

May 31, 2022

**VIA EMAIL**

Town of Rockport  
Zoning Board of Appeals  
101 Main Street  
Rockport, ME 04856

**RE: Appeal of Building Permit; 20 Central Street, LLC**

Dear ZBA members:

Please accept this letter of argument on behalf of appellant John Priestley in lieu of oral argument at the hearing on the above appeal scheduled for June 2, 2022. I note that Section 5(A)(3) of the Board's Bylaws permits the presentation of written testimony during a public hearing. Section 5(A)(2) has previously been referenced to argue that written submissions such as this letter must be submitted 15 days in advance of the hearing; however, that section is plainly referring to the appeal application itself. Particularly where this letter is being submitted in the interest of efficiency, it should be considered.

**1. The permit is not in accordance with the May 2020 site plan approval.**

It was legal error for the CEO to have granted the building permit to 20 Central Street LLC for a 20-room hotel, as this is a material modification to the project that was granted approval in May 2020. When the Planning Board reviewed the project in 2020, the project was presented and approved as a 26-room hotel, having been reduced from the initial application for a 36-room hotel.<sup>1</sup> The number of rooms was material to the Planning Board's review of parking and traffic standards and, most importantly, the scenic view standard requiring that the hotel "impede, as little as reasonably practical, scenic views." The Planning Board in its February 28, 2020 motions and later Notice of Decision found that the 26-room hotel as then proposed met the scenic view standard. The number of rooms in the hotel is material to what footprint and height of the building is reasonably necessary, and therefore whether the impact on scenic views is impeded as little as reasonably practical. The reduction to 20 rooms absolutely requires reconsideration of whether the footprint – which remained unchanged in the approved building plans – could be reduced in order to preserve the existing scenic view of the harbor from Central Street and Goodridge Park.

It is clear that any change to an approved site plan, no matter how minimal, must be presented to the Planning Board for revision. Section 1302 of the LUO states that "[n]o building permit...shall be issued by the Code Enforcement Officer or Local Plumbing Inspector for any use or development within the scope of this Section until a site plan review of the proposed

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<sup>1</sup> See applicant's submission dated February 14, 2020; Notice of Decision dated 6/16/20.

development has been approved by the Planning Board. Section 1303 applies the site plan review requirements to, “[r]evisions to an existing Site Plan seeking amendment to that previously approved Site Plan,” and Section 1305 requires updated written materials to address any revisions. These requirements are not limited in any way; if there is a change to an approved project, it must be approved by the Planning Board. It cannot be said that the change from 26 to 20 rooms was *de minimis* or not relevant, not only because the ordinance does not envision such a concept, but also because the number of rooms directly relates to standards applied by the Planning Board in its approval. The CEO cannot have issued the building permit for a 20-room hotel when such hotel was not approved by the Planning Board.

## **2. The Planning Board was required to review the traffic and parking study.**

The CEO reviewed a traffic and parking study prepared by Gorrill Palmer as part of the building permit approval. It was legal error for the CEO to have evaluated this study, as the Planning Board was required to do so. The Planning Board in its 2020 approval and 2022 remand applied the parking standards of Section 803 to the hotel application. The CEO did not do so in issuing the 2021 building permit for the 26-room hotel. After the Superior Court ruled that the petitioned ordinance amendments adopted in 2020 applied to the hotel project, the CEO for the first time took jurisdiction over the parking standards and commissioned and reviewed the Gorrill Palmer report.

Section 803.1(5) states that no off-site or shared parking, or waiver of parking requirements, shall be approved unless it is supported by an independent traffic study. That section applies retroactively to affect the hotel approval. The question, then, is who approved the off-site parking? It was the Planning Board, and not the CEO. Therefore, by the clear language of the ordinance, it is the Planning Board that is charged with reviewing the traffic and parking study. 20 Central and the Town will likely argue that the paragraph prior to the subject paragraph in Section 803.1(5) contemplates review of the parking standards by the CEO or the Planning Board, and that it was acceptable for the CEO to have performed the review in this case. But that does not match the Planning Board’s traditional role in reviewing parking and traffic requirements as part of site plan review, or the fact that in this case the Planning Board was the one to apply those standards and to approve the split on-site / off-site parking arrangement. The reason the Planning Board and the CEO are mentioned in the preceding paragraph is simply because the Section 803 standards apply to all development, but not all development requires site plan review. Where site plan review is required, it is the Planning Board who applies these standards.

Note that the Board of Appeals has previously held that the CEO does not need to review all of the substantive standards under the LUO, and that the building permit review process focuses on the building itself and not on the overall site. It would be contradictory to now suggest that, for the first time, the CEO may assert exclusive jurisdiction over a parking and traffic review standard.

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**3. The Gorrill Palmer traffic and parking study was not independent.**

As the Board is likely aware, Friends of Rockport commissioned its own parking and traffic study. Undersigned counsel reached out to several engineering firms for proposals for this work, including Randall Dunton of Gorrill Palmer. Mr. Dunton informed me by telephone in November of 2020 that he could not work on behalf of Friends of Rockport because he routinely works for Stuart Smith's various companies and it would therefore be a conflict of interest for him to perform the requested study. While I unfortunately do not have Mr. Dunton's statement in writing, I do have written communications with my client in which I relayed that statement and attest that this is what Mr. Dunton said.

If Gorrill Palmer has such a conflict of interest that it cannot work for an opponent of this development, then it cannot satisfy the requirement of Section 803.1(5) that the traffic and parking study be independent. This is a *de novo* review. As such, we ask that the Board of Appeals question the applicant as to its business relationship with Gorrill Palmer and specifically the number of projects the company has performed for Smith's development projects, the relevant dates, and whether there were any such projects underway at the time the parking study was being conceived, performed, or presented to the CEO. Significant entanglements such as these require an order that a new parking and traffic study be commissioned.

**4. The CEO did not apply the findings of the parking and traffic study.**

The Gorrill Palmer study contained several reservations and cautions about the project, particularly as to the off-site valet parking. There is simply no evidence and no findings in the record that the CEO considered these issues and either appropriately dismissed them, or applied conditions to address them.

**5. Remaining arguments.**

The appellant believes the remaining arguments are well-known to the Board of Appeals based upon prior appeals, and that he need not repeat them here.

Thank you for your consideration.

Sincerely



Kristin M. Collins