

1 **MINUTES OF THE ZONING BOARD OF ADJUSTMENT**
2 **February 11th 2019**
3 **MERIDEN TOWN HALL**
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7 Zoning Board

8 Members Present: Richard Colburn, Chairman Peter Martin
9 Brad Atwater Bill McGonigle
10 Scott MacLeay, Alt

11 Planning Board

12 Members Present: Mike Sutherland Ryan Boynton
13 Judy Belyea Steve Halleran, Alt
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15 Others Present:

16 Amy Franklin David Lillie
17 Patricia Lillie Troy Hall
18 Patricia Hall Paul Franklin
19 Nancy Franklin
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22 The meeting opened at 7:00pm
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24 Chairman Colburn opened case 19-01 a request by BART Industries to modify the hours
25 of operation for the new warehouse at 360 Rte 12A. The Planning Board was also in
26 attendance this evening to address any planned changes to their approved site plan for the
27 project.
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29 Attorney Brad Atwood represented the applicant. Mr. Atwood explained that the new
30 request is for six days per week, Monday through Saturday 4am to 4pm for the delivery
31 trucks with bulk truck deliveries between the hours of 4am to 9pm Sunday through
32 Friday.
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34 Attorney Atwood explained that changes to the site that have been made to minimize
35 these proposed new hours are as follows:
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37 Most outside lights are now on motion sensitive switches; the dumpsters have been
38 relocated away from any property line and have been designated for a residential
39 collection route, not a commercial one. Enhanced vegetative screening is planned and
40 will include a 2' berm along the Franklin property line with trees to be planted on the top.
41 Employee parking along the Franklin property line has been moved to the interior of the
42 lot.
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44 The owner is proposing to reduce the number of delivery trucks allowed from 10 to 8.
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1 **Public Comment:**

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3 **Amy Franklin** discussed some work she did graphing the delivery times to the site as
4 provided by the applicant. A significant number of them occur outside of the approved
5 hours and even outside the now proposed hours. Amy acknowledged the reduction in
6 outside lighting and relocation of the dumpster as two things that have helped mitigate
7 the effects of the business use to her property.

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9 **David and Patricia Lillie:** Expressed concern about the activity at the site, noting that
10 the Zoning Board might have reached a different conclusion if the current hours had been
11 revealed when the application was originally made.

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13 Owner Robert Boylan apologized to those in attendance, indicating that he was unaware
14 of the changes to the delivery schedules when he obtained his initial approvals and built
15 the facility. He and his business partner continue to believe that they can operate the
16 warehouse in a manner that does not harm neighbors.

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18 **Paul Franklin:** Noted that while the board is rightfully trying to work with the applicant
19 to find middle ground, at the end of the day their job is to judge the appropriateness of the
20 use at that site in that neighborhood. In his view, the neighborhood is residential and
21 agricultural.

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23 **Troy and Patricia Hall:** Neither has any problem with the use as currently configured.
24 What does concern them is the uncertainty of what the use might become. It was
25 represented in one manner and has been developed in a different manner. What they
26 would like is certainty going forward as to the size and scale of the use.

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28 Board members began their deliberations. It became clear that the board did not feel that
29 the proposed hours of operation were a useful way of bounding the operation. Regardless
30 of what hours are set, deviation from those hours seems likely. Evaluating the use as a 24
31 hour per day, seven day a week, low intensity operation seemed a more reasonable
32 approach. The issue then being does the relatively low intensity of use offset the fact that
33 the site might have some traffic any day of the week or time of the day. Members noted
34 that state roads are the only places in town where these types of commercial uses are
35 allowed.

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37 The Frito Lay warehouse manager testified that the site is not able to support more than 8
38 small delivery trucks and no more than 2 bulk deliveries of product per day. That would
39 be the maximum that is possible at the site. He reminded the group that most of the
40 activity at the site is early in the day when the trucks leave and later in the afternoon
41 when they return. Many hours of each day there is no activity at the site. He conceded
42 that while often the bulk trucks arrive during the daylight hours, but at times those trucks
43 do arrive late into the night or very early in the morning. The bulk trucking work is all
44 done on a bid process at the regional level.

