

ZONING BOARD OF ADJUSTMENT  
268B MAMMOTH ROAD  
LONDONDERRY, NH 03053

DATE: APRIL 21, 2010

CASE NO.: 4/21/2010-2

APPLICANT: SHAUN AND KARI MILLIGAN  
79 HOVEY ROAD  
LONDONDERRY, NH 03053

LOCATION: 79 HOVEY ROAD, 13-142-88, AR-I

BOARD MEMBERS PRESENT: MATTHEW NEUMAN, ACTING CHAIR  
NEIL DUNN, VOTING MEMBER  
JIM SMITH, VOTING MEMBER  
JOE GREEN, VOTING ALTERNATE  
JAY HOOLEY, NON-VOTING ALTERNATE  
LARRY O'SULLIVAN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING OFFICER

REQUEST: SPECIAL EXCEPTION TO ALLOW A FAMILY GROUP DAYCARE AS A HOME OCCUPATION IN ACCORDANCE WITH THE PROVISIONS OF SECTION 3.12.2.

PRESENTATION: Case No. 4/21/2010-2 was read into the record with one previous case listed.

KARI MILLIGAN: Hi, I'm Kari Milligan. I'm here hoping to change my current zoning of a family home day care to a group day care. I will be only accepting younger children that will not be going outside, so it will not affect the noise. I'm hoping to hire an employee that can take care of my younger group of children. That way I could conduct my preschool-aged group more... I could be more academic with my older children. I think I'm only going to take four (4) more children at the most, so I don't see that it will change too much of my current traffic that I have.

MATT NEUMAN: Okay. If you wanna just read through your app...

KARI MILLIGAN: I don't have it, so I'll ask for a copy from Jaye. Thanks.

JAYE TROTTIER: Yup.

KARI MILLIGAN: So, I think I already stated what I was hoping to accomplish here. I said that I'm licensed now and I'm going to upgrade my license through the State. My hours of operation are Monday through Friday, seven (7:00) to six (6:00) PM. I will not be asking for a sign. Do you want me to read off my total living space and everything?

MATT NEUMAN: You can go right through that. That's okay.

KARI MILLIGAN: Okay. My total living space is two thousand, four hundred and sixty (2,460) square feet and the living space used will be four hundred and sixty eight (468). My percentage is nineteen (19) percent. The home occupation will be carried on...it will be in my home. We do have a fenced-in play area in the backyard. There will be no changes to my exterior. Only my family lives at my house. I will be asking for one (1) employee, though, like I said. So, I do not know if there's anything else you'd like from my application. Any questions?

NEIL DUNN: How big is your fenced-in area?

KARI MILLIGAN: Boy, it's pretty...[looks to her husband in the audience] He's the math guy.

NEIL DUNN: Richard, if I may, isn't there a square footage thing for the number of children or occupants or whatever the term is...

RICHARD CANUEL: Yeah, there is.

KARI MILLIGAN: There is.

RICHARD CANUEL: Yeah, there's a square foot area minimum requirement per child in the building.

LARRY O'SULLIVAN: But not in the yard.

RICHARD CANUEL: Not necessarily outside.

NEIL DUNN: Oh, okay.

KARI MILLIGAN: He's doing the math. Yes, I'm going to be licensed, so anything that the State requires from me, I will comply to.

SHAUN MILLIGAN: I think it's thirty (30) feet by seventy (70).

KARI MILLIGAN: Did you hear that? Thirty (30) by seventy (70).

MATT NEUMAN: But that is fenced in?

KARI MILLIGAN: Fenced in, yeah.

MATT NEUMAN: With a gate?

KARI MILLIGAN: With a gate. Two (2) gates.

MATT NEUMAN: How far away from the house is it?

KARI MILLIGAN: Probably a few...

SHAUN MILLIGAN: About a hundred (100) feet? I'm sorry, about fifty (50) feet.

MATT NEUMAN: And what's the maximum amount of kids that you'd like to care for?

KARI MILLIGAN: Right now as I'm licensed, I'm allowed to have six (6) children that are preschool aged and three (3) full time students, school aged children. So, I will be having an employee and four (4) more preschool aged children.

JOE GREEN: Thirteen (13).

JIM SMITH: What's the total?

KARI MILLIGAN: So, six, eight...ten (10) preschool aged children and three (3) school aged children.

JIM SMITH: So a total of thirteen (13)?

KARI MILLIGAN: Yes.

LARRY O'SULLIVAN: So, basically, your hours aren't changing.

KARI MILLIGAN: No. Unfortunately.

