



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

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

**Bremen Planning Board Meeting Minutes
Tuesday, September 12, 2023 at 7:00 p.m.**

1. Attendance

Members Present: Walter Voskian, Chairman; Floyd Gent, Vice Chairman; Jack Boak, John Clapp, Walter Radloff, Mark Tenney; Deborah Roll, Alternate Member

All others present: Wendy Pieh, Select Board Chair (via zoom); John "Boe" Marsh, Selectman; Steve Page, Selectmen; Peter Drum, Town Attorney; Melanie Pendleton, Town Clerk; Keena Cates, Deputy Town Clerk; Cheryl Ferrara, Recording Secretary

2. Meeting called to order at 7:01 p.m.

Chairman Voskian read his two opening statements. A quorum was present. He appointed Deborah Roll as a regular member for this meeting.

3. Adjustments to Agenda

Chairman Voskian postponed approval of the minutes to later in the meeting or to the next meeting depending on how much time was needed for agenda items.

4. Application for Review

John Clapp, Map 004, Lot 066, 276 Shore Road, Construction of a Deck on an Accessory Building

Planning Board member John Clapp declared he had a conflict of interest and removed himself from deliberation and voting on this application by taking a seat in the audience. The chairman determined that no other Planning Board members had a conflict with regard to this application and confirmed that the Board continued to have a quorum.

Here are the Findings of Fact:

The applicant, John Clapp, is proposing the construction of a deck on an accessory structure located on Map 004, Lot 066, otherwise known as 276 Shore Road. The conforming lot is 17.54 acres or 764,042.4 square feet, with about 5.7 acres or 294,100 square feet within the Shoreland Zone, according to information provided by the applicant. The area of the lot in the Shoreland Zone covered by non-vegetated surfaces totals 6,599 square feet while the proposed non-vegetated coverage in the Shoreland Zone would be 7,039 square feet or 2.83 percent of the lot in the Shoreland Zone, according to information provided by the applicant. This total consists of the main house, the 16'x 18' barn to which the proposed deck is to be attached at 288 square feet and the driveway and roads. Dimensions of the main house, the driveway, and the roads

were not given. Section 15 B (10) of the Shoreland Zoning Ordinance states that the non-vegetated surfaces within the Shoreland Zone shall not exceed 20 percent of the portion of the lot in the shoreland zone.

The accessory structure to which the proposed deck will be attached is 176 feet from the normal high-water mark at its closest point to the water. Thus, the accessory structure is outside the maximum 150-foot setback that governs the square footage of expansions in the Residential District of the Shoreland Zone, but the accessory structure is still within the Shoreland Zone. The length of the lot's shore frontage is not provided, but based on the site plan it appears to be more than twice the 300-foot minimum in tidal areas prescribed by Section 15 A of the Shoreland Zoning Ordinance.

According to information provided by the applicant, the total current non-vegetated coverage for the entire lot amounts to 13,672 square feet and the proposed non-vegetated coverage would be 14,112 square feet or 1.85 percent of the entire lot of 764,042 square feet. Section 5.1 of the LUO states that the maximum allowed lot coverage is 25 percent.

The barn to which the proposed deck would be attached appears to be a non-conforming structure because of the following condition. Based on the revised site plan provided by the applicant, the barn's closest point to a property line –that would be the southern-most corner of the barn – is only 16 feet from the southern property, or 4 feet closer to the property line than the 20 feet setback established by Section 5.1.1 of the Land Use Ordinance. Under Section 2.2 of the LUO a structure made non-conforming by the enactment of this or any other ordinance may continue but may not be enlarged or expanded in any way that increases its non-conformity. Section 12 C (1) of the SZO states that "A non-conforming structure may be added to or expanded after obtaining a permit... if such an addition or expansion does not increase the non-conformity of the structure ..." The questions for the Board to consider are whether the accessory structure is non-conforming based on it not meeting the Land Use Ordinance's (Section 5.1.1) side setback requirement of 20 feet and whether that condition matters in terms of whether the proposed expansion is or is not an increase of the building's non-conformity.

The proposed deck structure would be 8 feet deep by 28 feet long on the north side of the barn and 12 feet deep by 26 feet on the east or water side, totally 440 square feet of additional foot print and non-vegetated area coverage, according to the application. The addition of the deck would bring the eastern most corner of the structure, which is now 176 feet from the normal high-water mark, 14' 5" closer to the normal high-water mark but still outside the 150-foot setback at 161.5 feet, according to the site plan. According to the narrative, the deck will primarily be built over rocky ledge, and the exact dimensions may differ by a foot or so to ensure solid footing to the ledge beneath. The applicant has applied for the largest practical deck to be built and will make any adjustments needed by making the deck smaller than proposed. The rocky ledge is set slightly below the level of the building, resulting in a maximum deck height of about 5 feet off the ground at its highest point.

