

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

Walter Voskian, Chair
Steven Wallace, Vice Chair
Jack Boak, Board Member
Floyd Gent, Board Member
Walter Radloff, Board Member
Justin Stailey, Board Member
John Clapp, Board Member
Mary Berger, Alt. Member
Deborah Roll, Alt. Member

**Bremen Planning Board
Meeting Minutes
Tuesday, February 14, 2023, at 7:00 p.m.**

I. Attendance

Members Present: Walter Voskian, Chairman; Steve Wallace, Vice Chairman. Jack Boak via zoom; Floyd Gent; Walter Radloff; Justin Stailey; Deb Roll; alternate Member.

Absent: John Clapp

Officials Present: Selectman Steve Page; Keena Cates, Recording Secretary; Mary Berger, alternate member, via zoom, who remained a member of the audience.

Applicant Present: Jaja and David Martin

II. Meeting called to order at 7:00 p.m.

Chairman Voskian began the meeting by noting that this hybrid meeting is being held under State Statute 1 MRS 403-B that governs participation, via remote methods, by members of the body and the public after public notice. Under this statute, members of the body are expected to be physically present for a meeting except when that is not practical. All votes taken during the meeting using remote methods will be by roll call vote that can be seen and heard if using video technology, or heard if using audio technology, by other members of the body and the public. A member of the body who participates remotely will be considered present for purposes of a quorum and voting. This meeting is being recorded.

Chairman Voskian introduced the members of the Board, and all others present. Alternate member Deb Roll was appointed as a regular voting member for this meeting. A quorum was established.

III. Adjustments to the Minutes

Chairman Voskian moved approval of the minutes to a later time in the meeting.

IV. Application for Review

Iceblink LLC Map 015, Lot 002. David and Jaja Martin, addition of a dormer to a residence at 119 Fogler Road.

Chairman Voskian determined that no Planning Board members had a conflict of interest regarding this application and re-established that a quorum was present.

Chairman Voskian presented the following "findings of fact." The applicants are proposing to add a dormer to the lakeside of a legal non-conforming residential structure on Map 15, Lot 002, otherwise known as 119 Fogler Road. The lot size is a four- and three-quarter acres, and the structure is entirely within the Residential District of the Shoreland Zone. It has not undergone previous expansions, according to Town records supplied by the Town Clerk. The two and a half story structure to which the 28 feet by 8 foot dormer would be added has a footprint of 30'4" by 26'4" or about 797 square feet. According to the site plan provided with the application, the existing structure is 112 feet from the normal high-water line of Biscay Pond at its closest point and 131 feet from the normal high-water line at its farthest point. The only other structure on the lot is a 10 foot by 10 foot shed also in the Residential District of the Shoreland Zone.

The proposed shed dormer is to begin at the roof peak on the west or lake side of the structure, which is some 26 feet high, and extend to a point 8 feet immediately above the existing first floor roof line. This addition would expand an existing room by providing more headroom. According to the application, no plumbing is to be associated with the project.

The proposed addition does not appear to increase the existing structure's footprint, height, or non-conformity, which needs to be confirmed by the Planning Board.

The applicants have provided a quit claim deed to the property and list of abutting property owners. According to the application, no covenants or easements exist on the property. Planning Board members Wallace, Gent, Radloff, Roll, and Voskian, accompanied by Mr. and Ms. Martin, conducted a site visit on 12 February 2023.

The Planning Board's authority in this application is based on Section 12 C (1) of the Shoreland Zoning Ordinance and other applicable ordinances. Section 12 C. (1) states in part that "A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (c) and (d) below." Subparagraph (c) has to do with expansion limitations within specific setbacks and (d) has to do with recording an approved plan for expansion with the Registry of Deeds within 90 days of approval.

This ends the Findings of Fact.

Chairman Voskian noted that the applicant has asked for the following waivers as reflected in the checklist: for LUO 2.a.vi. (locations of buildings on abutting properties), 2.a.ix. (location of off-street parking), 2.a. xi. (signage), 2.a.xii. (locations of utilities and easements), 2. A. xiii. (locations of natural drainage ways, etc.), 2.a.xv. (outdoor lighting), 2.a.xvii. (location of fences, hedges, etc.), 2.a.xviii. (contour lines), 2.a.xix. (setbacks from property lines and center of road), 2.a.xx. (landscaping and buffering), 2.b.ii (evidence of owners financially and technical capability), 2.b.ii (deed, etc.) , 2.b.iv. (easements, covenants), 2.b.v (estimate of daily and peak traffic), 2.b.vii (septic design), 2.b.viii (state and federal permits), 2.b.ix. (photos of site) The Chairman noted that the deed and photos of the site have been provided and, therefore, waivers are not needed for those two items.

