



**Town of Gorham
December 1, 2008
PLANNING BOARD MINUTES**

LOCATION: Municipal Center Council Chambers, 75 South Street, Gorham, Maine

Members Present:

**SUSAN ROBIE, CHAIRWOMAN
DOUGLAS BOYCE
THOMAS FICKETT
THOMAS HUGHES
MARK STELMACK
EDWARD ZELMANOW**

Staff Present:

**DEBORAH FOSSUM, Dir. of Planning & Zoning
THOMAS POIRIER, Assistant Planner
BARBARA SKINNER, Clerk of the Board**

Members Absent:

MICHAEL PARKER

The Chairwoman called the meeting to order at 7:00 and read the Agenda. The Clerk called the roll, noting that Michael Parker was absent.

1. APPROVAL OF THE OCTOBER 20 and NOVEMBER 3, 2008 MINUTES

Thomas Fickett MOVED and Douglas Boyce SECONDED a motion to approve the minutes of October 20, 2008, as written and distributed. Motion CARRIED, 6 ayes (Michael Parker absent). [7:03 p.m.]

Thomas Fickett MOVED and Douglas Boyce SECONDED a motion to approve the minutes of November 3, 2008, as written and distributed. Motion CARRIED, 5 ayes (Michael Parker absent, Thomas Hughes abstaining as not having been present at the November 3, 2008 meeting). [7:04 p.m.]

2. COMMITTEE REPORTS

A. Ordinance Review Committee – Ms. Robie reported that the Committee is working on a proposal for bed and breakfast language.

B. Sign Ordinance Sub-Committee – Ms. Robie reported that there is a review meeting scheduled with the Code Officer in February.

C. Streets and Ways Sub-Committee – No report.

3. ADMINISTRATIVE REVIEW REPORTS

Ms. Fossum reported that the application from White Rock Outboard has received final approval. One new submission has been received from Dale Rines for the conversion of a residence to office use on Lower Main Street, near the Route 25 town line. She said there are four other projects currently under review at this time: a project from Odias Bachelder to convert his property on Main Street next to Crockett Interiors to used auto sales; a proposal by JCB Properties to convert a residence on Main Street to office use; a proposal from Sappi for recreational improvements in the area of Mallison Falls for parking and to allow canoe portage around the Falls; and finally, a proposal from Dwayne St. Ours for a laundromat at Little Falls.

4. CONSENT AGENDA: NO ITEMS.

5. PUBLIC HEARING (continued from September 8, 2008)

Site Plan Amendment -- Plan-It Recycling & Transfer -- By CLRS Properties, LLC, Ron Smalley.
Proposed amendment to use a mobile, 1,400 square foot picking station, Zoned Industrial, M12/L26.001

Scott Collins, St. Germain & Associates, appeared on behalf of Ron Smalley, the applicant, who was also present. Mr. Collins referred to their most recent submission, a report by Macleod Structural Engineers, as well as a revised site plan, which is designed to address comments from the Board related to the structural integrity of the proposed litter fence/privacy screen. Mr. Collins noted that in summary what has been recommended to Plan-It Recycling by Macleod Engineers is to install an additional five poles, spaced equally between the six poles already proposed on the property boundary, to support the fence. The poles will be buried approximately 12 feet into the ground and 20 feet above ground.

Mr. Poirier gave the staff report, noting that the plans received on November 19, 2008, do not show the proposed landscaping additions designed by Terrence J. DeWan & Associates. Staff has added condition of approval #4 to address the omission of the proposed landscaping: "That the applicant shall add the proposed additional landscaping recommended by Terrence J. DeWan & Associates to the final plan prior to the Planning Board's endorsement of the final plan." Mr. Poirier said that the Board should discuss with the applicant the time frame for the installation of the privacy fence; staff has added condition of approval #5 that "...the visual screen shown on the approved plan shall be completed within 60 days of the Planning Board's endorsement of the final plan and the additional landscaping proposed by Terrence J. DeWan & Associates Landscape Architects & Planners shall be installed by June 15, 2009." He said that staff has added condition of approval #7 dealing with the requirement for the establishment of a performance guarantee, and condition of approval #10 "That if the picking station is moved on the site the visual impact of the new location shall be assessed by the Planning Director and if the Planning Director deemed the visual impact to be a problem with respect to the view shed, then the applicant shall come back to the Planning Board for site plan amendment."

Mr. Poirier referred to an email received from Eric Dudley, City Engineer for Westbrook, in which he said:

"The design uses a wind speed of 60 mph for the load on the poles. Both BOCA and the IBC codes call for structures to be design with a wind speed of mph. I think your Code Office should look at this and determine if 60 mph is adequate or not. My feeling is that if they consider the screen to be a 'structure' then the wind speed should be 60 mph.

The analysis by MacLeod looks good other than this concern. Whatever your Code Office believes should be used for a design speed should be used. If they agree that 60 mph is adequate, then I have no issues."

