

Approved: _____

Approved with changes: _____

Effingham Zoning Board of Adjustment
Meeting Minutes
July 08, 2021
Via In Person and Zoom

Members Present: Theresa Swanick (chair), Tim White (vice chair), Jim Pittman, Nate Williams, Mike Cahalane.

Members Absent: Knute Ogren.

Others Present: Nate Fogg, Mark McConkey, Rebecca Boyden (Zoning Officer), Tom Hart (selectman), Erik Jones, Mark Hempton, Lorie Dunne, Moselle Spiller, Matt Howe, Blair Folts, Sara Grasse-Crabtree and Mickala Grasse-Stockman.

Mike Cahalane sworn in as an alternate member of the Zoning Board by Moderator Susan Slack.

Lenny Fitzgerald informed chair he will be unable to serve as an alternate at the present time.

Meeting called to order at 7:00pm.

Alternate Mike Cahalane was seated for member Knute Ogren.

Theresa Swanick opened the public hearing for Case #97, variance application for Meena LLC.

Mark McConkey provided copies of several documents, including the tank removal closure report, design drawings, current UST installation permit.

It was noted that the previous ZBA special exception allowed for the expansion of a non-conforming business and converting the laundromat to a third apartment.

Prince, principal of Meena LLC, owns several businesses and various LLCs of ownership. Mark McConkey has assisted several Pakistani owners obtain permits. Mark McConkey read a note from Prince, attached for the record.

The application is for the same number of fuel tanks and dispensers as previously used at Boyles. The two underground storage tanks of fuel have multiple compartments.

Jim Pittman asked why the plan noted public water supply. Mark McConkey, noted that because they serve the public, the water supply must be registered with the state. The setbacks for wells to water supplies were discussed.

Moselle Spiller of Green Mountain Conservation Group (GMCG) bought a stratified drift aquifer model to show how a stratified drift aquifer which has high transmissivity can spread a leak quickly. The ZBA also looked at an aquifer map that showed the well head protection areas.

Meena property is just outside a Wellhead Protection Area for a public water supply in Ossipee.

Lorie Dunne read a statement from GMCG (included as an attachment to these minutes). The Ossipee aquifer affects 14 communities and is the largest stratified drift aquifer in NH. She urged the ZBA not to support the application.

Blair Folts was at GMCG when they led a multi-town effort for Groundwater Protection Ordinances, when Effingham's ordinance came into being.

Mike Cahalane asked if the GMCG minutes from the creation of the Groundwater Protection Ordinance were available to be accessed.

Matt Howe of GMCG noted all previous records have been kept and are available back to 2008.

Sarah Grasse-Crabtree lives in and loves Effingham. She read a prepared statement which is attached to these minutes.

Blair Folts stated that there have been several leaks on McConkey systems. Mark McConkey noted that none of the issues mentioned were related to leaks of tanks.

Blair Folts read a prepared statement which is included with these minutes. She noted that she does not believe the application meets any of the five variance criteria.

Rebecca Boyden noted that the special exception allowed for the expansion of a non-conforming business. She believes that the conversion of the laundromat to an apartment requires a variance for the dwelling unit density.

Blair Folts read a letter written by Corey Lane of Porter, ME, attached as part of these minutes.

It was noted Blair Folts has extensive knowledge in this area, formerly with GMCG for 20 years.

Rebecca Boyden affirmed DES's One Stop website has spill data for underground storage tanks.

Mark McConkey reviewed some of the local incidents with USTs. Any tank incident was with a single wall tank. Fuel with ethanol is cleaned with air, not water. He is not making an excuse for the new owners of the property, but they believed that they had all of the permits that they needed before they hired any contractors.

Theresa Swanick noted that the owners proceeded at their own risk and were aware of the risk.

Rebecca Boyden noted that there are often multiple levels of regulations, and many people beginning a project in town come to meet with her. No one came to discuss the local process with her on this project.

Matt Howe noted that Corey Lane asked about notifying other towns. Theresa Swanick noted that the planning board has used regional impact in a recent case. She suggested regional impact letter is not required but could be a courtesy.

Mike Cahalane noted we should decide on regional impact. Rebecca Boyden read the criteria for considering regional impact. Mike Cahalane noted he doesn't expect there to be regional impact.

Lorie Dunne and Mark Hempton noted that spills happen at stations. Large gas companies usually budget for liabilities from gas stations.