On a motion made by Chairman Voskian and seconded by member Gent, the Board granted the remaining waivers and deemed the application complete and ready for review. The motion passed unanimously by roll call vote.

In Chairman Voskian's view, the following ordinances appeared to be potentially applicable to this proposal based on the review of the application.

From the Shoreland Zoning Ordinance:

- Section 12 C (1) SZO. Section 12 C. (1) states in part that "A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure and is in accordance with subparagraphs (c) and (d) below." Subparagraph (c) has to do with expansion limitations within specific setbacks and (d) has to do with recording an approved plan for expansion with the Registry of Deeds within 90 days of approval.
- Section 17 Enlargement or Expansion of a Structure is defined as "An increase in the footprint of a structure or its height, including all extensions... ."
- Structure, Increase in Non-Conformity "...structure expansions which either meet the dimensions standard or which cause no further increase in the linear extent of non-conformance of the existing structure shall not be considered to increase non-conformity. "

Land Use Ordinance

- Section 12.2 of the LUO. The definition of expansion or enlargement of a structure is largely the same as the one found in the SZO, with one exception: the LUO definition includes the words "an increase in cubic volume."

So, based on the definitions, it appears that the Shoreland Zoning Ordinance and the Land Use Ordinance are inconsistent about what constitutes an expansion or enlargement of a structure. The Land Use Ordinance is more restrictive in that it includes expansion of cubic volume in the definition of expansion. On the other hand, the SZO does not include volume, just footprint and height.

By way of background, when Bremen's Shoreland Zoning Ordinance was revised a few years ago the reference to cubic volume was eliminated from the definition of expansion and enlargement to make the Shoreland Zoning ordinance consistent with State model ordinance, which had eliminated such a reference. This revision and others to the Shoreland Zoning Ordinance were approved by the Town Meeting. For a variety of reasons, such as COVID disruptions and a delay in State approval of our revised Ordinance, and despite our best intentions, the corresponding reference to cubic volume in the Land Use Ordinance has yet to be eliminated. The Board will now, re-emphasize its efforts to make that change soon as reasonably possible.

Despite those inconsistencies, both ordinances state that when a provision of a Town-administered ordinance conflicts or is inconsistent with another Town-administered ordinance the more restrictive or higher standard shall control. (See Sect 7 of SZO and 1.5 of LUO)

The Board reviewed and decided on a very similar application for addition of dormers to a lakeside cottage in 2020 after the Shoreland Zoning Ordinance revisions were made. In that 2020 case the proposal to install dormers did not result in an increase in the structure's footprint or its non-conformity. At that time, the Board sought an opinion from the-then-Town Attorney as to which ordinance should apply: the Shoreland Zoning Ordinance or the more restrictive Land Use Ordinance under the standard ordinance provision that in cases of conflict the more restrictive or higher standard shall control.

The then-Town Attorney advised that "The Board should apply the definition as set forth in the SZO." The Attorney then went on to explain that "The Board does not need to consider the definition of expansion as set forth in the LUO because that definition is not triggered by this application. If both definitions were triggered and in play, the Town would use the more restrictive definition (pursuant to the Conflict of Ordinance provision), however, that analysis is not necessary in this instance. The only review for expansion of a non-conforming structure (setback) is under the SZO. The Board should proceed to determine whether the expansion is permitted, applying the newly revised Section 17 of the SZO and definition of 'expansion and enlargement'."

The Chairman noted that, putting it another way, what the Attorney was saying in noting the primacy and triggering of the Shoreland Zoning Ordinance –and not the Land Use Ordinance—is that there is nothing in the Land Use Ordinance,

other than the definition, that addresses expansion. Using the Attorney's interpretation, the Board did approve the addition in that 2020 case.

Under the circumstances, Chairman Voskian recommended that given the essential and basic similarities between the 2020 case and the current application the Board should proceed tonight, with the concurrence of the applicants, under the ordinances as they stand now on what constitutes expansion/enlargement and what happens in the event of inconsistencies, using the previous Town Attorney's opinion—as we did in 2020—as a precedent and guidance in reaching a determination on this application. And, as a result the Chairman Voskian did not see any need to seek another legal opinion in this situation. The consensus of the Board was that they were comfortable with the Chairman's recommendation.

