



**CITY OF DOVER**

## ZONING BOARD OF ADJUSTMENT - MINUTES

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

**Members Present:** Sam Reid (Chair), William Colbath (Vice Chair), Otis Perry, Jennifer Stone (Alternate), Chris Prior (Alternate)

**Members Not Present:** Frank Landford, James Kelley

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

The Chair called the meeting to order at 7:01 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.

### 2. APPROVAL OF PRIOR MINUTES OF MARCH 15, 2012

**Motion:** O.Perry motioned to accept the minutes as presented. Seconded by W.Colbath. Vote: U/A  
S.Reid abstained.

### 3. PUBLIC HEARINGS

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.

Motion: O.Perry motioned to remove from the table. Vote: U/A.

- 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.

Atty. Chris Boldt, Donahue, Tucker & Ciandella, representing Salmon Falls Holding, LLC, introduced Henry Brandt, principal for Salmon Falls, and Tom Heaney, of Keller Williams Coastal Realty who was on hand as a realtor expert (Exhibit E, letter dated 2/29/12). Atty. Boldt gave a presentation on the proposed plan and discussed the location, then stated that this one corner of Arch Street was rezoned in 2011 from RMU to R-12. He stated if the property were still in RMU, it would not have required the variance.

C.Parker clarified that none of the corner lots were rezoned.

Atty. Boldt apologized and clarified it is the last lot on that side of the street. Salmon Falls is seeking to rebuild three units (3) and explained the documents submitted.

He discussed the (5) zoning criteria and he believes they meet them all. He stated the project better the neighborhood, as there are currently 35 dwelling units, and only 14 are single family units. This does not change the character of the neighborhood as they want to keep the 3 family. It does not negatively impact



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abutting property owners, and moving it further over on the property, further from any single families that are currently on Arch Street. It gives net positive tax revenue for the City. The project is asking for 10% wiggle room for the footprint.

Atty. Boldt discussed rear setbacks and that there would be very little encroachment and very little change to what is there now. He referred to the recent Supreme Court cases Malachy Glen and Harborside. The court state that a variance request must alter the neighborhood, or impact the safety, health or welfare of the neighborhood.

The zoning on this property changed 50-60 days after the owner purchased the property. If the zoning had not changed, the property would not have required a variance. There is no gain to the public for denying the variance. The variance will not negatively impact property values. He referred to the Harborside case and that this lot is the only lot of the end lots rezoned most recently. In short, the use is already on the property and by moving this building further away from other residential uses on Arch Street, there are no adjacent properties that will suffer from this project. The use is reasonable and the structure will be improved, and given the existing condition of the building, and the upscale nature of the proposed structure, this is an improvement for this property. Hank Brandt and Tom Heaney were on hand to answer any questions.

S.Reid asked why the structure is moving.

C.Boldt stated the plan is to keep the current structure rented while building the new structure.

W.Colbath asked about Tom Heaney and his expertise.

Mr. Heaney stated he is Chief Executive Officer for Keller Williams and has been a real estate broker in Portsmouth for 27 years. He stated he is a broker, not an appraiser.

W.Colbath commented on relocating the building, and moving it as close as it can get to an active rail line, and questioned calling it a luxury structure. He questioned that there are no future plans to subdivide.

Attn. Boldt restated they have no other plan. A Certificate of Occupancy cannot be granted until the old building is demolished. The 3 unit use is permitted with the property. He states they would not take down the old without the approval of the new structure. Discussion ensued.

C.Parker states a variance from section 170.12 is needed for the setback requirement. Setbacks are between 18 and 25 feet. He referenced the Heaphy Lane variance for a two structure situation.

Attn. Boldt is concerned about section 170.40b which provides that nonconforming uses may not be moved in all or in part. This is why they are concerned.

C.Parker does not agree that section 170.40b applies. The use variance under 170.12 is what is needed. Discussion ensued.

W.Colbath asked why the structure cannot be maintained and rebuild the current structure.



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Attn. Boldt replied its economics, and cheaper to build new.

C.Parker spoke to a building inspector and was advised the condition is deplorable from a code standpoint.

Attn. Boldt reminded the Board that the court suggested strongly to evaluate the application before you, rather than the application you wish were before you.

Henry Brandt, Principal of Salmon Fall Holding, LLC spoke. He feels that they are improving the property. The existing structure has two curb cuts which requires a backout. New garages are part of the plan giving a cleaner design. Due to the rezoning and discussions with neighbors, they requested a green home, and something attractive. H.Brandt stated the intent is to build the new structure first.

*Opposed:*

Atty. Chris Wyskiel, of Wyskiel, Boc, Tillinghast & Bolduc appeared on behalf of the abutters at 43-45 Arch Street, (George Sherwood) and 8 Arch (Carol Boc). He spoke about NH law which requires that an existing structure is raised, it's abandoned.

