TOWN OF WEBSTER, NEW HAMPSHIRE
Zoning Board of Adjustment
945 Battle Street/Rte. 127
Webster, NH 03303
Tel. (603) 648-2272

Zoning Board of Adjustment Minutes July 10, 2012

Case No.: 12-03 Special Exception Re: Setbacks
Dr. and Mrs. Richard Benson agents for Susan D. Panilaitis
118 Westwind Village Road Lot 13 Map 4

Members present: Chairman Marty Bender, Robert Drown, Jr., Don Koberski and Barbara Corliss; Alternates – Secretary, Jaye Bowe, Normandie Blake, Meg LaValley and Paul Silberman.

7:02 pm: Chairman Bender opened the meeting by having Secretary Jaye Bowe take attendance. At this time the Board looked over the minutes from the last meeting of May 8, 2012. Alternate Member Blake in place of absent Member Barnes, made a motion to accept the minutes of May 8, 2012 as written, seconded by Member Drown and approved by the Board unanimously.

7:05 pm: Chairman Bender opened the hearing. Secretary Bowe read the application. Chairman Bender explained the procedure to the applicants. Before the applicants' presentation, Chairman Bender stated that he had some problems with their application. Chairman Bender understood that they would also need a variance. Dr. Benson stated he was given information at Town Hall that he needed a special exception. Continuing, Chairman Bender stated that the map Dr. Benson submitted with the application was not adequate because it did not have enough information. Dr. Benson stated he was told at the office that was the only map that was needed. Chairman Bender stated that if this hearing was only for a special exception, maybe the map would be acceptable. Chairman Bender explained that a variance is much harder to get because asking for a variance means the applicant would be asking for something that the Zoning Ordinance does not approve or make any special exceptions for. Basically, the Zoning Board would have to override the Zoning Ordinance. Dr. Benson stated he was not advised to apply for a variance. Chairman Bender referred to two responses to inquiries as to whether or not the Zoning Board should or should not go ahead with the variance at this meeting. One was from the N.H. Office of Energy and Planning and one from the Local Government Center; each providing different opinions. Chairman Bender stated that regardless of those opinions, his opinion was that the Board would need a lot more information on the map in order to even consider a variance.

Chairman Bender stated that before proceeding he would need to hear from the Board as to what their opinions were about the map and whether or not they should proceed with

the variance. Member Drown's concern was the map did not show the distance from the water to the proposed garage. This may pose a problem with the Department of Environmental Safety (D.E.S.) and the Shoreland Water Quality Protection Act (SWQPA). Dr. Benson then explained the map was drawn to a scale of 1 inch equal to 36 feet. A detailed and lengthy discussion ensued. Chairman Bender stated that he would not have had any problem approving a special exception with regards to the side property lines; the problem was that the applicants wanted to go too close to the road. Dr. Benson stated that they had not set a distance for that. Mr. Tim Allen, the Bensons' contractor, stated he hoped to build within twenty feet of the road because of the steep grade of the land. The ground floor of the garage would be built into the land and be the foundation for the structure. The storage area above would be at ground level on the uphill side of the road. Construction with a 50 foot setback from the road would set the building too far up the grade to make it workable. Chairman Bender stated that the Board really needs diagrams and maps that would show exactly what the applicants propose to build. Mr. Allen stated that the road was actually a right-of-way, a private road. Chairman Bender referred to the Zoning Ordinance definition of a right-of-way: *"...Means and includes all present and proposed private, town, state and federal highways..."* Member Drown stated that meant the set back from the road would be 50 feet. He asked Chairman Bender if the Board could allow a special exception down to 25 feet. Chairman Bender answered in the affirmative. He then stated the applicants would have to apply for a variance for a 20 foot setback, which would be much more difficult to get approved. Mr. Allen stated that the 25 foot setback from the road would work. Chairman Bender then stated that the whole thing could be done by special exception, but the Board would still need to have a better map.

Member Corliss had questions regarding the Shoreline Protection Act. Chairman Bender stated that he would have to do some research. Member of the public, Mr. Jere Buckley offered information that the act does not prohibit building within the 250 foot setback from the water.

Member Drown inquired of Chairman Bender, if the Board did not approve the application at this meeting, would the applicant have to apply all over again and pay the fees, too? Chairman Bender proposed to continue the hearing until August. That way there would be no need for a new application or fees; just a detailed map similar to a plot plan. Then the Board would have a chance to review the Shoreline Protection Act. Dr. Benson asked Chairman Bender to define what he meant by a good map. Chairman Bender stated it must show the distances from the lot lines to the garage; must have a drawing of the garage and the specific placement on the lot; not just speculative distances.

Member Corliss inquired about the construction and use of the second story of the garage. Mr. Allen answered stating that the second story will be on the same footprint of

the ground floor. There will be no driveway or entrance to the building from the upper road.

At this time abutters, Mr. & Mrs. Berryman, asked to be recognized because they may not be able to come to the August meeting. Their primary concern would be the effect of the water flow from the Bensons' property to theirs. Mr. Berryman stated that there is significant water that flows off of the hill every year. Another concern was the use of the second floor; was it going to have plumbing, etc. or just used as storage? The Bensons stated it was only going to be used as storage. Mrs. Berryman asked where the edge of the road would be in order to measure back 25 feet. Member Corliss explained that the Bensons could take measurements from boundary markers and their property plat and calculate that measurement from the right-of-way. Mr. Allen addressed the Berrymans' concerns regarding the drainage. The Berrymans and the Bensons both praised the drainage work that Mr. Allen has done on the right-of-way in the past and, specifically, the site work he had done for the Berrymans. Mr. Berryman asked if the second floor would be a residence to which the Bensons stated "No". Member Drown let the Bensons know that the Board would probably put a restriction for no inhabitants on the second floor if the application is approved. Chairman Bender clarified Member Drown's statement that the second floor cannot be an accessory apartment. Chairman Bender asked if there were any more comments. At this time Member Blake made a motion to continue the public hearing until August 14, 2012 at 7:00 p.m. The motion was seconded by Member Drown and passed unanimously by the Board.

The meeting was adjourned at 7:52 p.m.

Respectfully submitted minutes accepted as written August 14,2012.

Jaye Bowe

Jaye Bowe
Zoning Board of Adjustment Secretary

DRAFT Posted July 16, 2012