Tim White noted that a DES factsheet states that spills typically go 295 feet and that the Ossipee town line is closer than that distance.

Mike Cahalane noted that input from regional impact will not affect the ZBA's ability to make the decision. Jim Pittman noted that regional impact is not likely to affect the ZBA decision.

Nate Williams noted that other new replacement tanks have been installed in the aquifer overlay zone in other towns. He is not sure about regional impact.

Jim Pittman noted that he does not believe that the size of this project rises to the level of regional impact.

Theresa Swanick noted that there is too much to review to finish the case this evening, possibly allowing time to notice other towns, even if not formally undertaking a Regional Impact process.

Mike Cahalane does not believe the ZBA needs to use regional impact for this case.

Jim Pittman noted that the ZBA needs to continue this hearing and asked if they should close the public input or not prior to continuing the hearing. There was no decision to close public input.

Mike Cahalane made a motion to declare regional impact. Tim White seconded the motion. A vote was taken; the motion failed with a vote of 1-3-1 with Theresa Swanick abstaining.

Mike Cahalane motioned to continue the public hearing to Tuesday, July 20th, at 6:00pm at town offices. Jim Pittman seconded the motion. A vote was taken; the motion passed 5-0.

The Closure Report will be forwarded to the ZBA members for review.

Minutes:

The ZBA reviewed the minutes of the meeting of June 29, 2021.

Theresa Swanick made motion to approve the minutes from June 29, 2021, as amended.

Mike Cahalane seconded the motion. A vote was taken, and the motion passed 5-0.

Next Meeting: July 20, 2021, at 6:00pm in person.

Adjournment:

Mike Cahalane motioned to adjourn the meeting. Theresa Swanick seconded the motion. A vote was taken, and the motion passed 5-0. The meeting adjourned at 9:25pm.

Dear Effingham ZBA

I have given a lot of thought as to the path that led us all to this situation. I have done tank installations on other sites, but they were existing sites with tank removal and installation. In this case there seems to have been the assumption across the broad spectrum of all involved that bringing Boyle's Market back to a gas station convenience store was a straightforward process. Questions were asked regarding any specific issues that might be an obstacle to approval but was told there were none.

The process to date and the work that was done on site was initiated based on this understanding and was not intended, in any way to be disrespectful of the Town of Effingham, its officials or citizens. If anyone was offended, I sincerely apologize. Boyle's Market has always been one of the focal points of the area and it is my goal to maintain that function and to improve upon it.

Sincerely,

Pankaj (Prince) Garg

Good Evening. I am Lorie Dunne, Effingham Representative on the Board of the Green Mountain Conservation Group at 236 Huntress Bridge Road.

Founded in 1997, Green Mountain Conservation Group promotes an awareness of and appreciation for clean water and the wise use of shared natural resources across the Ossipee Watershed and advocates strategies to protect them.

From 2008 to 2011, GMCG worked with 6 towns, the Lakes Region Planning Commission, and the NH Department of Environmental Services to help towns protect the Ossipee Aquifer – New Hampshire’s largest stratified drift aquifer and the primary source of drinking water for 14 communities including Effingham, Freedom, Ossipee and Eaton.

Effingham was one of the towns that voted to adopt a Groundwater Protection Ordinance (GPO). As you know, the purpose of this ordinance is, in the interest of public health, safety, and general welfare, to preserve, maintain, and protect from contamination existing and potential groundwater supply areas and to protect surface waters that are fed by groundwater. These objectives are met by regulating land uses which could contribute pollutants to designated wells and/or aquifers identified as being needed for present and/or future public water supply.

Gas stations are among a handful of activities recommended by NH DES as a prohibited use within sensitive drinking water zones. We would like to draw your attention to a 2020 document prepared by the NH Department of Environmental Services entitled “Preventing Groundwater Contamination at Gas Stations – What Municipalities and Water Suppliers Can Do,” which elaborates the risk. (handout- highlight pertinent section).

Gas stations, given the inherently high risk of contamination from underground tanks, vapor release and surface spillage, should be **prohibited from sensitive drinking water zones**. The residents of Effingham recognized this risk and wisely adopted protective measures more than 10 years ago in the town’s zoning ordinance. This is explicitly specified in Effingham’s zoning ordinance in Article 22, section 2207, item 8 on page 53.

