

Hopkinton Zoning Board of Adjustment
Minutes
November 3, 2009

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Tuesday, November 3, 2009, at 7:00 PM in the Town Hall. Members present: Toni Gray, Harold Perkins, Gregory McLeod and Daniel Rinden.

Chairman Krzyzaniak began by outlining the Rules of Procedure and advised those present that only members of the community will be allowed to provide testimony. She believed that she had erred at the previous meeting by allowing non-members of the community to provide testimony and by allowing dogs inside the Town Hall.

Lastly, Chairman Krzyzaniak to those present for review of application of Lisa and Graham Baynes that only those people that had provided testimony at the October 6, 2009 meeting will be allowed to provide rebuttal testimony this evening.

I. Application.

Case #ZO2009-16 Herrick Mill Work, Inc./John Herrick Timothy Bernier of T.F. Bernier, Inc. addressed the Board on behalf of John Herrick for a Special Exception to excavate four to six feet of sand over an area not to exceed sixteen acres. The property is located at 290 Burnham Intervale Road in the M-1 district, Tax Map 220, Lot 23.2. The application was submitted in accordance with Section XI of the Hopkinton Zoning Ordinance.

The property in question is generally flat. The proposal is to lower the plateau by four to six feet, but no more than eight feet, so that the property is all one grade which is consistent with the grade of Burnham Intervale Road. Once excavated, the property will remain at approximately twenty (20) feet above the water table.

Mr. Bernier reviewed the criteria for a Special Exception as outlined in Section 15.8.2 of the Zoning Ordinance.

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

"The proposed excavation will comply with all local regulatory requirements." Section XI, Excavation, of the Zoning Ordinance gives the Planning Board the authority to oversee excavation sites. Therefore, if the Special Exception is approved Mr. Herrick will need Planning Board approval. Additionally, due to the fact that the proposed excavation involves sixteen (16) acres, State approval from the NH Department of Environmental Services will be required.

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

"The removal of sand will not create a risk of fire, explosion or release of toxic material."

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.

"None of the listed offenses will result from the proposed excavation." Trucks are loaded with an on-site loader. There will be no additional storage of fuels associated with the excavation of the property.

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

"The earth will be removed with a maximum of ten truck trips per day (5 loads). Due to changes in the commercial industries on Burnham Intervale Road the additional truck traffic will be less than historical volumes."

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

"The proposed excavation will not create a demand on any municipal services."

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

"The existing grade and drainage patterns will be maintained and all runoff will be contained on site." NH Department of Environmental Services approval for storm-water runoff will be necessary. All soils are exceptionally well drained.

7. An appropriate location for the proposed use.

"The site is presently an industrial park and the proposed excavation is an industrial activity."

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 proposed excavation will have no detrimental affects on abutting property." NH RSA 155E requires a 10-foot setback to abutting property lines. However, if the abutter disapproves of the excavation there must be a 50-foot setback. Again, the Planning Board will review the site plan during Site Plan Review.

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

"The resulting excavation will improve the use of the property and is consistent with the spirit of the Ordinance and public interest." The purpose of the excavation is to make the property level. The site is currently used for lumber storage.

Mr. Herrick addressed the Board explaining that the Herrick Millwork building is currently leased to McLane, and they net out approximately the same number of truck loads as Herrick Millwork which is estimated at fifteen (15) trucks a day. Excalibur is estimated at eight (8) trucks per day, which may be less now due to the recession. Mr. Herrick further advised that when he was making cable reels there were approximately twenty-five (25) to twenty-seven (27) trucks a week. He estimated that the additional truck trips due to the excavation work will net no more trips than what has historically taken place. If anything, Mr. Herrick suggested that there may be two (2) or three (3) less trips.

Mr. Bernier briefly explained the process by which the Planning Board will not only review the proposed excavation, but will also review reclamation plans for the site.

