

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

DATE: MAY 16, 2012

CASE NO.: 5/16/2012-2

APPLICANT: ARIA AND JONATHAN EMERY
685 HANOVER STREET
MANCHESTER, NH 03104

LOCATION: 49 PERKINS ROAD; 15-49-4; AR-I

BOARD MEMBERS PRESENT: JAMES SMITH, ACTING CHAIR
LARRY O'SULLIVAN, VOTING MEMBER
JAY HOOLEY, VOTING MEMBER
JAMES TOTTEN, VOTING ALTERNATE
NEIL DUNN, CLERK

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

REQUEST: SPECIAL EXCEPTION TO ALLOW A HOME OCCUPATION FOR A FAMILY
DAYCARE IN ACCORDANCE WITH SECTION 3.12.2.

PRESENTATION: Case No. 5/16/2012-2 was read into the record with no previous cases listed. The Clerk also read Exhibit "A" into the record, a letter in opposition from an abutter.

JIM SMITH: Okay, who will be presenting?

ARIA EMERY: Aria Emery.

JIM SMITH: Okay.

ARIA EMERY: Well, I've had a daycare in Londonderry for almost three (3) years now. A small in-home daycare and I've been running it out of my parent's house because right now I live in Manchester and we don't have the house or the yard for it. But my husband and I just bought the house in Londonderry and we wanna move the business to our own home. It has a nice playroom and a nice backyard which we'll be fencing in for the kids and moving our swing set there and everything. As for the concern about the added traffic, I don't think it should be much of a concern, it's very small. We only have four (4) kids and it's only two (2) families. So it's two (1) sibling groups. It would only be two (2) cars. We open at 7:30 in the morning, we close at 5:30, but the families typically don't get there 'til after 8:00. Their schedules vary, so sometimes it's a little bit earlier, but it's typically not 'til after 8:00. Usually about 8:15. And like I said, it's just the two (2) cars and I don't plan on expanding the daycare at all. The most I would ever have would be six (6) kids, but right now I'm very comfortable with just the four (4) kids and in two (2) years, two (2) of them will be going to school, so at

46 that point, that would be the earliest that I might consider taking another one (1) probably. But that's it, so I
47 really don't think it would change the neighborhood too much or really at all. The kids will be in the backyard
48 in a fenced in area, nowhere near the road. We don't know any of the neighbors except for one. We actually
49 found out after we bought the house that one of the neighbors is somebody that used to go to our daycare
50 and they were actually very happy that we were moving there. Their little boy can see his old friends and
51 come over and visit with his parents and everything. He was disappointed when he had to leave, so he still
52 likes to visit. But that's the only neighbor we really know. So the only one we know didn't have a problem
53 with it.

54
55 JIM SMITH: Okay. Any questions.

56
57 LARRY O'SULLIVAN: Are you ready?

58
59 NEIL DUNN: So you'd be happy with a restriction of six (6)...no more than six (6) children?

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61 ARIA EMERY: Yes, I'd be fine with that.

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63 LARRY O'SULLIVAN: How big is the driveway?

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65 ARIA EMERY: Oh, I'm not sure. I mean, it will fit four (4) cars.

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67 LARRY O'SULLIVAN: Four (4) cars wide? Four (4) cars deep?

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69 ARIA EMERY: Two (2) by two (2) I would say.

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71 LARRY O'SULLIVAN: Okay.

72
73 ARIA EMERY: And we're also thinking of making a parking space on the front of the lawn, like off of the
74 driveway.

75
76 LARRY O'SULLIVAN: Are you making any modifications to the building for the business?

77
78 ARIA EMERY: To the building itself, no. But we'll be add...well, I'm sorry, to the inside or the outside? I mean,
79 we're putting, you know, we're painting the walls and we'll be preparing the play room, putting toys and
80 bookshelves and things like that.

81
82 LARRY O'SULLIVAN: But you plan on living there.

83
84 ARIA EMERY: Right. Right. It'll be our home. So, you know, we're just doing things to get it ready for us to
85 live there. We're not living there yet.

86
87 LARRY O'SULLIVAN: No additions for the play areas for the children or...?

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89 ARIA EMERY: No. No additions to the house itself, but like I said, we'll just be putting up the fence and the
90 swing set.