GMCG respectfully asserts that it is the obligation of the Zoning Board of Appeals and the Planning Board to uphold the town's existing Groundwater

Protection Ordinance. A variance to allow a use that is expressly prohibited sets the stage for future prohibited uses to be allowed in sensitive drinking water protection areas. GMCG requests that the Zoning Board of Appeals adhere to the town's zoning ordinance as written. This is the best way to safeguard critical drinking water supplies for present and future generations.

Thank you.

July 8, 2021

Dear Effingham Zoning Board of Adjustments,

I write to you to ask you to respectfully deny the Application for Meena LLC requesting a variance from Article 22, Section 2207(A)(8) which would allow the owners of the property to expand their existing business to include a gas station on Tax Map 401-5. This is a prohibited use in Effingham's Groundwater Protection District.

As a direct downstream neighbor in Porter, Maine, this application is of regional concern. The proposal is located over the Ossipee Aquifer (the largest stratified drift aquifer in NH) and in the Saco River Watershed. This surface and groundwater supply is relied upon by countless citizens including over 300,000 people in Maine with drinking water being taken directly from the Saco River which the Ossipee River is a major tributary of.

Having worked in water quality protection for over 10 years combined in Maine and New Hampshire, I understand the fragile nature of our shared drinking water resources as well as the importance of protecting the water quality before it is contaminated, not after. The citizens of Effingham are also fully aware of how important protecting their water quality is because on page 54 of the Effingham Zoning Ordinance under **Article 22 Section 2207 Prohibited Uses A. 8.** they voted to **prohibit "The development or operation of a gasoline station"** in this area and this Board has a sworn duty to uphold the Zoning Ordinance that the citizens supported.

While mitigation and cleanup of an "accident" is potentially possible, it is not guaranteed, especially in a highly transmissive stratified drift aquifer like this. Being composed of sand and gravel, which recharges very quickly, also makes it very vulnerable to contamination. Mitigation is also expensive, can take an incredibly long time and contamination can easily travel much farther than one might realize affecting more citizens than one might think which, again, is why Effingham voted to protect their water from this known potential hazard.

In order for the Zoning Board to grant the variance five criteria must be met. In reviewing Effingham's Ordinance, it is clear that none of the five criteria can be met under these circumstances and your careful review of this requested variance is appreciated. It is felt that once reviewed, this Board will have no choice but to deny this prohibited proposed use.

Effingham's five criteria:

- 1) The variance will not be contrary to the public interest; *This 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 spirit of the ordinance is observed; *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) Substantial justice is done; *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; *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) and Literal enforcement of provisions of the ordinance would result in an unnecessary hardship. *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.*

The citizens of Effingham thoughtfully voted to discontinue allowing new gas stations in the Groundwater Protection District. They did this to protect their health and safety. The ZBA should adhere to the Ordinance, deny this variance request due to the fact that none of the five criteria have been met to approve it.

Thank you for your careful consideration.

Sincerely,

Corey Lane
461 Bickford Road
Porter, Maine

Sara Grasse-Crabtree

8 July 2021

Effingham Zoning Board of Adjustment

Good Evening.

First, I would like to say thank you to the zoning board and all of the other town officials for the time they volunteer to keep Effingham the special place that it is.

I have lived in this great town since 2017. A large part of its appeal to me was the fresh, clean air, the beautiful wooded areas, the thriving farms, and its general feeling of peace.

I am here tonight because of my concerns at learning that the business applying for this particular variance has already installed its gas tanks.

My concerns center around something that I, unfortunately, had to worry about before: clean drinking water.

The water the Ossipee Watershed provides is too valuable to take lightly. This water nourishes our bodies and the food we grow. It is essential to keep a community happy and healthy.

In 2019, I was told to not drink my tap water because of my home's proximity to the Effingham Transfer Station and the landfill. I was surprised, and concerned, both for myself and what I learned was causing the PFOAs to show up in the drinking water. Who could have foreseen that something as harmless as a pizza box could be broken down into something that caused cancer and pass so easily into our drinking water?

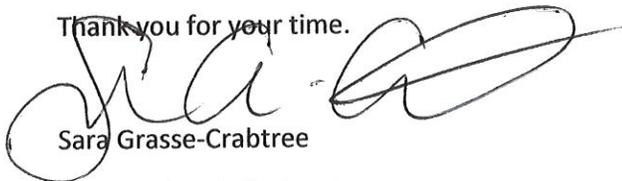
I was fortunate that my well was OK—for the moment. I imagine that, if these tanks are not removed, that the wells in this town will have to be tested in the future, perhaps regularly to ensure our safety, and I fear that there will come a time when we are again instructed not to drink our water.

