

Kristin M. Collins  
kcollins@preti.com  
207.791.3292

April 11, 2022

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

**RE: Appeal of Planning Board approval on remand  
20 Central Street, LLC**

Dear Board of Appeals Members:

I am writing to supplement the arguments raised in the appeal filed by my clients Friends of Rockport (on behalf of members listed in the appeal) and John Priestley. I will not be able to attend the hearing scheduled for April 14, 2022 and therefore ask that the Board refer to this letter as the basis for the Appellants' arguments.

1. The Planning Board improperly considered new evidence as to architectural harmony.

The Planning Board's findings on remand were tainted by the fact that it held a site walk on the morning of the remand hearing and reviewed new letters submitted by the applicant. At the site walk, representatives for 20 Central Street LLC took the opportunity to point out features of the newly constructed building to Planning Board members, and compared them to features of nearby buildings. In doing so, the Planning Board corrupted the purpose and basis of the remand. The Planning Board's charge in this remand was to review the *same* body of evidence that was before it in May of 2020 when it rendered its decision, and augment its findings of fact and conclusions of law so they would be of sufficient substance for the Superior Court to review. The Court's order stated as follows:

This issue was presented and contested before the ZBA [sic], but the actual terms of the board's approval were limited. No architect or other professional appeared before the board to offer an opinion as to the extent to which a bank of hotel balconies might 'relate harmoniously to the terrain and surrounding environment, including existing buildings in the vicinity that have a visual relationship with the proposal being entered.' LUO § 1301; MISC 281. Approval of the proposed design seems instead to have been based on the observation that other buildings 'around the corner' have decks of some sort ('a number of large decks'). Recording of Feb. 27, 2020 meeting at 3:23-3:24. There was no discussion of the nature of these 'decks,' whether they fall within the field of vision of a person standing on Central Street, or how the proposed bank of balconies might blend in with, complement, or clash with buildings adjacent to 20 Central.'\*\*\*The matter shall be remanded to the Planning Board for *reconsideration* of 20 Central's site plan application with respect to adequacy of parking and compliance with standards for architectural harmony.' (Emphasis added).

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The Planning Board should not have conducted a new site walk. It also should not have considered letters such as those submitted by Kerry Leichtman, Elizabeth Vickerman, Richard Bernhard, Meg Barclay, John Scholz, Samuel Smith, and Stephen Smith, each of whom present themselves as “experts” on the parking or architectural issues. The Planning Board in receiving and reviewing these letters created a whole new record, despite the fact that it only had limited jurisdiction to revise its findings of fact based upon the original record.

In reviewing whether the Planning Board’s findings on remand were arbitrary or capricious, the Board of Appeals cannot consider any of the materials submitted prior to the January 27, 2022 hearing. It must confine its review only to the record before the Planning Board in May of 2020. However, this is a difficult if not impossible task. Appellants ask that this Board review the January 27 meeting video. Although the Planning Board attempted to bifurcate its decision by first considering the prior record before considering the new evidence, it is clear that this new evidence permeated its entire discussion and the revised findings. The Planning Board referred to neighborhood building elements that were never referenced in its May 2020 findings (and seen only on the January 2022 site walk). It referred to the opinions of architects that were never heard in May of 2020 (because they were included only in letters submitted in January of 2022). Not only was the Planning Board’s reference to new evidence outside the scope of its permitted review, it was fundamentally unfair. The Appellants, understanding the limited purpose of the January 27 hearing, did not solicit a letter-writing campaign, unlike 20 Central. The overall record of the January 27 meeting therefore veered unfairly and inaccurately in the direction of support for the hotel, which was not at all the case with the record as of May 2020.

Because the ZBA cannot properly parse the Planning Board’s findings on remand to separate the former record from the new evidence, this matter must be remanded to the Planning Board with explicit instructions to consider and specifically reference only material that was before the Planning Board as of May of 2020.

2. The Planning Board erred in determining that the 2012 approval for Union Hall did not rely upon the 25 spaces then being added to Sandy’s Way by the developer.

The Planning Board’s task on remand was to answer the Court’s question:

What this [2012] waiver meant is not spelled out in the decision or otherwise in the record. Were 25 new spaces constructed? Did the waiver mean that 25 spaces in Sandy’s Way were allocated to Union Hall (in addition to those previously dedicated to use by patrons of the Shepherd Block), thereby leaving no room in Sandy’s Way for guests of 20 Central? Or did it mean...that the waiver was complete, such that there were no spaces in Sandy’s Way dedicated to Union Hall and all of those spaces were available to 20 Central’s patrons?

