

MEMORANDUM

TO: Cape Elizabeth Planning Board
FROM: Maureen O'Meara, Town Planner
DATE: October 20, 2020
SUBJECT: 14 Hill Way Site Plan/Tarbox Triangle Subdivision Amendments

Introduction

Two Penguin Properties LLC is requesting site plan review of a mixed use building with a 1,920 sq. ft. Short Term Rental (STR) on the ground floor and one residential unit on the main and second floors and amendments to the Tarbox Triangle Subdivision, located at 14 Hill Way (U22-74-3). The application was deemed complete September 15, 2020 and a public hearing has been scheduled for this evening. The plan will be reviewed under Sec. 16-2-3 of the Subdivision Ordinance, Sec 19-9 Site Plan Regulations, and Sec. 19-6-4(D), Town Center Design Requirements.

Procedure

- The applicant will summarize any changes made to the plans since the last meeting.
- The Board should then open the public hearing.
- Once the public hearing is closed, the Board may begin discussion of the application.
- At the end of discussion, the Board has the option to approve, approve with conditions, table or deny the application.

Subdivision Review (Sec. 16-3-1)

Below is a summary of subdivision standards applicability to the proposed lot 2/3 lot line and easement changes. The comments of the Town Engineer are attached.

(a) Pollution

No change.

(b) Sufficient Potable Water

No change.

(e) Erosion

No change

(d) Traffic

1. Road congestion and safety. No change.

2. Comprehensive Plan. No change.

3. Connectivity. A driveway shared between lots 2 and 3 will be severed into 2 driveways, which should provide adequate access to each lot.
 4. Safety. No change.
 5. Through traffic. No change.
 6. Topography. No change.
 7. Block Length. Not applicable.
 8. Lot Access. Lots 2 and 3 will have independent vehicular access drives.
 9. Sidewalks/pedestrian connections. No new sidewalks are proposed. An existing gravel accessway connecting lots 1, 2 and 3 will be preserved. No easement deed to preserve the access between the lots has been provided.
 10. Road Name. Not applicable.
 11. Road Construction Standards. The road construction standards also include a requirement that a boundary monument be installed at the corners of the lots. Monumentation should be installed.
- (e) Sewage Disposal.
- All lots will be served by public sewer.
- (f) Solid Waste Disposal.
- Solid waste disposal for lot 3 is proposed to be located on lot 1. No access/solid waste easement deed has been provided.
- (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. Not applicable.
 4. Farmland. Not applicable.
- (h) Conformity with local ordinances
1. Comprehensive Plan. No change.
 2. Zoning Ordinance. No change.

3. Multiplex Housing. No change.
 4. Addressing Ordinance. No change.
- (i) Financial and Technical Capability
The applicant has provided a letter from Androscoggin Bank asserting financial capability to complete the project.
 - (j) Surface Waters
No change.
 - (k) Ground Water
No change.
 - (l) Flood Areas
The subdivision is not located in the floodplain.
 - (m) Wetlands
No wetland alteration is proposed.
 - (n) Stormwater
The Town Engineer has reviewed the stormwater plan and supports this approach. Stormwater from lot 3 will be conveyed over lots 1 and 2 and a stormwater easement deed should be provided.
 - (o) Lake Phosphorus concentration
Not applicable.
 - (p) Impact on adjoining municipality
Not applicable.
 - (q) Land subject to Liquidation Harvesting
Not applicable.
 - (r) Access to Direct Sunlight
No change
 - (s) Buffering

Buffering for lot 1 and 2 was provided as part of the original subdivision. Now that lot 3 is proposed for development, buffering should be included as part of site plan review.

- (t) Open Space Impact Fee

No change.

- (u) Utility Access.

There remains outstanding issues with utility connections crossing lots to provide access to other lots or within the right-of-way, also shown in 2 different widths.

- (v) Phasing.

Not applicable.

Site Plan Review Standards

Below is a summary of application compliance with the Site Plan standards, Sec. 19-9-5.

1. Utilization of the Site

The site is currently functioning as the lawn for the 2 family home located on lot 2. The site will be redeveloped and regraded as part of building construction.

2. Traffic Access and Parking

- a. Adequacy of Road System- Scott Dyer Rd appears to have adequate capacity to safely handle additional trips.
- b. Access into the Site- An existing driveway will be used to provide access from Scott Dyer Rd to the parking area. The driveway width is proposed to be 9.8', which is narrower than the typical driveway for a mixed use building. For example, 1231 Shore Rd, which provides access to a single family home and mixed use building is 16'+ wide.
- c. Internal Vehicular Circulation- The driveway provides access to a 3-space parking lot.
- d. Parking Layout and Design- The parking area appears to have 3 parking spaces, plus 2 garage spaces. The applicant should add a note to the site plan that specifies the proposed uses and parking provided by use.

