

City Council  
City of Dover, New Hampshire  
March 15, 2011

Dear City Councilors:

I believe a rehearing for the rezoning of Arch St. should be granted for the following reasons:

The citizens of Dover did not request Arch St. to be rezoned from RMU to R12 and even though one of the City Councilors stated at the January 26<sup>th</sup> city council meeting that Democracy was at work because the "vast majority" of Arch St. residents have asked for this rezoning and the Legal Department claims in it's City of Dover-Resolution that a "vast majority of the residents of this neighborhood seek and support the proposed amendment", I see no evidence to back up this statement. As I stated in my letter dated January 11<sup>th</sup> to the City Council, only twenty two actual residents or property owners on Arch St. signed the petition to rezone Arch St. from RMU to R12. Even though this was their petition that they were trying to push through quickly, only fourteen of the Arch St. residents and one W. Concord St. resident spoke up at the December 7<sup>th</sup> Planning Board Public Hearing and that number dwindled by one third to only ten petitioners who spoke in favor of it at the City Council meeting. In addition, these petitioners were never even contacted by the Planning Board to determine if they fully understood what they were signing or what the ramifications this rezoning would entail on their properties. When my husband and I were first informed about the rezoning we were told by one of the petitioners that this rezoning would not affect our property because our rights would be grandfathered in. We soon found out that was not true. There are at least 50 or more people who live or own property on Arch St. and only 22 signed the petition. That is not a "vast majority", in fact, it's a minority. There are 24 properties that directly abut Arch Street, 21 of which will be rezoned. 12 of the property owners signed the petition but those property owners own less than 20% of the land that they're asking to be rezoned. What is a "vast majority" is the more than 80% of the land that is owned by the property owners who did not sign the petition and the more than 70% of the land that is owned by the property owners who put in a protest petition. So, the people who are requesting Arch St. to be rezoned represent less than half the residents and owners on Arch St. and own less than 20% of the land that they want rezoned. That is not Democracy at work.

After the rezoning of Arch St. was unanimously recommended by the Planning Board, a few weeks later another petition for rezoning came up before the board. Unlike Arch St., where a minority of owners and residents wanted to rezone property where the majority was not in favor of it, this rezoning was requested by the owner to rezone just their land, a 9+ acre property. They wanted to rezone from B4 to R40. Before the Planning Board would consider it further, they requested that an economic feasibility study be done. Why was a feasibility study not requested for the rezoning of Arch St? The Arch St. rezoning encompasses 30 acres of land, about half of which is undeveloped. With only 57 acres of undeveloped RMU land left in all of Dover, this rezoning would take away about 25% of that land. Did the Planning Board not think that taking away 25% of developable RMU land did not require an economic feasibility study? At the very least the Planning Board should have required one before rendering a decision.

At the city council meeting, Chris Parker, the Planning Director for Dover, was asked by the city manager to speak on behalf of the Arch St. rezoning. Why was he given unlimited time to state his case, yet, those who opposed the rezoning were not allowed this same consideration or even allowed to rebut his statements? I would like to rebut some of Mr. Parker's claims now. Mr. Parker stated that unless they rezone Arch St. to R12 the number of units that could be built on the undeveloped land off of Arch St. could put a serious strain on Dover's resources. This might have been a valid argument if the city of Dover hadn't just gone through a thorough study and substantial rezoning. After the rezoning, 57 acres of undeveloped land, including our 12 acres, were left as RMU. When they were doing the study, did the city planners not anticipate that 57 acres of multi-density land would generate hundreds of new homes and that these new homes would require upgrading some of Dover's infrastructure? I'm sure they did (if not, perhaps they're not

in the right job) and they realized that the hundreds of thousands of dollars these new homes would generate in tax revenue would more than offset that cost. In addition, in the 22 years that my husband and I owned multi-units, the overwhelming majority of people who lived in them tended to be young professionals, the type of people who don't use as many of the city's resources that the families who live in single family homes with two or three children do.

Mr. Parker also claimed that this rezoning is not "Spot Zoning", I disagree. Here is just one of the many definitions of "Spot Zoning": "This is the term used by the courts to describe a zoning amendment that is invalid because it is not in accordance with a comprehensive plan. It is the singling out of a small parcel of land for a use classification totally different from that of the surrounding area."\* Or, it could even be defined as "Reverse Spot Zoning" "Reverse spot zoning occurs when a zoning ordinance prevents a property owner from utilizing his or her property in a certain way, when virtually all of the adjoining neighbors are not subject to such a restriction, creating, in effect, a veritable zoning island or zoning peninsula in a surrounding sea of contrary zoning classification. Reverse spot zoning is invalid, as it is confiscatory"\*\*. Our land has seven properties that directly abut it. Four of those properties have multi-units on them. The largest property that abuts more than half our land has a multi-unit with over 100 units in it. Our land is literally surrounded by multi-units and yet, with this new zoning, we are no longer able to build a single multi-unit. I would say that our property is now a "veritable zoning island in a sea of contrary zoning classification"

