying the property. You have also viewed a document from the law firm of Upton, Sanders and Smith, dated November 16, 1983, regarding the previous owner's request for a permit to install said dog runs. The permit was found to be consistent with the Zoning Ordinance."

- (b) There shall be no display of goods or wares visible from the street.

"Our wares are our dogs and they are kept in their room or attached runs. They are located in the back yard, not visible from the street or even our driveway. The foster dogs on our property are contained in the dog room in their chain link run with outside access barricaded from the hours of 8 PM and 6 AM. Occasionally, when there is activity that interests them outside, such as a wild animal or a neighbor dog barking they will vocalize. These noises are contained inside the room and we have also placed a radio in the room to minimize their ability to hear the outside noise. Dogs are known and are often revered for their superior sense of smell and hearing which is used to warn their humans of pending danger. As of yet, we have found no way to override this basic instinct. During the day time hours the dogs are allowed to access the outside portion of the runs. These are attached to our home and were in place when we purchased our home. If we are home they may play and exercise in the fenced area that access their runs. We have a huge responsibility to keep these pups safe while in our care. They do not leave the area unless they have a vet appointment, a family has chosen to adopt them or for occasional walks. On these walks they are leashed for their safety from cars and other neighborhood dogs that ironically roam freely. There was one incident when we first moved into our house and the fence was not fully constructed. We had a foster dog, a boxer that got loose and ran down the street with our own dogs. That was the only time that a foster dog has ever been out of the house."

- (c) The dwelling or accessory building in which the Home Business is conducted shall not be rendered objectionable to the neighborhood because of exterior appearance, emission of odors, gas, smoke, dust, noise, electrical disturbance, hours of operation or in any other way.

"We feel that our permit request is not a problem. It does not involve the emission of odors, gas, smoke or dust. It does not cause any electrical disturbance. There is no exterior element visible to anyone but ourselves since it is all in the back, nothing in the front of the property. The appointments we set are Sunday mornings from 9 AM to 12 PM, Saturday 3 AM to 5 PM and evenings from 5 PM to 7 PM, if necessary. It is one

Saturday a month, generally up to two evenings a week and sometimes two Sundays a month. The appointments fluctuate depending on the puppies we foster and the families that are interested in adopting them. There have been many occasions this past year when we have no foster puppies at our house, but typically we have five or six visitors a week.”

- (d) In a multi-family dwelling, the Home Business use shall in no way become objectionable or detrimental to any residential use within the multi-family dwelling. It shall include no features of design not customary in buildings for residential use.

“This does not pertain to us as we live in a single family dwelling.”

- (e) The use shall not create a traffic safety hazard, nor shall it result in a substantial increase in the level of traffic congestion in the vicinity of the dwelling.

“When potential adoptive families visit our home they park in our driveway. Occasionally, there are additional cars that are parked on the right hand side of the road for up to an hour while dogs are being picked up. Also we ask other volunteers to park on the road to leave space in the driveway for families in order to eliminate the dogs, children and people being close to or in the road, potentially causing a traffic or safety hazard. I have submitted photos to the Board with my application that was labeled one through four. Two of them were taken by our neighbor Mr. Pellerin that show cars parked along the road during an event held at our home. You will notice in the photos that folks who park on the road are considerate enough to park far off of the road as not to impede normal traffic flow of the road. In fact, we actually duplicated that and measured and they are 26-inches into the road which leaves plenty of space for traffic to go by. The other two photos were taken by me to show cars parked on the road for an event at Mr. Pellerin’s home recently. Mr. Pellerin has the advantage of being uphill and on the opposite side of the road where there is no drainage ditch, so the cars could park further off of the road. I stood in the rain that day for an hour so that I could report facts to you. The cars that passed along Hatfield Road the day of his event did not slow down any more or less than they do when we have our events. Therefore, we conclude that traffic flow is not impacted by our dog rescue efforts. As to the question of a substantial increase in traffic, I would concur that there has been an increase in traffic on the street since we purchased our home. This is largely due to the fact that since the property had been vacant for almost two years, prior to our purchase, any traffic related to the property would be an increase, whether it is any number of friends or family who visit us, contractors and workmen whose services have been requested to do work, guests to home parties held here such as Pampered Chef, PartyLite Candle, guests for holiday events, persons receiving reading tutoring by myself or families wanting to adopt a new pet. It is worthy to mention that Hatfield Road is a pass through road to Thain Road and to Weare. So, an increase in traffic may also be the result of folks just driving through. For a little while Exit 5 was closed while they were doing maintenance and traffic was re-routed so who knows how many people had decided to travel up Hatfield Road. Without a traffic survey, which hasn’t been done on Hatfield Road, we know this because it would have been done by the New Hampshire Department of Transportation and we have it on authority of Lieutenant Pecora that it has not been done, it is nearly impossible to assume the point of origin or final destination of all the traffic on Hatfield. I also spoke to friends and coworkers as to the amount of traffic they have at their homes. On average during the weekend they have five or six cars at their home, so the five or six that we have is not out of the ordinary.”

- (f) No outside storage of equipment will be allowed in connection with the Home Business.

“It is not applicable.”

- (g) Any special exception for a Home Business (i) shall be nontransferable, (ii) shall be issued to the individual applicant(s) only, and (iii) shall automatically expire when such applicant(s) is no longer the resident owner(s) of the dwelling.

“We completely understand. We consider this reasonable and will comply with this.”

- (h) Not more than one commercial vehicle in connection with the Home Business shall be stored on the premises. Parking areas associated with or needed for the Home Business, if any, shall be effectively screened from abutting and facing residential properties by appropriate fencing, four (4) feet in height, or by an evergreen planting at least three (3) feet in height, at the time of planting.

“This is non-applicable to us.”

- (i) Site plan review by the Planning Board shall be required.

“We intend to comply promptly. We have the application filled out at home.”

Mrs. Baynes then stated, “On a personal note we learned recently based on letters in our file that there have been complaints about our rescue work. Until the past week no one has ever contacted us about any objections they may have. Please keep in mind that we have lived in the neighborhood for thirteen months now. When the first letter arrived from Karen Robertson explaining that we might be violation to the R-4 Zoning Ordinance, we were unaware that we might be in violation. The area is zoned residential and agriculture so we looked up the definition of agriculture and interpreted definition number nine which reads, the raising, breeding and sale of domestic strains of fur-bearing animals, to include dogs.”

