



No one else came to speak on the short term rentals, so the public hearing was closed.

Ms. Jordan made the following motion:

BE IT ORDERED that based on the draft materials and the facts presented, the Short Term Rental Amendments and Comprehensive Plan Amendment to Recommendation # 86 are tabled to the regular November 17, 2020 meeting of the Planning Board, at which time a public hearing will be held.

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

OLD BUSINESS

Mr. Sahrbeck said Dr. Myerowitz had reached out to him about short term rentals, but Mr. Sahrbeck did not talk to him about anything substantive.

Mr. Huebener said he also had been contacted by Dr. Myerowitz. It was an email and he did not reply to it, and forwarded the email to Ms. O'Meara.

**14 Hill Way Site Plan, Subdivision Amendment** - Two Penguin Properties LLC is requesting site plan review of a mixed use building with a short term rental on the first floor and one residential unit on the second/third floors, and amendments to the previously approved Tarbox Triangle Subdivision, located at 14 Hill Way (U22-74-3, 74, 74-1), Sec. 19-9 Site Plan Public Hearing and Sec. 16-2-5, Amendments to a previously approved subdivision public hearing.

Rick Dunton of Main-Land Development Consultants said the changes since the last submittal are technical in nature. They are basically to address the Town Engineer's comments about drainage and some easements.

Mr. Chalot asked if there was anything the Board needed to look at. He asked if Mr. Dunton wanted to show the plan.

Mr. Dunton did not think they would be interesting to anyone else. They were engineer to engineer. There was nothing substantive changed.

Ms. Jordan noted that the engineer's letter is dated October 14th and the letter from Mr. Dunton is dated October 1. Is there anything additional in the October 14 letter that we need to talk about?

Mr. Dunton said this process requires that we submit in advance of the meeting. There were a couple of small items in Ms. O'Meara's letter that might become conditions of approval if we get to that point.

Mr. Chalot opened the public hearing.

Dan Lawsore of 11 Hill Way said the town does not have a legal right to the right of way. It's been ongoing since 1992. The town had agreed to purchase that land from me, but now they are telling me otherwise. It brings up more problems because you've issued building permits based upon my survey that you agreed with. Now you've taken that back and issued building permits on substandard lots. The building itself is going to be in a hole. It is not a first floor. If it's a first floor that's where the measurement of height needs to take place. You will not be able to see this commercial space either from Hill Way or Scott Dyer: 1. It's in a hole. 2. Plantings around it, you will not be able to see it which affect the windows. You're not going to get 50% of what you think it's going to be.

The drainage goes through the public right of way for quite some distance. It also sheds out onto the impervious blacktop in lieu of storm drains. There's quite a maintenance to those, and if they're not maintained, they do nothing and the water sheds out over the top.

The basement ceiling height on the architectural print is 10ft. to finished ceiling. How are you going to achieve that without blowing the height? It's just impossible.

Mike Freidland of 287 Ocean House Road is very supportive of this project. The Myerowitz' have been great neighbors. Their project is a great addition to the Cape. They have followed through on everything they said they would do. I think their project will be a great addition to the neighborhood.

Mark Boutin of 4 Greenview Drive wants to voice his support for Amber and Zev's project at 14 Hill Way. He has known Amber and Zev for a long time. Has been neighbors with them for a long time. They are wonderful neighbors and residents in Cape. I know they follow the ordinances to the Tee and I'd love to see this project come to fruition.

Brianna Boutin also wants to voice support for this project. She has known them for many years now. She respects and admires their commitment to the community. They have dedicated so much time, so much money and their careers to serving the people of the town. They have done their homework before taking on any project. It is disheartening to hear the pushback that is happening.

No one else came to speak, so the public hearing was closed.

Mr. Gilbert asked about the building height.

Ms. O'Meara said she asked the Code Enforcement Officer about the height. He confirmed that the building is a little below the maximum height limit and explained that height is measured from average original grade.

