

**MINUTES
CHARLESTOWN PLANNING BOARD
JULY 19, 2011**

Members Present: Robert Frizzell (Chair); Sharon Francis (Vice-Chair); Andy Jellie, Roger Thibodeau, Rosie Smith-Hull, Pat Royce

Alternate Present: Doug Ring – Ex-Officio Alternate, James Jenkins

Staff Present: David Edkins – Planning & Zoning Administrator
Regina Borden – Recording Secretary

CALL TO ORDER & SEATING OF ALTERNATES: Mr. Frizzell called the meeting to order at 7:12 PM. He noted that ex-officio alternate Doug Ring is sitting for regular ex-officio member Steve Neill. All regular members were present therefore there was no need to seat alternates. He advised that meetings are tape recorded and asked anyone wishing to speak to identify themselves for the record.

APPROVAL OF MINUTES OF JULY 5, 2011:

Mr. Jellie moved to approve the Minutes of the July 5, 2011 meeting as printed. Mrs. Smith-Hull seconded the motion. With seven members in favor, the motion was approved.

REHEARING – ROSE BURNS (OWNER) & JOHN BURNS (APPLICANT) d/b/a COLD RIVER CYCLES – Motorsports Parts & Service Business w/ Retail Showroom in Existing Building – 26 Sullivan Street – Map 118, Lot 94 – Zones B (Business) & E (Mixed Use): Mr. Jellie stepped off the Planning Board (PB) due to a potential conflict of interest. Mr. Frizzell asked Mr. Jenkins to sit in his place.

Mr. Frizzell felt the first issue to be determined is if the PB considers this application to be a Major or Minor Site Plan.

Mrs. Francis moved that this application be considered as a Minor Site Plan rather than Major as the degree of change of use of that property is not so significant as to trigger a Major Site Plan and there is not that much more traffic. Mrs. Royce seconded the motion. With seven members in favor, the motion was approved.

The second issue is that of completeness of the application as submitted. Mrs. Francis advised that the PB did not determine if the previous Site Plan was complete, as the approval included some conditions – one of which was the submittal of a survey. What would help the PB at this time is for the applicant to present the survey and to indicate if it addresses the requirements for a complete Site Plan.

Mr. Collins, business partner of the applicant, confirmed that the PB had already received a copy of the survey. He had a new version of the survey that shows their snow removal plan and

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parking spaces marked on it. Mr. Travis Royce, who assisted Mr. Bruno with the survey, measured out the parking spaces and they are to scale on this new version of the survey. (A copy of the new version was given to the PB.) In his appeal, Mr. Poisson brought up the issues of the snow storage and the parking. Mr. Collins had a signed letter from Tammy Houghton, an abutter, dated July 11, 2011, that he read which gives “John Burns and David Collins (CRCLLC) permission to use her property for storage of snow in winters that warrant the need”. (A copy is attached to the Minutes). He also read their “Snow Removal Plan” (a copy is attached to the Minutes).

Mr. Collins read a letter requesting that the PB waive the strict access and egress requirements contained in Section 5.7.7 of the Site Plan Review Regulations as this commercial building would be rendered “valueless” without such a Waiver.

Mrs. Francis asked Travis Royce to walk the PB through what he found in doing the survey. The PB is interested in the boundary with Ms. Aiken, the border of the right-of-way over Mr. Poisson’s property and the shape of the parking spaces in front of the building. Mr. Royce explained that the basic concept is that he had information, researched all the properties from Main Street to Cummings Avenue to Sullivan Street and established the east line of both Ms. Aiken and the applicant. John Bruno is the surveyor and is also here. At one time these two properties and Mr. Poisson’s were one lot until the early 1950s. There is a lot of missing information. They established the easterly line of the original three properties when they were one. The first piece to come out was the Aiken parcel. They indicated, by a dashed line going through the Burns building, the original lot line around 1951. After that Bemis purchased this property. A few years later he purchased the southerly (now Aiken) property as he wanted to add onto his workshop. After a few years he sold off the southerly parcel retaining 20-feet on the south side of the Burns property.

