

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION

On February 13, 2018, the application of Terry and Diana Jones for a building permit on Lot 4 in the Lynnway Subdivision at the south end of Webber Pond was denied by the Bremen Planning Board. On March 9, 2018, Mr. and Mrs. Jones filed an administrative appeal from the Planning Board decision with the Bremen Board of Appeals and simultaneously applied for a variance from the 150-foot shoreline setback prescribed by the Bremen Shoreland Zoning Ordinance.

The Board of Appeals heard the administrative appeal at its meeting on April 11, 2018. Based on the argument of Mr. and Mrs. Jones, the Board remanded the permit application to the Planning Board for further consideration, as described below. Because remanding the appeal made the variance application moot, no hearing was held on that application.

The Jones lot is part of a small residential subdivision at the south end of Webber Pond. According to two plans submitted by the Joneses and included in the record of the Planning Board proceedings, Lot 4 is partially composed of bog land bordering the pond. In a letter to Mr. and Mrs. Jones, Walter Voskian, Chairman of the Planning Board, explained that Planning Board denied the building permit because the plan presented by the Joneses showed no point within the building envelope where the proposed structure could be located and still meet the 150-foot setback from the upland edge of the wetland required by the Bremen Shoreland Zoning Ordinance.

The plan on which this determination was based is dated July 27, 1999 and titled "Site Development Plan." It is referred to here as the "1999 Plan." It depicts Lot 4 with an outline of a "building envelope" within the boundaries of the lot. The 1999 Plan is not signed by the surveyor; rather, it is stamped "Preliminary" in place of a signature. It is evident from the labeled lines on this plan that at the time it was drafted, the wetland setback was 100 feet, not 150.

Mr. Voskian stated that the Bremen Land Use Ordinance provides that the ordinance in effect at the time of an application applies to that application. Mr. Jones testified that because their subdivision had been approved originally by the Planning Board, he believed that his lot was grandfathered so that the 100-foot setback would continue to apply, despite the change in the Ordinance. Town Attorney Jonathan Hull observed that while the subdivision and its lots had been approved by the Planning Board, no structures existed on Lot 4 at the time of that approval. Thus, there is no grandfathered right

to build according to the setback that existed at the time of approval. The approval of the subdivision created the lots, Mr. Hull said, but it did not create rights to structures in the future.

The 1999 Plan contains several notes, as follows:

1. The 1999 Plan notes that the both the high-water mark and the upland edge of the wetland depicted on the Plan were determined by observation, and that “Wetland delineation by a 'wetland specialist' was NOT performed.” (Notes 1 &2)
2. The 1999 Plan states that the building envelopes depicted (one on Lot 4 and two on Lot 5, also owned by Mr. and Mrs. Jones) were determined by setbacks as defined in the Bremen Shoreland Zoning Ordinance.  
(Note 3)
3. The 1999 Plan states that the property information was compiled from a subdivision plan titled “Lynnway Subdivision for Donal L. Fisher at Route # 32 & Fire Road 19 in Bremen, Lincoln County”, dated December 1994 and recorded in the Lincoln County Registry of Deeds in Book 54, Page 76. (Note 6)
4. The 1999 Plan states that “The purpose of this sketch is to show the relative distance of the features to the high-water mark. This is NOT a Standard Boundary Survey.”

At the Board of Appeals hearing, Mr. and Mrs. Jones presented a full-size version of the recorded 1994 subdivision plan (the “1994 Plan”) depicting the subdivision with compass courses and distances for all the lots, as well as a line that appears to be labeled “Shoreline at mean high water wash line.” The 1994 Plan is signed by the surveyor and was included in the materials the Joneses presented to the Planning Board, but only in a reduced-size version measuring 8.5 x 11 inches. This version was included, as well, in the materials forwarded to the Board of Appeals for purposes of the appeal.

The reduced-size 1994 Plan is illegible in places and nearly so in others, owing to the substantial reduction in size from the original. According to Walter Voskian, the Joneses did not present or rely on the 1994 Plan at the proceedings before the Planning Board; all discussion focused on the 1999 Plan, which depicted the building envelope that supposedly met the 100-foot setback requirement.

The Joneses did not dispute this, but they brought to the Board of Appeals hearing a full-size

version of the 1994 Plan, which the Planning Board had never seen. Mr. Jones testified that he believed that because this plan included surveyed boundaries and shoreline, whereas the 1999 Plan stated that it was not a “Standard Boundary Survey” and that the wetland had not been delineated “by a 'wetland specialist,’” the 1994 Plan is more reliable regarding the location of the upland edge of the wetland than the 1999 plan. He said that he worked with a friend, using the shoreline on the 1994 Plan, to determine where the present 150-foot setback would fall. He had marked this line and on the 1994 Plan. He stated that the location of the line showed that the house he proposes to build will fit between the present shoreline setback (150 feet) and the road setback (20 feet) and that therefore the appeal should be granted.

The Board discussed the issue and determined that the matter should be remanded to the Planning Board, where the Joneses may present the 1994 Plan updated with the 150-foot and 20-foot setbacks located on Lot 4 by a registered surveyor, so that the Planning Board can reconsider the building permit application.

BOARD MEMBERS VOTING IN FAVOR: Coolidge, Jones, Robinson, Schramm, West

BOARD MEMBERS OPPOSED: None