Ms. Jordan asked Ms. O'Meara to address the right of way issue.

Ms. O'Meara said it's still a bit of an outstanding issue with this application. The town decided to have some research done on the right of way of Hill Way. When the Board reviewed the original Hill Way project, an assumption was made that the right of way was 50 ft. wide. When the research was done in June of this year, the firm of Monaghan, Leahy determined that when Route 77 moved off of Hill Way, the 66 ft. right of way was never changed. It appears that the right of way on Hill Way is 66 ft. wide. In July of this year, it was determined that the right of way is 25 ft. from the center line to the east (towards the Myerowitz property) and 33 ft from the centerline to the Lawsure property. The plan for this property shows both rights of way. The 14 Hill Way is assuming a 66 ft. right of way and the subdivision lots are at a 50 ft. right of way. It relates to the drainage easements. The town really needs to have those drainage easements.

In response to a question, Ms. O'Meara said the applicant needs to provide the documented easement. Those easements would need to be submitted to the Town Attorney for review. Those are proposed as conditions of approval.

Dr. Myerowitz said when they learned of the discrepancy, they moved their building 8 ft., so under all circumstances our buildings do conform to setbacks. Our attorneys are drafting the easements, so we have no objections to that condition.

Mr. Bodenski asked if they will be submitting the storm water management report and calculations.

Mr. Dunton said this comment has to do with an agree to disagree between engineers. He then made a technical response to the question.

Mr. Sahrbeck addressed the comment about the 50% windows. It does not have anything to do with the trees.

Dr. Myerowitz said the condition has been met.

Ms. Jordan asked about if there is a standard specifying the driveway width and Ms. O'Meara said there is not.

Mr. Curry said as the short term rental requirements now read, it is an accessory use. He is still bothered by the staircase between the residential space and the rental space. He said it should not be permitted. He will not vote for approval if the stairway is still there.

Mr. Chalot said this is a residential building. There is nothing in the residential code that would preclude a stair going from the basement to the first floor. If it was a commercial building, you could have a stair from the basement to the first floor, but it would have to be enclosed in a 1 hour shaft and rated doors.

In response to a question, Ms. O'Meara said she had previously raised the issue that the stairway is inconsistent with the first floor being a totally separate non residential use. The Code Enforcement Officer said that he will have a difficult time enforcing the use of that area.

Dr. Myerowitz said he would not take out the stairway. He needs it for timely access to the mechanical room. It goes against the design of the building to take it out.

Mr. Huebener made the following 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.

Mr. Sahrbeck seconded the motion.

Ms. Jordan wants the ground floor be called the first floor.

Mr. Chalot asked about the need for an ADA parking space.

Ms. O'Meara said it is a site plan requirement that applies to residential as well as commercial property.

Mr. Dunton said he does not agree with condition 1. He does not agree to all the recommendations, it is the board's discretion on several points, parking, ADA access and a couple of others.

Mr. Chalot said it is a town requirement to have an ADA parking spot under site plan review.

There was further discussion of whether an ADA space was needed, with the answer being that it is a requirement under site plan review.

Ms. O'Meara noted that several items on the engineer's letter said that the Planning Board should determine if this situation is acceptable. That means if the board decides not to do anything with that item, no further action would be needed.

Dr. Myerowitz said that if the building is approved based on current zoning, receiving a permit is only contingent upon satisfaction that the short term rental moratorium ends. There is not a revisit on the zoning.

Mr. Chalot said that is above their pay grade.

Dr. Myerowitz spoke about the buffering and said he reserves the right to substitute other plants or put in a fence.

Ms. Jordan said we are well beyond that point. A change in buffering is not a de minimus change.

Ms. O'Meara said the board has approved a plan with plantings, so the only way to change that is to come back to the board.

The board voted 6-1(Curry) to approve the motion.

**1226 Shore Rd/ High Tide Dental Site Plan Amendments** - Red Tail Properties, LLC is requesting amendments to the previously approved site plan for 1226 Shore Rd (U11-14) to change the use of Building B from storage to village retail and construct an 8 space parking lot, Sec. 19-9, Site Plan Public Hearing.