MATT NEUMAN: Is your driveway gonna be able to handle the additional?

KARI MILLIGAN: I think so. My plan is to print out the layout that I've given to the Town. I don't know if you have copies of it in front of you...

MATT NEUMAN: Mm-hmm.

LARRY O'SULLIVAN: A hand drawn. We have the hand drawn.

KARI MILLIGAN: I'd like to have it...I'm going to make a little diagram for the parents and ask that, you know, they park in those suggested spaces. If you see, there's a front portion that's jutting out? That is where I'm going to have my husband park so that area will be free to use as an additional

space. So far it hasn't caused any trouble because parents come at all different times normally. You know, most of the time. All of the parents don't come at once and leave at once. And that being said, some of my families have multiple children, so, there will not be a parent per child. If that makes sense.

LARRY O'SULLIVAN: Or one (1) driver. They may have more than one (1) child per car.

KARI MILLIGAN: Right, has siblings, two (2) children or...

LARRY O'SULLIVAN: Mm-hmm.

KARI MILLIGAN: Yeah.

MATT NEUMAN: And the employee that you were talking about hopefully hiring, it's gonna be a full time person?

KARI MILLIGAN: I haven't decided if it will be two (2) part time people or one full time person.

JOE GREEN: A family member?

KARI MILLIGAN: Is that a problem?

MATT NEUMAN: I don't...

JIM SMITH: Richard, am I reading this right? The Family Group Day Care, it should be limited to twelve (12), right?

JOE GREEN: Right.

RICHARD CANUEL: Mm-hmm.

KARI MILLIGAN: Is it...but that's just the preschool aged children.

JOE GREEN: Do you have any children of your own?

KARI MILLIGAN: I do. And so I include my son in the school aged child ratio...

JOE GREEN: In the count, okay.

KARI MILLIGAN: And my daughter, who is ten (10), does not count anymore according to the State.

JIM SMITH: So she's limited to twelve (12), right?

JOE GREEN: Including her child.

RICHARD CANUEL: Yeah.

JIM SMITH: Yeah.

RICHARD CANUEL: See, this shouldn't be considered a Family Group Day Care. It should be considered a Family Day Care, simply because under the Family Day Care criteria, she's allowed to have additional children who attend school outside of the normal day care.

JIM SMITH: Okay.

RICHARD CANUEL: The reason she's here requesting...submitting another application is because she was restricted to six (6) children by the first home occupation special exception that she received. So in order to do the full twelve (12), she had to come back here to this Board to change that restriction. As far as her licensing goes from the State, that's not gonna change. That's gonna be the same as it is now. She's allowed to have twelve (12) children now under her State license if she chooses to. That license will not change.

LARRY O'SULLIVAN: But she doesn't have that license yet.

RICHARD CANUEL: The only difference in the criteria...excuse me?

LARRY O'SULLIVAN: You don't have that license yet?

KARI MILLIGAN: I have not gotten the group day care license yet, nope.

RICHARD CANUEL: Yeah, she has a family...

KARI MILLIGAN: This is my first step.

RICHARD CANUEL: Yeah, she has a Family Day Care license now.

KARI MILLIGAN: Right.

RICHARD CANUEL: Yeah, so...

LARRY O'SULLIVAN: Okay.

JOE GREEN: But how do we get around that one (1)? Because there's thirteen (13) and it clearly states twelve (12).

RICHARD CANUEL: What I would say is, if the Board so chooses, is to grant her a special exception to allow a Family Day Care and allow up to twelve (12) children.

JIM SMITH: No, but she's asking for thirteen (13), though.

KARI MILLIGAN: Well, I'm asking for what the State allows.

JIM SMITH: No, we're looking at what our local zoning regulations state.

KARI MILLIGAN: It's my understanding that it was twelve (12) or ten (10) preschool aged children and still the same amount of school aged children. I wish I would brought...

JOE GREEN: Just so you know, it defines it...

RICHARD CANUEL: I'm sorry, I thought she was asking for twelve (12). I'm sorry.

JOE GREEN: Okay, it defines it as "care of seven (7) to twelve (12) children from one (1) or more unrelated families, including children under six (6) years old who live in the home and other [sic] related to the applicant." So that's the way it...

KARI MILLIGAN: That's fine, we'll do twelve (12).

JOE GREEN: Just wanna make sure. It's three-dash-twelve (3.12).

RICHARD CANUEL: Yup.

KARI MILLIGAN: Okay. Yes.

JIM SMITH: Okay. Just so we...

KARI MILLIGAN: I'm a rule abiding lady, so...

JIM SMITH: Yeah. I wanna make sure you understood.

