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Rockport Zoning Board of Appeals
110 Main Street
Rockport, ME 04856

Re: Earle Administrative Appeal of Library Building Permit

Dear Chair Parker and members of the Zoning Board of Appeals:

My firm represents the Town of Rockport and I have been asked to assist the Code Enforcement Officer ("CEO") in an administrative appeal filed by Stephen Earle (the "Appellant") of the CEO's decision to issue a building permit to the Town of Rockport for a new library building on Union Street ("the Project") in the Downtown Zoning District. We respectfully, but strongly, disagree with the arguments in the appeal and urge you to determine that the CEO's decision was not in error, that the Project meets the applicable requirements for a building permit, and to uphold the issuance of the permit.

The residents of Rockport have debated whether or not to renovate or replace the existing library through many different iterations and for many years. Most recently, after numerous public workshops and meetings and after three successive town meetings votes, the voters approved funding to replace the library with a new building in its current location. The plans and designs of the new library were discussed widely and publicly by at least three boards or committees; indeed a large depiction of the design of the new library building hung on the existing library building leading up to the town meeting vote that approved the issuance of a bond and construction for the project.

Following voter approval, the Town's architect Stephen G. Smith, Architects, and engineer Gartley & Dorsky Engineering & Surveying, finalized the design and construction documents and the Town's contractor Phi Builders and Architects, applied for a building permit on behalf of the Town. The CEO approved the building permit on May 22, 2019 after finding that the building met the applicable standards for such a permit and the Maine Uniform Building Code as outlined in Section 601 of the Town's Land Use Ordinance ("the Ordinance").

The Appellant raises essentially four arguments: 1) that the new library building should have been reviewed by the Planning Board instead of the Code Enforcement Officer; 2) that the building permit application did not meet certain performance standards in the Ordinance; 3) that the Town did not use the correct process related to Maine Department of Transportation (“MDOT”) work on Limerock Street and the intersection adjacent to the Project; and 4) that the Project’s budget has not been transparent for public consumption. For the following reasons, the Board should determine that each of the Appellants arguments fail and should vote to uphold the issuance of the building permit. This letter addresses each of the Appellant’s arguments below.

1. The Project did not require site plan review from the Planning Board.

The Ordinance requires that certain development projects obtain site plan approval from the Planning Board prior to the issuance of a building permit. Under the applicability provisions in Section 1303, the following categories of projects require site plan review:

- The construction or expansion of buildings, including accessory buildings and structures, for commercial use by a total floor area of 1,000 sq. ft. or more;
- The creation of more than ten thousand (10,000) square feet of new impervious area at commercial or multi-family residential properties;
- A commercial building that has been vacant for more than two (2) years;
- The conversion of a residential building to a commercial use;
- Revisions to an existing Site Plan seeking an amendment to that previously approved Site Plan; and
- Certain changes of use

When interpreting an ordinance, a board should first evaluate the plain meaning of the ordinance, and, if the meaning is clear, “need not look beyond the words themselves.” *Olson v. Town of Yarmouth*, 2018 ME 27, ¶ 11, 179 A.3d 920, 924. The terms of an ordinance are construed “reasonably, considering its purposes and structure and to avoid absurd or illogical results” and a board should consider the entire scheme of an ordinance to achieve a harmonious result. *Id*; *Wister v. Town of Mount Desert*, 2009 ME 66, ¶ 17, 974 A.2d 903, 909.

In this case, none of the site plan review applicability categories apply to the Project. Under the terms of the Ordinance the new public library is clearly is not a commercial building or use, it does not amend an existing approval site plan, and is not a change of use - and thus does not require site plan review by the Planning Board.

The term “commercial use” is defined in the Section 302 of the Ordinance as:

The nonresidential use of lands, buildings, or structures, other than a “home occupation,” defined below, the intent and result of which activity is the production of income from the buying and selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

Conversely, the Ordinance includes the following relevant definitions:

Community Use: One or more of the following: schools, public and private, day care centers, libraries, churches and other houses of worship, community buildings, municipal uses and quasi-public uses which involve frequent on-site interaction with the public.

Municipal Building: Any structure used by, or use of any space solely for the conduct of governmental affairs of the municipality, its agents, officers, officials, employees and its subsidiary agencies.

Municipal Use: A use of land, structure or building, owned or controlled by the Town of Rockport or any district, agency or commission thereof, which services a public purpose.

The Ordinance further distinguishes between commercial and municipal uses in Section 917, Land Use Table, which organizes various permitted uses into larger groups of uses - including “Commercial” and “Government/Institutional.” Municipal uses and community buildings are located under the Government/Institutional group of uses; the Commercial group of uses includes uses such as grocery stores, hotels, restaurants, and retail, among others.

Under a plain reading of Section 1303 of the Ordinance site plan review only applies to commercial uses and buildings, amendments to existing site plans, or a change in use; a municipal library that will replace an existing municipal library simply does not require site plan review by the Planning Board.

