

CONDITIONAL USE REVIEW EXTENDED HOURS

Owner: Giroux Family Trusts – Bernard A., June T., Victor T., and Ramona. 9318 Rt. 116, Hinesburg, Vermont 05461	Applicant: Martin's Foods of South Burlington, Inc. (a Vermont Corporation doing business as Hannaford Supermarkets) PO Box 1000, Portland ME, 04104
Surveyor/Engineer: O'Leary-Burke Associates PLC 1 Corporate Drive, Suite # 1, Essex Jct. VT.	Property Tax Parcel: 20-50-02.100 Commerce Street Extension

BACKGROUND

Per Section 4.3 Site Plan Approval “No commercial or industrial use shall operate outside the hours of 6:00 a.m. to 10:00 p.m. without the conditional use approval of the Development Review Board...”. This section was added in 2002. Previous to that, the Selectboard issued a Policy Governing Hours of Operation in 1996 at the request of the Planning commission. While the language is not the same, it appears to me to cover basically what is now addressed via the Conditional Use Review standards. As a policy it has no real regulatory impact, but can provide background for this review. I have included that document at the end of this report.

This application is for an extension of the operating hours so that they can be open to customers from 6 am to 11 pm, Monday through Saturday, and from 7 am to 10 pm Sunday and, as well, to conduct other operational activities overnight after the store is closed to the public. In this segment of the review process you are only addressing the impacts of the extended hours, not the impacts of the application in general. The applicant has submitted a revision (included in the DRB packet) to the original conditional use application that more specifically addressed the issues that are relevant to the increased hours.

Conditional Use Review – “The proposed use shall not adversely affect:”

- 1) The capacity of existing or planned community facilities. **While the Official Map issue would appear to be of concern, it appears to me that the extension of business hours has no impact on the resolution of that issue.**
- 2) The character of the area affected, and the essential character of the neighborhood or district in which the property is located. **In this case, since the district boundaries lie at boundary of the lot, it is the character of the neighborhood which should be considered. The original subdivision approval went to lengths to make it clear that the lots on the periphery of Commerce Park would be held to a higher standard than those on the interior. Within the relatively narrow focus of the extended hours of operation, it would appear that the main issues will be lighting and noise. Note that there is a higher bar for conditional use review than site plan review, and while the lighting review under site plat is "Adequacy of exterior lighting for safe circulation on the site without creating off-site glare and excess illumination." The “essential character of the neighborhood” requirement of the conditional review process is different. The neighborhood consists of a wide range of uses, from the closest neighbors being both Dark Star on one side, and a small residential cottage on the other to the mostly commercial uses in the Commerce park environs and the portion**

of Mechanicsville Road directly opposite the lot, to the wonderful older houses closer to 116 and the residential areas on the hillside above the property.

Darkstar hours of operation were limited to from 6 until 10, however they were allowed to return their loaded vehicles after those hours, with the understanding that normal operating procedure would be to unload them the next morning. The Mobile station was permitted to open at five because of the many commuters on their way to work but not after 10 although it was requested. The Vet clinic was allowed to have special “on call” hours to take care of emergencies only, they were allowed to keep the outside lights on until 11 since that was when the majority of emergency visits occurred, They were permitted to keep their sign lit through out the night because of the need for emergency visitors to locate the clinic at night. The Middlebury bank was allowed to have the drive through open at all times after much discussion about the lighting and its impact.

3) Traffic on the roads and highways in the vicinity. I can’t foresee any issues.

4) The Town Plan and bylaws in effect – The town plan addresses many diverse elements related to the future of Hinesburg and can be “cherry Picked” in many ways to support various visions. The zoning has been revised to ensure that commercial development can be accommodated within the Village Growth Area. Because of our zoning this project is located where the town plan promoted growth, and the use, as well is permitted. The challenge is best summarized by a sentence from the plan: **The challenge will be to integrate the new with what currently exists in such a way that the overall Town and Village character are preserved.**

. **The challenge will be to integrate the new with what currently exists in such a way that the overall Town and Village character are preserved.** Thus far the review process has limited hours of public operation to no later than ten in the evening, and allowed other operational activities or “office” uses only if the impacts were minimal.

5) Utilization of renewable energy resources. **I can’t see any impact due to the extended hours**

6) The appropriate use or development of adjacent property. **The main areas of concern are basically the deliveries that will take place while the store is closed. Area lighting, vehicle lights, alarms, refrigeration units, especially in the quiet of the night, can be very disturbing to the neighboring residences and conditions which both control and allow for subsequent re-appraisal it issues arise should be incorporated into any approval.**

7) The public welfare in any other matter. **I can’t think of other issues.**

ISSUES –

After hours lighting should be designed directed and timed so that it is only on when necessary. “Security” lighting should be limited to those areas that require it, and certainly no blank wall areas of the structure need illumination.

Spill out lighting from interior lights onto the front outside area should be controlled to be kept as an acceptable minimum, and it should be analyzed along with the requested parking lot lights in that area so that the after hour illumination is kept to an absolute minimum.

Peter Erb, Zoning Administrator.

Policy Governing Hours of Operation

Adopted By the Selectboard August 19, 1996

A primary concern of Hinesburg residents, as expressed in the town plan, is "to maintain the rural small town character and environment of Hinesburg." a major component of rural character is enjoying peace and quiet during the nighttime hours. Although the town seeks to maintain and encourage a vibrant mix of **BUSINESSES** and services in the town, those that operate during the late night hours will be discouraged. In particular, business should be prevented from disrupting the peace and quiet of the town outside the hours of 6:00 a.m. To 10:00 p.m.

For any business or service seeking to operate outside the default hours, the planning commission and zoning board will consider the impact of the extended hours on the character of the neighborhood involved. Answers to the following questions should be considered establishing the potential impact of the nighttime use.

- A. What is the nature of the proposed nighttime use - is it essential or beneficial to the town?
- B. Where is the location of the proposed nighttime use -- is it in an appropriate location for a nighttime activity in the context of the immediate surroundings and the town as a whole?
- C. What are the surrounding uses and what is their proximity to the proposed nighttime use -- will the proposed use maintain the **CHARACTER** of the neighborhood?

If the planning commission or zoning board answers in the negative to any of the above questions, denial of the request for an **EXTENSION** of the hours of operation should be considered.....

The selectboard, acting as the liquor control board, should reinforce the hours of operation established in the zoning bylaw, or the respective boards, through reference in the conditions of approval for liquor licenses. It is important to link the liquor license to the approval of hours because requirements of the liquor licenses are more easily enforceable than requirements imposed through the zoning bylaw.