Mr. Poirier than quoted from the email sent by Clint Cushman, Gorham Code Enforcement Officer, in which he said "... it is my assessment that the privacy/litter fence as described will be compliant with both the zoning and building codes currently in effect in Gorham."

In response to a query from Mr. Stelmack, Mr. Collins said that the applicant would request 90 days instead of the 60 days as mentioned due to anticipated delays in scheduling subcontractors and getting the fence manufactured and shipped from Washington. After discussion, the Board concurred that condition of approval #5 shall be amended to "the visual screen shown on the approved plan shall be completed within 90 days of the Planning Board's approval of the final plan..." Ms. Robie said if the fencing is not installed

within the required, then the original stop work order, suspended at the request of the Planning Board, will go into effect.

The Board discussed the need for the establishment of a performance guarantee, with the conclusion being reached that as this is an enforcement action with a stop work order pending, there is no need for such a performance guarantee and condition of approval #7 should be deleted, with Mr. Fickett, Mr. Hughes, Mr. Stelmack, Mr. Boyce and Mr. Zelmanow concurring with the deletion.

Mr. Zelmanow asked how condition of approval #10 (now condition #9) would be implemented. Ms. Fossum replied that some site visits would be necessary. Mr. Zelmanow said that if the picking station is moved and the Planning Director determines there is a problem, the issue should return before the Board as a consent agenda item. Ms. Robie suggested a revised condition that "...if the picking station is moved, then the applicant shall return before the Planning Board for site plan amendment as a consent agenda item." Mr. Boyce asked the applicant if he is amenable to the proposed condition of returning before the Board if there is a change in the location of the picking station. Mr. Collins asked what would be required of the applicant; Ms. Fossum replied that a submission would need to be made showing where the location is that the picking station is to be moved. She said that even as the condition was originally written, she would want documentation of where it was being moved so that she could make an assessment of what was being proposed. In that case, under the original condition, it would be a de minimis change. However, if it were a site plan amendment, there would be an application fee and a letter could be written, along with a visual submission, showing the proposed location of the picking station.

Mr. Collins expressed concern that if it came before the Board again, it could be a long process with more opposition expressed, and said he would prefer submitting a letter to the Planner notifying her of a proposed change in the location of the picking station. Mr. Zelmanow read from the minutes of October 6, 2008, that if the picking station needs to be moved, the owner would consult with the Planning Director, which means that the Planner's assessment would be before any action takes place, not after the fact.

A new condition was drafted that "...if the picking station needs to be moved on the site, the applicant shall notify the Planning Director, confer with the Planning Director as to the visual impact of the new location of the picking station, and if the Planning Director deems the visual impact to be a problem with the view shed, then the applicant shall come back to the Planning Board for site plan amendment."

The Board also discussed the issue of maintenance of the privacy screen. Mr. Poirier read from the Code that "Fencing and screening shall be durable and properly maintained at all times by the owner," which gives the Code Enforcement Officer the authority to deal with the issue. The Board crafted a new condition of approval #7 that "...if it is determined by the Code Enforcement Officer that the effectiveness of the visual screen has been compromised, the visual screen shall immediately be repaired."

PUBLIC COMMENT PERIOD OPENED: None offered.
PUBLIC COMMENT PERIOD ENDED.

Thomas Hughes MOVED and Thomas Fickett SECONDED a motion to grant approval of the applicant's proposal to locate a mobile conveyor picking station as well as proposed buffer improvements at Plan-It Recycling & Transfer on lot Map 12 Lot 26.001 with conditions of approval as posted prior to the meeting, modified tonight and discussed with the applicant. Motion CARRIED, 6 ayes (Michael Parker absent). [7:55 p.m.]

Break to 8:05 p.m.

Mr. Boyce asked that he be recused from participation in the next item as he is an employee of Hannaford Brothers, an abutter to the project.

Thomas Fickett MOVED and Mark Stelmack SECONDED a motion to recuse Mr. Boyce. Motion CARRIED, 5 ayes (Michael Parker absent, Douglas Boyce abstaining). [7:56 p.m.]

6. PUBLIC HEARING:

MAJOR SITE PLAN – BY JED ASSETS, LLC (aka David Douin) – 8 ELM STREET

A request for approval of a proposed commercial office development at 8 Elm Street, zoned Urban Commercial, Map 102 / Lot 161.

Ms. Robie noted that the application also falls under the Village Center standards section of the Code.

David Douin, applicant, described the site plan as changing a two-story single family residence building to a commercial site. He said that during the site walk held before the meeting, Bill McKenney of Hannaford provided some suggestions to improve the site. Mr. Douin noted that achieving the required number of parking spaces on the site has been a challenge. He said that according to the Code's square footage requirement, 9 parking spaces would be required, only 6 can be accommodated, and therefore he is requesting a waiver. At Ms. Robie's request, Mr. Douin described the site and pointed out various features such as the two-story building now on the parcel, with a smaller building to be built on the front of the parcel, a one-way entry and a one-way exit, 4 perpendicular parking places at the front of the building, and two parallel spaces on the front of the lot. He said that there is a right of way with Hannaford on the northern boundary line that he wishes to use as part of the driveway.

