

TOWN OF CAPE ELIZABETH  
MINUTES OF THE PLANNING BOARD

October 4, 2016

7:00 p.m. Town Hall

Present: Peter Curry, Chair  
Josef Chalot  
Carol Anne Jordan  
Elaine Falender  
Jonathan Sahrbeck  
Henry Steinberg  
Victoria Volent

Also present was Maureen O'Meara, Town Planner.

Mr. Curry opened the meeting and called for the approval of the minutes of the September 20, 2016 meeting. The minutes were unanimously approved without a change.

OLD BUSINESS

**12 Hill Way subdivision reapproval and site plan amendments** - Dr. Zev and Amber Myerowitz are requesting reapproval of a 3-lot subdivision located on Hill Way (the approval lapsed August 17th) and minor amendments (such as shifting the angle and shape of the connector) to the site plan approval of the Cape Chiropractic and Acupuncture Center, Sec. 16-3-2, Minor Subdivision Review Public Hearing, and Sec. 19-9, Site Plan Amendments Public Hearing.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Two Penguin Properties, LLC for Minor Subdivision Review of a 3-lot subdivision and Site Plan Review of two buildings containing 6,205 sq. ft. of medical office space, 10 multi-family residential units and a 357 sq. ft. building connector, located at 12 Hill Way, be removed from the October 18, 2016 Planning Board meeting and considered at the October 4, 2016 special meeting of the Planning Board.

Mr. Steinberg seconded the motion and it was passed, 7-0.

John Kenny of WBRC thanked the Board for hearing this matter. The plan that was approved on May 17, 2016 was not recorded in time, and needs reapproval. There have been no changes to the subdivision itself. They have added a note (number 11) to the plan re. the easements.

He showed the plans of the site and where it is located.

Jocelyn Boothe of WBRC enumerated the proposed changes to the site plan and displayed the plan. There are 6 changes proposed. 1. To move the location of a tree to facilitate snow removal. 2. The location of the generator pad has been determined. 3. The connector between the two buildings has been changed. The height and area have not been changed. 4. and 5. Are tweaks at the entries. 6. Is that the two signs will not be lit.

Ms. Falender asked if there were changes from what was presented at the last meeting.

Ms. Boothe said these are the exact same changes that were presented at the last meeting.

Ms. Boothe expanded on each of the changes and showed plans of each. She did say that the generator will comply with the noise limits of the Ordinance.

Mr. Curry opened the public hearing. No one came forth to speak, so the public hearing was closed.

Mr. Sahrbeck commented that he thinks the proposed changes do not have an effect on the Rand Road and Philip Road neighborhoods.

There was a brief discussion of some of the language on the plat. Since the mylar was already prepared, it was decided to write in "as stated in Planning Board Order October 4, 2016.

Ms. Falender wants a clear statement that the materials submitted for the reapproval of the subdivision are the same materials that were submitted with the original approval. That here have been no changes other than the ones enumerated in this new application.

Mr. Kenny said that was correct. No material changes have been made.

Mr. Sahrbeck made the following motion:

#### Findings of Fact

1. Two Penguin Properties, LLC, owned by Dr. Zev and Amber Myerowitz, are requesting Minor Subdivision Review of a 3-lot subdivision and Site Plan Review of two buildings containing 6,205 sq. ft. of medical office space, 10 multi-family residential units and a 357 sq. ft. building connector, located at 12 Hill Way, which requires review for compliance with Sec. 16-2-3, Minor Subdivision Review, Sec. 19-9, Site Plan Review and Sec. 19-6-4, Town Center Design Standards.

