


## Points of Inquiry – Lloyd-Broad Neighborhood

- Possible tools to help address student rental challenges – Staff met with residents and discussed zoning strategies related to family size and dimensional standards.
- Recyclable materials requirements, solid waste form, and construction waste in residential containers – Enforced by Orange County with assistance from Carrboro Public Works and Inspections staff who will also contact a permit holder and/or Orange County if there are issues with waste on site.
- Demolition requirements for deconstruction assessment when structures 500 SF or larger– Since the entirety of the home at 308 Lloyd Street was not removed, the project is classified as a renovation/addition and not a demolition.
- Requirements for display of permit on site – Visible posting required at the time of the first inspection.
- Applicability of owner exemption to permit issuance at 308 Lloyd Street and ongoing compliance - Town staff checked with neighboring jurisdictions in Orange County and the Licensing Board to determine that no other permits were active related to the exemption at the time the permit for renovation/addition at this location was issued. The owner completed the affidavit indicating her eligibility for the exemption and the affidavit was submitted to the NC Licensing Board, which is responsible for ensuring compliance with the exemption. Staff does contact the Licensing Board if we become aware of information that suggests their review would be needed. Staff does monitor that the homeowner/residency component of the exemption is met during the period of construction/prior to issuance of a certificate of occupancy.
- Proof of Workmen's Compensation for building permit over \$30,000 - Proof of workers' compensation insurance was provided for the 308 Lloyd Street permit.
- Lead paint abatement/removal – Memo attached. In addition to continue the practice of contacting the State when questions arise, staff have begun to request information on lead and asbestos abatement for all renovation and demolition permits related to homes built in 1973 and earlier.
- Owner exemption for construction at 304 Pleasant Drive – At the time of permit issuance and the completion of construction/CO it was and is the Town staff's understanding that the only active building permit in effect at the time was for this property.
- Parking – possible changes to Town Code related to parking on Broad and Cobb Streets considered in 2016 and 2017. Additional modifications, following neighborhood input related to Cobb Street and Lloyd Street, will be presented for the Board's consideration, this spring. Follow-up on other regulatory changes resulting from an evaluation by Police personnel of parking conditions in the neighborhood as a whole will be included.
- Traffic calming – request submitted and packet with area of interest map and addresses sent out in 2015. Completed petition for improvements has not been located in Transportation Planner files.

## MEMORANDUM

TO: David Andrews, Town Manager 

FROM: The Brough Law Firm, PLLC; Robert E. Hornik, Jr.

RE: Lead-Based Paint Regulation and General Contractor Exemption

DATE: November 21, 2017

### Issues

Recent events at property in Carrboro (308 Lloyd Street) have raised issues concerning the Town's authority to regulate renovation/rehabilitation projects on property where lead-based paint may be present. As a result, we have reviewed State law, federal law and applicable regulations regarding the regulation of renovation/rehabilitation projects where lead-based paint may be present. We also note that there are quite similar regulatory schemes under federal and State statutes regarding renovation and abatement projects involving asbestos-containing materials. This memorandum does not cite specifically to the regulations regarding asbestos, but the same general principles regarding exemptions from the certification process discussed herein in connection with lead-based paint apply for small projects and projects undertaken and performed by property owners/operators involving asbestos-containing materials.

### Discussion

The federal government has adopted statutes and regulations regarding lead-based paint. Generally speaking, renovation/rehabilitation projects performed by contractors/for hire on property where children six years of age or under are frequently present (preschools, daycares, kindergartens, for example) and in residences constructed prior to 1978 must adhere to federal regulations which are largely administered by State governments (in North Carolina, the Department of Health and Human Services). Those regulations, and the State's implementing regulations, require contractor(s) performing such work to be properly trained and certified, and require that the work space and its immediately surrounding area must comply with certain standards for the protection of workers, occupants and/or residents from dust and debris that might contain lead (and, in connection with asbestos abatement projects, friable asbestos). It must be noted that if an owner of a residence decides to perform the renovation work themselves (i.e., does not hire a contractor) then the work is not covered by the regulations.

