



# Town of Hopkinton

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## HOPKINTON ZONING BOARD OF ADJUSTMENT MINUTES January 2, 2013

Chairman Janet Krzyzaniak opened the Hopkinton Zoning Board of Adjustment meeting of Wednesday, **January 2, 2013, at 6:30 PM in the Hopkinton Town Hall**. Members present: Toni Gray, Charles Koontz, David Brock and Gregory McLeod.

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*Note: The Zoning Board of Adjustment's Rules of Procedure was provided during the application process and additional copies were available at the meeting for the general public.*

### I. Application(s).

#2013-1 Bruce Gamsby Special Exception to operate a dog kennel for nine dogs as a home business. The property is owned by Bruce Gamsby and Jill Crane, located at 913 Pine Street in the R-2 district, Tax Map 208, Lot 98. The application was submitted in accordance with Zoning Ordinance Table of Uses 3.6.A.7.

Bruce Gamsby and Jill Crane were present to present the application. Mr. Gamsby began by explaining their proposal to operate a small dog kennel housing no more than nine dogs. The property consists of 23-acres with the proposed kennel being located a great distance from the neighboring homes and street. The kennel is a retirement business for both Mr. Gamsby and Ms. Crane, with no employees.

Mr. Gamsby reviewed the criteria for a **Special Exception** as outlined in Section XV of the Zoning Ordinance.

- Standards provided by this Ordinance for the particular use permitted by Special Exception.** "The home business is permitted per Zoning Ordinance section 3.6.A.7."
- No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.** "There are no hazardous materials associated with the home business. All waste products are to be removed from the site."
- 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. The neighborhood will remain very rural. The proposed kennel will be a couple of hundred feet off Pine Street. The rear of the house is approximately 400 feet to Pine Street, so there is plenty of driveway space."
- No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.** "We expect to have less traffic than when we had teenagers

living at the home. The proposal is for nine kennels so there is a possibility that an additional nine vehicles will be at the property; however, the driveway is very wide with ample sight visibility in both directions along Pine Street.”

5. **No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.** “There will be zero demand on municipal services as we have our own well and septic system.”
6. **No significant increase of storm water runoff onto adjacent property or streets.** “The property slopes gradually towards the rear, but is otherwise very level. Runoff from the street currently travels onto the property leaching into the sandy soil.”
7. **An appropriate location for the proposed use.** “We believe the kennel is an appropriate use for the property. The property consists of 23-acres in which to walk the dogs without having to leave the property or bother anyone.”
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 kennels will be indoors only. There will be no outside runs. The dogs will be on a leash when outside. If there is a dog that is found to be a problem, the owners will be told that we won’t keep the dog under our supervision. I don’t believe that there is another kennel in Town that provides a similar service.”
9. **In the public interest and in the spirit of the ordinance.** “We have taken great care and thought into the creation of our in-home business. We will both be retired and this will be our full-time job. We believe that our kennel will provide a positive addition to the community.”

Mrs. Gray questioned whether the building that will house the kennel is heated. Mr. Gamsby responded not at this time. The building will eventually be heated if the kennel is approved.

Mrs. Gray inquired about the lack of outdoor runs for the dogs, and questioned whether a license for the kennel will be required from the State. In response, Ms. Crane stated that there will be no outdoor runs. It is their intentions to walk the dogs. If they are successful at receiving a permit for the kennel, they will apply to the NH Department of Agriculture for a license to operate.

Mrs. Gray asked how the waste from the dogs will be disposed. In response, Mr. Gamsby said that they plan to use plastic bags and dispose of the waste in an appropriate manner. They will not bury or leave the waste on the property.

Mr. Brock asked if the kennel will include boarding of the dogs. Mr. Gamsby responded yes, stating that they will provide “doggy daycare” and boarding.

Mr. Brock then asked if the building that will house the kennel is insulated. Mr. Gamsby replied yes. Mr. Brock believed that the insulation would help to reduce any possible noise related to the dogs barking. Mr. Gamsby agreed, stating that their intentions are to be good neighbors. He didn’t believe that a dog barking in the building will be heard by the neighbors due to the distance the building is from the property lines.

Chairman Krzyzaniak inquired about the additional traffic that will be created because of the home business. In response, Mr. Gamsby stated that the maximum number, in one day, could be nine vehicles; however, he believed that to be optimistic. He noted that some of the dogs may be boarded for multiple days; therefore, traffic would not be on a daily basis.

