



TOWN OF BREMEN
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BREMEN BOARD OF APPEALS
MEETING MINUTES
AUGUST 10, 2017, 6:30 p.m. – Bremen Town Center

I. Attendees

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

Public present: John Carroll-Appellant; Walter Voskian-Planning Board Chairman; Kelly Clancy; Dede Heath; Doris Kritz; Jerry Kritz; Autumn Mahoney; Wendy Pieh; Steve Wallace.

- II. Diantha Robinson, Chairman called the meeting to order at 6:30 p.m. Chairman Robinson introduced the members of the Board. Board Member Harold Schramm asked Attorney Hull for clarification in regard to the burden of proof in an Administrative Appeal. Attorney Hull verified that the burden of proof lies solely with the appellant, in this case John Carroll. Chairman Robinson reminded Mr. Carroll 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. Walter Voskian and John Carroll were sworn in by Chairman Robinson.

- III. Appellant, John Carroll was invited to present his arguments for appealing the June 13, 2017 decision of the Bremen Planning Board to deny a portion of his application to renovate and add a garage to his residence located at 383 Fogler Road. Mr. Carroll indicated that he felt the Planning Board decision was based on a misinterpretation and misapplication of sections of the Bremen Shoreland Zoning Ordinance.

Mr. Carroll stated that the difference of opinion is centered around the definition of the word structure as it is referred to in the Planning Boards opinion and how it was interpreted from the Shoreland Zoning Ordinance. It is Mr. Carroll's understanding that the decks and all the individual parts of a home are part of the principal structure according to definition 1 pg. 33 sec. 17 of the Shoreland Zoning Ordinance. Johnathan Hull pointed out that definition is part of the Accessory Structure which does not apply to this situation.

Mr. Carroll went on to state the term structure is used differently throughout the Shoreland Zoning Ordinance making its meaning ambiguous.

Secondly, Mr. Carroll stated that the Planning Board misinterpreted the expansion by considering portions of the primary structure separately, and not considering the total combined floor area resulting from all the changes, as stated in the Shoreland Zoning Ordinance. Mr. Carroll argued that the Planning Board failed to take into consideration that the reductions in other areas actually decrease the non-conforming area by a minimal amount of square footage. The proposed renovation reduces the size of two other decks within the 150-ft. setback but increases the footprint of another deck which lies within the 150-ft. setback from the natural high-water mark. The deck in question would enter further into the 150-ft. setback and would increase in size as part of the principal structure. Mr. Carroll cited The Maine DEP Issue Profile, Non-Conforming Structures in the Shoreland Zone, March 2007 as graphically depicting that changes to the structures laterally do not increase the non-conformance. Therefore, it is Mr. Carroll's feeling that the Planning Board misapplied the definition of increase in the non-conformity as cited on pg. 36 of the Shoreland Zoning Ordinance. Member Coolidge asked how the second application differed from the originally approved plan from 2015. Mr. Carroll explained that the intended plan was similar with the exception of moving a portion of a deck to provide entry into a proposed garage, of which 8 sq. ft. is within the 150-ft. setback. The 2015 proposed garage was not attached to the residence and was located outside of the 150-ft. setback.

Mr. Voskian, Planning Board Chairman described the Board's decision. He noted that this was a multi-part application, and the Board only denied the proposal for the deck labeled #1. The Board did approve two other decks and a garage (with setback conditions), grading the septic tank area, and modifications to the driveway and a path.

Referencing the letter received by Mr. Carroll, Chairman Voskian pointed out the definition of "structure" according to pg. 40 of the Shoreland Zoning Ordinance "the term [structure] includes structures temporarily or permanently located, such as decks...". Mr. Voskian goes on to say that while the decks may be part of a single structure, in this case the principal structure, each deck by definition is a structure of its own.

Mr. Voskian pointed out that the decks in question will be removed in order to reconfigure the replacement decks. Also, the Shoreland Zoning Ordinance clearly states that in no case shall a non-conforming structure be reconstructed or replaced so as to increase its non-conformity, and the replacement structure shall not be any larger than the original structure. As noted in the Planning Board minutes, the new deck #1 would be both closer than the original to the normal high-water line by some 10 feet, thus increasing non-conformity, and the new deck would be larger by some 170-sq. ft. in floor area and larger in volume than the original deck, because a 12-foot by 12-foot portion of the enlarged deck would be enclosed, as well.

Mr. Voskian also addressed Mr. Carroll's suggestion that the Planning Board should have considered his proposed reduction in square footage as a trade-off for location. Chairman Voskian stated that the Shoreland Zoning Ordinance encourages moves toward conformity however, the Ordinance does not support trade-off in terms of relocating a non-conforming structure. A reduction in size of a non-confirming structure and a move toward conformity cannot be offset against increases in another part of the non-conforming structure.

The Planning Board Chairman noted that the proposed plan of deck #1 shows that this deck is proposed to be not just expanded laterally or on its side; rather the proposal is to move the water side of the deck closer to the natural high-water mark by about 10 ft., thus increasing its non-conformity.

