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

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

Dear Board of Appeals Members:

I am writing to respond to the submission by Planning Board chair Joseph Sternowski dated December 2, 2020. Mr. Sternowski submitted the letter to the ZBA following its deliberations meeting on December 1.

Objection to Sternowski letter

I would like to first strenuously object to the Board's consideration of Mr. Sternowski's letter. Both Mr. Sternowski and counsel for the Planning Board were present at the December 1 meeting and able to speak as needed to address questions and correct any factual errors they may have perceived in the discussion. Counsel for all three parties were permitted to speak in this limited way. They were not permitted to present lengthy legal arguments on any issue, no matter how strongly they disagreed with the discussion. Mr. Sternowski cannot circumvent the rules put in place by the Chair by submitting a letter outside the public hearing process. The fact that he chose to do so shows how unusually invested he is in this approval. Mr. Sternowski should want the Town of Rockport to get this decision right, even if it means his ruling is overturned or remanded.

To accept this letter is unfair and creates an improper dynamic where the Planning Board Chair has been able to add significant argument on an issue important to him (and the applicant), whereas the appellants – in adhering to the Chair's stated rules – have not had the opportunity to present post-hearing arguments on the issues of importance to them. The ability to present the present letter in response to Mr. Sternowski only balances the record as to this one issue; in fairness, the appellants and applicant should be able to submit post-hearing briefs, as did Mr. Sternowski, on any issues they consider of importance before final findings of fact are adopted.

Response

Summary of Argument

The off-site parking at 310 Commercial Street is intrinsically linked to the approval for the hotel. The Planning Board applied Section 803.1 to require the 35 off-site parking spaces to be provided and acknowledged in its findings that the ZBA had approved the off-site parking in

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accordance with Section 803.1.3. The Planning Board should have applied the design standards in Section 803.1.5 and Section 1004 just as it did the numerical standards in Section 803.1.5, because each of these standards must be met by any use subject to site plan review. The Planning Board improperly avoided this review requirement by classifying the off-site parking as an “existing parking lot.” Since the hotel will be developing a new parking lot (with newly demarcated spaces and lanes), and that new parking lot will serve the use under review, the Planning Board was required to apply the landscaping standards as part of the site plan review for the hotel. Finally, even if it was appropriate to consider the prior use of the area, the record was devoid of evidence that the area in question was ever used for the “parking of vehicles” as per the definition of “parking lot.”

Argument

Mr. Sternowski seems to find it important that the Planning Board never reviewed a site plan for the offsite parking at 310 Commercial Street. The appellants are not challenging the Planning Board’s decision on a site plan for the offsite parking; they are challenging the fact that the Planning Board failed to apply required approval standards related to that parking. It is clear under the ordinance that all parking standards be applied in site plan review of the use, unless waiver is specifically authorized. Section 803.1.1 provides that, “in all new construction, alterations and changes of use, there shall be provided off-street parking and loading space adequate for their use.” Section 803.1.2 states that “Off-street parking shall be considered as an accessory use *when required or provided to serve conforming uses* located in any district.” These two sections directly link the provision of off-street parking spaces with approval of the use they serve.

Section 803.1.5 emphasizes the need for an applicant to show compliance both with the number of spaces as well as standards regarding their design, stating “*in addition to the off-street parking spaces and loading bays required by this ordinance*, the following minimum standards for parking areas shall apply.” Section 1004.1 further links use approval with parking requirements, stating that “All development shall provide permanent off-street parking space in accordance with the minimum amount specified in Section 803.” Section 1004.2 goes on to state that “*required off-street parking spaces shall be so designed...*” to include the stated landscape standards. Taken all together, these requirements mean that an applicant must provide an adequate number of spaces and show that they meet the design standards.

While it might not be necessary for the applicant to have submitted a formal “site plan” demonstrating compliance with these standards, the Planning Board would need to have evaluated some sort of plan to demonstrate compliance with Sections 803.1.5 and 1004. The applicant here is using the off-site parking at 310 Commercial to meet the off-street parking space requirements for the hotel. Pursuant to Section 1004.2 those “required off-street parking spaces” must meet the design and landscaping standards. Review of the parking site is therefore an integral part of the hotel’s site plan approval. Imagine if the Sandy’s Way lot were presently a dirt lot and the hotel proposed to construct a new parking lot there to serve the hotel. There could be no question in anyone’s mind that the parking lot was being built to serve the hotel, that it is a required component of the site plan and use approval for the hotel, and that conformance

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with all Section 803 and Section 1004 standards would be required before the hotel could be approved. There is nothing separating the logic behind this example with the logic the appellants are arguing must be applied to 310 Commercial. This new parking lot is – per the Planning Board’s own requirement – required in order to meet the parking standards for the hotel use. The fact that it is a mile away does not change the analysis.