2. The Performance Standards in Section 1000 of the Ordinance do not Apply to Non-Commercial, Municipal Uses

Although Appellant argues that the Project does not meet certain performance standards in Section 1000 of the Ordinance, the Section 1000 standards do not apply to non-commercial, municipal uses that do not require site plan review. Section 1001, Applicability and Purpose, states the following (emphasis added):

The purpose of this section is to provide standards and guidance for the landscaping, architectural design and parking areas for all commercial properties in the Town of Rockport. The section’s intent is to ensure that new commercial development, and modifications to existing structures, are done in a manner that enhances the overall aesthetic appeal and visual character of Rockport’s roadways and neighborhoods.

All non-residential development proposed within Rockport shall be subject to the regulations, procedures and standards specified in the following sections, in addition to those standards pertaining to the particular district in which the development occurs.

To achieve these goals the Planning Board may waive requirements that it deems to be unnecessary to a specific development project.

The provisions make clear that the intent and purpose of the section is to provide standards for “commercial properties” and “commercial development” in Rockport *that are reviewed by the Planning Board*. Indeed the standards are not even mandatory – and can be waived by the Planning Board as part of site plan review. *See* Section 1001.

While the second paragraph notes that “all non-residential development” is subject to the regulations, as previously noted, the definition of “commercial use” specifically notes that it includes “nonresidential use of lands, buildings, or structures ... the intent and result of which activity is the production of income from the buying and selling of goods and/or services...” Reading the entire scheme of Section 1000 and the whole of the Ordinance together to achieve a harmonious and logical result, the clear intent of the provisions is to apply to commercial buildings and uses and other non-residential uses that require Planning Board approval (hence reference to the Planning Board waiver language in Section 1001 and similar references to Planning Board review in Sections 1002, 1003, and 1004.)

- a. Even if Section 1000 applies, the Project meets the landscape standards in Section 1002

The Appellant argues that the “Landscape Plan Requirements” within the Section 1002 Area Landscape Plan Regulations provisions apply to the Project and specifically that Section 1002.1(7) requires Planning Board review and approval of a landscaping plan. As noted above, however, the Project does not require site plan review by the Planning Board - and Section 1000 standards do not apply to municipal uses or buildings. Indeed Section 1002.1 requires a landscape plan (including a planting plan) for certain developments that are “presented to the Planning Board.” Since the Project does not require Planning Board review, the landscape plan requirement does not apply.

Even if the standards did apply, the record will show that the Project materials presented to the Town as part of the building permit application included the location for any horizontal and vertical landscape construction and lighting. Since at the time of the building permit application the Project did not include a planting schedule or planting plan the remaining provisions are not applicable. While not required by the Ordinance, the Town has since engaged a landscape architect to develop a landscape plan for the Project.

b. Even if Section 1000 applies, the Project meets the architectural standards in Section 1003.1.

The Appellant argues that the Project does not meet Section 1003(1), which requires that proposed developments “shall be located in a configured in a visually harmonious manner with the terrain and vegetation of the parcel and surrounding parcels. Structures shall impede as little as reasonably practical, scenic views from the main road or from existing structures.”

Specifically, the appellant argues that the Project will block his views to the village and harbor from the south side of his property purchased just over two months before the Rockport voters approved the design and bonding for the Project.

The new library building is located on the exact same site as the existing library. The Project meets the Ordinance’s space and bulk standards – including height, lot coverage, and setbacks. The Project, designed by local architecture firm Stephen G. Smith, Architects, is a site specific design that considered and responded to the surrounding visual landscape and was designed in a manner that is visually harmonious with the terrain, vegetation, and surrounding parcels. Views were impeded as little as reasonably practical given the programmatic requirements for the library, the zoning requirements, and the dimensions of the site – which, importantly, does not contain any view easements benefitting the Appellant’s property.

Even if Section 1003.1 applies, the Project meets and exceeds the architectural standards contained within those provisions.

c. Even if Section 1000 applies, the Project meets the parking standards in the General Sections 1004.1 & 1004.2, and Landscaping Section 1004.3

The Appellant argues that the Project does not meet the off-street parking, individual parking space, and parking landscape requirements in General Sections 1004.1, 1004.2, and Landscaping Section 1004.3.

General Section 1004.1 requires off-street parking in accordance with the minimum amount specified in Section 803 of the Ordinance (the Appellant makes a separate argument under Section 803.1 that the Project did not include a parking plan; for purposes of consolidation this paragraph addresses both Sections 803.1 and General 1004.1). Under Section 803.1, off-street parking is required for certain uses in an amount prescribed in the table located in Section 803.1(2). As previously outlined above, however, the provisions of General Section 1004.1 do not apply to the Project.

While offices (including both professional and public buildings) are listed in Section 803.1, neither municipal uses nor community buildings (uses defined in the Ordinance and delineated in the Section 917 Land Use Table) are listed in Section 803.1. There is also a category labeled “all uses not specifically listed or able to be placed into one of the above categories” – which gives

the CEO discretion to determine the sufficient number of parking spaces or to eliminate the necessity of on-street parking altogether when site plan review is not required.