Steve Bushey spoke about the project. He said Dr. Homicz will move his dental practice from the corner of Mitchell and Ocean House Roads to this location. He spoke about the generator, they have added a small screening fence around it. The generator is there only in case of a power outage during a medical procedure. He showed the plan of the site. There is an 8 space parking lot in the middle of the lot. They have added a small rain garden for storm water purposes. It will allow water to come off the parking lot into that low area and be treated by the vegetation in that rain garden. The rear parking lot will be used by the staff. Building B is unoccupied for now. They have no problems with the peer review and the staff comments. Sight distance will be added to the plan and dimensions of the ADA spaces will also be added.

Mr. Chalot opened the public hearing. No one indicated a desire to speak, so the public hearing was closed.

In response to a question, Ms. O'Meara said the address for Building B will be 1228 Shore Road per the Town Assessor.

Mr. Sahrbeck made the following motion:

Findings of Fact

1. Red Tail Properties LLC is requesting Site Plan review of proposed amendments to the site plan for 1226 Shore Rd to add an 8 space parking lot and change the use of Building B from storage to village retail, which requires review under Sec. 19-9, Site Plan Regulations.
2. The plan for the development reflects the natural capabilities of the site to support development.
3. 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.
4. The plan does provide for a system of pedestrian ways within the development.
5. The plan does provide for adequate collection and discharge of stormwater.
6. The development will not cause soil erosion, based on the erosion plan submitted.
7. The development will be provided with an adequate quantity and quality of potable water.
8. The development will provide for adequate sewage disposal.
9. The development will be provided with access to utilities.
10. The development will not locate, store or discharge materials harmful to surface or ground waters.
11. The development will provide for adequate disposal of solid wastes.
12. The development will not adversely affect the water quality or shoreline of any adjacent water body.
13. The applicant has demonstrated adequate technical and financial capability to complete the project.
14. The development will provide for adequate exterior lighting without excessive illumination.
15. The development will provide a vegetative buffer throughout and around the site and screening as needed.

16. The development will not substantially increase noise levels and cause human discomfort.
17. Storage of exterior materials on the site that may be visible to the public will be screened by fencing or landscaping.
18. The application substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Red Tail Properties LLC for Site Plan review of proposed amendments to the site plan for 1226 Shore Rd to add an 8 space parking lot and change the use of Building B from storage to village retail be approved, subject to the following condition:

1. That the plans be revised to address the comments of the Town Engineer in his letter dated October 14, 2020.

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

**Rosewood Subdivision Amendment** - Joe Frustaci is requesting subdivision amendments to split the existing lot 4B to create lot 4C and extend the Rosewood Drive private road (U34-22-4), Sec. 16-2-5 Amendments to a previously approved subdivision public hearing.

Peter Biegel showed the plan and said there were 4 changes, all of them to do with the Portland Water District water line connections. They also added pins at the corners. They added a note 8 to the subdivision plan. Item 6 in the staff memo about buffering. They will not be adding buffering between lots 4B and 4C., but they will add buffering between the lot and the open space.

Mr. Chalot said he thinks buffering for a subdivision is between the subdivision and the abutters, but not between lots in the subdivision.

Ms. O'Meara said that is correct, and noted the adjacent open space was created as buffering from a prior subdivision constructed by the applicant.

Ms. Jordan asked about buffering between the 2 lots if they choose to add it.

Ms. O'Meara said you can always add buffering outside the building envelope, but you cannot remove it except under the rules.

Mr. Frustaci asked if they can remove some trees in the buffering area to put in a septic system.

Ms. O'Meara said they can make it a condition of approval that they may put a septic system outside the building envelope and clear trees for that if needed.

Mr. Chalot opened the public hearing. No one indicated a desire to speak, so the public hearing was closed.

