

DUNBARTON ZONING BOARD OF ADJUSTMENT**Monday, February 14, 2022****7:00 p.m. – Town Office****MINUTES OF MEETING**

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

Attendance: Chair John Trottier, Secretary Alison Vallieres, Dan Dal Pra, Jim Soucy, and Alternates Derrick Labranche and Matt Delude.

Derrick Labranche was appointed as a Voting Member in the absence of John Herlihy.

Approval of previous meeting minutes: **Dan Dal Pra made a motion to approve the minutes of the January 10, 2022 meeting as written; Alison Vallieres seconded the motion. All were in favor.**

Continued Public Hearing – Application #2021-ZBA-004, Sifathullah Woodod & Rahimullah Woodod, 1011 Meadow Lane, B4-01-09, in the Low-Density Residential District. Request Equitable Waivers as follows: 1) To maintain a shed within the side and rear setback; and 2) To maintain a carport within the side setback.

Jim Soucy recused himself from this matter; Matt Delude was appointed as a Voting Member in his place. Attorney John Bisson represented the applicants. Sifathullah “Sippy” Woodod was present.

Attorney Bisson reminded members that the applicant applied for a variance about a year ago; that request was denied. He stated that the applicant then went to the Housing Appeals Board (HAB). At a meeting with the HAB, a suggestion was made by the HAB chair that the applicant consider asking the ZBA for an Equitable Waiver. Mr. Bisson said the Town’s attorney was in agreement with the suggestion. He said the matter is still pending with the HAB, allowing the applicant time to apply for the Equitable Waiver at the local level.

Mr. Bisson stated that the issue here is the placement of the shed and carport in the setbacks. He said what the board needs to deliberate is if this was a deliberate ignorance of the law versus a good faith error. The attorney said an original shed of 180 sf was on the property in 2005, within the setback, and was there when the applicants purchased the property in 2018. He said the applicants decided to replace it because it was deteriorating. Mr. Bisson stated there were actually two sheds, one of 180 sf and one of 96 sf, which were replaced with one new 240 sf shed. He said the carport was lined up with the shed that had been placed in the same place as the previous shed, which ended up being in the setback. He said the owner felt the shed was okay, so he lined up the carport. Mr. Bisson said during that time a certified plot plan was requested. He said the building inspector issued a request to stop construction, yet the applicant went ahead and finished the carport. He said the applicant had the materials on site and it was during the pandemic, but they should not have proceeded. Mr. Bisson said they would like to get past that, and it needs to be decided if it was good faith or bad faith and if it was substantially completed or not. Attorney Bisson said the variance was denied, and they are asking for an Equitable Waiver which has different criteria that has been set out in the application. He noted that no abutters had concerns of the location of the shed at the previous hearing.

Attorney Bisson handed out copies of an aerial view of the property, pointing out the shed and carport near the wooded area of the parcel. He said part of the purpose of the setback is to avoid overcrowding of properties. Mr. Bisson stated that the area has been cleaned up since the time the aerial photo was taken. He said there have been no suggestions that the structures are creating any negative impact on the area, there are no nuisance or value issues, and they do not create problems for anyone else. Mr. Bisson noted that the abutter at 1013 Meadow Lane voiced support of the applicant’s request at the previous hearing. He said if the applicant

had to do it over again, he would have done it differently. He said they lined the carport up with the shed, a good faith misunderstanding based on the shed location.

The chair explained that the Board would address the two structures separately and would begin with the shed. Mr. Bisson went through the criteria for the shed as follows:

- a. *The violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed.*

Mr. Bisson stated that the shed was complete when the issue was discovered, noting that it had been placed in the same location as the prior shed.

- b. *The violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent.*

Mr. Bisson stated the prior shed was in the same location, and this was a good faith error and miscalculation.

- c. *The physical and dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.*

Mr. Bisson said the shed cannot be seen, neighbors are fine with its location, and it does not appear to have any negative effect on property values. He noted that the closest neighbor submitted an affirmative response at a previous hearing.

- d. *Due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be equitable to require the violation to be corrected.*

Mr. Bisson said there would be some financial cost to move the shed. He asked what the corresponding benefit to the public might be if the shed was moved.

The chair asked if there were any questions on the shed portion of the request. Matt Delude said he had read notes on the variance request from February 2021 which stated the shed was placed in the same area. Attorney Bisson said that was correct; this shed is bigger but the part in the setback is no worse. Derrick Labranche asked to confirm that both previous sheds are gone. Mr. Woodod said that was correct.