Relative to the parking, Mr. Royce located the painted lines. The northwesterly corner of the building is closer to Sullivan Street; from the corner of the building to the edge of the Sullivan Street right-of-way it is almost 19-feet and about 21-feet on the other end. Mrs. Francis thought that the right-of-way to the Aiken property does not appear to correspond with the building line. Does the long narrow strip (triangle) adjacent to the driveway belong to Mr. Poisson? Mr. Royce said it does belong to Mr. Poisson; the property line is the darkest line on the survey. Mrs. Francis noted that there is a right-of-way; Mr. Royce said a right-of-way is called for in the deeds but no specific dimensions are given. The right-of-way shown corresponds with the driveway that is there. Mr. Collins mentioned that Mr. Poisson has a marker about 2-feet from the building; it appears that it is at the property line but it is under the over-hang.

Mrs. Francis noted that they do not have the hours of operation or their lighting plan. Mr. Edkins stated that the hours of operation were submitted with the original application. Mr. Collins will address the lighting with the Sign Permit application. They are not adding any exterior lights to the building. Mrs. Royce would like to have Tammy Houghton provide a formal easement rather than just a letter for the snow storage. Mr. Collins confirmed that if they cannot obtain an easement they will truck the snow out as indicated in their plan.

Mrs. Francis moved that the Planning Board accept the application as complete based upon the survey, dated July 19, 2011, which delineates parking spaces, snow storage, augmented by the hours of operation as indicated in the Site Plan application and an easement letter for snow storage at the abutter's property. Mrs. Royce seconded the motion. With seven members in favor, the motion was approved.

Parking: Mr. Frizzell recognized Attorney Carl Hanson, who is representing Fred Poisson, and invited him to speak. Attorney Hanson wanted to draw attention to Police Chief Ed Smith's letter about the parking on this lot as the PB needs to be aware of those safety concerns when backing out into Sullivan Street. When he measured the drawing he saw 16-feet between the edge of the building as shown on the plan and the edge of the right-of-way on the westerly portion of the lot. He doesn't feel that the 18-foot parking space requirement can be met on the westerly side of the building. Vehicles will stick out into the right-of-way where pedestrians walk. Eventually you get 18-feet but there are three doors and they need space to open them for access. He does not see how they can get six parking spaces. The parking regulations are established for the safety of pedestrians and roadway. In addition, there are regulations for loading, unloading and deliveries. They do not have adequate space for this. Motorcycles will be delivered and picked-up. At this point the Town has the opportunity to make the Town safer and they should take Chief Smith's recommendations under advisement. There are two residential apartments and they require two parking spaces per unit. Based on seven parking spaces this would provide three for the motorcycle business and their employees.

Mr. Royce commented on the distance between the building and the right-of-way; perhaps the over-hang area was not used to measure the distance so that is a discrepancy, Mr. Collins stated that the 8th parking space was not marked on the drawing as Ms. Houghton owns a small piece of that area. One of the tenants parks in the 8th spot. Mr. Frizzell would like to have another easement for the use of that space. He mentioned that they figured there should be one parking space for the small apartment and two for the other tenants during the site visit. Mr. Thibodeau felt they should have to provide parking spaces for the employees.

There were some comments by board members that there was no room on the lot for more parking spaces and that other properties in town had the same situation which requires people to back out onto the street or find parking on the street. One member said it had worked when it was a pet store earlier. Mr. Collins said he could park elsewhere and lives nearby anyway. Mrs. Francis felt Attorney Hanson added useful information regarding deliveries and bringing in motorcycles to be worked on. This is a tight situation and she is uncomfortable with the parking area. Mr. Collins said they could pull into the right-of-way for loading and unloading. If deliveries are a problem they could have UPS make all deliveries at their other store in Alstead. Mr. Poisson stated that they cannot block the right-of-way. UPS is a minor issue. Mr. Poisson said they have laid out 7-or-possibly-8 parking spaces which are not realistic. There are posts from the over-hang; it looks different on paper than when vehicles are parked there.

Aare Ilves noted that there are two lines on the plan showing the edge of pavement and the edge of the Sullivan Street right-of-way and asked what the distance between them is. Mr. Royce answered about 4-feet; there are pins. Mr. Edkins said it appears to be about 3-feet.

