

**Town of Amherst
Zoning Board of Appeals - Special Permit**

DECISION

Applicant/Owner: Christopher and Lisa Packard, 145 North Whitney Street, Amherst, Ma 01002

Date application filed with the Town Clerk: August 3, 2012

Nature of request: For a Special Permit to formalize an existing Greyhound rescue and adoption operation, as a Home Occupation, under Section 5.013 of the Zoning Bylaw

Address: 145 North Whitney Street (Map 11D-Parcel 175, R-G Zoning District)

Legal notice: Published on August 21, 2012 and August 28, 2012 in the Daily Hampshire Gazette and sent to abutters on August 17, 2012

Board members: Eric Beal, Hilda Greenbaum, Tom Ehrgood

Staff members: Jeff Bagg, Senior Planner and Rob Morra, Building Commissioner

Submissions:

- ZBA application, filed with the Town Clerk on August 3, 2012
- Management Plan
- GIS site plan
- Site Plan
- Floor Plan
- Schedule
- Petition in support of application
- Existing conditions photographs
- Emergency Order, 1-AHO-05, May 26, 2005
- DAR guidelines, January 24, 2007
- Wikipedia information on Greyhounds
- Building Commissioner (Weeks) letter, February 11, 2010
- Code Enforcement Officer letter, July 26, 2012
- ZBA FY1970-44, creation of two units
- Town GIS aerial photograph
- Revised floor plans, with dimensions, received September 4, 2012

Site Visit: August 30, 2012

Eric Beal, Hilda Greenbaum, and Tom Ehrgood met the applicant, Lisa Packard, at the site. The Board members observed the location of the property along the east side of North Whitney Street and the following:

- The existing two family dwelling and driveway running along the south side and the close proximity of the abutting properties to the north and south.
- The existing garage positioned between the front unit and rear unit. The exterior area immediately adjacent to the garage to be fenced-in and used as an outdoor run.
- The interior of the existing garage to be converted into two rooms, one for isolation and one for kennels. The garage door to be removed and replaced with a wall and the approximate location of a new exterior door and windows.

- The exterior of the rear and side yards consisting of a large mulched area within a metal post and wire fence used as a dog run. The location of an existing wooden picket fence along the north property line.

Public Hearing: September 4, 2012

The applicant, Lisa Packard, was accompanied by her husband, Christopher, and her attorney, Deborah Robes. Ms. Packard described her proposal as follows:

- She and her husband have been involved with rescuing Greyhounds placing, and fostering dogs, since before 2008. They have had a kennel license from the Town Clerk since at least 2008 and have had twice yearly inspections by the animal welfare control officer, Carol Hepburn. Presently, they have 12 licensed dogs, which they own, plus two foster dogs. Over the past seven years, they have kept anywhere from two to seven foster dogs.
- The proposal is to renovate the garage to create a facility that will receive, foster and arrange for dogs to be adopted. The garage would be divided into two spaces, one for new dogs, to be separated (isolated) for 48 hours following arrival and another area to foster and keep the dogs while awaiting adoption. The maximum number of dogs would be 18, plus the 12 dogs they currently own.
- The isolation area will be designed to meet specific state standards and each dog must be held in a holding facility for 48 hours to ensure that it is healthy and disease-free. The proposed facility would be designed to receive and isolate up to six dogs, during which time the dogs would be bathed and monitored. A veterinary would come to the site for examination prior to moving them into the adoption area.
- The exterior changes to the site include the following:
 - Replacement of the existing garage door with a wall and the addition of a new window and entrance door in its place.
 - An area, called a "turn-out", would be constructed immediately outside the existing garage door. The turn-out would be an 8 by 12 foot platform constructed of raised concrete, elevated approximately two feet above the existing driveway. The area would be designed with drainage connected to the Town sewer system and would be enclosed within a chain link fence.
 - A new door and window would be installed at the back of the garage facing the north property line and accessing the existing run.
- The area of the rear and side yards consists of a large mulched area within a metal post and wire fence and is currently used as a dog run. The run area extends to the north property line and an existing wooden picket fence.
- The interior changes include the construction of two separate rooms within the existing garage. The smaller room will be approximately 8 feet by 12 feet and will be used solely for the isolation of newly received dogs. It will be connected to the proposed new turn-out area and its design will meet certain state guidelines, including walls that are washable and appropriate drainage. The remaining portion of the garage will be utilized for the adoption area. It will contain a washing station and crates for up to 18 dogs.