The chair asked Mr. Bisson to continue with the carport portion of the request. Attorney Bisson said the carport was placed in line with the boundary where the shed was, thinking the shed was properly located. He said the setback issue was not discovered until after the carport was begun, but before it was completed. He said a certified plot plan was asked for after the shed was in place. Mr. Woodod stated that the carport was 50% done when the building inspector mentioned his concern of it being in the setback and asked them to get a surveyor. He said they tried to get a surveyor, but it was difficult due to Covid. Mr. Woodod explained that they had the materials outside at the time. He knows that it was mentioned at the previous hearing that they could have covered the materials, but it would have been tough to do, plus they had the builder lined up already. Mr. Woodod said they completed the project, not thinking it was too big of an issue, which was their mistake. He said the footings and framing were done before they were asked to stop construction.

Attorney Bisson said the question would be if the carport creates a private or public nuisance in the neighborhood. He said no concerns have been raised, and there are no indications that it has affected values of other properties. He then asked if the Board could agree the decision to move forward was justified. He noted that in prior hearings there was conversation about the applicant moving ahead with the construction. Mr.

Bisson said they realize they should have stopped and there should be some consequences; however, it was 75% complete, it was a good faith error, and they wanted to get it done.

The chair noted there were no abutters present. Donna presented an email received from the owner of the former golf course, Bob Pike of Countryside Homes, LLC, an abutter to this parcel. Mr. Pike stated that Countryside Homes has no objection to the equitable waiver as it relates to his property. A chronological outline created by the building inspector for the previous variance hearing was again distributed to board members. Dan Dal Pra asked the applicant if a plot plan was required by the bank when they purchased the property. Mr. Woodod said it was not. Attorney Bisson said most residential lenders do not require a plot plan. Mr. Dal Pra asked to confirm that the only documentation is the sketch given to the building department. Mr. Woodod said that was correct. He said he sat with the building inspector to do the sketch. He said he tried to be very open during the process, was in the office several times, and is still figuring out the process.

Hearing no further discussion, the chair closed the public hearing. Mr. Trottier said he would like to deal with each structure individually, beginning with the shed. He said there was a shed there prior to the applicant purchasing the property, and the shed would be considered a pre-existing, non-conforming structure. He said two sheds were replaced by one larger shed; it makes sense to have one good-sized shed. Matt Delude said they stayed within the same footprint and did not increase the encroachment into the setback. Mr. Trottier said it was an error in placement, based on the previous shed's location. Board members agreed; there were no other comments.

The chair said they would then consider the carport. He said he has a little different thought on this one. He referred to the building inspector's outline, noting that on 8/13/20 a list of surveyors was sent to the homeowner and a certified plot plan was requested. He then read on or about 9/3/20 that work had continued, and that the homeowner stated they needed to get the carport done and no surveyors were getting back to him. Mr. Trottier said the applicant just kept moving, as confirmed in the outline, and it is incumbent on an applicant to resolve these things. He said the chronology does not set well with him. Matt Delude referred to Article 13, Section D-4-1a of the Zoning Ordinance, noting that substantial completion was done after the municipal officer brought the issue to their attention. He said he has serious concerns with that criterion. Derrick Labranche asked when the stop work order was issued. Donna White explained that a written order was not issued, yet they were asked for documentation on 8/11/20, a certified plot plan was requested on 8/13/20, the need for a certified plot plan was discussed with Sippy on 8/20/20, and a follow up as to when they would get the certified plot plan on 10/6/20. On 8/13/20 the building inspector stated that he needed to know the carport location and that they should stop working until this was resolved.

Matt Delude addressed the four points as follows: *a) violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed.* He said this looks pretty bad for them as it was discovered before the structure was substantially complete. *b) The violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent.* Mr. Delude said this does not look terribly good for them either; he might consider this a draw. *c) The physical and dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property.* He said this is not a problem for them; he would agree there is probably no adverse effect on surrounding properties. *d) Due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be equitable to require the violation to be corrected.* Mr. Delude said the benefit to the public may not be that high; he might consider this a draw as well.

