

**TOWN OF HINESBURG  
DEVELOPMENT REVIEW BOARD  
FINDINGS OF FACT, CONCLUSIONS & ORDER  
For Martin's Foods of South Burlington LLC  
c/o Tyler Sterling and David White  
Hannaford Supermarket – Subdivision Revision  
Tax Map 20-50-02.100**

Based on the public hearing and the documents contained in the “document” file for this proposal, the DRB enters the following Findings of Fact, Conclusions and Order.

**FINDINGS OF FACT**

1. This matter came before the Hinesburg Development Review Board (DRB) on the application from Martin's Foods of South Burlington LLC, hereafter referred to as the “Applicant” or “Hannaford”, for a subdivision revision approval for lot #15 of the 1986 Commerce Park subdivision, which is a 4.86-acre undeveloped property in the Commercial (C) Zoning District. The Applicant also applied for Site Plan approval of a 36,000 square foot Hannaford Supermarket, which is being reviewed in conjunction with this application.
2. The original 1986 Commerce Park subdivision, which plat is recorded in map slide 108, had 15 lots, which the proposed development is to be on lot #15. Though not dimensioned on the plans, the recorded survey shows “building setback limits” of 30 feet on the side and rear, 75 feet from the centerline of Commerce Street, and 75 feet from the Canal by scaled measurements. These were the required minimum setbacks in the zoning regulations at the time of 1986 approval. The June 3, 1996 Zoning Bylaws reduced the setbacks to 10 feet from the side and rear property lines and 40 feet from the centerline of Commerce Street. The May 25, 2009 Zoning Regulations changed the front yard setback to 10 feet from the front property line and reduced the stream setback for the Canal to 25 feet.
3. The Applicant is requesting a change in the building envelope to match the current required setbacks in the Commercial Zoning District of 10 feet from a property line and 25 feet from the Canal. See Table 1 in Section 2.4 and Section 2.5.1 of the Hinesburg Zoning Regulations (HZR) and the Village Growth Area Stream Setbacks/Buffers Map. The Canal setback is measured from the top of bank of the Canal.
4. The DRB reviewed the subdivision revision application on April 17, 2018, May 15, 2018, June 5, 2018, August 7, 2018 and on September 4, 2018. The hearing was also continued, but not opened on July 3, 2018 at the request of the Applicant. Representatives for the Applicant attended the meetings on April 17, 2018, May 15, 2018, June 5, 2018 and on September 4, 2018. Even though most of the meeting time was to review the site plan application, the subdivision revision application was left open for testimony on all these dates. The property is owned by Trusts of Bernard Giroux, June Giroux, Victor Giroux and Ramona Giroux, who were not active participants in the hearing.
5. A group of residents represented by their counsel, James Dumont Esq., known as Responsible Growth Hinesburg (RGH), who are in opposition of this project attended all five meetings. RGH submitted documents for the DRB to review and provided professionals that testified at the hearings. In addition, members of the Public provided testimony and documents for the DRB to review. RGH representative, Tony Stout testified that in his opinion this application should be denied because it will destroy natural features, create a stormwater problem, would not be compliant with zoning bylaws and would affect the hydrology of the site. RGH representative Steve Revel testified that in his opinion the hydrology in the area and the Canal will be negatively affected by the subdivision revision due to the reduced setbacks.
6. The following members of the DRB were present for the subdivision revision reviews on April 17, 2018 and May 15, 2018, constituting a quorum: Dennis Place, Dick Jordan, Sarah Murphy, Ted Bloomhardt, Greg Waples, John Lyman and Jon Slason. The following members of the DRB were

present for the subdivision revision review on June 5, 2018, constituting a quorum: Dennis Place, Dick Jordan, Sarah Murphy, Ted Bloomhardt, Greg Waples and John Lyman. The following members of the DRB were present for the subdivision revision review on August 7, 2018, constituting a quorum: Dick Jordan, Sarah Murphy, Ted Bloomhardt, Greg Waples and John Lyman. The following members of the DRB were present for the subdivision revision review on September 4, 2018, constituting a quorum: Dennis Place, Dick Jordan, Sarah Murphy, Ted Bloomhardt, Greg Waples, John Lyman and Jon Slason. See the official meeting minutes for a list of others present at the meetings.