Mr. Curry made the following motion:

#### Findings of Fact

1. Joe Frustaci is requesting an amendment to the Rosewood Subdivision to split lot 4B to create a new lot 4C and extend the private road right-of-way for Rosewood Drive to create frontage for the lot, which requires review under Sec. 16-2-5, Amendments to previously approved subdivisions.
2. The Rosewood 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. The subdivision amendment will have a sufficient quantity and quality of potable water.
4. The subdivision amendment will not cause soil erosion, based on the erosion control plan provided.
5. The subdivision amendment will not cause unreasonable road congestion or unsafe vehicular and pedestrian traffic. The private road extension is laid out to conform to existing topography as much as is feasible. All lots are provided with vehicular access. The road extension is designed to meet private road town standards, with the exception of waivers that are granted for an off-center road and a 45' wide right-of-way.
6. The subdivision amendment will provide for adequate sewage disposal.
7. The subdivision amendment will provide for adequate solid waste disposal.
8. The subdivision amendment 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 amendment 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 amendment will not adversely impact the quality or quantity of ground water.
12. The subdivision amendment is not located in a floodplain.
13. The subdivision amendment does not include wetland alterations.
14. The subdivision amendment will provide for adequate stormwater management.
15. The subdivision amendment does provide for access to direct sunlight.
16. The subdivision amendment includes a vegetative buffer throughout and around the subdivision and screening as needed.
17. The subdivision will comply with the open space impact fee with the payment of \$6,729.00.
18. The subdivision amendment will be provided with access to utilities.
19. The applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Joe Frustaci for an amendment to the Rosewood Subdivision to split lot 4B to create a new lot 4C and extend the private road right-of-way for Rosewood Drive to create frontage for the lot 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 13, 2020;
2. That the applicant pay an open space impact fee of \$6,729.00.
3. That the road maintenance agreement be submitted in a form acceptable to the town attorney and signed and recorded by the applicant;
4. That that the area of the septic system outside the building envelope may be cleared as needed for functioning of the system;

5. That the plans be revised and submitted to the Town Planner for review and approval, and the conditions satisfied, prior to recording the subdivision plat.

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

**498 Spurwink Ave Resource Protection Permit** - The Cape Elizabeth Land Trust (CELT) is requesting a Resource Protection Permit to install boardwalks and a bridge on the Pollack Brook Preserve located at 498 Spurwink Ave ((U43-8-5), Sec. 19-8-3, Resource Protection Permit Public Hearing.

Philip Mathieu, of CELT, said they want to have flexibility to extend the boardwalks if needed, so they have included a 2 phase development. He said on 3 of the boardwalks they have identified an additional boardwalk section. At boardwalk 5 they are building in enough leeway to go up to the start of the bridge. He showed the plan and he showed the design of the materials. He said they are using the National Park Service bridge standards, but not having railings. For the stringers they are considering using glue laminated wood.

Mr. Chalot asked if the gluelam is a pressure treated wood.

Mr. Mathieu said it is an engineered wood that is created under pressure with adhesive. He then talked about the span. It is not what the Army Corps would define as the span. What they are saying is that the distance is 26 ft. from bank to bank. The abutments are placed just beyond that.

Mr. Chalot opened the public hearing. No one indicated a desire to speak, so the public hearing was closed.

Ms. Jordan asked about the DEP and Army Corps and whether they have permits from both.

Mr. Mathieu said they are exempt from the DEP because they are replacing the bridge and the other impacts are small enough not to require a permit. The Army Corps requires self verification, which means completing a form and sending it at least 2 weeks before the start of build.

Mr. Sahrbeck made the following motion:

#### Findings of Fact

1. The Cape Elizabeth Land Trust is requesting a Resource Protection Permit to construct 13 boardwalks and bridges in wetlands, totaling 1,428 sq. ft., on the Pollack Brook Preserve located at 498 Spurwink Ave (U43-8-5),

which requires review under Sec. 19-8-3, Resource Protection Permit regulations.