91
92 LARRY O'SULLIVAN: Are you planning on a sign?
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94 ARIA EMERY: I'm sorry, planning on what?
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96 LARRY O'SULLIVAN: A sign in front of...?
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98 ARIA EMERY: No sign. No.
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100 LARRY O'SULLIVAN: Do you have any of your own children?
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102 ARIA EMERY: I have two (2).
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104 LARRY O'SULLIVAN: So you plan on having up to, what did you say, six (6) total children or eight (8) total
105 children?
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107 ARIA EMERY: Well, it would eight (8) including my own. The license doesn't include my own kids. But like I
108 said, I actually don't plan on that. Just, like I said, in the future, I mean, the two (2) older ones are gonna go to
109 school, so they might still come after school and I might get one (1) or two (2) more to come during the day.
110 But that would be...
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112 LARRY O'SULLIVAN: I'm just trying to get an idea of the...what your expectations are.
113
114 ARIA EMERY: Mm-hmm.
115
116 LARRY O'SULLIVAN: You know, the requirements that we have for Family Group Daycare...
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118 ARIA EMERY: Right. Right.
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120 LARRY O'SULLIVAN: ...Daycare Nursery. Each one of them as a little bit of a different number requirement.
121
122 ARIA EMERY: Right. Family Daycare is six (6) kids. Group Family, I think, is up to twelve (12).
123
124 JIM SMITH: So which one are you asking for? The Family Daycare?
125
126 ARIA EMERY: The Family Daycare. Right now we have a Group Family Daycare but we've never gone...we've
127 never maxed out because we never wanted to. Right now, it's my mom and I doing it together in her home
128 but it'll be primarily myself in the new house, so I definitely wouldn't ever have more than six (6), which is the
129 Family Daycare.
130
131 LARRY O'SULLIVAN: Has anybody done the math on the...?
132
133 NEIL DUNN: One eighty (180), two-ten (210), so she needs two-ten (210) for six (6), if you don't have to count
134 your own. It's thirty five (35) square feet per child for a Family Daycare.
135

136 LARRY O'SULLIVAN: Yeah.
137
138 NEIL DUNN: So six (6) times thirty five (35) is one eighty (180) and thirty is what, two-ten (210)? And she's...
139
140 LARRY O'SULLIVAN: They meet the State requirement. Okay, now what about our space requirement? Can't
141 allow more than how many? What percent?
142
143 [Overlapping comments]
144
145 LARRY O'SULLIVAN: Twenty five (25) percent?
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147 ARIA EMERY: If I could make a comment on that, too.
148
149 LARRY O'SULLIVAN: Mm-hmm.
150
151 ARIA EMERY: My original...when I originally submitted the drawing that I did of the house, I included one of
152 the upstairs bedrooms as daycare space and it was only because...I'm not gonna actually use it for the daycare
153 but for my own daughter to take her nap. And then...I'm not sure who it was that I spoke with, somebody
154 called me and said...and had asked about that space and they said, "Oh, you don't need to include that in the
155 twenty five (25) percent because it's personal, it's not for the daycare."
156
157 LARRY O'SULLIVAN: I see.
158
159 ARIA EMERY: So that wouldn't count.
160
161 LARRY O'SULLIVAN: That is not included...
162
163 ARIA EMERY: Mm-hmm.
164
165 LARRY O'SULLIVAN: Okay, so that hundred and eighty four (184) square foot bedroom that you've got there is
166 not going to be...
167
168 ARIA EMERY: Will not be included.
169
170 LARRY O'SULLIVAN: ...used for daycare. Thank you.
171
172 ARIA EMERY: Mm-hmm.
173
174 LARRY O'SULLIVAN: So we have downstairs, four hundred and thirty two (432) square feet and in the...that
175 was the basement...and then you have half of the kitchen roughly...
176
177 ARIA EMERY: Yeah, just so we can set up a little table so they can eat their lunch, really.
178
179 LARRY O'SULLIVAN: Which is two hundred (200) square feet, right? No, a hundred (100) square feet. So
180 you've got a total of, what five hundred and thirty two (532) square feet. How big is the house?

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ARIA EMERY: Twenty four hundred (2,400) square feet with the finished basement.