7. Sarah Murphy and Jon Slason discussed their involvement in this hearing and reasons for which they would not be recusing themselves due to alleged conflicts of interest at the beginning of the April 17, 2018 hearing. David White, representing the Applicant, stated that the Applicant had no objection with Sarah Murphy and Jon Slason reviewing these applications as members of the DRB. In response to a letter from Bill Moller received on August 19, 2018, David White at the September 4, 2018 meeting restated that the Applicant had no objection to Sarah Murphy reviewing these applications as a member of the DRB.
8. The 1986 subdivision approval and minutes from the Planning Commission meetings did not provide any reason for the minimum setback distances. Distances from the property lines to the building envelope on the plan are not provided on the subdivision plan. When scaled, the distances match the setback distances required by the 1986 zoning regulations.
9. Section 7.7.1 of the Hinesburg Subdivision Regulations (HSR) requires a warned hearing for changes to a recorded subdivision that meets the definition of a re-subdivision. The proposed change to the building envelope does meet the definition of a re-subdivision per Article 9 of the HSR.
10. The parking areas for the post office property and the Nestech building are both located within 75 feet of the Canal. The Nestech building itself is approximately 56 feet from the top of bank of the Canal.
11. RGH testified that they are not contesting the change in property line setback from 30 feet to 10 feet. They are instead only contesting the setback distance change of 75 feet to 25 feet from the Canal. They presented testimony from a hydrologist who suggested that the change of setback would result in draining the Canal. A member of the Public testified at the April 17, 2018 meeting that the water level of the Canal is controlled by inlet and outlet structures on each end of the Canal.
12. This is the first property in the Commerce Park subdivision to go through the subdivision revision process.
13. The Commerce Park subdivision and the post office property comprise the entire Commercial Zoning District in this area of town.
14. The application was received and deemed complete on January 29, 2018. Below are lists of application materials and other submittals from the Applicant, RGH and the Public that specifically pertain to this application. More information on the overall project is available in the site plan application, which is not listed below. All of these application materials and submittals are contained in the document file (20-50-02.100) in the Hinesburg Planning & Zoning office.
  - a. Memorandum re: "Authorization to Submit and Execute Applications for Approvals", from David G. White, dated 1/24/18, with attachments.
  - b. Application form for Subdivision Revision Review, dated 1/26/18.
  - c. Cover letter re: Application of Martin's Foods of South Burlington, LLC (Hannaford) for Amendment of Commerce Park Subdivision Plat to Reflect Town's Current 25-Foot Canal Setback and 10-Foot Side Yard Setback, dated 1/29/18 to Mitchel Cypes from David G. White.

- d. Sheet PN-1 "Revised Subdivision Plan", prepared by O'Leary-Burke Civil Associates PLC, and dated 1/24/18.
  - e. Letter from James Dumont, Esq., dated February 16, 2018, which makes legal arguments about how the DRB review should proceed.
  - f. Letter from James Dumont Esq., dated April 18, 2018.
  - g. Written testimony from Anthony Stout, Planner at Lakeside Environmental Group for Attorney Dumont, received April 17, 2018.
  - h. Content document and plan from Anthony Stout presented at the April 17, 2018 DRB meeting.
  - i. Written testimony from Stephen Revell, Hydrogeologist for Attorney Dumont, received April 17, 2018.
  - j. Edited O'Leary Burke plans and diagrams by Stephen Revell presented at the April 17, 2018 DRB meeting.
  - k. Letter of concern from Bob Thiefels received on June 4, 2018 regarding traffic, the Canal setback and size of the store.
  - l. Letter of concern from Mr. Stout received on June 5, 2018 regarding the Canal setback.
  - m. Letter from Bill Moller received on August 19, 2018 questioning Sarah Murphy's decision not to recuse herself.
15. The April 17, 2018 public hearing was warned in *The Citizen* on March 29, 2018.

