

**Town of Cape Elizabeth
Ordinance Committee Minutes**

February 8, 2013

8:00 a.m., Town Hall

Present: Kathy Ray, Chair
Jessica Sullivan

Staff: Ben McDougal
Matt Sturgis
Maureen O'Meara

Mrs. Ray opened the meeting and asked for action on the minutes of January 4, 2013. The minutes were approved by a vote of 2-0.

Public Comment

Debra Murphy, 24 Pilot Point Rd- Mrs. Murphy supports building permit notification. She noted that appeals have been made to the Zoning Board, but because the deadline for appeals had passed, the Zoning Board could not hear the merit of the appeal. Some building permit holders have waited 30 days before starting in order to avoid an appeal. Without the Zoning Board option, residents have filed law suits in Superior Court, which costs \$20,000 to \$30,000, in addition to the emotional cost. Neighbors are pitted against neighbors when, if notified, there would be an opportunity to talk up front. The Zoning Ordinance is not just to protect the applicant, but also all residents. She does not want to make the building permit application process cumbersome, but earlier notice is better.

Ben McDougal, Code Enforcement Officer commented that if a notification is made after the building permit issuance, it will not hamper the application process.

Mrs. Murphy supports providing notice during the application review rather than after issuance. The Zoning Board members include lots of lawyers and you need a lawyer to even submit an appeal, which is costly. The applicant should fill out the building permit application to demonstrate how the project complies with the Zoning Ordinance.

Jim Morra, 5 Waumbek Rd, President of the Shore Acres Association - The Shore Acres Association Board is in favor of building permit notification. Notification would support town employees to follow ordinance. Sometimes mistakes are made and notification would help correct errors before construction starts. There

have been some “off-season” permits issued in November for decks to be constructed the following spring, after the 30 day appeal period.

Mr. Morra also noted correspondence from his neighbor Sandy Jones, 2 Algonquin Rd. She could not attend this meeting, but also supports notification. She does not want to allow a project to start construction that is in violation of the Zoning Ordinance.

Building Permit Notification

Ms. O’Meara provided a summary of her memo, including building permit notifications elsewhere and building permit activity in 2012.

Mr. McDougal said it was unfortunate to have appeals rejected on timeliness grounds. It is better for the Zoning Board to deal with the merits of an appeal. It is important to allow a timely process to allow appeals.

Mrs. Sullivan asked Mr. McDougal if notification should occur when the application is submitted or when a permit is issued.

Mr. McDougal said it would be problematic to provide a notice when the application is filed. He has learned that people are accustomed to getting their permit within 5 days of submitting the application. Providing a notice when the application is received would be a huge change. He expects people would be angry with the permit delay. In York, there was some anger but overall it worked well. The key is to narrow the scope of when the notification is needed, so as to not include small expansions.

Mrs. Sullivan stated that in general she is in favor of notification. She does not want to over regulate and is concerned with unintended consequences. She is in favor of the notice upon issuance of the permit. She also wants the standards to support the permit met before notice is sent.

Mrs. Ray concurred that she would like the notice sent when the permit is issued.

Mr. McDougal agreed that was a reasonable approach with the expectation of permits issued within 3-5 days of application submission.

Mr. Sturgis pointed out that sending notice before issuance creates a “two bites at the apple” situation where issuance of the permit is contested with the Code Enforcement Officer and then again as a Zoning Board appeal.

There was general consensus to provide notice upon issuance of the permit. The committee then began a discussion of what types of building permits would trigger the notice requirement. Ms. O'Meara reviewed a spreadsheet of the building permits issued in 2012 that included a building footprint expansion. She also reviewed a menu of options to guide Ordinance Committee discussion.

Mrs. Sullivan proposed and all agreed that no notice would be provided if the building permit covers interior alterations only.

Mr. McDougal suggested that small footprint expansions, such as addition of a bulkhead, might not trigger an ordinance. He suggested that footprint expansions of less than 50 sq. ft. be exempt.

Mrs. Ray asked for other examples of what could be constructed with 50 sq. ft.

