

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

DATE: JULY 21, 2010

CASE NO.: 7/21/2010-1

APPLICANT: AMY AND ROBERT SOLOMONS
22 WESTMINSTER DRIVE
LONDONDERRY, NH 03053

LOCATION: 22 WESTMINSTER DRIVE, 15-46-2, AR-1

BOARD MEMBERS PRESENT: VICKI KEENAN, CHAIR
NEIL DUNN, VOTING MEMBER
JIM SMITH, VOTING MEMBER
MICHAEL GALLAGHER, NON-VOTING ALTERNATE
JOE GREEN, VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

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

REQUEST: SPECIAL EXCEPTION TO ALLOW A FAMILY GROUP DAY CARE AS HOME OCCUPATION IN ACCORDANCE WITH SECTION 3.12.2.

PRESENTATION: Case No. 7/21/2010-1 was read into the record with no previous cases listed. Non-voting alternate member Jay Hooley recused himself from hearing the case and joined the audience for the duration of this presentation.

AMY SOLOMONS: Hi, I'm Amy Solomons, 22 Westminster Drive, Londonderry, New Hampshire.

ROBERT SOLOMONS: And I'm Robert Solomons, 22 Westminister Drive, Londonderry, New Hampshire.

AMY SOLOMONS: And we are asking for an exception for the Family Group Day Care. I did not bring a copy of my application. I wasn't aware that I was supposed to do that, so I apologize.

VICKI KEENAN: We have...do we have an extra copy she can borrow? And then we all have it up here on the screens.

AMY SOLOMONS: Oh, okay. I'm applying for permission for a child day care, family group, to care

for twelve (12) children, Monday through Friday, between the hours of seven thirty (7:30) and five thirty (5:30) at my home. I will have to apply for State licensing after your approval. Like I said, my operation would be Monday through Friday, from seven thirty (7:30) AM to five thirty (5:30) PM. I will not be requesting a sign. I have a total living space of two thousand ninety two (2,092) square feet. We'll be using four hundred and twenty eight (428) of those square feet in my home, which is twenty point forty five (20.45) percent. I did include the drawings of the house and the driveway. I hope you all have a copy of that. I do plan on having an assistant. So if I am licensed up to twelve (12) children, I will have to have a paid assistant with me any time I have more than six (6) children. At this time, we do not plan on changing the house at all, the exterior of the house at all. We do not have a fenced in play area at this time but my house is set very far back from the road and our backyard is surrounded three quarters around by woods. And it is set back behind the house to the right hand side of the house in the end of the property. Like I said, very far back from either Westminster Drive or Noyes Road. I couldn't even give the...how far back do you think that is?

ROBERT SOLOMONS: The driveway runs about a hundred, maybe a hundred and twenty (120) feet and then the house is set back, maybe twenty, twenty five (25) feet from that and then in the backyard where the children will be playing is...it's only accessible by a small area off to the left side of the house.

AMY SOLOMONS: Which also is our side entrance.

ROBERT SOLOMONS: Right.

AMY SOLOMONS: Yeah, our driveway is a hundred thirty five (135) feet long. Anything else?

VICKI KEENAN: Is there anything else you want to add? If not, we can bring it to the Board. I'm sure there will be questions.

ROBERT SOLOMONS: Sure.

AMY SOLOMONS: Yeah, if there's questions, that's great, 'cause I'm not sure what else you would be looking for.

VICKI KEENAN: Okay, good. Can I start off with a couple? I've got one. Do you have any intentions for a fence in the future?

AMY SOLOMONS: If it's required, we have no opposition to a fence but I just don't want it to hinder, you know, hinder the process right now. But we're not opposed to a fence.

VICKI KEENAN: Okay.

AMY SOLOMONS: You know, we just don't feel like it's necessarily needed at this time, but if it becomes an absolute requirement, then we will get a fence.

VICKI KEENAN: Okay. And did you say this was Monday through Friday?

AMY SOLOMONS: Yes.

