

Town of Kittery, Maine  
Board of Appeals  
June 8, 2010

**Members present:** Vern Gardner, Niles Pinkham, Herb Kingsbury, Craig Wilson, Thomas Battcock-Emerson

**Members absent:** Brett Costa, Bob Kaszynski

**Staff:** Heather Ross, Code Enforcement Department

The meeting was called to order at 7: 01 p.m.

Pledge to the Flag

**Item 1** - Larry Salomon for Kittery Dairy Queen requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 32, Section 585, and Title 16, Chapter 32, Section 595, in order to replace the existing street sign. Located at 174 State Road, Kittery, Map 14 Lot 58, in the Local Business Zone.

**Larry Salomon**, stated he was updating the Dairy Queen signage in keeping with the company's signage standard. He was not increasing the sign area on the existing free-standing sign.

**Chairman Gardner** asked if the sign is illuminated. The CEO stated the sign is internally illuminated, and meets code requirements in that regard. Discussion followed regarding whether the sign is in the right-of-way. **Mr. Pinkham** recalled the Shaftmaster sign in the right-of-way was approved by the Board, noting the State could require it be removed. **Chairman Gardner** agreed, noting he opposed that decision because it was in the right-of-way, and believed the Board did not have jurisdiction. **Mr. Wilson** noted this is an existing, non-conforming sign, and read from Section 16.32.625.A - *All signs lawfully existing on October 1, 1997 that do not conform to the terms of this article may be continued and maintained subject to Section 16.32.625(B), but may neither be enlarged nor substantially altered except in conformity with this article.* **Mr. Salomon** stated this sign had been in the same location since 1969.

**Chairman Gardner** asked if there was anyone present wishing to speak in favor or against this item. There being none, the CEO provided:

1. This is a conforming lot with conforming structures located within the Local Business zone. Both the Dairy Queen and the Bagel Caboose are located on this parcel.
2. Mr. Solomon has proposed to remove the existing Dairy Queen sign and replace with a new Dairy Queen sign.
3. Title 16.32.585 prohibits each development from having more than one freestanding sign.
4. This property currently has two freestanding signs and the proposal is to still have two freestanding signs.

**Mr. Pinkham motioned** to grant a miscellaneous appeal to Larry Salomon for the Kittery Dairy Queen to the terms of Title 16, Chapter 32, Section 585, and Title 16, Chapter 32, Section 595, in order to replace the existing street sign. Said property is located at 174 State Road, Kittery, Map 14 Lot 58, in the Local Business Zone.

**Mr. Kingsbury seconded**

**Motion carries, 4 in favor, 1 against (Gardner), 0 abstentions**

**Findings of Fact**

1. Larry Salomon for Kittery Dairy Queen requested a Miscellaneous Appeal to the terms of Title 16.32.585 and Title 16.32.595, in order to replace an existing free-standing street sign.

2. There was no public comment.
3. This is a conforming lot with conforming structures located within the Local Business zone. Both the Dairy Queen and the Bagel Caboose are located on this parcel.
4. Mr. Solomon has proposed to remove the existing Dairy Queen sign and replace with a new Dairy Queen sign.
5. Title 16.32.585 prohibits each development from having more than one freestanding sign. This property currently has two freestanding signs and the proposal is to still have two freestanding signs.
6. Mr. Salomon noted the replacement sign will be smaller than the existing sign, will use the same pole and sit on the same pad.
7. The CEO stated internal illumination is allowed, as long as there is no spilling of light onto the roadway.
8. No survey was available to determine location of sign pad to the traffic circle right-of-way.
9. Section 16.32.625, *Non-Conforming Existing Signs*, was reviewed and discussed.

**Mr. Emerson motioned** to accept the Findings as read.

**Mr. Kingsbury seconded**

**Motion carries unanimously by all members present**

#### **Conclusion**

The Board has the authority under 16.32.625, *Non-Conforming Existing Signs*, to allow all signs lawfully existing on October 1, 1997 to remain and be maintained as long as it is not enlarged or substantially altered. The Board found the sign will not be enlarged or substantially altered.