Chairman Voskian also stated that he believes that any motion to approve must state several things:

- 1.) That approval is based on Sections 12 C (1) and 17 of the Shoreland Zoning Ordinance. Accordingly, the Board finds that proposed activity is not an expansion of the existing structure under the definition of expansion and enlargement found in Section 17 of the Shoreland Zoning Ordinance—the operative ordinance definition of expansion and enlargement in the view of the Board based on a previous legal opinion—, and because the Board determines that the proposed activity does not result in an increase in the structure's footprint, height, or non-conformity.
- 2.) That the proposed activity, while not an expansion, is an "addition" in accordance with Section 12 C (1) and thus requires a permit from the same permitting authority as a new structure, in this case the Planning Board.
- 3.) That in accordance with Section 12 C (1) (a), the structure's footprint has not been expanded by 30 percent or more since January 1, 1989, according to Town records.
- 4.) That the total square footage of all structures within the relevant setback do not exceed the square footage allowance stated in Section 12 C (1).
- 5.) That the addition must be recorded with the Registry of Deeds within 90 days of approval in accordance with (Section 12 C (1) (d) and that photos of the project must be provided to the Town within 20 days of completion Section 16 C (5).

On a motion made by Chairman Voskian and seconded by Floyd Gent, the Board approved the application for addition of a dormer with the above stated conditions. The motion passed unanimously by roll call vote.

Chairman Voskian then read the following Conclusion of Law:

The Planning Board concludes that the applicants' proposal, as presented in the application and as clarified at the Board's meeting, meets the relevant requirements of the SZO. Such approval will be subject to any ordinance-based conditions imposed by the Board as stated in the minutes of the meeting.

He indicated he will send the applicant will receive a letter from Chairman Voskian informing them of the Board's decision and the conditions attached to decision.

V. Informal Discussion

Walter and Mary Voskian, Map 3, Lot 31, 1132 Waldoboro Road. Proposed stairs and two platforms to provide shoreline access to Webber Pond.

Chairman Voskian reminded the Board that this request for an informal discussion had originally been on the agenda for the January 2023 meeting but had been postponed due to more pressing matters at the time to the February meeting. He stated the in view of his obvious conflict of interest about this issue, he would recuse himself from Board discussion and from voting and take a seat among the public. He then turned over the chairmanship temporarily to Vice Chairman Wallace for this discussion.

To establish the Planning Board's jurisdiction on this issue, this discussion is being held under Section 11.5.7 of the Land Use Ordinance. That provision states that in the absence of a formal application, the Planning Board, at its discretion, may agree to discuss informally with a prospective applicant a proposed project. Such a discussion, however, does not imply any binding commitment between the prospective applicant and the Planning Board, and such a discussion shall only be to discuss what is proposed, what ordinances apply, and what the ordinances allow. Moreover, no vested interest shall attach or accrue to the prospective applicant because of such a discussion with the Planning Board.

He then asked the Voskians if they agreed to such conditions, to which they replied in the affirmative.

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The Voskians are proposing to construct a stairway complex consisting of about twelve stairs and two small platforms—one at the mid-point of the stairs and another on the pond end—to provide shoreline access to Webber Pond. The proposed site is in the Residential District of the Shoreland Zone. The proposed stairway and platforms would descend a steep shoreline slope, extending about 20 feet or more off a relatively flat area adjacent to their existing seasonal cabin and then down to an area near an existing short stairway and dock; the longstanding existing dock and the portion of the existing stairway that protrudes into the water are removed in the off season. The proposed stairway and the platforms, which would be located at the mid-point and the bottom of the stairway, would be constructed of wood and/or aluminum and would be no wider than 4 feet—the same width as the existing short stairway and dock. The stairway would have a railing for safety purposes.

The Voskians are offering two possible paths for the proposed stairway and platforms. In their view, each would provide reasonable points of shoreland access to the pond. In neither case no wetlands would be affected, and no excavation would be involved. According to the Voskians, in both cases any disturbance of the terrain would be minimal and probably would be limited to any temporary or permanent security of the proposed stairway and platforms to the ground. If they choose to make the stairway and platforms permanent, the Voskians say they understand that they would need to secure the requisite State of Maine DEP approval—probably a Permit by Rule—in addition to Planning Board approval. To secure DEP approval, the Voskians probably would need to know the Boards' preference between the two routes. Neither site appears to be in a flood hazard area.