VICKI KEENAN: Okay. How many vehicles do you think a day will be coming for drop-offs and picks-ups?

AMY SOLOMONS: Probably four (4). Four (4) or five (5).

JOE GREEN: Is that four (4) or five (5) children that you'll be watching or is it multiple...?

AMY SOLOMONS: No, there's families that have multiple children.

JOE GREEN: So what do you expect for a number of people per day? Children that you'd be watching?

AMY SOLOMONS: Seven (7). At this time, seven (7).

LARRY O'SULLIVAN: Do we have the ages?

ROBERT SOLOMONS: Yes.

AMY SOLOMONS: Yes.

LARRY O'SULLIVAN: We just need "under fifteen," "under twelve," "under eight," or...

AMY SOLOMONS: Oh, okay. Right now, I am watching three (3) children and I have two (2) three-year olds and a two-year old.

LARRY O'SULLIVAN: So you plan on small children?

AMY SOLOMONS: Yes, preschool age children. Yes.

LARRY O'SULLIVAN: In your lot, on the left side as you're driving in your driveway, there's a shaded in area on our maps showing wetlands.

AMY SOLOMONS: Yes.

LARRY O'SULLIVAN: Okay.

AMY SOLOMONS: It's not very wet right now. Yes.

LARRY O'SULLIVAN: And there's, at the rear of our lot, there's another home, I guess it's 23, which a built in swimming pool?

AMY SOLOMONS: Yeah, that's not even...there is a rock wall and there's a lot of trees and overgrowth. You can't even access the people's backyard from our yard at all. You really can't access the wetlands area. There's like a little brook. But there's so many trees and overgrowth, you really can't get in there.

LARRY O'SULLIVAN: Well, the reason why we typically have a fenced in area is to prevent little ones from wandering into the...

AMY SOLOMONS: Right. Right.

ROBERT SOLOMONS: Right. Sure.

LARRY O'SULLIVAN: ...the swamps and the...

AMY SOLOMONS: Right.

LARRY O'SULLIVAN: ...thickets and what have you. Or the pools.

AMY SOLOMONS: Right. Right.

ROBERT SOLOMONS: Yup.

AMY SOLOMONS: And if I thought that in any way it could be accessed, you know, a fence would be without a question. But you would really have to go...

ROBERT SOLOMONS: There is a fence around the pool. As you said, there's a fence around that pool.

AMY SOLOMONS: Yeah.

ROBERT SOLOMONS: And our backyard probably goes back about a hundred and twenty (120) feet as well. Then it goes to that rough area that she mentioned and then into a heavily wooded area. And then an old stone wall before it even gets to that yard, which...

AMY SOLOMONS: And then he has sheds and a lot of...I think he's got a vehicle back there. I don't even think they could get there if they wanted to.

LARRY O'SULLIVAN: The reason for my asking the question is we typically don't ask you to fence the yard. We ask you for a fenced area.

AMY SOLOMONS: Okay. Okay.

ROBERT SOLOMONS: Yeah. Okay. Sure.

LARRY O'SULLIVAN: Okay? To place the children that may wander.

AMY SOLOMONS: Right. Right.

ROBERT SOLOMONS: Right. We can do that. We could do that.

AMY SOLOMONS: Okay. We could do that.

JOE GREEN: The parking for the drop off...

AMY SOLOMONS: Yup.

JOE GREEN: Is it gonna be sporadic drop off? Because it doesn't look like there's enough for four (4) to five (5) people.

AMY SOLOMONS: Yeah, they all come at varying times. Anywhere between, like, seven thirty (7:30) and nine thirty (9:30) in the morning.

JOE GREEN: How much space do you think is there for a car? Is there two (2), three (3), four (4) cars or...?

AMY SOLOMONS: Oh, at least...

JOE GREEN: You can't really see on the drawings, so...

ROBERT SOLOMONS: Yeah, well my driveway is a two (2) space, you know, allotment there. But there's grass, on my grass, my lawn runs right down to the street before my trees and usually, if there's two (2) cars in that, occupying those spaces, then they just pull in right next there and, again, it's drop off, it usually lasts maybe five (5) to ten (10) minutes...?

