



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT AGENDA

Meeting Type: Regular Meeting
Meeting Location: Media Access Center, Rm 306 - McConnell Center, Dover, NH 03820
Meeting Date: **Thursday, April 19, 2012**
Meeting Time: **7:00 pm**

1. ATTENDANCE

2. APPROVAL OF PRIOR MINUTES OF MARCH 15, 2012

3. HEARING – *CONTINUED FROM MARCH 15, 2012*

- A. * Z 11-11 Salmon Falls Holding, LLC, 45-48 Arch Street, Tax Map 11, Lot 16, located in the Medium Density Residential (R-12) District, proposes to demolish an existing three (3) family dwelling, which is a nonconforming use, and to construct a new three (3) family dwelling on a different portion of the lot. Applicant requests a variance from **Section 170-12.A** of the Zoning Ordinance and the R-12 District Table of Use to (a) permit a three (3) family dwelling unit use of the property, where three (3) family dwelling units are not a permitted use, and (b) to permit the new three (3) family dwelling to be located approximately 18 ft. from the front lot line.

4. NEW HEARING

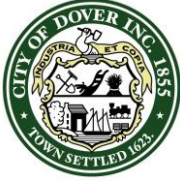
- A. * Z 12-06 McQuade Realty, Inc. and Prime Time All-Stars, LLC, 1 Sumner Drive, Tax Map H, Lot 35C-2, located in the Rural Restricted Industrial (I-2) District, requests a variance from **Section 170-12.A** of the Zoning Ordinance and the I-2 District Table of Use to permit a training and teaching facility for cheerleading teams, dance teams, tumbling and fitness programs and similar programs where Commercial Recreational uses are not permitted in the I-2 District.

5. APPROVAL OF REVISED ZBA APPLICATION FORM

6. ADJOURN

*** If the application is accepted for discussion, the public hearing will be held that evening.**

Persons with questions or wishing to see the plans are invited to visit the Planning Office, Monday-Thursday from 8:30 am to 5:30 pm. You may also view materials at www.dover.nh.gov, a map showing project locations can be found at www.dover.nh.gov/planhome.html. Follow us on Twitter @DoverNHPlanning and find us on Facebook at www.facebook.com/pages/Dover-NH/City-of-Dover-NH-Planning/446789895351



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers - 288 Central Avenue, Dover, NH 03820
Meeting Date: **Thursday, March 15, 2012**
Meeting Time: **7:00 pm**

1. ATTENDANCE

Members Present: William Colbath (Vice Chair), Otis Perry, Frank Landford, James Kelley, Jennifer Stone (Alternate), Chris Prior (Alternate)

Members Not Present: Sam Reid (Chair), Joshua Cote (Alternate)

Staff Present: Timothy Corwin (Assistant City Planner), Gail Pare (Recording Secretary)

The Vice Chair called the meeting to order at 7:05 p.m. William Colbath opened the meeting and introduced the Board and staff members to the audience, and described the process used to hear cases. He asked the Board to hear the New Business prior to the election of officers. The Board members concurred.

2. ELECTION OF OFFICERS

The Vice Chair asked to defer the Election until after the public hearings.

3. APPROVAL OF PRIOR MINUTES OF FEBRUARY 16, 2012

The Vice Chair asked to postpone the approval of the minutes until after the public hearing.

Motion: F.Landford motioned to postpone elections to the end of the public hearing. Seconded by J.Stone. Vote: U/A.

Motion: F.Landford motioned to approve the February 16, 2012 minutes. Seconded by J.Stone. Vote: 4-0. *W.Colbath, O.Perry, J.Kelley, Chris Prior abstained.*

4. PUBLIC HEARINGS

Due to a special request from Attorney Christopher Boldt, the Chair requested that Item C be brought to the table ahead of schedule.

A. *Z-11-11 The applicant, Salmon Falls Holding, LLC, for property located at 45-48 Arch Street, Tax Map 11, Lot 16, was represented by Attorney Christopher Boldt.