Chairman Krzyzaniak questioned how the issue of water runoff would be addressed so to avoid any additional runoff into the river or onto adjacent properties. In response, Mr. Bernier stated that according to the requirements in NH RSA 155E during excavation of the site the site must be pitched back into the gravel pit so to avoid runoff. When presenting the reclamation plans to the Planning Board he will have to demonstrate the fact that the water will remain onsite. Mr. Herrick concurred, noting that the water currently percolates into the ground due to the sandy soil. The only occasion when that does not occur is when the ground is frozen.

Mr. Perkins inquired about the differences in the property grade. In response, Mr. Bernier stated that there is an eight (8) foot difference in grade from the front of the property to the rear. He further noted that when test pits had been dug for the septic system that they had dug down approximately twenty (20) feet and never found water.

Abutter Byron Carr addressed the Board stating that he did not believe that the water table in the area is consistent and therefore additional test pits will be necessary. Mr. Bernier agreed, noting that they will have to dig additional test pits as part of their State permit requirements.

Mr. Carr noted that his sister has concerns with the possibility of additional run-off onto her property as a result of the excavation. Mr. Herrick noted the concerns and advised that there should be no additional runoff. Mr. Bernier concurred, noting that they will be sure to dig several test pits in the area of Mr. Carr's sister's property.

Chairman Krzyzaniak suggested that Mr. Carr attend the Planning Board meeting to voice his concerns and review the site plans. Mr. Carr agreed.

Public testimony was closed.

Mrs. Gray believed that the Applicant had successfully addressed criteria to be granted a Special Exception. During Site Plan Review, the Planning Board will address the details of the excavation. Mr. Perkins concurred.

With five members voting, all five voted in favor (T. Gray, H. Perkins, G. McLeod, D. Rinden, and J. 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 #: ZO2009-11 Lisa & Graham Baynes Special Exception to foster/shelter no more than four rescued 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. Review of the application was a continuation of the October 6, 2009 hearing.

Chairman Krzyzaniak advised those present of decisions that she had made with respect to the Board viewing the Baynes' property. In particular, she stated that on advice of Counsel the Board did not attend a viewing of the property due to the fact that the Board was not willing to sign liability waivers, prior to entering the property. Furthermore, originally, the Applicant had agreed to the viewing provided that only the Board members were in attendance, not the

abutters or members of the public. Again, on advice of Counsel the Board did not attend a viewing due to the Applicant's request that attendance be restricted to only Board members. Any meeting of the Board would be considered a public meeting in which members of the public would have a right to attend. Chairman Krzyzaniak noted that, at a later time, the Applicant had agreed to the viewing allowing the members of the public to attend; however, at that point in time the viewing had already been cancelled.

Chairman Krzyzaniak provided a brief outline of the process in which information and/or questions by applicants or the public are asked of the Planning Director and then passed onto her as Chair for consideration or a decision, so to avoid the potential for applications to be discussed outside of a meeting. Being a member of the Board of Adjustment for more than twenty (20) years, Chairman Krzyzaniak believed that the Zoning Board of Adjustment has always been extremely careful not to discuss an application outside of the meeting. She noted that all communication between the application and the Planning Director with respect to the possible viewing had been passed onto her for review and a decision. Once she had made a decision, the decision was then provided by the Planning Director to the Board members.

At this time, Chairman Krzyzaniak noted that the Planning Director has provided members of the Board with a copy of Mr. Baynes' information concerning the definition of "Agriculture, Farm, Farming" and whether that includes, "the raising, breeding, or sale of domesticated strains of fur-bearing animals". Additionally, the Board has been provided with information from the Planning Director concerning her findings of the same.

Graham and Lisa Baynes of 1445 Hatfield Road addressed the Board clarifying that eventually they did agree to allow members of the public onto their property for the viewing.

Mr. Baynes addressed the Board with a response as to what the neighbors have or have not indicated has taken place as a result of the rescued dogs being at his property. Before being notified by the Planning Director of the need for various permits, Mr. and Mrs. Baynes were not aware that a permit was required. In response to comments from neighbors as to the registered non-profit status, Mr. Baynes stated that in order to obtain a license from the State they had to register the rescue operation as a non-profit, which they did.

