

MEMORANDUM

TO: Cape Elizabeth Planning Board
FROM: Maureen O'Meara, Town Planner
DATE: August 7, 2012
SUBJECT: Survey Zoning Amendment

Introduction

The Cape Elizabeth Town Council has referred to the Planning Board an amendment crafted by the Ordinance Committee that would require a standard boundary survey for some building permits. The proposed amendment to the Zoning Ordinance would require a standard boundary survey for projects of \$10,000 or more in value where construction will be located within 5' of the minimum setback. Provision of only the property boundaries closest to the construction is an option.

Background

Currently, an applicant must show the location of property boundaries on a building permit application, but there is no minimum requirement of property line accuracy. Consequently, some building permits are issued on faulty location of property line information. Errors are usually uncovered when the property is being sold. Options to cure the problem and clear the title are limited.

The property owner can remove the portion of the structure in violation of the setback. This is almost never desired as it can be costly and devalue the property. The property owner can apply for a variance from the Zoning Board of Appeals. The Zoning Board must find that the variance standards have been met. Further, the Zoning Board cannot grant a variance to allow a setback of less than 10', so the variance option is not always available. Finally, the property owner can seek a Consent Agreement with the Town Council essentially agreeing not to enforce minimum setbacks where the violation occurs. This option is also costly and the Town Council is reluctant to enter into Consent Agreements.

Following a Consent Agreement item on the February, 2012 Town Council agenda, the Ordinance Committee reviewed the existing building permit requirements, a range of survey options, and recommended that the property boundary information required be upgraded to a standard boundary survey quality.

History of property line location errors

As stated above, it is very difficult to know how often building permits have been issued in reliance on faulty property boundary information. Errors are most commonly discovered when a property is for sale and the prospective buyer's lender identifies an encroachment as part of the appraisal.

The following summary is based on a review of the Zoning Board of Appeals records 2001-present, Town Council records, and anecdotal information. In cases where the seller elected to correct the problem without town involvement, there may be no record of the encroachment.

U4-118, 21 Woodcrest Rd

The Howes applied for a building permit in November, 1999 for a building addition valued at \$60,000, with a minimum setback of 10' from the property line. The lot is 7,980 sq. ft. with minimum side setback of 10'. Property boundary information was based on a mortgage inspection plan. A survey of the abutting property (17 Woodcrest) was conducted in 2011 in preparation for construction of an addition. This survey indicated that the property line was located 20" closer. Because 21 Woodcrest is for sale, the setback violation needs to be corrected. At the February 13, 2012 meeting, the Town Council agreed to enter into a Consent Agreement with Andrew and Gay Howe to not seek further enforcement of a setback violation. This includes an 80-B action and agreed consent judgment. Estimated cost to the Howes (\$3,000-\$4,000).

U16-63, 7 Crescent View Ave

The Millers applied for a building permit in September, 2001 for an addition valued at \$71,000, with a minimum front setback of 25'. The lot is 12,015 sq. ft. and the minimum side setback is 25'. The Millers applied for and received a variance from the Zoning Board of Appeals to reduce the side setback 2' to the required 25'. Property boundary information was based on a mortgage inspection plan. In 2006, the property owners discovered that the mortgage inspection plan was inaccurate. In October, 2006, the owners were granted a new variance from the Zoning Board for a 4.5' side setback variance. The new variance was also based on a mortgage inspection plan. Estimated cost to the Millers is unknown.

Other questions

In preparation for review of this amendment, a Planning Board member asked the following questions.

1. Is there a record of a demolition in order to correct a setback violation?

No, there is no record I have found of a demolition where a permit has been issued, the property line has been incorrectly identified and there is a setback violation. There are instances where demolition of a portion of a structure has occurred to cure setback violations, such as when a structure has not received a building permit or the structure was incorrectly located on the lot.

2. How egregious are the setback violations that have been discovered?

See examples above.

3. What are the cost implications of requiring a survey?

Attached are survey cost estimates obtained as part of the Ordinance Committee preparation of this amendment.

4. Does the Town Code Officer have discretionary power to require a survey?

Yes, he does right now. As a practice, he advises applicants that there is some risk and does not require a survey.

5. Has the Town Code Enforcement Officer expressed a desire for this amendment?

No.

Next Steps

The Planning Board may table this to another workshop or move it to a regular meeting, when a public hearing can be scheduled.