Mr. Baynes addressed the Board to state, “Under section 3.5 District Purposes of the Zoning Ordinance it states, ‘the intent of this district R-4 is to provide for open space, conservation, agricultural use and predominantly very low density residential development on individual lots or in conservation subdivisions’ and it goes on. Referencing the Zoning Ordinance 2.1 Definitions it states, ‘terms and words defined in the Hopkinton Building Code, if any, or Subdivision Regulations or Site Plan Review Regulations shall have the meaning given therein unless a contrary intention clearly appears. Words not defined in either place shall have the meaning given in Webster’s Unabridged Dictionary, Third Edition’. So, I then referred to section 2.1.A.4 Agriculture, Farm, Farming, number one, ‘the word farm means any land, buildings or structures on or in which agricultural and farming activities are carried out or conducted and shall include the residence or residences of owners, occupants, or employees located on such land’. Section two says the words, ‘Agricultural and Farming shall mean all operations of a farm to include the raising, breeding, or sale of domesticated strains of fur-bearing animals’ and in the Ordinance there is no specific definition of a ‘fur-bearing animal’ so I referred to Webster Dictionary. The words, domesticated and domestic were defined as belonging to or incumbent on the family or members of the family, living near or about the habitations of man, to live in the same household, to adapt an animal to live in intimate association with and to the advantage of humans, of or relating to the household or the family, to bring to the level of ordinary people. The example given was that of the domestic cat. The

word 'bear' as defined can mean to carry or to be equipped with or furnished with and in this case we feel that perhaps it could be related to the word 'fur'. Based on research, Mr. and Mrs. Baynes believe that the definition of the words 'Agriculture, Farm and Farming' clearly encompasses the fostering of dogs and delivering of dogs to their people. Therefore, the Baynes believe they are compliant with the requirements for the R-4 district.

Mrs. Baynes advised that once they had learned that they might not be in compliance, they immediately wrote a letter to the neighbors hoping for feedback as to how they could resolve this issue. The letter was hand delivered to six homes. No one responded. Mrs. Baynes went on to explain how three residents in the neighborhood had visited them this past weekend. One resident, Mr. England, had explained how he operates a therapeutic horse farm. There are six school districts that bus children with delays to the England residence for horse therapy. Mrs. Baynes stated that when she had inquired with Mr. England about his permits he had said he needed no permits to carry out this humanitarian work, nor have their neighbors complained. Another resident, Mr. Mellen, stopped in and expressed concern over the barking noise that he hears at night. In response, Mrs. Baynes stated that she hears this barking as well and it rarely comes from her property, with the exception of Sunday night when neighborhood dogs had ran onto their property, barking. At the time, Mr. Mellen expressed concern about the neighborhood property values and stated that on occasion vehicles turn-around in his driveway. Mr. Pellerin, Mr. and Mrs. Baynes' neighbor located across the street, had also visited the property. Mrs. Baynes stated that while he had commended their efforts he said that he did not want to hear or see the dogs in his neighborhood, expressing concern about the affects on his property values should he decide to sell his home. In response, Mrs. Baynes stated that she has found that property values in the entire Town have decreased, not just those properties along Hatfield Road. She believed that it is mere speculation that the dog rescue will have any affects on property values.

Note: Outlined below are the standards for a Special Exception as addressed by the Applicant as part of their application submitted to the Board.

1. *Standards provided by this Ordinance for the particular use permitted by special exception.*

*"Permitted by Special Exception per Table of Uses 3.6.A.7 and 3.7.3 of the Zoning Ordinance."*

2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.*

*"The nature of our request has no association with explosives or toxic materials. Regarding potential fire; we are no more at risk than any other resident on this street as our request does not increase or decrease the potential of fire."*

3. *No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor(s), smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.*

*"Our request has not changed any of the essential characteristics of the neighborhood as we have not added any of the above such as structures, parking areas, storage*

*equipment, vehicles or other materials in conjunction with the request with the exception of fencing which was in place when we purchased the home. It was in disrepair, so we replaced it with newer, more adequate material. Regarding noise, the foster dogs on our property are contained in the dog room which is part of the attached garage and are in their chain-link runs during the hours of 8 AM to 6 PM. Occasionally, when there is activity that interest them outside, such as a wild animal or a neighbor dog barking they will vocalize as dogs are known to do. We have placed a radio in their room to minimize their ability to hear outside noises when they are inside, and have blocked their access to the outside portion of their pens at night so the barking noises are contained within our home. Dogs are known and are often revered for their superior sense of smell and hearing which is used to warn their humans of pending danger. We have found no way to override this basic instinct.*

*During the daytime hours the dogs are allowed to access the outside portion of the runs. If we are home they may play and exercise in the fenced area just off of their runs. This is the area that was set up by the previous owner of the property and used for her dogs. The dogs are predisposed to the same behaviors and instinctual propensity for noise making as the many other dogs in the neighborhood, including our personal dogs and exercise their ability to bark when they feel inclined. We know of seven dogs in our immediate area, not including our own, two at the Mellens, two at the Pellerins, two at the Kerins and at least one at the farm on the corner of Hatfield and Thain. Since we have lived here, the barking of our personal dogs, the foster dogs and these various other neighborhood dogs has never exceeded reasonable volume or continued for a length of time that would be objectionable to anyone within hearing distance or be in violation of any town ordinance regarding noise."*

4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.*

*"When potential adopters visit our home they park in our driveway. Occasionally, sometimes once a month, there are additional cars that are parked on the right hand side of the road for up to an hour while dogs are being picked up. Also we ask other volunteers to park on the road to leave space in the driveway for adopters in order to eliminate the dogs and people being close to or in the road, potentially causing a traffic or safety hazard. Please refer to photos one and two, which were taken by our neighbor, Mr. Pellerin that show the cars parked on the road during an event. You will note in the photos that folks who park on the road are considerate enough to park far off of the road as not to impede normal traffic flow of the road. Photos three and four were taken by myself to show cars parked on the road for an event at Mr. Pellerin's home recently. Mr. Pellerin has the advantage of being uphill and on the opposite side of the road where there is no drainage ditch, so the cars could park further off of the road. The cars that passed along Hatfield Road the day of his event did not slow down any more or less than they do when we have our events. Therefore, we conclude that traffic flow is not impacted by our dog rescue efforts.*

*As to the question of a substantial increase in traffic, I would concur that there has been an increase in traffic on the street since we purchased our home. This is largely due to the fact that since the property had been vacant for almost two years, prior to our purchase, any traffic related to the property would be an increase, whether it is any number of friends or family who visit us, contractors and workmen whose services have been requested to do work on the property, guests to home parties held here such as*

*Pampered Chef, PartyLite Candle, Tastefully Simple, guests for holiday events, persons receiving reading tutoring by myself or dog adopters. I would also like to remind the Board that Hatfield Road is a pass through road to Thain Road and to Weare. So, an increase in traffic may also be the result of folks driving through. Without a traffic survey it is nearly impossible to assume the point of origin or final destination of all the traffic on Hatfield."*

5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.*

*"We do not utilize municipal water, sewer or waste disposal. Household fire extinguishers are placed throughout our home. Additional fire and police protection, if needed, is expected to be provided by the Hopkinton Fire Department as it is for all other taxpaying citizens of the Town."*

