



TOWN OF BREMEN  
P.O. Box 171~ Bremen, ME 04551

*Walter Voskian, Chair  
Blair Kauffman, Board Member  
Autumn Mahoney, Board Member  
Jack Boak, Board Member  
Steven Wallace, Board Member  
Steve Page, Board Member  
Floyd Gent, Board Member  
Thomas Kronenberger, Alt. Member  
Vacant, Alternate Member*

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**Bremen Planning Board  
Meeting Minutes  
Tuesday, May 14, 2019 at 7:00 p.m. – Bremen Town Office**

**I. Attendance**

Members Present: Walter Voskian, Chairman; Jack Boak; Blair Kauffman; Autumn Mahoney; Steve Page; Thomas Kronenberger, Alternate

Members Absent: Floyd Gent, Steve Wallace

Members of the Public: Heidi Robertson; Susan Metzger, The Coastal Landscape; David Starr, Gartley and Dorsky representing the Robertsons and the Hardens; Charles W. Tucker, Builder, Robertson Project; Dan Price and Simon Frost, representing Thirty Acre Farm; Select Board Chair Wendy Pieh.

**II. Meeting called to order at 7:03 p.m.**

Chairman Voskian read the traditional opening statement on Planning Board hearing policies. He appointed alternate member Tom Kronenberger as a regular member for this meeting.

***On a motion duly noted and seconded, Christine Henson was elected as the new Recording Secretary.***

**III. Approval of Minutes**

***After discussion and on a duly noted and seconded motion, the board moved to defer consideration of the minutes for the April meeting until the next meeting because the minutes arrived late and several members did not have time to read them.***

#### **IV. Applications for Review**

**A. Voskian - Replacement dock, Map 003, Lot 031, 1132 Waldoboro Road**  
Board Chairman Walter Voskian recused himself from any vote, took a seat in the audience, and temporarily turned the meeting over to Board Member Autumn Mahoney to act as Chair.

The Voskians propose to replace a 30-year-old dock on their Webber Pond property (Map 003, Lot 031) with a new dock located exactly in the same place and in the same size and configuration as the existing dock. The new dock is strictly a replacement dock. The property is in the Residential District of the Shoreland Zone. Planning Board members, accompanied by Mr. Voskian, visited the site on April 7, 2019. Members Jack Boak, Autumn Mahoney, Steve Wallace, Thomas Kronenberger, Floyd Gent and member of the public Kathy Gent were present on the site visit.

Mr. Voskian presented the construction plan consisting of a run of 4'X12' wooden stairs from the land, a 4'X4' intermediate wooden deck/landing, and a short 4'X3' run of wooden stairs from the intermediate landing to the water line that will fold up in the offseason. The undercarriage holding up the intermediate landing will rest on the rock embankment and not in the water; nothing will remain in the water during the offseason. The rest of the dock will consist of two dock sections arranged in an "L" pattern. One dock section at 4'X14' will be perpendicular to the land and attached to the stairway. The other dock section of 4'X12' will be parallel to the land and attached to the south side of the other dock section. Each "L" section will be one piece supported by pipes. Mr. Voskian presented photos indicating the new dock will be exactly the same size and configuration and in the same place as the old dock, noting each section of the two sections of the old dock is made up of three pieces.

No vegetation or trees will be disturbed or removed, and no part of the dock will remain in the water during the offseason. The deck will be made of a rot-resistant wood such as cedar and will not be made of pressure wood.

The new dock – like the old one – will be strictly for family recreational use and will be seasonal. It will be installed in the spring and removed in the fall.

The new dock appears to fall under Sections 15 C (1) and (2) and 12 C (3) of the Shoreland Zoning Ordinance.

Regarding 15 C (1) and (2), photos were presented showing the area is virtually all rock, so there will be no erosion and there are no natural beach areas.

Regarding Section 15 C (3), the existing dock has no impact on fisheries; there frequently are fish around the existing dock. The new dock will not impact fisheries either.

Regarding Section 15 C (4), the new dock will have the same dimensions as the old one, and the 4-foot width is not wider than six feet – the width limit set out in the ordinance.

Section 15 C (5) – (8) do not apply.

Section 15 B (1) (a) regarding setback requirements says that setback requirement shall not apply to structures that require direct access to the water such as docks and other water dependent uses.

Section 12 C (3) deals with non-conforming structures located less than the required setback from water bodies. It says that a removed non-conforming structure may be replaced within 18 months provided that such replacement structure complies with setbacks to the greatest extent possible as determined by the Planning Board. As established earlier, setbacks do not apply to docks. This section also says that in no case shall the replacement structure be any larger than the original structure. It has already been established that this new dock will be the same size as the original dock.