Ms. Packard described the adoption process and day-to-day activity, as follows:

- Typically, new dogs will come in from out of state where they would meet the haulers and transport the dogs to their house. At that point, they would go into the proposed isolation area of the garage.

- The schedule generally begins with letting the dogs outside in small groups around 6:00 a.m. to urinate and defecate. They are taken back outside again around 9:00 a.m. and again at 2:30 p.m. At certain points they are allowed out in groups to exercise, which may last between 15 and 30 minutes. They are again allowed outside around 5:00 p.m. and for a final time around 10:00 p.m. This schedule would rotate so that the dogs in isolation are outside at different times than are the dogs up for adoption and their own dogs.
- Those interested in adopting a dog would either schedule an appointment or would attend a “meet and greet” to occur off-site at a location such as Petco. Generally, there would be up to two or three appointments on Saturday or Sunday, or sometimes during early evenings Monday through Friday.

The Board discussed the proposal relative to the Zoning Bylaw:

- Mr. Ehrgood noted that Section 5.00 states that an accessory use shall be customarily accessory and incidental in Hampshire County and that such use shall not be detrimental to the neighborhood or the property in the vicinity. Ms. Packard stated that there are other similar facilities throughout the state, such as a facility in Salisbury, Massachusetts.
- Mr. Ehrgood noted that Section 3.357 of the Zoning Bylaw identifies that a principal use as a “*veterinary establishments, kennels, or places for the boarding of animals*” is prohibited in the R-G Zoning District, where this property is located. Therefore, he noted that the application can only be considered as a Home Occupation, under Section 5.013. The Zoning Board of Appeals is authorized to issue a Special Permit when a portion of a building or a dwelling is used “*as the workroom of a resident artist, crafts-person, beautician, dressmaker, milliner, photographer, cabinetmaker, skate-sharpener, radio repair technician, or other person engaged in a customary home occupation*”. Based on this provision, the Board must find that this is a workroom. Ms. Packard stated that this is her form of work and that it is very unique. She stated that the facility should be considered her workroom.
- Mr. Beal stated that the proposal is not a workroom of a person such as an “*artist, crafts-person, beautician, dressmaker*”; rather it is akin to a kennel that has been licensed since 2006. A kennel is different from the occupations listed under Section 5.013 and doesn’t fit into the accessory Home Occupation section of the Zoning Bylaw.
- Mr. Ehrgood noted that Section 5.0134 requires that “*all operations, including incidental storage, are carried on within the principal or accessory building, and that there is no outward evidence that the premises are being used for any purposed other than residential*”. He stated that the construction of the turn-out area would be clear evidence that the property is being used for something other than a personal residence. Additionally, the large run in the back of the property also indicates that something is taking place other than a personal residence. He concluded that the proposal does not fit within the listed series of occupations and that the operation is more of an establishment regulated under Section 3.357, which is not allowed in this zoning district. Ms. Packard stated that the proposed operation is not a kennel, it is an adoption facility. She also stated that most people who have dogs allow them to go outside and their existing run would be normal at a private residence.

Ms. Greenbaum asked how the adoption business is supported and whether the applicant is still operating the retail business noted in the 2010 Cease and Desist order. Ms. Packard stated that she is in the process of establishing the greyhound operation as non-profit organization. She explained that she and her husband fund the majority of the costs although they do receive some donations. She stated that the business of making and selling pet items has been discontinued.

