

## MEMORANDUM

TO: Cape Elizabeth Planning Board  
FROM: Maureen O'Meara, Town Planner  
DATE: September 20, 2016  
SUBJECT: Tarbox Triangle Minor Subdivision Reapproval  
Cape Chiropractic and Acupuncture Site Plan Amendments

### Introduction

Two Penguin Properties, LLC, owned by Dr. Zev and Amber Myerowitz, are requesting reapproval of a 3-lot minor Subdivision located at 12 Hill Way which the Planning Board approved on May 17, 2016. The approval expired when the plan was not signed and recorded within 90 days. The applicants are also asking for approval of minor changes to the site plan approval, also granted on May 17, 2016, 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. The application will be reviewed 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. The comments of the Town Engineer are attached.

### Procedure

- The Board should begin with a summary from the applicant of changes made to the plans since the May 17, 2016 approval.
- The Board should allow an opportunity for public comment on completeness.
- The board should proceed to make a finding of completeness for the subdivision application. The board should also determine by consensus if adequate information has been provided to consider the site plan amendments.
- If the applications are considered complete, substantive discussion may begin.
- There is no specific "reapproval of a subdivision" provision in the Subdivision Ordinance, so staff is recommending that the reapproval be treated as a new subdivision approval, which requires a public hearing. A public hearing has not been scheduled or advertised for this evening, so the application should be tabled to the October meeting when a public hearing may be held.
- When discussion ends, the Board has the option to table, approve or approve with conditions the site plan amendments and the option to table the subdivision to a public hearing.

### Minor Subdivision Review Summary of Completeness

The subdivision completeness checklist is attached. This subdivision review and approval is specifically referencing all the materials that were provided and approved by the Planning Board at the May 17, 2016 meeting. There appears to be no information missing from those materials.

Subdivision Review (Sec. 16-3-1)

(a) Pollution

The project is not located in a vulnerable natural resource, such as a floodplain, and will not be discharging wastes into soils or streams.

(b) Sufficient Potable Water

Lots 1 and 2 will be connected to a public water line in Scott Dyer Rd and a stub for public water connection will be provided for lot 3.

(e) Erosion

An erosion and sedimentation control plan has been submitted.

(d) Traffic

1. Road congestion and safety. A traffic study has been submitted which calculates the anticipated number of trips generated by the project and the adequacy of the road system to handle the added traffic.
2. Comprehensive Plan. No new roads are proposed.
3. Connectivity. The subdivision includes multiple existing and proposed access points and further avoids installing a new driveway on the problematic frontage on Ocean House Rd.
4. Safety. No new roads are proposed and the existing roadway system appears adequate for the anticipated new traffic.
5. Through traffic. No new road is proposed.
6. Topography. No new road is proposed.
7. Block Length. Not applicable.

8. Lot Access. Each lot has access to Hill Way and lot 3 has access to Scott Dyer Rd.
9. Sidewalks/pedestrian connections. A new sidewalk is proposed on the east side of Hill Way along the frontage of lots 1, 2 and 3. The applicant is requesting a waiver from constructing a sidewalk along the Scott Dyer Rd frontage of lot 3. (There is an existing sidewalk on the south side of Scott Dyer Rd) If lot 3 is developed, it will require site plan review and compliance with the Town Center Design Standards, when a sidewalk would be required.
10. Road Name. No new road is proposed.
11. Road Construction Standards. No new road construction is proposed.

(e) Sewage Disposal.

All lots will be served by public sewer. Town Engineer Steve Harding has provided a letter confirming adequate capacity to convey and treat the estimated wastewater flow.

The applicant should prepare sewer easement deeds for lots 1 and 2 across lot 3.

(f) Solid Waste Disposal.

Lot 3 solid waste will be handled by a commercial solid waste disposal company. Lot 2 solid waste is currently disposed of at the town recycling center. Lot 1 is undeveloped at this time.

(g) Aesthetic, cultural and natural values

1. Scenic. The site is not located in a vista or view corridor as identified in the Visual Impact Study conducted by the town.
2. Wildlife. No significant wildlife habitats have been identified.
3. Natural features. Most of the area of lot 1 is wooded and the applicant is proposing to preserve portions of the woods where no development is proposed.
4. Farmland. No farmland is located on the subdivision.

(h) Conformity with local ordinances

1. Comprehensive Plan. The subdivision is located in the Town Center District, which is one of the town's growth areas.
2. Zoning Ordinance. The subdivision is located in the Town Center District. There is no minimum lot size for commercial uses. Lot 2 includes 2 dwelling units and has 19,528 sq. ft. The minimum lot size for multifamily units is 7,500 sq. ft. Building envelopes are shown on each lot demonstrating compliance with setbacks.
3. Multiplex Housing. The multiplex housing is included in a mixed use building designed for compliance with the Town Center Design standards.
4. Addressing Ordinance. No individual residential unit buildings are proposed.

(i) Financial and Technical Capability

The applicant has provided a letter from Machias Savings Bank asserting adequate financial capacity and a list of professionals with experience in designing subdivisions.

(j) Surface Waters

The property is not within 250' of a water body.

(k) Ground Water

The project has been designed to have no or a positive impact of ground water.

(l) Flood Areas

The subdivision is not located in the floodplain.

(m) Wetlands

No wetland alteration is proposed.

(n) Stormwater

The paved portion on lot 1 will be constructed with porous pavement, which dramatically reduces post-development stormwater flows. A rain garden is also

proposed. With these Low Impact Development features, the post-development flows are still modeling slightly above pre-development flows. Stormwater will discharge into the town stormwater system, which outlets into marsh on Route 77. The Town Engineer has reviewed the stormwater plan and supports this approach.

No construction on lot 2 or 3, except for the shared parking on lot 2 for the benefit of lot 1, are proposed.