N.C. Gen. Stat. § 130A-453.01, *et seq.*, is the statutory authorization for North Carolina's Lead-Based Paint Hazard Management Program. That statute clearly and unequivocally provides that certification requirements for contractors do "not apply to an individual who performs an abatement of a residential dwelling the person owns and occupies as a residence, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while the abatement is being performed, or a child residing in the dwelling has

been identified as having an elevated blood lead level.” N.C. Gen. Stat. § 130A-453.23(a) provides that renovations for compensation in target housing (constructed prior to 1978) or child-occupied facilities (a building or a portion thereof constructed prior to 1978 and regularly visited by the same child under six years of age) must be “performed or directed by certified renovators and certified firms. . .” To become a certified renovator, inspector or risk assessor, one must satisfy the requirements established by State regulations found at Chapter 10A, Subchapter 41C of the North Carolina Administrative Code.

The question you ask regarding the “owner exemption affidavit” referred to in N.C. Gen. Stat. § 87-14(a)(1) is not directly related to projects involving disturbance of surfaces bearing lead-based paint; it is an exemption from the general requirement that certain kinds of work must be performed by licensed general contractors. Basically, the “general contractor” licensure requirement does not apply to persons making alterations to structures or building structures on land they own, or occupy, or will occupy after completion. How this relates to the situation at 308 Lloyd Street is that (1) the owner has filed an exemption affidavit so that no contractor is required, and (2) the project involves the abatement or renovation of a residence where lead-based paint is present but because the owner/occupant is doing the work, the certification requirements do not apply.

N.C. Gen. Stat. § 87-1(b)(2) provides that to qualify for the exemption from the license requirement, the building or structure must be solely occupied by the person performing the work and his family for at least twelve (12) months following completion of the project. In that subparagraph, it is quite clear that if the building is not “occupied solely by the person [seeking exemption from the general contractor licensure requirement] and his family, firm or corporation for at least twelve (12) months following completion” then that person is not entitled to the exemption from the licensure requirement.

### **Conclusion**

Based on my research, the Town has no authority to regulate projects in the Town that may involve renovations or abatement of buildings or structures containing lead-based paint based solely because the project may involve lead-based paint. The lead-based paint regulations are established by federal and State law, and are enforced by/through the State Department of Health and Human Services. If that type of project is to be performed by a contractor, then the contractor (or subcontractor) must be certified appropriately for the work. If not, they are subject to enforcement procedures by the State, particularly the Department of Health and Human Services. If the project is being performed by the property owner/occupant who submits an exemption affidavit to us, we forward that affidavit to the State – which monitors and enforces the contractor’s licensing regulations.

With respect to the general contractor’s license, if the building or any portion thereof is going to be occupied by someone other than the owner of the property and his/her family, then the owner may not avoid the requirement that the work be performed by a licensed general contractor (assuming the cost of the work exceeds the \$30,000 threshold). If a portion of the property is to be occupied by anyone other than the owner (or family members) within twelve (12) months after completion of the work, the work must be performed by a licensed general contractor. There is no

statutory independent obligation for the Town or the State to follow up within the 12 month period following completion of the work to make sure the owner is still the sole occupant of the premises, though the State certainly can take enforcement action should it become aware of violations of the licensure requirement.

One final note regarding the owner/occupancy exceptions/exemptions of the statutes and regulations. Neither the federal nor state statutes and regulations regarding lead-based paint and regarding the contractor's license exemption define the term "family". However, the lead based paint regulations qualify the term by the use of the adjective "immediate". And the State general contractor's licensure exemption qualifies the term by use of the adjective "his". In my opinion, this suggests that the term "family" for purposes of these regulatory schemes should be narrowly construed and should NOT encompass the situation where several unrelated individuals occupy a dwelling.