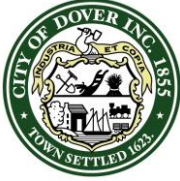
The Vice Chair read a letter received from C.Boldt stating that the principal for the applicant, Henry Brandt, was unexpectedly detained in Dallas, Texas and would not be able to attend the meeting tonight.

Public Hearing Open.

Attorney Christopher Boldt, of Donahue, Tucker & Ciandella, has respectfully requested the case be continued until the April 19, 2012 meeting of the Zoning Board. In addition, Atty. Boldt spoke before the Board and explained that he was on hand to answer any questions abutters may have.

Motion: J.Kelley motioned to grant the continuance until the April 19, 2012 meeting. F.Landford seconded. Vote: 5-0.

Public Hearing Closed.



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B. * Z 12-04 To obtain Special Exception approval to permit an approximately 1,100 s.f. retail store for the sale of fresh flowers and plants, to be located within the existing building.

Public Hearing Open.

The Chair requested J.Stone sit in for Sam Reid on this case.

Beverly Carter, a co-owner of the Dover Flower Studio spoke. B.Carter stated she was in the process of setting up the shop and then applied for a sign permit. She was then advised by the Planning Dept. staff that she needed a sign variance for the sign and a special exception for the business. She also stated that the business has been open for approximately 2 months in the current location. The store location is on Central Avenue right across from Purdy's Funeral Home, and is located in the Office zone. She explained to the Board that there are not a lot of deliveries, or a lot of trucks, and she feels that her business is an appropriate use of the current property.

J.Kelley asked why the Special Exception is required if it were previously a retail space.

T.Corwin replied it is a permitted use, but by special exception and it is not grandfathered.

W.Colbath asked about the previous business in the building.

B.Carter advised she is in the house portion of the building and that Avis Goodwin was a previous tenant in space to the left of the flower shop. She said her space had seen a number of businesses in the past.

O.Perry asked about water usage.

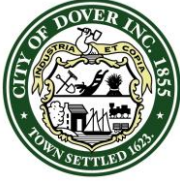
B.Carter stated there is a bathroom with a shower, but the only water used is to fill water buckets for the fresh cut flowers. The water buckets are changed out every 3-4 days which she uses the regular drains for disposal of the water.

Guy Eaton, 67 Mount Vernon Street. Mr. Eaton stated he is concerned about the traffic impact and the parking lot to the back side of the building as it exists. He does not oppose the business. He is here on behalf of the owners of 63, 65 and himself at 67 Mount Vernon Street. He is also concerned about snow removal issues as it impacts those properties mentioned with water drainage. He explained the current snow removal issues and has had to speak to the snow plow company about where the snow is dumped. Mr. Eaton explained that the snow gets dumped onto the corner of the lot which dumps onto 65 Mount Vernon Street. This can cause a water drainage problem.

T.Corwin stated he did not feel that Mr. Eaton's concerns could be addressed by the Zoning Board in the content of this application.

F.Landford asked if it was discussed with the landlord.

Mr. Eaton stated he has spoken to both the landlord and the snow plow company.



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J.Kelley asked if there are any snow removal plans in place.

W.Collbath asked who Mr. Eaton can go to have his problems resolved.

T.Corwin offered his contact info and asked Mr. Eaton to contact him at the office.

O.Perry asked if the Special Exception is transferrable.

T.Corwin explained that the next tenant would need to reapply. There is no timeframe for a special exception. It expires when the tenant vacates. The previous business had ceased for more than 12 mos. and therefore, the prior non-conforming business is not grandfathered.

T.Corwin believes that, per the information presented in the application, the applicant's proposed retail flower store meets the six (6) special exception criteria for retail stores in the Office District (as set forth in the Table of Use). Moreover, the retail commercial use of this building is consistent with how it has been used in the past and present, and is consistent with the commercial use of adjacent and nearby properties.