Sec. 19-9-5 includes approval standards for site plan review. This project requires site plan review because it is a mixed use building. Subsection 3 (d), Parking Layout and Design, states "Off-street parking *shall conform to Sec. 19-7-8 Off Street Parking*, and the following standards. (emphasis added) Subsection C includes a table requiring that parking lots with 1-25 spaces include at least 1 Accessible space meeting ADA requirements,

which means van accessible handicapped access. No handicapped accessible space is provided.

3. Pedestrian Circulation

The site design includes a walkway that connects perpendicularly to the Scott Dyer Rd sidewalk. From the sidewalk, stairs and additional walkway connect to the ground floor. A public sidewalk exists along the Scott Dyer Rd and Hill Way frontages. A gravel path connects from the northeast corner of the lot to lot 2. No easement has been provided to preserve access for lot 3 over lot 2 and lot 1.

4. Stormwater Management

The applicant is proposing two rain gardens on the southeast and southwest to filter stormwater. The southeast garden drains to an existing catchbasin in Scott Dyer Rd. Underdrain from the western frontage of Scott Dyer Rd will be collected into the second rain garden, then discharged into underdrain that crosses lot 2 and lot 1 (if the 50' wide Hill Way right-of-way applies), where drainage easement deeds should be provided.

5. Erosion Control

An Erosion and Sedimentation Control Plan has been included in the July 31, 2020 application materials.

6. Utilities

A public sewer connection will be made from the middle back of the building and extend down to and along Hill Way and then along the Scott Dyer Rd frontage to connect to an existing sewer force main. The public water line connection will be made from Hill Way, as will electric.

7. Shoreland Relationship

The property is not located in the Shoreland Overlay Performance District.

8. Landscaping and Buffering

A row of forsythia is proposed along the Scott Dyer Rd frontage, with two crabapples framing the front stairway. A row of white cedar is proposed along the Hill Way frontage. The rear of the lot will include 100'+ of wood stockade fence, as well as a mixed planting. No buffering is proposed between the property line and the parking lot.

9. Exterior Lighting

A mix of low level lighting, mostly mounted on the building, is proposed which does not exceed 0.5 footcandles at the property line.

10. Signs

No signs are proposed.

11. Noise

Noise levels are characterized as "that standard to residential/professional uses."

12. Storage of Materials

No exterior storage of materials is proposed.

13. Technical and Financial Capacity

The applicant has provided a letter from Androscoggin Bank attesting to the financial capability of the applicant. The applicant has previously completed construction of the project located at 8-10 Hill Way.

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 building footprint is 1,920 sq. ft., which is less than the 5,000 sq. ft. maximum. The building is oriented toward Scott Dyer Rd.
- b. Scale. The proposed building is three stories, with a portion of the ground floor being 5'± lower than the adjacent road and sidewalk grade.
- c. Height and Roof Pitch. The building includes a range of roof pitches from 4:12 to 12:12, with a building height of 32 feet 7 inches.
- d. Building and Parking Orientation. The building is oriented toward Scott Dyer Rd, with a walkway and steps to the ground floor front door, and screened porch above. Parking has been located in the northeast rear corner of the lot, which is the location that best aligns with town center standards on a corner lot.
- e. Openings. The ground floor front facade includes at least 50% ratio of openings to wall space.
- f. Exterior Materials. Proposed exterior materials include hardieplank vertical siding, lap siding and cultured stone veneer. No samples have been provided.
- g. Landscaping and Site Development. In the town center, the front setback is intended to be transitional space between pedestrians on the sidewalk and the proposed structure. The forsythia and white cedar will grow to create a solid buffer. The parking lot lacks any buffering along both abutting property lines. The village green is not applicable to this proposal.