The applicant asks the ZBA, as it asked the Planning Board, to *assume* that the owner of the 310 Commercial lot will submit a site plan approval for the new off-site parking lot. However, there is nothing in place to *require* that this occur, because the Planning Board did not condition construction or use of the hotel on an approved site plan for the parking lot or on any requirement to otherwise meet the standards of Sections 803.1.5 and 1004. The hotel could open and begin parking guest vehicles at 310 Commercial without anyone ever assuring that it meets applicable standards. To be sure, it is the hotel developing and using this parking lot; without the hotel it would continue to be a dirt storage area as it always has been. The hotel absolutely has standing today to seek approval of the parking lot pursuant to its lease. If the Planning Board never believed the hotel had standing to seek site plan approval for the parking lot, as Mr. Sternowski suggests, then it should never have allowed the hotel to use it to meet the off-street parking standards that it accepted were necessary for approval of the hotel.

Mr. Sternowski asserts that there would have to be a change of use of the 310 Commercial property before a site plan would have to be submitted. Again, Mr. Sternowski is conflating the concept of site plan approval with the requirement for any development to show conformance with the design standards. It is true that an existing development cannot be subject to site plan approval unless there is a change of use or the development meets the other provisions of Section 1303.¹ But that is an entirely separate section – and process – than the one at hand. Again, the argument is that Sections 803.1.5 and 1004 require the applicant to show conformance with their standards as part of the approval for the hotel use. While it might be true that either the applicant or the owner of 310 Commercial may eventually be required to obtain site plan review related to construction of the lot, that is a process that can be handled later. But for the purposes of this review for the hotel, the Planning Board was required to ensure that the parking met the applicable design standards just as it was required to ensure it met the numerical space requirements.

Even using Mr. Sternowski’s logic, the hotel is proposing a change of use. Looking at the table of uses in Section 917, there is no use of “parking lot.” Per the table, the use of 310 Commercial today is as a retail business. That retail business includes customer parking, but the use of the facility is not a “parking lot.” The lease to 20 Central will divide off a part of that retail facility and devote it to a new use as a standalone parking lot exclusively serving the hotel. This is a new use of a newly divided off piece of property. As stated in Section 803.1.2, required parking is accessory to the use it serves. The storage lot today is an accessory to the retail use; as proposed it will be an accessory use to a hotel.

¹ Notably, Section 1303 provides that the creation of more than 10,000 square feet of new impervious area at a commercial property is a trigger for site plan review.

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Based on the above, it was not legally appropriate under the Ordinance for the Planning Board to have even considered what prior use was made of the area proposed for the new parking lot. But just a quick glance at the photos submitted by the appellants before the close of the hearing should have demonstrated that the area was ever used more than incidentally for the parking of motor vehicles. More importantly, the applicant offered no evidence of prior use as a parking lot except to agree with the Chair when he suggested it. Ultimately, the Planning Board relied only on the conclusory (and false) statement of the Chair that this was an existing “parking lot.” The only reliable evidence demonstrates that this has always been a storage area, not a parking lot.² The ZBA must consider the various ways this precedent might be abused in the future. Could a new restaurant park its customers in the driveway of an abutting home without making improvements to that area? Could a new office in leased office space simply defer to the owner of the building to eventually meet parking requirements? Could a fast-food restaurant locate in a lot where a hot dog stand once stood and not have to provide properly designed parking?

Parking lots by their nature are accessory to other principal uses; they do not stand on their own. The Land Use Ordinance clearly intended that new uses should not be developed without assurance that adequate, properly designed parking was provided for each use. The Planning Board’s failure to apply all of the off-street parking requirements was in error. It cannot have asserted jurisdiction to require the minimum number of parking spaces in Section 803.1.1, without also requiring those parking spaces to meet the necessary standards in Section 803.1.5 and Section 1004. This error and omission can be easily corrected by the ZBA remanding the decision back to the Planning Board for either approval of a landscaping and design plan for the 310 Commercial lot pursuant to the relevant sections, or the attachment of a condition to require the same.

Thank you for your consideration.

Sincerely



Kristin M. Collins

cc: Leah Rachin, Esq.
Mark Coursey, Esq.
Phil Saucier, Esq.

² “Parking lot” is defined as “An area where motor vehicles may be located for the purpose of temporary, daily or overnight off-street parking.”