

DUNBARTON ZONING BOARD OF ADJUSTMENT

Monday, February 8, 2021

7:00 p.m. – Town Office

The regular monthly 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
James Soucy

Physically not present, participating remotely:

John Herlihy, via ZOOM
Dan DalPra, via ZOOM

Other Attendees:

Donna White, Building Department
Michael Cumings, Building Inspector (via ZOOM)
Jacques Belanger, Surveyor representing the applicants
Peter Weeks, Surveyor representing the applicants (via ZOOM)

Meeting Posting:

The Chairman verified with the Secretary that the meeting notice had been posted in two public places throughout the Town. It was noted the Zoning Board Meeting was posted on the Google Calendar and on the Dunbarton Town Web Site.

APPROVAL OF PREVIOUS MEETING MINUTES: MONDAY, JANUARY 11, 2021

MOTION:

James Soucy made a motion that the Dunbarton Zoning Board of Adjustment approve the minutes of the JANUARY 11, 2021 meeting as written. John Trottier seconded the motion. The motion passed unanimously with the following roll call vote:

*Trottier – Yes
Vallieres – Yes
Soucy – Yes
Herlihy – Abstain (not present) via ZOOM
DalPra – Abstain (not present) via ZOOM*

CONTINUED PUBLIC HEARING – SIFATHULLAH & RAHIMULLAH WOODOD OF 1011 MEADOW LANE, (B4-01-09)

REQUEST VARIANCES FOR REDUCED SETBACKS FOR A RECENTLY CONSTRUCTED CARPORT AND SHED. APPLICANT IS ASKING FOR (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 THE REAR SETBACK FROM 20' TO 15.8' FOR THE SHED FOR PROPERTY LOCATED IN THE LOW DENSITY DISTRICT IN DUNBARTON, NH.

John Trottier, Chairman, read the Public Notice and noted at the January 2021 meeting the Board had reviewed the status of the application and noted that Michael Cumings, Building Inspector, had submitted a time line of the events leading up to this meeting. (attached) The Board would like to hear from the applicants or their representative.

“Sippy” the applicants’ son, appeared before the Zoning Board of Adjustment on behalf of his parents, Sifathullah and Rahimullah Woodod. He explained that they had been working with Mike Cumings and have done a lot of projects since they moved in. There was a bit of a misunderstanding. We were working on a deck at the same time. We were putting in a footing for the carport. Mike had made several suggestions on the project. At this point, Mike Cumings stated the project should come to a halt. We were confused. It came to be a problem at that point. He sent us a list of surveyors. Due to the pandemic, none of the surveyors got back to us. Donna White and Mike suggested that we get on top of the situation. We had all the lumber and construction materials and finished the project. We finished to protect ourselves from a ruination of lumber and the contractor who was building it. We feel we did protect ourselves but we also acknowledge the mistake we made but we thought it was reasonable because of the situation. There was a discussion about where the property line was.

BOARD COMMENTS:

John Trottier noted the shed was not in the same place as the original shed.

Sippy stated the carport wall aligns with the shed wall.

John Trottier noted you were asked for a Certified Plot Plan and you proceeded at your own risk.

James Soucy noted the existing carport is shown on the plan submitted.

Sippy stated the carport is entirely new. The shed is the only thing being replaced.

Jacques Belanger stated Sippy did reach out to me after the request for the Certified Plot Plan.

James Soucy asked Mike Cumings if he was able to hear the applicant’s description of time and evidence. Is there any description as to the situation into the time line and when a permit was issued and when construction of the carport should stop?

Mike Cumings explained that they stated the shed had been there. I never said anything about they could proceed. I don’t recall allowing a shed with a permit. On 8/13 called for how close to the hedge the shed was. He was talking about it being framed. At that point, I said he needed to stop working on the 13th and that is the same day we mailed a list of surveyors to them.

James Soucy asked at what stage of completion is the carport done right now.

Sippy noted it was done.

Jacques Belanger stated the shed was a replacement. There was a shed in place when I arrived there. I looked at the aerial maps.

At this point, Donna White, Planning and Zoning, noted the shed showed up on the previous tax cards in 2005 as a 180 square foot shed prior to when they purchased the property.