2. The proposed boardwalks and bridges will not materially obstruct the flow of surface or subsurface waters across or from the alteration area;
3. The proposed boardwalks and bridges will not impound surface waters or reduce the absorptive capacity of the alteration area so as to cause or increase the flooding of adjacent properties;
4. The proposed boardwalks and bridges will not increase the flow of surface waters across, or the discharge of surface waters from, the alteration area so as to threaten injury to the alteration area or to upstream and/or downstream lands by flooding, draining, erosion, sedimentation or otherwise;
5. The proposed boardwalks and bridges will not result in significant damage to spawning grounds or habitat for aquatic life, birds or other wildlife;
6. The proposed boardwalks and bridges will not pose problems related to the support of structures;
7. The proposed boardwalks and bridges will not be detrimental to aquifer recharge or the quantity or quality of groundwater;
8. The proposed boardwalks and bridges will not disturb coastal dunes or contiguous back dune areas;
9. The proposed boardwalks and bridges will maintain or improve ecological and aesthetic values;
10. The proposed boardwalks and bridges will be constructed and located to maximize wetland buffers and adjacent land uses;
11. The boardwalks and bridges will be accomplished in conformance with the erosion prevention provisions of Environmental Quality Handbook Erosion and Sediment Control, published by the Maine Soil and Water Conservation Commission dated March, 1986, or subsequent revisions thereof;
12. The boardwalks and bridges will be accomplished without discharging wastewater from buildings or from other construction into Wastewater Treatment Facilities in violation of Section 15-1-4 of the Sewage Ordinance; and

13. The proposed boardwalks and bridges are not located in the "100-year" floodplain.
14. The application substantially complies with Sec. 19-8-3, Resource Protection Regulations.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Cape Elizabeth Land Trust for a Resource Protection Permit to construct 13 boardwalks and bridges in wetlands, totaling 1,428 sq. ft., on the Pollack Brook Preserve located at 498 Spurwink Ave (U43-8-5) 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 October 13, 2020;
2. That erosion control measures be added to the application.
3. That there be no alteration of the site nor issuance of any local permits until the plans have been revised to address the above conditions and submitted to the town planner for review.

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

#### NEW BUSINESS

Town of Cape Elizabeth Communications Tower - The Town of Cape Elizabeth is requesting site plan review of a telecommunications tower and support equipment to be installed at 8 Dennison Dr (R5-10), Sec. 19-9 Site Plan Completeness.

Peter Gleason, Fire Chief said the police, fire and public works now have antennas and radios located at 3 different sites. The public works is at the transfer station, the police department is located on a private tower on Bowery Beach Road, and the fire department is on a temporary tower on top of the bottle return at the transfer station. These locations give us some significant gaps in our coverage, particularly for the fire and police on the northern end of town. None of our current sites have a generator, so when we have a power outage, we have to acquire gasoline generators from different locations and bring them to the radio sites and plug them in and get them running. It is essential that we get automatic power to our radios. This will give us significantly better coverage. We are looking to consolidate all our operations at one spot with generator power.

Steve Harding showed the plan and the location. He said they have updated the plan in response to engineer and staff comments. They will have a diesel generator. Right now it will only be for the use of the police, fire and public works. They will have some pads for the potential co-location in the future. There is a gravel area for parking, we would provide an access drive with a turnaround. A three legged lattice tower, self supporting, is proposed. He showed an example of a similar installation.

There would not be any area lighting, but a light over the door of the support building. There will be three signs. This area will be a gravel build up with a crushed stone surface layer which will act as a treatment for the storm water. There will be less than 10,000 sq. ft. of impervious area so they don't have to do a formal storm water calculation. They have done a noise evaluation for the generator and it will not be an issue. They have asked for one waiver, of the boundary survey.

He showed photos of how this will look from various areas. He spoke about the coverage.

Mr. Chalot opened the public comment on completeness. No one indicated they wanted to speak, so the public comment was closed.

