



ZONING BOARD of ADJUSTMENT
Town of Hollis
Seven Monument Square
Hollis, New Hampshire 03049
Tel. (603) 465-2209 FAX (603) 465-3701

Minutes of January 25, 2024

The Zoning Board of Adjustment meeting was held in the Community Room, Hollis Town Hall, and was called to order by Chairman Brian Major at 7:00 pm.

MEMBERS OF ZONING BOARD OF ADJUSTMENT PRESENT: Brian Major, Chairman; Regular Members – Cindy Robbins-Tsao, Rick MacMillan, Drew Mason; Alternate Members – Kat McGhee, Stan Swerchesky.

MEMBERS ABSENT: Jim Belanger, Vice Chairman; Alternate Members – Bill Moseley, and Meredith West.

STAFF PRESENT: Kevin Anderson, Town Planner & Environmental Coordinator; Donna Setaro, Building and Land Use Coordinator.

B. Major led the Pledge of Allegiance.

B. Major explained the policies and procedures.

B. Major stated that the voting members at this meeting will be B. Major, C. Robbins-Tsao, R. MacMillan, D. Mason, and S. Swerchesky.

Review of Minutes

C. Robbins-Tsao moved to approve the minutes of December 28, 2023.

Seconded by S. Swerchesky.

Motion unanimously approved.

K. McGhee recused herself from both cases this evening.

Determination of Regional Impact

By unanimous vote, the Zoning Board of Adjustment (ZBA) found no regional impact for cases ZBA2024-001 and ZBA2024-002.

The ZBA discussed both cases together since both cases involved the same property.

ZBA2024-001

The application of William Davis, property owner, for a Variance to Section XH; paragraph 5.c, Minimum Front Yard Depth, of the Zoning Ordinance, to construct a 20' x 20' Carport, 40 feet from the front property line (required 50 feet), located at 240 Hayden Rd., (Map 028, Lot 043) in the Rural Zone.
and

ZBA2024-002

The application of William Davis, property owner, for a Variance to Section XH; paragraph 5.d, Minimum Side Yard Depth, of the Zoning Ordinance, to construct a 20' x 20' Carport, 25 feet from the side property line

(required 35 feet), located at 240 Hayden Rd., (Map 028, Lot 043) in the Rural Zone.

Applicant: William Davis, 240 Hayden Road. Stated that they are seeking variances for the minimum side and front yard depth by 10 feet each. This is a non-conforming, irregularly shaped lot, of one acre, with the residence being 22 feet from the road. The whole neighborhood was developed in the 1950s, and his neighbors have the same setback issues. There is precedence in the neighborhood for similar variances. His proposed construction will not threaten any public health, safety, or welfare, or otherwise injure the public rights; where the carport would be is already a parking area for his cars. Nothing is really changing from the land use perspective. The spirit of the ordinance is maintained in that the spirit is to maintain rural character; he is looking to put in a semi-permanent carport made of cedar in a place that will not disturb any structures, trees, or sight lines. The nearest abutting structure is still 150 feet away from the proposed carport. Substantial justice would be done by allowing the requested footage because it would be reasonable, fair, and equitable use of the property – it is where they already park cars today. Literal enforcement of the ordinance would create a hardship because of the slope of the lot. If he were to try to move the proposed structure back 10 feet, his property drops off 12 feet. Right behind the 12-foot drop is his septic system and leach field. In terms of trying to move to the side 10 feet, there is a foundation wall in the way. Taking down the foundation wall would disrupt the required eight-degree slope of the driveway. The proposed location of the carport would maintain handicap access to the cars. The value of the surrounding properties would not be diminished; the entire neighborhood consists of non-conforming lots. His house is closer to the road than where they are seeking to put the carport, which is about 12 feet behind the front of the house.

B. Major pointed out that if the Applicant tried to attach the carport to the house they would have had to come before the Board for a special exception. W. Davis stated that there is also a 20-foot space between the house and the driveway, with a deck there as well as the foundation wall that maintains the eight-degree slope. This is a very sloped lot. The back of the lot gets down 25 feet below street level, and is very wet.