James Soucy stated he was trying to connect where the shed was and who put it there. Was the shed properly located on the property when it was put there and who put it there? The applicant should have some knowledge of setbacks and where it should go.

John Herlihy noted that Jacques Belanger has said the present shed is bigger than the one that was there before. The present shed is 240 square feet and the tax card says 180 square feet on the previous shed. It is on blocks and could be moved. The owners say they didn't realize the setbacks. Ignorance is no excuse. Why didn't they stop?

Sippy stated they had purchased all the lumber and materials for the carport at that time.

John Herlihy stated that your lumber was not going to rot before getting this resolved. It was not going to go away.

Jacques Belanger, Surveyor for the applicant addressed the criteria for the granting of a Variance as follows:

1. The Variance will not be contrary to the public interest because:

The granting of this requested variance will not alter the essential character of the neighborhood. The constructed carport and shed blends with the existing house and is consistent with the character of the other lots within the area. There is one other carport and three storage buildings on abutting properties. The shed has been replaced this year and was placed in the original location of the previous shed.

2. The spirit of the Ordinance is observed because:

An abutting lot has an existing carport and an abutting lot across Meadow Lane has three storage sheds. The style of the carport and shed was constructed so that it blends in with the existing home and will fit in with the other surrounding properties. The shed was placed this year and owners did not pull a building permit. It was their understanding one was not required if placed where the original shed was located.

3. Substantial justice would be done because:

Granting the variance will allow the owners to fully enjoy their property and to benefit from have a carport and a shed. We feel the style of the carport and shed will increase the value of the neighborhood. Concerning the shed, the owners were under the impression that a building permit was not required and that it could be positioned where the original shed was previously.

4. The values of surrounding properties are not diminished because:

Granting of this variance request will have little effect on the surrounding property values. It will actually increase the values as it will be consistent with other properties. The carport and shed are not intrusive or out of character with the surrounding homes. The landowners to the south have mentioned that they are fine with granting of the variance.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

(a) For purposes of this subparagraph, "unnecessary hardship" means that, owing to special conditions of the property that distinguish it from other properties in the area:

(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, and;

The carport and shed are not intrusive or out of character with the surrounding homes. The style of the carport and shed was tastefully constructed and was the most logical placement. There is a natural buffer along the southerly boundary line. The abutters to the south have stated to the owners that they are fine with position of the carport and shed.

(ii) The proposed use is a reasonable one.

The owners are making valuable and reasonable use of their land which is consistent with the character of the neighborhood. The carport and shed will protect equipment and cars from the weather and will improve the aesthetics and will not overburden the building coverage.

It was noted for the record that there were no abutters present at this meeting.

Abutters – Andrew & Heather G. Cummings

Joseph & Nicole French

Mary Jane Caron Revocable Trust

Countryside Homes, LLC

Public Hearing was closed by John Trottier.

At this point in the meeting, John Trottier noted he felt the criteria for a Variance has not been met. Felt spirit of the Ordinance was not being observed and granting the Variance would be contrary to the public interest. The Town adopted setbacks and those setbacks should be followed. Applicant noted others in the neighborhood have carports and sheds, but nothing was presented indicating these carports and sheds were within the setbacks. If they are not meeting the setbacks they cannot do it just because they want to put it there. There is ample room on the property to locate the shed and carport without infringing on the setbacks. Applicant can abide by the setback and still have plenty of usable land available. I don't feel they meet the criteria of a Variance.

John Herlihy stated he has a problem with putting in a large shed and I agree there is enough property out there to abide by the setbacks. It being that the criteria for a Variance has not been met and there is no hardship. He created his own hardship.

James Soucy stated he doesn't want to go over what has already been said. In addition, I am looking at the existing plan and there is a hedge on it. Don't know if the hedge is put on the property line or not. It is not like it is a ledge or rocks. Hearing from the applicant that the abutters to the south don't object. As far as this is concerned, I would have preferred they have them send a letter from these people to go on. The easterly neighbor that would have been one of the people. I agree with John that all work did not stop. They could have used a blue tarp to cover their lumber, etc. There seems like there was a few other things. Unfortunate situation. In looking at the larger picture, this lot does have other areas for the carport and the shed to be moved onto.

Dan DalPra stated the problem I have with it is that more than one time he ignored the request from the Building Inspector and the fact that there is nothing exceptional about the property. The ignoring of the directive from the Building Inspector does not sit well with me.