6. *No significant increase of storm water runoff onto adjacent property or streets.*

*"Number six is not applicable."*

7. *An appropriate location for the proposed use.*

*"Please refer to a copy of our purchase and sales agreement which states, 'dog room and runs were installed prior to our buying the property and included in the sale.' Additionally, please refer to a copy of a document from the law firm of Upton, Sanders and Smith, dated November 16, 1983, regarding the previous owner's request for a permit to install said dog runs. The permit was found to be consistent with the Zoning Ordinance."*

8. *Not affect adversely the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.*

*"All adjacent and neighboring properties have been developed, most of them after the construction of our home and installation of the dog runs in question. Since the foster dogs are either contained at all times in the fenced area or their indoor/outdoor pends or on a leash being walked by us or volunteers, the safety of residents in the area is not a concern. Our request in no way affects the health of residents and others in the area. There have been no incidences of record involving any of the foster dogs."*

9. *In the public interest and in the spirit of the ordinance.*

*"Lastly, please refer to the testimonials that are attached to our application for proof that our request more than satisfies the public interest. This is only a sampling of the letters we have received lauding our efforts in dog rescue. Please also notice the number of people in the hall that have turned out to show their support for ADAR Rescue. These people have all adopted dogs from ADAR Rescue. You will even see Hopkinton residents in attendance. We believe that our volunteer efforts regarding dog rescue are beneficial to the community. Some dogs have been adopted to residents of Hopkinton. Often adopters will patronize local businesses while in our area on dog-related ventures. Our efforts also positively impact the dog over population problem of the South. By working with a rescue in Alabama we are helping to save some of the 5,500 dogs euthanized annually at the Tuscaloosa Metro Animal Shelter. We are able to accomplish*

*this with little to no interference from our neighbors as we have not personally received complaints from them nor have they approached us with concerns about the foster dogs. Until recently they were willing to endure a bit of noise and traffic for the greater good of the rescue effort and we admired them for that.”*

Mrs. Gray inquired with Mr. and Mrs. Baynes as to whether they had read the information (letter) received by the Board from the Pellerin’s attorney. *See copy attached.* Mr. and Mrs. Baynes replied no. Mrs. Baynes questioned from whom the information was submitted. In response, Mrs. Gray stated that the information is from an attorney representing Mr. Pellerin and others.

Mr. Baynes questioned whether the Board would like to take a recess to allow him an opportunity to respond, since it was just received. Mr. Perkins noted that he, too, had not had an opportunity to read the letter submitted. In reviewing the information, Mrs. Baynes believed that they had touched on some of the information. Mr. Baynes stated that he would be more than willing to address every point in the letter submitted; however, he was unsure as to how the Board would like to proceed at this point. After consulting with members of the Board, Chairman Krzyzaniak advised that the Board will continue on with the testimony portion of the hearing, due to the number of people in attendance and the difficulty that it may be for them to attend another hearing should they live far away. However, following testimony the Board will table the rebuttal portion of the hearing to a later date so to allow Mr. and Mrs. Baynes an opportunity to respond to the information submitted.

Mr. Baynes then questioned whether the Board is accepting the information submitted by Mr. Pellerin’s attorney or whether the Board would consider the submittal untimely. In response, Mr. Perkins stated that the information will be accepted since the Board has agreed to continue the hearing to a later date so to allow sufficient time for review of the information and rebuttal.

At this point in time, Mrs. Baynes submitted letters and emails from people in New Hampshire and New England that are in support of their efforts in dog rescue. *Note: A total of 40 letters were received.*

Public testimony was opened.

Attorney Jim Steiner of D’Amante, Courser, Steiner and Pellerin addressed the Board, noting that he is an attorney that works with Mr. Pellerin and that is representing the Pellerins (1430 Hatfield Rd), Mellens (1419 Hatfield Rd), Diamonds (1488 Hatfield Rd) and Kerins (1481 Hatfield Rd).

Attorney Steiner began by explaining that there is nothing new in the information submitted that has not already been raised in the Baynes’ application or in the letters that the Town has received from the neighbors.

Attorney Steiner outlined what he believed to be the facts of the case, noting that the use currently being operated at the Baynes’ property is inconsistent with the quiet neighborhood. Hopkinton allows home businesses by Special Exception if certain criteria can be met. One, the use needs to qualify as a home business; two, the use need to meet the criteria of section 3.7.3 for a home business and three, the use needs to meet the general criteria outlined in section 15.8.2 for a Special Exception. He stated that the Applicant is unable to meet all criteria as the use creates noise, a safety issue, and an increase in traffic. The home business definition requires that the use

be conducted entirely within the dwelling. While the prior owner had dogs and used the fenced in kennels, the use was that of her own personal use for her own personal pets.

With respect to the Applicant's argument that the use qualifies under the Town's definition of a Agriculture, Farm and Farming, Attorney Steiner stated that the key words in that definition is that that it refers to "all operations of a farm" and not just portions of a property. He further stated that the use is not capable of being entirely within the dwelling based on the fenced in yard. The dogs need to be outdoors; therefore, the use does not fall within the definition that constitutes a home business. Furthermore, the use cannot be unobtrusively pursued since the neighbors are well aware of the use being conducted at the home. This is based on the increased traffic, concerns for health and safety, noise and a sign advertising the property. This use has been conducted at the property for the past nine months which has allowed the abutters the ability to attest to the differences between the personal pets and the rescue dogs. The residents believe that during open houses additional dogs are brought to the property. There is a police report of August 2009 in which Mrs. Baynes was bit and the Fire Department was called to the property. This speaks to the concerns of the residents in the neighborhood for their health and safety.

Attorney Steiner noted that the Ordinance allows for no more than one employee outside of the family. He believed that one could not exclude volunteers as employees. In fact, based on the volunteers that come to the home the Baynes have many employees. Furthermore, in reviewing the diagrams submitted by the Applicant, the request does not appear to meet the requirements that the use not exceed an area of 500 square feet. In addressing the requirements of section 3.7.3 of the Ordinance all conditions must be met. In particular, the increase in traffic for the operation of the business is a substantial increase that is beyond a level that should be allowed for a home business in a residential neighborhood. The letter, included in the information submitted by Attorney Steiner, indicates that the use would be detrimental to property values.

Attorney Steiner went on to explain how the use as it has been carried out has changed the essential characteristics of the neighborhood based on parking, noise, storage of equipment and the use taking place outside of the home. The use is not an appropriate location as the dog run and play yard are close to the road. The dogs that are brought to the property are unfamiliar with their surroundings and are believed to have been left on a number of occasions during which time they bark. Additionally, there have been incidences in which neighbors have felt threatened by the dogs when they have been loose. Attorney Steiner stated that the neighbors' use and enjoyment of their property has already been negatively impacted by the affects that the use has had on the neighborhood. The dog rescue business is not in harmony with the general purpose and intent and should any exceptions be granted they must be unobtrusive.