Mr. Parker gave a rather elaborate explanation on nonconforming properties. The fact is, if you look at use, area and frontage nonconformities, rezoning Arch St. from RMU to R12 will increase nonconforming properties by 80%. This violates the NH statute regulating Planning Board responsibilities not to create inefficiencies. By creating almost an entire neighborhood of nonconforming lots, it's "per se" inefficiencies. The Planning Department in their report to the City Council mentions the nonconformities that would be created under R12 but provide no justification for it.

According to the City of Dover-Ordinance, the rezoning of Arch St. to R12 will promote its existing character. This makes no sense. For decades Arch St. has been zoned the equivalent of RMU. There are several multi-units, duplexes and single family homes on Arch St. that are made up of several different styles, shapes and sizes. It is this diversity that RMU allows that has created Arch Streets' character. If you change the zoning from RMU to R12 you will in essence be changing the character of Arch St. which is exactly what the petitioners are saying they don't want.

The Ordinance also mentions that R12 allows only single family homes unless the building is older than 1964. Yet, under permitted uses two family dwellings are allowed in the R12 districts when incorporated under an open space subdivision. Why was this permitted use under R12 zoning not mentioned on the Ordinance?

One of the Arch St. residents and a city councilor mentioned at the city council meeting that even though there are multi-units on Arch St., they don't look like multi-units and because of this they don't want any more multi-units to be added or built. This is the 21<sup>st</sup> Century. Any shape, size or style of home can be built. We can build homes that look like single family 19<sup>th</sup> century buildings but have the modern conveniences and energy efficiency of the 21<sup>st</sup> century. If the planning board said to a developer that they would allow them to put in a multi-unit as long as it looked like a large single family home so it would fit in with the character of the street, I'm sure the majority of developers would be more than willing to do so.

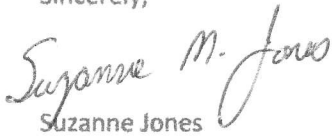
One of the most disingenuous arguments is the traffic that will incur if Arch St. is not rezoned. My husband brought forth a plan to the mayor, the city manager, the planning director, the planning board and the city council asking you to consider putting in a new Gateway Blvd. into Dover using our land. This is really the only way to take all the thru traffic off of Arch St., yet he was virtually ignored by everyone. No one will even look at other options to remove the traffic from Arch Street. Instead, the only option anyone will consider is to take away the rights of long term property owners.

Chris Parker warned the Planning Board that with our property zoned RMU; we could put in as many as 192 units. Yet, through the efforts of Will Boc (an ex-mayor of Dover who's law firm drafted the rezoning petition and by his own

admission has convinced Chris Parker that they are "best buddies"), Jack Buckley, (the Executive Director of the Dover Housing Authority who is also, coincidentally, an ex-mayor of Dover) and with the unanimous vote of the Planning Board and the City Council we now have a non-conforming, undividable 12 acre lot. Land that has been zoned the equivalent of RMU for decades, which we have owned for over a decade and now because the Planning staff in their Ordinance decided to change the original petitioned zoning amendment to include this statement that says "the existing dimensional characteristics of lots on Arch St. must be preserved", we can no longer put in even one unit without a variance.

According to the City of Dover-Resolution created by the Dover Legal Department, they say that "The proposed amendment is in the public interest since it will lessen the impact on our natural and environmental resources" and it will "likely result in a fiscal benefit to the city" How did the Dover Legal Department come up with this conclusion? Do they have facts to base these statements on? Have they done an economic feasibility study? Have they done an environmental study? Have they done a wetland study or surveyed our property to determine exactly what can be built? Do they also realize that by taking away the density from our property it could push density and create a negative impact on other areas of Dover or that it could potentially take away tens of thousands of dollars in tax revenue for the city? Since the city of Dover's Legal Department claims they are taking away virtually all the value of our land, all for the good of the public then they should also know that by law, if the city takes away your land or the value of your land for public use, the city must compensate the owner of the property for that land and since we have gone (according to Chris Parker, the Planning Director for the city of Dover) from being able to put in up to 192 units down to zero units I would say that the value of our property has been greatly diminished and that we should be justly compensated.

Sincerely,

  
Suzanne Jones

\* New Hampshire Practice, Vol. 15, Land Use Planning and Zoning, Third Edition

\*\*In City of Miami Beach v. Robbins, 702 So. 2d 1329 (Fla. 3rd DCA 1997)