He handed out 2 zoning drawings that were presented to the Zoning Board and the City Council during rezoning. The R12 is now connected with what was the RMU zone. There is merit in connecting the R12 zone. The preferred zone is single family and duplexes, but not a triplex. He stated if it's new construction, then it should be with the new zoning. He directed the board to a March, 2010 plan, where Sonoma Builders, was proposing a single family subdivision which would have created Story Street.

He stated this request for a variance is illegal and the variance should be denied. Granting it will be contrary to the public interest, and does not adhere to the spirit of the ordinance. There are not unique characteristics that warrant a variance.

S.Reid asked about the plan, which was the proposed Story Street, close to Washington Street.

C.Parker stated the proposed subdivision referenced by Attn. Wyskiel needed 4 waivers which the Board would not support. That application was withdrawn and was not approvable.

Atty. Wyskiel stated there are other options for potential development on this lot.

S.Reid asked about the harm to the neighbors.

Attn. Wyskiel feels they harm the zone in general. The three unit use is a grandfathered use if it's located in that structure.

Peggy Jalbert, 10 Arch Street, spoke on the right of self determination and is concerned about her neighborhood. The neighbors asked for a zoning change, when there were no plans to the contrary. She is asking the board to honor the decision of the elected officials and to make good choices for the future. She spoke on the current condition of the property and the current owner.



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Carol Boc, 8 Arch Street, gave a timeline on the rezoning. In September 2010, the neighborhood submitted a petition submitted to the Zoning Board from the RMU to the R-12 zone change. The amendments were posted in November.

- On November 29, 2010, the 46-48 Arch Street property closed and purchased by Salmon Falls Holdings (Mr. Brandt).
- On December 7, 2010, a public hearing was held where Henry Brandt was in attendance as well as an attorney representing Salmon Falls Holdings. There was no disclosure that Mr. Brandt was connected to Salmon Falls Holdings.
- On December 9, 2010, the 40 Arch Street property (property right next to 46-48 Arch Street) closed with Mr. Brandt as the owner.
- On December 21, 2010, the Zoning Board approved the rezoning.
- In January 2011, the rezoning was submitted to the City Council and they approved it.
- In March, 2011 – the City Council voted against Mr. Brandt’s request for a reconsideration of the approval of the rezoning.

Ms. Boc also stated she is a realtor and mentioned how difficult it is to rent near the railroad tracks. She mentioned the letter from Keller Williams Coastal Realty that refers to executive rentals and upper end buyers. The location near the railroad does impact who rents/purchases these properties. There are proposed balconies, and the three bedrooms units would have children which could be a safety concern. The letter mentions an urban infill project, which is not relevant.

Cathy Vanderweil, 20 Arch Street. She referred to the staff memo, in which the staff stated the approved plan is in keeping with the look and feel of the neighborhood of Arch Street, and she feels that this is inaccurate in keeping with the scope of the neighborhood. She mentioned the height of the structure, and the facade of the building, and the garages and disagrees with staff. She liked the comments of Mayor Trefethen’s at a previous council meeting when they unanimously approved the rezoning. She is against the proposed plan and does not want it approved.

Peter Driscoll, 41 Arch Street. His property is directly across the street from the proposed site. He feels that this variance is the first of many requests over this property. He refers to lots 15 & 16 (which is the property the developer is looking at). He feels the proposed plan changes the frontage of those lots. The idea that Arch Street has 35 dwelling units on it. According to the assessor’s office, there are 20 units on Arch Street, 14 which are single family dwelling units. Arch Street is a mix, but the majority are single family.

Larry Tatro, 2 Arch Street. He agrees with the previous arguments. His argument is primarily in keeping with the architectural character of the neighborhood and the proposed structure is not in keeping with the integrity of the neighborhood. It has 5 large garage doors angled and in view on Arch Street. The actual structure will be moved and this opens up frontage (proposed Story Road) and would allow for frequent development. Arch Street is one of the oldest and most historic areas. He feels that rebuilding the current property, in the exact location with a single family or duplex property would be acceptable to all neighbors. He also had safety concerns.



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Jack Buckley, 36 Arch Street. He would like to see the existing building torn down and rebuilt in the current location. He refers to the Zoning change in 2011. Salmon Falls Holdings LLC filed suit to reverse the Zoning. He asks that the variance be denied until litigation is handled.

Atty. Boldt mentioned the litigation and the alternate relief is through the Zoning Board right now. In concern to the abutters, he stated if you listen to them, you are ignoring the court. He stated you must follow the court and that this is not a legitimate reason to deny a variance. He referred to Mr. Tatro's comment about a safety issue. There are currently two driveways that back out onto Arch Street, and as a result would be removed, which improves the safety concern. In reference to Mr. Driscoll's comments, the numbers referencing dwelling units, Silver Street, frontage on Arch Street, and the side street - West Concord Street, are correct. Next, he referenced who would want to live next to the railroad tracks. He stated with a quality build, it will take care of the railroad issues. He discussed the old Boccia test which legislature has gotten rid of. The law has changed; the old law is no longer there,–referencing Brandt Development vs. Somersworth.

