



Town of Moultonborough Zoning Board of Adjustment

Notice of Decision - DENIAL

Request for Special Exception

David S. Severance and Julianne P. Daniels

Tax Map 152, Lot 2

April 7, 2010

Applicant: David S. Severance and Julianne P. Daniels

431 Chase Road

N. Sandwich, NH 03259

Location: 133 Severance Road, Moultonborough, NH (Tax Map 152, Lot 2)

On March 3, 2010 the Zoning Board of Adjustment of the Town of Moultonborough opened a public hearing on the application of David S. Severance and Julianne P. Daniels (hereinafter referred to as the "Applicant" and/or "Owner") for an application for Special Exception under Article VI (A)(4) to allow for establishment of a dog daycare and dog training facility for the property located in the Agricultural Residential (AR) Zoning District at 133 Severance Road.

Based on the application, testimony given at the hearing, and supporting documentation and plan(s), the Board hereby makes the following findings of fact:

- 1) The property is located at 133 Severance Drive (Tax Map 152, Lot 2)
- 2) The applicants are the owners of record for the lot.
- 3) The lot is located in the Agricultural Residential (AR) Zoning District.
- 4) Numerous residents and abutters spoke against this application during the public hearing.
- 5) One (1) member of the public spoke in favor of the application.
- 6) The applicants are proposing to use the existing site and structures for a dog daycare and dog training facility.
- 7) The applicants stated that the facility would only be in use during the work day and would not have clients' pets on the site overnight.

- 8) The applicants stated that they would limit their operations to no more than twenty-five (25) dogs on the premise at one time.
- 9) The applicants stated that all refuse from the dogs would be composted on-site.
- 10) The applicant made a request to change their application from a Special Exception under Article VI (A)(4) – Commercial Use outside of a commercial zone, to Article VII(A)(4) – Special Exception for Home Occupation.
- 11) The ZBA allowed the applicant to amend his application to Article VII(A)(4) at the meeting of March 3, 2010.
- 12) The applicants submitted a letter, dated March 4, 2010, formally requesting to amend their application to Article VII (A)(4).
- 13) A Site Visit was conducted on March 12, 2010.
- 14) A copy of a letter from the Code Enforcement Officer, dated September 2, 2009, was submitted to the ZBA on March 17, 2010 stating that the Code Enforcement Officer had determined that the proposal did not qualify as a Home occupation under the Zoning Ordinance and would require a Special Exception for Commercial Use from the ZBA and Site Plan Approval from the Planning Board. Said letter was sent to the applicant by certified mail and was returned after three attempts to deliver by the Postal service.
- 15) The applicant did not appeal this determination of the Code Enforcement Officer.
- 16) At the continued Public Hearing on March 17, 2010, the applicants introduced a professional sound consultant, Eric Reuter, who gave a presentation about the sound levels at the site in relation to the proposed use and the impacts on the abutting properties. The results presented were that there would not be a significant impact on the abutting ambient noise levels. The engineer also stated that the study was not comprehensive and had been conducted earlier that day.
- 17) There was concern amongst the Board as to the authenticity of the sound study and the actual impacts of the proposed new use, as the study did not measure the actual sounds of dogs barking but used “pink noise”, and that the location of the measuring equipment and sound production devices may not have been able to accurately ascertain the true conditions that would exist in the field should the facility be approved.
- 18) At the continued Public hearing on March 17, 2010, numerous residents and abutters attested to the sound and traffic of the site having a negative impact on their properties and quality of life.
- 19) The specific site is not an appropriate location for the use.
- 20) The use is incompatible with the character of the neighborhood in the Residential Agricultural District.
- 21) The property values in the district may be negatively impacted by the use in the district.

- 22) There will be no serious hazard to vehicle or pedestrians.
- 23) There may be a nuisance to pedestrians and residents due to the noise generated from the site.
- 24) The Adequate and appropriate facilities will be provided for the proper operation of the proposed use.
- 25) The proposed use will comply with the minimum land space requirements.
- 26) The capacity of existing roads and highways to carry related traffic is not adequate for the section along Severance Farm Road.
- 27) The application failed to meet all of the requirements for a Special Exception under Article VI (A)(4).
- 28) In order for a Special Exception to be granted under Article VI (A)(4), the Zoning Ordinance states that "... the Board shall determine that all general provisions and regulations of this ordinance are met..."

The Board of Adjustment continued the Public Hearing to March 17, 2010 and scheduled a Site Walk for March 12, 2010. The Board of Adjustment closed the public portion of the hearing on April 7, 2010. Based on the above Findings of Fact, the Board of Adjustment voted by a vote of four (4) in favor (Stephens, Hopkins, Roseberry, Bernstein), none (0) opposed, and one (1) abstention (Nolin), to **DENY** the request for Special Exception.

This decision shall not take effect until thirty (30) days have elapsed and no request for rehearing has been filed in accordance with RSA 677:2, or that if such request has been filed, it has been dismissed or denied, in accordance with RSA 677:3.

 Robert Stephens
 Chairman, Zoning Board of Adjustment

Date _____