

Hopkinton Zoning Board of Adjustment
Notice of Decision
November 3, 2009

Notice is hereby given that the Hopkinton Zoning Board of Adjustment held a public hearing on Tuesday, November 3, 2009, at 7:00 PM in the Hopkinton Town Hall. During the hearing, the Hopkinton Zoning Board of Adjustment made the following decision:

Case #ZO2009-16 Herrick Mill Work, Inc./John Herrick 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.

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.

With five members voting, all five voted in opposition (T. Gray, H. Perkins, G. McLeod, D. Rinden, and J. Krzyzaniak). 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 Applicant's proposed 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 their proposed 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 Applicant's proposed use, sheltering/fostering rescued dogs, is not a use specifically listed in the Hopkinton Zoning Ordinance, 3.6 Table of Use, and is*

Notice of Decision is subject to Zoning Board of Adjustment review and approval.

- 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 Applicant’s proposed 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 Applicant’s proposed 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 Applicant’s proposed 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.*

Karen L. Robertson
Planning/Zoning Director

Pursuant to New Hampshire RSA 677:2, any party to the action or proceedings, or any person directly affected thereby, may apply 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.