Finally, given the simple, straightforward, and replacement nature of this application, under section 11.5.3, the Voskians are requesting waivers for the following provisions of the Land Use Ordinance except where the same requirements are called for in the application form and are considered applicable to this application: Land Use Ordinance Section 11.5.2 (a) v-xxi and Section 11.5.2 (b) ii-x.

The checklist for submission was reviewed, and items not applicable were noted. Board discussion ensued regarding waivers.

***On a motion duly noted and seconded, the Board voted to waive the required copy of the deed. Motion passed with one opposition.***

***On a motion duly noted and seconded, the Board accept the waivers requested by the applicant. The motion passed unanimously.***

***On a motion duly noted and seconded, the Board agreed to accept the application as complete. The motion passed unanimously.***

***In addition, the Board moved on a duly noted motion and second, to approve the construction of the dock as presented with the contingency that the new staircase be moored with pins. Approval was unanimous.***

**B. Robertson Property, Lot 073, Map 004, 120 Shore Road**

Chairman Voskian explained that the Robertsons propose to renovate and expand a legal, non-conforming cottage located in the Residential District of the Shoreland Zone on Webber Pond. Planning Board members Mahoney, Wallace, Page, Kauffman, Gent, and Voskian visited the site on May 5, 2019, accompanied by Mr. Robertson, David Starr, the Robertsons' representative, and Charles Tucker, who will do the construction.

According to the plans submitted, the total square footage of the existing cottage to be renovated is 608 square feet. The subject cottage is identified on the site plan as "cottage #1" The Robertsons propose to add 127 square feet to the cottage by squaring off the south side of the cottage where there currently is a two-foot overhang on the loft level; extending the roof line on the western end of the building over a one-story part of the structure while changing the sloped roof to a center peaked roof of the same height of 22 feet; and adding an 8'X12' deck. Drawings were presented with details.

According to the plans submitted, two other structures on the property within the Shoreland Zone consist of a 1200-square-foot cottage that is identified on the site plan as "cottage #2, and a 20-square-foot "outhouse." Both structures are to the north of the subject cottage and both are within the 75-foot setback from the Normal High-Water Line (NHWL). A deck attached to the 1200-square-foot cottage on the northerly side is 14 feet from the NHWL and the outhouse at its closest point is 45 feet from the NHWL. No renovations are planned for either of these structures under this project.

Board member Autumn Mahony asked to revisit the square footage figures as presented on the site plan. Cottage #2 came in at 1200 square feet on the site plan not including the steps. With steps included, the calculation for cottage #2 came to 1,235 square feet. In light of this change, Member Mahoney asked that the new numbers for all setbacks be reflected in the proposal and initialed by Mr. Starr.

Accordingly, with the addition of the 35 square feet the existing total square footage for all three structures:

- Within the 75-foot setback is 1220 square feet (with steps changed to 1255) while the ordinance allows 1000 square feet
- Within the 100-foot setback is 1591 square feet (with steps changed to 1626) while the ordinance allows 1500 square feet
- Within the 150-foot setback is 1828 square feet (with steps changed to 1863) while the ordinance allows 2000 square feet.

Accordingly, the proposed addition of the 127 square feet to the subject cottage would bring the total square footage of all structures:

- Within the 75-foot setback 1255 square feet representing no change while the ordinance allows 1000 square feet.
- Within the 100-foot setback to 1625 square feet for a reduction of one square foot while the ordinance allows 1500 square feet
- Within the 150-foot setback to 1990 square feet while the ordinance allows 2000 square feet.

Chairman Voskian noted that the principal applicable ordinance for this proposal would appear to be:

- Section 12 A of the Shoreland Zoning Ordinance (SZO) that states that non-conforming conditions that existed before the effective date of this ordinance or amendments thereto shall be allowed to continue subject to the requirements set forth in Section 12.
- Section 12 C (1) of the SZO that states in essence that a non-conforming structure may be expanded after obtaining a permit from the Planning Board if such expansion or addition does not increase the non-conformity of the structure and is in accordance with the square footage and height limitation with specific setback.

Mr. Voskian noted that an increase in non-conformity is defined in Section 17 of the SZO as any change in a structure that causes further deviation from dimensional standards creating the non-conformity such as reductions in setbacks from water bodies. For example, there would be no increase in non-conformity with the setback requirement if the expansion extends no further into the required setback area than does any portion of the existing non-conforming structure. A structure may be expanded laterally provided the expansion extend no closer to the water body than the closest portion of the existing structure from that water body. Included in this allowance are expansions that in-fill irregularly shaped structures.

