

Kristin M. Collins  
kcollins@preti.com  
207.791.3292

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BY EMAIL: lrachin@drummondwoodsum.com  
Zoning Board of Appeals  
Town of Rockport  
101 Main Street  
Rockport, ME 04856

**RE: Appeal re: 20 Central Street LLC  
Response to submission by Applicant**

Dear Board of Appeals members:

Please accept this response to the December 8 submission by Attorney Sarah Gilbert on behalf of the appellants in this matter.

**Objection to Applicant's Submission**

The appellants must now object, again, to another inappropriate submission from the other parties in this matter. The ZBA is well into the deliberations phase on this appeal and as such it is inappropriate and prejudicial for any party to be submitting testimony or argument, especially outside of a Board meeting. Pursuant to Section 5(A)(3) ZBA's Bylaws

No information shall be submitted except in one of these manners:

- a. As part of a formal application to the Zoning Board submitted 15 days in advance of a scheduled hearing.
- b. As verbal or limited written testimony *during a public hearing*.
- c. Or at the request of the majority of the Board present and eligible to vote.

Chair Sternowski's submission violated this rule, and the Chair's remedy was to allow the other parties to respond. Now the applicant has capitalized on this free-for-all and submitted arguments on all remaining issues as well as proposed findings of fact. None of these submissions were requested or permitted by the Board.

The only fair response, pursuant to the Rules, is to disregard Attorney Gilbert's letter in its entirety, or continue the hearing so that the appellants can be provided more than a day to respond. However, given that there can be no ruling on this matter before the meeting, the appellants have no choice but to submit what they can in the limited time allotted in an attempt to even the playing field.

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### **Response to Applicant's submission re: remaining issues**

#### 1. The split vote on whether 310 Commercial is a parking lot is irrelevant

Near the close of the December 1 hearing, the ZBA had a tie vote on a motion that “The Planning Board did not have substantial evidence in the record to determine that the ‘Hoboken Gardens’ off-site parking was an existing parking lot.” There was some discussion about the effect of this vote. The appellants agree that the Board has not found by majority that Hoboken Gardens is an existing “parking lot.” However, this is irrelevant to the finding it needs to make. As discussed further in the appellants’ December 8 letter, the Section 803.1.5 and 1004 landscaping standards must be applied to this review of the hotel just like the numerical parking standards were applied to this review of the hotel. The hotel is clearly building a new parking lot over what has always been a dirt storage area. There are no designated spaces today. There is no pavement today. The new parking lot will be carved off of the existing retail use and held and used exclusively by the hotel under lease. The two are intrinsically linked as the parking is required for approval of the hotel.

Certainly a notation on a plan (not matching reality) is not “substantial evidence” of the dirt lot’s current use. But even if the ZBA cannot agree as to the current use of the lot, it must find that the Planning Board was required to have reviewed the plan for the parking lot for conformance with the landscape standards under Sections 803.1.5 and 1004. There is no exemption to those standards where the lot is existing. The Planning Board Chair was legally incorrect in his assertion that existing use – which only exempts from site plan review – was relevant to application of the 803.1.5 and 1004 standards.

#### 2. The hotel does not meet the architectural standards of the Ordinance.

There can be no question that the proposed hotel will block out a scenic view of the ocean that has been in place for over 100 years. This is *exactly* the scenario that Section 1003.1 was written to prevent. The applicant argues, preposterously, that a view of its hotel will be as scenic as the view of beautiful Rockport Harbor. Section 1003.1 does not care what the development itself looks like, and certainly many residents disagree that this massive hotel looks nice. Rather, Section 1003.1 implements the goals of the Comprehensive Plan to protect scenic views, and the Harbor is listed as one of the most important views.

Regardless of any lot coverage allowances, or permitted uses, Section 1003.1 applies to require the developer and Planning Board to arrive at a building design that impedes scenic views from the main road “as little as reasonably practical.” If the hotel were on the opposite side of Central Street, it could cover the lot without any issue. However, because it is on the ocean side of Central Street, the Planning Board was required to consider the impact on the scenic view and to discuss the practicality of different possible designs. There is absolutely no discussion in the record as to whether other building designs that would preserve the view might

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be practical. Where the Planning Board did not even engage in this discussion, it is clear that it (1) did not do its duty to apply Section 1003.1, and (2) did not rely on *any* facts, much less substantial evidence, in finding that Section 1003.1 is met.