Motion: O.Perry motioned to close the public hearing. Seconded by J.Kelley. Vote: U/A.

Public Hearing Closed

Motion: O.Perry motioned to grant the Special Exception. Seconded by J.Kelley. Vote: U/A.

C. * Z 12-05 To obtain a Variance for an 11 s.f. projecting sign to advertise an approximately 1,100 s.f. retail store for the sale of fresh flowers and plants, to be located within the existing building.

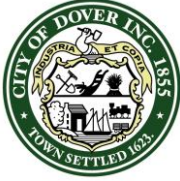
The proposed projecting sign is less than the maximum permitted size and will be a reasonable method of identifying the property. The configuration of the façade of the building is not conducive to designing and installing an appropriate wall sign, and a freestanding sign would require variance relief because the structure does not meet the 20 ft. minimum setback required to install a freestanding sign. The applicant's projecting sign, which is the only exterior sign proposed for the applicant's business, is consistent with the photo studio's sign which is also projecting.

B.Carter spoke again. She feels as a retail shop it is important for drive by traffic to make the business visible to the public. The business has suffered slightly the past two months due to patrons not being able to find them.

O.Perry asked about the design concept of the sign and the location.

J.Kelley questioned the visible address of the business and location of the building number on it. He feels the address should be as visible as the sign itself. He asked if future applications and/or locations on Central Avenue would request future variances for projected signs.

T.Corwin states it does not set a precedence for additional requests. He stated each case would have to come to the ZBA for a request and each case is considered separately on its merits. Here, although freestanding signs are permitted, the applicant would still need a variance due to the fact her store front is



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only 18 ft from the road. Therefore, she has requested a projected sign, as a freestanding sign would not be allowed without a variance. Either way, this business would need a variance for some sort of a sign.

W.Colbath suggested that as a condition of approval, if the business goes away, that the variance for the sign also goes away.

Open the Public Hearing. Nobody spoke. Public Hearing Closed.

T.Corwin spoke. The Zoning Department Staff supports the variance request and feels it is consistent with current the use in the building.

O.Perry stated that he wants the sign to be removed when the business vacates. The variance lapses when the business vacates.

Motion: O.Perry motioned to grant the Variance with the condition that the sign be removed when the business vacates. The variance lapses when the business vacates. C.Prior seconded the motion. Vote: U/A.

5. ELECTION OF OFFICERS

Motion: O.Perry motioned to nominate Sam Reid as Chair. J.Kelley seconded. Vote: U/A

Motion: J.Kelley motioned to nominate William Colbath as Vice Chair. F.Landford seconded. Vote: U/A

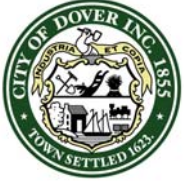
6. OTHER BOARD BUSINESS

T.Corwin passed out the new Zoning Board of Adjustment application and asked the Board to review for any suggestions or changes.

T.Corwin gave a presentation on the Harborside Associates vs. Parade Residence Hotel case and other recent cases.

7. ADJOURN

Motion: O.Perry motioned to adjourn at 8:18 pm. Seconded by F.Landford. Vote: U/A



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO (Z11-11)

Application Type:	Variance
Applicant:	Salmon Falls Holding, LLC
Owner:	Salmon Falls Holding, LLC
Location:	46-48 Arch Street (Tax Map 11, Lot 16)

INTENT: Applicant proposes to demolish an existing three (3) family dwelling, which is a nonconforming use, and to construct a new three (3) family dwelling on a different portion of the lot. Applicant seeks a use variance to permit the replacement three (3) family dwelling, which is not a permitted use in the R-12 District. Applicant is also asking for relief from the front setback, to allow the new structure to be placed approximately with the same front setback as the existing structure has.