LARRY O'SULLIVAN: Okay, so that falls within the...about twenty (20) percent range then. Okay. Is your mother your employer? Or your...

ARIA EMERY: Employee.

LARRY O'SULLIVAN: She is your employee?

ARIA EMERY: She...yeah, we work together right now, but once I move, she'll primarily just be a fill-in, you know, if I have a doctor's appointment or something like that, so I don't have to close the daycare. She might come over for an hour. So she'll stay licensed with me.

LARRY O'SULLIVAN: But you're not having any outside employees.

ARIA EMERY: No.

LARRY O'SULLIVAN: And did you say you're not having a sign at all?

ARIA EMERY: No sign.

LARRY O'SULLIVAN: Thank you. The days of operation are going to be...hours of operation, sorry, [indistinct].

ARIA EMERY: Monday through...oh, that's alright...7:30 to 5:30, Monday through Friday.

LARRY O'SULLIVAN: And you know that there is no on-street parking?

ARIA EMERY: I do know that.

LARRY O'SULLIVAN: Okay. And you will make sure your customers are aware of that?

ARIA EMERY: Yes. Mm-hmm.

JAY HOOLEY: You indicate that the driveway fits at least four (4) cars, but with the potential to expand to six (6) children. If they are six (6) different families, are you just gonna have to stagger your arrivals and pickups somehow?

ARIA EMERY: Right. And actually, my husband would be gone by the time they got there, so it would just be my car in the driveway, so we could fit the three (3) cars in the driveway and I'm sure, you know, like I said, we might put a little parking space off of the driveway on the front lawn if we had to.

LARRY O'SULLIVAN: What's the white shaped building on your lot? It looks to the left, as you're facing the house, to your left. There's a white roof on something there. Is that a shed? Was that a garage?

226 ARIA EMERY: Oh, there's a shed in the backyard.
227
228 LARRY O'SULLIVAN: Gotcha.
229
230 ARIA EMERY: But it's directly in the middle and back. It's not...
231
232 LARRY O'SULLIVAN: The over...
233
234 NEIL DUNN: This might have been an old GIS...
235
236 LARRY O'SULLIVAN: The pictures that we have show it [indistinct] to your left.
237
238 ARIA EMERY: A lot has changed. I think they had some sort of trailer on the property. They also had a pool
239 before we bought the house. All of that is gone.
240
241 LARRY O'SULLIVAN: Geez, it looks like you could fit a driveway without having to come here for a variance.
242 Oh boy. I mean a garage.
243
244 ARIA EMERY: Oh.
245
246 [Laughter]
247
248 LARRY O'SULLIVAN: Somebody planned on that one, huh?
249
250 ARIA EMERY: That's not in the budget, unfortunately.
251
252 JIM SMITH: Okay. Further questions? Jay? James? Neil? Anyone who is in favor of this...would like to
253 speak? Anyone in opposition or has questions about this case? Seeing none, we bring it back to the Board
254 and to the applicant.
255
256 JAMES TOTTEN: So when you say that you're gonna have two (2) that will go off to school, they'll come back
257 somewhere around 3:00. But you could still be looking at the six (6).
258
259 ARIA EMERY: I think it'll be more like 4:00. When we've had kids go to the school in the past, they usually get
260 back at 4:00. So sometime...I mean, I guess depending on where they are in the bus route. Sometime
261 between 3:30 and 4:00 would be my guess.
262
263 JAMES TOTTEN: So to play it safe, you'd really be looking for eight (8)...eight (8) kids max at a point in time?
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265 ARIA EMERY: Are you including my own kids?
266
267 JAMES TOTTEN: Well, the six (6)...so you have four (4) now and you might increase that by one (1) or two (2).
268 Throughout the day...
269
270 ARIA EMERY: Right.

