

**DUNBARTON ZONING BOARD OF ADJUSTMENT**

**Monday, May 10, 2021**

**7:00 p.m. – Town Office**

**MINUTES OF MEETING**

A meeting of the Dunbarton Zoning Board of Adjustment was held at the above time, date and place.

John Trottier, Chairman, called the meeting to order at 7:00 p.m.

The following members were present:

John Trottier, Chairman

Alison Vallieres, Secretary

Dan DalPra

Physically not present, participating remotely:

John Herlihy, via ZOOM

Other Attendees:

John Bisson, representing the applicants

“Sippy” Woodod, representing his parents

Donna White, Building Department

Joe French, Abutter

**REHEARING FOR SIFATHULLAH & RAHIMULLAH WOODOD (B4-01-09) OF 1011 MEADOW LANE, FOR REDUCED SETBACKS FOR A RECENTLY CONSTRUCTED CARPORT AND REPLACEMENT SHED. APPLICANT IS ASKING FOR: (1) A REDUCTIN OF THE SIDE SETBACK FROM 20’ TO 3.8’ FOR THE CARPORT, AND (2) A REDUCTION OF THE SIDE SETBACK FROM 20’ TO 3.7’ AND A REDUCTION OF THE REAR SETBACK FROM 20’ TO 15.8’ FOR THE SHED ON PROPERTY LOCATED IN THE LOW DENSITY DISTRICT IN DUNBARTON, NH.**

John Trottier, Chairman, read the Public Notice for the Rehearing.

John Bisson, Attorney, representing the applicants appeared before the Board and presented the following comments regarding the Criteria for the granting of Variances.

- Noted they were there for a Variance for a lot at 1011 Meadow Lane. Should not be an encroachment issue because it would be built where a shed had existed before and that is why the location was chosen.
- 1. *The Board’s determination that the requested variances were contrary to the public interest and spirit was unlawful and unreasonable.*

He presented the Board with a GIS Map showing the location at 1011 Meadow Lane (attached). He passed out a copy to the members showing the location of the property, etc. Stated they

would be driving straight into the driveway where the grassy area is. The driveway runs along the property line. There is a row of hedges also along the property line.

It is a situation where the structure is being put in a location on the property where the shed originally was located along the driveway.

Noted there were other lots in the area where they have carports and structures within the setbacks. Public safety doesn't seem to be an issue because there doesn't seem to be any safety concerns. Many of the homes have had carports relatively close to the boundary. It does fit into the basic character of the neighborhood. The lot is pie shaped and as you go further back, crowding would be less of a concern just because of the shape of the lots. Many of the homes have carports set up. All seem to be situated close to the boundary. Two down the street seem to be configured with a push toward the common boundary. This does not affect the character of the neighborhood.

When you think about setbacks being proposed, they are to prevent overcrowding and trying to make it work. Look again at the aerial map. Question of the crowding issue and setback issues would be minimum because of the configuration of the lot. If you go further back, crowding would be less just because of the shape of the lots.

John Bisson noted that public safety does not seem to be an issue.

**2. *The Board's finding that the hardship element was not met was unlawful or unreasonable.***

John Bisson noted there is a new relaxed standard for hardship, so-called Simplex definition of hardship. Hardship is not an issue.

Whether or not there are specific conditions of the property and that make again overcrowding. If you look over the natural bounds that are on this property and close neighbors to the property. If we could go back and do things a little more correctly.

If you look at the natural terrain of the other properties, it doesn't appear to be unreasonable. If we could go back, the location was chosen because of the existing shed on the property. It would obviously be in the same location.

At this point in the discussion, John Trottier, Chairman, stated that you are saying that the structure was placed there because of the existing shed and the driveway location.

John Bisson stated the pavement is right along the boundary and that is pretty much the basis for the Variance. At the time the Woodod's requested the Variances, the property was already improved.

**Abutters Letters:**

He noted that a letter from an abutter (Andrew and Heather Cummings) was not included in the minutes nor part of the record. (attached)

**It was noted by the Board that the letter from Andrew and Heather Cummings was dated February 17, 2021 which was after the Public Hearing and also was not presented as part of the application process.**

**A letter from Mary Jane Caron, 1016 Meadow Lane, was presented by the applicant's attorney noting that she had no objection to the granting of the Variance. (attached)**

**Joe French, abutter, - At this point, Joseph French, 1005 Meadow Lane, spoke in favor of the granting of the Variances. Stated he is the abutter on the other side of the property.**

**At this point in the Rehearing, the Board addressed the requested Variances as follows:**

**John Trottier, Chairman, noted the following:**

***Granting the variance would not be contrary to the public interest because:***

The request alters the essential character of the neighborhood. Applicant indicated carport and shed blends with the existing house and is consistent with the character of the other lots within the area. Noted that there is one other carport and 3 storage buildings on abutting properties. Agree may be consistent that other lots have carports and sheds but no evidence presented that those other lots have outbuildings that encroach within the setbacks.

Motion for rehearing refers to Town of Dunbarton GIS that shows outbuildings close to the property line and structures encroaching on the property line. GIS photos provided are at an angle and not an accurate representation of what and how structures actually exist.

Setbacks serve to prevent overcrowding, while an existing hedge exists to the south of the proposed carport, no natural buffer exists to the west behind the shed. There's nothing preventing the property owners from eliminating the hedge and losing the natural buffer. Letter of support from southerly abutter was never presented during the variance hearing, furthermore the unsigned letter presented in motion for rehearing is dated Feb 17, 2021 nine days after the Board denied the variance request on Feb 8, 2021.

