

## MEMORANDUM

TO: Cape Elizabeth Planning Board  
FROM: Maureen O'Meara, Town Planner  
DATE: October 4, 2016  
SUBJECT: Tarbox Triangle Minor Subdivision  
Cape Chiropractic and Acupuncture Site Plan

### Introduction

Two Penguin Properties, LLC, owned by Dr. Zev and Amber Myerowitz, are requesting reapproval of a 3-lot subdivision located at 12 Hill Way which the Planning Board approved 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 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.

### Procedure

- The Planning Board originally tabled this item to the October 18th meeting. The applicant is anxious to wrap up the approval portion of the project and, because there are minimal changes from the review and approval granted by the Planning Board in May, 2016, a special public hearing has been scheduled for this evening. The Planning Board may want to make a motion to remove this from the October 18th meeting and consider the item this evening. All legal and public noticing and posting of the agenda has been done for this meeting.
- The Board should begin with a summary from the applicant of changes made to the plans since the last meeting.
- The Board should then open the public hearing, which has been advertised for this evening.
- At the close of public comment, the Board may begin discussion.
- When discussion ends, the Board has the option to approve, approve with conditions, table or deny the application.

### 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 has prepared sewer easement deeds for lots 1 and 2 across lot 3, which should be conveyed when the lots are under separate ownership. Condition #2 has been revised from the May 2016 approval to delay the actual signing and recording of deeds until the lots are conveyed.

(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. Future development of the lot would be subject to Site Plan review, at which time solid waste disposal would be confirmed. The Town's Recycling Center transfers solid waste to a regional facility, and both facilities have capacity to accept solid waste from lot 3 at such time it is developed.

(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 two 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. Easement deeds to allow the shared parking have been prepared by the applicant, and Condition #2 has been revised from the May 2016 approval to not require signing and recording of the deeds until the lots are conveyed.

(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 infrastructure improvements proposed as part of subdivision review, no phasing of the subdivision plan is proposed.

Site Plan Review Standards

Below is a summary of the proposed site plan amendments' compliance with the Site Plan standards, Sec. 19-9-5.

A. Utilization of the Site

The proposed alterations to the site are located within the previously proposed developed areas. The most significant change is the connector, which will be slightly angled and include more window area, but remains centrally located on the site.

B. Traffic Access and Parking

1. Adequacy of Road System- No change is proposed
2. Access into the Site- No change is proposed.
3. Internal Vehicular Circulation- No change is proposed
4. Parking Layout and Design- No change has been proposed, except to delay recording of deeds for shared parking until lots are conveyed out.

C. Pedestrian Circulation

No change is proposed

D. Stormwater Management

No change is proposed.

E. Erosion Control

No change is proposed

F. Water Supply

No change is proposed.

G. Sewage Disposal

No change is proposed.

H. Utilities

The applicant has located a generator on the northern end of the building 1. A porch on the southern end of building one will include a solid side wall where a utility panel will be located.

I. Water Quality Protection

No change is proposed

J. Wastes

No change is proposed.

K. Shoreland Relationship

No change is proposed.

L. Technical and Financial Capacity

No change is proposed.

M. Exterior Lighting

The applicant will not be lighting the ground mounted sign on Hill Way or Ocean House Rd.

N. Landscaping and Buffering

A tree located on the southern end of lot 1 will be relocated to the frontage of lot 2 to provide for more snow storage area adjacent to the lot 1 driveway.

O. Noise

The applicant has provided information of the decibel level of noise anticipated at the property line when the generator is in operation. Decibel levels do not exceed maximum levels allowed by ordinance.

P. Storage of Materials

No change is proposed.

Town Center Design Standards

The site is located in the Town Center District and the proposed project must also comply with the following Town Center Design Requirements.

a. Footprint

The connector building is angled but the footprint remains the same size. The connector is not the portion of the building that is within the minimum/maximum setback required in the Town Center District, so there is no change in the compliance with that standard.

b. Scale

No change is proposed

c. Height and Roof Pitch

No change is proposed

d. Building and Parking Orientation

No change is proposed

e. Openings

There will be an increased amount of window to wall area in the connector. The Town Center standards require a minimum amount (50%), which the original approval met.

f. Exterior Materials



No change is proposed. The applicant has removed the option of 2 exterior materials approved in May 2016 and committing to a polymer shingle.

g. Landscaping and Site Development

One tree will be relocated from the southern boundary of lot 1 to the Hill Way frontage of lot 2.

Motions for the Board to Consider

**A. Motion to Consider at the October 4th special meeting**

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.

**B. Motion for Approval**

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/will not) result in undue water pollution. The subdivision (is/is not) located in the 100-year floodplain. Soils (will/will not) support the proposed uses. The slope of the land, proximity to streams, and state and local water resource rules and regulations (will/will not) be compromised by the project.
3. The subdivision (will/will not) have a sufficient quantity and quality of potable water.
4. The subdivision (will/will not) cause soil erosion, based on the erosion control plan provided.

5. The subdivision (will/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/are not) provided with vehicular access.
6. The subdivision (will/ will not) provide for adequate sewage disposal.
7. The subdivision (will/will not) provide for adequate solid waste disposal.
8. The subdivision (will/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/is not) compatible with applicable provisions of the Comprehensive Plan and town ordinances.
10. The applicant (has/has not) demonstrated adequate technical and financial capability to complete the project.
11. The subdivision (will/will not) adversely impact surface water quality.
12. The subdivision (will/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/will not) 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/does not) provide for access to direct sunlight.

20. The subdivision (does/ does not) provide a vegetative buffer throughout and around the subdivision and screening as needed.
21. The subdivision (will/ will not) comply with the open space impact fee with the payment of \$13,458.
22. The subdivision lots (will/ will not) 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/ does not reflect) 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.
26. The amendments to the site plan do not change erosion control measures.
27. The amendments to the site plan do not change the quantity and quality of potable water.
28. The amendments to the site plan (will/ will not) provide for adequate sewage disposal.
29. The amendments to the site plan (will/ will not) be provided with access to utilities.
30. The amendments to the site plan do not change to allow location, storage or discharge of materials harmful to surface or ground waters.
31. The amendments to the site plan do not change provision for adequate disposal of solid wastes.
32. 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.
33. The amendments to the site plan do not change demonstrated adequate technical and financial capability to complete the project.

34. The amendments to the site plan (will/will not) provide for adequate exterior lighting without excessive illumination.
35. The amendments to the site plan(will/will not) provide a vegetative buffer throughout and around the site and screening as needed.
36. The amendments to the site plan (will/will not) substantially increase noise levels and cause human discomfort.
37. 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.
38. 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.
39. 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 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.