It was noted that the following sections of the Shoreland Zoning Ordinance do not apply.

1. Section 15 G of the SZO regarding parking areas.
2. Section 15 H of the SZO regarding roads and driveways.
3. Section 15 P of the SZO regarding clearing and removal of vegetation.
4. Section 15 Q of the SZO and Section 5.2.12 and 11.5 regarding erosion and sedimentation control. No excavation will take place and the contractor has an erosion control certificate.

Board Member Boak mentioned that the original plans do not include gutters. He asked that the plans be corrected to ensure drainage will cause minimum erosion. Petitioner agreed to add stone drainage to mitigate erosion.

The applicants added no supplementary comments.

Board member Autumn Mahoney asked to determine if the application was complete. Non applicable items were enumerated and discussed.

***On a motion duly noted and seconded, the Board waived submission requirement for 2A: 6, 8, 9, 11, 12, 13, 15, 17, 20, and 2B 4, 5, 7, 8. The vote was unanimous.***

***On a motion duly noted and seconded, the Board approved the application as submitted based on its finding that the application met the conditions of sections 12 A and 12 C 1 of the Shoreland Zoning Ordinance and section 12 C 1 ii, iib, and section 17 of the Shoreland Zoning Ordinance, providing there is no deviation from the final plan as submitted and as the Board has waived several submission requirements. The motion passed unanimously.***

## **V. Public Comments and Questions**

Ms. Heidi Robertson asked what work has been approved regarding trees removal on Will Butler Road.

Chairman Voskian said the Planning Board has no enforcement authority and the question should be taken to the Board of Selectmen, especially since Bremen's Code Enforcement Officer is on leave.

Dan Price of Thirty Acre Farm requested to be on the agenda for this meeting or to have a special Planning Board meeting convened to discuss proposed changes to building locations as set out in a decision document issued by the Planning Board in January 2019. Chairman Voskian explained that, as he has

noted to Mr. Frost, the information presented to date by Thirty Acre Farm regarding the proposed changes is inadequate in terms of explaining the proposed changes, requests for further explanation have not been met, the deadline for such explanatory information to be considered at tonight's meeting has passed, and emails from Mr. Frost concerning whether Thirty Acre Farms wished to make changes or stay with the original plan have been confusing. So, Mr. Voskian explained that in the absence of on-time, adequate information regarding the proposed changes, Thirty Acre Farm – the subject of two Planning Board meetings in January – will not be on tonight's agenda. Regarding Thirty Acre Farm's request for a special meeting, Board members expressed no interest in convening such a meeting. Accordingly, Chairman Voskian announced that the Board will consider the proposed changes at its June meeting, provided the requested information is received on time.

## **VI. Other Planning Board Business**

Chairman Voskian announced that at their last meeting the Selectmen approved the Planning Board's newly completed bylaws, so the Board should approve and adopt them.

***On a motion duly noted and seconded, the Board unanimously agreed to approve and adopt its bylaws as drafted on May 14, 2019.***

The next step will be revising the permit application form, which will be available online. Member Mahoney introduced a submission requirements checklist that she prepared, derived from the ordinances. The checklist is to be used in connection with determining whether applications are complete. The consensus of the Board was that this checklist should be used until we revise the permit application form. Chairman Voskian also announced that the draft of the "Building in Bremen" brochure will need to be reviewed soon..

Chairman Voskian noted the Ordinance Review Committee was looking at recommendations to amend the Board of Appeals Ordinances to give the Board of Appeals authority on all setbacks, including from the Normal High-Water Line.

Board of Selectmen Chair Wendy Pieh said a comparison analysis was being done on the Shoreland Zoning Ordinance as it relates to the State's model ordinances. This analysis will be used by the Ordinance Review Committee in its upcoming review of the Shoreland Zoning Ordinance.

Chairman Voskian announced that a memorial service will be held for former Planning Board alternate member and longtime Board of Appeals member David West on Saturday at the Bremen Union Church at 1 p.m.

Chairman Voskian noted that he had been approached by local attorney Peter Drum asking the Board for an after-the-fact approval of a several-year-old Biscay Road subdivision. Although the Board has jurisdiction in approving changes to subdivisions, this one was marked by complexity and multiple legal errors, and Chairman Voskian thought that this issue should be addressed by the Selectmen and the Town Attorney to meet the applicant's apparent need for quick consideration of the issue. Accordingly, the issue will be resolved by consent agreement signed by the Selectmen.