Motion for the Board to Consider

Findings of Fact

1. Two Penguin Properties LLC is requesting site plan review of a mixed use building with a 1,920 sq. ft. Short Term Rental (STR) on the ground floor and one residential unit on the main and second floors and amendments to the Tarbox Triangle Subdivision, located at 14 Hill Way (U22-74-3, which requires review under Sec. 16-2-3 of the Subdivision Ordinance, Sec 19-9 Site Plan Regulations, and Sec. 19-6-4(D), Town Center Design Requirements.
2. The Tarbox Triangle subdivision has been previously approved by the Cape Elizabeth Planning Board to be in compliance with the Subdivision Ordinance, and the findings and decisions of the prior approval which are not altered by the proposed amendments remain in effect.
3. All lots (are/ are not) provided with vehicular access and construction (is/is not) designed to meet town standards.
4. The subdivision (will/ will not) provide for adequate sewage disposal.
5. The subdivision (will/ will not) provide for adequate solid waste disposal.
6. The proposed subdivision (will/ will not) provide for adequate stormwater management.
7. The subdivision (does/ does not) provide a vegetative buffer throughout and around the subdivision and screening as needed.
8. The plan for the development (reflects/ does not reflect) the natural capabilities of the site to support development.
9. Access to the development (will/ will not) be on roads with adequate capacity to support the traffic generated by the development. Access into and within the site (will/ will not) be safe. Parking (will/ will not) be provided in accordance with Sec. 19-7-8, Off-Street Parking.
10. The plan (does/ does not) provide for a system of pedestrian ways within the development.
11. The plan (does/ does not) provide for adequate collection and discharge of stormwater.
12. The development (will/ will not) cause soil erosion, based on the erosion plan submitted.
13. The development (will/ will not) be provided with an adequate quantity and quality of potable water.

14. The development (will / will not) provide for adequate sewage disposal.
15. The development (will / will not) be provided with access to utilities.
16. The development (will / will not) locate, store or discharge materials harmful to surface or ground waters.
17. The development (will / will not) provide for adequate disposal of solid wastes.
18. The development (will / will not) adversely affect the water quality or shoreline of any adjacent water body.
19. The applicant (has / has not) demonstrated adequate technical and financial capability to complete the project.
20. The development (will / will not) provide for adequate exterior lighting without excessive illumination.
21. The development (will / will not) provide a vegetative buffer throughout and around the site and screening as needed.
22. The development (will / will not) substantially increase noise levels and cause human discomfort.
23. No storage of exterior materials on the site that may be visible to the public is proposed.
24. The Planning Board is currently reviewing a referral from the Town Council to amend Short Term Rental regulations under authority provided in Sec. 19-10-3 of the Zoning Ordinance. The Planning Board review of the 14 Hill Way project is separate and based on the *current* Zoning Ordinance regulations.
25. Town Attorney Michael Hill has provided the Planning Board with advice (letter dated July 30, 2020) on its ability to approve a project that includes a new Short Term Rental at a time when the Town Council had adopted a moratorium on new Short Term Rental permits effective June 1, 2020 through December 31, 2020, subject to extension. His advice is that the Planning Board may approve the project, but that any subsequent construction may not be able to obtain a certificate of occupancy if Short Term Rental regulations in effect when the moratorium ends do not allow issuance of a Short Term Rental Permit for 14 Hill Way. A Planning Board approval will not create vested rights to create a Short Term Rental on the first floor and the Planning Board has noted that the applicant proceeds at its own risk.
26. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1, Sec. 19-9, Site Plan Regulations, and Sec 19-6-4(D) Town Center Design Requirements.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Two Penguin Properties, LLC for site plan review of a mixed use building with a 1,920 sq. ft. Short Term Rental on the ground floor and one residential unit on the second and third floors and amendments to the Tarbox Triangle Subdivision, located at 14 Hill Way be approved, subject to the following conditions:

1. That the plans be revised to address the recommendations in the Town Engineer's letter dated October 14, 2020;
2. That monumentation for all lot corners be added to the subdivision plan and installed;
3. That the applicant provide easement deeds for the "multiuse easement," stormwater easements, and solid waste access easement, in a form acceptable to the Town Attorney and signed by the applicant;
4. That a note be added to the site plan documenting the use of the property as Short term rental on the ground floor and a single residential unit on the second and third floors with a parking calculation consistent with Sec. 19-7-8;
5. That any use occupying the first floor of the building located at 14 Hill Way must be a use included in Sec. 19-6-4 (B)(3) nonresidential uses.
6. That the parking lot be redesigned to include a van accessible handicapped parking space meeting ADA requirements;
7. That a planted buffer be provided for the parking lot consistent with the planting proposed along the Scott Dyer Rd or Hill Way frontage;
8. That the plans be revised and submitted to the Town Planner for review and approval prior to recording of the subdivision plat; and
9. That there be no issuance of a building or any other permit until a Performance Guarantee has been provided in accordance with Sec. 16-2-6.