**Mr. Pinkham motioned** to accept the Conclusion as read.

**Mr. Kingsbury seconded**

**Motion carries unanimously by all members present**

**Item 2** - Ken Markley for Chris & Sue Brown requesting a Miscellaneous Appeal to the terms of Title 16, Chapter 32, Section 490K2, and Title 16, Chapter 32, Section 490N2, Table 16.12, in order to replace a portion of the deck with an extension of the kitchen. Located at 10 Wheelhouse Way, Kittery Point, Map 71 Lot 1-20, in the Resource Protection Zone.

**Ken Markley** summarized the request, noting the CEO's denial was because the existing deck and proposed expansion lies within the 100 foot wetland setback. The structure was built in 1987. The requested expansion replaces a portion of the deck that currently exists. Under Title 16.32.490.K.2, a 30% expansion is allowed with BoA approval, and the expansion is not additionally non-conforming, at 17% by volume and 14% by area.

**Pat Strand (and husband)**, neighbors, supported the Brown's request for this appeal.

**Chairman Gardner** asked if there was anyone present wishing to speak in favor or against this item.

There being none, the CEO provided:

1. This is a conforming lot with non-conforming structure located in the Resource Protection zone.
2. Table 16.12 requires a minimum 100 foot setback from waterbodies greater than one acre in size. The proposed addition is closer than 100 feet, but no closer than the existing deck.
3. Title 16.12.090.c states that the applicable approvals and land use standards in the shoreland zone apply to all proposed uses in the RP district.
4. Title 32.490.K.2 allows for an expansion of existing structures of no more than 30 percent floor area or volume. The proposed volume area increase is 17% and the proposed floor area increase is 14%. The existing structure is 27.2 feet from the edge of the wetland and the proposed is 29.7 feet from the wetland edge.

**Mr. Pinkham motioned** to grant a Miscellaneous Appeal to Chris and Sue Brown to the terms of Title 16.32.490K2, and Title 16.32.490N2, Table 16.12, in order to replace a portion of the deck with an extension of the kitchen. Said property is located at 10 Wheelhouse Way, Kittery Point, Map 71 Lot 1-20, in the Resource Protection Zone.

**Mr. Kingsbury seconded**

**Motion carries unanimously by all members present**

**Findings of Fact**

1. Ken Markley, representing Chris and Sue Brown, requested a Miscellaneous Appeal to the terms of Title 16.32.490K2, and Title 16.32.490N2, Table 16.12, in order to replace a portion of the deck with an extension of the kitchen.
2. A survey by Easterly Surveying illustrated the structure is located 27.2 feet from the wetland. The proposed addition will be 29.7 feet from the wetlands.
3. The house was constructed in 1987.
4. The increase in volume of the 234 square foot addition is 17% in volume and 14% in area.
5. Mr. and Mrs. Strand, property neighbors, publicly supported the appeal.
6. The CEO testified this is a conforming lot with non-conforming structures located in the Resource Protection zone.
7. Table 16.12 requires a minimum 100 foot setback from waterbodies greater than one acre in size. The proposed addition is closer than 100 feet, but no closer than the existing deck.

**Mr. Kingsbury motioned** to accept the Findings as read.

**Mr. Emerson seconded**

**Motion carries unanimously by all members present**

**Conclusion**

The Board of Appeals has authority under Title 16.28.130.D.1 to grant this appeal.

**Mr. Pinkham motioned** to accept the Conclusion as read.

**Mr. Emerson seconded**

**Motion carries unanimously by all members present**

Minutes: BoA meeting of May 25, 2010

The minutes were accepted, with changes, without motion

**Mr. Kingsbury motioned** to adjourn

**Mr. Emerson seconded**

**Motion carries unanimously**

The Kittery BOA meeting of June 8, 2010 adjourned at 7:46 p.m.

Submitted by Jan Fisk, June 9, 2010