

**EFFINGHAM'S FIVE-PART TEST FOR A SPECIAL EXCEPTION IN REGARD TO THE BOYLE'S
MARKET GAS STATION APPLICATION**

The Test Criteria:

1. Granting the variance will not be contrary to the public interest.

MCCONKEY: Granting the variance will not be contrary to the public interest because: This use was in existence prior to the establishment of the Effingham's Zoning ordinance and operated in that capacity without incident up to 2015. The property sold this year, and the new owner wants to reinstate gas operations. The owner's proposed underground storage tanks (UST) and dispenser instillation has been reviewed/ approved by the state waste division and will be installed in strict compliance with state and federal regulations. The reinstatement of the approved UST's and dispensers will not alter the essential character of the neighborhood and will not threaten the health, safety or general welfare of the public.

LANE: The Requested variance IS contrary to the public interest because there is no existing gas station on this site and public voted to prohibit this use in the Groundwater Protection District to protect their groundwater, and in turn their health, safety and general welfare. This standard has not been met.

2. The use is not contrary to the spirit of the ordinance.

MCCONKEY: The spirit of the ordinance is observed because: The Effingham Zoning Ordinance Preamble states that the purpose of the ordinance is to promote the health, safety and general welfare of the inhabitants of the Town of Effingham. The previous owner in 2015 decided it was too costly to replace the tanks, bring the piping from the UST's to the dispensers up to the current regulations and made a financial decision to remove the tanks, piping, and dispensers instead of investing the money needed for the necessary upgrades. Those same owners filed a closure report and under the guidance and watchful eye of the state waste division, those tanks, dispenses, piping were removed. The new install meets current standards. The tanks and piping will be double walled, automatic leak detection systems will be put in place, fill protections measures put in place during the delivery of product from the distributor and containment in the concrete pad incase a consumer overfills their tank. The variance requested will not alter the essential character of the neighborhood and will not threaten the health, safety or general welfare of the public. This proposal is in keeping with the spirit of the ordinance.

LANE: The issuance of this variance would clearly violate the spirit of the Ordinance. The applicant acknowledges that this property has not been a gas station since 2015. The decision the citizens of Effingham made to protect their water should not be disregarded. Allowing this prohibited use would not promote the health, safety and general welfare of the inhabitants of the town. This standard has not been met.

3. Granting the variance would do substantial justice.

MCCONKEY: Substantial justice is done because: The test for a variance is that: any loss to the individual which is not outweighed by a gain the general public is an injustice. The owners purchased the property with the understanding that they could resume dispensing gas, enlisted an engineering firm to secure those permits and now have those permits in hand to reinstate the UST's, piping, and dispensers, under the guidance of the state waste division. Residents and passerby's driving on Rte 25 will see a lot similarly developed as it has been since the 90's. The instillation, operation and the ongoing monitoring of the operation is overseen by the state waste division. In addition to the state oversight, the owner must have permitted class A, Band C operators to handle the day-to-day compliance. I suggest substantial justice is done in this instance.

LANE: The property owner will not be deprived of any rights when this variance is denied because the property was purchased long after the Groundwater Protection District was approved and long after the former owner of the property discontinued the previously existing gas station. The application states "Develop/operate a gas station in the Groundwater Protection District" which is strictly prohibited. Just because the applicant did not due their due diligence prior to purchasing a convenience store in the Groundwater Protection District does not mean that the Ordinance can be violated. The Ordinance is available to the public for this reason. This standard has not been met.

4. The values of surrounding properties are not diminished.

MCCONKEY: The values of the surrounding properties will not be diminished because: The proposed UST installation will not diminish the values of the surrounding properties. This use existed up to 2015 and continuing this use again will not lower values of the neighboring home or other commercial properties in this district.

LANE: The surrounding property values could easily be diminished due to groundwater contamination. The applicant again mentions the previously existing gas station; however, that has not been in existence for many years, so it is not relevant today. This standard has not been met.

5. Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship.

MCCONKEY: Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship owing to special conditions of this property that distinguish it from other properties in the area are as follows: This is a commercial property that had a use that predated town zoning regulations. This property was sold to the Meena LLC as a convenience store, laundry mat, apartments along with the understanding that with the required state permits that they could reestablish a retail gas operation. The new owners have done everything they thought was required to reinstate the gas operation, secured permits from the

state, eliminated the laundromat but unfortunately, they were not advised there was a local regulatory component that they needed to comply with. Once they found that out, they proceeded to the Zoning Board and then to the Planning Board to gain their approvals. AND B; Owing to the special conditions, set forth above, the property cannot be reasonably used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it because: The owners have been through the zoning process, moved onto the planning board (site plan review) to than (sic) discover that they are now directed back to the zoning board to address a groundwater protection district concern. The previous owner removed the old UST's, and no groundwater contamination was discovered during that process (see the closure report) and the new installation is far superior to the previous tanks, piping and dispensers. The tanks and piping are all double walled and the proposed leak detection monitoring systems far exceeds the older install and the concrete pads that the dispensers are located on are constructed to accept any fuel that is occasionally spilled by the customers during there (sic) fill up. The owner in addition must have state permitted operators to observe the day-to-day operation and see that monitoring systems are properly functioning. Gas sales are essential to the profitability of a modern convenience store business and will ecome (sic) an added convenience to the residents in the area. In addition to this investment, they are upgrading the septic system and eliminating the laundry mat. It is ours and the states position that the installation of this facility per the approved plans will not adversely affect the groundwater and knowing this use previously existed on this property we suggest that the variance request is reasonable.

LANE: There is no hardship in this application. The applicant did not do their due diligence and stated that "they were not advised that there was a local regulatory component that they needed to comply with". The applicant not having sufficient "advisors" does not create a hardship. If it did, the Ordinance would be useless. The applicant also states that they will have "superior tanks" which is irrelevant. The Ordinance states no tank standard for allowance and the applicant should have been consulted prior to the purchase if a gas station was desired at this location. This standard has not been met.

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