October 22, 2020

Richard Dunton, P.E.

P.O. Box Q

Livermore Falls, Maine 04254

RE: 14 Hill Way Site Plan/Tarbox Triangle Subdivision Amendments

Dear Mr. Dunton:

At the October 20, 2020 meeting, the Cape Elizabeth Planning Board approved the following findings of fact and motion:

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 first 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 provided with vehicular access and construction is designed to meet town standards.

4. The subdivision will provide for adequate sewage disposal.

5. The subdivision will provide for adequate solid waste disposal.

6. The proposed subdivision will provide for adequate stormwater management.

7. The subdivision does provide a vegetative buffer throughout and around the subdivision and screening as needed.

8. The plan for the development reflects the natural capabilities of the site to support development.

9. 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.

10. The plan does provide for a system of pedestrian ways within the development.

11. The plan does provide for adequate collection and discharge of stormwater.

12. The development will not cause soil erosion, based on the erosion plan submitted.

13. The development will be provided with an adequate quantity and quality of potable water.

14. The development will provide for adequate sewage disposal.

15. The development will be provided with access to utilities.

16. The development will not locate, store or discharge materials harmful to surface or ground waters.

17. The development will not adversely affect the water quality or shoreline of any adjacent water body.

18. The applicant has demonstrated adequate technical and financial capability to complete the project.

19. The development will provide for adequate exterior lighting without excessive illumination.

20. The development will provide a vegetative buffer throughout and around the site and screening as needed.

21. The development will not substantially increase noise levels and cause human discomfort.

22. No storage of exterior materials on the site that may be visible to the public is proposed.

23. 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.

24. 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.

25. 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 first 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 first 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.

The subdivision amendment is valid for 90 days and will expire on January 18, 2021 if the subdivision plan is not signed by the Planning Board and recorded in the Cumberland County Registry of Deeds or a request to extend the approval is not forwarded to the Planning Board prior to the expiration date. The site plan approval is valid for one year and will expire on October 20, 2021 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 if you have any questions.

Sincerely,

Josef Chalat

Planning Board Chair

cc: Matt Sturgis

Ben McDougal

Clint Swett