(o) Lake Phosphorus concentration

The subdivision is not located within the watershed of a great pond.

(p) Impact on adjoining municipality

The subdivision does not cross municipal boundaries.

(q) Land subject to Liquidation Harvesting

The subdivision does not include liquidation harvesting.

(r) Access to Direct Sunlight

Each lot has substantial access to sunlight.

(s) Buffering

The subdivision includes preservation of a small area of existing woodlands on lot 1. A landscaping plan is included to landscape and screen portions of the subdivision.

(t) Open Space Impact Fee

The applicant has agreed to pay a fee of \$6,729 x 2 new lots for a total of \$13,458.

(u) Utility Access.

The lots will have access to public water, electrical, telephone and public sewer utilities.

(v) Phasing.

For the purposes of Subdivision review, no phasing of the subdivision plan is proposed.

### Site Plan Completeness

The applicant is requesting amendments to the site plan approval granted May 17, 2016. These changes include relocating a tree, adding a generator pad, adjusting the connector between the two buildings, shifting a unit entrance, adding a wall to hide electrical meters and confirming that there will be no lighting on the Hill Way signage. The Planning Board should determine if additional information is needed to consider these changes. Staff recommends that an estimated decibel level at the nearest property line be provided for the generator.

### Site Plan Review

A public hearing is not mandatory for site plan review. The Planning Board may consider a motion to approve the site plan changes. Alternately, because the Planning Board will likely hold a public hearing for the subdivision reapproval, the site plan review may be tabled to include it in the public hearing.

### Motions for the Board to Consider

#### **A. Motion for Completeness**

BE IT ORDERED that, based on the plans and materials submitted, including all the plans and materials approved as part of the May 17, 2016 Planning Board approval, 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 deemed (complete/incomplete).

#### **B. Motion to Table to Public Hearing**

BE IT ORDERED that, based on the plans and materials submitted, including all the plans and materials approved as part of the May 17, 2016 Planning Board approval, 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 tabled to the regular October 18, 2016 meeting, at which time a public hearing will be held.



Attachment: May 17, 2016 Planning Board approval letter

May 23, 2016

John Kenney  
WBRC Architects Engineers  
44 Central Street  
Bangor, Maine 04401

RE: Cape Chiropractic Subdivision/Site Plan

Dear Mr. Kenney:

At the May 17, 2016 meeting, the Cape Elizabeth Planning Board approved the following findings of fact and 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. 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, and is not adjacent to a public access 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 a floodplain.
14. The land of the subdivision does not include wetlands.
15. The proposed subdivision will provide for adequate stormwater management.
16. The subdivision is not in the Great Pond watershed.
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 \$13,485.
22. The subdivision lots will be provided with access to utilities.
23. The subdivision will not be phased.

24. The plan for the development reflects the natural capabilities of the site to support development.
25. Access to the development will be on roads with adequate capacity to support the traffic generated by the development. Access into and within the site will be safe. Parking will be provided in accordance with Sec. 19-7-8, Off-Street Parking.
26. The plan does provide for a system of pedestrian ways within the development.
27. The development will not locate, store or discharge materials harmful to surface or ground waters.
28. The development will provide for adequate exterior lighting without excessive illumination.
29. The development will not substantially increase noise levels and cause human discomfort.
30. Storage of exterior materials on the site that may be visible to the public will be screened by fencing or landscaping.
31. The Town Engineer has recommended revisions to the plans.
32. 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.
33. Cross easements between lots 1, 2 and 3 will be needed.
34. Lighting on the site should be adequate to move safely around the site but also not exceed .5 footcandles at the property line to minimize impact on abutting and nearby properties.
35. The building footprints are compatible with the Town Center Design Standards.
36. The proposed buildings are compatible in scale with other structures in the Town Center District.
37. The roofs of the proposed buildings are compatible with the roofs of nearby buildings in the Town Center and to the design of the structure.

38. The primary orientation of the buildings is toward the street.
39. The building openings are compatible with the rhythm of openings in nearby structures and consistent with the style of the building. The first floor facade is constructed with an equal proportion of openings to wall space.
40. The buildings exterior materials are compatible with nearby buildings and the design of the buildings.
41. The site landscaping and buffering are compatible with the adjacent uses and the town center. The front yard is designed to be pedestrian-friendly in scale, access, lighting and security.
42. 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 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 approved, subject to the following conditions:

1. That the plans be revised to address the comments of the town engineer in his letter dated May 11, 2016;
2. 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 signed by the applicant and recorded with the subdivision plan;
3. 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;
4. That the lighting plan be revised so that no lighting exceeds .5 footcandles at the property line;

5. That any lighting on property signs be ground based or down lighting on the top of the sign and that the lighting level not exceed .5 footcandles at the property line.
6. That the plan be revised to show the location of any proposed generator and that information be submitted demonstrating that decibel levels will not exceed the site plan standards at the property line;
7. That the exterior material notes on the elevations delete the option of installing plywood as an exterior material.
8. That there be no recording of the subdivision plan, issuance of a building permit or alteration of the site until the plans have been revised to address the above conditions and submitted to the town planner.
9. 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.

The subdivision approval is valid for 90 days and will expire on August 17, 2016 if the plan is not signed by the Planning Board and recorded in the Cumberland County Registry of Deeds or a request to extend the approval has not been forwarded to the Planning Board prior to the expiration date. The site plan approval is valid for one year and will expire on May 20, 2017 if a building permit is not issued or a request to extend the approval is not forwarded to the Planning Board prior to the expiration date. Please contact the Town Planner with any questions.

Sincerely,

Peter L. Curry  
Planning Board Chair

cc: Michael McGovern  
Ben McDougal  
Matt Sturgis