Abutter Michelle Diamond of 1488 Hatfield Road addressed the Board with respect to a letter she had submitted. Chairman Krzyzaniak asked that Mrs. Diamond read her letter for the record. At this time, Mrs. Mellen read the letter on Mrs. Diamond's behalf. *See attached copy.* "To the Hopkinton Zoning Board of Adjustment, we, Terry and Michelle Diamond, are the owners of the property at 1488 Hatfield Road, Hopkinton, NH, writing in response to Case #ZO2009-11 Lisa and Graham Baynes. AS neighbors to the property at 1445 Hatfield Road, we have a few concerns with their request to foster/shelter dogs at their residence. Our main concern, as parents, is the safety of our three year old daughter. On one occasion, two strange dogs entered our yard with my daughter outside playing. These dogs had no collars on and one appeared to be part pit bull, not sure if that is what it was. My immediate concern was to get my daughter inside and shoo the dogs out of our yard. Although this situation has only happened once, we still feel there is a risk. As everyone knows, dogs could turn aggressive at any moment. We often hear on the news about someone being mauled or bitten by a dog, often a child. Another concern is the extra traffic in our

neighborhood. We question if our property would be less desirable for resale due to traffic coming and going, dogs barking and strange dogs wondering on the property. Terry and I are good, quiet neighbors and we are animal lovers. We feel that what the Baynes are trying to do is honestly a good thing for these animals; however, we do not feel this is in the best interest of the neighbors or the neighborhood. We feel it is an obtrusive home business and a business that disturbs the peace and safety of the neighborhood. The houses in our neighborhood are in somewhat close proximity, we can see or hear our neighbors, so a business of that nature affects all the people around the Baynes property. We are afraid that if this Special Exception is granted, even more obtrusive exceptions may be granted in the future. We do not want their property to turn into a business on the scale of something like the SPCA. There is no doubt that the concerns of the surrounding properties should be seriously considered before granting a Special Exception to the Baynes to foster/shelter dogs at their home for a home business. Thank you for your consideration.”

Abutter Jacqueline Mellen of 1419 Hatfield Road addressed the Board to state as follows: “If I understand this process at all, it seems that applications of this sort are generally made before an activity is started. In this case, the Baynes are applying after the fact. This operation or business has been going on for almost a year now. You, the members of the Zoning Board have the opportunity to hear firsthand how this activity has affected the abutters and our neighborhood. We want to tell you that ours is a small quiet neighborhood and that this sort of activity is not working. This is not an appropriate location for this sort of activity. First, let me say that we do not have an issue with what the Baynes are doing. We own dogs, we like dogs, all of our pets have come from shelters or rescue. I’m sure that anyone here will agree that rescuing dogs is an honorable endeavor. That is not the issue here. What we have issues with is where they have chosen to do this. One of my biggest concerns is for the safety in our neighborhood. This has to do with personal safety and with traffic hazards and safety. My personal introduction to our new neighbors, when they moved in last fall, involved a frightening confrontation in the road in front of their house. While out for a run with my dog. We were accosted by four unknown dogs, all teeth and hackles. My very loud yelling, a few well placed kick-boxing kicks, and the presence of mind to rein in my own dog are the only weapons I had with me. The dogs finally retreated into the driveway. I have run and walked with my dogs on Hatfield Road and the area for ten years without incident. That day was only the second time in my entire life that I have ever been afraid of a dog; this was a pack looking for a fight. The barking and my shouting brought Bill and Diane Kerin out to the road and they witnessed this encounter. Two days later, Graham Baynes came to our house to introduce himself and to find out what had happened. Apparently, they had been living there for a couple of months. He told us that Lisa had been home that day, yet she did nothing to call off her dogs as they accosted me in the road. I fear for the safety of other runners and walkers on our road and I fear for the safety of the small children and other pets in our neighborhood. I have since been approached by a threatening dog twice while out running. We see loose dogs running into the road or crossing the road into the Pellerin yard on a regular basis. We cannot identify these dogs because there are no collars. Today, we learned of a police report filed in August that tells of two dogs fighting at the Baynes residence. Apparently, Lisa was bit trying to break up the fight and yet the Baynes’ application claims that ‘there have been no incidences of record involving any of the foster dogs’. These dogs are unknown elements and I’m not convinced that the Baynes have proper control over them, either on their property or off. This brings us to the traffic safety issue. Obviously, loose dogs running into the road are a hazard. The foster and adopt activity has attracted a lot of traffic to our neighborhood. When Camp Kyra holds an open house on the weekends, there are cars parked on the side of the road as well as people walking in the road with dogs. This is an unsafe situation given the narrow tree lined road. The Baynes are licensed to foster fur dogs, so why do we have a photograph showing eight to nine cars lining the road for one of their open houses? I’m not sure their application fully explains this part of their business or activity. There’s more to it than just fostering or housing dogs. They also hold regular open houses

and meet and greets on weekends, which seem to bring more dogs, volunteers and prospective adopters and it creates a traffic hazard. My other concern with this dog foster situation has to do with the character of our neighborhood and the affect this business or activity is having on the property values in our neighborhood. My family's biggest complaint all summer was the noise coming from Camp Kyra. The Baynes state on their application that 'since we have lived here, the barking of our personal dogs, the foster dogs, and these various other neighborhood dogs has never exceeded reasonable volume, or continued for a length of time that would be objectionable to anyone within hearing distance'. We live well within hearing distance. The Baynes backyard runs into our front yard. We can tell you that the Baynes got up at 5:30 AM every morning all of the last spring and all summer because their dogs barked nonstop for at least half an hour every morning. There was a weekend in July that we could not sit out on our front porch for four days straight. They obviously got a delivery of dogs at 7:30 AM on a Friday and there was barking, shouting, fighting and door slamming for almost two hours. We spent the rest of the weekend listening to barking for hours at a time and were awakened at 3:30 in the morning one night. Things didn't settle down until Tuesday. This kind of noise still occurs. There is barking on a daily basis as well as the occasional dog fight. We are having trouble enjoying the use of our property due to this excessive noise. We are concerned about our property value. Who would ever consider purchasing a home in our neighborhood with this going on? Any prospective buyer is sure to ask what is Camp Kyra, and will be headed to the door when they hear that there's a dog fostering business akin to a dog kennel next door. We are also concerned for the future of our neighborhood. If such an activity is allowed to continue, where will it stop? The door will be open. Our neighborhood would now be open to more fostering activities. Maybe the Baynes will decide they can foster six or eight dogs instead of just four. Or, maybe someone buys the next house for sale and sees that this is allowed in our neighborhood. We feel that this is not something that should be allowed to continue in this residential neighborhood. The fact that I am here at all speaks volumes to the notion that the character of our neighborhood has changed. It has been adversely affected and it should not be allowed."