2. The subdivision will not result in undue water pollution. The subdivision is not located in the 100-year floodplain. Soils will support the proposed uses. The slope of the land, proximity to streams, and state and local water resource rules and regulations will not be compromised by the project.
3. The subdivision will have a sufficient quantity and quality of potable water.
4. The subdivision will not cause soil erosion, based on the erosion control plan provided.
5. The subdivision will not cause unreasonable road congestion or unsafe vehicular and pedestrian traffic. The subdivision does not include road construction and therefore a requirement for road network connectivity while discouraging through traffic is not applicable. All lots are provided with vehicular access.
6. The subdivision will provide for adequate sewage disposal.
7. The subdivision will provide for adequate solid waste disposal.
8. The subdivision will not have an undue adverse impact on scenic or natural areas, historic sites, significant wildlife habitat, rare natural areas, or public access to the shoreline.
9. The subdivision is compatible with applicable provisions of the Comprehensive Plan and town ordinances.
10. The applicant has demonstrated adequate technical and financial capability to complete the project.
11. The subdivision will not adversely impact surface water quality.
12. The subdivision will not adversely impact the quality or quantity of ground water.
13. The subdivision is not located in the floodplain.
14. The subdivision does not include wetlands.
15. The proposed subdivision will provide for adequate stormwater management.
16. The subdivision is not located within the watershed of Great Pond.

17. The subdivision is not located in more than one municipality.
18. The subdivision is not located on land where liquidation harvesting was conducted.
19. The subdivision does provide for access to direct sunlight.
20. The subdivision does provide a vegetative buffer throughout and around the subdivision and screening as needed.
21. The subdivision will comply with the open space impact fee with the payment of \$13,458.
22. The subdivision lots will be provided with access to utilities.
23. The subdivision plan will not be constructed in phases.
24. The amendments to the site plan for the development reflects the natural capabilities of the site to support development.
25. The amendments to the site plan do not include changes to access, and vehicular and pedestrian circulation on the site.
26. The amendments to the site plan do not change stormwater management.
27. The amendments to the site plan do not change erosion control measures.
28. The amendments to the site plan do not change the quantity and quality of potable water.
29. The amendments to the site plan will provide for adequate sewage disposal.
30. The amendments to the site plan will provide for access to utilities.
31. The amendments to the site plan do not change to allow location, storage or discharge of materials harmful to surface or ground waters.
32. The amendments to the site plan do not change provision for adequate disposal of solid wastes.

33. The amendments to the site plan do not change that waters will not be discharged to adversely affect the water quality or shoreline of any adjacent water body.
34. The amendments to the site plan do not change demonstrated adequate technical and financial capability to complete the project.
35. The amendments to the site plan will provide for adequate exterior lighting without excessive illumination.
36. The amendments to the site plan will provide a vegetative buffer throughout and around the site and screening as needed.
37. The amendments to the site plan will not substantially increase noise levels and cause human discomfort.
38. The amendments to the site plan do not change that storage of exterior materials on the site that may be visible to the public will be screened by fencing or landscaping.
39. The Planning Board finds, in accordance with Sec. 16-3-2(A)(3), that no sidewalk is required on the Scott Dyer Rd frontage of lot 3.
40. The application substantially complies with Sec. 16-2-3, Minor Subdivision Review, Sec. 19-9, Site Plan Review and Sec. 19-6-4, Town Center Design Standards.

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Two Penguin Properties, LLC for Minor Subdivision Review of a 3-lot subdivision and Site Plan Review as amended of two buildings containing 6,205 sq. ft. of medical office space, 10 multi-family residential units and a 357 sq. ft. building connector, located at 12 Hill Way, each be approved, subject to the following conditions:

1. That deeds be prepared in a form acceptable to the Town attorney for sewer easements to benefit lot 1 and 2, a parking easement on lot 2 to benefit lot 1, and an access easement to benefit lot 2 over lot 1 to access the parking lot, and that the deeds be conveyed and recorded when any lot is conveyed;
2. That the applicant will pay an open space impact fee of \$13,458 prior to the issuance of a building permit for any lot in the subdivision;

3. That there be no recording of the subdivision plan, issuance of a building permit or alteration of the site until the above conditions have been satisfied.
4. That there shall be no issuance of a building permit nor alteration of the site until a performance guarantee has been provided to the town in an amount approved by the town engineer, a form approved by the town attorney and all approved by the town manager.

Ms. Jordan seconded the motion and it was passed, 7-0.

Mr. Curry opened the public comment period. No one came forth, so the public comment period was closed.

The Board voted unanimously to adjourn at 7:35 pm.

Respectfully submitted,

Hiromi Dolliver,  
Minutes Secretary