Mr. Ehrgood asked about the cease and desist order and noted that it stated that the operation was in violation of Zoning Bylaw. Ms. Packard stated that she had never received a cease and desist letter up until a week ago. She stated that she had contacted the Town about setting up the isolation facility.

Mr. Beal asked if there is a limit to how many dogs an Amherst resident can have before they require a kennel license. Ms. Packard stated that the Town Clerk informed her that each dog costs \$5.00 to register but that if the fees exceed \$40.00, the registration would be of a kennel rather than of an individual dog. Mr. Bagg stated that the issuance of a kennel license by the Town Clerk was related to the Town's General Bylaw and did not translate into permission to operate a kennel in terms of the Zoning Bylaw.

The following members of the public spoke regarding the application. All statements are summarized:

- Joan Hart, 612 South Pleasant Street, stated that her daughter owns property at 46 Harvard Avenue, which is adjacent to this property. She expressed concern with liquid waste migrating onto their property which is downhill from the subject property.
- Len Luschan, 46 Harvard Avenue, expressed concern with the number of dogs. In the past, he has seen approximately 25 dogs and stated that there have been cases of multiple dogs barking outside as late as 9:00 p.m.
- David Ross, 34 Harvard Avenue, stated that he owns a property immediately to the south of the subject property. He expressed concern about allowing the existing operation to expand to nearly 30 dogs. He stated that the proposed exterior turn-out area is close to their property and would have a visual impact and create potential noise problems.
- Myra Ross, 34 Harvard Avenue, expressed concern with allowing the expansion of the operation where a Cease and Desist was ordered back in 2010.
- Linda Tulenko, 150 North Whitney Street, expressed concern with allowing the expansion of the operation on the lot, which is small and already contains two dwelling units. She expressed concern with the large number of dogs and the potential for traffic or parking problems with added visitors.
- Andrea Catlin, 124 High Street, asked about the issuance of the Cease and Desist order. Mr. Morra stated that he could not find evidence that the order was actually mailed, but a copy was provided prior to this application. She expressed concern with the larger number of dogs on the property.
- Clem Clay, 147 North Whitney Street, stated that he owns the property directly to the north. He stated that he has not been negatively impacted by the existing operation and expressed concern that the term "workroom" not be interpreted too narrowly.

Ms. Packard responded to some of the comments:

- Regarding the waste: the run area contains nearly eight inches of mulch which is turned and replaced occasionally. Additionally, a product to reduce the smell of urine is applied frequently.
- The appointments would be limited to one family at a time and would be comparable to guests coming to a private residence.
- The solid waste is picked up immediately, is double bagged and then is picked up frequently by Amherst Trucking.

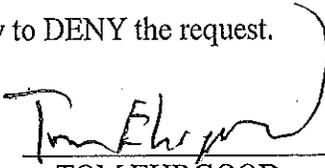
Mr. Ehrgood re-iterated his position that the proposal does not fit within the home occupation because the operation is not a workroom and exterior changes are required which would result in appearance that would not be residential in nature. Ms. Greenbaum agreed.

Mr. Beal explained that in order to grant a Special Permit, a unanimous vote of the three members is required. In certain cases, the Board has allowed the applicant to withdraw an application. Mr. Ehrgood stated a vote should be taken based on the previously issued Cease and Desist order and the letter from the Town's Code Enforcement Officer citing that this use is not allowed without a Special Permit.

Public Meeting - Zoning Board Decision

Mr. Beal MOVED to grant a Special Permit to formalize an existing Greyhound rescue and adoption operation as a Home Occupation under Section 5.013 of the Zoning Bylaw, at 145 North Whitney Street. Ms. Greenbaum seconded the motion.

For all of the reasons stated herein, the Board VOTED unanimously to DENY the request.