Mr. Delude asked if Mike Cumings, building inspector, had strong views on this matter. Donna said that Mike has been adamant about following up with the applicant, staying on it and them, and was frustrated and disappointed that they kept going. The chair said he was contacted by the building department earlier in the day to see if Mr. Cumings needed to be here tonight. He said the inspector could be brought in next month if the board would like to hear from him directly. Mr. Delude said he was fine with the outline and that the

description was very helpful. Dan Dal Pra said the applicant is not denying the fact that they were notified of the issue and has admitted they made a mistake in going ahead and finishing the carport. He said most anyone may have done something similar in their life. He said this is not a black and white situation. Matt Delude agreed, referring to the location in the picture. Derrick Labranche asked if the carport is on the existing driveway. Copies of the certified plot plan were distributed for the board's review, all noting the location of the carport at the end of the driveway.

Hearing no further discussion, the chair asked how the Board wished to proceed with the Equitable Waiver request to maintain a shed within the side and rear setback. **Dan Dal Pra moved to grant the Equitable Waiver to Sifathullah Woodod and Rahimullah Woodod at 1011 Meadow Lane (B4-01-09) to maintain a shed within the side and rear setback based upon reliance on the fact that the shed was a replacement for one that was there for many years, the Town was aware of it, the previous shed was replaced in the same location, it does not provide any physical or dimensional violations that constitute public or private nuisance, the shed does not devalue surrounding properties, and the cost to relocate would outweigh any public benefit. Alison Vallieres seconded the motion.** Matt Delude said he supports the motion, relying on submissions provided by the applicant. **All were in favor; chair voted in the affirmative. Equitable Waiver granted for the shed.**

The chair asked how the Board wished to proceed with the Equitable Waiver request to maintain a carport within the side setback. **Dan Dal Pra moved to grant the Equitable Waiver to Sifathullah Woodod and Rahimullah Woodod at 1011 Meadow Lane (B4-01-09) to maintain a carport within the side setback based on the fact that the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed.** The chair explained the voting process, noting that a new motion would be needed if this motion does not pass. **Matt Delude seconded the motion.** He said he could support it with the information provided by the applicant, noting this is a tough call as things were crazy with Covid when getting contractors and materials lined up was intense. He said he would barely support the motion, recognizing the unique circumstances of Covid and the desire to get it done. He said he could have gone either way on this one but will support for reasons stated, abutters not being concerned, it not being a problematic structure, and it does not seem to be affecting the neighborhood. There was no other discussion. **All were in favor; chair voted in the affirmative for all the same reasons. Equitable Waiver granted for the carport.**

Jim Soucy returned to the table; Matt Delude stepped down. As an alternate, Mr. Delude can participate in discussion but not vote.

Public Hearing – Application #2021-ZBA-005, Josh & Marney Durand, 16 Stark Highway North, E3-02-27, in the Village District. Requests a variance from Article 4, Section B. Dimensional Requirements, of the Dunbarton Zoning Ordinance to allow the construction of an Accessory Dwelling Unit (ADU) within the 40' front setback. The chair commended Mr. Durand on his re-submittal packet.

Mr. Durand read from his ADU Project Summary as follows: *1) The proposed project at 16 Stark Highway North will involve the construction of a 1000 sq ft Accessory Dwelling on the first floor of the structure, and storage space above the existing home. Additionally, tying this living space into the existing home as an ADU will allow for the existing septic and well to be used.* Matt Delude asked if the intent is to make it look the same as the existing home. Mr. Durand said that was correct. John Trottier pointed out on an architectural drawing how the two sections would have the same lines, with the ADU set back some. *2) The goal of the project is to create an additional living space on the property without sacrificing its single family/historical home appearance.* *3) The proposed ADU will meet all criteria as defined by the ADU Zoning Ordinance.* He showed a picture of the existing home, proposed ridge lines, and windows being the same. *4) A variance has been requested as the chosen location falls within the 40 ft property setback at the front of the home.* Mr. Durand presented information on a similar project on Gorham Pond Road that was granted a variance. *5) A building permit application along with a backup septic plan was submitted for this project but was denied on account of the encroachment on the setback.* Mr. Durand said Jim Soucy had asked for photos of

the existing layout. He presented several shots showing the location of the current walkway, septic tank location, and access to the dwelling, all reasons not to push the ADU back.

Dan Dal Pra asked if there is any intent to enlarge the driveway. Mr. Durand said there is not at this time as that would mean less yard and affect the trees that have been planted. Mr. Dal Pra asked if the traffic would remain basically the same and what the public is going to see when driving by. Mr. Durand noted that this application is more about the placement of the ADU and maintaining the historic appearance of the home. Matt Delude asked if it would be just family living there. Mr. Durand said that is the plan for right now.