AMY SOLOMONS: If that.

JOE GREEN: And the last question about the...thank you for that...the last question for the drop offs would be, is this driveway wide enough for two (2) cars if one (1) is coming out of the driveway and one (1) could enter in?

ROBERT SOLOMONS: No, it is not.

AMY SOLOMONS: No. No.

JIM SMITH: How many children are you gonna actually have?

AMY SOLOMONS: I plan on seven (7).

JIM SMITH: Okay. Under the Family Group, it's between seven (7) and twelve (12).

AMY SOLOMONS: Right.

JIM SMITH: Are you gonna ask for the twelve (12) or are you...?

AMY SOLOMONS: No. I have no intentions of taking twelve (12). Not at this time.

JIM SMITH: Well, okay, the point I'm trying to raise is if you ask for the twelve (12) at this time, if you change your mind later, you wouldn't have to come back.

AMY SOLOMONS: Right. Which is why I decided to ask for the Group, as opposed to just the, you know, the home day care, because I want the ability to, if somebody has a baby, to say "oh yeah, sure I can take your child."

ROBERT SOLOMONS: That's what he's saying, he's saying do you want the twelve (12) or do you want the seven (7)?"

AMY SOLOMONS: Yes, we want the twelve (12).

ROBERT SOLOMONS: He does...

JIM SMITH: Okay. That's what I'm trying to get at.

AMY SOLOMONS: I do want the twelve (12). Yes. Oh, I'm sorry.

ROBERT SOLOMONS: You said you only plan on taking seven (7). The gentleman was asking "do you want the allotment for twelve (12)?"

AMY SOLOMONS: Yeah. Yes.

ROBERT SOLOMONS: Okay.

AMY SOLOMONS: Sorry.

JIM SMITH: Okay.

ROBERT SOLOMONS: Yes.

VICKI KEENAN: Any other questions from the Board?

MICHAEL GALLAGHER: Yeah, how far...I'm sorry, I may have missed it. How far, approximately, is that pool? Just say...

ROBERT SOLOMONS: We can't even see it from our property, actually. We can't...

AMY SOLOMONS: We can't even see it from our property at all. Not even if we're upstairs, looking out the bedroom window.

MICHAEL GALLAGHER: The yard's...

ROBERT SOLOMONS: Our yard goes back, probably, like I said, a hundred and twenty (120), a hundred and thirty (130) feet. Maybe even more, because our driveway's...

AMY SOLOMONS: And then his is more...I don't know.

ROBERT SOLOMONS: I mean, his is...I couldn't tell you, we can't see it from the house. We just know that it's there.

AMY SOLOMONS: I mean, at least two hundred (200).

ROBERT SOLOMONS: Once I shot a rocket off in my backyard and it went through his yard.

AMY SOLOMONS: At least two hundred (200) feet.

ROBERT SOLOMONS: At least two hundred (200) feet.

AMY SOLOMONS: Three hundred (300) feet.

ROBERT SOLOMONS: Yeah.

MICHAEL GALLAGHER: Okay.

AMY SOLOMONS: It's far.

VICKI KEENAN: Okay. Any other questions from the Board? Seeing none, is there anyone in the audience here to speak for or against this application? Please state your name and address. Thank you.

JIM FUDALA: Jim Fudala, 23 Noyes Road. I'm just opposed to it as a business being in a residential/agricultural section. That's all. Thank you.

ROBERT SOLOMONS: The gentleman that just spoke is actually the one that has the yard, so he...

AMY SOLOMONS: That has the pool.

ROBERT SOLOMONS: ...the yard where the pool resides, so he may be able to speak to the distance.

VICKI KEENAN: Anyone else in the audience here to speak for or against the application? Okay, seeing none, we're gonna close the public section. We're gonna bring it back to the Board for deliberation, okay?