Mr. McDougal said that 50 sq. ft. is too small to add a room. You might be able to move a wall to make a kitchen big enough to add an island.

Mrs. Sullivan said that a bump out or bulkhead is small enough to reasonably not provide notice.

The committee generally agreed that any number would be debated, but some number should be established.

The committee next discussed expansions beyond the "skin of the building," which might not increase the footprint.

Mrs. Sullivan suggested a minimum size approach similar to footprint expansion. Mr. McDougal suggested that you would not want to catch small dormers, or something that is below the peak of the roof. You would want to catch vertical expansions. Options to look at include value of the project, sq. ft. of floor area, volume increase.

Mr. Sturgis suggested that floor area or volume might work better than value of the expansion. There is a lot of variability on value that has little to do with the actual size of the expansion. The provision is intended to capture impact on neighbors. He also noted one of the current appeals is a small percentage increase in total house size, but still very controversial.

Mrs. Ray asked how you would measure roofline. She agreed that value would not work well, but volume increase would.

Mrs. Sullivan suggested that if the expansion is below the roofline, it would be ok not to send a notice. Some volume could be significant, however, so that may be a trigger.

Mr. McDougal suggested a 12 x 12 x 12 box might work as a minimum volume. After discussion, it was agreed staff would come back with a recommended minimum volume. It was noted that this is a standard to trigger a notice, not a standard that allows the construction to occur.

The committee also agreed that any expansion above the existing roofline would trigger a notice and agreed that cost of construction would not be used as a trigger.

The committee then considered a trigger based on proximity to a minimum setback.

Mr. McDougal suggested that a conforming lot or structure would be exempt from the notice provision. A nonconforming lot where the distance from the setback is 10' or less and including a footprint or "skin of the building" expansion would trigger a notice. There was general agreement with this approach.

The committee agreed that if a permit was issued for a project that received Planning Board or Zoning Board approval, then no additional notice would be required.

The committee discussed the option to require that a sign of minimum size be posted on the site. This approach has limitations, such as confirming the posting has been done, that the posting has remained on the site, and general weather conditions.

Mrs. Ray said she did not support on-site posting. The town can confirm that a mailing has been done.

Mrs. Sullivan also did not support posting. She noted a building permit placard has to be posted on the site. She favors a mailed notice but would like to explore who pays for the mailing.

Mr. McDougal said he thought the mailed notice was better and also favored having the town mail the notice. If the applicant has to mail the notice, he will end up arguing with applicants on whether a notice is needed and it will be easier for him to decide a notice is needed.

The committee agreed that the town should send the notice and deferred till later a discussion of who will pay for the notice.

Mrs. Ray noted that the town can document the notice has been sent if the town sends the notice.

Staff will take the committee discussion and draft zoning amendment text for consideration at the next meeting.

Property Tax Deferral

Mr. Sturgis provided a summary, noting that only 2 towns statewide have adopted an ordinance and no applications have been submitted. He pointed out that other entities would also be affected by the proposed ordinance provisions, including the Tax Collector, who would take in the application, and the Town Council, who would consider the application in executive session. If you want to go forward with the ordinance, timing constraints would delay implementation until 2014.

Mr. Sturgis reviewed the 7.5% interest rate, and noted there must be no restrictions on the deed and the applicant would need to be up-to-date on their property taxes.

Mrs. Ray questioned why a property owner would choose this option when there is a significant down side. She doubts this is good for the homeowner.

Mrs. Sullivan noted that the town could be owned more in property taxes than the property is worth. She thinks it is significant that there have been no applications in the state.

Mrs. Sullivan made a motion that the Ordinance Committee does not recommend the Property Tax Deferral Ordinance to the Town Council, seconded by Mrs. Ray. The motion passed 2-0.

Next Meeting

The next meeting of the Ordinance Committee is scheduled for Friday, March 7 2013, beginning at 8:00 a.m.

Public Comment

Mrs. Murphy welcomed Mr. McDougal and thanked him for his work.

Mrs. Ray thanked participants for coming and helping with the committee work.