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 February 19, 2013

Case No.: 13-01 Application from Susan D. Panilaitis et al c/o Benson, for a Variance from Article IV Section 4. (A), (B), & (C) of the Webster Zoning Ordinance. Applicant proposes to raze current dwelling and construct a replacement dwelling not being able to meet the setbacks. This property is a pre-existing non-conforming lot located at 118 Westwind Village Road, tax map 13 lot 4.

(NOTE: Included with the application was a two page 22" X 17" Site Plan that the Board continually reviewed and referred to during the meeting.)

Approved as Written

Members present: Chairman Marty Bender, David Barnes, Don Koberski, Bob Drown, Jr. and Barbara Corliss; Alternate Members – Secretary, Jaye Terrazzano, Dee Blake and Guy LaRochelle.

Please note that although Mr. Tom Godfrey was referred to as the Building Inspector throughout this text, he is actually the Life/Safety Code Enforcement Officer as the Town of Webster does not have a Building Inspector.

7:05 pm: Chairman Bender convened the meeting. Secretary Terrazzano took attendance. The Board unanimously approved the October 9, 2012 minutes as written.

7:06 pm: Chairman Bender opened the public hearing. Secretary Terrazzano took attendance and then read the application. Chairman Bender explained the procedure to the applicant's agent, Mr. Mark Moser, Professional Engineer, and then invited him to tell the Board exactly what the applicants propose to do.

Mr. Moser stated that the applicants wish to tear down the existing cottage and construct a brand new one. The foundation would be moved about seven feet further away from the shoreline of Lake Winnepocket and about 12 feet further away from the westerly property line. The building will be a little bit larger. Mr. Moser added that the applicants had obtained the State's septic Approval for Construction and the DES Shoreland Impact Permit. Mr. Moser also stated that the current setback on the westerly side is about 14 feet and the plan is to increase it to about 26 feet. The current distance from the building foundation to the shoreline is 42 feet. Member Drown stated that he was a little confused because on the site plan the proposed building foundation setback from the shoreline was 48.9 feet but the distance from the attached deck to the shoreline was 36.4 feet. Mr. Moser stated that the deck was not the primary building structure. Member Drown disagreed and stated that it was part of the structure. Mr. Moser stated according to Tom Godfrey, Building Inspector, a building setback only applies to the main structure unless it is detached. Chairman Bender stated that the Board had always treated an attached

deck as part of the structure. Member Drown also pointed out that the site plan showed the building foundation setback on the easterly side to be 19.8 feet, but the setback from the deck steps on that side measured 5.6 feet. Member Drown stated that steps were considered part of the structure as far as he was concerned. Chairman Bender agreed with Member Drown. Mr. Moser then stated that Mr. Godfrey told him the deck did not have to meet the building setback because "deck" does not meet the definition of a building. Member Corliss asked if the deck was completely enclosed or did it have just a railing. Mr. Moser stated the deck was not enclosed. Chairman Bender asked for clarification of the setback distance on the easterly side. Mr. Moser stated he was told by Mr. Godfrey to take the setback distance from the edge of the foundation, not the eave, not the overhang and not the deck. The setback distance from the foundation is 19.8 feet. Member Koberski asked Mr. Moser what was the advantage of moving the structure closer to the easterly side. Mr. Moser stated that the owners were trying to be respectful of their neighbors and keep things isolated to their other lot on the easterly side. Alternate Blake asked if this had been approved by DES. Mr. Moser answered in the affirmative and that he had included copies of those approvals for the Shoreland Permit and the septic Approval for Construction in the application for the variance. Alternate Blake then posed the question, if attached decks did not count as part of the building, what would stop someone from building a deck right out to the lake. Member Corliss then questioned the septic Approval for Construction regarding one of the requirements; "*Approved with a public water system only*." Mr. Moser stated that there was a community well in the Westwind Village community. Member Drown stated that he would feel better if the construction remained with the 14 foot setback on the westerly side, which is already "grandfathered" because of its pre-existing non-conforming status. Member Drown stated he would like to see the setback on the easterly side from the lot line to the building a minimum of 25 feet. A lengthy and in depth discussion ensued. Alternate Blake then inquired as to why the applicant does not want to build on the same footprint. Mr. Moser stated he thought the Bensons' were being respectful with their family by hugging the easterly lot line where they already own property. Mr. Moser clarified that the Benson family does own the two abutting properties, 118 and 114 Westwind Village Road.