Mrs. Robertson noted that she had notified the Police and Fire Departments, along with the Road Committee, concerning the application and received no concerns or comments.

Public testimony was opened.

Richard Chiocca addressed the Board as an abutter opposed to the application. Mr. Chiocca owns a building lot, adjacent to the Gamsby/Crane property. He expressed concern with potential noise; questioning how the kennel will benefit anyone other than the owner. He suggested that the operation of the kennel will be detrimental to property values in the neighborhood, and that he and other neighbors will have a difficult time selling their properties because of the kennel.

In rebuttal, Ms. Crane explained that there is a limit on the size of the home business which is why they are limited to no more than nine dogs. The kind of kennel run that will be provided will be hand-on, rather than a fenced in run. The dogs will be taken for multiple walks on the property. Lastly, she suggested that there are humane ways to deal with a barking dog, such as using a vibrating collar. They, too, are not interesting in having a dog at the kennel that constantly barks as it could upset the other dogs.

In rebuttal, Mr. Gamsby stated that the distance of the kennel building to the Chiocca property line is approximately 200-feet. He suggested that there are other noises, such as using a chainsaw, which would be louder than a dog barking inside a building. Mr. Gamsby further noted that one reason for not having the run is because the home business has a size limitation. In considering the size of the kennel, including outside runs, would mean that their business would exceed the Town's size limitation. Mr. Gamsby was aware that a number of years ago the Board had reviewed an application for a dog shelter which was proposed with outside runs. In that particular case, the total square feet of the shelter space, indoors and outdoors, exceeded the limitations of the Ordinance.

Mrs. Gray questioned whether the use (kennel) is a use listed in the Ordinance as being permitted in the R-2 district. In response, Mrs. Robertson explained that she had reviewed the use with Mr. Gamsby and determined that a kennel is permitted in the district. Mrs. Robertson noted that a number of years ago the Board had reviewed an application for a dog shelter which is a use not listed in the Ordinance.

In reviewing the site plan, Mrs. Gray questioned why the barn would not be a more appropriate location for the kennel. In response, Mr. Gamsby stated that the barn is not insulated and has overhead garage doors; therefore, the smaller building would be better suited.

Chairman Krzyzaniak questioned the overall size of the home business. Mr. Gamsby responded approximately 480 square feet. The building was originally designed as a barn; however, when he was aware that Ms. Crane would be eligible for retirement they realized the potential for the kennel to be in the building. They then decided to construct the building so that it is insulated. It will eventually be heated and have running water.

In response, abutter Mr. Chiocca asked the Board to consider whether they would buy a house or a lot that is next to a kennel. He believed knowing that there is a kennel will affect the neighboring property values.

Public testimony was closed.

Mrs. Gray suggested that if there is a potential for a decrease in property values then the Board should have received proof from a real estate agent.

Mr. McLeod noted that the Applicant isn't proposing outside kennel runs. He did not believe that the kennel, if operated as represented by the Applicant, will present a noise problem.

Motion made by Mr. McLeod, seconded by Mr. Koontz, to approve Application #2013-1 as presented with the condition that there be no outside kennel runs, now or in the future, as it relates to the home business.

Mr. Brock offered an amendment to the motion to include as a condition that adequate steps be taken to minimize associated noise.

*Mr. McLeod, seconded by Mr. Koontz, amended their motion to approve Application #2013-1 as presented with the following conditions:*

- 1. That there be no outside kennel runs, now or in the future, as it relates to the home business, and*
- 2. That adequate step is taken to minimize associated noise.*

*Motion carried unanimously (Gray, Koontz, Brock, McLeod, and Krzyzaniak). The Applicant successfully satisfied the criteria to be granted a Special Exception in accordance with Section XV of the Zoning Ordinance.*

*Mr. Brock noted that the use is still subject to approval by the Planning Board, Board of Selectmen and the State.*

Mrs. Robertson asked for clarification as to whether the conditions imposed would impact the Owners' ability to have outside runs for their own personal dog(s). The Board unanimously agreed that the above conditions do not limit the owners' abilities concerning their own personal dog(s).

At this time, the Board recessed for a few minutes so that a member could address a personal matter. In reconvening, the Board reviewed the application of Allan McCausland #2013-2.