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1 At this time Attorney Atwood asked that the Zoning Board consider a recess of this
2 meeting to give the applicant one final opportunity to continue to discuss with abutters
3 about ways to further enhance the site plan for the lot to minimize the impact of the
4 activity on site. As the applicant continues to learn more about neighbors concerns they
5 remain confident that solutions exist.

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7 The Board noted that a decision on this case must come very soon, but given the hour a
8 motion to recess the case until Thursday March 14th at 7pm was made, seconded and
9 voted in the affirmative. Any further action required by the Planning Board will be done
10 at another time not yet determined.

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13 The meeting adjourned at 9:40pm.

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16 Stephen Halleran

Richard Colburn

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Abutters:

Paul Franklin questioned the accuracy of the information; the operation has a history of acting outside its representation. He pointed out the building was to be located 70' from their property line, it was built 42' from the line. He further noted that the permitted uses in the zone are primarily daylight operations and that in all cases there is an uninterrupted period of quiet during the normal sleeping hours. The 24 hour nature of this use means that abutters cannot count on a continuous quiet period during any portion of a day.

Mr. Franklin went on to say this is not about the abutters, in his view it is about whether this type of use is permitted under our existing zoning ordinance. Chair Colburn responded that such a use would likely be permitted if the applicant can mitigate the noise and lights.

Amy Franklin added, that as an abutter, she is fine with activity at the site from early in the morning to into the evening; it's the late night activity, including back up beepers, that are troublesome.

David Lillie pointed out that, from the beginning, this use has operated outside of its approved hours and its time for this to stop. Board members reviewed the data provided regarding deliver times to the warehouse. More than 25% of the activity has occurred outside the approved 6am to 6pm hours.

Board members reviewed in detail the provided sound study. From it the Board could not, in its judgment, adequately determine that the proposed wall would successfully mitigate the late night noise generated by delivery trucks.

At this time, member Atwater moved that the application be denied based on the following:

The proposed noise abatement measures have not adequately demonstrated that they mitigate the impact of late hour deliveries. In absence of necessary mitigation, the use as proposed is determined to be detrimental to the neighbors expected enjoyment of their property.

The motion was seconded and voted in the affirmative 3 to 0.

The meeting adjourned at 9:30pm.

Stephen Halleran

Richard Colburn

1 determined that the proposed use satisfies the applicable sections of the zoning ordinance.
2 Any additional buildings or units will be considered a substantive change requiring
3 additional town review.

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5 The application was approved as presented with no conditions on a vote of 3-0, Chairman
6 Colburn did not vote as there were three other members present.

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8 The case will now move on to Site Plan Review followed by the building permit process.

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10 The meeting was adjourned at 8:15pm.

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13 Stephen Halleran

Richard Colburn, Chair

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1 outside of its hours. She noted that BART, like many of the agricultural operations in
2 town, is a family owned business. They have removed that manager and the team here
3 tonight is committed to working with their tenant and the town to bring the facility into
4 full compliance with what they hope can be an amended approval.

5 Members of the Frito Lay team (tenant) present reviewed the operational needs of their
6 facilities. Typically, they expect 24 hour per day access, in this case they have
7 determined that the hours as proposed tonight would more likely than not allow them to
8 remain in the facility, as 95% of their dispatched trucks are owned by Frito Lay.

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10 The public hearing was closed and the Board began its deliberations. A review of hours
11 of operations of other business along the Route 12A and Route 120 corridor found that
12 while there are variations mainly approved hours of ranged from 5am to 8pm, with 6am
13 to 7pm being quite common. Board members furthered noted that all businesses are
14 different and each case is reviewed based on its merits. There are no standard hours of
15 operation, however, an expectation of quiet for an extended period of time each day is
16 customary in residential areas.

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18 In general the board felt that 10pm is too late and that much of the activity on the site is
19 confined to before 6pm. This being the case Member Peter Martin moved to amend the
20 approved hours of operation in case 17-10 as stated in the attached decision which will
21 allow hours of operations to 5am to 8pm for all business activity seven days per week.
22 Up to two tractor trailer deliveries to be permitted each day, however no more than one is
23 allowed after 6pm. Further the activity of the small trucks is limited to 5am to 6pm seven
24 days per week. The motion was seconded and subsequently voted in the affirmative 4 to
25 0.

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27 The meeting was adjourned at 9:45pm.
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30 Stephen Halleran

Richard Colburn, Chair

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