

MEMORANDUM

TO: Ordinance Committee
FROM: Maureen O'Meara, Town Planner
DATE: February 8, 2013
SUBJECT: Building Permit Notification

Introduction

The Town Council has forwarded to the Ordinance Committee a request to review public notification of building permit issuance. At the last meeting, the Ordinance Committee discussed a possible requirement to provide mailed notice to residents when building permits are issued. Below is a summary of information collected for further discussion.

Comparable Communities

Cumberland, Falmouth, Freeport, Scarborough, South Portland, Scarborough and Yarmouth are the communities used in the comprehensive plan to compare with Cape Elizabeth data. None of these communities currently provide a mailed or other notice to abutters when a building permit is issued.

Other examples

A general review of building permit notification indicates that notices are often required for specific uses. San Francisco and Denver require a mailed notice when a building permit includes demolition. The State of New Hampshire, and other jurisdictions, require notification of a building permit issuance to install a wind turbine. Junkyards is another example when a mailed notice of building permit issuance is required.

Just a bit south, the Town of York does require mailed notice to abutters for building permits for construction located within 125' of the normal high water line (in the Shoreland Zone). See below:

Application Fees

See §1.5.

Application Process for a Permit Issued by the Code Enforcement Officer

The Code Enforcement Officer shall decide on all permit applications using the following process.

A. Submittal of Application

The applicant for a permit shall complete a Town permit application form, shall include all necessary supplemental materials and information required to

demonstrate compliance with the Ordinance, and shall deliver the application package to the Code Enforcement Officer at times specified by the Town. Unless otherwise requested by the Code Enforcement Officer for good reason, one copy of the application package shall be provided by the applicant. The application fee shall be paid at the time of application, and is non-refundable.

B. Advanced Abutter Notification

For building construction less than 125' from the normal high water mark or upland edge of a Shoreland resource, the Code Enforcement Officer shall send notice by first class mail to abutters at least 7 days prior to issuing a Shoreland Permit. The purpose of this action is to put abutters on notice of a pending action, and to allow abutters to comment on or provide relevant information about the application prior to a decision being made.

Enclosed is a sample letter used by the District of Columbia when applicants are required to notify abutters. Also enclosed is a request form from the City of Quincy, Massachusetts, where an applicant can request mailing labels to provide notice to abutters.

2012 Building Permits

In 2012, 168 building permits were issued. Of those, 72± permits included a building footprint expansion. Attached is a spreadsheet summarizing the 72 building permits. Please note that some of the information is approximate and limited to what could be obtained from the building permit application.

Most of the building permits that included a building footprint expansion were valued at less than \$100,000. The permits appear to be widely distributed through the zoning districts, although 50 of the permits appear to be located on non-conforming lots.

When a notice should be mailed

At the last meeting, the Ordinance Committee began to discuss narrowing the mailed notice requirement to only certain building permits. Some options for the Ordinance Committee to consider include:

- Interior only. Where building permits do not alter the exterior, a mailed notice would not be required.
- Footprint expansions. This will leave out the interior remodels that do not impact property owners. It may also leave out building replacements or conversions of decks to rooms, etc.

- ❑ “Skin of the building” alterations. This would include both building footprint expansions and expansions of upper floors, dormers, etc. It could also include minor porch roof additions over front doors.
- ❑ Minimum cost expansions. This could be formulated similar to the survey amendment where only building permits exceeding a certain value would trigger a notification.
- ❑ Distance from setback. Again like the survey amendment, building permits for exterior alterations within a minimum distance from the setback could trigger a mailed notice. The standard boundary survey requirement is triggered when a building permit is submitted for activity within 5’ of the minimum setback. Beyond this minimum, no notice would be required.
- ❑ Planning/Zoning Board approvals. The notification could be waived if the building permit is based on an approval from the Planning or Zoning Board. For these building permits, notices would have been sent to abutters as part of the board review, so another notice may not be needed.

Non-mailed notice options

Mailing of a public notice by first class mail to the addresses in the Assessor’s data base is the classic method of public notice. This is sometimes supplemented by publication of a legal ad in the local daily newspaper. There are also some other options further described below:

- ❑ Prominent on-site posting. Some jurisdictions require that a sign be posted at the proposed construction site a minimum amount of time before construction may begin. Minimum requirements for size of the sign and confirmation from the applicant that the sign has been placed is typical.
- ❑ Delayed appeal period deadline. If additional notification is not desired, another option suggested for consideration by Code Enforcement Officer Ben McDougal is to not close the appeal period until 30 days after “open and notorious” construction has commenced. The term borrows from “adverse possession” language.

If an applicant wanted to close the appeal period before beginning construction, mailing of a notice becomes an option. The advantage of this option is that it leaves choice and cost up to the applicant. A challenge could be determining when the appeal period ends. The appeal period

termination could be the subject of a Zoning Board appeal, which provides both flexibility and potential legal exposure to the Zoning Board.

Next Steps

If the Ordinance Committee makes a decision about policy direction, staff will proceed with drafting ordinance amendment language for consideration at the next meeting.