LOTS/UNITS PROPOSED: 3

AGENDA ITEM #: 4-C

ZONING DISTRICT: R-12

EXISTING LAND USE: residential - three (3) family dwelling

PROPOSED LAND USE: residential - three (3) family dwelling

SURROUNDING LAND USE:
Single family residential and duplexes

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: No

ATTACHMENTS: Site plan

APPLICATION IS COMPLETE: Yes

NOTICES AS REQUIRED: Yes

STAFF RECOMMENDATION:
The Planning Department supports the variance request.

Summary of Request and Background

The subject property is located at 46-48 Arch Street. The property is currently improved with a three family dwelling unit on it. The applicant wishes to remove the outdated structure and replace it with one that is more modern, includes garages, is energy efficient and is in keeping with the look and feel of Arch Street. The use is currently grandfathered, where only a single family use is allowed on the lot. Therefore, applicant's proposed use requires a variance from Section 170-12 of the Zoning Ordinance. Additionally, the applicant requests to have the front setback of the new structure match that of the existing structure.

Reason for Staff Recommendation

The applicant requested relief from Chapter 170-40 and 170-12. Staff believes that while 170-40Bⁱ, could apply, no other sections of 170-40 would. The use is not being moved from one structure to another it is being extinguished and replaced by a similar three family dwelling also located on the property; thus relief is from 170-12 (table of uses), not from 170-40 (non conforming uses).

Staff believes it is reasonable to relocate the three units into a new efficient structure, which will improve the look and functionality of the lot. This is accomplished, in part, by relocating the parking into a more efficient layout, and includes garage storage. Staff believes the improved structure is in keeping with the neighborhood look at feel, desired by the residents of Arch Street.

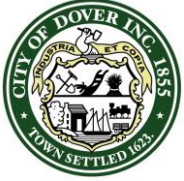
Staff believes the applicant does need relief from the front setback. Staff understands the request, but the interpretation of the setback notation on the table of uses allows that if the lot were vacant, the structure could be placed within a range of 5 to 25 feet from the front property line along Arch Street. The applicant has proposed placing the structure at approximately 18 feet, matching the existing structure.

If the ZBA agrees with the applicant that relief is required for the front setback, staff supports this. The spirit and intent of the range of area for the setback is being met in the request and it makes sense for the applicant to have a similar setback to what is in place today.

Recommendation

The Planning Department recommends the Board hold the public hearing, and approve the variance.

ⁱ The intent of 170-40B is that more than one structure exists on the property and a non-conforming use is being relocated from one structure to another. This is historically how this has been interpreted. In this scenario two structures will not be occupied at one time.



CITY OF DOVER

ZONING BOARD OF ADJUSTMENT – STAFF MEMO (Z12-06)

Application Type:	Variance
Applicant:	McQuade Realty, Inc. and Prime Time All-Stars, LLC
Owner:	McQuade Realty, Inc.
Location:	1 Sumner Drive (Tax Map H, Lot 35C-2)

INTENT: Applicant proposes to operate a training and teaching facility for cheerleading teams, dance teams, tumbling and fitness programs and similar programs. Applicant seeks a use variance to permit this commercial recreational facility, which is not a permitted use in the I-2 District.

LOTS/UNITS PROPOSED: n/a

AGENDA ITEM #: 4-A

ZONING DISTRICT: I-2

EXISTING LAND USE: Prime Time All-Stars, LLC's commercial recreational facility began operation at the subject property in December, 2010

PROPOSED LAND USE:
commercial recreational

SURROUNDING LAND USE: Industrial, commercial, and multi-family residential

PREVIOUS ZBA ACTION: None

PLANNING BOARD APPROVAL REQUIRED: No

ATTACHMENTS: Application, Application Narrative, Plot Plan, and Photos

APPLICATION IS COMPLETE: Yes

NOTICES AS REQUIRED: Yes

STAFF RECOMMENDATION:
The Planning Department supports the variance request.

Summary of Request and Background

The subject property is located at 1 Sumner Drive. The property is improved with an approximately 13,480 sq. ft. industrial building. The building is currently occupied by the Applicant's proposed business which consists of a training and teaching facility for cheerleading teams, dance teams, tumbling and fitness programs and similar programs. This type of facility meets the definition of "Commercial Recreation" which is not a use that is permitted in the I-2 District.