B. Major stated that the Applicant's neighbors to the north are the ones most affected by the side yard setback. W. Davis agreed, but also pointed out that there is a 12-foot strip between the lots, which belongs to a third party back neighbor. That 12-foot strip was originally for the power line, in the 1950s. B. Major asked if that strip is used; W. Davis stated that it is not. The strip is treed.

B. Major stated that, therefore, as mitigating factors to the requested intrusion, the Applicant has the 12 foot strip, and the irregular shape of his lot – which puts the northern neighbors' house at over 150 feet from the proposed carport. W. Davis stated that while he has not had the Building Department out to measure at the site, there are stakes and it is well marked.

W. Davis stated that literal enforcement of the ordinance would create an unnecessary hardship due to the slope of the lot, the driveway retaining wall, the septic system location, and the drop off and wetlands behind the septic system – those factors are really pigeonholing how they can use the property. He would prefer to build a garage, but unfortunately if he were to do that it would have to be way in the back, behind the septic field, and it would not be accessible. It would also require taking trees down, putting in fill, changing too much of the neighborhood.

R. MacMillan asked the Applicant to go over the hardship aspect again. W. Davis replied that there is nowhere else for him to put the carport, except where the driveway is currently located. The way the lot was developed, in the 1950s, it is very restrictive in what they can do with it. He personally needs the carport; for health reasons, he cannot deal with the snow, clearing the cars, and shoveling around them. That is why, after 40 years of residency, he would like to build the carport.

C. Robbins-Tsao asked about the wetland area that the Applicant mentioned. W. Davis stated that behind the property there is what he calls seasonal wetland: it is wet right now because of all the rain. It is behind the leach field, where the property drops off 20 feet behind the tree line.

B. Major asked about the square footage of the proposed intrusion. The answer was that it is approximately 10 feet in each direction; 100 square feet on the side. The front intrusion would be 10 x 20, so 200 square feet. Some of the two intrusions overlap.

R. MacMillan stated that just because the Applicant doesn't have land, that is not a hardship. A lot of people don't have land. W. Davis replied that the problem really is fair and equitable use of his property. The way the house is positioned on the property, and the fact that none of the current ordinances were in place when the house was built, are contributing factors. There is nowhere else to put a shelter, or any other structure, on the property.

Per a question from C. Robbins-Tsao, W. Davis stated that the carport would be 20 feet from the end of the house, with a deck between the house and the driveway.

R. MacMillan stated that in the past the Board has generally considered 10% de minimis.

S. Swerchesky asked whether the 12-foot strip of land, originally for the power line, is technically a right of way. W. Davis stated that is not – it is owned by the property holders behind his lot. It is a factor that affects the side yard. W. Davis stated that his wife's father built the house, beginning in 1958/59 and finishing in about 1963.

Per a question from D. Mason, W. Davis confirmed that the carport would not be accompanied by any other new construction.

Per a question from S. Swerchesky, W. Davis confirmed that the representative images included with the application are exactly what he intends to build. It is a cedar kit shed, with a shed dormer roof. It would be constructed in accordance with the plans, meeting wind and snow-load requirements.

Per a question from B. Major, K. Anderson confirmed that the Applicant could put up a temporary tent shelter by right, with a building permit, but would still have to follow the setback requirements. 'Temporary' is considered to be 120 days or less. B. Major further asked whether the Applicant could construct a colonnade, or something attaching the house to the carport, that would then be considered part of the principal structure. K. Anderson stated that he struggled with that determination when looking at this application, trying to figure out whether the foundation of the deck is attached to the house, and whether this is really an expansion of the existing house or whether it's a separate stand-alone. In looking closely at the language of the ordinance, K. Anderson and D. Setaro both determined that the proposal is basically for a detached structure.

