

TOWN OF BREMEN
PO BOX 171, 208 WALDOBORO RD
BREMEN, MAINE 04551
(207) 529-5945 • FAX (207) 529-6302

**BREMEN BOARD OF APPEALS
MEETING MINUTES
APRIL 11, 2018, 6:30 p.m. – Bremen Town Center**

I. Attendees

Members in attendance: Diantha Robinson, Chairman; A. Knight Coolidge; Douglas Jones; Harold Schramm; David West; Attorney Jonathan Hull.

Public present: Tracy and Diana Jones Appellants; Walter Voskian-Planning Board Chairman; Wendy Pieh, Selectmen representative; Rick Genthner; Marie and Tom Ruggerio.

II. Diantha Robinson, Chairman called the meeting to order at 6:30 p.m. Chairman Robinson introduced the members of the Board. Chairman Robinson reminded Mr. & Mrs. Jones and all members of the Board that an Administrative Appeal hearing is limited to the review of information and documentation presented at the original Planning Board meeting and no additional information can be introduced.

III. Chairman Robinson advised the Board of Appeals members that her one-year term appointment as Chairman had expired in December of 2017. However, she would be willing to continue as chairman if there were no other members interested in assuming the role. **On a motion duly noted and seconded that Diantha Robinson continue to serve as Chairman of the Board of Appeals.**

Vote: 4-1 Motion passes unanimously.

IV. Member Schramm noted that the potential for a conflict of interest may exist due to the fact that his property is in the Shoreland Zone; however, he did not feel that this would interfere with his ability to be objective in this case.

After clarification from Town Attorney Hull other Board of Appeal members also living in the Shoreland Zone felt there was no conflict.

Chairman Robinson noted that Tracy and Diana Jones have submitted a request for both an Administrative Appeal and a Request for a Variance. Also stated was the fact that the Administrative Appeal portion would be heard first due to the fact that if the Appeal were to be granted then there would be no need for a Variance hearing.

- V. Appellants, Tracy and Diana Jones were invited to present their arguments for appealing the February 13, 2018 decision of the Bremen Planning Board to deny an application for a new construction residence located on Maple Lane. Mr. & Mrs. Jones indicated that they felt the Planning Board decision was based on the wrong map having been presented at the time of the meeting. The map presented to Planning Board by the Jones was titled as a Preliminary Site Development Plan dated July 27, 1999. This plan identifies lots that were sited using the previous Shoreland Zoning requirement in place at that time. The correct map was included in the application submission packet identified as the Lynnway Final Subdivision Plan for Donal L. Fisher, approved and recorded 12/19/1994, but was not in the requested size and was not referred to by the Jones. Upon closer inspection Tracy and Diana Jones realized that the 1994 subdivision plan identifies a 250 ft. setback from the mean high-water line. They have since had the 1994 Final Subdivision Plan map delineated to show where the 150 ft. setback is located, this setback is depicted as a red dashed line, also displayed is a green dashed line depicting the 20 ft. setback from the road. The addition of the dashed lines was not part of the original certified boundary survey.

It was determined that the 1999 map which was presented to the Planning Board at the time of the decision does not include a certified measurement from the normal high-water mark as previously stated. The 1999 site development plan was preliminary and was not a certified survey.

Chairman Robinson clarified with the Jones that it was their understanding that the imposed (red and green dashed line) measurements of the 1994 subdivision plan map would allow them an envelope sufficient to accommodate their proposed structure. Mrs. Jones used a scaled model of the proposed structure to demonstrate how the lot could accommodate the structure on the northwest end of lot 003-033-004.

- VI. Chairman Voskian was asked to speak on behalf of the Planning Board. He noted that he is an abutter of the Jones property and had made that point at the February 13, 2018 Planning Board meeting. The Jones had no reservations with Chairman Voskian being part of the deliberations. Chairman Voskian stated that for purposes of this hearing, he is not in agreement with the claim that the

Planning Board made an error in their decision to deny the Jones' application. Chairman Voskian quoted the current setback requirements of the Shoreland Zoning Ordinance Section 15 B Principal and Accessory Structure which states "All new principal and accessory structures shall be set back at least seventy-five (75) feet from the normal high-water line, horizontal distance, of tributary streams and at least one hundred-fifty (150) feet, horizontal distance, from the normal high-water line of all other water bodies, or the upland edge of a wetland..." The Planning Board used the 1999 Preliminary Site Development Plan when determining whether the proposed structure could meet the required setbacks. No other site plan was presented by the Jones at that time.