Reason for Staff Recommendation

Staff believes that the Applicant's training and teaching facility is a reasonable use of the property and is similar to the other uses currently permitted in the I-2. The training facility is compatible with the surrounding land uses which include other commercial and industrial properties, as well as multi-family residential across the street.

In fact, staff has proposed an amendment to the I-2 District to permit commercial recreational uses as a permitted use. The proposed amendment will be considered by the Planning Board over the next several months.

Recommendation

The Planning Department recommends the Board hold the public hearing, and approve the variance with the following condition:

1. That the proposal is submitted to the Technical Review Committee for review and approval to address parking, traffic flow, and other safety issues.

CASE # 212.06

DATE RECEIVED _____ TIME RECEIVED _____

AMOUNT PAID \$ _____

APPLICATION COMPLETE/ABUTTERS CORRECT? Y/N INITIAL _____

**CITY OF DOVER
ZONING BOARD OF ADJUSTMENT
APPLICATION**

I. APPLICANT McQuade Realty, Inc. and Prime Time All-Stars, LLC
PHONE #: _____
 ADDRESS 1 Summer Drive, Dover, NH 03820
 PROPERTY OWNER McQuade Realty, Inc.
 ADDRESS PO Box 1409, Dover, NH 03821
 PROPERTY LOCATION 1 Summer Drive, Dover, NH
 BRIEF DIRECTIONS Summer Drive is off Route 155, just southeast of the
Spaulding Turnpike
 ZONE I-2 ASSESSOR'S MAP H LOT #(S) 35C-2

TYPE OF APPEAL: (Please check off one)

<input checked="" type="checkbox"/> VARIANCE	ARTICLE <u>IV</u>	SECTION <u>170-11</u>
<input type="checkbox"/> VARIANCE (Physical Disability - RSA 674:33-V)	ARTICLE _____	SECTION _____
<input type="checkbox"/> SPECIAL EXCEPTION	ARTICLE _____	SECTION _____
<input type="checkbox"/> APPEAL ADMINISTRATIVE DECISION	ARTICLE _____	SECTION _____
<input type="checkbox"/> EQUITABLE WAIVER	ARTICLE _____	SECTION _____

Describe briefly your plans for this property: Prime Time All-Stars, LLC operates a training and teaching facility for cheerleading teams, dance teams, tumbling and fitness programs and similar programs. This is a Commercial Recreational use, which is not a permitted use in the I-2 zone. A variance is needed from Article IV, Section 170-11 for this use. See Narrative for further details.

II. REQUIREMENTS SUBMITTED: (Please check off)

- A. Plot plan drawn in accordance with a boundary line survey to scale not less than 1" = 40', (10 copies). They need to include the lot dimensions including area in square feet, and also the size and location of existing and proposed buildings if applicable, including setbacks. X
- B. List of abutters including addresses and map and lot number of parcels who X adjoin or are directly across the street or stream from property. In the case of an abutting property being under a condominium or other collective form of ownership, the term "abutter" means the officers of the collective or association, as defined in RSA 356-B: 3, XXIII. Additionally, the individual owners of units within the association, which are located within two hundred (200) feet of the common property line, shall be notified by first class mail only.
- C. Application fee of:

\$100.00 VARIANCE	\$ <u>100.00</u>
\$100.00 SPECIAL EXCEPTION	\$ _____
\$100.00 APPEAL FROM ADMINISTRATIVE DECISION	\$ _____
\$100.00 EQUITABLE WAIVER	\$ _____

D. Certified letters fee:		
# of abutters	5	X \$8.00 =
		\$ 40.00
Applicant & Owner	3	X \$8.00 =
		\$ 24.00
E. First Class Mail fee		
# of abutters	8	X \$1.00 =
		\$ 8.00
F. Foster's newspaper public notice		\$ 60.00
	TOTAL	\$ 232.00