Mr. Huebener asked if this will interfere with the towers on Spurwink Avenue.

Mr. Harding said they are getting assistance from Mark Davis and he is providing a memo that deals with this.

Mr. Curry asked if there are cables on the structure.

Mr. Harding said it is a 180 ft. self supporting lattice structure.

Mr. Gilbert wants to know why they didn't locate this elsewhere?

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth for site plan review of a 180' public safety telecommunications tower to be located at 8 Dennison Drive be deemed complete.

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

Ms. O'Meara said they want to be careful that there are not a proliferation of towers throughout the town because they don't have to show that there is a need. This applicant should be able to show a compelling need to put up a

tower. There are 3 questions. 1. do we need a tower? 2. are there other places you can locate? 3. Are you planning to have space for other people to locate on your tower if they want to? The Planning Board would like a narrative to address these issues.

Mr. Harding then showed the existing conditions plan. The parking will still be there.

The Board scheduled a site walk for Tuesday October 27 at 5:15p.m.

Ms. Jordan made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of the Town of Cape Elizabeth for site plan review of a 180' public safety telecommunications tower to be located at 8 Dennison Drive be tabled to the regular November 17, 2020 meeting of the Planning Board at which time a public hearing will be held.

Mr. Curry seconded the motion and it was approved, 7-0.

**Cape Memory Care HVAC Site Plan Amendment** - Woodlands Senior Living of Cape Elizabeth LLC is requesting an amendment to the previously approved site plan to install an HVAC equipment structure at Cape Memory Cape, located at 126 Scott Dyer Rd (U45-4), Sec. 19-9 Site Plan Completeness and Public Hearing.

Elliot Thayer of Thayer Engineering spoke about the project. They are proposing an air handler on the west side of the building. The site plan was displayed. The ground area of the HVAC proposed doesn't extend beyond the furthest side wall of the building. It will be on a concrete pad, then there will be a steel structure 22 ft. high, then the air handling unit will sit on top of that. The total height of the project is less than 29 ft., well below the existing roof. This is to replace the HVAC unit. Regarding the sound, this unit will be slightly over 80 ft. from the property line at Willow Brook. There are large trees on the property just east of Willow Brook. The next residence to the west is also buffered by large trees on its property and is about 400 ft. from the air handler.

Mr. Huebener asked why they didn't put it on the ground instead of on this big structure.

John Barrett said the reason is it is the only way we can get connected to the existing ductwork.

In response to a question, Ms. O'Meara said there is no engineer's letter because there was nothing for him to review.

Mr. Chalot asked about the unit, and was there information about the noise it generates.

Mr. Barrett said they have submitted that information. There are existing units that have been there since they opened, that also produce noise.

Mr. Huebener made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Woodlands Senior Living of Cape Elizabeth, LLC for an amendment to the previously approved site plan for Cape Memory Care, located at 126 Scott Dyer Rd, to install a 17.75' x 5.7' air handling unit on a 22' high steel support structure be deemed complete.

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

The Board did not feel the need for a site visit.

Mr. Chalot opened the public hearing. No one indicated a desire to speak, so the public comment was closed.

Mr. Bodenski said he would like to see abutting houses on the plan.

In response to a question about the noise standard, Ms. O'Meara said the standard is the measurement at the property line. You need to meet the standard at the property line.

Ms. Jordan they have done some additional sound reduction.

Mr. Gilbert noted that they have stated a level of 46.9 dba, but you have said you will reduce it to 45 dba at the property line.

Mr. Thayer said he is confident the noise will not be an issue.

Mr. Huebener made the following motion:

#### Findings of Fact

1. Woodlands Senior Living of Cape Elizabeth, LLC is requesting an amendment to the previously approved site plan for Cape Memory Care, located at 126 Scott Dyer Rd, to install a 17.75' x 5.7' air handling unit on a 22' high steel support structure, which requires review under Sec. 19-9, Site Plan Regulations.