### **CONCLUSIONS**

1. Section 7.7.1 of the HSR provides the authority for approval of a re-subdivision to change building envelopes on previously approved subdivision plats.
2. The only apparent reason for the setbacks required in the 1986 subdivision approval was that these setbacks were required by the 1986 zoning regulations. Therefore this proposed revision is not inconsistent with the other terms and conditions of the 1986 Commerce Park subdivision approval.
3. This subdivision revision would not affect any provision, other than the setback requirements, of the 1986 Commerce Park subdivision approval.
4. The proposed setback reductions are in conformance with the applicable Planning Standards of Section 5.1 of the HSR, including HSR Section 5.1.13, which conforms to the requirements in Table 1 of Section 2.4 in the HZR.
5. The proposed subdivision revision is in conformance with Section 5.1.2 of the HSR as it will not have an adverse effect on, and give due regard to, the Canal and other natural features.
6. The water level in the Canal and the ability to use and enjoy the Canal will not be affected by this application for a subdivision revision due to the inlet and outlet controls located at each end of the Canal.
7. In consideration of Section 5.1.7 of the HSR, this subdivision revision will not affect the stormwater runoff or hydrology of the property. The effects of stormwater runoff and hydrology will be dependent on development proposed in a site plan application and not on this application for a subdivision revision.
8. The proposed subdivision revision is in conformance with Section 5.1.5 of the HSR and would allow for similar development on this property that has occurred on the neighboring properties and other properties in the Commerce Park subdivision.
9. This application only seeks to change the location of the approved building envelopes of the 1986 subdivision approval to provide greater flexibility for future development that is consistent with the current setback requirements of the Town's development regulations. Since this application

proposes no changes to the lot coverage requirement, the other provisions of Sections 5.1 and 6.11 of the HSR are not affected by this application for a subdivision revision. This includes criteria like suitability of the site, cultural features on the site, open space, recreation, transportation, erosion, stormwater runoff, water supply, wastewater disposal, agriculture, forestry, use of municipal services, energy conservation, conformance to the Town Plan, and layouts of streets and pedestrian networks. Any effect on these standards by the development of this property would be reviewed in conjunction with a use and/or a site plan application.

### **ORDER**

Based on the Findings of Fact and Conclusions set forth above, the Hinesburg DRB approves the proposed subdivision revision subject to the conditions listed below.

1. All provisions and conditions from the prior subdivision approvals that have not been specifically revised by this decision shall remain in full force and effect.
2. In accordance with State statute, the Mylar, containing a date and signature of approval of the Development Review Board, of this subdivision revision shall be recorded in the Hinesburg Land Records within 180 days (or 270 days if permitted by the Zoning Administrator pursuant to the Subdivision Regulations, section 7.5) of this approval and before any property is transferred.
3. The recorded Mylar shall include a statement that the 25-foot Canal setback shown is measured from the top of bank of the Canal.
4. This project shall be completed, operated, and maintained as set forth in the plans and exhibits as approved by the DRB and on file in the Town Office, and in accordance with the conditions of this approval. Deviations may be made from these plans if they are:
  - a) Approved by the designer, or equivalent, and
  - b) In conformance with the intent of this decision, and
  - c) Determined by the Zoning Administrator that they are not significant enough to require a formal revision to the DRB decision.

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For Development Review Board

October 17, 2018  
Date

Board Members participating in this decision: Dennis Place, Dick Jordan, Sarah Murphy, Ted Bloomhardt, Greg Waples, John Lyman and Jon Slason.

Vote to approve: 7-0

**30-day Appeal Period:** - An "interested person", who has participated in this proceeding, may appeal this decision to the Vermont Superior Court, Environmental Division within 30 days of the date this decision was signed. Participation shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding. See V.S.A. Title 24, Chapter 117, Section 4465b for clarification on who qualifies as an "interested person".

Notice of the appeal, along with applicable fees, should be sent by certified mail to the Vermont Superior Court - Environmental Division. A copy of the notice of appeal should also be mailed to the Hinesburg Planning & Zoning Department at 10632 VT Route 116, Hinesburg, VT 05461. Please contact the Court for more information on filing requirements, fees, and current mailing address.

**State Permits:** - It is the obligation of the Applicant or permittee to identify, apply for, and obtain required state permits for this project prior to any construction. The VT Agency of Natural Resources provides assistance. Please contact the regional Permit Specialist at 879-5676 (111 West St, Essex Jct., VT 05452) for more information.

All new residential and/or commercial construction including additions, alterations, renovations, and repairs are subject to either the Vermont Residential Building Energy Standard (RBES) - 21 V.S.A. § 266, or the Vermont Commercial Building Energy Standard (CBES) - 30 V.S.A. § 53. A certificate of occupancy cannot be issued until the required RBES or CBES certification has been filed in the town records.