

**Town of Cape Elizabeth
Ordinance Committee Minutes**

June 7, 2012

8:00 a.m. Town Hall

Present: Jim Walsh, Chair
Kathy Ray
Dave Sherman

Staff: Maureen O'Meara
Bruce Smith

Mr. Walsh opened the meeting. He reviewed what the problem is that the committee is solving, which is the quality of boundary line information needed to avoid construction in violation of zoning setbacks. The issue was raised as part of a recent item before the Town Council. We are concerned with the financial burden of a strict requirement, but want to avoid future issues.

Mr. Smith noted that the problem of a building discovered in violation of the setback has happened 3-4 times since 1997. Mr. Walsh noted that it comes up rarely.

Mr. Sherman commented that it is rare, but some property owners may take advantage of this and not do their due diligence. He wants to preserve the integrity of the ordinance and is inclined to require a boundary survey. When people get a permit from the town, they think they are in the clear when they might not be.

Mr. Smith said that he now sees that a sketch plan is not the way to go.

It was noted that property owners could avoid the cost by moving the addition 5' feet away from the property line. Mr. Smith said that in the tight neighborhoods, people want that last 5'.

Mrs. Ray asked if we want our neighborhoods to look like a city? She has seen houses too big for the size of the lot.

Mr. Walsh said that you could argue that all the houses in the Wood Rd area are too big for the lot. Mr. Smith noted that we do have impervious surface coverage limits.

Mr. Sherman said that making sure that homes do not expand more than they are currently allowed also keeps those neighborhoods more affordable.

Mrs. Ray said the sketch plan description of boundary lines is fuzzy.

Mr. Smith said that a sketch plan is not the answer. He does not see a problem so the ordinance should be kept as is.

Mr. Sherman said that if we chose a remedy, it should be a survey because we don't want to spend \$1,200 on a sketch plan when that doesn't provide reliable boundary information.

Mr. Smith said he has to face these people and he sees an issue with requiring a survey.

Mr. Sherman asked how many building permits a year are issued under these standards. Mr. Smith estimated 50-60. He then said less are within 5' of the setback line.

Mr. Sherman suggested, as an option, that the applicant sign a document that acknowledges that if they build upon reliance of a mortgage inspection plan, then they may have to tear down a portion of the addition.

Mr. Walsh was concerned that this would be administratively cumbersome and Mr. Sherman added that the Town Council would not make them tear it down, so it would only be a deterrent.

The committee discussed the "building permit survey" suggestion.

Mr. Walsh is inclined to obtain some survey information so you get it right when you first build. All committee members noted that the costs to a property owner of finding the problem after the fact exceed the cost of the survey.

Mr. Smith said he can change his thinking and start requiring surveys.

Ms. O'Meara said that the ordinance should be clear about requirements so that anyone reading it has a reasonable expectation of what they can do.

The committee agreed to require a boundary survey prepared by a registered Maine surveyor. At the discretion of the Code Enforcement Officer, a boundary survey quality plan of only the nearest property line(s) may be required.

Mr. Smith raised the question of changing the Variance requirements. The committee noted that the variance provisions had not been referred to them by the Town Council.

Ms. O'Meara said they choose to work on the variance provisions and send it to the Town Council. In her review, the Variance provision had no submission list of information at all and this could be a bigger project than just adding the survey requirement.

Mr. Smith explained that he doesn't do this, but the ordinance requires that a building permit be applied for and then denied before a variance request can be submitted. If he does it correctly, he can get the survey information for variances.

Mr. Walsh said that the committee will be meeting with the Town Manager to go over a workplan for ordinances and perhaps the variance section can be added to that workplan.

The committee agreed to put any changes to the variance section on hold.

The committee agreed to review a revised draft at their next meeting on Tuesday, June 19th, at 8:00 a.m. They will also add to the agenda one of the ordinance referrals expected from the Town Council.

The minutes of the May 24, 2012 meeting were accepted by a vote of 3-0.