Mr. Ken Moore stated that he has lived in this neighborhood for 40 years. Big trailer-trucks came in for George Brown; they always got off the street. Mrs. Smith-Hull noted that when Mr. Leonard had the pet store there he always parked east-to-west and under the canopy. Mr. Edkins mentioned that the Town regulations require 9 feet X 18 feet for a parking space. Attorney Hanson said they do not show where the door swings are. If they are 21-feet or less then there is not room for the vehicles. On the westerly boundary there is an existing section of concrete, so what is the purpose of that pin? Is there any reason why it was set-back further than the right-of-way? Mr. Thibodeau said there is a line painted three-feet from the wall; it is in the Minutes that they put a barricade there to show the 3 doors. Mr. Collins noted that these barricades have been acquired and will be put in place when they are open. Mr. Travis, in response to a question, said he measured the parking spaces between the seven painted lines for his survey and they are basically 9 feet x 18 feet, plus or minus a few inches, which also took into account the door swing which was one of the earlier conditions of approval.

Mr. Poisson and Mr. Edkins discussed some old Deeds to this property that refer to a walkway along Sullivan Street. It was lost in the last 50-or-60 years but there was a walkway in the old Deeds. He would like to see the Town retain that. Why give away the only place for a sidewalk? Mr. Bruno stated he does not believe there is a Deed that conveys that strip (for a sidewalk) to the Town. Mr. Poisson does not agree with Mr. Bruno. He spoke to another attorney that determined Sullivan Street to be 3-rod road.

Mrs. Francis commented that Planning Board's job is to insure the safety and welfare of the residents of this Town and to give all applications a fair review. Mr. Jenkins mentioned that the applicant only has so many parking spaces available and if that is not adequate he won't be in business; it is tight.

Ms. Debra Walker is a tenant of the property. She stated that all the PB members were there for the site visit, all the spaces were filled except for one. They indicated they had no problems with backing out of the parking spaces. The individual that has the store across the street said they are welcome to park in his area and they could load and unload there.

Mr. Raymond Hull felt they should go way back to the old maps and find out where the pegs are. Mr. Frizzell responded that they already have a survey from a licensed surveyor.

Mr. Phil Shaw mentioned that at one time there was a sidewalk on Sullivan Street. You can still see the remains of it there. Did that belong to the Town and, if so, was it officially thrown-up? Mr. Frizzell said the surveyor did not find any evidence of a sidewalk.

Mr. Poisson stated that he has another survey by the same surveyor but it shows some differences as his survey has pins missing compared to this new survey.

Mr. Royce was asked to respond about the differences and he described how he and Mr. Bruno had determined the width of Sullivan Street for this new survey. He was directed to the Department of Transportation (DOT) who directed him to the state archives. From the 1700s the documents clearly reference the road to Claremont as being two-rods, so they are certain of its

width. Mr. Poisson said his map doesn't show the second pin by the road. In response to a question, he said his survey has not been recorded. Mr. Frizzell advised that they have to go by the stamped, recorded survey. Mr. Burns stated that in accordance with the conditions of the original approval he did have the property surveyed and the survey was recorded in Newport.

Mr. Edkins asked about the 4-foot distance between the pins on the northwest corner - was the original pin improperly set? Mr. Bruno responded that they do not know where it came from or who it was set by. There is no survey that shows that it was set by anybody. When they took the information from the Deeds and backed in the distances, that pin fit the frontages in a reasonable manner but as a line pin, not necessarily a corner pin, and with the information that was developed on the width of a two-rod road, they extended that line to the edge of the right-of-way line being one-rod off the centerline of Sullivan Street. That pin seems to be more of a line pin rather than a corner pin.

Attorney Adele Fulton asked Mr. Bruno, as a surveyor, if he had to show on his survey that there was an existing pin even if he does not believe it accurately shows the corner of the property? So his survey with the new pin four feet further out identifies what he concluded is the edge of the right-of-way? Mr. Bruno affirmed that is correct. Mr. Collins mentioned that the original pin they are talking about is almost a foot higher than every other pin on the property. Mr. Baker feels it is actually a pipe that is in concrete but it is not a survey pin. Mr. Bruno confirmed that it actually is a pipe that was used to mark a boundary at one time.

Mr. Jenkins stated he would be inclined to grant approval but with seven parking spaces. Mrs. Francis is uncomfortable with the adequacy of space for parking and backing into traffic where there is no extra room on Sullivan Street. Mrs. Smith-Hull asked if they could postpone a decision until the next meeting to allow time to do some more homework on the maps and if they do this does it cancel the rest of this meeting.

Mr. Edkins said they need to hear out the public on the issue and then they can close the Public Hearing and then deliberate among themselves. Attorney Fulton advised that after they close the Public Hearing no new information can come in.