B. Major pointed out that the Board could be concerned about the appearance of the carport, and whether the Applicant or some future owner might junk it out. There are some god-awful ugly carports out there, but this proposal is not one of them. W. Davis responded that he and his wife have had that discussion ad nauseam, and that that has been one of his own concerns, as he will be sitting on his deck looking at it. It will not be tin, or metal-frame. W. Davis confirmed that it would be reasonable for the Board to require that the carport be constructed in accordance with the drawings submitted with the application. W. Davis stated that the carport would have a metal shed roof.

B. Major asked why the Applicant could not drop the carport back five feet. W. Davis responded that the back of the driveway drops off six feet; they would have to bring in a substantial amount of fill, which they cannot do because the leach field is right there. R. MacMillan pointed out, though, that there appears to be room between the leach field and that area to put fill. Per a question from S. Swerchesky, W. Davis explained that the driveway retaining wall continues around the back, as well.

K. Anderson asked how long the driveway has been in its location. W. Davis stated that the retaining wall has been in place since about 1985 or 86. The area has always been used as a parking area for cars.

W. Davis stated that the main part of the house is just under 900 square feet.

Spoke in favor of both applications

Kat McGhee, 27 Beckys Pl. Stated that she is a neighbor, and knows the property. There are several non-conforming lots in the area, many of which have either garage or carport-type structures. As a neighbor, the proposal would not disturb those who live near the Applicant. She is in support of the applications.

No further questions from the Board and none from the floor. The hearing portion of the case was closed.

The ZBA deliberated both applications together but voted on each case individually.

DELIBERATIONS AND DECISION

ZBA2024-001

The discussion of the application of William Davis, property owner, for a Variance to Section XH; paragraph 5.c, Minimum Front Yard Depth, of the Zoning Ordinance, to construct a 20' x 20' Carport, 40 feet from the front property line (required 50 feet), located at 240 Hayden Rd., (Map 028, Lot 043) in the Rural Zone.
and

ZBA2024-002

The discussion of the application of William Davis, property owner, for a Variance to Section XH; paragraph 5.d, Minimum Side Yard Depth, of the Zoning Ordinance, to construct a 20' x 20' Carport, 25 feet from the side property line (required 35 feet), located at 240 Hayden Rd., (Map 028, Lot 043) in the Rural Zone.

R. MacMillan stated that the Board has looked at a number of undersized lots that wanted carports, down by Silver Lake. There have been many over the years, and he cannot remember one time that they granted the request. He also pointed out that the Board has often gone by the rule that 10% of the setback requirement is fine – that is de minimis. A third of it, however, has not been granted before.

B. Major asked about the mitigating factor of the 12-foot strip. R. MacMillan asked whether that makes any difference; it's still somebody's property line. He is considering the precedent of similar situations that were denied. B. Major asked which setback R. MacMillan was more concerned about; R. MacMillan answered the side yard setback. The front does not worry him – the Applicant is parking cars there now.

B. Major asked whether the Board should consider the fact that the front yard setback basically would be less violated than it already is by the main structure of the house, and that if this were to be attached to the house the Applicant could do it with a special exception with regard to the front yard setback.

R. MacMillan asked what the hardship is – that the Applicant doesn't have enough land? B. Major stated that the Board has to treat each property individually, and asked what we are defending, here. R. MacMillan stated that we are defending the zoning ordinance. The purpose of the ordinance is pretty well spelled out: the setbacks are the setbacks.

B. Major stated that we have side yard setbacks so that people can have sanctity and peace in their house, and don't have someone building right on top of them. We have side yard setbacks so that there isn't excessive massing of properties. We have side yard setbacks for fire and safety reasons. With this particular parcel of property, given its shape, and the fact that it is undersized, a good argument could be made that this is one of those cases in which we want to exercise discretion and allow the Applicant to have the relief that they are requesting.

B. Major asked again what the square footage of the violation with respect to the side yard setback is; D. Mason stated that he believes it is 100 square feet. S. Swerchesky stated that, in looking at the drawing on the application, he believes it is less than 100 square feet.