Abutter Diana Kerin of 1481 Hatfield Road addressed the Board to state, "I am here tonight to oppose the application for the Special Exception to operate a home business. I have lived in the neighborhood for 25 years and knew my neighbor Joan Guardino very well. She would say to me that she hoped when she was gone that the kennels that she had built with the house would never be a problem for the neighbors. She always feared that in her words someone would see those kennels and try to have a business. She was very perceptive as we are now at that point. Joan's intention was never to have a business, but to use the kennels for her own personal use which she did. This is evident in her letter to the Town. She was very concerned about the noise and any impact she had on the neighborhood. She followed Town rules and kept the dogs from roaming the neighborhood. Now, we find a new neighbor that has an admirable mission to rescue dogs from the south and bring them to New Hampshire for adoption. I, myself, have had two rescue dogs but they came from the area I was living in at the time. As a long time dog owner I respect their effort but in the execution of their motion there are problems that threaten my rights as a homeowner in a residential area. First, the tranquility of the neighborhood is threatened by barking of dogs for hours on end due to lack of supervision. I am home in the middle of the day and do hear barking and when we are in the yard working or have company sitting on our deck we hear barking for up to three hours at a time. Secondly, the negligent control of their animals. They let them run without collars and not on leashes. This has been documented in a police report, which I hope you all have read. Thirdly, the property values of our neighborhood are going to be impacted because most people research a home they intend to buy before purchase and certainly would hear the barking of dogs. They would also see the sign in the yard which would alert them to a problem. I think when these people bought this house all they saw was kennels and a mission. They ignored the mold and mildew and the pests that had invaded the house. They ignored the swamp in their back yard

and they obviously did not research the Town regulations concerning this business and just plowed ahead ignoring the people around them until the Town decided to take action. My husband is retired and I will be retired in one more year. We have worked long and hard to pay off a mortgage and have a nice quiet rest of our lives. I do not feel that I should make any adjustments in my life to accommodate somebody else's mission in life. My husband and I would appreciate it if the Board would see the necessity of not extending this exception."

Abutter Jessica Scheinman of 1430 Hatfield Road addressed the Board to read a letter that she had provided to the Board expressing concerns with respect to the safety of residents in the neighborhood. See *attached copy*. "I am an abutter of the above property and am writing to you regarding the pending special exception ('Application'). I respectfully ask that you deny the request because it fails to meet the criteria necessary for a special exception generally and for a home business specifically. I recognize that the applicants are interested in pursuing animal rescue work which is a general cause which I support. The issue, however, is that the location for the applicants' activities is not appropriate and is inconsistent with both the residential zone we live in and the town zoning ordinance. Most applicants for special exception and permits apply before engaging in the non-permitted activities. In this instance, the applicants have been engaging in the non-permitted activities prior to their application. Thus, we have the benefit of actual experience in addressing this matter. The applicants' activities have demonstrated that the use is not consistent with our residential neighborhood. For instance, we already know from our actual experience that the activities are not unobtrusive, they do create a nuisance, they do disturb the neighborhood, and they do raise safety and health concerns. The activities of the applicant involve both sheltering/fostering dogs and have clients visit the property. The sheltering and rescue activities are not conducted entirely within the building, as evidenced from the application and as required by the home business provisions in the zoning ordinance. The dogs reside in part outside in fenced runs and in the backyard at times. Additionally, the dogs are walked on the road. Thus, the activities and goods related to the business are not contained entirely inside as required by the ordinance. The subject activities also have not been unobtrusively pursued as required by the ordinance. Neighbors have been greatly disturbed by noise coming from the concentrated collection of dogs residing, in part, outside at the property. These are dogs who are in unfamiliar surroundings arriving after a long travel from the South and who are likely housed with other unfamiliar dogs. I can only presume that they are tense, anxious and always on alert. Prior to the arrival of the rescue activities, our neighborhood was quiet and peaceful. We have lived in our home for approximately 10 years, including many years when the prior owner of the property (Joan Guardino) resided across the street. We never heard any noise emanating from Ms. Guardino's property while she lived there. There has been a substantial increase in noise in our neighborhood as a direct result of the current non-residential activities at the property. I understand that at least one neighbor has complained to the town regarding the noise. Moreover, I am aware that a number of neighbors have felt threatened by the rescue dogs escaping the property."

Ms. Scheinman referenced Mrs. Mellen's encounter with the dogs.

Ms. Scheinman stated, "Dogs have left the property frequently, sometimes in pairs or groups. I am particularly concerned about the safety of my young children and other youngsters in our neighborhood from these dogs who may have potentially aggressive and unknown tendencies. It is my understanding that at least some of the transient rescue dogs were previously abused and neglected. These are not known, trained, docile family dogs familiar with their surroundings and neighbors. Concerns for safety in our residential area from the applicants' rescue activities have been detrimental to our and other neighbors' use and enjoyment of our homes and property. Further, I am aware that at least one neighbor has failed a complaint with the police concerning unwelcome and threatening encounters with the uncollared dogs."

Ms. Scheinman stated she was not aware until recently that is a Police report concerning an incident in which Mrs. Baynes was bitten by one of the dogs in an effort to stop the dogs from fighting.

Ms. Scheinman went on to read, "With respect to the client component, the applicants' rescue work entails a high volume of clients to their property, often on weekend days. I have attached pictures I took of clients attending one of the applicants' open house hours to demonstrate the number of clients utilizing their business and our road at one time. The clients' vehicles come and go during those open hours, with cars regularly parking and pulling out on the road directly across from my home. These open hours have at times been held weekly on both weekend days. Moreover, the clients often use my driveway as a turn-around which is disruptive and raises concerns for the safety of my children. I have heard from neighbors that they find the regularly parked vehicles on the road a nuisance, that it can render our road a one-lane road at the point of parked vehicles and that the vehicles have caused congestion on the road. Prior to the rescue activities, one could walk up and down Hatfield Road in our area on a weekend day and see virtually no cars using the road. On 'open hour' weekend days at the property, the vehicular traffic on our road has substantially and clearly increased. Additionally, the property has signage advertising the business visible from the road. At first, the applicants would place a handwritten ('Camp Kyra') sign on the road whenever they had open hours and they would remove the sign after the open hours. Camp Kyra is the name of their business website and appears to be a service/trade name for their activities. Subsequently, the applicants affixed the name of their business to their mailbox and also erected a sign set back on their driveway but visible from the road. This signage is inconsistent with the residential neighborhood and the town zoning ordinance. While I respect the good intentions of the Applicants rescue efforts, the location of this activity is not appropriate and it directly and significantly interferes with the neighbors' quiet enjoyment of their homes and property. We have zoning in this town for many beneficial reasons and one of those reasons is to protect people's ability to live peacefully and safely in their homes in residential areas. Thank you for your thoughtful consideration of my comments."