For the reasons noted, I feel that granting the variance will be contrary to the public interest.

***If the variance were granted, the spirit of the ordinance would be observed because:***

Applicant indicated abutting lot has an existing carport and another abutting lot has 3 sheds. Style of the carport and shed was constructed so that it blends with the existing house and will fit with other surrounding properties. Shed was placed this year and was their understanding no permit was required if placed where original shed was located.

Legal purpose the ordinance has side and rear yard setbacks is to provide an open unoccupied space thus lessening congestion. The subject lot is located in the low density district and surrounding lot sizes and setbacks are already reduced compared to actual low density district. The cumulative impact of allowing the requested variances would be significant to the character of the neighborhood and would be inconsistent with the spirit of the ordinance. Do not feel the spirit of the ordinance would be observed.

**Unnecessary Hardship**

The property has existing improvements, however the existing improvements do not dictate where future improvements would be limited to on account of interfering with the ability to move in and out of the existing garage.

Evidence shows a natural buffer along the southerly property line that is not 100% under the control of the applicant and there is no buffer along the westerly property line associated with the shed.

Reason the ordinance has side and rear yard setbacks is to provide an open unoccupied space thus lessening congestion.

There is no specific conditions of the property that would not permit the property to follow the setbacks.

While a carport and shed are common accessory structures for residential use, no evidence was presented that the setback restriction would interfere with the reasonable use of the property. There is nothing unique about this property, other properties share the same characteristics. There are no special conditions of the property that distinguish it from other properties in the area that would create an unnecessary hardship.

**John Herlihy noted he agreed with John Trottier's comments.**

**Dan DalPra noted the following:**

1. ***Granting the variance would not be contrary to the public interest because:***

***NO - Without compelling reasons why a variance should be granted, doing so could in effect, invalidate the ordinance for future cases and therefore granting the variance would be contrary to the public interest.***

2. ***If the variance were granted, the spirit of the ordinance would be observed because:***

***NO - The Applicant has not provided information to show that the structures in the abutting lots are within the setback as his would be and it is therefore inappropriate to compare these properties.***

3. ***Granting the variance would do substantial justice because:***

***NO – This is not a “use” variance request but a dimensional one. Denying of this variance would not prevent the owners from enjoying their property by having a carport and shed and still be in compliance with the ordinance.***

4. ***If the variance were granted, the values of the surrounding properties would not be diminished because:***

***YES – Although no evidence was presented by the applicant showing the effect on surrounding properties, personally, I do not feel a carport and shed, if appropriately constructed, would have a negative impact on surrounding properties.***

5. ***Unnecessary Hardship***

- a. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because:
- i. 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 because:

*NO – The applicant has not shown there are “special conditions: of the property that differs it from others in the area making a variance the oy option. The applicant could easily meet setback requirements of the ordinance therefore there is no hardship.*

- ii. The proposed use s a reasonable one because:

**YES**

John Herlihy stated he agreed with Dan DalPra’s comments. The applicant increased the size of the shed from what it originally was. A permit is required and he should have sought it out.

John Trottier stated the same would apply if a permit would have been required. If you are going to tear down , you should see the Town.

Alison Vallieres stated she also agreed and noted that there were other locations on the property where the shed and carport could be located that would not require Variances.

It was noted that the consensus of the Board was that all five criteria have not been met at this time.

**MOTION:**

*John Herlihy made a motion that the Dunbarton Zoning Board of Adjustment DENY the request from Sifathuliah & Rahimuliah Woodod (B4-01-09) of 1011 Meadow Lane, for Variances for reduced setbacks for a recently constructed carport and replacement shed. (1) A reduction of the side setback from 20’ to 3.8’ for the carport, and (2) A reduction of the side setback from 20’ to 3.7’ and a reduction of the rear setback from 20’ to 15.8’ for the shed on property located in the Low Density District in Dunbarton. The motion was seconded by Dan DalPra. The motion passed unanimously with the following Roll Call Vote:*

*Trottier – Yes*

*Vallieres – Yes*

*DalPra – Yes*

*Herlihy – Yes*

**APPROVAL OF PREVIOUS MEETING MINUTES – Monday, March 22, 2021**

**MOTION:**

*John Herlihy made a motion that the minutes of Monday, March 22, 2021 be approved as written. Dan DalPra seconded the motion. The motion passed unanimously.*

**ELECTION OF OFFICERS:**

**MOTION:**

*John Herlihy made a motion that John Trottier be elected Chairman of the Dunbarton Zoning Board of Adjustment. Dan DalPra seconded the motion. The motion passed unanimously.*

**MOTION:**

*John Herlihy made a motion that Alison Vallieres be elected Secretary of the Dunbarton Zoning Board of Adjustment. Dan DalPra seconded the motion. The motion passed unanimously.*

**MOTION:**

*Dan DalPra made a motion that John Herlihy be elected Co-Chairman of the Dunbarton Zoning Board of Adjustment. John Trottier seconded the motion. The motion passed unanimously.*

**ADJOURNMENT:**

**MOTION:**

*Dan DalPra made a motion that the Dunbarton Zoning Board of Adjustment adjourn at 7:35 p.m. John Trottier seconded the motion. The motion passed unanimously.*

Respectfully submitted,  
Alison R. Vallieres, Secretary