S. Swerchesky stated that another point he wanted to make is that if the Applicant considered moving the proposed structure further back toward the leach field, it would encumber him more in regard to access to the leach field. That area seems to be the only way to get to the leach field in order to maintain it. In his opinion, the proposed structure as shown in the application would be an enhancement of the area.

The Board showed consensus that the side yard setback variance is the more difficult of the two requests to consider. The front yard setback was not a concern.

B. Major asked whether it would be practicable to move the proposed structure closer to the house. S. Swerchesky stated that it would not be, considering the retaining wall. The current retaining wall would have be demolished, along with the deck, and rebuilt along new lines because of the slope.

R. MacMillan stated that it comes down to assigning special rights because an applicant has an undersized lot. Other people who have a two-acre lot can't do this.

B. Major stated that he doesn't think anyone considers a carport a necessity, but we're basically looking at practical use of the lot, and what interests this would harm.

R. MacMillan agreed that we want to grant relief where it is properly due. He asked, however, whether having an undersized lot automatically makes a property owner a candidate to overlook a third of the setbacks.

C. Robbins-Tsao stated that the way the lot is configured, with the retaining wall and steep slope in the back, she doesn't know where else the Applicant could locate the structure. Even if this were a two acre lot, it would have the same issues. B. Major stated that that was a good point – the lot being undersized might not in itself even be a factor.

S. Swerchesky asked whether this proposal would require a building permit; K. Anderson answered yes. S. Swerchesky stated that the construction will therefore be monitored and inspected.

D. Mason pointed out that if the proposed carport were slightly smaller it would be an accessory building, and the Board would be considering a 15-foot setback rather than a 35-foot setback. He concurs with C. Robbins-Tsao that the size of the lot isn't relevant because of the position of the house, and because of the fall-off in the back going down into forest, marsh, and wetlands. Yes, the proposal is an intrusion on the side, but he does not find it to be an objectionably large one in view of the other facts. The two-fold intent of the rural land zone is to encourage farming in Town, and to permit limited development in areas where physical site conditions are problematic or access to Town services is restricted. Additionally, a lot of the adjacent properties have structures very close to the line. To him, that speaks to substantial justice. All things considered, it is a bigger intrusion than he would like, but he would come down in favor.

B. Major stated that he always likes to look at a proposal and consider whether there is anyone in the neighborhood who will look at the finished product and say that they have a problem with it. If the Board grants the variance, they should consider specifying that it be constructed as proposed.

DECISION AND VOTING RESULTS

ZBA2024-001

The decision and voting results of the application of William Davis, property owner, for a Variance to Section XH; paragraph 5.c, Minimum Front Yard Depth, of the Zoning Ordinance, to construct a 20' x 20' Carport, 40 feet from the front property line (required 50 feet), located at 240 Hayden Rd., (Map 028, Lot 043) in the Rural Zone.

D. Mason moved for the following finding-of-fact;

1. *The existing principal structure is 22 feet from the road and therefore, if this were an attached structure, the Applicant would be seeking a Special Exception.*

Seconded by C. Robbins-Tsao.

Motion unanimously approved.

Questions – Variance

- Question 1. The variance will not be contrary to the public interest.
- Question 2. The spirit of the ordinance is observed.
- Question 3. Substantial justice is done.
- Question 4. The values of surrounding properties are not diminished.
- Question 5a(1). 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.
- Question 5a(2). The proposed use is a reasonable one.
- Question 5b. The property cannot be reasonably used in strict conformance with the ordinance, and a variance is, therefore, necessary to enable a reasonable use of it.