At this time, non-abutters who feel directly affected were asked for comments.

Melissa Mandrell of 102 Ridge Lane addressed the Board advising that she had adopted a dog in April from ADAR. She found adoption to be as was represented. In fact, when she had driven to the Baynes' property she wasn't sure if she had the correct location because the home is secluded. She only visited once and believed that without the Baynes and ADAR her dog would have otherwise been euthanized.

Chairman Krzyzaniak consulted with members of the Board concerning those people remaining in the ordinance that might wish to speak concerning the proposal, while not qualifying as being directly affected. Following brief discussion, Chairman Krzyzaniak requested those in attendance that are in support of the application to stand so that the Board could count those present in favor. Mrs. Robertson and Mr. Rinden counted those people standing in favor and in opposition of the proposal. The recorded number was 34 people in favor and nine (9) people in opposition. Chairman Krzyzaniak advised the public that while they would not qualify as being directly affected by the proposal under consideration, the Board recognizes the fact that they are present and are in favor of the proposal. She then informed Mr. and Mrs. Baynes that the Board would permit one non-abutter that is not directly affected by the proposal to speak.

Chairman Krzyzaniak first recognized Melissa Hannon, a non-abutter whom the Board recognized to speak, prior to their consulting concerning the procedure of hearing public testimony from non-abutters that are not directly affected by the proposal.

Non-abutter Melissa Hannon informed the Board that she is in the dog transporting business. She has brought ADAR and other rescue dogs to New Hampshire for the past year. She assured the Board that before any dog is allowed to be transported they need to be vaccinated and quarantined. All dogs that she has ever had contacted with have been clean and very social. Ms. Hannon noted that she has been to the Baynes residence which is setback from the street.

Non-abutter Rob Colby of 223 Varney Street, Manchester, NH was selected by Mr. and Mrs. Baynes to speak on behalf of the non-abutters who are in favor of the proposal. Mr. Colby explained how he had come to adopt his dog and the process by which his dog has gone through training. He stated that it is important for him to have his dog be able to help him by eventually being able to fetch the telephone and other things as he tends to fall down a lot. Mr. Colby indicated that the adoption of his dog has changed his life for the better.

Non-abutter Laura Morgan of 68 Barton Corner Road addressed the Board as a non-abutter that is directly affected by the proposal. Mrs. Morgan advised that the proposal does not only directly affect those residents along Hatfield Road. She, too, has heard the “continuous” barking of the dogs. She is concerned with the aggressive nature of the dogs at times and believes it isn’t safe for her some to ride his bike along Hatfield Road during the Baynes’ open houses.

As there was no further testimony, Chairman Krzyzaniak thanked those present for attending the meeting and advised that the Board will continue review of this application to the November 3, 2009 meeting which will be held at 7:00 PM in the Town Hall. Review of the application will be limited to rebuttal, deliberation and action on application. No additional public testimony will be received.

**Mrs. Gray, seconded by Mr. Perkins, moved to continue the application to the next scheduled hearing (November 3, 2009, 7:00 PM, Town Hall). Motion carried unanimously (Gray, Perkins, McLeod, Rinden and Krzyzaniak).**

**Case #ZO2009-12 Brenda & Alain Breault** for a Special Exception to change use from a family home child care to a family group home child care. The property is located at 69 Snowshoe Trail in the R-1 district, Tax Map 222, Lot 22.7. The application was submitted in accordance with Table of Uses 3.6.H.15 of the Hopkinton Zoning Ordinance.

Chairman Krzyzaniak noted that she had once met Mrs. Breault under “extreme circumstances”. Chairman Krzyzaniak asked Mrs. Breault if she would prefer that she recuse herself. Mrs. Breault replied no.

Mr. Breault began his presentation by submitting a floor plan of the existing and proposed area to be utilized by the home day care. The day care is currently on the lower floor (walk-out basement) of the residence. The proposed expansion will require renovations to the one-bay of the connected garage.

Mrs. Breault currently provides family home child care to a total of nine children (six children between the ages of 6 weeks and 5 years and three children between the ages of 6 and 12 years). The proposal will increase the number of children from six to twelve and from three to five for a total of seventeen children. Currently, while not required, Mrs. Breault has part-time staff assisting in caring for the children; however, if permitted to care for additional children she will be required by

the State to have one full-time assistant. Mrs. Breault proposes one full-time assistant and a part-time after school assistant. The hours of operation are currently from 7:30 AM – 5:00 PM, Monday – Friday. The proposal will include an increase in hours from 6:30 AM – 5:30 PM.

In reviewing the floor plan and the required 40 square feet per child, Mr. Breault advised that the size of the space available will be adequate for 20 children; however, they propose no more than 17 children. While the State requirement is that there be one bathroom per 20 children, Mr. Breault is planning on constructing a second bath.

At this point, members viewed photographs of the existing play yard. The size of the play yard is 1500 square feet which is more than ample for the number of children proposed.

- (a) Standards provided by this Ordinance for the particular use permitted by special exception.

"The use is permitted by Special Exception in accordance with Tables of Uses 3.6.H.15 of the Zoning Ordinance."

- (b) No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

"There will be no hazards to the public or adjacent property due to the nature of the business."

- (c) No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor(s), smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.

"There will be no detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood."

- (d) No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.

"The use will not create a traffic safety hazard, but will increase the level of traffic from an estimated five vehicles to ten vehicles during a two hour window of drop-off and pick-up."

- (e) No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

"There will be no excessive demand on municipal services."

- (f) No significant increase of storm water runoff onto adjacent property or streets.

"There will be no significant increase in storm water run-off."

- (g) An appropriate location for the proposed use.

"This is an appropriate location for the proposed use due to adequate yard space for play area; adequate interior space to provide a warm and secure environment, and adequate space for parking of five vehicles."

- (h) Not affect adversely the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.

"The proposed use will not affect adversely the health and safety of the residents and not be detrimental to the use or development of adjacent or neighboring properties. The play area is surrounded by a white picket fence and parking is out of sight."

- (i) In the public interest and in the spirit of the ordinance.

"The propose use is in the public interest and in the spirit of the Ordinance in that it will offer job opportunities to local towns' people and offer excellent childcare for local children as well."

Mrs. Breault discussed how she offers a preschool curriculum for those parents interested in their child attending preschool. Those children attending the preschool are included in the total number of children allowed at the home.

Mr. McLeod questioned the square footage of that portion of the home that is not utilized by the day care. In response, Mr. Breault stated that the living space is approximately 2,300 square feet and is two-story.

**Mrs. Gray, seconded by Mr. Perkins, moved to approve the application as presented. Motion carried unanimously (Gray, Perkins, McLeod, Rinden and Krzyzaniak).** The Applicant adequately addressed the criteria to be granted a Special Exception as set forth in paragraph 15.8.2 of the Zoning Ordinance.