W.Colbath asked about new driveway plans. Atty. Boldt advised he could provide it, but he did not have it tonight. H.Brandt spoke about the driveway closest to the Washington Street.

C.Parker states the request for a variance is reasonable. The 3 family structure as a replacement for a 3 family is reasonable. It's reasonable the abutters are concerned; and reasonable there is conflict tonight; the board would be reasonable to grant the request for a variance. The concerns are valid. The staff supports to remove it, replace it, but won't get into where the home would be provided. The driveway would need a waiver and would come back to the board. He stated a reasonable condition could be added and a discussion about reasonable condition of approval could be added.

J.Stone asked if it were still in the RMU zone and did not move, would a special exception be necessary.

Cathy Vanderweil, 20 Arch Street, asked about the 4 bedrooms vs. 9 bedrooms on the plan, the parking increase, and changes in density changes.

Nancy Cote Carroll, 17 Arch Street, asked about the site plans, parking, driveway, the proposed plan and that it is hard to imagine that no site plan approval is required for this proposal.

George Sherwood, 43 Arch Street, stated the purpose of zoning is to have an orderly growth of the City. It can't reach fruition because there is a continued request in variances.

G.Sherwood stated that the ordinance doesn't work if we keep approving variances.

Carol Boc asked about lot line adjustments and could the residual land be adjusted.

Attn. Boldt commented on previous statements, and on the structure. The footprint is within 10% of the existing footprint. By providing garages, it which will improve the overall curb appeal. The building currently has 3 floors, and the proposed is a 2 ½ floor and smaller building than proposed.



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*Public Hearing closed.*

**Motion:** O.Perry motioned to defer until the May 17, 2012 meeting. Seconded by J.Stone. Vote: U/A.

O.Perry would like to confer with the City Attorney before the May meeting. Board members would like a better understanding of the case law including the Harborside case, as well as the law regarding imposing conditions of approval, grandfathering, and precedent setting.

*The Board took a 5 minute recess. Meeting resumed at 9:33 pm*

#### 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.

*Public hearing open:*

Attorney John Springer, who represents Bill McQuade (Realtor) and Ron Quinio (Prime Time All-Stars, LLC) spoke on behalf of the applicant. In December 2010, by oversight, the applicant was unaware a variance was needed. He referred to his written submission, similar to a child care facility, which is a permitted use. His hours of operation are Mon-Thurs 5:30-8:30 pm, occasionally on Saturdays, and no summer hours. He feels the use is reasonable and has no impact on the abutters.

S.Reid asked about other tenants in the building. B.McQuade stated there is 12,500 sf. in the building, of which 9000 sf. is Prime Time. There is a truck business on site as well.

*Public hearing closed.*

O.Perry feels it is not the equivalent of a child care facility. (He feels it is not fair to penalize them as they have been operating in there.

C.Prior discussed commercial industrial.

S.Reid referred to a dance studio inside and would much rather see an industrial business but mentioned it is difficult to find such a large space with high ceilings.

T.Corwin stated that the I-2 zone permits a number of non-industrial uses.

J.Stone questioned granting a variance.

T.Corwin stated a variance goes with the property and is not specific to the applicant.



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R.Quinio discussed why he chose the space in the first place. He stated the need for a large space, with high ceilings, and a “spring floor” for jumping.

T.Corwin stated he received a couple of complaints about the parking and traffic safety issues and feels a condition of approval that the proposed use be reviewed by the Technical Review Committee to address parking, traffic flow, and other safety issues.

W.Colbath recommended limiting the variance to the current tenant. Discussion ensued.

The Chair verified that this would be added as an additional condition of approval.

1. The variance would expire when the tenancy of Prime Time vacates the business.

**Motion:** W.Colbath motioned to grant the variance with conditions. Seconded by J.Stone. Vote: 4/1. O.Perry opposed.

### 5. APPROVAL OF REVISED ZBA APPLICATION FORM

**Motion:** O.Perry motioned to approve the revised Zoning Board application as presented. Seconded by W.Colbath. Vote: U/A.

### 6. STAFF COMMENTS:

- Discussion about televising the Zoning Board meetings was discussed. O.Perry feels it should be as the ZBA is the only large city meeting that is not. The City Council or City Manager needs to authorize.
- OEP updated Zoning handbook – pdf will be forwarded from T.Corwin.

### ADJOURN

**Motion:** W.Colbath motioned to adjourn at 10:07 pm. Seconded by O.Perry. Vote: U/A