KARI MILLIGAN: There will be no problems.

LARRY O'SULLIVAN: So if we limited, gave you a maximum of twelve (12) children...

KARI MILLIGAN: Mm-hmm.

LARRY O'SULLIVAN: ...whether they're a mix of preschool or school age, your State requirements are one thing and your Town requirements are a different one.

KARI MILLIGAN: Okay.

LARRY O'SULLIVAN: Okay? Right?

NEIL DUNN: So, Richard, say that again. She's applying for a Family Group Day Care and you think it should be something else? Or no?

RICHARD CANUEL: I think, under our criteria, the special exception should be for a Family Day Care. If it's Family Group Day Care, then she's only limited to preschool aged children, where under the Family Day Care, she's allowed to have school aged children which are not there during the day, they only come and go. There's two different criteria there, so, if we establish her as a Family Group Day Care, then she's only limited to preschoolers, basically.

NEIL DUNN: But then a Family Day Care doesn't give her twelve (12) people, the way I'm reading it. It's the "care of three (3) to six (6) children from one (1) or more unrelated families."

JIM SMITH: That would drop it to nine (9).

KARI MILLIGAN: The group day care is the larger amount of children, yeah. And then the Family Day Care is what I currently have.

JIM SMITH: You're six (6) plus three (3) on the family...

LARRY O'SULLIVAN: But as soon as you go group, it's all under six (6).

KARI MILLIGAN: That's all under six (6)?

LARRY O'SULLIVAN: Yeah.

KARI MILLIGAN: Then I would just use those slots that could be preschool aged children for my school aged children. But it would stay within the ratio allotted. If that makes sense.

LARRY O'SULLIVAN: Are we reading that right, Richard?

JOE GREEN: No, I don't think so.

NEIL DUNN: No, no. No, I think it's saying seven (7) to twelve (12), it's not...the under six (6) limitation is on her own children or related to the applicant.

LARRY O'SULLIVAN: To mean to include the...

RICHARD CANUEL: No, that...it can either/or. It could be those related to or unrelated to the applicant.

NEIL DUNN: Well, a Family Group Day Care, the "care of seven (7) to twelve (12) children from one (1) or more unrelated families, *including* children under six (6) years old who live in the home" and are...

RICHARD CANUEL: Right.

NEIL DUNN: So there's no...I don't see where the age thing kicks in on the Family Group Day Care.

JOE GREEN: It doesn't.

NEIL DUNN: Except for her own children.

RICHARD CANUEL: Under the Family Group Day Care, she's limited to children under the six (6) years of age.

NEIL DUNN: No, only ones that are...

RICHARD CANUEL: By our ordinance.

NEIL DUNN: "[...]including children under six (6...who live in the home."

RICHARD CANUEL: Right.

NEIL DUNN: It's not referring to the seven (7) to twelve (12) children.

RICHARD CANUEL: Mm-hmm.

NEIL DUNN: Is it?

JIM SMITH: Well, he's talking about the Family Day Care.

RICHARD CANUEL: Right. Yup. No, you look under the definition for the Family Group Day Care.

NEIL DUNN: Yeah, that's...

RICHARD CANUEL: She can have seven (7) to twelve (12) children from one (1) or more unrelated families, including children under six (6) years of age who live in the home, okay? Hmmm.

NEIL DUNN: So that's the one she should be in.

JOE GREEN: Yeah.

LARRY O'SULLIVAN: Yeah.

JOE GREEN: Absolutely.



RICHARD CANUEL: Yeah. I guess so. I guess...

NEIL DUNN: I just wanted to make sure we were....

RICHARD CANUEL: I guess as you reread it, yup.

JOE GREEN: Yup. Okay.

RICHARD CANUEL: Okay.

LARRY O'SULLIVAN: Good pick.

JOE GREEN: What are the times that you think everybody will be coming to drop off the children?

KARI MILLIGAN: My first parent comes at seven (7) normally, so that's normally when they start. They range from seven (7) to ten (10) o'clock in the morning that they arrive and normally, they begin picking the children up at four thirty (4:30), between four thirty (4:30) and six (6:00).

JOE GREEN: So, there's eight (8)...accommodates eight (8) vehicles. So, would you be able to stagger that in a way that...I mean, I don't see...I mean, you can kind of back out into that little...I guess that's why you made that, huh?

KARI MILLIGAN: Mm-hmm.

JOE GREEN: To kind of back out and turn around? So you can stagger it to the point where people are coming in earlier, seven (7:00), eight (8:00), nine (9:00).