**Case #Z02009-13 Ed Bender** for a Special Exception to change the non-conformity use of property located at 672 Currier Road from Lett Manufacturing to Sundance Solar. The property is owned by the William F. Lett Trust and is located in the R-4 district, Tax Map 258, Lot 18. The application was submitted in accordance with section 5.3.1 of the Hopkinton Zoning Ordinance.

Mr. Bender of 1037 Kearsarge Mountain Road in Warner, New Hampshire, addressed the Board advising of his proposal to purchase the property 672 Currier Road for the purpose of relocating his business from Warner to Hopkinton.

In 1995, Mr. Bender started Sundance Solar in a room within his home. Since then he has over one million visitors, annually, to his website and ships small portable solar products around the world. Since 2000, Sundance Solar has been operating from the former Cricenti's store in Warner. There are currently six employees with, again, approximately 97% of the business being done via the internet. However, on occasion, a customer may come to the site.

1. Standards provided by this Ordinance for the particular use permitted by special exception.

"The Ordinance provides for the change from one non-conforming use to a new non-conforming use per section 5.3.1. Our new non-conforming use is not substantially different than the previous use."

2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

"The operation of Sundance Solar provides no hazard to the public on account of fire, explosion or release of toxic materials. The company has operated safely at its current location for ten years without incident."

3. No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor(s), smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.

"There will be no changes to the building or other structures and the Applicant will improve the appearance of the property; therefore, enhance the property values in the neighborhood. Our use will be quieter and have less traffic than the previous use."

4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.

"No, hens will be kept in an enclosed area."

5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

"No, all waste will be composted using best practices and the composted manure will be used on gardens."

6. No significant increase of storm water runoff onto adjacent property or streets.

"Sundance Solar is making no significant changes to the property and therefore there will be no increase in storm water run-off."

7. An appropriate location for the proposed use.

"The Applicant believes this is a perfect location for the continued growth of our business."

8. Not affect adversely the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.

"Sundance Solar's use of the property will not adversely affect the health and safety of the surrounding neighborhood."

9. In the public interest and in the spirit of the ordinance.

"The Applicant believes that the granting of the request for Special Exception is in the best interest of the public and is in the spirit of the Ordinance."

Mr. McLeod questioned whether the status of the property still remains as grandfathered or whether the business of Lett Manufacturing has not operated from the property for more than one-year. In response, Mrs. Robertson noted that approximately two years ago she had met with Mr. Lett to inform him of the fact that should the non-conforming use no longer be operated from the property, for more than one year, the grandfathered rights would no longer exist. At the time, Mr. Lett advised that on occasion he does operate the business from the property and that the building in question continues to be used for storage and equipment of Lett Manufacturing.

There was no one present wishing to offer public testimony.

**Mr. Perkins, seconded by Mrs. Gray, moved to approve the application as presented. Motion carried unanimously (Gray, Perkins, McLeod, Rinden and Krzyzaniak).** The Applicant adequately addressed the criteria to be granted a Special Exception as set forth in paragraph 15.8.2 of the Zoning Ordinance.

**Case #Z02009-14 Martin G. Marklin** for a Special Exception to change use from office space into retail space and coffee bar. The property is owned by AUS, LLC and is located at 28 Riverside Drive in the VB-1/VM-1 districts, Tax Map 101, Lots 23, 24 & 25. The application was submitted in accordance with Tables of Uses 3.6.F.1 of the Hopkinton Zoning Ordinance.

Mr. Marklin addressed the Board explaining that he is the director of AUS, LLC and a managing member of Marklin Candle which is a company that makes church candles and furniture. He purchased the property and began operations of his business from 28 Riverside Drive in 1999. In December 2008, he expanded his business to include a retail operation in space within his building that was formerly utilized as office space. At the time, he was not aware that he needed permits as the property is located in the commercial district. He is now before the Board to comply with the necessary permitting requirements.

1. Standards provided by this Ordinance for the particular use permitted by special exception.

"Retail establishment selling convenience goods, including but not limited to foods, drugs and proprietary goods and general merchandise, including but not limited to dry goods, apparel and accessories, furniture and home furnishings, home equipment, small wares and hardware, including discount and limited price variety store. The use is permitted by Special Exception per sections 3.6.F.1 and 3.6.F.5 of the Zoning Ordinance."

2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

"The 2,000 square foot retail space features home goods, candles, sacred art, jewelry and apparel. Additionally, roughly 80 square feet has been designated as a coffee bar for the convenience of the store's customers. The space has some detectors and is alarmed with notification to an off-site central office. No combustible or toxic materials will be stored in the retail store. The building of the patio area will be in compliance with all local and state ordinances. Any construction debris will be disposed of in an approved manner. Once constructed, the outdoor patio will not store any hazardous materials and will be no threat of a potential fire."

3. No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor(s), smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.

"The proposed retail space merely affects the inside of an existing structure. Current off-street parking is sufficient and will not be removed or reduced. No smoke, gas, dust or other pollutants will be generated from this use. Sufficient and safe lighting for the parking lot will meet town ordinances and not contribute to light pollution. Additionally, landscaping has been done to improve the curbside appeal. The patio area is nestled in the corner of two existing exterior walls. The patio is set back from both Riverside Drive and Pine Street and will be accessible via a walkway from the main entrance of the existing building. Since the patio area will not be visible from Pine Street, there should be no detriment to property values in the vicinity. The patio will be attractively landscaped consistent with the present look of the grounds."

4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.

"Current off-street parking is sufficient and will not be removed or reduced. Additionally, access to the parking area is from a town road that services three town businesses and two residences. There is more than sufficient off-street and lighted parking in the front of the existing building to meet the town's requirements for office/retail space. Creation of an outdoor patio will not substantially increase the level of traffic congestion in the area."

5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

"The building currently has town water and town sewer. Aside from some additional bathroom usage, there will be no additional impact to the town water and sewer services. Additionally, since the retail space is within the existing structure, there will be no additional exposure for fire and police protection. Any waste generated by the retail store will be disposed of through a trash removal service. The outdoor patio will have no municipal water hook-up or sewer. Any trash generated by customers who use the patio will be collected in trash receptacles and disposed of."

6. No significant increase of storm water runoff onto adjacent property or streets.

"Since current structures and off-street parking are sufficient, no modifications have been made. Storm drains are in place so there will be no increase of water run-off onto adjacent properties or streets. The patio does not abut another piece of property, and as such, will have no impact on storm water run-off. The patio will be constructed with a type of stone which would allow for drainage in and around the patio area."