The next meeting for the Board of Selectmen will be June 6. Chairman Voskian is unable to attend. So, a member from the Planning Board will need to cover it.

Chairman Voskian next introduced the discussion of two questions arising from an informal discussion at the Board's April meeting on an informal pre-application proposal for expansion of a residence on Porcupine Ridge.

Essentially the two questions are:

- Whether an applicant can remove part of an existing legal non-conforming structure to get below the square footage threshold and then add back a smaller number of square feet to expand the structure. This would amount to a reallocation of square footage.
- In terms of determining whether a renovation increases non-conformity, whether the relevant distance to the Normal High-water Line is the closest point of any part of the principal structure or alternatively any part of an attached deck, which the Shoreland Zoning Ordinance also defines as a structure.

The Chairman noted that as discussed at the Board's April meeting, Board Members referred these questions to the MMA for an opinion. But the response, which was delayed, did not directly address our questions.

Voskian reminded Board members that these questions were prompted by what is still an informal inquiry and that the Board is not legally obliged to take any action beyond an informal non-binding discussion in the absence of a formal application and accompanying fees. In fact, the relevant ordinance says that "at its discretion" the Board may hold such informal discussions provided that the discussions are non-binding and that such discussion should not make specific reference to the potential project. But we agreed to discuss these questions as a courtesy and because they may have wider applications to the Board's future decisions.



Chairman Voskian offered that it appears that for the Board's purposes, the two questions are strikingly similar to, if not exactly the same as, question rising from an application the Board considered and resolved in 2017. After looking at the relevant documents, the Chairman said that it appears the Board may have established a precedent in its finding in the 2017 case. In that case the Board determined that, based on the opinion of our attorney, the Town ordinances do not allow for a "trade off" for location. In other words, the Board found that a reduction in size of a non-conforming structure cannot offset against any increase in another part of the non-conforming structure. The Board also found, again based on the opinion of the Town Attorney, that each deck is a separate structure by itself. And in terms of determining whether a renovation increases non-conformity, if a deck is moved closer to the Normal High-Water Line, measurement to the Normal High-Water Line should be made from the deck, which is a structure, and not the house, the principal structure. Equally important, those Planning Board findings were upheld by the Board of Appeals also based on the opinion of the Town Attorney.

So, the questions for the Board would appear to be:

- Did the Board's 2017 finding, upheld by the Board of Appeals and based on legal opinion, resolve (a) whether an applicant can "reallocate" square footage in a structure and (b) in terms of determining whether a renovation increases non-conformity, whether the relevant distance to the Normal High-Water Line is the closest point of any part of the principal structure or any part of the attached deck, which the SZO defines as structure?
- Were those decisions precedent-setting for the Planning Board?

The Board discussed the issues and the consensus was the following:

- The 2017 decisions were precedent setting in terms of the Board's position on future deliberations on similar questions.
- But in future deliberations on similar questions, individual Board members may advance other views supported by compelling reasoning.

There being no further business, the meeting was adjourned at 9:31 p.m.

**BREMEN PLANNING BOARD:**



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Walter Voskian, Chairman

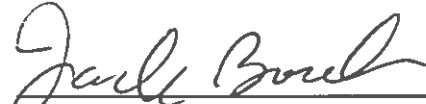


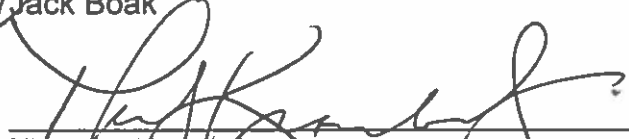
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Steven Wallace, Interim Vice Chairman

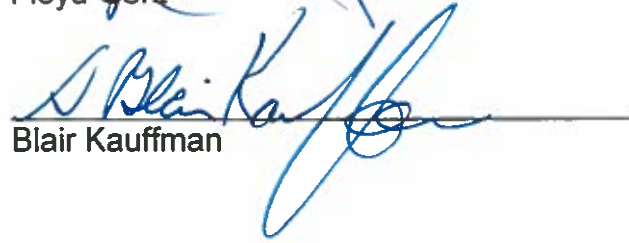
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Steve Page

  
Jack Boak

  
Thomas Kronerberger

  
Floyd Gent

  
Blair Kauffman

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Autumn Mahoney

Respectfully submitted,  
Cheryl Ferrara, Recording Secretary