After reviewing the anticipated parking needs of the Project, the CEO determined that the existing off-street parking, together with on-street parking, was sufficient for the library – which was of course the replacement of an existing library structure. As part of the Town’s review of the Project, the Town Planner additionally determined that visitors to the existing library utilized existing on-street parking and lots located in the rear of downtown buildings - and that the new library will likewise use on-street parking in a similar fashion, as well as certain off-street parking spaces included in the Project design. (See March 13, 2019 memo from Town Planner attached to this letter).

For the foregoing reasons, General Section 1004.1 and Section 803.1 do not apply to the Project and the existing off-street and on-street parking are sufficient to support the Library.

General Section 1004.2 requires that any off-street parking spaces shall be designed so as to be unobstructed and have access to an aisle or driveway so that any automobile, except employee vehicles, may be moved without moving another, and so that no maneuvering incidental to entering or leaving a parking space shall be on any public right-of-way or walkway. Based on the plans in the record, the off-street parking spaces included in the Project meet this standard.

Landscaping Section 1004.3 applies, by its own terms, to “Large Parking Lots.” That phrase appears to apply to lots with more than forty (40) spaces. The Project does not contain a large parking lot and this section thus does not apply.

3. MDOT Upgrades to Limerock Street and Adjacent Intersection

The Appellant argues that, as part of the MDOT project to upgrade portions of Limerock Street and the intersection of Limerock, Union, Central, and Russell Avenue (“the public road upgrades”), the Town did not follow the process outlined in Section 803.4 of the Ordinance related to upgrading existing public ways.

The MDOT road construction plans, however, were not part of the building permit application for the Project and not reviewed by the CEO. The Select Board, working together with representatives from MDOT, previously approved the final design of the public road upgrades. Contrary to the appellant’s arguments, the Select Board gave notice to abutters of the proposed re-design, held numerous public meetings, and considered the existing character of the neighborhood in the design process.

To the extent the Applicant is attempting to appeal the design of the road upgrade, it was not part of the building permit application and road design decisions are not within the CEO’s (or for that matter the Planning Board’s) jurisdiction. The Zoning Board of Appeals likewise does not have

jurisdiction to review Select Board determinations. *See* Ordinance at Section 703.2 (The ZBA can only hear appeals from decisions or determinations made by the CEO or Planning Board).

Further, to the extent the Applicant is objecting to the creation of additional on-street parking spaces on Limerock Street, under Maine law only the Select Board has the exclusive authority to regulate the parking of motor vehicles on any public way or public parking area in the Town of Rockport – including the location, time limitations, and any fees. Neither the CEO nor the Planning Board has jurisdiction for such determinations. 30-A M.R.S. § 3009(1) (C).

4. Budget for Project

The Appellant finally argues that “on a macro level” the Project’s budget has not been transparent for public consumption. While this argument is irrelevant to the issuance and appeal of a building permit - and not subject to ZBA review - the Project and its budget has instead been the subject of numerous public meetings, workshops, and town meeting votes over many years with many opportunities for any members of the public to participate and at all stages of the process information has been transparent and available for public consumption.

At the Special Town Meeting on November 6, 2018, Rockport voters approved the design, site preparation, construction, and equipping of the new library building and appropriated \$1,500,000 in general obligation bonds to fund the Project – and further authorized the Select Board to accept grants and donations for the Project and determine whether or not to move forward with the bond issuance based on the outcome of those grants and donations. *See* 2018 Special Town Meeting Warrant Articles attached to this letter). This positive vote was a public process that was preceded by many years of public discussions and deliberations by the Select Board and Library Committee over the scope, budget, and location of the Project. The Select Board and Library Committee’s meetings are all advertised and open to the public - and their agendas and minutes are posted on the Town’s website.

After the voters approved the Project, the Select Board set a budget and created a Library Building Committee with a charge to provide “oversight for the final design, bidding, and construction phase of the new Rockport Library” – with guiding principles to balance costs, quality and scope to optimize long-term value and efficiency and make fiscally responsible choices mindful of the potential impact to taxpayers and of the budget set by the Select Board. All of the Committee meetings were advertised and open to the public – and the Committee’s agendas and minutes are posted on the Town’s website. The Town also included information about the budget and design in the Town’s 2019 Annual Report (relevant pages attached to this letter).

The public transparency continues even during construction of the Project - the Town created a “Library Construction” link on its website that contains detailed weekly construction updates along with a description and pictures of the work undertaken to date.

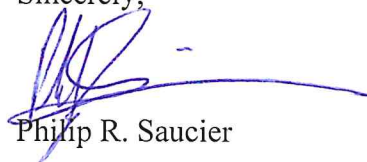
Earle Appeal
September 4, 2019

Conclusion.

For the foregoing reasons, the CEO properly determined that the Project did not require site plan review, that Sections 803.1, 803.4, and Section 1000 did not apply to the Project, and that it met all applicable standards for a building permit. The Project is a permitted use in the Downtown District as either a community building or municipal use; it meets the dimensional standards in Section 918 of the Ordinance; received a permit from the Maine Department of Public Safety; and complies with the requirements in the Maine Uniform Building Code.

The CEO respectfully requests that the Zoning Board of Appeals deny the pending appeal and uphold the issuance of the building permit for the new public library in Rockport.

Sincerely,



Philip R. Saucier

cc: Scott Bickford, Code Enforcement Officer