Alison Vallieres stated there are other locations on the property to locate the shed and the carport within the setbacks. Stated she agreed with both John Herlihy and James Soucy in that the applicant should not have proceeded with the construction of the shed and carport until such time as he had a Certified Plot Plan and knew where the setbacks should be. He has the ability to move the shed because it is on cement blocks.

Donna White noted that when the question came up about the carport originally, it seemed like it made sense to show the shed on the plan and get both encroachments resolved.

The following motion was made:

MOTION:

John Herlihy made a motion that the Dunbarton Zoning Board of Adjustment DENY the request for a Variance from Sifathullah & Rahimullah Woodod (B4-01-09) of 1011 Meadow Lane. Applicant is asking for (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 the rear setback from 20' to 15.8' for the shed on property located in the low density district in Dunbarton, NH.

Denial is based upon evidence provided and discussions amongst the Board members. Spirit of the ordinance is not being observed, variance will be contrary to the public interest, there is no special conditions of the property that would prevent the shed and carport from meeting the setback requirements.

The motion was seconded by James Soucy and passed unanimously with the following Roll Call Vote:

Trottier – Yes

Herlihy – Yes, *via ZOOM*

Vallieres – Yes

Soucy – Yes

DalPra – Yes, *via ZOOM*

OTHER BUSINESS:

None

The meeting adjourned with the following motion:

MOTION:

John Trottier made a motion that the meeting adjourn at 7:35 p.m. James Soucy seconded the motion and it passed unanimously.

Respectfully submitted,

Alison Vallieres, Secretary

Dunbarton Zoning Board of Adjustment

January 5, 2021

Re: Woodod, 1011 Meadow Lane, B4-01-09, Variance application

I am submitting this outline of events and communications with the applicant/son of the applicant for the Board's use during consideration of the applicant's application.

On or about 8/11/20, I inspected the poured sonotube footings in the ground for the carport permit that was issued 8/11/20. The location of the footings was discussed, and I asked for the homeowner to get me some documentation to verify that the location of the carport was outside the setbacks. I noticed the shed at that time.

On or about 8/13/20, I was called for a framing inspection for carport. There were some issues with the framing that needed to be addressed by the contractor. I asked for the location documentation and I asked where the homeowner thought the property lines were. He stated beyond the hedges. I saw a swing set in the neighbor's yard beyond the hedges and stated the swing set might be on the property line or the carport might be in the setback. I asked how the roof framing for the carport would be done, and the homeowner stated it would be like the shed roof. I asked if they built the shed, and he said it was already there. At that time, I did not question the existing shed as I thought it was built by a prior owner. I stated that I needed to know the carport location and that they should stop working until this was resolved.

On 8/13/20, I emailed our list of surveyors to the homeowner and requested the certified plot plan.

On 8/20/20, I met with Sippy (son) at the office for a few minutes to discuss the need for the certified plot plan.

On or about 9/3/20, I was called for an inspection for the deck being built at that time and saw that work had continued on the carport, but it was not complete. The homeowner stated they needed to get the carport done and no surveyors were getting back to him.

On 10/6/20, I spoke with Sippy for when they were getting the certified plot plan. He stated they have contacted someone to do the survey in October.

On 10/27/20, I drove by 1011 Meadow Lane and saw the carport was near completion. I sent an email to Sippy to again request the certified plan. I stated they were not to use the carport until a final inspection was done.

On 10/27/20, Sippy sent me an email to again request the list of surveyors. I advised him I would have Donna send the list. I stated that it seems like work had continued on the carport, and I asked why that was done. He stated that building in the winter would be difficult. I again stated that they are not to use the carport and are not to finish the carport until we get the project in compliance. I asked that they contact Donna once the survey is done.

On 11/17/20, I sent an email to Sippy, asking how the plan was coming. Sippy replied that the surveyor would be doing the work in early December.

On 12/21/20, we received the application for variance and the certified plot plan.

On 12/29/20, I drove by 1011 Meadow Lane. I observed a vehicle parked under the carport.

It would appear from conversations with the surveyor's agent that the current shed was built earlier in 2020 and replaced a shed that was put on the property by a prior owner.

Respectfully submitted,
Michael Cumings
Building Inspector