**#2013-2 Allan McCausland Special Exception** to convert office space into two, one-bedroom apartments. The property is located at 834 Main Street in the VB-1 district, Tax Map 101, Lot 86. The application was submitted in accordance with Zoning Ordinance Table of Uses 3.6.A.3.

Mr. McCausland began by providing the Board with a brief history of the property; explaining that the proposed change would actually be converting the property back into the residential use it had been used for since constructed in 1890. The property was a single family home for a number of years, and then became three residential units in 1980 and four units in 1985. The McCausland's purchased the property in 1993 and received a Special Exception to change two of the apartments into offices for their business, McCausland Economic Associates, LLC. Mr. McCausland explained how the neighbors welcomed their taking over the property.

Now, they no longer need the office and as Mr. McCausland is preparing for retirement. They have attempted to rent and lease the building, but have been unsuccessful as there seems to be a limited market for commercial space. However, those interested in the building have wanted to rent residential space. Therefore, the proposal is to convert the offices back into two, one-bedroom apartments. Mrs. McCausland suggested that the change will be beneficial as they will provide first floor housing that is near shops and services.

The proposed change will not involve exterior changes to the building other than the addition of an exterior door and fire escape for the second floor apartment. These changes were reviewed by fire and code enforcement. Interior changes will involve updating a kitchen, adding a kitchen, changes to a bathroom and relocating interior doors.

As there was no one in the audience, the Board did not require the Applicant to publicly address the criteria for a Special Exception. However, for the record, the application submitted included the following written responses:

1. **Standards provided by this Ordinance for the particular use permitted by Special Exception.** “We are seeking a Special Exception to convert a two-apartment/professional office mixed use building into a four unit multi-family dwelling in the VB-1 district of Hopkinton. This use is permitted by Special Exception according to the standards of the Hopkinton Zoning Ordinance on page Z-18, Section 3.6 Table of Uses, A-3 Multi-Family Dwelling which allows a multi-family dwelling of up to eight units as a Special Exception.”
2. **No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.** “Granting this Special exception will not result in a hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials. All units will be hard-wired with battery backed-up smoke and CO detectors as per the NH Fire Codes and the Hopkinton Fire Department and Code Enforcement Officer. The Code Enforcement Officer has inspected and approved our plans.”
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.** “Changing the office space back into two small apartments will not be detrimental to property values in any way. This was the original use of the building when we purchased it in 1993. The surrounding neighborhood is mostly mixed residential with single-family and multi-family dwellings. There will be no changes to the existing building other than the installation of an emergency doorway and stairway/landing to the rear of the proposed apartment on the second floor. No other structures will be added or changed. The front and back doors will continue to be used as they were when in use by the office staff and the prior apartments. The parking lot is already approved for 12 spaces which is more than is required/adequate for four apartments (1.5 spaces per apartment is required). We will continue to provide a dumpster for trash.

We have attached a copy of our lease which contains provisions relating to the criteria above as well. We are a non-smoking building, and don't permit smoking anywhere on the premises. There are also clauses relating to 1) the number of vehicles permitted; 2) no long-term storage of unregistered vehicles; and 3) the storage of toys and/or equipment,

etc. See clauses 12, 14, and 19 on the attached lease for particular details regarding these criteria.”

**4. No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity.** “Changing the use from offices back into two small apartments will not create any traffic safety hazard. It will result in a decrease in the level of traffic congestion in the area due to less FEDEX and UPS deliveries and no employee traffic. The current parking lot is approved for 12 spaces. Eight spaces were required for the mixed use of office and two apartments. Four apartments will require 1.5 parking spaces per unit for a total of six spaces. When the office was fully staffed it was common to have 6-7 vehicles per day in the lot just from the office staff. Changing the offices back into two, one-bedroom apartments will result in fewer vehicles and deliveries (FEDEX & UPS) per day in the lot. Again, as per our lease, we will continue to plow and maintain the parking lot and enforce the off-street parking requirements. See sections 12 and 19 of the lease.”

**5. No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection, and schools.** “We are requesting to change office space back into two small one-bedroom apartments, two less bedrooms than the way the building was used when we purchased it in 1993. The apartments will be small. The first floor apartment will be 1,000 square feet and the second floor apartment will be 760 square feet. We envision these apartments as being suitable only for one to two adults per unit and no children. There will be no additional impact on the schools or Town services.