The ZBA cannot simply refer to its prior decision on this issue, because the Superior Court found the Planning Board’s May 2020 findings on this issue to be deficient. It must look anew at the

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Planning Board's findings in light of the record that was before the Planning Board in 2012. For the purposes of this argument, Appellants refer you to slides #3 through 8 of the Appellants' presentation to the Planning Board, which is part of the record.<sup>1</sup> The 2012 application and review materials excerpted in these slides demonstrate that the Union Hall renovation and Sandy's Way addition were presented as a conjoined project, with Union Hall using the new spaces in the Sandy's Way lot to satisfy the parking standards. It would be simply illogical to find that the applicant in 2012 was offering up 25 new spaces, but the Planning Board in response waived the parking requirements down to zero spaces. What actually happened is that the applicant offered up 25 new spaces, which was not enough to meet the strict standards, and the Planning Board waived the balance of the required spaces. There was no reason for the Planning Board to consider Union Hall's use of the Sandy's Way lot differently from the Shepherd Block's use. Any use by the hotel of the Sandy's Way lot will displace parking on to town streets.<sup>2</sup>

3. The Planning Board erred in failing to apply the shared parking standards to the hotel and to consider the competing demands on the Sandy's Way lot, as required by the Land Use Ordinance and the Superior Court's order.

The Superior Court required on remand that the Planning Board consider "all the overlapping burdens on the limited parking downtown." The Planning Board could not, as it did in the May 2020 decision, "simply and out of context attribute a minimum number of spaces to the project." Whether or not the 2012 approval for Union Hall dedicated the 25 new spaces to that use, it is clear from that application that the intent and effect of the Sandy's Way lot has always been to serve all uses in the Shepherd, Union and Martin blocks. The applicant stated in a letter to the Planning Board in December 19, 2019 that it would continue to employ the "shared use of 49 existing private parking spaces," and further stated that, "these spaces are not restricted, and *the public is allowed to use them.*" Simple common sense and experience tracks this statement, as parking for many uses downtown has historically been "combined in [this] one facility." (Section 1004 of 2018 Land Use Ordinance). 20 Central therefore has two choices: it can either (a) acknowledge that the parking is shared and allow the Planning Board to take any competing uses into account when determining how many on-site and off-site spaces must be provided, and then formalize the combined use with an easement as required by Section 1004<sup>3</sup>; or (b) usurp the Sandy's Way lot and prohibit parking for all other uses. What the hotel cannot do is allow free and fluid use of the whole lot for various tenants and the public without going through the analysis – as required by the Court – to "consider all the overlapping burdens on the limited parking downtown."

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<sup>1</sup> The documents referenced in the slides were all before the Planning Board in May of 2020.

<sup>2</sup> Section 1004 provides that, "[g]enerally, the required space assigned to one use may not be assigned to another use; thus, the total available spaces shall be the sum of required spaces for each of the individual uses."

<sup>3</sup> 20 Central Street LLC now owns the entirety of the Sandy's Way lot. The Planning Board acknowledged in its May 2020 approval that spaces within that lot are reserved for the Shepherd Block. The Planning Board must, at minimum, require an easement to ensure that the shared spaces are available in perpetuity.

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4. The Planning Board was required to review a traffic and parking study in considering the demands on parking and traffic.

Unlike with the architectural standards, the Court did give the Planning Board license to consider new evidence as to the “overlapping burdens” on parking. It ordered the Town to abide by the 2020 ordinance amendment that required review of a parking and traffic study before approving any shared or offsite parking. There is no question that the Planning Board is the applicable review authority for consideration of site issues, including traffic and parking. Section 803.1(5) as amended, vests the Planning Board<sup>4</sup> with jurisdiction to review shared parking arrangements. Section 1306 gives the Planning Board authority to seek professional assistance when considering site plan applications. It is therefore clear that the intent of the amendment was to require the Planning Board to commission a traffic and parking study before approving any development that relies upon shared or offsite parking. The hotel development relies upon both. The Planning Board must review and determine the implications of the Town-commissioned parking and traffic study before its remand decision can be seen as compliant with the Court’s remand or with the LUO itself.

5. The Planning Board did not consider the remand in the appropriate context of site plan amendment.

The Planning Board in May 2020 approved a 26-room hotel. The number of beds guided the Planning Board’s consideration of parking, and is directly related to the size and exterior features of the hotel. The number of guest rooms has now been reduced by 55% since 20 Central presented its plans to take up this entire lot. Can the hotel now be designed to take up less of its footprint and preserve some scenic view of the harbor? Can it have fewer exterior balconies? The Superior Court not only instructed the Planning Board to revise its findings of fact for more substantive attention to parking and architectural harmony, it also required that the Board in doing so take into account the Court’s other order limiting the number of guest rooms to 20 in keeping with Section 917, note 9 of the LUO.

Section 1306 of the LUO requires that all construction shall be in conformance with the approved site plan. Section 1304 governs revisions to an approved site plan. The Planning Board cannot have properly addressed its tasks on remand outside of the site plan amendment process, since the change in guest room number is a material change to the site plan approved in 2020. The Court envisioned this, stating, on page 2 of its Order dated January 3, 2022 that “the Planning Board will have to review the parking elements of 20 Central’s application in conjunction with the court’s judgment in Count I of CV-2021-002.” The civil action referenced is the one in which the Court ordered that the 20-room limit applied. The Planning Board may have done a more thorough job going through the architectural harmony and parking standards during its remand hearing, but it was reviewing the wrong project. The applicant was required to present its new, reduced project to the Planning Board for review of how that size reduction

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<sup>4</sup> The section references review by the “CEO or Planning Board” but the language is flexible only to address the fact that each might be the applicable reviewing authority under the LUO for a particular type of project. The Planning Board is the reviewing authority for this site plan review.