According to the Voskians the possible first route would be the unimproved steep path that they currently use to get from the cabin to the existing short stairway and connecting dock. This path is about 21 feet from the northern property line. They also use this vegetation free area—a rarity along our shoreline—to store the dock in the off season and to slide various watercrafts to and from the dock and an existing upland storage shed at the beginning and end of the season. This potential site for the stairway and platforms, which is right off the cabin's stoop, as noted is virtually free of vegetation but is steeply

sloped. It also is covered with protruding tree roots, which would risk being disturbed by the installation of the stairway, likely causing damage to the trees. The site is also covered by slippery pine needles, which, despite being hazardous, are retained to prevent erosion. These conditions have made this only route to the dock increasingly dangerous for the Voskians, especially as they advance in age, and it has been the site of some falls in recent years.

The second possible site for the stairway and platforms—and the Voskian say that this is their preferred route—would be an area about four to six feet to the south of the first proposal and off the relatively flat area alongside the cabin. The area for this option is almost 30 feet from the northern property line. This area, like the rest of the property's shoreline, is steeply sloped, but unlike the first option it has some scrubby vegetation that would remain and one or two very small trees that would probably be removed. Use of this option to gain access to the pond would still allow the Voskians to continue to use the existing path to slide their kayaks, canoe, and other watercraft to and from the dock at the beginning and end of the season, as opposed to bumping them up and down a stairway, and to continue to store the dock in a vegetation-free area. The Voskians say that the existing path, while dangerous to foot traffic, acts as kind of a natural ramp for watercraft.

Discussion:

The first question from Board members was from member Gent who asked why the Voskians felt they needed a preliminary discussion of the project, given Mr. Voskian's through familiarity with ordinance requirements and that this appeared to be a straightforward proposal. Mr. Voskian replied that they were hoping to get feedback from the Board regarding a preference for either opinion. Vice Chairman Wallace pointed out that that it also would be helpful for any DEP permitting since an applicant cannot present more than one option to the state regulators. The discussion then turned to whether the new stairs and platforms could be installed feasibly as removable, seasonal structures rather than fixed, permanent features. The Voskians agreed that it would be more likely that the new access would be permanent and secured to the bank in some fashion. Again, getting a preliminary view from the Board on the temporary vs. permanent option was also part of the reason for the informal discussion.

The Vice Chairman also pointed out that there was no indication of how a person get from the new platform at the bottom of option 2 to the to the existing stairs and dock. For instance, is the area stable and safe for foot traffic without additional improvements? He requested clarity in any application that may be forthcoming to address this.

Vice Chairman Wallace then requested some details about the severity of the slope since a site visit didn't occur and it had been sometime since Board members had been at the site. The Voskians responded that the vertical drop was some six or eight feet over an approximately 20/25-foot horizontal distance. Mr. Wallace agreed that that was indeed well in excess of a 20% slope which would make footing very difficult. He then brought up the need for detail in an application about erosion and sedimentation control measures for construction and long-term presence of the new access, more specifically, in the case of option 2, the need to provide for sunlight to be able to reach the existing vegetation that would be underneath the new structures so it could continue to survive and stabilize the slope. He also requested consideration of revegetating the existing, needle-covered pathway with frasses to improve the stability of that area while still allowing for seasonal sliding boats in and out of the water and temporary storage of the dock. Other discussion occurred around the primary issue of mitigation of erosion potential, the size of the trees that would be cut (really just saplings, according to M. Voskian). etc.

Mary Berger and Jack Boak suggested the Voskian's reach out to Lake Smart for ideas on the steps to pond. Board members and the applicants all agreed this was a very worthwhile suggestion. Member Berger emphasized this was not a requirement for the application, merely a suggestion for taking advantage of the Lake Smart expertise in water quality protection.

There being no further discussion, Vice Chairman Wallace reminded the Voskian's that, as they were aware, should they choose to have the Planning Board formally consider a proposal at a future date, the Board would be making a site visit likely on the Sunday prior to the meeting, and would be expecting a complete application, using the application form and check list that is in use at the time. He also requested that they please make sure they have secured any required approvals from other agencies, such as DEP.