Respectfully, the ZBA has the grave task of determining whether the applicant should be permitted to obliterate forever one of the most scenic views of the Harbor from one of the most scenic and important streets in Rockport, without even any discussion of the issue. The public deserves for this issue to be remanded to the Planning Board to at least discuss with the applicant some options for the building that would preserve at least some of the existing view.

The applicant suggests that it altered the building design and at the request of the Planning Board. The Planning Board made no such request. However, the applicant points out an important issue, which is that the applicant reduced the hotel by 10 rooms but still maintained the exact same mass. This would have been the perfect opportunity for the Planning Board to have considered whether the reduction in room number could have allowed for an altered design to minimize the view impact. But this was not done. Again, the Planning Board was required to consider the practicality of designs that would have preserved the view, and there is no record of it having done so.

As to the compatibility standard in Section 1003.2, the principal issue is compatibility of the excessive number of front and rear decks with the rest of the block and the neighborhood. The appellant has suggested that the decks meet the compatibility standard because some residences in the area have decks, and its own buildings have decks (two of which were added since this application was filed). A residential front or back deck is completely different in appearance and in use than the numerous, multi-story decks proposed for the hotel. They simply do not comport with the design and use of the block.

Finally, as to the nuisance standards, the Planning Board did not rely on any objective evidence as to likely levels of noise and light pollution to be created by the hotel, nor their impacts on the community. These issues are significant and must be remanded to the Planning Board to be addressed after adequate study of the issues and placement of conditions or design modifications to protect the community.

### **Appellants' Proposed Findings of Fact**

1. The Planning Board erred in failing to apply the Section 803.1.5 and Section 1004 parking standards. Section 803.1.5 requires that the landscape standards applicable to parking lots *shall be applied* in addition to the parking space requirements. Section 1004 requires that "required off-street parking spaces shall be so designed..."
2. Neither Section 803.1.5 nor Section 1004 contain an exception for existing parking lots and the Planning Board therefore erred in finding that the applicant need not meet those standards because it believed the offsite parking area to be an existing parking lot.

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3. The parking lot will be newly developed, with pavement and space demarcations being placed where none previously existed. It will be separately leased to and exclusively serve the newly developed hotel, as required by the Planning Board. Because these spaces provide required off-street parking, the lot must meet the standards of Sections 803.1.5 and Section 1004.
4. The view of Rockport Harbor is designated as an important scenic view by the Comprehensive Plan. The Planning Board erred in failing to consider under Section 1003.1 whether there were other building designs that would preserve all or some of the existing view between buildings that has existed for over 100 years.
5. While the visual harmony standards are by their nature somewhat subjective, the Planning Board could not have reasonably found based on the building design plans that the number of decks on the front and rear of the building was compatible with the rest of the block and surrounding residential area.
6. Considering both the view standard and the visual harmony standard, the Planning Board could not have reasonably found that the overall massing and scale of the proposed hotel was visually harmonious with the rest of the block and the surrounding visual area.
7. While the applicant has argued that buildings in the 903 District are allowed to fully cover the lot, provisions of the Ordinance must be read in harmony with one another, and the lot coverage allowance does not trump the architectural, visual harmony or scenic view standards of the Ordinance.
8. The ZBA hereby REMANDS the application to the Planning Board to:
  - i. Require the applicant to submit landscape plans for the planned offsite parking at 310 Commercial Street that demonstrate compliance with the standards under Section 803.1.5 and Section 1004 of the Ordinance.
  - ii. Require the applicant to submit a building design that allows for preservation of the view corridor as shown in submitted historical and current building plans, or to provide substantial evidence as to why such a building design is not practical.
  - iii. Require the applicant to submit a building design that:
    - a. Substantially reduces or eliminates the number of decks on the front and rear of the building
    - b. Requires all exterior lighting except as required for safety to be turned off at a reasonable hour, to be determined by the Planning Board.

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- c. Includes technical information sufficient to satisfy the Planning Board that noise from any exterior spaces of the hotel, and specifically the top-level restaurant that will be open to the harbor, will not cause unreasonable noise to surrounding residents.

Respectfully submitted.

Sincerely

A handwritten signature in black ink, appearing to read "K M Collins", written in a cursive style.

Kristin M. Collins

cc (by email)  
Mark Coursey, Esq.  
Sarah Gilbert, Esq.  
Phil Saucier, Esq.  
Geoffrey Parker  
Mandy Everett