KARI MILLIGAN: Yes, and I'm going to, like I said, write up a plan and ask the parents to follow my parking plan.

MATT NEUMAN: Have you had any issues with your current...?

KARI MILLIGAN: No, not really. My neighbors haven't said anything or complained. I've spoken to them and most...a lot of them that I've spoken to are like 'good luck.' So, I don't see that it's too disruptive.

MATT NEUMAN: No accidents or anything in front of your house.

KARI MILLIGAN: No accidents, no.

JOE GREEN: That's a pretty busy road...

MATT NEUMAN: Yeah, I drove by, it's...Any other questions from the Board at this time? Anyone in the audience who would like to come forward, either in favor or opposed to the request? Seeing none, I will bring it back to the Board and if you guys have any other questions that...

NEIL DUNN: Let me...I need a minute here, I think.

MATT NEUMAN: Alright.

NEIL DUNN: I'm looking at the layout. Sixteen (16) by twelve (12). Do you provide any food or stuff from the kitchen?

KARI MILLIGAN: Yes.

NEIL DUNN: But the kitchen's not included in your square foot total?

KARI MILLIGAN: No.

JOE GREEN: Do you think it should be?

KARI MILLIGAN: It's not been modified in any way to accommodate the children. It's still my household kitchen. It does not have any...

JOE GREEN: Yeah, we're just trying to determine if that should be included in the total usage. That's why the question was raised.

KARI MILLIGAN: Right.

JOE GREEN: Anybody have any feeling on that?

MATT NEUMAN: Richard, what are your thoughts on that as far as including the kitchen with any home day care?

RICHARD CANUEL: My thoughts are if she were bringing the children into the kitchen and feeding them there, then that area should be included as part of that home occupation. If she's simply preparing food in the kitchen and serving it elsewhere, wherever the day care is taking place, then I would exclude the kitchen from that.

NEIL DUNN: Thank you, Richard.

LARRY O'SULLIVAN: I don't believe we've added it before, unless somebody's volunteered it.

RICHARD CANUEL: Yeah.

NEIL DUNN: Yeah. Now it's just that we're getting into so many more kids and...

LARRY O'SULLIVAN: Right.

NEIL DUNN: ...the kitchen is right next to it all and...

LARRY O'SULLIVAN: It's not walled or anything, yeah.

NEIL DUNN: And I realize they have snacks and all that...

LARRY O'SULLIVAN: Yup.

NEIL DUNN: ...you're probably gonna wanna keep the mess in one area, but I was just trying to make sure we're dotting everything, checking everything.

MATT NEUMAN: Any other questions? Neil?

NEIL DUNN: I'm good.

MATT NEUMAN: Larry?

LARRY O'SULLIVAN: I'm set.

JOE GREEN: I'm all set.

MATT NEUMAN: Okay. Would anyone like to make a motion?

LARRY O'SULLIVAN: This is Jim's turn, I think.

NEIL DUNN: Are you going into deliberations, then? Is that...?

JAYE TROTTIER: Did you actually go into deliberations?

MATT NEUMAN: Oh, I thought we were in deliberations. I thought I pulled us back.

LARRY O'SULLIVAN: Why don't you do that then?

MATT NEUMAN: Let's go into deliberations.

[laughter]

DELIBERATIONS:

LARRY O'SULLIVAN: Do we have anything else to add? I think she's addressed the concerns, the...now I'm still not quite sure what we're gonna be calling this, so I'm not gonna make the motion, whether we use that word "group" or not, however, I would make it restricted based upon the updated license with the State because that has not happened yet. So, that would be a condition that I would put on it that the State license be in hand and approved.

NEIL DUNN: What were the conditions in the previous one? There was no on-street parking and...

LARRY O'SULLIVAN: The fenced area.

NEIL DUNN: The fenced area, so, the fenced area's there.

JOE GREEN: Yeah.

NEIL DUNN: And that's a requirement of the ordinance anyway, isn't it?

LARRY O'SULLIVAN: No.

NEIL DUNN: Oh, it's not?

LARRY O'SULLIVAN: We add that.

MATT NEUMAN: Nope.

LARRY O'SULLIVAN: We add that typically because there's so much wet and traffic nearby and it's just been something that we've done for the ten (10) years I've been here.

NEIL DUNN: Mmm.

MATT NEUMAN: I'm gonna come out of deliberations for a second because I just have one more questions for you. How often are you inspected by the State?

KARI MILLIGAN: Well, to obtain your first license, there's one visit and then there's your official visit. We also have to have a State...or a fire and health inspection. I'm insured by an insurance agency, so they inspect it.