With that Chairman Voskian resumed the chair.

VI. Public Comments

None made at this time.

VII. Other Planning Board Business

- 1- The Board reviewed an edited version of the January minutes with changes provided by Chairman Voskian.

On a motion duly moved by VC Steve Wallace and seconded by member Gent, the Board approved the January 10, 2023, minutes with the edits made by Chairman Voskian. The motion passed 7-0 on a roll call vote.

2. Chairman Voskian reported that the Select Board, at its 2 February meeting, approved the new Building Application Form and the companion checklist for immediate use. No conditions were imposed by the Select Board.

3. Chairman Voskian's draft of the Planning Board's report for the Town Report was emailed to all members. The members accepted the report as written and the chairman will forward it on to the Select Board.

4. The Planning Board budget, as approved by the PB at our last meeting, will be submitted for consideration at its March meeting. Chairman Voskian will represent the PB, but all are welcome to attend and participate.

5. LCRP Training. A planning board workshop sponsored by the LCRPC and the Mid Coast Council of Governments was held on Wednesday, 18 January 2023. Voskian attended; and shared his opinion that it was a good course. Here are his takeaways.

- A. Under state law, all Planning Board Members must take Freedom of Access Act training within 120 days of initially assuming office or at renewal of their terms. MMA training will satisfy this requirement. I sent around a notice of such training. So far two members have signed up.

- B. An application may not be officially determined complete and ready for Board review or determined incomplete and not ready for review until the Planning Board meeting at which the application is considered. Based on Voskian questions, apparently this does not preclude the Planning Board Chairman, or some other Board member, from informally and unofficially advising the applicant before the meeting of any deficiencies in the submitted application that would be likely to result in the application being determined to be incomplete and not ready for review. This is what the Board has been doing.

C. Before the Planning Board can formally consider an application, it must formally determine by majority vote that:

- The Planning Board has the legal authority to consider the application, and it must state the ordinance basis for that authority. The Chairman now states the ordinance basis of the Board's authority about each application, but henceforth we need to take a formal vote on this issue.
- Based on the application, the applicant has the legal standing to do what he or she is proposing to do. This legal standing may take the form of a warranty deed or documentation showing right, title, or agreement to purchase. We have always asked for such documentation to be included in the application, but henceforth we should formally vote on whether this issue has been satisfied.
- The application is complete and ready for review based on the requirements stated in the applicable ordinances and in the permit application form and companion checklist. We have consistently been doing this.

In Voskian's view, all three of these issues can be rolled into one motion.

Voskian fully recommend this course, for new and longtime members.

6. Re LD 2003 the newly passed affordable housing law. Voskian has received notice from the LCRPC that the Dept of Economic and Community Development, the agency responsible for rolling out LD 2003, has finalized rule making for LD 2003 and has posted it for comment. The rule will remain open for public comment until March 13, with a public hearing on March 1. DECD anticipates that the final rule will be adopted in mid/late April, following a final review by the Attorney General. DECD also has recommended that communities look at the document received at the session in Waldoboro as a baseline for what should be included in any ordinance amendments to accommodate LD 2003. DECD is working on a set of draft model ordinances but cautions that communities are unique in the way they approach zoning. Voskian has sent all of this to the SB and the Town.

Voskian asked Selectboard member Steve Page if he had anything to report on the CEO issue. Page stated he did have a letter from the Town Attorney, Peter Drum and handed the letter to all present members of the Planning Board. Selectman Page gave the Planning Board the option of taking the letter home to read over and they all agreed this was the best idea and a discussion would be held at the next Planning Board meeting. Steve Page informed the Board that Peter Drum is willing to attend a meeting and go over any questions the board may have.

VII. Meeting and Events Calendar

Wednesday March. 1, 2023, at 12 noon – Application deadline for March
Sunday, March. 12, 2023 – Site visits (if any) at 4 p.m.

Tuesday March. 14, 2023 – Next meeting at 7 p.m. in the Town Office

There being no further business, the meeting was adjourned at 8:06 p.m.

BREMEN PLANNING BOARD:



Walter Voskian, Chairman

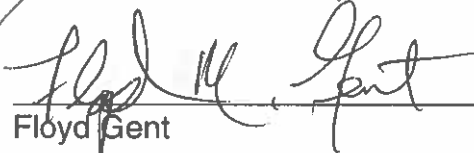


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