Ms. Robie asked Mr. Douin to explain how a building came to be built in that location, in the Village District, for a commercial building. Mr. Douin said it was a replacement of an existing building, as he received permission from the Zoning Board of Appeals to replace and expand the two non-conforming structures on the site in August of 2007. He said that the initial purpose of the building was for a 5-space parking garage, having been backed into that scenario because once the building was removed there was a 10-foot setback that had to be observed. However, he decided that the building should be the only building on site, with the original building being torn down because it was too expensive to rehab. Mr. Douin confirmed to Ms. Robie that at no time during the evolution of the project was there an official site plan. Mr. Douin said that while he was told he needed a site plan, he was waiting for a decision from Hannaford Brothers to use its entry road, having made that request in mid-2007. He said they did not get a decision from Hannaford until Thanksgiving of 2007, and during that time, knowing he needed covered parking, he requested permission to build a residential garage, and he believed everyone knew he wanted to develop a commercial property. Mr. Douin said he met with various departments, including Planning and Code, and he thought he was advised that it was a reasonable approach to get something started in the fall while awaiting a response from Hannaford. He said they could not complete a site plan application without knowing where the entry and exit would be, so they started construction on the project.

Mr. Hughes asked about the fence and trees that had been taken down, if they had been on Hannaford's property. Mr. Douin replied the trees and the fence were on Hannaford's property, and said he has spent some time with Bill McKenney of Hannaford about replacing the fence, not necessarily the same type of stockade fence but perhaps something, in his opinion, more attractive. Mr. Hughes commented that the Fire Chief would like to see a walkway from the exit on that side of the building which would require a gate of some kind in the fencing. Mr. Douin said that the intent of the door was for aesthetic purposes only, to make the building look attractive from that side, and was not intended to serve as an exit.

Mr. Poirier gave the staff comments, noting that the applicant received Board of Appeals permission to replace and expand the two non-conforming structures on the site in August of 2007, which allowed him to rebuild the structure at rear property line as a garage. The applicant then decided that rather than rehab the residential building at the front of the lot, he would remove it and convert the garage to commercial office space and obtained a demolition permit allowing him to remove the residential structure. Mr. Douin is now seeking approval to convert the garage to commercial office space. The applicant has completed the exterior construction of the rear building on the site which he is proposing to convert to [or finish off as] a three-unit office building. An accessory building with three storage units is proposed for construction at the front of the lot on Elm Street for use by the tenants of the office building and to meet the performance standards of the UC district. The lot will be served by a circular driveway with one-way entrance and exit onto Elm Street. The lot will be served by public water and sewer as well as overhead electric and telephone. The site is currently in a state of partial completion because on October 20, 2008 the Code Enforcement Officer advised the applicant via email to stop work and complete the site plan review process. Two weeks later, on October 31, the Planning Office received Mr. Douin's application for site plan review.

Mr. Poirier said that among the points for discussion this evening is the applicant's request for a waiver from the Code's parking requirements. He said the applicant is proposing to construct a 2,136 square foot building, parking standards in Chapter II require 1 space for every 250 square feet, which would require 9 parking spaces. The current plan identifies 6 parking space; therefore, the applicant is asking for a waiver of 3 parking spaces. In the October 31, 2008 submission, the applicant identified his reasons for requesting the waiver.

Mr. Poirier said that the applicant is also proposing a new multi-occupant building, which under the new sign ordinance, would require master sign plan identifying the proposed location and sizes of the signs to be allowed on the site including provisions for how individual business signs will be treated. The master sign plan should demonstrate how the signs on the property will be coordinated in conformance with the requirements of the sign ordinance to create a harmonious visual environment. The plan needs to specify any conditions or limits applied to future signs or how changes in signs will occur in the future. Any changes in signs need to conform to the approved sign plan. The master sign plan may be revised with the approval of the Planning Board. The Planning Board should review the applicant's proposed master sign plan and ensure the plan conforms to the new LUC sign ordinance. Mr. Poirier said that in his November 26, 2008 submission, the applicant asked for approval of the installation of three signs, 8-1/2" by 11", to be located adjacent to the front door; staff has some concerns whether those signs will be visible at that location. He said that the applicant would like to return at some future date with a revised master sign plan.

Mr. Poirier said that the site is subject to the Urban Commercial "village" performance standards, and the applicant's proposal must meet those performance standards, the general performance standards outlined in Chapter II, and the Site Plan approval criteria and standards of Chapter IV, Section IX. The applicant's engineer has provided a written response in the plan submittal for each of the Urban Commercial performance standards and the site plan review criteria. The Planning Board should review the applicant's response to the Urban Commercial Performance Standards for compliance with the LUC and for discussion with the applicant.

Mr. Poirier said that a staff Review Memo dated December 1 has been prepared in response to the applicant's November 26, 2008 submission. He noted that Standard 9 of the Urban Commercial performance standards requires that the front wall of the building will have windows or architectural treatments designed to simulate windows and shall comprise no less than twenty percent of the exterior wall surface; the proposed Elm Street storage shed does not meet that standard. The applicant will be required to revise the front wall so as to meet the performance standard.