271
272 JAMES TOTTEN: ...that would be six (6), and then if the other two (2) come back, you could have eight (8) on
273 premise...
274
275 ARIA EMERY: No, no. We have four (4) now and the most we would get is two (2) more. I have two (2) of my
276 own, so it would be eight (8) including my own.
277
278 JAMES TOTTEN: Okay.
279
280 LARRY O'SULLIVAN: See, our limitation's gonna be six, okay? Not eight (8). Six (6).
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282 JAMES TOTTEN: That's why I wanted to clarify with the kids coming back after school.
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284 LARRY O'SULLIVAN: No matter how you look at it...
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286 JAMES TOTTEN: That's counting part of the six (6).
287
288 LARRY O'SULLIVAN: ...if it's eight (8), if it's part of the day or the whole day, it's still...
289
290 JAMES TOTTEN: Yeah.
291
292 ARIA EMERY: You're not including my own in the six (6), correct?
293
294 JAMES TOTTEN: No.
295
296 ARIA EMERY: Okay.
297
298 NEIL DUNN: What age are your children?
299
300 ARIA EMERY: They range from two (2) to five (5).
301
302 NEIL DUNN: Richard, if I could get...on the definition of Family Daycare, it says "care of three (3) to six (6)
303 children from one (1) or more unrelated families, including children under six (6)," so the children under six (6)
304 are used in that calculation?
305
306 RICHARD CANUEL: That's correct. Including the children that are related to the applicant.
307
308 NEIL DUNN: Right.\

309
310 RICHARD CANUEL: But also in addition to that, they can also care for three (3) additional school aged children.
311
312 NEIL DUNN: After school programs.
313
314 RICHARD CANUEL: So you can have a maximum of nine (9) children, basically, to qualify as a Family Daycare.
315

316 NEIL DUNN: But at this point, where her children are two (2) are five (5), they would be included in that
317 number.
318
319 RICHARD CANUEL: Included in that count.
320
321 NEIL DUNN: Until they get over six (6) years old is the point.
322
323 RICHARD CANUEL: Yup.
324
325 ARIA EMERY: That surprises me, because I actually called State licensing and asked them that question and
326 they said they wouldn't be.
327
328 LARRY O'SULLIVAN: This is a Town reg, though. That's a Town reg.
329
330 ARIA EMERY: Oh, okay. Well, that's...
331
332 NEIL DUNN: Well, it doesn't sound it would impact you at this point but...
333
334 ARIA EMERY: Right, it wouldn't.
335
336 NEIL DUNN: And by then, they'd be grown out of the...they'd be out of that six (6) under...
337
338 ARIA EMERY: Right. So that's fine.
339
340 NEIL DUNN: ...so they wouldn't be in the calculation, but...
341
342 ARIA EMERY: Mm-hmm.
343
344 JIM SMITH: So should we put a max of eight (8)?
345
346 RICHARD CANUEL: If the Board so chooses. Like I said, if you include the count of the children that live in the
347 home, plus the others that would total six (6), then you add the additional three (3) school aged children, and
348 you can essentially have nine (9) children that could be licensed as part of the Family Daycare in our
349 ordinance.
350
351 LARRY O'SULLIVAN: Yeah, but she's already agreed that she wouldn't have more than six (6).
352
353 JAMES TOTTEN: That doesn't sound like it would be a problem, right?
354
355 LARRY O'SULLIVAN: Eight (8) [indistinct].
356
357 JAMES TOTTEN: You have two (2) going to school, will be first grade or...
358
359 ARIA EMERY: Mm-hmm.
360

361 JAMES TOTTEN: ...higher next year.
362
363 ARIA EMERY: Next year, they'll be in kindergarten.
364
365 JAMES TOTTEN: One...
366
367 ARIA EMERY: The following year, they'll be in first grade.
368
369 LARRY O'SULLIVAN: There isn't really a need to make it any more complicated...
370
371 JAMES TOTTEN: No.
372
373 LARRY O'SULLIVAN: ...because she's already agreed that eight (8), including her own, would be the max.
374
375 JAMES TOTTEN: Yeah.
376
377 JIM SMITH: Okay. So the max is gonna be eight (8).
378
379 NEIL DUNN: Well...
380
381 LARRY O'SULLIVAN: Until they're six (6) years old or whatever the age is, yeah.
382
383 NEIL DUNN: Okay. So it's one (1) short of what we legally allot.
384
385 JIM SMITH: Right. Okay. Any other comments? Questions? If not, we'll close the hearing at this point.
386
387 DELIBERATIONS:
388
389 JIM SMITH: Deliberations. Larry, any questions?
390
391 LARRY O'SULLIVAN: No, I don't. I think...
392
393 JIM SMITH: Comments?
394
395 LARRY O'SULLIVAN: I think eight (8), her own number is eight (8) and, you know, if she decides to have some
396 more children or adopt some or what have you, that's...who are gonna be older than six (6), right? I don't
397 have any issues with it.
398
399 NEIL DUNN: It's an approved usage in that area. I mean, it falls within all the scopes. I know there were some
400 concerns from the letter written that it's adding to traffic on the street. It is a busy street, but, you know, two
401 (2) cars a day is not an impact as it might have been in a neighborhood where there's only two (2) cars in the
402 whole period. So I don't have an issue with it.
403
404 LARRY O'SULLIVAN: Also, our Master Plan is promotion...promoting in-home businesses, so...or in-home
405 occupations, anyway, and I think that goes a long way towards, regardless of where you live in Londonderry,