Although the Shoreland Zoning Ordinance does allow for repair and maintenance without permit for the normal upkeep and maintenance of a non-conforming structure including repairs and alterations that do not involve expansion of the non-conforming structure, Mr. Carroll's proposal is not simply for upkeep and maintenance. Instead this is a complete reconstruction involving an expansion in both square footage and volume.

Mr. Voskian referred to the Planning Board meeting minutes of May 9, 2017 where the Planning Board tabled this item pending opinion of town counsel, Jonathan Hull. Attorney Hull provided the opinion that each deck is a non-conforming structure and must be considered individually, even though the decks are part of a larger structure.

A motion was made at June 13, 2017 Planning Board meeting to approve the resizing of decks #2 & #3 as well as the garage, with the condition that no part of the proposed garage shall be in the 150-ft. setback. Portions of this application that were denied were the expansion of deck #1 which would include the addition of the 144-sq. ft. year-round enclosure and was based on several factors;

1. First being the opinion offered by Attorney Jonathan Hull.
2. Secondly, in accordance with section 12 C. (3) of the Shoreland Zoning Ordinance which states that in no case shall a structure be reconstructed or replaced so as to increase its non-conformity.
3. Lastly 12 C. 1 (v) regarding the size of structures allowed within the 150-ft. normal high-water mark being limited to 2000 sq. ft. and the current residence without the 144-sq. ft. year-round enclosure structure exceeds that allotted floor space.

Attorney Jonathan Hull offered clarification for the opinion offered in the decision as being the definition of the term structure as stated in the Shoreland Zoning Ordinance under non-conformance as being all structures individually. Additionally, Attorney Hull stated that the ordinance as it is written uses "principal structure" when it intends to use it as stated in various sections of the ordinance, so by the absence of the term "principal" then all structures are to be considered individually.

Chairman Voskian confirmed for the Board of Appeals members that the Planning Board used the definition of the term "structure," not "principal" or "accessory structure," when making their decision to deny portions of this application.

A lengthy discussion followed among the Board of Appeals members regarding the expansion of non-conforming structures within the 150-ft. setback. For consistency purposes, clarification regarding accessory structures and principle structures was needed, as there are different guidelines for each within the Ordinance which can be misinterpreted. The overall outcome of this discussion was that this expansion of deck #1, including the year-round enclosure, would indeed increase the non-

conformity of that structure which is not to be considered part of the principal structure and that the attached garage is not an existing part of the principal structure, so it must also be considered as an individual structure as well.

Motion made by A. Knight Coolidge:

The Planning Board was in error in not concluding that term "structure" in Section 12 C of the Shoreland Zoning Ordinance means "principal structure" and therefore includes the garage and deck #1, which thus meet the requirements of the Ordinance.

The motion failed for lack of a second.

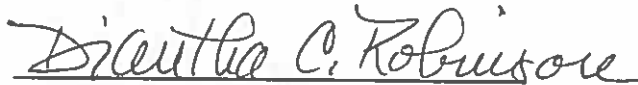
Motion made by A. Knight Coolidge:

The decision of the Planning Board relating to the garage should be upheld for the reasons stated in that decision. Motion seconded by Harold Schramm

Vote: 4-1 A. Knight Coolidge opposed.

Motion made by Harold Schramm:

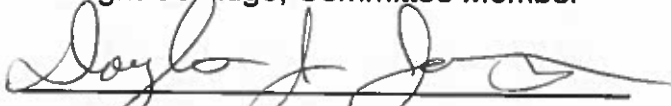
The decision of the Planning Board relating to the deck(s) should be upheld for the reasons stated in that decision. Motion seconded by David West
Vote 4-1 A. Knight Coolidge opposed.



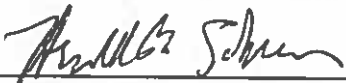
Diantha Robinson, Chair



A Knight Coolidge, Committee Member



Douglas Jones, Committee Member



Harold Schramm, Committee Member



David West, Committee Member

continuity in the direction which it is to be conducted part of the
financial situation and the other things in an order and in the
general situation, so it must also be considered as an individual structure
as well

Recording secretary,

Cynthia Hasty
Bremen Clerk

Motion made by A Knight Council

The Planning Board was in error in not including the term "structure" in
Section 11.7 of the Standard Board Ordinance. The Board should
and therefore should be amended to read: "The Board shall have the
management of the Ordinance"

The motion failed for lack of a second

Motion made by A Knight Council

The decision of the Planning Board relating to the garage should be denied
for the reasons stated in the attached report submitted by the
Board
Vote 4-1 A Knight Council opposed

Motion made by A Knight Council
The motion of the Planning Board relating to the deck should be denied
for the reasons stated in the attached report submitted by the
Board 4-1 A Knight Council opposed


Cynthia Hasty, Clerk


A Knight Council member


A Knight Council member


A Knight Council member


A Knight Council member