

**Town of Cape Elizabeth  
Ordinance Committee Minutes**

June 19, 2012

8:00 a.m. Town Hall

Present: Jim Walsh, Chair  
Kathy Ray  
Dave Sherman

Staff: Maureen O'Meara  
Bruce Smith  
Robert Malley

Mr. Walsh opened the meeting.

No members of the public were present and indicating they wanted to speak.

Mr. Sherman made a motion to accept the minutes of the June 7, 2012 meeting, seconded by Mrs. Ray. The motion passed 3-0.

The Ordinance Committee reviewed the survey amendment draft.

Mr. Smith suggested adding "structure," which is a defined term, as something that would trigger a survey if the value exceeded \$10,000 dollars. The committee discussed what types of projects that would include. It would include underground pools, which the committee noted can be more intrusive to the neighbors than a building. The committee agreed to the change and will listen for comments at the public hearing.

Mr. Walsh asked about the need to check on the estimated cost on a building permit. Mr. Smith said that he does that now. Mr. Walsh wanted to confirm that the total cost of the project and not just the portion of the project within 5' of the minimum setback would be the value that triggered the survey. Mr. Smith confirmed that it would be the whole project.

Mr. Smith questioned the partial boundary survey provision that referenced property line when it should reference setback line. Ms. O'Meara said she would make that change.

Mr. Sherman made a motion to recommend the survey amendments to the Town Council for consideration, seconded by Mrs. Ray. The motion passed 3-0.

Mr. Walsh introduced the next item, amendments to the Town Ways Ordinance. He noted the appeal of a street opening permit on Stonegate Rd to the Town Council, where 3 councilors had to recuse themselves.

Mr. Malley noted that an appeal to the Town Council is awkward. A better fit is an appeal to the Zoning Board of Appeals, which is trained to process appeals based on standards.

Mr. Sherman is in favor of not having the Town Council function in a quasi-judicial role.

There was general discussion about the appropriateness of the Town Council in an appeals role. In the committee's experience, it does not work well. There was general agreement to revise Sec. 17-2-1 to refer to the Zoning Board.

Mr. Malley noted that in Sec. 17-2-3, the word inspection fee should be changed to "permit" and reference to "if required by the Director of Public Works" should be deleted.

Mr. Walsh was concerned with the Zoning Board's technical expertise to review the application. Would they be able to retain assistance? It was agreed that the Planning Board approach where they can retain expertise at the applicant's cost would be added as a reference to this section.

In Sec. 17-2-4, the reference to "with all local regulations" should be deleted. Any other applicable ordinances would apply based on their internal ordinance applicability sections.

Mr. Malley noted his concern that a parcel of land may not have adequate sight distance and he would have to deny a permit, which could expose the town to a takings claim. He noted that some of the pressure was taken off when the town adopted different sight distance standards in the Subdivision Ordinance, but there have been a few lots that have barely achieved sight distance. He has given permission to clear vegetation in the right-of-way in order to obtain sight distance.

Mr. Malley agreed to check on how other towns handle inadequate sight distance.

Mr. Sherman asked if there is an issue with how far a driveway must be placed from an intersection. The ordinance does not address that now, but informally residents are encouraged to avoid placing a driveway too close to an intersection.

Ms. O'Meara asked if the ordinance is clear about what the Zoning Board is supposed to do. Mr. Smith said it would be an administrative appeal and they should determine if the Public Works Director properly applied the standards of the permit. Staff will check the Zoning Ordinance to see if any complementary changes are needed to the Zoning Ordinance.

The Ordinance Committee agreed to review this item again at the next meeting.

Mr. Walsh spoke about other work for the Ordinance Committee, referencing a memo received from the Town Manager listing potential other work. This memo will be forwarded to the Ordinance Committee for discussion at a future meeting.

The next meeting of the Ordinance Committee is scheduled for **Tuesday, July 17th, beginning at 8:00 a.m.** If the Short Term Rental Amendments are forwarded to the Ordinance Committee by the Town Council at the July 9th meeting, the Ordinance Committee will hold a meeting on **Tuesday, July 31st, at 8:00 a.m.** to take up those amendments.