

Hopkinton Zoning Board of Adjustment
Notice of Decision
December 22, 2009

Notice is hereby given that the Hopkinton Zoning Board of Adjustment held a meeting on Tuesday, December 22, 2009, at 7:00 PM in the Hopkinton Town Hall. During the meeting, the Hopkinton Zoning Board of Adjustment made the following decision:

Motion for Rehearing submitted by Attorney Christopher H.M. Carter, on behalf of Graham and Lisa Baynes, dated December 2, 2009, and received on December 3, 2009. Motion for Rehearing pertains to the Zoning Board of Adjustment decision of November 3, 2009, in which the Board denied the Applicant's request (Case #Z02009-11) for a 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 Road, shown on Tax Map 216 as Lot 4, in the R-4 district (Hopkinton Zoning Ordinance section 3.6.A.7). No public testimony was accepted.

Following review, motion was made by Toni Gray, seconded by Harold Perkins, to deny the Motion for Rehearing based on reasons specifically outlined in the record of the meeting. With five members voting, all five voted in favor of Mrs. Gray's motion. The Motion for Rehearing was denied.

- The Board considered the description of the activities as had previously been explained by the Baynes'; the NH Animal Shelter License; the definition of Commercial Use as set forth in Section 2.1.C.3 of the Zoning Ordinance, and the language of NH RSA 437 in consideration of whether the use as described by the Applicant is a commercial business with the Applicant acting as agent for ADAR Rescue (Alabamians Defending Animal Rights).
- The Motion for Rehearing is a result of the Board's denial of the Applicant's application for Special Exception to operate a Home Business. In submitting the Motion for Rehearing, the Applicant cannot now abandon that request and instead ask the Board to consider an entirely different request.
- Applicant had every opportunity to submit an Administrative Appeal, rather than submitting their application for Special Exception to operate a Home Business.
- During the November 3, 2009 hearing, the Board did respond to the Applicant's request for a determination as to whether the use as described could be considered an Agriculture, Farm, Farming activity as it relates to fur-bearing animals. Note: Board had determined that the use did not qualify.
- While the Motion for Rehearing suggests that the Board should have considered the use, as now requested by the Applicant, as a "kennel" as defined in Section 2.1.K.1 of the Ordinance, the Board acknowledged that they did not consider other use listed in the Ordinance as the Board was not asked to do so. The Applicant had not submitted an Administrative Appeal, but rather submitted a request for a Special Exception to foster/shelter dogs as a Home Business.

In reviewing the Motion for Rehearing, the Board considered whether a different classification of the use would have changed their findings with respect to the Applicant's failure to satisfy other criteria to be granted a Special Exception e.g., change in essential characteristics of the residential neighborhood; appropriate location; health and safety of residents; detrimental to the use of neighboring properties, and spirit of the Ordinance.

- A Kennel as defined by the Ordinance is listed as a principal use requiring a Special Exception. In this particular case, the Applicant would have had to apply for a Special Exception for the commercial kennel and a Variance to allow more than one principal use (residential and commercial kennel) on a lot in accordance with Section 4.4.3 of the Zoning Ordinance.
- While the Motion for Rehearing suggests that the Board should have considered the use as described by the Applicant as an “accessory use” there was no argument, justification or explanation outlining why consideration should have been given and what the use would have been accessory to when considering the uses listed in the Zoning Ordinance.
- In denying the Applicant’s request for a Special Exception to operate a Home Business the Board had considered the use, as described by the Applicant, which included testimony and information submitted by the Applicant and Abutters. *Refer to decision of November 3, 2009.*

Karen L. Robertson
Planning/Zoning Director