Mr. Baynes expressed concern over the need to receive such a permit as he believed that the rescuing of dogs was an "Agriculture, Farm, Farming" activity as defined in the Ordinance. He noted that he may some day have chickens and pigs at his property.

When viewing the property for the first time, prior to purchase, the Baynes were excited about the six (6) acres and the fact that only one (1) house (Pellerins) could be seen. He provided a comparison of neighborhoods from when he and Mrs. Baynes had lived off Stumpfield Road from now living off of Hatfield Road.

Mr. Baynes stated that the neighbors would have the Board believe that their rescue of dogs creates a traffic and noise problem and that there are loose dogs roaming the neighborhood. He believed that if the neighbors, at any time, felt that they were unsafe then they should have come forward and have spoken with him or Mrs. Baynes. He questioned why the neighbors would have waited so long to express such a concern. He noted that Brian Pellerin (abutter across the street) had come over, before the prior meeting, to talk. Then, Mr. Mellen (side abutter) had walked with him and one of the rescued dogs discussing his concerns. Prior to speaking with Mr. Pellerin and Mr. Mellen there had been no contact by the neighbors.

Mr. Baynes stated that according to Lieutenant Pecora there has been no traffic study completed for Hatfield Road and there is no noise ordinance in affect in Hopkinton. Mr. Baynes questioned why Diana Kerin (side abutter) would listen to the dogs bark and not call the authorities or come over to see her neighbor?

With respect to statements made by Attorney Jim Steiner as to the rescue operation not being within the spirit of the Ordinance, Mr. Baynes referenced a letter from Attorney Russell Hilliard to the Town, dated 1983, indicating that the prior owner's ability to raise her own six (6) dogs was within the spirit of the Ordinance. Mr. Baynes reminded those present that he is permitted to have as many personal dogs as he wishes.

While residents in the area continue to refer to the property as in a residential neighborhood, Mr. Baynes stated that the actual zoning district is R-4 which is designated residential and agricultural.

While neighbors had previously stated that the use poses a health and safety hazard, Mr. Baynes noted that there were no examples provided to the Board. All dogs that enter the property have been properly vaccinated as is required by law.

While neighbors had indicated that the dogs entering the property are not "family pets", Mr. Baynes questioned how the neighbors had come to that opinion without ever speaking to him or Mrs. Baynes. He noted that he and Mrs. Baynes have assisted in the adoption of over 400 dogs, explaining the process by which the dogs are adopted, and in some cases, later trained to assist their owner.

Mr. Baynes recalled three (3) occasions in which foster dogs had escaped from his property. There was one occasion in which Mrs. Kerin had noted seeing the dogs, the second time approximately one-week later, and finally a third time just after the last meeting of the Board. At no time was an animal or person hurt during these incidents. In comparison, Mr. Baynes noted that Mr. Pellerin's dog occasional gets into his trash and comes into his yard; however, he has had no reason to have contacted the Pellerins.

While neighbors and Attorney Steiner had previously indicated that the use was not appropriate in the residential neighborhood, Mr. Baynes, again, stated that the neighborhood is not strictly residential. It is designated as residential and agricultural. Furthermore, the dog runs and play yard is estimated to be 100-feet from Hatfield Road and are located behind the home.

Mr. Baynes informed the Board that his residence had been vacant for two (2) years prior to he and Mrs. Baynes occupying the home. In fact, when the previous owner did live at the property she lived by herself. So, there was most likely little noise or traffic associated with the residence. While neighbors have indicated that there is noise caused by the foster dogs at all hours of the night, Mr. Baynes questioned how the neighbors would know which dogs in the neighborhood were barking and whether it was his personal or foster dogs. Furthermore, with respect to comments made concerning them offering "open houses" for the viewing of the dogs, Mr. Baynes stated that there are no "open houses"; in fact, there are set times for dogs to be picked up which usually takes between 10 and 45 minutes. Their home is not a meeting place for other foster dogs as has been stated by others. He noted that Hatfield Road is busier than Stumpfield Road any day of the week, since it is a through road from Weare to

Hopkinton. There are no signs banning parking along side the road and any time in which vehicles were parked along side the road they were parked far enough off of the road so to provide sufficient space for vehicles to travel.