 ERIC BEAL	 HILDA GREENBAUM	 TOM EHRGOOD
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FILED THIS 30th day of November, 2012 at 11:19 A.M.,
in the office of the Amherst Town Clerk Jandra G. Burger

TWENTY-DAY APPEAL period expires, December 20, 2012.

NOTICE OF DECISION mailed this 30th day of November, 2012 56
to the attached list of addresses by Jeffrey R. Bagg, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2012,
in the Hampshire County Registry of Deeds.

BOARD OF APPEALS
AMHERST, MASSACHUSETTS
RECORD OF APPEALS AND DECISION RENDERED

Petition of Christopher & Lisa Packard

For Special Permit to formalize an existing Greyhound rescue and adoption operation, as a Home Occupation, under Section 5.013 of the Zoning Bylaw

On the premises of 145 North Whitney Street
At or on (Map 11D, Parcel 175, R-G Zoning District)

NOTICE of hearing as follows mailed (date) August 17, 2012
to attached list of addresses and published in the Daily Hampshire Gazette
dated August 21, 2012 and August 28, 2012

Hearing date and place September 4, 2012 (Town Room)

LEGAL NOTICE
The Amherst Zoning Board of Appeals will meet on *Tuesday, September 4, 2012*, at 6:30 PM. In the TOWN ROOM, Town Hall, to conduct the following business:
PUBLIC HEARING:
ZBA FY2013-00005 - Christopher & Lisa Packard - For a Special Permit to formalize an existing Greyhound rescue and adoption operation, as a Home Occupation, under Section 5.013 of the Zoning Bylaw, at 145 North Whitney Street (Map 11D-Parcel 175, R-G Zoning District)
ZBA FY2013-00004 - Deborah & Ronnie Gilmore - For a Special Permit to create a Supplemental Apartment within a new addition to an existing Single Family Dwelling, under Section 5.011 of the Zoning Bylaw, at 38 Mount Holyoke Drive (Map 20A, Parcel 105, R-N Zoning District)
Eric Beal, Chair
Amherst Zoning Board of Appeals
August 21, 28
3229262

SITTING BOARD and VOTE TAKEN:

To grant a Special Permit to formalize an existing Greyhound rescue and adoption operation as a Home Occupation under Section 5.013 of the Zoning Bylaw, at 145 North Whitney Street.

Eric Beal – NO Hilda Greenbaum – NO Tom Ehrgood – NO

DECISION: Application **DENIED**, as stated in the decision

Town of Amherst Abutter List

<u>Parcel ID</u>	<u>Parcel Address</u>	<u>Owner1</u>	<u>Owner2</u>	<u>Address</u>	<u>City/Zip</u>
11D-221	CANTON AVE	CLARK, PAULINE E		3079 CHESTNUT ST	RIVERSIDE, CA 92501
11D-189	CANTON AVE	FABOS, JULIUS GY & EDITH		45 CANTON AVE	AMHERST, MA 01002
11D-195	23 CANTON AVE	CLARK, PAULINE E		3079 CHESTNUT ST	RIVERSIDE, CA 92501
11D-185	24 CANTON AVE	DRAKE, CHARLES & DORIS (LIFE ESTATE)	DRAKE, DAVID FRANCIS & ET AL	24 CANTON AVE	AMHERST, MA 01002
11D-186	34 CANTON AVE	FRASIER, STEPHEN JAMES	LOMANTO, SUZANNE K	34 CANTON AVE	AMHERST, MA 01002
11D-220	39 CANTON AVE	LITTLE, MICHAEL & MUKUNDA, KEERTHI	C/O KENDRICK PROP MINGMT INC	1185 NORTH PLEASANT ST	AMHERST, MA 01002
11D-187	40 CANTON AVE	HART, JOAN M TRUSTEE		P.O. BOX 2188	AMHERST, MA 01004-2188
11D-194	43-45 CANTON AVE	FABOS, JULIUS GY & EDITH		45 CANTON AVE	AMHERST, MA 01002
11D-138	HARVARD AVE	GROSS, MEIR		16 HARVARD AVE	AMHERST, MA 01002
11D-139	7 HARVARD AVE	TRIPP, TODD M & WAITE, SUSAN M		7 HARVARD AVE	AMHERST, MA 01002
11D-154	16 HARVARD AVE	GROSS, MEIR		16 HARVARD AVE	AMHERST, MA 01002
11D-153	19 HARVARD AVE	DOWD, KIMBERLY A	C/O EAGLE CREST	73 MAIN ST	AMHERST, MA 01002
11D-176	34 HARVARD AVE	ROSS, DAVID S & MYRA		34 HARVARD AVE	AMHERST, MA 01002
11D-214	45 HARVARD AVE	HART, JOAN M		P.O. BOX 2188	Amherst, MA 01004-2188