Mr. Poirier said that the applicant has just submitted lighting plans, which Mr. Poirier distributed to the Board. He said the applicant has requested that the Board endorse the final plan and have staff review the lighting to ensure that it meets the Urban Commercial standards as well as Chapter II's performance standards. Condition of approval #5 has been added to address this issue: "That the applicant shall submit the required photometric plan for Town staff review and approval prior to the Planning Board's endorsement of the final plan."

Mr. Poirier said that the applicant is proposing improvements to Elm Street of sidewalks and granite curbing and has been in contact with Bob Burns, the Town's Public Works Director, about this proposal. Improvements required in the right of way required an additional performance guarantee, equal to 150% of the construction costs and must be posted prior to the start of construction on the site. Staff has added condition of approval #7 to address the requirement of a performance guarantee.

Referring again to staff's Review Memo of December 1, 2008, Mr. Poirier said that there are some minor changes required such as the rear door, which now appears will be removed from the site plan. The applicant identified as an emergency exit door, but the Fire Chief has notified staff that any door so labeled requires a lighted walkway. This would require the applicant to obtain an easement from Hannaford. During the site review process, Mr. Poirier said it was noted that the storage shed located in the front portion of the site could be moved forward to line up with additional buildings on the street, which is allowed under the Urban Commercial district, which states that "Buildings shall be located on the lot in a manner that reinforces the 'village character.' Where an established village scale setback relationship exists, a new building shall maintain the established relationship." This would allow the storage shed to be moved forward an additional 6 feet to line up with the buildings currently on Elm Street. With that relocation of the shed, it appears that the applicant could construct a garage and increase his parking by 3 or 4 spaces; garages are considered structures, which allow the applicant to move a garage within the front yard setback and also maintain them as a use for parking. If the applicant does not convert that to a garage, he cannot use the front 25 feet of the site as parking.

Mr. Poirier spoke about the review memo submitted by the Code Enforcement Officer concerning the granite step that accommodates the rear emergency exit door, in which Mr. Cushman stated that "A substantial portion of the granite step appears to be on Hannaford property. Applicant should present an easement or other acknowledgement from Hannaford authorizing such placement of the step."

Mr. Poirier commented about the peer reviewer's note that "Proposed contours or spot grades should be provided along the proposed Elm Street sidewalk, ramps, and curb line. Without this information, it is not clear that the intended drainage pattern can be achieved. The existing street elevation is approximately 209, which would put the top of curb at 209.5, making the slope between the curb and the storage building 0%. The sidewalk should be sloped to allow positive drainage away from the walkway and to minimize ponding/icing."

Ms. Robie thanked the Planning staff for doing the best they could with an application that they have had only since the first of November. She said this is very difficult because there are so many loose ends, it is hard to know where to start. She asked for the Board's thoughts about the application of the ordinance with regard to the building that is being erected at the front of the lot, basically because a site plan has not been proposed, which would never have allowed the main building to be positioned against the back of the lot in the "village" standards. She said that the applicant must put a building on the front of the lot so there can be parking on site that does not violate "village" standards. She said there is a building lined up with the rest of the buildings on Elm Street, which is what the "village" standards call for, but because the parking standards, which are not specific to the "village" standards, say that there cannot be any parking in the 25 foot front yard setback, there are 6 feet of "no man's land" between the front building and the parking. In her opinion,

the fact that there is a building there “trumps” the 25-foot parking setback requirement and makes imposing it not possible. She asked for other Board members’ views.

Mr. Hughes concurred, saying that with the building there it is common sense to use the 6 feet to pick up another 2 parking spaces, making the applicant’s request for a waiver for only 1 parking space. Mr. Stelmack said he agrees with Ms. Robie’s rationale, but asked for the reasons behind it. Ms. Robie said the building is required to meet the Code because under the “village” standards overlay, there can be no parking in the front yard, or in the space between the foundation of the building and the road, which means with the building the applicant has, there can be no parking in that entire area, unless there is another building between that building and the road. The Code Officer has said it must be a building and can line up with the other buildings on the street. Mr. Stelmack asked if the applicant has decided to change the storage shed into a garage. Mr. Douin said they were hoping not to have to put in a building at all because of costs, but clearly the building has to go in, so they worked with the Code Enforcement folks to come up with the building they have proposed today. He said the cost of that building would be quite steep, and a complete garage would probably double the cost.

Ms. Fossum noted that the reason the ordinance encourages the buildings to line up is to maintain the “street wall.” The buildings in an urban or village area come closer to the sidewalk to make it more pedestrian friendly, and the parking is supposed to be located to the rear. What happened in this instance is that the building was built at the rear of the lot, so the front wall of that building is back further, and to compensate, the applicant has proposed an 8 by 24 foot long storage shed at the front of the lot, with the parking located behind it. That establishes the front setback. Ms. Robie said that is her argument for not imposing the 25-foot parking setback.

