

TOWN OF KITTERY, MAINE

BOARD OF APPEALS

Approved Minutes of February 9, 2016 - Recorded by Jennifer Scrafford

[A complete video record of this meeting is available online at kitteryme.org.](http://kitteryme.org)

Members present: Jeffrey Brake, Charles Denault III, Barry Fitzpatrick, Craig Wilson, Brian Boyle

Staff: Robert Marchi, Code Enforcement Officer

Chairman Wilson called the meeting to order at 7:01 p.m.

1. Call to Order, Introductory, Roll Call
2. Pledge of Allegiance
3. Agenda Amendment and Adoption
4. Executive Session - None
5. Public Hearings – Jeff Apsey, 95 Government Street, Mixed-Use Kittery Foreside – MU-KF zone, requesting Administrative Appeal per Title 16.6.4.1, regarding a Notice of Violation and Order for Correction.

Secretary Boyle affirmed Board has the right to hear this administrative appeal. Code 16-1.5.2.2 (Powers and Duties).

Testimony

Mr. Marchi explained this was a line of sight complaint. He researched the sign and the tax card shows a transaction date of 9/27/2011 so it appears that, with change of ownership, the sign ceased to be accurate. There is no sign permit or paperwork for application for signed permit. The sign needs to be removed because it has not been accurate for more than three years. Mr. Apsey sent letter to the Board, explaining it's a realty sign to rent his property. Realty signs without permit are allowed provided it does not exceed 12 square feet; these signs are also usually time sensitive. Mr. Apsey states he has a workshop at this location but public records do not show there has been a change of use application. Code stands behind its decision for NOV.

Mr. Apsey stated he lives at 5 Chauncey Creek, Kittery Point. The subject property was purchased in 2011; he didn't take possession for one year because it took a year to evict previous tenant. He needed to pay back taxes and utilities. Mr. Apsey thinks the clock should start from eviction date (2012) because he wasn't allowed on property. Prior owner had sign for 35 years and this is the same sign; it was part of the property. Mr.

Apsey said he will move sign back but he does think sign is grandfathered. He doesn't want to remove the sign because he runs his business from there. He tried to keep the sign discrete because it is a residential neighborhood but he does want to develop the property at some point.

Mr. Apsey went through the letter of violation he received. He objects to almost every statement. He runs his business out of the basement. He is willing to fill out a change of occupancy. He doesn't think every current business has a certificate of occupancy. This is not a real estate sign. It is a sign for his business, which happens to be real estate. He owns over 100,000 square feet of property. He does concede that it interferes with line of sight but he feels sign should be grandfathered. He does not want it to be a traffic issue but he doesn't know of any accidents in the past.

The property is primarily a workshop that allows him to be a handyman to his other properties. The sign is obscured but not illegible. It is not blank; it is reflective. He has included pictures of the nighttime and daytime version of the sign. Mr. Apsey can prove he operates out of the basement because he has Comcast and utility bills. Previous owner ran a bed and breakfast (Stover House) and then Harbor Relators and sign did not come down for 35 years. Mr. Apsey did not leave sign blank long after he was able to occupy the building, about 18 months after he took title.

Mr. Marchi said Mr. Apsey is the owner of multiple properties so he does know about change of use. Sign must be out of way of both streets to be permitted. Tax card shows property as residential.

Jose Montero, 17 Stimson Street, asked for photos of the sign. He does not want to wait for an accident to happen to remove sign. Road is not highly plowed. There is an incline that is a blind hill. The front end of a vehicle could be hit while nosing out to see if a car is coming. The post should be grandfathered but the sign has been removed and has lost its status. Maureen McKellum, 10 Stimson Street, has owned that property for 12 years. The sign does obstruct the view. If sign moved back, you'd have a clearer view of incoming traffic. Previous sign was lower and closer to the ground. She does not want an accident to happen there.

Mr. Montero stated he understands Mr. Apsey has a business. But he wants the sign moved to the other corner, away from Stimson Street, it wouldn't be so obvious.

Mr. Apsey has picture of sign that was there for years previous. He is willing to move sign to other side of the street.

Deliberation

Chair Wilson stated this is an administrative appeal. They are not there to see if sign should be moved. The purpose of the hearing is to determine if the NOV is valid. Mr. Fitzpatrick asked if Mr. Marchi stated previous owner never took out a permit. Mr. Marchi clarified that Mr. Apsey never took out a permit to change the sign.

Chair Wilson noted Mr. Apsey has modified the sign from the previous owner. Once the sign is changed, it loses its grandfathered status. The sign has changed in form. There has never been a permit taken out for sign so it doesn't exist legally. He would uphold the violation on this issue.