In response to comments made concerning the neighbors' driveways being used as a turn-around and that the rescue operation has changed the essential characteristics of the neighborhood, Mr. Baynes stated that the property is located in a residential/agricultural district which is different than strictly a residential district. Furthermore, statements made with respect to negative affects on property values are "mere speculation". If requested, Mr. Baynes agreed to screen his property.

While Attorney Steiner had indicated that the use involves multiple volunteers at the property, Mr. Baynes stated that the volunteers are not necessary to conduct the use from the home. Jessica Sheinman had previously presented to the Board with photographs of eight (8) vehicles parked along side the road. Mr. Baynes responded that the photographs show that the vehicles are not impeding traffic. He further noted that three (3) of the vehicles are of volunteers.

According to Mr. Baynes, concerns with respect to the demeanor of the dogs have been unsubstantiated. While Ms. Sheinman had assumed that the dogs had once been abused, Mr. Baynes stated that the type of abuse that occurred involved some dogs being tied outside year-round. He stated that Ms. Sheinman's statements are presumptions with no proof.

Mr. Baynes advised that the Camp Kyra sign was made by his father as a gift. If need be the sign will be removed.

Mr. Baynes stated that concerns raised by abutter Jackie Mellen with respect to safety are untrue. The occasion in which Mrs. Mellen has stated that she was accosted at the end of the Baynes' driveway, if occurred, would have taken place while Mr. Baynes or his wife were outside. Prior to the Board's review of the application they had never heard of such an incident.

The Police Report referred too by the neighbors of an incident in which Mrs. Baynes was injured by a dog was inaccurate and has since been corrected. The incident involved one foster dog and one of the Baynes' personal dogs.

With respect to statements made by abutter Diana Kerin concerning the Baynes' ignoring the Town regulations, Mr. Baynes responded by explaining that they meant no disrespect to the Town in providing this service at their home without permits. He explained how they had done the same at the property on Stumpfield Road, prior to moving to Hatfield Road. Mr. Baynes objected to statements made by Mrs. Kerin concerning their ignoring the condition of the home and only considering the fact that there was an existing kennel at the property when deciding to purchase the home. Mr. Baynes noted that they had paid almost \$20,000 in improvements to the home, prior to moving in. Mr. Baynes stated that he recently had a conversation with the former owner's sister who had indicated that her sister was breeding and showing dogs as a business which was operated from the home. She further told the Baynes' that her sister would be very happy that the property was being used to help rescue dogs. Mr. Baynes then stated that he too hears the Kerin's dogs bark which in turn causes his dogs to bark. He then noted that there are fifty-three (53) registered dogs within a one-mile radius of the property, so it is not unusual to see or hear dogs barking. Mr. Baynes also presented a photograph of a

sign that he had found on the property which appeared to confirm that the former owner was selling dogs from the property.

Lastly, Mr. and Mrs. Baynes thanked those people that support their efforts in rescuing dogs and stated that they hoped to continue their work.

At this time, the Board took a brief five minute recess.

In returning, Chairman Krzyzaniak informed those present that during the recess she had realized that Mrs. Baynes was a good friend of her niece and on occasion she had seen Mrs. Baynes with her. While she believed that she could be impartial in reviewing the Baynes' application, Chairman Krzyzaniak gave the Applicant and Abutters and opportunity to object, if they wished to do so. Mr. and Mrs. Baynes had no objection. Attorney Steiner, on behalf of the Abutters, had no objection.