Ms. Robie asked again for Board comments about the use of the 6-foot area. Mr. Hughes said he would have no problem with the applicant using it to secure more parking spaces. Mr. Fickett said he does not believe it meets the Code, and he would turn it down. Mr. Zelmanow said he does not like the way the plan is presented as the Code intended that the primary structure be placed at the front of the lot, that the 8 by 24 foot building looks like a way to subvert the ordinance to get the parking in. He would want to hear more before turning the application down. Mr. Stelmack said some sort of compromise should be permitted with the development and noted that the Zoning Board of Appeals had approved an entirely different concept than that being presented. He said that the proposed scenario seems to be the only way to move the application forward. Ms. Robie said she concurs with Mr. Hughes and Mr. Stelmack, and said she shares Mr. Stelmack’s view that if the plan is turned down, it will be very costly to the applicant and the site will not be utilized. Moreover, she said that the Code Enforcement Officer has said that the 8 by 24-foot building meets the requirements of the Code. She said that the Board can move forward allowing 8 parking spaces on the plan.

Mr. Stelmack noted omissions on the plan such as the lack of comments from the Fire Chief, the drainage and erosion control issues, elevation issues mentioned by the reviewing engineer, and as a result he does not see that the application can be approved this evening. Mr. Zelmanow added lighting to Mr. Stelmack’s list, saying there is not enough information to determine if the lighting meets the performance standards of the Code. Mr. Hughes confirmed with Mr. Poirier that the utilities will be underground.

PUBLIC COMMENT PERIOD OPENED: Bill McKenney, representing Hannaford Brothers, came to the podium and presented the Board with a concept plan sketch based on the applicant’s plan that works for Hannaford. Mr. McKenney said that one of Hannaford’s concerns involves the existing right of way straddling the property boundary between the Hannaford parcel and the applicant’s parcel; 5 feet encumbers the applicant’s parcel, providing Hannaford access, and 5 feet encumbers the Hannaford parcel and benefits the applicant. The intent behind that 10 foot right of way was to provide a driveway to the two residences, one that used to be on the applicant’s parcel, and a second to another residence that is no longer there. He

said that Hannaford will work with the applicant to get rid of the right of way; they will give up their rights to his land if he is willing to give up his rights to Hannaford's land. Instead, Mr. McKenney proposes to move the edge of Mr. Douin's drive on to his property. This plan reduces the amount of impervious area, and adds one more parking stall, which is accomplished by realigning the two parallel parking spaces to three spaces head in and not putting in the building at the front of the site. There would still be a 12-foot buffer between the parking and the street, which could be planted out with landscaping. He said the way the plan is configured now, the parking along the building is just 3 feet off the face of the building, which is quite close, and from an aesthetic standpoint, the parking could be shifted away from the building so there is 10 feet instead, giving room for a sidewalk and more landscaping.

Mr. McKenney said that Hannaford is concerned about the proximity of the applicant's building to the property line and having a door there. He said Hannaford would like to see the fence reinstalled along the property line, which was one of the conditions of Hannaford's site plan review when the store was approved. He said the applicant is concerned about the height of the fence blocking his building, Hannaford is agreeable to having the fence lower, and indicated that Ms. Fossum is willing to work with Hannaford to allow a de minimis change to their site place so that Hannaford maintains its compliance with their site plan review.

In response to a query from Ms. Robie, Mr. McKenney suggested that perhaps some sort of ornamental structure could be built at the front of the site, such as a pergola. He said that typically when site plan review is done, the building and parking are designed to work with Code; in this case, the building is a certain size so there isn't enough parking. So perhaps the use of the building could be limited to accommodate what the available parking can support. He suggested that perhaps the garage building can be moved even closer to the street line, still on the applicant's property. Ms. Robie noted that the Board does not have much ability to change the concept as the Code Officer has indicated what kind of building he will accept. Mr. McKenney agreed with Ms. Robie's earlier opinion that occasionally there are conflicts in the ordinance, and that the Board has the discretion to resolve those conflicts on a case by case basis to decide what is better for a particular site.

Ms. Robie confirmed with Mr. McKenney that he positioned the light poles on the revised plan at the back of the lot, not having seen any on the plan. He said he did not want to place the poles too close to the building, and it would be of benefit to have the lights in the middle of the parking area on either side to provide even illumination.

Thomas Ellsworth, Gorham Economic Development Corporation, said that while he came to the meeting intending to urge the Board to approve the application, he now believes that that might not be possible. He said he believes that what Mr. Douin has done with the property is in keeping with the Village character and will end up eventually being a good project. He said he thinks he heard that the building was built without site plan approval, yet as he understands the project, after only attending two meetings which started last week, the building was done in an approved fashion through the Zoning Board of Appeals. He said he does not believe that Mr. Douin has done anything incorrectly or stealthily. Mr. Ellsworth said that in a meeting with the Town Manager and Mr. Douin, there was no criticism of the Planning Staff. Mr. Ellsworth said he is confused about not having the Fire Chief's comments being a reason to withhold approval, that the Fire Chief attended the meeting held last week, and that he believed the Fire Chief seemed fine with everything he was hearing and he heard nothing from the Chief that would prevent this project from going forward.