Mr. Brake noted it does block the view of the intersection. Without a permit, the sign should come down.

Mr. Denault drove by the sign and did not have an issue with line of sight at the intersection. However, judging by the pictures, he noticed the height and depth of the sign has changed so he agrees it is a different sign.

Mr. Fitzpatrick drove by the sign a dozen times. When a car comes out of Stimson Street, he noticed the sign does block the view. This is especially true during summer with heavy greenery and during Navy Yard traffic.

Secretary Boyle proposed to uphold the Notice of Violation of Order for Correction, dated 12/9/2015, for property located at 95 Government Street. Mr. Brake moved and Mr. Fitzpatrick seconded. Motion carried unanimously.

Findings of Fact

1. The CEO issued a notice of violation in regards to the sign at 95 Government Street. There was a call to the Town Hall in regards to line of sight. Research confirmed there was no sign permit. Mr. Marchi also noted Mr. Apsey's place of residence is not 95 Government Street. It is Chauncey Road.
2. Mr. Apsey stated he purchased the property in 2011 but did not take possession of the property for a year, following eviction of previous tenant. He agreed to move the sign to correct the line of sight problem but he believes it is grandfathered. He made a conscious effort to keep the sign discrete out of consideration for neighborhood.
3. Mr. Apsey amplified the points of his letter dated January 2016. He offered a point-by-point rebuttal of the CEO's letter.
4. Mr. Apsey noted sign was in use before he started using it. The sign does not only advertise for rentals of that property; it is for other properties encompassing Mr. Apsey's business.
5. Mr. Montero, 17 Stimson Street, said he has never seen the photograph in Board's packet. Stimson Street is not well plowed and is difficult because of a blind hill. Mr. Montero has difficulty pulling out safely into traffic.
6. Ms. McKellum, 10 Stimson Street, said she also has problems pulling out into traffic, turning to the right.

7. The Board found there was no permit for the existing sign and it was not legally conforming and has been changed in the last three-year period. Therefore any sign on the premises would have to be conforming.
8. The sign location under Code 16.8.10.3h does not satisfy the sight distance requirement.
9. Mr. Apsey agreed to move the sign to the other side of the property.
10. In discussion, the Chair stated his opinion that Notice was issued in accordance with the law. CEO said there was no permit taken out.
11. Mr. Brake noted sign is illegally blocking the view coming out of Stimson Street.
12. Mr. Denault did not think the sign blocked the view.
13. Mr. Fitzpatrick thought the sign did block his view of traffic.

Mr. Brake moved to accept these finding of fact. Mr. Boyle seconded. Motion carried unanimously.

Conclusions of Law

The Board found there was no permit for the existing sign; therefore, the sign was legally nonconforming. It has been changed in the last three year period. The sign location under Code 16.8.10.3h did not satisfy the safe sight distance requirement.

Mr. Brake moved to accept these conclusions of law. Mr. Boyle seconded. Motion carried unanimously.

6. Unfinished Business – The Chair stated Mr. Marchi called him to discuss Mr. Emery, who received an approval for an ADU on Haley Road on November 24. He wants to add a manufactured home on the site of the current garage. An 1120 sq foot building was approved. Now, he wants to reduce building by two square feet. The building was not required to be built on the original footprint. The original footprint was 40 x 28. The new proposal is 38 x 26. A three-season sunroom has been added. Mr. Emery explained he wanted the house in place this November so he needs to get into the queue of the manufactured house builders.

The Chair moves to modify prior order to replace garage with ADU of 1120 square feet with an ADU of 1118 square feet with a sunroom. Mr. Brake seconded. Motion carried unanimously with Mr. Fitzpatrick abstaining.

7. New Business – Chair received an invitation to participate in social media campaign to run up to comp plan. No objection from the Board. Mr. Fitzpatrick will go to comp plan meetings; he is the Board representative.

8. Acceptance of Previous Minutes – None

9. Board Member or CEO Issues or Comment – Currently no applications have been filed so no hearing is scheduled for next meeting. Chair asked if anyone was going to MMA meeting. Secretary Boyle asked if there was an agenda for the meetings and Chair Wilson said the manual is the agenda. Mr. Marchi pointed out Board can sign up for access to MMA website. No Board members currently plan to attend.

10. Adjournment

The Chair moved to adjourn. Seconded by Mr. Brake. Motion carried unanimously.

The Board of Appeals meeting of February 9, 2016 adjourned at 8:13 p.m.