Snow Removal: Mr. Frizzell offered Attorney Hanson an opportunity to speak about snow removal. Attorney Hanson did not see the snow removal plan before tonight. He has the same concerns as with the parking. Trucking it out is not safe. If the applicant can get an easement to store it on the neighbor's property that would be okay but it is not legal to plow it across the street. There isn't a loading facility on the property.

Mr. Frizzell said the previous snow removal plan that Mr. Poisson didn't like was to clean out the right-of-way for the neighbor out back which pushed the snow onto his property; this plan removes the snow entirely from his property. Mr. Poisson agreed and said his concern was that they plowed it out back; last winter it was to the west side on his property which causes problems when he comes out of his driveway. Mr. Burns responded that that was the way the Town plowed and pushed it back but it was not them; the Town pushes it back and piles it higher and higher. Mr. Collins replied that there is enough room to push it next to the fence; they could use the 8th parking space. Attorney Hanson was not sure that this took care of Mr. Poisson's

complaint. In addition, there is a telephone pole in the way of pushing the snow onto Ms. Houghton's property.

Mr. Baker, a tenant, said he takes care of the snow near the telephone pole as he shovels it. Mr. Collins said they also have a snow blower. He felt that if the property belongs to Mr. Poisson, then it is his responsibility to maintain and plow it. He said the business does not need the driveway.

Mr. Ring said he was not comfortable asking another property owner to store snow. If that No. 8 parking space would work, that is how it should be handled. Mr. Jenkins noted that if the Houghton property was sold, they would have to have a new agreement with the new owner. Attorney Hanson said he does not debate that the applicant and the neighbor have the right to clear the snow from the right-of-way in a reasonable manner but storage of snow is the issue. But if the business is not going to use the driveway, then it's irrelevant. But if they will use the back door, then they will use the right-of-way and, if so, it should be included in the Snow Removal plan.

Attorney Fulton noted that this survey shows that the right-of-way has an unspecified width which is next to the boundary line so the applicant has the right of reasonable use of the driveway to make it useful for vehicles as a driveway, which would include snow removal which helps people to get in and out; whatever is necessary to make it useful as a driveway. Mr. Poisson stated that this driveway hugs their building up to Ms. Aiken's porch; the applicants moved it over toward his mobile home so the unspecified width is now about 6-feet further onto his property. Mr. Royce was asked how the survey determined the area shown as the right-of-way, and he responded that it shows the area actually used for the driveway which is evident on the ground. Mrs. Francis said it seems that this applicant should not have the responsibility for clearing the right-of-way nor to plow onto it but the snow should go on their parking space #8. Mr. Poisson advised that he has a snow storage site on his property.

Attorney Hanson said the regulations require 20% area for snow storage. One of the tenants pointed out that part of the parking area by the street is covered in front of the building, so there would only be snow in the uncovered area. Mr. Thibodeau calculated that, if parking space #8 is used for snow storage, it would be approximately 14% of the total parking and driveway area but since some of the parking area is covered, parking space #8 probably is closer to 20% of the remaining parking area.

Mrs. Francis asked the applicant if customers come in about the same frequency through the year or are there fewer in the winter. Mr. Collins noted that it is busiest in May, June and July; there is some business in the winter with snowmobile parts but other than that it is more sporadic.

Mrs. Francis moved to close the Public Hearing. Mr. Jenkins seconded the motion. With all in favor, the Public Hearing was closed at 8:59 PM.

Mr. Frizzell advised that the PB can now deliberate. There will be no more comments from the public.

Parking: Mr. Jenkins is in favor of approving the parking with seven spaces with the provision that the eighth parking space be utilized for snow storage and that the applicants cannot be required to plow the right-of-way.

Waiver: Mr. Edkins mentioned that the PB has a formal request from the applicants to waive the access/egress requirements that were contained in the regulations. Mr. Poisson's motion to the court specifically referenced Section 5.7.7-E which states "Access/Egress to Parking and Loading Facilities: The access/egress to a parking facility shall be clearly marked and signed and said markings/signs maintained year around. One-way entrances shall be 13 to 15 feet wide and two-way, 24 to 28 feet wide. Access/Egress points should be at least 100 feet away from another entrance on the street. Access/egress curb cuts shall be aligned with on-site parking design. Through traffic on fronting streets shall not be significantly impeded or endangered by vehicles entering or leaving the site."