The Planning Board's decision was based on the dimensions of the structure and that according to the Preliminary Site Development Plan presented there was no location on lot 033-004 that could accommodate a 28 x 54 ft structure and still meet the required setbacks. It was voted unanimously with a vote of 4-0 to deny the application.

At the Planning Board Meeting, further discussion took place to clarify a misunderstanding that since the lot 003-033-004 met the Shoreland Zoning requirements when it was purchased in 1999 that it was grandfathered to be a buildable lot using the previous Shoreland Zoning Ordinance requirements. Chairman Voskian went on to clarify that according to the current Land Use Ordinance Section 1.4 titled Applicability which states "This Ordinance shall apply to all land areas within the Town. All buildings or structures constructed, reconstructed, enlarged, and /or moved, including buildings undergoing alteration, and the uses of buildings and land, including the division of land, shall be in conformity with the provisions of this or other applicable Town ordinances on the date of that action". Chairman Voskian stated that it is the role of the Planning Board to restrict and discontinue any increase in non-conformity as stated in Section 2.2 of the Land Use Ordinance.

VII. Board of Appeals member West asked for clarification of the point that when the Jones bought the land there was a 100ft setback, and because they did not build on the property over the course of the 20 years of ownership and the setback requirements changed during that time, that lot 033-004 could no longer be considered a buildable lot.

Town Attorney Hull confirmed that there is no provision for grandfathering any lot from the current Shoreland Zoning Ordinance requirements. If a property owner applied for a building permit prior to any changes to setback requirements the lot would be considered grandfathered for that permit but nothing further. Attorney

Hull stated that since the Jones own an adjoining lot which could be merged to achieve the required setback, the Jones are considered to not be deprived of all useful benefit of the property.

Board Member Schramm discussed with Attorney Hull the fact that the approved and recorded subdivision should be recognized. Attorney Hull stated that the subdivision plan divides up a parcel of land but does not grandfather the use.

Chairman Voskian stated that at the Planning Board meeting he did have a discussion with the Jones that lot 003-033-005 would be a more buildable lot; with the correct positioning of the structure the required setbacks would most likely be met.

At this point Attorney Hull stated that after reviewing the 1994 subdivision plat plan included in the original application the Board of Appeals had two options:

Option 1: Would be to deny the Administrative Appeal on the grounds that the applicants did not provide the necessary information to the Planning Board to determine the exact location of the required 150 ft. setback for their proposed building site. The Administrative Appeal would be dismissed.

Option 2: Would be to remand to the Planning Board, because they had the 1994 subdivision plat plan, which arguably could present information to the Planning Board that would have suggested the Planning Board table its action and require the Jones to submit a certified survey providing the distance line from the normal high-water line to meet the 150 ft. setback. The Board of Appeals would then remand the application back to the Planning Board for reconsideration with the certified survey.

On a motion duly noted and seconded that the Board of Appeals remand this matter to the Planning Board to request from the Jones a certified survey of required size with measurements from the normal high-water line to the 150 ft. setback.

After discussion Attorney Hull suggested amending the motion to read that the Board of Appeals remand this matter to the Planning Board to allow them to determine what professional opinions they need to make a determination of the location of the 150 ft. setback from the normal high-water line and the building location envelope.

On a motion duly noted and seconded that the motion be amended as stated to remand to the Planning Board.

Vote to end debate: 5-0

Vote: 5-0

Mr. Jones asked if the professional survey required would be from current normal high-water line or would it be determined from the original 1994 subdivision plat plan? Attorney Hull confirmed it would be from the current normal high-water line.

Hearing adjourned at 7:32 pm.



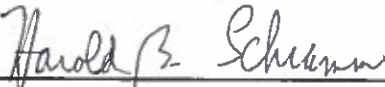
Diantha Robinson, Chair



A Knight Coolidge, Committee Member



Douglas Jones, Committee Member



Harold Schramm, Committee Member



David West, Committee Member

Recording secretary,

Cynthia Hasty

Bremen Clerk

