



**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, May 17, 2012**  
Meeting Time: **7:00 pm**

### 1. ATTENDANCE

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

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

The Chair called the meeting to order at 7:06 p.m. The Chair opened the meeting and introduced the Board and staff members to the audience, and described the process used to hear cases.

*Please note that the audio recording for this meeting failed.*

### 2. APPROVAL OF PRIOR MINUTES OF APRIL 19, 2012

**Motion:** O.Perry motioned to accept the April 19, 2012 minutes as amended. Seconded by J.Stone.  
Vote: U/A

### 3. HEARING – *CONTINUED FROM APRIL 19, 2012*

*J.Kelley and F.Landford recused themselves from the case. J.Stone and C.Prior are voting in their place.*

- 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.

The applicant, Salmon Falls Holding, LLC, was represented by Attorney Christopher Boldt.

C.Parker spoke on the revised staff memo. He read staff's proposed conditions of approval. The proposed conditions would allow the applicant to replace the home with a modern structure, but addresses the concerns of the abutters. He stated the floor plan and footprint condition in the plan may need to be shifted as a new condition. A Notice of Decision was presented from the Planning Department. (copy in file)

S.Reid requested clarification about the building and asked if the new building is placed in its current location, would another 3 family be allowed in the rear of the property in the future.

C.Parker said they would have to come back to the Board. Discussion continued.

**Motion:** O.Perry motioned to grant the variance per the conditions described in staff's proposed Notice of Decision. Seconded by C.Prior. *Motion failed.*



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W.Colbath asked the board if they are suggesting including the accessory structure as square footage (which is a barn). The applicant submitted a plan that is a 10% increase in square footage, which includes the square footage of the barn and the structure. He also asked about grandfathering on a specific use, and rebuilding it.

O.Perry said they are redesigning the structure to fit in the space.

C.Parker stated the existing structure is grandfathered; a new structure would not be, and they need a variance for a new structure.

J.Stone asked about parking issues and driveways. Discussion ensued.

C.Parker stated the driveway does not require site plan approval.

S.Reid asked if the planning department is concerned about the location of the driveway.

C.Parker responded that they are changing the curb cut which makes it safer. City Engineering will look into the driveway with the driveway permit.

J.Stone asked if relocating the access would be considered.

W.Colbath asked that the gross area not exceed 10%, and that the driveway and the screenings go to TRC prior to construction to review the backing out situation of the driveway.

C.Parker stated this will be considered by engineering. He also feels the application stated "not to exceed the 10%" and he didn't feel that it was necessary to go to TRC.

J.Stone asked about the intent of the driveway plan and parking.

**Motion:** W.Colbath motioned to limit the increase to 10% and add a TRC review as a required condition. J.Stone seconded. *Motion failed.*

J.Stone asked if there are any regulations requiring screening on the property. C.Parker said there are not.

**Motion:** C.Prior motioned to approve the variance requested, with the following conditions:  
W.Colbath seconded. Vote: U/A.

1. The placement of the new structure shall not be any closer to the north side lot line than the plane along the existing structure and no closer to the south lot line than the plane along the existing barn structure, recognizing that the footprints/floor plans previously presented may need to be adjusted to fit into the building area described herein.
2. The new structure shall be no larger than what was presented in the application.

#### 4. NEW HEARINGS



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- A. \* Z 12-07 Luke Murphy, 3 Nantucket Court, Tax Map 22, Lot 41, located in the Medium Density Residential (R-12) District, requests a variance from **Section 170-12.A** of the Zoning Ordinance and the R-12 District Table of Use to permit the construction of an attached deck to be located fifteen (15) ft. from the rear property line where a minimum thirty (30) ft. rear yard setback is required.

*C.Prior recused himself, as he is an abutter.*

Peter Anderson, who is a builder, represented the applicant Luke Murphy, who is out of town on business. Mr. Anderson presented a letter from the applicant allowing Mr. Anderson to speak on his behalf. Mr. Anderson gave a brief overview of the applicant's request. He discussed the 15' setbacks vs. the 30' setback requirement and the reconfiguration of the deck.

J.Kelley asked about the existing deck and asked if the homes on the street are similar. He commented on the request to have a smaller setback and if other neighbors would wish to do similar changes in future.

Mr. Anderson stated the property is unique. The old deck would be removed. He pointed out a misstatement in the application; the 14 ft deck is replacing the current deck. The plan submitted shows the deck is 14' closest to Henry Law Avenue and what they are requesting is a 15 ft rear setback.

S.Reid asked for a clarification.

*Public Hearing open. No one spoke. Public hearing closed.*

T.Corwin stated the Planning staff supports the application and granting the variance. The original plan included a larger deck, but the staff requested the applicant reduce the size.

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

*J.Cote and C.Prior did not vote.*

- B. \* Z 12-08 Daniel and Lauren Fontaine, 544 Tolend Road, Tax Map C, Lot 28, located in the Rural Residential (R-40) District, requests a variance from **Section 170-12.A** of the Zoning Ordinance and the R-40 District Table of Use to permit the construction of a detached "in-law apartment" containing 768 sq. ft. where "in-law apartments" are not a permitted use in the R-40 District.

*Public hearing open*

Daniel Fontaine represented himself. He mentioned the Building Inspection Department reviewed the preliminary plans including plans for a bedroom, bathroom, living room in the proposed barn, but there would be no kitchen or microwave. He was advised from Building Inspection that in-law apartments are allowed, but that cooking facilities are not.

W.Colbath asked about the "proposed building" on the plans and questioned the "proposed barn". He wanted clarification that the new building is 60-70 feet away from the main house. He also questioned why you would want to put an elderly person that far away from the main house with no kitchen access.



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J.Kelley confirmed with T.Corwin that an “In-Law” apartment over a detached accessory building is not permitted.

O.Perry asked about the new accessory dwelling unit and if it can be occupied by anyone? He stated a detached structure should have an alternative use as a garage and the dwelling unit must be on the second floor.

Sam Reid confirmed this is correct, and stated the Certificate of Occupancy will apply to the second floor only.

O.Perry asked the applicant why he wants the “in-law apartment” in the barn and not attached to the primary structure.

Daniel Fontaine stated the reason to have it in the barn is that he is a contractor and would need a woodshop and storage for his tools. He stated that the R-40 zone includes “elderly care”. He said he tore down a previous 1800 era dwelling and is trying to better the property with new structures.

Lauren Fontaine stated that the apartment is for her elderly dad who needs a place to live.

T.Corwin stated the staff memo states the staff does not take a position on the application and that the Planning Department is considering an accessory dwelling unit zoning amendment. Discussions ensued regarding the property driveways, water and utilities.

F.Landford asked about driveway and the proposed driveway and water line.

*Public hearing closed.*

**Motion:** O.Perry motioned to grant the variance with conditions to build the accessory dwelling unit. Seconded by J.Kelley. Vote: Passed 4-1 (opposed W.Colbath)

**5. STAFF COMMENTS:** N/A

**6. ADJOURN**

**Motion:** O.Perry motioned to adjourn at 8:10 pm. Seconded by F.Landford. Vote: U/A