Mr. Edkins read the conditions of the original approval dated May 10, 2011. Mr. Jenkins felt the best way to handle this would be to waive the Section 5.7.7-E in its entirety and add the four original conditions in. Attorney Fulton advised that one of the decisions that the PB should make is whether to incorporate all of the original conditions except the survey as that no longer applies.

Mrs. Smith-Hull asked if it is legal to back out onto Sullivan Street. Police Chief Ed Smith responded that people can legally back into the street as long as they use due caution.

The Planning Board discussed possible items to be included in a motion for approval including waiving Section 5.7.7-E; the four conditions of the original approval except for the survey; snow storage would be in parking space #8 and it will be removed off-site when that space is full; Mrs. Francis noted that they should accept the survey as a part of the Site Plan.

Mr. Edkins mentioned that Attorney Hanson pointed out that Section 5.7.7-L-5 which is the provision that requires that at least 20% of the parking, aisle and driveway areas will be generally required for on-site snow storage. He felt the PB should consider waiving that requirement as well and should have an explanation for waiving those requirements in the record. Based on comments made earlier, he thought one reason expressed was that strict adherence to those requirements would render this property valueless for any use. Mrs. Francis felt that there are lots of commercial uses where there is a customer once or twice a week; so if they do not approve this use it doesn't preclude less intensive uses.

Mr. Jenkins moved that the Planning Board re-affirm the original decision and approve the application with the same conditions contained in the original approval less the survey which has now been provided. These conditions include:

- 1. Parking spaces in front of the three main doors shall be provided with a clear space of not less than 3 feet for access and egress; said space shall be delineated by physical barriers.**
- 2. There shall be no exterior sales, display or storage of merchandise, scrap parts or any other items.**

3. There shall be no organized or sponsored events or gatherings on the site.
4. All hazardous materials generated on the site shall be properly manifested and disposed of in accordance with state and federal law.

This approval specifically incorporates the new snow storage plan requiring that the snow from the parking lot be pushed to the east side of the parking lot in what was previously designated as space #8. The Planning Board specifically waives the strict requirements of Section 5.7.7 – Coordination of Roadways, Streets, Parking, Loading, Recreation and Safety – specifically paragraph E – Access/Egress to Parking and Loading Facilities – for the seven parking spaces and acknowledges that the 14 % of the parking, aisle and driveway areas designated for snow storage is close to the required 20% but given the circumstances including the over-hang it is adequate. The reason for allowing seven parking spaces was that the property would otherwise have little value. This approval incorporates the survey that the applicant has provided and shall be considered Final Approval. Mrs. Royce seconded the motion.

Mr. Frizzell called for a vote and with four members in favor (Mr. Jenkins, Mrs. Royce, Mr. Thibodeau and Mr. Frizzell) and three opposed (Mrs. Smith-Hull, Mrs. Francis and Mr. Ring) the motion was approved by a 4-to-3 vote.

PLANNING & POLICY ISSUES:

Old Claremont Road: Mrs. Smith-Hull asked Mr. Edkins if he had a chance to look into the addition going onto the J.T. Power Wash building. He will check with the Building Inspector to see if they obtained a permit.

ADMINISTRATION & CORRESPONDENCE:

Upper Valley Lake Sunapee Region Planning Commission: A notice was received that the UVLSRPC is planning a possible Fall Planning and Zoning Conference on October 29, 2011. If anyone is interested in attending let Mr. Edkins know. Mrs. Royce and Mrs. Smith-Hull are interested in attending.

Sign Replacement: For many years at the corner of Main and Elm Streets there was a street sign type sign over the Elm Street sign indicating Home Health Care & Community Services. It has disappeared and they would like to replace it. It pre-existed any sign regulations that the Town has. They are proposing to replace it with a larger sign and the logo but that goes beyond what was there. Mr. Edkins will bring this to the attention of the Selectboard during the meeting tomorrow night. There was a consensus of the PB to allow replacement of the original sign with a sign similar in size, color and layout.

Adjournment:

There being no other business, Mrs. Smith-Hull moved to adjourn the meeting. Mrs. Royce seconded the motion. With seven members in favor, the motion was approved. The time was 9:36 PM.

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Respectfully submitted,
Regina Borden, Recording Secretary

Minutes Filed: 7-25-11

(Note: These are unapproved Minutes. Corrections, if necessary, will be found in the Minutes of the August 2, 2011, Planning Board meeting.)