

ZONING BOARD OF APPEALS
TOWN OF EAST HAMPTON



In the Matter of the Appeal

of

DETERMINATION

LORI MARSDEN

Appeal of Building Inspectors Determination
Dated July 11, 2018

SCTM #300-91-2-6

HEARING DATE: January 29, 2019

PRESENT: JOHN WHELAN, Chair
ROY DALENE, Vice-Chair
THERESA BERGER
TIM BRENNEMAN

ALSO PRESENT: ELIZABETH L. BALDWIN, ESQ., Counsel to the Board
BRITTANY MacVITTIE, Clerk Typist
CARL IRACE, ESQ., Attorney for Applicant
LORI MARSDEN, Applicant
JOHN COLLIER, Neighbor
RANDALL PARSONS
JOYCE McFADDEN
YUKA SILVERA

FINDINGS OF FACT AND DETERMINATION OF THE BOARD

The findings of fact and determination made herein are based upon the application, the evidence received at the public hearing before the Board, all documents contained in the Board's files and which were received prior to the close of the hearing, and the inspection and field report made by Member Brenneman of this Board.

A. PROJECT DESCRIPTION

1. **PURPOSE OF APPLICATION:**

An appeal of the Chief Building Inspector pursuant to § 255-8-35 of the Town Code.

2. **RELIEF OR APPROVAL SOUGHT:**

Appellants seek to challenge the determination of the Principal Building Inspector dated July 11, 2018 which determined that the pet sitting business use at the subject premises was not a Home Occupation as defined by §255-1-20 of the Town Code.

B. PROPERTY SIZE & LOCATION

1. **STREET LOCATION:** 10 Saddle Lane
2. **HAMLET OR GEOGRAPHIC AREA:** East Hampton
3. **SUFFOLK COUNTY TAX MAP DESIGNATION:** #300-91-2-6

C. ZONING INFORMATION

1. ZONING DISTRICT: A Residence
2. ZONING OVERLAY DISTRICT: WROD

D. SEORA DETERMINATION

1. SEORA CLASSIFICATION: Type II
2. LEAD AGENCY: N/A
3. DETERMINATION OF SIGNIFICANCE: N/A
4. DATE OF DETERMINATION: N/A

E. ADDITIONAL FINDINGS AND CONCLUSIONS

1. This is an appeal of a determination from the Principal Building Inspector dated July 11, 2018 (the "determination") regarding the property located at 10 Saddle Lane, East Hampton. Said determination was made pursuant to a request by the Appellant dated June 18, 2018. Appellant inquired as to whether a dog-walking and pet sitting business taking place in a single family residence located within a residential zone is a Home Occupation pursuant to §255-1-20 of the Town Code.
2. In her determination, the Principal Building Inspector found that the Appellant's pet sitting business does not qualify as a Home Occupation pursuant to the East Hampton Town Code. The Principal Building Inspector noted that because the business produces external evidence of the business it did not meet the requirements set forth in the definition of Home Occupation (§255-1-20).
3. In order to qualify as a Home Occupation, pursuant to §255-1-20 of the Town Code, the business must meet the following definition:

HOME OCCUPATION: Any gainful activity customarily conducted within a dwelling unit by the residents thereof which is clearly secondary to the residential use and which does not otherwise change the character of the building as a residence. Such activity shall be deemed a "home occupation" only if the following requisites are met:

A. The area devoted to the activity shall not exceed 25% of the gross floor area of the dwelling unit, or 500 square feet, whichever is less.

B. The activity shall be conducted solely by resident members of the family occupying the dwelling unit, except that up to one additional person may be employed who is not a member of the resident family.

C. There shall be no external evidence of the activity, including audible noise, other than one announcement sign of a type authorized by this chapter.

Notwithstanding the above, no clinic, hospital, restaurant, breeding kennel, or antique dealer shall be considered a "home occupation." In addition, no retail shop shall be considered a "home occupation"; provided, however, that the business of a private consultant shall be considered a "home occupation," even if it involves the incidental sale of goods or merchandise to clients (e.g., as by a fashion or computer consultant), if (a) the consultant is available to clients only on an individual basis and by prior appointment; (b) the business is neither open to the general public on a walk-in basis nor holds itself to be so; (c) the home is located within a Limited Business Overlay District; and (d) the Town Board shall have accepted a duly executed and acknowledged document in form acceptable to the Town Attorney, which includes a floor plan of the entire premises and identifies the portion used for the private consulting business, and pursuant to which the consultant (i) represents and agrees to operate the consulting business in accordance with the floor plan and this definition of "home occupation," and (ii) grants the Town Building Inspector and Code

Enforcement Officer permission to enter and inspect the premises during regular business hours for the purpose of ascertaining the consultant's compliance with this definition of "home occupation." Activities carried on by a resident which are connected with produce of the seas, bays or harbors caught or dug by him, including storage of boats and gear, spreading and mending of nets and other gear, and sale of such produce so gathered, shall constitute a "home occupation."

4. In her determination, the Principal Building Inspector found that the pet sitting business failed to meet paragraph C of the Town Code definition whereby she noted,

With regard to the pet sitting (boarding kennel, either on a daily basis or overnight), you mentioned in your letter that patrons leave different pets at the residence. Clearly, this would produce external evidence of the pet sitting business, such as time periods when the dogs are taken out of the residence, whether for walks, playtime or to relieve themselves (daytime or nighttime).

5. The Board respectfully disagrees with the Principal Building Inspector's determination. The Board finds that the dog walking/pet sitting business operated by the Appellant meets the definition of Home Occupation found in §255-1-20 of the Town Code. The Board finds that the evidence in the record supports the Home Occupation use of the property. Specifically, the Board found it compelling that the use does not change the character of the neighborhood and is secondary to the residential use of the property. Moreover, it was not demonstrated that there was any external evidence of the business operation. During his site visit, Member Brenneman noted that there were not kennels outside or other evidence of the dogs.
6. While a neighbor did submit a video to the record which depicts dogs barking, the video does not depict whose dogs are barking. It cannot be determined from the video whether the dogs barking are the Appellant's dogs, dogs she is pet sitting for or even if they are dogs on the Appellant's property. As it is impossible to determine what dogs are barking and where, the Board does not find the video persuasive. During the public hearing, the Appellant mentioned that she has two dogs. The Board finds that there is no evidence that the activities by dogs from the pet sitting business can be distinguished from the use of the residence by the appellant's own dogs.
7. Also compelling to the Board is that the Town Code specifically excludes a "breeding kennel" from the definition of home occupation and not a boarding kennel. Finally, The Board notes that this use is not a commercial animal establishment or commercial kennel. The appellant is not breeding or selling animals from the residence, nor is she providing any grooming services.

G. DISPOSITION OF APPLICATION

For the reasons set forth herein, the Board makes the following determination with respect to the application:

RELIEF OR APPROVAL GRANTED:

The determination of the Principal Building Inspector dated July 11, 2018, which determined that the pet sitting business use at the subject premises was not a Home Occupation as defined by §255-1-20 of the Town Code is hereby overturned. The Board finds that the use of the property, as described in the record, is a Home Occupation as defined by the Town Code in §255-1-20.

745

H. VALIDITY OF APPROVAL

If any condition of this determination is not met, or is not met within the prescribed time period, all approvals, permits, or authorizations granted hereby shall be deemed void and of no effect.

ALL CONCUR

JOHN WHELAN, Chair
ROY DALENE, Vice Chair
THERESA BERGER
TIM BRENNEMAN

Dated: March 19, 2019
cc: Building Department
Planning Department
Carl Irace, Esq.