

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Planning Board
DATE: January 3, 2011
SUBJECT: Flagpole regulation

Introduction

On May 12, 2008, the Town Council referred to the Planning Board a request to consider the regulation of flagpoles. The Planning Board added this to the queue of pending ordinance amendments and discussed the current status of flagpole regulations at the November 2, 2010 workshop.

Discussion

Based on the opinion of the Town Attorney, flagpoles fall within the definition of a structure and are subject to the setback requirements for structures. The Planning Board considered the option of excluding flagpoles from the definition of structure, which would eliminate any setback requirements. The Planning Board acknowledged that flagpoles may be of a height, plus the extension of any flag on the pole, that the potential impact on abutting property owners warranted some setback from the property line.

The Planning Board also reviewed the practices of Scarborough and South Portland in regulating flagpoles. Scarborough also considers a flagpole a structure but does not require it to meet setbacks. Flagpoles fall into a small group of structures, including transformers, which by custom are not required to meet setbacks. South Portland does not consider a flagpole to be a structure and does not require flagpoles to meet setbacks, but do expect the flagpole to be installed on the owner's property. The Planning Board also reviewed a summary of the Freedom to Display the American Flag Act of 2005, which applies to condominium associations, cooperative associations and residential real estate management associations, but not local governments.

Recommendation

Because a flag has been determined to be a structure under the existing ordinance, and the ordinance allows for the installation of flagpoles and provides for setbacks, the Planning Board is recommending no change to the current regulations.