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a (1)	Question # 5a (2)	Total Yes	Total No
B. Major	Yes	Yes	Yes	Yes	Yes	Yes	6	0
C. Robbins-Tsao	Yes	Yes	Yes	Yes	Yes	Yes	6	0
R. MacMillan	Yes	Yes	Yes	Yes	Yes	Yes	6	0
D. Mason	Yes	Yes	Yes	Yes	Yes	Yes	6	0
S. Swerchesky	Yes	Yes	Yes	Yes	Yes	Yes	6	0

THEREFORE, THE VARIANCE WAS GRANTED WITH THE FOLLOWING FINDING-OF-FACT;

1. **The existing principal structure is 22 feet from the road and therefore, if this were an attached structure, the Applicant would be seeking a Special Exception.**

ZBA2024-002

The decision and voting results of the application of William Davis, property owner, for a Variance to Section XH; paragraph 5.d, Minimum Side Yard Depth, of the Zoning Ordinance, to construct a 20' x 20' Carport, 25 feet from the side property line (required 35 feet), located at 240 Hayden Rd., (Map 028, Lot 043) in the Rural Zone.

B. Major moved for the following finding-of-fact of fact;

1. *The Board finds that the presence of a 12-foot undevelopable strip of property, north of the Applicants' property and between the abutting property minimizes the impact to the side yard setback intrusion.*

Seconded by R. MacMillan.

Motion unanimously approved.

D. Mason moved for the following finding-of-fact;

- 2. The Board finds that the proposed location of the carport is the only location it can go because; on the north side is the property line; the east side has a 6-foot drop down to the leach field; the south side is a retaining wall and a deck; the west side is a driveway which would result in a further intrusion into the front yard setback.*

Seconded by C. Robbins-Tsao.

Motion unanimously approved.

B. Major moved for the following condition;

- 1. The proposed structure shall be constructed in accordance with the representative drawings submitted to the ZBA and the structure shall not be altered or modified without prior approval from the Building Department.*

Seconded by R. MacMillan.

Motion unanimously approved.

B. Major moved for the following condition;

- 2. The location of the structure shall be staked out and inspected prior to excavation and/or construction.*

Seconded by R. MacMillan.

Motion unanimously approved.

Questions – Variance

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| Question 1. | The variance will not be contrary to the public interest. |
| Question 2. | The spirit of the ordinance is observed. |
| Question 3. | Substantial justice is done. |
| Question 4. | The values of surrounding properties are not diminished. |
| Question 5a(1). | 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. |
| Question 5a(2). | The proposed use is a reasonable one. |
| Question 5b. | The property cannot be reasonably used in strict conformance with the ordinance, and a variance is, therefore, necessary to enable a reasonable use of it. |

Board Member	Question #1	Question #2	Question #3	Question #4	Question #5a (1)	Question # 5a (2)	Total Yes	Total No
B. Major	Yes	Yes	Yes	Yes	Yes	Yes	6	0
C. Robbins-Tsao	Yes	Yes	Yes	Yes	Yes	Yes	6	0
R. MacMillan	Yes	Yes	Yes	Yes	Yes	Yes	6	0
D. Mason	Yes	Yes	Yes	Yes	Yes	Yes	6	0
S. Swerchesky	Yes	Yes	Yes	Yes	Yes	Yes	6	0

THEREFORE, THE VARIANCE WAS GRANTED WITH THE FOLLOWING CONDITIONS AND FINDINGS-OF-FACT;

Conditions:

1. The proposed structure shall be constructed in accordance with the representative drawings submitted to the ZBA and the structure shall not be altered or modified without prior approval from the Building Department.
2. The location of the structure shall be staked out and inspected prior to excavation and/or construction.

Findings-of-Fact:

1. The Board finds that the presence of a 12-foot undevelopable strip of property, north of the applicants' property and between the abutting property minimizes the impact to the side yard setback intrusion.
2. The Board finds that the proposed location of the carport is the only location it can go because; on the north side is the property line; the east side has a 6-foot drop down to the leach field; the south side is a retaining wall and a deck; the west side is a driveway which would result in a further intrusion into the front yard setback.

OTHER BUSINESS

The Board welcomes new member Michael Bishop, who will be officially sworn in in the coming days.

Meeting Adjourned

The ZBA meeting adjourned at 8:05 pm.

Respectfully submitted by:

Donna Lee Setaro, Building and Land Use Coordinator,
and Aurelia Perry, Recording Secretary.