

STATE OF NEW HAMPSHIRE

TOWN OF WILTON

WILTON ZONING BOARD OF ADJUSTMENT

MOTION OF HEIDI BLACKMER ROBICHAUD  
FOR REHEARING OF DECISION OF  
ZONING BOARD OF ADJUSTMENT TO VACATE THE  
NOTICE OF ZONING VIOLATION AND CEASE AND DESIST ORDER  
ISSUED BY THE WILTON BOARD OF SELECTMAN

Heidi Blackmer Robichaud (the “Movant”), resident of the Town of Wilton, residing at 242 Old County Farm Road, Wilton, New Hampshire, respectfully moves the Wilton Zoning Board of Adjustment (“ZBA”) for a rehearing on the decision of the ZBA, whereby it found that the Wilton Board of Selectmen (the “Board of Selectmen”) was in error when it issued a Notice of Zoning Violation and Cease and Desist Order on March 14, 2007, which asserted that Roger and Sabrina Hatfield were conducting a commercial enterprise on Lot C-4-1, 1 Victoria Lane, in the General Residential and Agricultural District of the Town of Wilton. The decision of the ZBA is incorrect, and the facts do not support its findings.

This Motion is made pursuant to New Hampshire Revised Statutes Annotated (“NH RSA”) 677:2. In support of this Motion, the Movant states as follows:

BACKGROUND

I. On March 14, 2007, the Wilton Board of Selectmen issued a Notice of Zoning Violation and Cease and Desist Order requiring the Hatfields to discontinue the commercial enterprise that they were conducting at their place of residence on Lot C-4-1, 1 Victoria Lane, in the General Residential and Agricultural District in the Town of Wilton.

II. The Hatfields filed an appeal with the ZBA, asserting that their alleged hobby of dog breeding on their residential property is permitted under Section 5.3.1.1 of the Wilton Zoning Ordinance (“Zoning Ordinance”) without a special exception. Alternatively, the Hatfields sought a special exception pursuant to Section 5.3.1 of the Zoning Ordinance, which they argued would allow their dog breeding as a permissible home occupation.

III. The ZBA held a public hearing and heard the appeal on April 10, 2007. Following public comment and ZBA deliberations, by a vote of 3-2, the ZBA found that the Hatfields’ dog breeding operation was not a commercial activity as envisioned by the Zoning Ordinance, but is a hobby, and that the Wilton Board of Selectmen therefore erred by issuing the Cease and Desist Order.

IV. Pursuant to NH RSA 677:2, a timely motion for rehearing must be filed with the ZBA by May 10, 2007.

V. Pursuant to NH RSA 677:2, the ZBA may grant a rehearing if “good reason for [the rehearing] is stated in the motion.” Based upon the following, good reason supports the Motion.

#### RULING OF ZONING BOARD OF ADJUSTMENT AND GROUNDS FOR REHEARING

A. ZBA ruled that the Hatfields’ dog breeding operation was not a commercial activity (i.e., a “home occupation,” as defined by Wilton Zoning Ordinance Section 3.1.12), even though the Hatfields’ venture has all of the trappings of a “business.”

#### Grounds for Rehearing:

1. Sections 5.3.1 and 5.3.1.1 of the Zoning Ordinance apply where a “home occupation” is conducted within a building that is primarily used as a dwelling. Wilton Zoning Ordinance § 5.3.1 (2007); Wilton Zoning Ordinance § 5.3.1.1 (2007).

2. The Zoning Ordinance defines “home occupation” as “[a] *business* operated in a building that is incidental and subordinate to the use of the building or lot for residential purposes in compliance with the criteria established for home occupations in section 5.3.1 and 6.6.1 of this Ordinance.” Wilton Zoning Ordinance § 3.1.12 (2007) (emphasis added).

3. The New Hampshire Supreme Court recognizes that the ordinary rules of statutory construction govern the analysis of a zoning ordinance. See Sundberg v. Greenville Bd. of Adjustment, 144 N.H. 341, 344 (1999). Accordingly, ordinary words that are not defined by a zoning ordinance are given their common meaning. Id. To define the plain meaning of a word, the New Hampshire Supreme Court states that the examining body should turn to Webster’s Third New International Dictionary, id., which defines “business” as “commercial or mercantile activity customarily engaged in as a means of livelihood and typically involving some independence of judgment and power of decision.” Webster’s Third New International Dictionary 302 (2002).