The applicant has provided a list of abutters, a site plan, photos, and a copy of the warranty deed. The application promised a permit by rule from the DEP, but the applicant subsequently said that such a permit is not required because the project is

more than 75 feet from the shoreline. Based on my research and, more importantly, on a determination from the CEO, the applicant's contention is correct and no DEP permit is required.

The Planning Board's authority to make a determination on this application is based on the Shoreland Zoning Ordinance's Section 14, Table 1, Line 15, dealing with structures accessory to allowed uses, Section 12 C (1) of the SZO dealing with expansions, and LUO's Section 4.6.1.4 concerning the permitting authority for all building in the Shoreland Zone. Planning Board members Berger, Tenney, Gent, Roll, Radloff, Boak, and Voskian, accompanied by Mr. and Mrs. Clapp, visited the site on September 10, 2023.

This ends the Finding of Fact.

The waivers were reviewed.

On a motion duly moved by VC Floyd Gent and seconded by Jack Boak, the board approved the waivers and determined the application was ready for review. The motion passed unanimously by 6-0 on a roll call vote.

The Board discussed applicable ordinances.

On a motion duly moved by Mark Tenney, seconded by VC Floyd Gent and amended by Chairman Voskian, the Board accepted the application as presented and discussed under applicable ordinances with the understanding that the accessory building is a non-conforming structure that is 16 feet from the property line and not the 20-foot setback required in Section 5.1.1 of the Land Use Ordinance. However, at its closest point, the deck presented would still be 21 feet from the property line and would not add to the structure's non-conformity. The deck also is being approved with a railing that was not shown on the submitted drawings. The following conditions were imposed: 1 – Any changes to the approved application, except the one raised by the applicant of a reduction in the proposed size of the deck, will require resubmission to the Planning Board. 2 – Photos of the project will be provided within 20 days of completion in accordance with Shoreland Zoning Ordinance Section 16 C (5). The motion passed unanimously 6-0 on a roll call vote.

Conclusion of law

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

The applicant will be getting a letter from me informing them of the Board's decision, the ordinance basis for such decision, and any conditions attached.

5. Other Planning Board Business

Town Attorney Peter Drum addressed the earlier two requests made by the Planning Board. Attorney Drum presented a letter to all Planning Board members on the two

issues and discussed each. On the issue of the Planning Board's request to be informed of CEO-issued permits Town-wide through a public posting, the Town Attorney said: "I see no reason that permit requests and approvals should not be listed publicly." The attorney added "a very important reason [for such a public posting]: when a permit is granted or a finding is made by the Board or the CEO anybody who is aggrieved has only 30 days to appeal that decision." In sum, the attorney said that a public posting of permit requests and approval means that a potentially aggrieved party—with only 30 days to appeal a decision—would be more likely to take timely notice of a decision that could have a major impact on his or her property.

The attorney, on the other hand, opposed the Planning Board's request to be informed through public posting of CEO-issued violations in the Shoreland Zone. The attorney was concerned that such notices to the Planning Board "could call into question the neutrality of the Planning Board in their votes on an application.... Furthermore, by placing the violations on the Town website, the Town could be accused of fostering an environment that creates bias in it's (sic) own Planning Board." In my view, the attorney's response is understandable.

For a fuller account of the attorney's view on both issues, see his letter to the Planning Board dated September 12, 2023.

The attorney also addressed the issue of the Selectboard's opposition to the Planning Board chair's practice of directly contacting an applicant whose application the chair finds deficient in terms of submission requirements with the intent of resolving such deficiencies. The attorney said that while he saw merit in the chair's approach to limiting contact with applicants to written correspondence listing an application's deficiencies and that "the ordinance seems to support your need to do that," he still counselled against it. The attorney stated that such an approach could carry the risk of legal jeopardy for the Board and could be considered as "advocacy" on the part of the Board. Instead, the attorney endorsed a proposal by the Board chair that the chair, or another member of the Board reviewing the application, collaborate with the CEO on such a review, and then the CEO would contact the applicant in writing about any deficiencies, reflecting the views of the CEO and the Planning Board reviewer. The attorney advised the Board to amend its bylaws to provide for such a procedure. The chairman said that the Planning Board would draft and consider such an amendment.

The Board discussed October dates for the meeting and site visits. The Board agreed to remain with the existing dates of October 8 for site visits (if any) and October 10 for the meeting.

Chairman Voskian handed out his revisions for the August Planning Board minutes to be discussed at the September meeting.

There being no further business, a motion was duly moved by Jack Boak and seconded by Deborah Roll to adjourn the meeting at 8:50 p.m. The motion passed unanimously 6-0 on a roll call vote.

FOR BREMEN PLANNING BOARD:



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Justin Stailey

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Mary Berger, Alternate

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These minutes do not represent the full extent of discussion on these agenda items.