Attorney Jim Steiner representing the Abutters (Mellen, Pellerin, Kerin, and Dimond) addressed the Board stating that there were no abutters who spoke in support of the application. The Abutters are unified in their belief that the operation of the business negatively impacts the neighborhood. Attorney Steiner noted that the Abutters have had the benefit of living with the business in the neighborhood for many months. The business has interfered with the neighbors' use and enjoyment of their properties. The activity is inconsistent with the uses in the neighborhood. A Home Business, by definition, requires the use to take place entirely within a dwelling or accessory building. In this case, the rescued dogs are living in runs which are partly in the garage and outside. Therefore, the use clearly does not conform to the definition of a Home Business. Attorney Steiner believed that the requirement that the Home Business take place entirely within the building is in part to insulate any noise associated with the business. Someone passing by the property would have no notion that the business would be taking place. However, that is not the case with the Baynes' property. The dogs bark, are loose, and the business involves a substantial increase in traffic in the neighborhood. It is obtrusive and has changed the characteristics of the neighbors as the Abutters have testified. The neighbors cannot ride their bikes or let their kids outside their home without supervision due to fear that the dogs will come onto their property. Neighbors cannot sit outside or leave their windows open due to the noise of barking dogs.

Attorney Steiner noted that based on a Police Report, Mrs. Baynes was bitten by a dog during her efforts of breaking up a fight between her dog and one of the rescued dogs. Furthermore, statements made in an email from Heath McKay supporting the Baynes' efforts, the dogs prior being rescued run free in packs and are in over crowded shelters in the south, support the safety concerns of the neighbors especially when the dogs loose in the neighborhood.

The Baynes' have admitted to have more than one employee "volunteer" at the property. Attorney Steiner believed that the volunteer, whether paid or not, is working and therefore is considered an employee. He noted that the definition of a Home Business allows no more than one (1) employee. Furthermore, the Ordinance requires that the space utilized by the Home Business not exceed twenty-five percent (25%) or 500 square feet, whichever is less. Based on the drawing submitted with the application it appears that the space exceeds 500 square feet of area. Because of the fact that the Baynes' cannot satisfy the requirements outlined in the definition for a Home Business Attorney Steiner believed that the application fails.

Attorney Steiner recalled a letter that he had submitted from Realtor Judy Hampe concerning the detrimental affects of property values on the neighborhood. He noted that the Baynes' have not submitted any information to challenge Mrs. Hampe's findings.

With respect to the 1983 letter from Attorney Hilliard, Attorney Steiner noted that Attorney Hilliard had indicated that it was permissible to have a kennel for your own personal use; however, that is now not the case. The Abutters believed that the former owner had one (1) or two (2) dogs, and if the prior owner had operated a business from the home and it has been discontinued for one (1) year or more it cannot now be re-established.

Jessica Sheinman of 1430 Hatfield Road addressed the Board advising that the neighbors have been very patient and gracious throughout this process. However, there was incident following the last meeting in which she and her son was driving in her garage and found a loose dog in the garage. At the time, she had her son stay in the vehicle while she placed one of her own dog collars on the dog and walked the dog to the Baynes' residence. Ms. Sheinman stated that she and her family have to make sure that the children do not go outside without being supervised in fear that one of the dogs may enter her property.

Jackie Mellen of 1419 Hatfield Road addressed the Board taking offense to Mr. Baynes' statements concerning the neighbors fabricating the facts when it comes to the safety of the residents. Mrs. Mellen leaves her home daily to either run or walk in the neighborhood. She stated that there have been loose dogs on more than the three (3) occasions referenced by Mr. Baynes. She believed that if the Board had viewed the property they would have seen the close proximity of the Baynes' home to others in the neighborhood; noting that there are eight (8) homes within one-half mile.

Mrs. Mellen advised that at the previous meeting, Mrs. Baynes had stated that the Englands operate a therapeutic riding service without permits. Mrs. Mellen noted that according to Karen Robertson (Planning Director) the Englands had received all the necessary permits to operate their business. Furthermore, the Baynes' have indicated to the Board that the Mellen's own two (2) dogs when in fact the Mellen's own one (1) dog.

Lastly, Mrs. Mellen asked the Board to deny the application due to the fact that the use does not meet the criteria for a Home Business or Special Exception.

Public testimony was closed.

Mrs. Gray questioned the size of the residence. In response, Mr. Baynes stated that the space utilized is over the maximum space allowed by 211 square feet. Mrs. Baynes stated that if the Board were to include the exterior dog runs they would exceed the limitation by 710 square feet.