4. In spite of the Hatfields’ best efforts to label their dog breeding venture as a mere hobby, the undeniable facts reveal a stark distinction between their conduct and what can be reasonably described as a recreational pursuit. For one, the number of dogs that the Hatfields board and the facilities that they use to house the animals demonstrate that this undertaking is, in fact, much more than a simple, family activity—it is an elaborate, meticulously designed business. While the Hatfields state that they own seven dogs as family pets—a collection of domesticated animals that would be excessive by most ordinary family standards—they admitted at the April 10, 2007 hearing that they are currently boarding 14 dogs. Meanwhile, at the Hatfields’ property, in addition to their residence, they have two 10’ x 20’ buildings, each of which holds five dog kennels per building and is equipped with a 8’ x 20’ run for the dogs.

5. In addition to the several dogs that they board on their property and the substantial dog-related facilities that they have, there is other evidence that demonstrates the strong business motives behind the Hatfields’ dog breeding. As the ZBA is aware, the Hatfields advertise the sale of their litters in dog club brochures and on the Internet. These puppies are then sold for the

princely sum of \$1,200 to \$2,200, depending upon whether the particular puppy is purchased for breeding or as a pet. Even at \$1,200 per puppy, it is irrefutable that the Hatfields profit from this venture. Also of note is that prior to the Hatfields' recent modifications to their website, the website contained a link to PayPal--the popular third-party operated credit card payment company. As Mr. Hatfield explained at the April 10th hearing, this was done so people could buy their dogs in a convenient way. The implication of this unintended concession is that the Hatfields' aim to provide good customer service and to employ sound business strategies.

6. Further revelations about the Hatfields' attitude toward their dogs are exposed by the fact that when the Hatfields' dogs reach the age of seven, the Hatfields retire the dogs from breeding and try to find new homes for the animals. This practice is clearly inconsistent with any suggestion that the dogs are maintained as pets, and can only be explained by the business sense that it makes. When a Hatfield dog is no longer usable for breeding, the dog has a greatly diminished value to the family and becomes a disposable asset that the business tries to eliminate. The Hatfields are engaged in an organized business plan by which they carry out their so-called "hobby" of breeding.

7. Showing dogs is a hobby. Breeding dogs is a business, not a hobby. The undeniable purpose is to produce a litter of puppies that can be sold. A distinction could be drawn if the dogs were bred and then the entire litter was shown at dog shows, but that is not the Hatfields' practice. Regardless of the Hatfields' motives for breeding dogs, their strategic approach to breeding and selling dogs demonstrates the obvious business element of this endeavor.

8. Although the Hatfields referenced RSA 437:2(I-a) and its definition of "commercial kennel" at the April 10th hearing, as Andy Hoar (alternate member of the Wilton ZBA) observed during the ZBA deliberative session, how the state regulates commercial dog kennels under RSA 437:2 is irrelevant to the issue of whether the Hatfields are involved in a commercial enterprise (i.e., a "home occupation") under the Zoning Ordinance. (ZBA Minutes, Apr. 10, 2007 at 6.)

9. Section 5.3.1.1 of the Zoning Ordinance states, in part, that home occupation "shall occupy no more than 20% of the existing, gross heated floor area of the primary residence or the structure in which the home occupation is operated." Wilton Zoning Ordinance § 5.3.1.1 (a) (2007). The Hatfields' are in breach of this provision. Additionally, at the April 10th hearing, Mr. Hatfield conceded that customers arrive at his residence to purchase puppies. The Hatfields are also in breach of Section 5.3.1.1 (b). Thus, it was proper for the Board of Selectmen to issue the Notice of Zoning Violation and Cease and Desist Order.

10. Finally, Section 5.3.1 of the Zoning Ordinance provides, in part, that "Home Occupations shall be conducted in accordance with all Town regulations, state laws and licensing requirements." Wilton Zoning Ordinance § 5.3.1 (h). Elsewhere, the Zoning Ordinance provides that "[w]hen a business outgrows the standards established for a home occupation, it must relocate into a commercial or industrial district." Wilton Zoning Ordinance § 5.3.1 (i). The Hatfields are in breach of these provisions. Thus, it was proper for the Board of Selectmen to issue the Notice of Zoning Violation and Cease and Desist Order.