NEIL DUNN: Although before we go into deliberation, when I went by, you have a fenced in sandbox with a swing set and all that. So you wouldn't be opposed to calling that the play area if we were to say that we wanted a fence?

AMY SOLOMONS: Correct.

ROBERT SOLOMONS: Yes.

NEIL DUNN: And obviously, it could encompass more than that and your yard is quite big and cut up, so...or...

ROBERT SOLOMONS: Yes. Right.

NEIL DUNN: ...[indistinct] shape, so you wouldn't be opposed?

ROBERT SOLOMONS: We do have that area fenced, yes.

NEIL DUNN: Thank you.

VICKI KEENAN: You're welcome.

DELIBERATIONS:

VICKI KEENAN: I don't have any issues with this application other than I would like to have one of the conditions be a fence for the play area.

LARRY O'SULLIVAN: Or that we require a fence.

VICKI KEENAN: We require it. Mm-hmm.

LARRY O'SULLIVAN: Right, a fenced in area. Yeah. That's the only thing that I would have a say in. When everybody has the laws of the State that they also have to attend to, so...

VICKI KEENAN: Mm-hmm. Right.

LARRY O'SULLIVAN: No issues.

VICKI KEENAN: State licensing...

LARRY O'SULLIVAN: Mm-hmm.

VICKI KEENAN: ...would be another condition. Mm-hmm. Okay. Anyone have any comments?

NEIL DUNN: I think, just speaking to the gentleman of the audience who was talking against, opposing a business in a residential/agricultural neighborhood; this is allowed by the Town ordinance. It's a home occupation and when you look at it, it has very little impact on the home, the character of the home or anything like that. So we do take that into consideration and look at that. But it is allowed, so...

VICKI KEENAN: Very well said.

AMY SOLOMONS: Thank you.

VICKI KEENAN: Okay, seeing no other discussion, is there a motion?

LARRY O'SULLIVAN: I make a motion to approve case 7/21/2010-1 to allow a Family Group Day Care as a home occupation in accordance with Section 3.12.2, with the restriction that there be required a fenced area for outside play and that all State requirements are met.

VICKI KEENAN: Is there a second to the motion?

JOE GREEN: I'll second it.

VICKI KEENAN: Okay. Any discussion regarding the motion?

NEIL DUNN: Maybe it's more of a point of order. I think a month or two ago, we were approving motions on the vote and then voting differently on the motion, so are we...?

VICKI KEENAN: I don't...I think...can I...?

NEIL DUNN: Or was...or is...

VICKI KEENAN: Yeah, can I make a comment about that? We've had this discussion at the Board, I think, a couple times and I think we agreed a couple times that there would be a motion made and then it would be open to discussion about that particular motion, then we would decide to...we would vote on that motion. Is that how everybody understood it?

LARRY O'SULLIVAN: Mm-hmm.

VICKI KEENAN: I didn't see that there was any point in making two (2)...

LARRY O'SULLIVAN: No double votes, right.

VICKI KEENAN: A double vote.

LARRY O'SULLIVAN: Right. What we're doing is we're going to have either a motion made and then approved or seconded, then we're going to discuss it. And then we're gonna vote on it and if you approve it, the motion, you approve the...

VICKI KEENAN: The motion.

LARRY O'SULLIVAN: ...appeal or the special exception or the variance.

VICKI KEENAN: Whether it was granted or denied or...

JOE GREEN: But the confusion...

LARRY O'SULLIVAN: Whether it was granted or denied.

JOE GREEN: The confusion was last time is that...

LARRY O'SULLIVAN: Right.

JOE GREEN: ...it was denied, which means in this case, it would automatically be the reverse, so we...that's, I think, the confusion last time.

VICKI KEENAN: So, for example, if Larry made a motion to deny an application...

LARRY O'SULLIVAN: A motion's passed, right?

VICKI KEENAN: ...and you wanted to deny the application, you would vote for the motion in the affirmative because he's denying the motion...or denying the variance.

NEIL DUNN: Right. But a lot of times we vote on making the motion and letting it go through 'cause we wanted to get to a vote...