Ms. Robie responded to Mr. Ellsworth saying that what was approved by the ZBA was a building that was intended for parking. She said that what it turned into was a commercial building, it would never have been approved as a commercial building by anyone. Mr. Ellsworth said that things have changed along the course of the project, but he does not believe Mr. Douin was being subversive or underhanded.

Ms. Robie said the Board has about half the information it would usually have to approve an application, and she is feeling pressure to approve the project.

Lisa Lozier, David Douin's wife and part of JED Assets, said that her husband has worked diligently with the Planning staff and kept them apprised of all of his changes. She asked the Board to consider a conditional permit and reiterated that her husband has worked diligently with staff. She said the delay in approval is becoming an economic hardship.

PUBLIC COMMENT PERIOD ENDED. [9:10 p.m.]

Mr. Stelmack asked about buffering between the applicant's property and the abutter. Mr. Douin said they will do whatever is necessary to put up a fence or landscaping, and his relation with that abutter has been amicable. Ms. Robie suggested that using a shared driveway with that abutter might provide more space for parking. Ms. Fossum said that cross easements would be required; Mr. Hughes pointed out that there would be a problem as that section is proposed to be one way out.

Mr. Douin explained his purpose for the site as always being commercial, that he could not prepare a site plan until he had heard from Hannaford about using their entry way, asserted that groundbreaking began with the implicit approval from the Town once he had ZBA approval, that at no time did he try to circumvent the process but only wanted to be proactive in the process. Ms. Robie noted that when the building at the back of the lot shifted from a parking building, which was the appropriate place for parking, to a building the difficulties with the site began. Mr. Douin said that when he presented the concept of demolishing the old building and building a new one, everyone liked the idea, and he thought that Mr. Poirier's advice about not meeting the parking standards for the site was wacky and believed he could park there anyway. However, at this time he knows that the building at the front of the lot is necessary to accommodate parking. He said he has taken all the feedback he has received and has done everything he believes to be reasonable.

Mr. Hughes said he cannot recall the Board ever turning down a commercial application, but one thing that has often helped the review process is a workshop. He said he has not heard any comments accusing Mr. Douin of doing anything underhanded or stealthy. Mr. Stelmack agreed with Mr. Hughes's idea of a workshop, commenting that there are issues that would be better discussed in that forum rather than tonight.

Mr. Poirier responded to Mr. Ellsworth's remarks about not having comments from the Fire Chief by saying that the Chief did submit comments dated November 19, but there have been no comments as yet on the latest proposal which was submitted the day before Thanksgiving. Ms. Fossum said that the Chief is looking at the emergency door which appeared on those latest plans, and with the holiday on Thursday and Friday of last week, he would have only received the plans today.

Ms. Fossum said that any time staff has met with Mr. Douin he has been encouraged to submit his site plan, and even with that encouragement, he went forward and made some of the changes to the site without submitting a site plan. She said she met with Mr. Douin some time ago and saw a very different site plan that incorporated the original building, which would have worked within the constraints of the ordinance. There have been numerous meetings with the Code office, and occasionally the Planning staff has been asked to comment on a piece of what was being designed, but until October 31, staff has not actually seen a site plan submitted. Until the entire picture is submitted in a site plan, it is very difficult to see some of the issues involved. A plan was received on October 31 and another on November 26, and the outside review engineer came in today expressly to provide comments on the November 26 plan for the Board's meeting this evening.

Ms. Robie asked for the Board's decision on whether or not to approve the request for a parking waiver from 9 to 6 spaces. She said a rationale for that waiver request can be based on the fact that there is one on-street parking space in front of this parcel but it is not painted in as the others are on the street, so someone needs to

check with the Public Works Director to see if Public Works would paint it in. She said that the Board can grant parking waivers within the Village as there are parking areas available, even though a certain amount of walking might be required if a car were left in one of these areas. Mr. Hughes said he would be agreeable to granting a waiver of the 9 spaces to 6. Mr. Zelmanow said he would be agreeable if there were 3 other spaces available within 200 feet on the street. Mr. Stelmack said he is also agreeable with the waiver for the reasons that have been given. Mr. Fickett also concurred.

Ms. Robie said that the Board cannot condition the engineering requirements such as the stormwater. She asked the applicant if he would be satisfied if the building is accepted and the 6 parking spaces by allowing the waiver; if he is satisfied, that would eliminate the need for a workshop. Mr. Douin asked if there would be any objections to perpendicular parking behind the front building. Ms. Robie said that the Board would approve a waiver from 9 to 6 parking spaces; Mr. Douin expressed satisfaction with the Board's action in that regard and said he did not believe a workshop is necessary. Mr. Douin said he believed that his application can be ready to be heard again by the Board in time for a meeting on December 15.