## CONCLUSION

The ZBA unreasonably and erroneously found that the Hatfields' dog breeding activities are not commercial in nature, and therefore not a "home occupation," as defined by the Wilton Zoning Ordinance. The ZBA ignored the great weight of the evidence, which should have led the ZBA to the contrary finding. The Wilton Board of Selectmen was justified in issuing the Notice of Zoning Violation and Cease and Desist Order relating to the Hatfields.

WHEREFORE, the Movant respectfully moves for a rehearing of the Appeal of Mr. and Mrs. Roger and Sabrina Hatfield and, after rehearing, respectfully requests that this Board deny the Appeal and uphold the decision of the Board of Selectmen.

Dated: May 10, 2007

  
Heidi Blackmer Robichaud

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## Town of Wilton, NH Request for a Rehearing Application, Page 2 of 3

### Representative

Fill out this section if the application is being submitted by a realtor, surveyor, engineer, attorney, etc., on behalf of the applicant.

Name Karen McGinley

Mailing address 111 Amherst Street

Mailing address \_\_\_\_\_

Town, State, ZIP Manchester, NH 03101

I authorize the above-named representative to submit this application and to speak before the Zoning Board on my behalf.

Signature of requestor Deisi B. Robichaud Date 5/10/07

### Contact Information

How can we get in touch with the applicant or the applicant's representative, if there are questions or problems about the application? Provide at least one of the following. If you provide more than one, please check your preferred form of contact.

This information is for:  the applicant  the representative.

Daytime phone (603) 695-8569

Evening phone \_\_\_\_\_

Work E-mail kmcginley@devinemillimet.com

Personal e-mail \_\_\_\_\_

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# Town of Wilton, NH Request for a Rehearing Application, Page 1 of 3

## Case Information

ZBA Case Number of the original application: case # 4/10/07-1 Hatfield

If the original application included more than one specific application, which ones does this request apply to? see attached

## Requestor

Information about the person who is requesting the rehearing.

Name Heidi Blackmer Robichaud

Mailing address 242 Old County Farm Road

Mailing address \_\_\_\_\_

Town, State, ZIP Wilton, NH 03086

You are (check one):

- the original applicant
- the owner of the property
- the Board of Selectmen
- an abutter or other party who was required to be notified of the original application
- a party directly affected by the decision

If you checked the last box, explain how you are directly affected by the decision: \_\_\_\_\_

LIVING WITHIN SOUND RANGE

I certify that to the best of my knowledge and belief, all information provided in this application is accurate.

Signature Heidi B. Robichaud Date 05-10-07

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<b>clerk use only</b>	
Date and time received: _____	
Received by: _____	Amount paid: _____
<input type="checkbox"/> Abutter labels included	



# Town of Wilton, NH Request for a Rehearing Application, Page 3 of 3

## Details of Request

You are requesting that the Zoning Board reconsider (check one):

- its approval of the application
- its denial of the application
- the conditions, restrictions, or modifications it imposed when it approved the application

## Reasons for a Rehearing

A motion for rehearing made under RSA 677:2 shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable. No appeal from any order or decision of the zoning board of adjustment, a board of appeals, or the local legislative body shall be taken unless the appellant shall have made application for rehearing as provided in RSA 677:2; and, when such application shall have been made, no ground not set forth in the application shall be urged, relied on, or given any consideration by a court unless the court for good cause shown shall allow the appellant to specify additional grounds. (RSA 677:3)

Why do you believe that the Zoning Board should hold a new hearing?

Reasons for a rehearing usually fall into two categories:

- You have additional evidence or information that you believe might change the decision.
- The Zoning Board made mistakes in how it applied the law (state law, case law, or the Zoning Ordinance) to the facts of the case.

Parties to a zoning case are expected to have prepared their case before the hearing. Therefore, if you are requesting a rehearing to present new evidence or information, you should explain why you couldn't have presented that evidence or information at the original hearing.

**The Zoning Board will usually not grant a rehearing to consider evidence that could have been presented at the original hearing.**

Set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable (use this page; attach additional pages as necessary):