LARRY O'SULLIVAN: Right, and then...

NEIL DUNN: ...and we still we vote the way we want...

LARRY O'SULLIVAN: Mm-hmm.

NEIL DUNN: So the verbal "let's do it" won't always match the paper and that's where I'm trying to make sure we're clear on it 'cause it did come up as a confusion point. So right now we're voting on the motion...

VICKI KEENAN: Yup. He's voting to grant it.

NEIL DUNN: And then we still can vote any way we want on the paper. Yes or no.

JIM SMITH: You know, I'm gonna throw this out because this is a procedure that we've used at Town Meetings. A lot of times we'll have a motion on the floor and they'll have a debate...

VICKI KEENAN: Mm-hmm.

JIM SMITH: ...then at some point, somebody will move the question.

VICKI KEENAN: Mm-hmm.

JIM SMITH: Then they vote to move it.

VICKI KEENAN: Right, which is done...

JIM SMITH: Then that sets everybody up in their mindset that the next vote is actually on the motion and they understand what they're doing. I think part of our confusion sometimes is we're not sure whether we're just voting to vote or we're actually voting. And I think, if the two step process, I think, makes it clearer, at least in my mind. I don't know whether anybody else would agree with that thought.

VICKI KEENAN: Would it be helpful for me, the Chair, to state what we're going to be voting on?

LARRY O'SULLIVAN: We've had procedures change. At one time, that's the way we did it. We had a vote that was...whether the motion was acceptable or not as made or would be supported, alright? So there's two different issues.

VICKI KEENAN: I think we should just...we should go with one (1) vote.

LARRY O'SULLIVAN: I think so, too.

VICKI KEENAN: I think for this example, I think we should just say we're...

NEIL DUNN: So the verbal motion is gonna...and that's why I wanna make sure.

[overlapping dialogue]

LARRY O'SULLIVAN: It should duplicate what you write down.

NEIL DUNN: In this case where you've got a unanimous, it's fine...

VICKI KEENAN: Yeah.

NEIL DUNN: ...but if we get into one where we're not, then the motion....

LARRY O'SULLIVAN: Right, we'll have those circumstances. We could have those circumstances. Jim has done it where he said "for conversation's sake" or "for discussion sake, I'm gonna..."

NEIL DUNN: Right.

JOE GREEN: [indistinct] move it forward, yeah.

LARRY O'SULLIVAN: Yeah, let's move it along. Right, so I also agree. So that's a possibility and it's whatever the Chair allows.

VICKI KEENAN: [indistinct] some debate. Right. And I think, in this case, where Larry's made a motion to grant the special exception, we say there is a motion on the floor to grant the special exception.

LARRY O'SULLIVAN: Mm-hmm.

VICKI KEENAN: If you don't want to grant it, then you would vote in the negative for this motion.

NEIL DUNN: Okay, and I guess that's what I'm...and the papers just are a trail of the verbal vote.

LARRY O'SULLIVAN: Mm-hmm.

NEIL DUNN: Okay.

LARRY O'SULLIVAN: In effect.

VICKI KEENAN: Mm-hmm.

NEIL DUNN: I wanted that clear...

VICKI KEENAN: Does that make sense?

NEIL DUNN: ...'cause there was an issue a while back.

VICKI KEENAN: Okay.

NEIL DUNN: Okay. That's fine.

VICKI KEENAN: Alright, so we have a motion on the floor.

LARRY O'SULLIVAN: Seconded as well.

VICKI KEENAN: And seconded, to grant a special exception for case 7/21/2010-1. Is there any more discussion? Seeing none, all those in favor, signify by saying 'aye.'

LARRY O'SULLIVAN: Aye.

JIM SMITH: Aye.

JOE GREEN: Aye.

VICKI KEENAN: Aye.

NEIL DUNN: Aye.

VICKI KEENAN: Opposed? Abstentions?

[no response in opposition or to abstain]

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 AUGUST 18, 2010 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JOE GREEN AND APPROVED 5-0-0.