Ms. Robie asked for the Board's feelings about using the 6 feet for parking. Mr. Zelmanow and Ms. Robie discussed the parking conflicts in the Code. Ultimately Mr. Zelmanow and Mr. Fickett said they would vote against using the 6-foot area.

Thomas Hughes MOVED and Mark Stelmack SECONDED a motion to allow the 6 feet behind the building fronting the street to be used as parking.

Discussion: Mr. Stelmack suggested amending the motion to include "because the presence of the proposed storage building necessitates the use of the otherwise prohibited area for parking in order to meet the standards." Ms. Robie suggested amending the motion by saying "to allow the 6 feet behind the storage building to be used for parking because the proposed building creates a front yard that will not be used for parking next to the street." Mr. Stelmack adopted Ms. Robie's suggestion as his amendment to the motion. The Movant accepted the suggestion and the Motion was amended accordingly: **...to allow the 6 feet behind the storage building to be used for parking because the proposed building creates a front yard that will not be used for parking next to the street.**

Motion CARRIED, 3 ayes (Susan Robie, Thomas Hughes, Mark Stelmack), 2 nays (Thomas Fickett and Edward Zelmanow), (Michael Parker absent, Douglas Boyce abstaining). [9:42]

Mark Stelmack MOVED and Thomas Hughes SECONDED a motion to grant the request for a parking waiver to reduce the number of parking spaces from 9 to 6 spaces because the Board has determined the situations outlined in Chapter II, Section II, A, 8) have been met. Motion CARRIED, 5 ayes (Michael Parker absent; Douglas Boyce abstaining). [9:43 p.m.]

Mr. Douin asked Ms. Fossum if it would be possible to have another meeting early next week in order to make sure that all of the outstanding issues are properly addressed before returning before the Board and was assured that it would be possible.

Thomas Fickett MOVED and Edward Zelmanow SECONDED a motion to postpone the final vote on this item until December 15, 2008. Motion CARRIED, 5 ayes (Michael Parker absent, Douglas Boyce abstaining). [9:49 p.m.]

Mr. Boyce returned to the dais.

Thomas Hughes MOVED and Mark Stelmack SECONDED a motion to waive the 10:00 o'clock rule. Motion CARRIED, 6 ayes (Michael Parker absent). [9:50 p.m.]

7. MAJOR SITE PLAN – BY CENTRAL MAINE POWER – OFF STRAW ROAD

Discussion on a proposal to expand the South Gorham Substation to accommodate a new auto-transformer and an addition to the existing control house. Zoned Rural, Map 4 / Lot 10 and Map 18 / Lots 1 & 12

Steve Harding of OEST Associates appeared on behalf of the applicant and introduced Samantha Perkins of OEST Associates and Jim Begin, project manager from Central Maine Power. Mr. Harding said that CMP is looking to expand the existing substation facilities to address certain system reliability needs identified by system reliability studies in the system. The proposal is to double the size of the current substation currently located on 4.7 acres to 9.3 acres, with a new auto-transformer, an addition to the existing control house, construction of a new leach field, and upgrades to the 345kV transmission lines. It will be expanded 139 feet to the northeast, 133 feet to the north, and 183 feet to the west. The existing control house of 1600 square feet will be expanded by another 2400 square feet in the back. Mr. Harding pointed out wetlands that will be impacted of some 45,000 square feet, requiring a permit from the DEP for a Natural Resource Protection Act permit and the US Army Corps of Engineers. He noted that if the wetland impacts can be justified to meet the goals of the project, it may be possible to mitigate the impact by participating in the “in lieu fee” compensation program whereby the compensation is used to purchase larger tracts of land to set aside. Army Corps approval has been secured, and it is anticipated that DEP will approve the project as well. A DEP Site Location of Development amendment to the existing permit is necessary to accommodate these changes. Mr. Harding said a noise study to the Town’s standards and the DEP’s standards has been done on site to account for the auto-transformer. He said that the lighting plan is going through a revision, but basically it would involve lighting over the doors of the control house and down shielded lighting on the facility. There is an existing well on site which provides water to the bathroom in the existing control house and the current leach field is located in the footprint of an area into which they want to expand, so they will create another leach field area, designed by Al Frick. He noted that stormwater issues raised by the Town’s review engineer are being dealt with and anticipate submitting a revised package to address those concerns as well as some concerns which the DEP has raised. Mr. Harding said that CMP hopes to begin work in June of 2009 with site work preparation for the auto-transformer, procurement and installation of the auto-transformer is about a 2-year process, and the completed substation should be operational by April of 2010.

Ms. Robie asked if the applicant would consider planting buffer trees between the substation and some of the abutting properties and asked that a landscape architect provide the Board with a proposed plan. A discussion occurred on the intermittent noise every couple of months mentioned by abutters during the site walk, which seemed to be exacerbated by atmospheric conditions on occasion.

Mr. Harding replied to Ms. Robie that they do not plan to replace all of the lights presently on site but the new lights will be full cutoff lights. Ms. Robie and Mr. Stelmack said they believe all the lights should be full cutoff unless it is an unreasonable request; Mr. Harding said he will check that with CMP.