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implicates the review standards. Without reviewing the standards on remand in the appropriate context of a 20-room hotel, the findings are irrelevant to the project that has now just been issued a building permit by the Code Enforcement Officer.

6. The Planning Board did not consider the architectural harmony of the harbor side of the hotel.

The Planning Board's discussion of architectural harmony focused too narrowly on the balconies on the Central Street side of the building. The Court's remand was not so limited. It asked the Planning Board to, "address whether the hotel balconies conform to the architectural harmony requirements of LUO §§ 1301 and 1003.1." Not only are there multiple balconies on the harbor side of the building that will project noise and light over the harbor, the harbor-facing façade is a virtual wall of glass. The hotel design also incorporates multiple arches, which are found nowhere on the harbor-facing side of the Central Street block. By contrast, the hotel is flanked by buildings that, on the harbor side, are all brick with few, small windows, one small private residential balcony and two restaurant decks (one of which was added after the hotel's approval). The Planning Board's findings simply do not touch on the architectural compatibility of the building with the rear of the Central Street block, and the application must be remanded to the Planning Board once again to address the glaring architectural disharmony on the harbor side of the development.

7. The Planning Board placed undue emphasis on residential decks and a fire escape.

The Superior Court, in its order remanding the application back to the Planning Board, noted that the Planning Board's original findings included "no discussion of the nature of these 'decks,' whether they fall within the field of vision of a person standing on Central Street, or how the proposed bank of balconies might blend in with, complement, or clash with buildings adjacent to 20 Central." In addressing this remand, the Planning Board was required to look at the record and facts as they existed in 2020.

The Planning Board's February 7 finding of fact #7(c) states that, "there are many balconies or decks on other buildings in the Village and in the visual vicinity of both the front and rear of the hotel, including four to five balconies within eyesight of the hotel." Pursuant to the Court's direction, architectural harmony must be evaluated "from the field of vision" of someone looking at that façade. As to the Central Street side of the building, the Planning Board is not sufficiently clear as to what "various buildings" visible from Central Street include balconies. If the Planning Board is referring to residences on Central and Main Street, only two residences, located on Main Street, include actual balconies. These are individual wooden balconies that are not within the field of vision of or from Central Street.

The only "balcony" specifically referenced by the Planning Board is a *fire escape* at 23 Central Street that exists only for code purposes and is not designed or used/usable as a balcony. Following is the photo referenced in the findings as showing this "balcony":

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The fire escape in question is not even visible in this singular reference (either visual or verbal) to it in the 2020 approval record. Even if this fire escape were relevant, it is absurd to suggest that it is somehow similar or complementary to a bank of lighted balconies spanning a whole façade and overhanging a main thoroughfare. The “balcony” referenced on the library is not relevant to the discussion because it is not a balcony, but a deck, and because it is on a different street, well outside the field of vision of someone looking at the balconies on the hotel. The library was also built after the hotel was approved. Central Street as it predates the hotel is a block of architecturally cohesive buildings. It is this block that is relevant to the discussion, and the Planning Board did not point to any features of the existing buildings on this block that are compatible with the proposed balconies.

The Planning Board should not have considered any decks/balconies on the harbor side of the existing block when evaluating harmony of the decks on the Central Street side. The Court’s guidance indicates that each of the two façades should be considered independently based upon architectural elements within the field of vision including that façade. Beyond the overbroad and overly general reference to “decks” in the “neighborhood,” it was also inappropriate for the Planning Board to take into account the presence a deck on the rear of the Central Street block that was added since the May 2020 approval. Moreover, the Planning Board failed to consider the nuisance effect of the lighting that will accompany the balconies and face the residences up the hill.

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8. The Planning Board was required to revisit its findings on scenic view.

As noted above, the overall 55% reduction in guest rooms since the design was rendered provides an opportunity to consider a design such as that presented on slide 18, which would both accommodate 20 well-sized guest rooms, enhance architectural harmony, and preserve the view of the harbor. At minimum, the Planning Board was required to heed the Court's guidance and consider the effect of the reduction to 20 rooms when evaluating architectural harmony standards, including the impact on scenic views. The Planning Board therefore was required, but failed to review whether the room reduction now makes it "reasonably practical" to preserve at least some of the scenic view of the harbor that Rockport residents had enjoyed from Central Street and Goodridge Park through this site (where a harbor road once passed). It was also required to consider any new opportunity to preserve the western wall of the iconic Shepherd Block, which the full-footprint building design extinguishes.

Thank you again for the Board's close attention to and consideration of this appeal.

Sincerely



Kristin M. Collins

cc: Leah Rachin, Esq.  
Philip Saucier, Esq.  
Andre Duchette, Esq.