406 how you can get a home occupation going. We've been generous, I'd say, in our interpretations of that as a
407 Board. I think this ought to be well within the Master Plan guidelines and, despite the fact that somebody
408 thinks that there may be two (2) or three (3) or even eight (8) more cars a day times two (2) going out and
409 picking 'em up, right? There's not a lot of trips. Especially on Perkins Road.

410
411 JIM SMITH: If they're after school kids, there wouldn't even be that many.

412
413 LARRY O'SULLIVAN: And...right. So, I mean, that's, take the worst case scenario.

414
415 JIM SMITH: Because they'd be coming on the bus. Okay. Jay? Comments?

416
417 JAY HOOLEY: I have a question. Do we mention anything about the fencing of the outside play area when we
418 get to it?

419
420 LARRY O'SULLIVAN: Good idea. I'm sorry I overlooked that. That's usually my thing.

421
422 JAY HOOLEY: Yeah, that...

423
424 JIM SMITH: ...usually just put...

425
426 [Overlapping comments]

427
428 LARRY O'SULLIVAN: Can I ask the applicant to...a question?

429
430 JIM SMITH: Well, she already did say that she's gonna fence it.

431
432 NEIL DUNN: Isn't that required?

433
434 LARRY O'SULLIVAN: No. It's not required.

435
436 JAY HOOLEY: We can require it.

437
438 LARRY O'SULLIVAN: We can require it.

439
440 JIM SMITH: Yeah. But she already mentioned that she was....

441
442 JAY HOOLEY: They're planning on it.

443
444 JIM SMITH: ...going to fence it.

445
446 ARIA EMERY: We actually have the fence. We'll be moving the fence that we have and the fence we have has
447 already been inspected by the State and approved and has the proper latches and all that.

448
449 JIM SMITH: So...

451 LARRY O'SULLIVAN: Well, part of our...what I would like to be able to do is to include in the approval of this, a
452 requirement that a fence be provided for the outside care of the children.

453
454 JIM SMITH: Yeah.

455
456 JAY HOOLEY: [Indistinct]

457
458 JIM SMITH: Yup.

459
460 LARRY O'SULLIVAN: So...are you ready for a motion?

461
462 JIM SMITH: Sure.

463
464 LARRY O'SULLIVAN: I'd like to make...

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466 JIM SMITH: Unless anyone's got any other comments? James?

467
468 JAMES TOTTEN: No.

469
470 JIM SMITH: Go ahead.

471
472 LARRY O'SULLIVAN: I'd like to make a motion to approve case 5/16/2012-2 as presented, with the exception a
473 restriction to eight (8) children, including her own or the family's own, that we will not allow...that no sign is
474 going to be provided or put up, and that a fenced area for the children's outside play will be installed and
475 workable.

476
477 JAY HOOLEY: Second.

478
479 JIM SMITH: All those in favor?

480
481 NEIL DUNN: Aye.

482
483 LARRY O'SULLIVAN: Aye.

484
485 JIM SMITH: Aye.

486
487 JAY HOOLEY: Aye.

488
489 JAMES TOTTEN: Aye.

490
491 RESULT: THE MOTION TO GRANT CASE NO. 5/16/2012-2 WITH RESTRICTIONS WAS APPROVED, 5-0-0.

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493
494 RESPECTFULLY SUBMITTED,

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NEIL DUNN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED AUGUST 15, 2012 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY NEIL DUNN AND APPROVED 4-0-1 WITH MATT NEUMAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.