Jim Begin, CMP project manager, said they are changing the controllers so that they all work the same. They are working on a lighting plan to develop new criteria. He said that the issue on the site walk was more to do with the light being left on, which may have been on a motion detector. He said there is a dusk-to-dawn light over the door, there are maintenance lights that will have automatic controls, dusk-to-dawn if necessary. If there is intrusion at the substation, they would like to have a motion sensor that would turn the lights on. Ms. Robie asked what criteria will be used for the security lights. Mr. Begin discussed the issues involved in establishing security through the use of motion detectors.

Mr. Stelmack and Mr. Harding discussed the modeling used in the noise study. In response to a question from Ms. Robie, Mr. Boyce stated he believes that the noise study that has been done is adequate and no peer review is necessary. The rest of the Board concurred. [10:30 p.m.]

8. SUBDIVISION APPLICATION – BLUEBERRY RIDGE -- BY BLUEBERRY FIELDS, LLC (aka Joffe/Colpitts) – off Finn Parker Road

Discussion on a revised plan for a proposed residential subdivision with 22 lots in Gorham, Zoned Rural, Map 54 / Lot 4, and 7 additional lots in Buxton.

Bill Thompson, BH2M Engineers, presented the Board with a revised 22 lot conventional subdivision plan as well as a revised 22 lot clustered subdivision plan, which seems to address the question of isolated land. The revised subdivision plan shows some additional changes from the plans reviewed in October, which include the relocated entrance onto Finn Parker Road, the revised road layouts, the proposed right-of-way connection to Daisy Lane as well as the right-of-way continuation to the Reynolds property. Mr. Thompson said there will be 40 acres of open space, 700 feet less road, and the entrance has been moved 400 feet with a curvilinear road. He said that the Buxton Planning Board has held two meetings on the project, November 10 and November 24, and has held a site walk.

Mr. Thompson told Ms. Robie that discussions are still continuing about snow plowing. He told Mr. Zelmanow that there are no provisions for sidewalks. He responded to Mr. Poirier that the plan has not yet been submitted to DEP.

Ms. Fossum said that staff is comfortable with the treatment of the “isolated” land on lot 19 in the conventional plan.

Mr. Stelmack said he likes the new cluster plan, as did Mr. Boyce and Ms. Robie.

9. SCHEDULE OPTIONAL MEETING – December 15, 2008.

10. ADJOURNMENT

Douglas Boyce MOVED and Mark Stelmack SECONDED a motion to adjourn. Motion CARRIED, 6 ayes (Michael Parker absent). [10:40 p.m.]

Respectfully submitted,

Barbara C. Skinner, Clerk of the Board
_____, 2008

5. Site Plan Amendment -- Plan-It Recycling & Transfer -- By CLRS Properties, LLC, Ron Smalley.

Approved
Conditions of Approval:

1. That this approval is dependent upon, and limited to, the proposals and plans contained in this application and supporting documents submitted and affirmed by the applicant and that any variation from the plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for de minimus changes which the Director of Planning may approve;
2. That the applicant is responsible for obtaining all local, state and federal permits required for the development of this project;
3. That all construction and site alterations shall be done in accordance with the "Maine Erosion and Sediment Control Handbook: Best Management Practices," Department of Environmental Protection, latest edition;
4. That the applicant shall add the proposed additional plantings recommended by Terrence J. DeWan & Associates to the final plan prior to the Planning Board's endorsement of the final plan;
5. That the visual screen shown on the approved plan shall be completed within 90 days of the Planning Board's approval of the final plan and the additional landscaping proposed by Terrence J. DeWan & Associates Landscape Architects & Planners shall be installed by June 15, 2008;
6. That all other applicable conditions of approval attached to the site plan approvals shall remain fully in effect;
7. That if it is determined by the Code Enforcement Officer that the effectiveness of the visual screen has been compromised, the visual screen shall immediately be repaired;
8. That prior to the commencement of any site improvements and/or earth-moving activities, representatives of the applicant and site contractor, shall arrange for a pre-construction meeting with staff members to review the proposed commencement date of the project, the overall schedule of improvements, conditions of approval, and site plan requirements;
9. That a complete set of the final approved plan set will be delivered to planning office to be distributed to: (1) Code Office, (2) Public Works Director, (3) Inspecting Engineer, and (4) Director of Planning;
10. That if the picking station needs to be moved on the site, the applicant shall notify the Planning Director, confer with the Planning Director as to the visual impact of the new location of the picking station, and if the Planning Director deems the visual impact to be a problem with the view shed, then the applicant shall come back to the Planning Board for site plan amendment; and
11. That the conditions of approval shall be recorded at the Cumberland County Registry of Deeds within thirty (30) days of the Planning Board's endorsement of the final plan, and a dated copy of the recorded Decision Document shall be returned to the Town Planner prior to the issuance of any building permits or commencement of any improvements on the site.