III. **NARRATIVE:** Complete the section pertaining to your request for a variance. Keep your answers brief and be prepared to explain them in detail at the meeting. The burden of proof is on the applicant. If you need more space use an additional sheet of paper

VARIANCE REQUIREMENTS: (PLEASE TYPE OR PRINT IN INK)

1. Provide proof that demonstrates the variance will not be contrary to the public interest.
See attached Narrative

2. Provide proof that demonstrates how a variance observes the spirit of the ordinance.
See attached Narrative

3. Provide proof that demonstrates how a variance will result in substantial justice.
See attached Narrative

4. Provide proof that demonstrates the variance will not diminish the values of surrounding properties.
See attached Narrative

5A. Provide proof that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Unnecessary hardship standards are:

(i) Special conditions of the property that distinguish it from other properties in the area; and
See attached Narrative

(ii) no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and
See attached Narrative

(iii) the proposed use is a reasonable one.
See attached Narrative

REQUEST FOR VARIANCE

NARRATIVE: The property is located at 1 Sumner Drive, Dover, NH, Tax Map H, Lot 35C-2 (“the Property”). The Property is owned by McQuade Realty, Inc. and leased to Prime Time All-Stars, LLC. McQuade Realty, Inc, and Prime-Time All-Stars, LLC are co-applicants. The Applicant is seeking a variance in the permitted uses of property within the Rural Restricted Industrial District (I-2).

The Dover Zoning Ordinance (“the Ordinance”) defines “Commercial Recreation” as: “leisure time activities conducted at prescribed places, sites, or fields as a principal use, in order to obtain profit for a private group, organization, or individual.”

Article IV, Section 170-11 sets out the use regulations, including the Table of Uses, identifying the permitted uses in each zone. Attached to this Narrative is the Table of Uses for the Rural Restricted Industrial (I-2) District. The Commercial Recreational use of Prime Time All-Stars is not a permitted use.

Prime Time All-Stars is a local business, started by Valerie Cunio and Sarah Peck in 2006. Ms. Cunio and Ms. Peck are successful coaches for school and rec teams for cheerleading squads and similar teams. Prime Time All-Stars is quite successful, having grown from a relatively small, start-up operation to the point where it is now the largest cheer gym in New Hampshire and Maine. Prime Time All-Stars offers year long and half-year long competitive cheer teams, dance teams, tumbling classes, skill classes, private lessons, birthday parties and fitness classes. The facility is currently equipped with spring floors, tumble tracks and many other gymnastic, tumbling and fitness/training equipment. There is a waiting area for parents, equipped with cable

TV. Prime Time All-Stars also offers a special needs team; this program is in its second season, and offers cheerleading training for special needs students.

Prime Time All-Stars began operations at the Property in December, 2010. At that time, both McQuade Realty and Prime Time All-Stars believed the use was permitted under the Ordinance. Only quite recently did the City indicate this type of use is not a permitted use within the I-2 zone, and therefore the co-applicants have filed this application for a use variance.

The Property, as can be seen from the attached site plan and photographs, include a large, pre-existing building with ample parking and easy access. During the time Prime Time All-Stars has operated there have been no problems with vehicular traffic or parking. No pedestrian traffic is generated by the use. To the best of the co-applicants' belief, no abutters or other interested parties have ever complained about the use.

While Prime Time All-Stars has outfitted the interior of the premises, no change to the existing building footprint or exterior, parking area, driveway or utilities have been made, or need be made in the future, by this use.

It is important to note that one of the permitted uses in the I-2 zone is a child care facility. In many ways, the Prime Time All-Star facility is very similar to the permitted use of a child care facility, in terms of hours of operation, type of clientele, and vehicular traffic and parking needs. Further, in terms of traffic generated, and impact upon abutters, many of the other permitted uses in the zone (for example, public utility,

trucking terminal, hotel/motel and industry uses, not to mention “helicopter take offs and landings”) potentially have a far greater impact than Prime Time All-Stars.