7. An appropriate location for the proposed use.

"The area of the building being used for retail straddles VB-1 and VM-1 zoned space. Town ordinances permit retail space in this location with a Special Exception from the Zoning Board. The addition of an outdoor seating for the convenience of our retail

customers is permitted activity within the Zoning Ordinance of this location. The proposed location is attractive and remarkably serene for a village setting. We feel that the location of this outdoor patio for our retail customers to enjoy a cup of coffee would be ideal."

8. Not affect adversely the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.

"Since the activity of the retail space is indoors, the only affect on the neighborhood would be an increase in traffic. Since the parking will be clean, lighted for safety, ample and off-street, there should be no real impact on the neighborhood. Handicapped parking is provided, and the building is ADA compliant. The patio area is set back and shielded by other buildings and trees. It is quaint and secluded. It will for the most part go unnoticed by the neighbors in the area."

9. In the public interest and in the spirit of the ordinance.

"The retail space will offer a valuable service to the community and is permitted with Special Exception. It will benefit the Town by providing employment opportunities as well as increased visibility for those from surrounding towns seeking out the retail space. The creation of the outdoor patio will give another place of respite for persons within the town to stop and enjoy themselves, whether they are on a walk or wish to take time from visiting the retail space."

Mr. Perkins inquired about the space to be utilized by the retail store and coffee bar. In response, Mr. Marklin stated that the total space consists of 2,000 square feet with 80 square feet of that space to be dedicated to the coffee bar. The coffee bar will consist of a counter with various coffees, juices and pre-packaged foods, such as donuts and cookies.

Public testimony was opened.

Mark Stock of 136 Riverside Drive addressed the Board as an abutter in favor of the proposal. Mr. Stock noted that Riverside Drive is a dead-end street. He owns the last two properties at the end of the street.

**Mr. Rinden, seconded by Mr. Perkins, moved to approve the application as presented. Motion carried unanimously (Gray, Perkins, McLeod, Rinden and Krzyzaniak).** The Applicant adequately addressed the criteria to be granted a Special Exception as set forth in paragraph 15.8.2 of the Zoning Ordinance.

**Case #Z02009-15 Martin G. Marklin** for a Special Exception to provide exterior lighting to an existing business sign. The property is owned by AUS, LLC and is located at 28 Riverside Drive in the VB-1/VM-1 districts, Tax Map 101, Lots 23, 24 & 25. The application was submitted in accordance with section 7.2.4 of the Hopkinton Zoning Ordinance.

Mr. Marklin began his presentation by submitted a sketch map of the proposed landscaping and lighting of his existing sign.

1. Standards provided by this Ordinance for the particular use permitted by special exception.

"The lighting of the sign is permitted by Special Exception per section 7.2.4 of the Ordinance."

2. No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.

"Since the lighting fixtures will be UL approved and installation will be inspected by the Town's building inspector, there will be no risk of potential fire to the Town. Furthermore, the lighting fixtures will be fully shielded and approved for outdoor use. Burned out bulbs will be disposed of in an approved manner."

3. No detriment to property values in the vicinity or change in the essential characteristics of a residential neighborhood on account of the location or scale of buildings and other structures, parking areas, access ways, odor(s), smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials.

"The lighting fixtures will be fully shielded and will not exceed the permitted lumens. The fixtures will light only the intended sign and will not add to light pollution. The fixtures will be incorporated into the landscaping so as to minimize their visibility."

4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.

"The fixtures will be angled such that they will pose no glare or distractions to oncoming traffic. The lighting of the existing sign will have no impact on increasing the level of traffic congestion in the vicinity. It will merely benefit those customers wishing to find our location when it is dark."

5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.

"The lighting of this sign will have no additional impact on municipal services. Again, burned out bulbs will be disposed of in an approved manner."

6. No significant increase of storm water runoff onto adjacent property or streets.

"The lighting of this sign will not affect storm water run-off onto adjacent properties."

7. An appropriate location for the proposed use.

"The property is zoned for a lighted outdoor sign. The location of the sign is at the intersection of Pine Street and Riverside Drive. The sign is sufficiently setback from the roads so as not to impede road maintenance, including snow plowing. Lighting the sign will simply add to its visibility."

8. Not affect adversely the health and safety of the residents and others in the area and not be detrimental to the use or development of adjacent or neighboring properties.

"The lighting of the existing sign will have no adverse affects on the health and safety of the residents in the area. The sign is attractive and neatly landscaped. The lighting will harmonize with this look and pose no unsightly detriment."

9. In the public interest and in the spirit of the ordinance.

"Having a lighted sign will benefit the public by making more visible the location of our business. Customers who will be visiting our store when it is dark outside, primarily during the holiday season when the sun sets late in the afternoon, will have more time to prepare to turn onto Riverside Drive from Pine Street."

Mr. Perkins inquired as to whether the sign is currently lit. In response, Mr. Marklin replied no; however, at one point in time the sign was lit. Once Mr. Marklin learned that a permit was required he immediately shut off the lights. At the time, the sign was lit with non-shielded lights, unknown that the Ordinance required that the lights be shield. The proposal is to light the sign only during business hours.

There was no one present wishing to offer public testimony.

**Mr. McLeod, seconded by Mr. Perkins, moved to approve the application as presented. Motion carried unanimously (Gray, Perkins, McLeod, Rinden and Krzyzaniak).** The Applicant adequately addressed the criteria to be granted a Special Exception as set forth in paragraph 15.8.2 of the Zoning Ordinance.

## II. Minutes/Notice of Decision

Mr. Perkins, seconded by Mrs. Gray, moved to approve the Minutes of September 15, 2009 as presented. With five members voting, three voted in favor (Gray, Perkins and McLeod) and two voted in abstention (Rinden and Krzyzaniak) due to the fact that they were not present at the September 15, 2009 meeting.

Mrs. Gray, seconded by Mr. Perkins, moved to approve the Notice of Decision of September 15, 2009 as presented. With five members voting, three voted in favor (Gray, Perkins and McLeod) and two voted in abstention (Rinden and Krzyzaniak).

## III. Other Business.

- Board of Adjustment Vacancy -- Chairman Krzyzaniak informed the members that John Boatwright, regular member of the Board, has requested that his position be changed to that of an alternate. At this time, Mr. Rinden was asked if he would be interested in filling Mr. Boatwright's position as regular member. Mr. Rinden replied yes, understanding that his appointment would be subject to the Board of Selectmen's approval.
- Site Viewing of Lisa & Graham Baynes Property – Members wish to view the Baynes property prior to the November 3, 2009 meeting. Mrs. Robertson is to schedule the site walk for 9:00 AM on Saturday, October 31, 2009. There will be no public comments received during this walk.

## IV. Adjournment.

With no further business to come before the meeting, Chairman Krzyzaniak declared the meeting adjourned at 10.27 PM. The next scheduled meeting of the Board is Tuesday, November 3, 2009, at 7:00 PM in the Town Hall.

Karen L. Robertson  
Planning/Zoning Director