Mrs. Gray informed the Baynes that the definition of "Agriculture, Farm, Farming" is not relevant to their situation due to the fact that the rescue operation is not a farm. In response, Mr. Baynes noted that the definition includes the raising of domesticated animals. Mr. McLeod concurred with Mrs. Gray stated that the while the definition appears to be vague a common sense reaction was that raising of domesticated fur bearing animals means the raising of mink or otters as a farm for the sale of their pelt, rather than the raising of domestic dogs.

Mr. Perkins was disappointed that the Board did not view the property. He believed that it would have helped to better understand the testimony given, and would have provided the Board with a visual as to where the dogs are located in and outside of the residence. However, he understood the reason for not going on the site visit and the abutters' rights to view what the Board views. Mr. Perkins stated that there is an emotional and legal component to this application. After reviewing the information presented and hearing the testimony, Mr. Perkins believed that the Applicant had not met the criteria to be granted a Special Exception. However, he admired the Applicant for their efforts in trying to save the dogs.

Chairman Krzyzaniak stated that understands the Baynes' passion for what they are trying to do; however, she also understands the concerns for the safety of the children in the neighborhood based on the testimony given. She, too, did not feel that the Baynes' had successfully addressed the criteria to be granted a Special Exception. She believed that to allow the rescue operation to continue in the residential neighborhood would infringe on the rights of the neighbors to enjoy their properties.

Mrs. Gray was very sympathetic to the Baynes' efforts; however, she could not vote in favor of the application.

While Mr. McLeod noted that he owns two (2) rescued dogs he has to consider whether the requested use falls within the definition of a Home Business as outlined in the Ordinance. He believed that the use is not a permitted use and therefore does not qualify as a Home Business and furthermore, that the use exceeds the maximum square footage allowed for a Home Business.

Mr. Rinden concurred with what had been said by all of the members.

With five members voting, all five voted in opposition (T. Gray, H. Perkins, G. McLeod, D. Rinden, and J. Krzyzaniak). The Board unanimously agreed that the Applicant failed to satisfy the following criteria for a Special Exception as set forth in paragraph 15.8.2 of the Zoning Ordinance:

- **Standards provided by this Ordinance for the particular use permitted by special exception.** *The use, fostering/sheltering dogs, is not a use specifically permitted in Hopkinton Zoning Ordinance and therefore does not qualify as a Home Business. In accordance with paragraph 3.6.1 any use not specifically permitted in 3.6 Table of Uses is not permitted, unless the Board of Adjustment determines it is substantially similar to a use listed as a permitted use in the applicable zone by virtue of an Administrative Appeal or by granting a Variance. Note: The Applicant had suggested that the use is an "agricultural, farm, farming" activity as set forth in paragraph 2.1.A.4 (8), "the raising, breeding, or sale of domesticated strains of fur-bearing animals". The Board of Adjustment disagreed, noting that the selling of fostered/sheltered rescued dogs is not an agricultural or farming activity. The "reasonable" interpretation of section 2.1.A.4 (8) is that it provides for the raising, breeding and sale of otters, minks, and other similar animals, with intentions of selling their fur (pelt).*
- **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 use, sheltering/fostering rescued dogs, is not a use specifically listed in the Hopkinton Zoning Ordinance, 3.6 Table of Use, and is therefore not permitted. The Board of Adjustment reviewed photographs of vehicles parked along side Hatfield Road, a letter from J. Hampe & Associates concerning adverse affects on property values, and heard testimony from abutters and a resident within the neighborhood. Based on the information presented and testimony given, the Board agreed that the use will negatively impact the neighborhood and thereby changing the essential characteristics of the neighborhood on account of noise (barking dogs), traffic (generated by those people attending an “open house” that are wishing to adopt a dog, volunteers and those delivering dogs), and safety (dogs leaving the property unattended and wandering onto neighboring properties). Note: Testimony by abutters was based on the Applicant having fostered/sheltered rescued dogs at their residence for the past several months, prior to the Board of Adjustment hearing.*
- **An appropriate location for the proposed use.** *Based on review of the Zoning Ordinance, information provided and testimony given, the Board unanimously agreed that the location is not appropriate for the use. Specifically, testimony was provided that the use takes place in an area along Hatfield Road where homes are within close proximity of one another. Furthermore, the use, sheltering/fostering rescued dogs, is not a use recognized in the Hopkinton Zoning Ordinance, Table of Uses 3.6.*
 - **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.** *A letter from J. Hampe & Associates, a local realtor, concluded that the use will negatively impact property values and the marketability of homes within the vicinity of the Baynes’ property. Testimony was provided that the use as being operated has adversely affected the safety and quiet enjoyment of residential uses within the neighborhood on account of noise associated with the dogs barking, safety associated with dogs leaving the property unattended and entering onto abutting properties, and traffic associated with dogs being transported to the neighborhood, volunteers and potential parties interested in adopting the dogs coming to the neighborhood parking along side Hatfield Road and turning around on abutting properties.*
 - **In the public interest and in the spirit of the ordinance.** *The use is not within the spirit of the Ordinance as it is not a use specifically permitted in the R-4 (residential/agricultural) district or even listed as a use in the Hopkinton Zoning Ordinance, Table of Uses 3.6. Furthermore, the use is not in the public interest as the Board agreed that the use currently adversely affects the health and safety of residents, detrimental to property values in the vicinity, and has changed the essential characteristics of the neighborhood on account of noise, traffic and safety.*