MATT NEUMAN: But is there an annual inspection by the State?

KARI MILLIGAN: Yes. Well, no, I think it could be at any time...

RICHARD CANUEL: I can answer that.

KARI MILLIGAN: ...in three (3) years.

MATT NEUMAN: Oh, Richard can answer that.

RICHARD CANUEL: The licensing inspection is every three (3) years.

KARI MILLIGAN: Yeah.

MATT NEUMAN: It's every three (3) years?

RICHARD CANUEL: It's the initial license, then it's every three (3) years.

MATT NEUMAN: Alright, but...in applying for this new license, there will be an inspection?

KARI MILLIGAN: You have to go through all new inspections, yeah.

RICHARD CANUEL: That's right.

MATT NEUMAN: Okay. So I think that helps to address that. Thank you. We're gonna go back into deliberations.

NEIL DUNN: So we have no restrictions at this point, then?

LARRY O'SULLIVAN: No, but we're gonna continue the restrictions and the updated license is what I'm suggesting.

JIM SMITH: And a max of twelve.

LARRY O'SULLIVAN: Yeah, well, it depends on what you're gonna call it, but yeah. A max of twelve (12).

JIM SMITH: We decided it was...

MATT NEUMAN: I think it has to be.

JIM SMITH: Yeah.

LARRY O'SULLIVAN: No, I don't care what you call it. It's a max of twelve (12), it's a max of twelve (12). So, I mean, is there a significance to whether it's a group or no group?

MATT NEUMAN: Yeah, because it's...

LARRY O'SULLIVAN: Okay, so then if we say it's twelve (12), it's twelve (12) of either age, right?

NEIL DUNN: Under family group it can be that, yes.

JIM SMITH: Yeah.

NEIL DUNN: But if we went the other way, it would...there would be some...

LARRY O'SULLIVAN: Okay, so we're calling it a Family Day Care.

NEIL DUNN: As a Family Group Day Care, as applied for.

JOE GREEN: Yup.

LARRY O'SULLIVAN: Okay, so it is a Family Group Day Care.

MATT NEUMAN: Group, yes.

LARRY O'SULLIVAN: Okay.

JOE GREEN: So...

LARRY O'SULLIVAN: Do you want me to make the motion?

JOE GREEN: I can make it, that's fine.

LARRY O'SULLIVAN: Go ahead, Joe.

JOE GREEN: Okay. I'd like to make a motion to approve case number 4/21/2010-2 as a Family Day Care Group with the following restrictions: restricted based on the updated license and no on-street parking. That's it.

LARRY O'SULLIVAN: I'll second.

NEIL DUNN: And maintaining a fenced area?

LARRY O'SULLIVAN: Well, that's a given.

JOE GREEN: Right.

LARRY O'SULLIVAN: The fenced area.

NEIL DUNN: Well, we said it wasn't because it was an exception on the...

LARRY O'SULLIVAN: It was a requirement for the first one.

NEIL DUNN: Right, but won't this override the first one?

JIM SMITH: Yeah, you should probably include it.

MATT NEUMAN: Or maybe just a continuation of previous restrictions.

LARRY O'SULLIVAN: Okay, I'll withdraw my second. Joe will modify his original.

JOE GREEN: Okay. Okay, my motion to approve...I withdraw that, right?

LARRY O'SULLIVAN: Yup.

JOE GREEN: First, okay.

LARRY O'SULLIVAN: Yup, that's first. And now you have to do it again.

JOE GREEN: So, that's withdrawn. A motion to approve case 4/21/2010-2 as a Family Day Care Group with the following restrictions: restriction one (1) based on the updated license, restriction number two (2), based on no on-street parking and restriction number three (3), must continue to provide a fenced in play area.

LARRY O'SULLIVAN: And I'll second that one.

MATT NEUMAN: We have a motion. We have a second?

LARRY O'SULLIVAN: I'll second that one.

MATT NEUMAN: A motion on the floor and it's been seconded. All those in favor?

JIM SMITH: Aye.

MATT NEUMAN: Aye.

LARRY O'SULLIVAN: Aye.

JOE GREEN: Aye.

NEIL DUNN: Aye.

MATT NEUMAN: Those opposed? Abstentions?

[no response for either]

RESULT: THE MOTION TO GRANT THE SPECIAL EXCEPTION WITH RESTRICTIONS WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK  
TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

**APPROVED MAY 19, 2010** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JOE GREEN AND APPROVED 5-0-2 (VICKI KEENAN AND MICHAEL GALLAGHER ABSTAINED AS THEY HAD NOT ATTENDED THE MEETING).