Hearing no further questions from the Board, the chair opened the hearing to abutters. Geoff Moody of 25 Everett Road said, as an abutter, he would have no objection to the plan to add onto the home. He said the driveway is already ample and there would be no appearance of this being a multi-family dwelling.

The chair closed the public hearing. The five points of the criteria were addressed as follows:

1. Granting the variance would not be contrary to the public interest: *The variance will not be contrary to public interest because the addition will maintain the historical character of the existing home. The location of the proposed ADU will not encroach past the front of the existing home and the roof ridgelines will be centered, creating a balanced original look.* John Trottier said he would agree that the proposal does not alter the character of the neighborhood. He said all of the houses in the area are right near the road, as is often the case with older homes. Mr. Trottier said he sees no threat to the public safety or health. Jim Soucy referred to Article 1, C, the purpose of the Zoning Ordinance. He said nothing was presented that would seem to tell him that this proposal would be contrary to public interest. Alison Vallieres said Mr. Durand has done a great job. She noted that the ADU will be no more intrusive than the existing house and will be no closer to the road. John Trottier said the Board has dealt with this type of situation often.
2. If the variance were granted, the spirit of the Ordinance would be observed: *The spirit of the ordinance is observed because the ADU has been designed in a manner that maintains the colonial appearance of the original home. The ADU will use the same windows, and siding will match the front of the existing home.* John Trottier said the proposal would not impact public or private rights of others. He said all of the project is within the applicant's own property, and he does not see it impacting anyone else. Dan Dal Pra stated that the applicant does not have a lot of options of where to put the ADU. He said Mr. Durand has done a good job of researching all the options, and the process he went through has been appropriate. Jim Soucy referred again to the purpose of the Zoning Ordinance, saying the proposal is consistent with the spirit of the Ordinance in health, safety, general welfare, traffic, etc. He said it is not overcrowding the area. Mr. Soucy noted the applicant's statement about, if approved, the ADU will comply with the ADU ordinance. He referred to the architectural plans, noting that they conform to the requirements of the ADU section of the Ordinance. Mr. Soucy said it seems to satisfy this criterion.
3. Granting the variance would do substantial justice: *Substantial justice would be done because there is no other location available for the homeowner to build the structure, restricting the homeowner's ability to utilize their entire property.* John Trottier commended Mr. Durand for his efforts on his application. He said this proposal is consistent with surrounding areas. Jim Soucy said the applicant explained in his photos why this layout is the least intrusive and most cost effective, conforming in large part to the spirit of the Ordinance.
4. If the variance were granted, the values of the surrounding properties would not be diminished: *The values of surrounding properties are not diminished because the ADU will add value and maintain the façade of the home. If the ADU were to be located anywhere else on the property it would require additional driveways to be constructed, giving it the appearance of a multi-family property, out of congruence with abutters' homes and many of those in the village district.* John Trottier said it is common knowledge that property values will not be diminished.

5. 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: *No fair and substantial relationship exists between the general public purposes of this Ordinance provision and the specific application of that provision to the property, and, due to the age of the home, the setback requirements, when located and constructed, had not been established and enforced.*
- ii. The proposed use is a reasonable one: *The proposed use is a reasonable one because it allows the homeowner to utilize the second floor as much needed storage space, strengthen/insulate the bulging north wall of the home, and reduce entry points for mice shoring up the foundation. Additionally, moving the structure west would eliminate the above and result in the destruction of the walkway, large white fir trees, and impact the existing septic tank located immediately adjacent to the walkway.*

John Trottier said Mr. Durand has done a good job with his explanation and pictures. Dan Dal Pra agreed. Jim Soucy, addressing 5.a.ii, said the applicant showed proposing an ADU in a different location is not reasonable and would be cost prohibitive. He said he feels the criteria has been satisfied. Hearing no other discussion, the chair said he would entertain a motion.

Jim Soucy made a motion to grant to Josh and Marney Durand at 16 Stark Highway North (E3-02-27) a variance to Article 4, Section B of the Dunbarton Zoning Ordinance to allow them to construct an ADU (Accessory Dwelling Unit) closer than the required 40 feet from the east (front) boundary at their property located in the Village District, as submitted through the application and by the applicant. Based on evidence submitted, the Board feels the applicant has met all five criteria. Alison Vallieres seconded the motion. All were in favor. Variance granted.

Adjournment: The Board having no further business, **Dan Dal Pra made a motion to adjourn the meeting at 8:30 p.m. Jim Soucy seconded the motion. All were in favor.**

Respectfully submitted,

Donna White, Office Administrator