In addition to failing to meet the requirements for a Special Exception, the Applicant failed to demonstrate compliance with the following conditions for a Home Business as set forth in section 3.7.3 of the Hopkinton Zoning Ordinance:

- **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 Ordinance requires that the use must be carried out entirely within the dwelling or an accessory building. In this particular case, the rescued dogs, for a portion of the day, are located outside in a fenced-in run. Additionally, based on the Applicant's own testimony the use utilizes more than the square footage allowed for a home business as set forth in paragraph 2.1.H.1 (500 sq. ft. or 25% of the total are of the home, whichever is less).*
- **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.** *Based on the information presented and testimony given, the Board unanimously agreed that a preponderance of the evidence supports the fact that the use as conducted has been objectionable to the neighborhood on account of noise, traffic, and safety.*
- **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.** *Based on the information presented and testimony given, the Board unanimously agreed that there is a lack of dedicated on-site parking for the business. Those people associated with the business, including volunteers or individuals interested in adopting a dog park along side Hatfield Road and turn-around at abutting properties.*

At this point, the Board briefly discussed whether it is their responsibility to require the Applicant to cease all operations of the rescue business within a specified time period or whether it is a matter that should be addressed by the Board of Selectmen. Following discussion, Chairman Krzyzaniak stated that the Board is to provide the Applicant with a specified time period so that the matter can immediately be resolved. Mr. and Mrs. Baynes were then informed that within ten (10) days from the date of this hearing they are to cease all activity at their property that is associated with rescued dogs. This includes fostering, sheltering, sale, adoption and/or viewing of dogs. In response, Mr. and Mrs. Baynes stated that they no longer have rescued dogs at their property. However, they questioned whether certain signage that presently exists was permissible. In response, Chairman Krzyzaniak stated that the sign would have to be removed within ten (10) days, and that they would need to a permit to erect the sign.

II. Minutes/Notice of Decision

Mrs. Gray, seconded by Mr. Perkins, moved to approve the Minutes of October 6, 2009 as corrected (Page 13, second to last sentence to include the number of people in opposition, and page 22, last sentence to read, "There will be no public comments received during this walk". Motion carried unanimously.

Mr. Perkins, seconded by Mrs. Gray, moved to approve the Notice of Decision of October 6, 2009 as presented. Motion carried unanimously.

III. Adjournment.

With no further business to come before the meeting, Chairman Krzyzaniak declared the meeting adjourned at 10:10 PM. The next scheduled meeting of the Board is Tuesday, December 8, 2009, at 7:00 PM in the Town Hall.

Karen L. Robertson
Planning/Zoning Director