2. Cape Memory Cape has been previously approved by the Cape Elizabeth Planning Board to be in compliance with Site Plan regulations, and the findings and decisions of the prior approval which are not altered by the proposed amendments remain in effect.
3. The amendment reflects the natural capabilities of the site to support development.
4. The amendment will not cause soil erosion, based on the erosion plan submitted with the original site plan approval.
5. The development will not substantially increase noise levels and cause human discomfort.
6. The application substantially complies with Sec. 19-9, Site Plan Regulations.

THEREFORE BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of Woodlands Senior Living of Cape Elizabeth, LLC for an amendment to the previously approved site plan for Cape Memory Care, located at 126 Scott Dyer Rd, to install a 17.75' x 5.7' air handling unit on a 22' high steel support structure be approved, subject to the following conditions:

1. That the erosion control measures included in the original site plan approval be applied during the construction of the air handling unit.
2. That the applicant will measure the sound level at the property line upon completion of the project. If the sound exceeds the 45 dba level required by the town, the applicant will come back before the planning board with proposed mitigation.

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

**19 Cunner Lane Private Road Amendment** - David Smith is requesting an amendment to the Cunner Lane Right-of-way adjacent to lots U14-26 and 26-1 to narrow the right-of-way to 50', Sec. 16-2-5 Amendment to a previously approved subdivision completeness and public hearing.

Julia Frederick, Landscape Architect with Mitchell and Associates, is here on behalf of David Smith. They want to reduce the width of a portion of the private right of way from 70 ft. to 50 ft. to expand the building envelope on Lot 26-1. Mr. Smith owns both lots. This will shift the lot lines a little. In their final submittal they will add the corner points of the right of way.

Mr. Chalot opened the public comment period on completeness. No one came forward to speak, so the public comment period was closed.

Mr. Sahrbeck made the following motion:

BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of David Smith for an amendment to the previously approved private road approval for a portion of Cunner Lane to reduce the right-of-way width from 70'7" to 50' be deemed complete.

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

Mr. Chalot opened the public hearing.

Jack Stewart of 421 Queensway Drive, Lexington, KY 40502, asked if this would affect Cunner Lane.

Ms. O'Meara said it only affects Mr. Smith's property. It does not affect the portion of Cunner Lane where other property owners have frontage.

Mr. Stewart said that is all he wanted to know and thanked the Planning Board for the opportunity to participate.

No one else indicated a desire to speak, so the public hearing was closed.

Ms. Jordan asked about the turnaround.

Ms. Frederick said the easement needs to be rewritten so it connects to the right of way.

Ms. Jordan made the following motion:

#### Findings of Fact

1. David Smith is requesting an amendment to the previously approved private road approval for a portion of Cunner Lane to reduce the right-of-way width from 70'7" to 50', which requires reviewed under Sec. 16-2-3 of the Subdivision Ordinance.
2. This portion of Cunner Lane has been previously approved by the Cape Elizabeth Planning Board as a private road in compliance with Subdivision regulations, 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 applicant has substantially addressed the standards of the Subdivision Ordinance, Sec. 16-3-1.

THEREFORE, BE IT ORDERED that, based on the plans and materials submitted and the facts presented, the application of David Smith for an amendment to the previously approved private road approval for a portion of Cunner Lane to reduce the right-of-way width from 70'7" to 50' 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 13, 2020; and
2. That the plans be revised and submitted to the Town Planner for review and approval prior to recording the subdivision plat.

Mr. Curry seconded the motion and it was approved 7-0.

#### OTHER BUSINESS

**Planning Board digital/remote operations** - The Planning Board will review meeting logistics and upcoming items.

Ms. O'Meara and the Board discussed the scheduling of the short term rental draft. The Board agreed that they may not discuss the draft at their next workshop meeting, but board members may request that it be on the agenda no later than October 27th. They will discuss it at the November 17 Planning Board meeting.

The Board voted unanimously to adjourn at 10:13 pm.

Respectfully submitted,

Hiroshi Dolliver  
Minutes Secretary