The office space currently has one kitchen and 1.5 baths. The plumbing and electrical services for the prior apartments were never removed. Changing the office use back into two small apartments will require adding Fire and Carbon Monoxide battery backups to all four apartments; updating one kitchen; adding one kitchen; and changing the half-bath back into a full bath. These changes will place additional excessive demand on municipal services, water, sewer and waste. The Town Assistant Superintendent of Public Works – Waste has approved this plan.”

**6. No significant increase of storm water runoff onto adjacent property or streets.** “N/A – no structural changes proposed. There will be no increase of storm water runoff on adjacent property or streets.”

**7. An appropriate location for the proposed use.** “This location is totally appropriate for the proposed use as a multi-family building. The history of the building indicates continued use as residential since the house was built in 1890, first as a single-family home, then a three unit building, then a four unit building. In 1993 a Special Exception was granted to make two of the apartments into office space, but even during that period more of the building square footage was in residential than in office space. The building continues to be located in a primarily residential neighborhood of single-family and multi-family residences.”

**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.** “This change will not adversely affect the health and safety of the residents and others in the area and will not be detrimental to the use or development of adjacent or neighboring properties. Indeed, leaving the office space in the building empty is not safe, or in the interest of the health and safety of the residents and others in the area.

Converting the office space back into two apartments with a maximum of four more adults living in the area will add to the health and safety of the residents of the building and the neighborhood. It is already a walking neighborhood, where residents look out for each other, and adding a few more responsible adults into this mix will be good for the neighbors and for the neighborhood. There will be no detriment to the use or development of neighboring properties. All of these properties are currently residential with the exception of the Town Clerk's Office, the antique barn across the street which is really part of a two-family dwelling, and the church on the corner. The appearance of the building and property will not change."

- 9. In the public interest and in the spirit of the ordinance.** "We have sought commercial tenants for over five (5) years now with little to no interest. Indeed, parties that have shown an interest have been more interested in converting the office space back to residential use.

As landlords over the past 20 years we have often had request for apartments by people in Town who were looking for a small, more affordable, one-bedroom apartment. Some of these folks were also looking for one-bedroom first floor living arrangements. Our current apartments have two and three bedrooms and both units contain stairs up to the bedroom levels. By changing the offices back into two one bedroom apartments, with one on the first floor, we will be meeting a need in Town that has been demonstrated when we have advertised apartments for rent. In addition, we will be adding adults, like our current tenants, who will be walking to and supporting local businesses; the banks, the shops, the grocery store, the restaurants, etc.

It is in the public interest to provide more appropriate housing for our citizens as well as to keep the spirit of the Town center where folks can walk to services and shops. The intent of the VB-1 Ordinance is to keep the Village strong through a mixed use approach. Single family, two-family and multi-family dwellings up to eight units are all permitted in this zone by Special Exception. The McCausland building at 834 Main Street will continue to enhance the neighborhood through this change."

*Motion was made by Mrs. Gray, seconded by Mr. Brock, to approve Application #2013-2 as presented. Motion carried unanimously (Gray, Koontz, Brock, McLeod, and Krzyzaniak). The Applicant successfully satisfied the criteria to be granted a Special Exception in accordance with Section XV of the Zoning Ordinance.*

- II. Review of the Minutes and Notice of Decision of November 7, 2012.** Motion made by Mr. Koontz, seconded by Mrs. Gray, to approve the Minutes and Notice of Decision as presented. With five members voting, three voted in favor (Gray, Koontz, and Krzyzaniak) and two voted in abstention (Brock and McLeod) as they were not present at the November meeting. Motion passed in the affirmative.
- III. Adjournment.** Motion made by Mr. McLeod, seconded by Mr. Koontz, to adjourn the meeting at 7:35 PM. Motion carried unanimously. The next regular scheduled meeting of the Board is Tuesday, February 5, 2013, at 6:30 PM in the Town Hall.

Karen L. Robertson  
Planning Director

Pursuant to New Hampshire RSA 677:2, any party to the action or proceedings, or any person directly affected thereby, may apply to the Zoning Board of Adjustment for a rehearing. Application, in writing, must be submitted to the Zoning Board of Adjustment within thirty (30) calendar days beginning the date upon which the Board voted to approve or disapprove the application. Such a request must set forth the grounds on which it is claimed the decision is unlawful or unreasonable. The Board must decide to grant or deny the rehearing within thirty (30) days.

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