At this time Member Barnes inquired of Chairman Bender how was the Board going to resolve the differences of the interpretation of the Zoning Ordinance language between the Building Inspector and the Board. Chairman Bender stated that the Building Inspector does not make the rules. Chairman Bender stated that the Zoning Board members are the ones who interpret the Zoning Ordinance. Chairman Bender informed Mr. Moser that the applicants were entitled to build on the same footprint without an application. Chairman Bender stated that if the applicant wished to follow through with the variance application, they would have to meet the five required conditions in order for the variance to be granted.

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At this time Chairman Bender asked if there was anyone who wished to speak in favor of the application. Dr. Richard Berryman, an abutter on the west side, stated that he was not for or against it but that he and his wife were pleased that the Bensons would be moving further away from the property line. He asked Mr. Moser if the proposed construction was going to be one story or two stories. Mr. Dean Anderson, a local contractor, said that it was to be determined. Dr. Berryman said that would change the character of what he and his wife would be looking at. Dr. Berryman then referred to the ***Zoning Ordinance: "***Article *V Special Exceptions, 1. Commercial Exceptions, D. Existing Violations. No special exception shall be issued for a property where there is an existing violation of this ordinance unless the granting of the exception will correct the violation."* Dr. Berryman asked if this would apply to the variance. Chairman Bender referred Dr. Berryman to page 12 of the ***Zoning Ordinance:*** *Article VI Non-Conforming Building, Land or Uses, Section 4.*, which says in cases of obsolescence you may restore, remodel or operate if it's done within 2 years "*…providing, however, that proximity to a lot line or right-of-way may be no nearer than the lesser of the original building and the setbacks defined in this ordinance."* Dr. Berryman thanked Chairman Bender for the clarification. At this time Mr. Kenneth Naide, Attorney for Dr. Berryman, asked if it was the Board's position if that section was applicable to this particular situation. Attorney Naide did not believe that the property had not been *"…partially or totally destroyed by reason of obsolescence..."* Chairman Bender stated that the property was obsolete. He stated that he assumed the owner considered the building to be obsolete hence that is why they will be tearing it down. Chairman Bender confirmed Attorney Naide's inquiry regarding this section of the Zoning Ordinance being the only one that would support the current non-conforming setback of 13.7 feet on the westerly side of the lot. There were no other comments in favor of the application. Chairman Bender then asked if anyone wished to speak in opposition; there were no comments.

7:42 pm Chairman Bender then closed the testimony and opened up the hearing for the Board's deliberation. Chairman Bender asked Mr. Moser what he wanted to do; try for a variance or live with the special exception assuming that Mr. Moser could show why the building is obsolete under Article VI Section 4. Chairman Bender stated that if they go ahead with the variance, then the five requirements/conditions would have to be met. Alternate LaRochelle then asked Mr. Moser what type of plan had he submitted to the DES; was it a building plan or just a footprint or foundation plan. Mr. Moser stated the plan submitted was the same site plan included in the application. Alternate Blake asked how much overhang would the building have. Mr. Moser stated his plan shows 18 inches all around the building. He stated that DES is only concerned with a footprint and the setback from the roof, not the number of stories of the building. At this time, Mr. Moser asked if it would be appropriate to ask for a continuance of the hearing in order to have discussions with the Benson family. Chairman Bender stated that getting a variance is much harder than a special exception. He suggested that Mr. Moser and the applicants read the requirements for a variance again. He stated that the Board cannot grant a

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variance just because the Board may happen to like the plan. Chairman Bender added that he did not have a problem with continuing the hearing. At this time Mr. Anderson asked the Board if it was going to be necessary to submit building plans for the specific model of the house, i.e., ranch, cape, colonial, etc. in order for the Board to grant a variance. Chairman Bender stated the location of the building was all that was required. Mr. Moser stated on behalf of the applicants he would like to continue the hearing. Chairman Bender asked the Board if they were in favor of continuing this public hearing until Tuesday, March 19, 2013 at 7 pm at the Webster Town Hall. The Board voted unanimously in favor to continue the public hearing until then.

7:55 pm: The public hearing was adjourned.

These minutes were "Approved as Written" at the ZBA meeting on March 19, 2013.

Respectfully submitted,

Marty Bender
ZBA Chairman

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