

STATE OF MAINE  
CUMBERLAND, SS:

DISTRICT COURT  
LOCATION: PORTLAND  
CIVIL ACTION  
Docket No. \_\_\_\_\_

TOWN OF CAPE ELIZABETH,

Plaintiff,

v.

WILLARD SQUARE HOME REPAIR  
LLC d/b/a The Lumbery, and  
Michael Friedland, 287 Ocean House  
Road, Lot 76, Cape Elizabeth, Maine  
04107,

Defendants

LAND USE CITATION AND  
COMPLAINT PURSUANT TO  
M.R. CIV. P. 80K & 30-A  
M.R.S.A. § 4452

NOW COMES Plaintiff Town of Cape Elizabeth, by and through its undersigned counsel, and complains against Defendants Willard Square Home Repair LLC, d/b/a The Lumbery, and Michael Friedland, pursuant to M.R. Civ. P. 80K and 30-A M.R.S.A. § 4452, as follows:

1. **Violation (Count 1):**

Date of violation, or when first observed by complaining official:

Month: November

Day: 15

Year: 2020

Location of violation: 287 Ocean House Road, Map U22, Lot 76

Town: Cape Elizabeth, Maine 04107

**Violation (Count 2):**

Date of violation, or when first observed by complaining official:

Month: May

Day: 3

Year: 2022

Location of violation: 287 Ocean House Road, Map U22, Lot 76

Town: Cape Elizabeth, Maine 04107

2. **Legal Basis of Complaint:**

a. Violation of State Law:

30-A M.R.S.A. § 4452

b. Violation of Municipal Ordinances:

Zoning Ordinance, Article IX, Section 19-9-6, Pages 270-271.

Sign Ordinance, Section 21-3-1, Page 7.

3. **Description of Violation:**

Willard Square Home Repair LLC, d/b/a The Lumbery, owned by Michael Friedland, is out of compliance with the Town of Cape Elizabeth Zoning Ordinance and Sign Ordinance. Specifically, the Defendants have been noncompliant with Section 19-9-6 of the Zoning Ordinance since November of 2020 and Section 21-3-1 of the Sign Ordinance since May of 2022.

a. **Count 1:**

Section 19-9-6 of the Zoning Ordinance states, in part, that “any alteration to a site which is inconsistent with the approved site plan shall require an amendment to the site plan. Planning Board approval must be obtained prior to the alteration.” Further, the Section permits “De minimis Changes,” as follows:

The intent of this section is to process minor deviations from the approved plan that typically arises as a project moves from conception to completion of construction. De minimis changes shall not include (1) a change to a public or private right-of-way or easement, (2) a decrease in proposed buffering or landscaping, (3) any issue involving a condition placed on the site plan approval, or (4) any change in a building footprint greater than five (5) feet in any direction.

Other than De minimis Changes, the Section allows parties to amend their approved site plan only by submitting an amendment to the Planning Board for review and approval.

The Defendants have violated Section 19-9-6 of the Zoning Ordinance by encroaching well beyond their approved site plan by storing several pallets of firewood, picnic tables, stacks of lumber, and other items in the front of the Defendants' store. This encroachment has gone well beyond a de minimis change<sup>1</sup>, as is occasionally permitted under the Zoning Ordinance. The Defendants' approved site plan allows for *minimal* outside storage of materials in areas defined in the site plan approved by the Planning Board, but the Defendants have failed to preserve appropriate accessibility into the store and have allowed the encroachment of materials to extend far beyond what the approved site plan contemplates. Also, in addition to the encroachment not qualifying as a "De minimis Change" under the Zoning Ordinance, the Defendants have also not obtained Planning Board approval on an encroachment as substantial as it currently stands. The Defendants have been given numerous warnings and opportunities to correct the issue, but the encroachment has not been corrected.

The Code Enforcement Officer has given the Defendants numerous verbal and written warnings to come into compliance with the Zoning Ordinance. In fact, the Defendants have been granted four (4) separate site plan amendment approvals to try to accommodate their business, on (1) July 23, 2020, (2) September 11, 2020, (3) October 5, 2020, and (4) July 21, 2021. Despite the Town's numerous attempts to accommodate the Defendants and their business, as well as after several warnings, the Defendants remain noncompliant. A formal Notice of Violation was sent to the Defendants on May 27, 2022. Such Notice was to no avail.

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<sup>1</sup> A de minimis change may be considered when the applicant submits a request which is then approved by the Planning Board Chair. No such request has been submitted.

b. **Count 2:**

Section 21-3-1 of the Sign Ordinance states, in part, that “prior to installing any sign that requires a permit, a completed application to install the sign shall be submitted to the Code Enforcement Officer.”

The Defendants have violated Section 21-3-1 of the Sign Ordinance by placing a sign in the front of the Defendants’ store without submitting the information necessary for a complete sign permit application. Such information includes the number of signs and sign dimensions on the Defendants’ property. Despite not having a complete sign permit application and despite numerous warnings by the Code Enforcement Officer, the Defendants have continued to display a sign without the Town’s approval.

The Code Enforcement Officer has given the Defendants numerous verbal and written warnings to come into compliance with the Sign Ordinance. After several failed attempts to accommodate the Defendants’ business, a formal Notice of Violation was sent to the Defendants on May 27, 2022. Like the Zoning Ordinance violation, this Notice was also to no avail.

Penalty Provision for Count 1: Town of Cape Elizabeth Zoning Ordinance, Article III, Section 19-3-6, Page 40; Title 30-A M.R.S.A. Section 4452(3).

Penalty Amount for Count 1: \$100 to \$5,000 per day.

Penalty Provision for Count 2: Town of Cape Elizabeth Sign Ordinance, Section 21-3-1, Page 7; Title 30-A M.R.S.A. Section 4452(3).

Penalty Amount for Count 2: \$100 to \$2,500 per day.

4. **Relief Sought from Court:**

Civil Penalty – for each day of the violation

Removal of Violation – removal of materials outside approved site plan space and removal of signage without a complete sign permit application and approval.

Other – attorneys fees and costs

Dated: October 13, 2022

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Benjamin McDougal  
Certified Code Enforcement Officer,  
Town of Cape Elizabeth  
320 Ocean House Road  
P.O. Box 6260  
Cape Elizabeth, Maine 04107  
(207) 799-1619

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Laura A. Maher, Esq., Bar No. 5799  
Monaghan Leahy, LLP  
95 Exchange Street  
P.O. Box 7046  
Portland, Maine 04112-7046

**Citation**

You are hereby summoned to appear in Maine District Court at the location, date, and time indicated below to answer to the above Complaint.

In the event of your failure to appear and state your defense on the court date specified a judgment by the default may be rendered against you. You are advised to call the District Court to verify the date and time of your appearance.

District Court:

Portland District Court

Address of Court:

205 Newbury Street  
Portland, Maine 04101

Telephone Number of Court:

(207) 822-4200

Date and Time of Hearing:

\_\_\_\_\_

DATED: October 13, 2022

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Signature of Complainant  
Benjamin McDougal, Code Enforcement Officer  
Town of Cape Elizabeth  
320 Ocean House Road  
Cape Elizabeth, Maine 04107  
(207) 799-1619