1. Granting The Variance Will Not Be Contrary To The Public Interest.

The New Hampshire Supreme Court has said that a variance is contrary to the public interest or injurious to the public rights of others if it unduly conflicts with the zoning ordinance such that it violates the ordinance’s basic zoning objectives. One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality. Another approach used by the courts is to examine whether granting the variance would threaten the public health, safety or welfare. Here, the evidence shows that granting the variance for Commercial Recreational Use would not alter the essential character of the locality or threaten the public health, safety or welfare. No changes are needed to the exterior of the building, or to the access, parking areas or utilities. The business operates during normal business hours and does not generate undue vehicular traffic or any type of nuisance factors (such as noise, smoke, harsh lighting, etc.) Prime Time All-Stars, LLC provides cheer and dance training services as well as general youth services activities to promote more productive, positive, and responsible members of the community. In many respects, their services are similar to those of a child care facility, a permitted use in the zone.

2. Granting The Variance Will Not Be Contrary To The Spirit Of The Ordinance.

New Hampshire courts have recognized that the requirement that the variance not be contrary to the public interest is related to the requirement that the

variance be consistent with the spirit of the ordinance. Therefore, for many of the same reasons as previously stated, the variance will not violate the spirit of the Ordinance.

3. Granting The Variance Will Result In Substantial Justice.

Granting the variance will achieve the substantial justice of allowing the applicant to provide a service to the youth of the community, while at the same time, protecting the City's interests. The public will not be injured, but will benefit from the activities of Prime Time All-Stars, LLC. For all these reasons, granting the variance will result in substantial justice.

4. Granting The Variance Will Not Diminish The Surrounding Property Values.

The Property is located within the Rural Restricted Industrial zone. The use does not generate excessive traffic, noise, smoke or other nuisance factors. The use is not changing the existing building footprint, assets or utilities. The site is located in a heavily developed area, not a residential area. Due to oversight, the use has been in operation for slightly over one year, and to the best of the co-applicant's knowledge and belief, no one has ever complained about the Prime Time All-Stars operation. The clientele of the facility are respectable, responsible families. For these reasons, the Applicant does not believe there will be any diminution of surrounding property values due to the commercial recreational use.

5. Provide proof that literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Unnecessary hardship standards are:

- (i). Special conditions of the property that distinguish it from other properties in the area; and

The property is well suited for this type of use. It is a large “warehouse” type of building which was easily adapted to Prime Time All-Stars’ use, which requires a lot of open floor space for the cheer, gymnastic and tumbling equipment and activities. It has ample parking and easy access. These are all special conditions which allow Prime Time All-Stars to operate its business.

(ii). No Fair and Substantial Relationship Exists Between the General Public Purposes of the Ordinance Provision and the Specific Application of That Provision to the Property.

The definition of “Commercial Recreational” use encompasses the Prime Time All-Stars operation, but many aspects of the Prime Time All-Stars operation are more closely related to the permitted use of child care facility. For example, Prime Time All-Stars is geared towards children and young adults; parents need easy access and ample parking to bring the children and drop them off and pick them up; and virtually all of the activities take place in-doors. It appears that the reason Commercial Recreational uses are not allowed in the I-2 zone is because it seems to contemplate the use of ball fields and other outdoor activities, where as part of the use itself, children will be outside running around and perhaps not easily supervised. (Although, it is recognized that the Commercial Recreational Use is not solely directed at that type of activity.) However, the ordinance as currently drafted does not allow Prime Time’s operation, even though it would allow a child care facility. For these reasons, the co-applicants do not believe there is any fair and substantial relationship between the general public purpose of the ordinance provision (not allowing commercial recreational uses in the I-2 zone) and the specific application of that provision to this property.

(iii). The Proposed Use is a Reasonable One.

The proposed use is a reasonable one for the Property. It enhances the surrounding community and is similar to a permitted use, namely a child care facility, both in function and clientele.