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/Zip</i>
11D-188	46 HARVARD AVE	HART, JOAN M TRUSTEE		P.O. BOX 2188	AMHERST, MA 01004-2188
11D-135	HIGH ST	ROEPER, THOMAS	HOLLAND, LAURA J	149 HIGH ST	AMHERST, MA 01002
11D-140	129 HIGH ST	PREMILA NAIR		129 HIGH ST	AMHERST, MA 01002
11D-137	143 HIGH ST	AUGUSTINE, ANN T		143 HIGH ST	AMHERST, MA 01002
11D-136	149 HIGH ST	ROEPER, THOMAS	HOLLAND, LAURA J	149 HIGH ST	AMHERST, MA 01002
11D-133	153 HIGH ST	SCHWARTZ, GREGORY M & NANCY S		153 HIGH ST	AMHERST, MA 01002
11D-179	119 NORTH WHITNEY ST	JOY, ROBERT J & JEAN E		207 SNELL ST	AMHERST, MA 01002
11D-152	124 NORTH WHITNEY ST	LA COUR, NIELS PIERRE & SARAH COLLINS		124 NORTH WHITNEY ST	AMHERST, MA 01002
11D-178	125 NORTH WHITNEY ST	BAK, JOHN J JR & MARION C		125 NORTH WHITNEY ST	AMHERST, MA 01002
11D-177	133 NORTH WHITNEY ST	STAPLETON, WILLIAM T	SOUZA, ELIZABETH H	133 NORTH WHITNEY ST	AMHERST, MA 01002
11D-175	145 NORTH WHITNEY ST	PACKARD, CHRISTOPHER J		18 GREENWOOD AVE	HOLYOKE, MA 01040
11D-174	147 NORTH WHITNEY ST	CLAY, WHARTON CLEMENT & ROSS, TIFFANY	C/O CLAY, WHARTON CLEMENT & TIFFANY R	147 NORTH WHITNEY ST	AMHERST, MA 01002
11D-155	150 NORTH WHITNEY ST	TULENKO, LINDA J		150 NORTH WHITNEY ST	AMHERST, MA 01002
11D-173	165 NORTH WHITNEY ST	BAILEY, BENJAMIN H & RUESCHEMEYER, JULIA		165 NORTH WHITNEY ST	AMHERST, MA 01002
11D-157	166 NORTH WHITNEY ST	O'NEIL, GERALD T	O'NEIL, LORRAINE M	166 NORTH WHITNEY ST	AMHERST, MA 01002

<i>Parcel ID</i>	<i>Parcel Address</i>	<i>Owner1</i>	<i>Owner2</i>	<i>Address</i>	<i>City/State/Zip</i>
11D-158	174 NORTH WHITNEY ST	BANKS, KEVIN W		174 NORTH WHITNEY ST	AMHERST, MA 01002
11D-172	179 NORTH WHITNEY ST	SWEETING, JAMES E N & AMY B R		179 NORTH WHITNEY ST	AMHERST, MA 01002