This fear is informed by the unforeseen event that caused the last crisis. Despite the cutting-edge technology available today, mistakes still happen, accidents still happen, and new knowledge about potentially harmful interactions is uncovered every day.

If the issues caused by the landfill teach us anything, it is that we should be as cautious as possible when it concerns something that can impact our drinking water.

At a time when so many in the world are being severely impacted by environmental shortcuts, I believe it is time for us all to acknowledge the responsibility we have to care for and protect our natural resources.

Thank you for your time.



Sara Grasse-Crabtree

978 Province Lake Road

Effingham, NH 03882

Blair Folts
984 Province Lake Road
Effingham, NH 03882

July 8, 2021

Dear Effingham Zoning Board of Adjustments,

I speak to you tonight about the Application for Meena LLC that requests a variance from Article 22, Section 2207(A)(8) to allow the owners to operate a gas station in the groundwater protection district. The property is listed as Tax Map 401-5. As a tax payer and resident in Effingham, I respectfully ask you to deny this variance as a gas station is a prohibited use in the Effingham Groundwater Protection District. This area of New Hampshire is located over the State's largest stratified drift aquifer, next to Phillips Brook and within close proximity to Ossipee Lake. This application is very close to Freedom, Ossipee and Porter, Maine and I would like to ask if they were notified about this hearing?

While I am confused as to why we are even here tonight given that the application is for a property located in the Groundwater Protection zone of Effingham and, according to our Ordinance this is a **prohibited use in that zone**, I will address that the hearing tonight is to review the proposal that is seeking a variance. None of the five criteria required for the granting of a variance can be met and the Effingham ZBA needs to deny this permit.

The Groundwater Protection Ordinance addresses the protection of ground water but also of surface water. This property not only is located over the aquifer but it is within feet of Phillips Brook which runs directly into Ossipee Lake—which is located in very close proximity to this property. Research conducted on monitoring wells in that area show that ground water flows north which further puts Ossipee Lake at risk should a leak or spill happen on this land and get into ground water. From a ground water “plume” perspective, this area is also just “up watershed” from Effingham Falls where there are homes, the Town Office, Effingham School and Farm by the River—an organic farm. I find it confusing that the applicant wrote in the variance application that “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.” Whose fault is that? If it is the property owner, then Meena LLC is liable for their lack of due diligence. If it is their agent, then Mark and Jacob McConkey are liable for that and given that they live in Freedom and know full well there is a groundwater protection ordinance, they should be held accountable. The town is not responsible in any way and the property owners should be fined for going forward with installation of the tanks illegally.

As a tax payer and resident of Effingham, I voted for this ordinance and its updates back in 2011 along with others in our town. It is a good and simple ordinance that defines clearly what is **not permitted in a Groundwater Protection zone because these activities could harm drinking water or surface waters resources.**

From the Groundwater Protection Ordinance Section 2207:

Section 2207 Prohibited Uses

A. The following uses are prohibited in the Groundwater Protection District.

1. The development or operation of a hazardous waste disposal facility as defined under RSA 147-A;
2. The development or operation of a solid waste landfill;
3. The outdoor storage of road salt or other deicing chemicals in bulk;
4. The development or operation of a junkyard;
5. The development or operation of a snow dump;
6. The development or operation of a wastewater or septage lagoon;
7. The development or operation of a petroleum bulk plant or terminal;
8. The development or operation of a gasoline station.
9. The development or operation of a golf course.
10. The development or operation of a dry cleaning facility.
11. The development or operation of a vehicle race track or vehicle proving grounds.
12. The development of a car/vehicle wash facility not utilizing closed system water recovery technologie

Effingham residents voted in this ordinance to make sure that drinking water will remain clean. Citizens have the right to write ordinances that are stricter than state laws and Effingham as well as Freedom, Ossipee, Madison, and Sandwich did this in the late 2000s. In fact, Ossipee had a Groundwater Protection Ordinance in place back in the late 1980s. Ossipee was the first town to be aware of the importance of the aquifer and protection of drinking water resources. There are now over 108 towns in New Hampshire that have Groundwater Protection Ordinances in place. The work on those ordinances has been encouraged by New Hampshire Department of Environmental Services through Source Water Protection Grants as well as with support from regional planning commissions. Each town that has voted to adopt a Groundwater Protection ordinance has gone through a process that takes several years. The people of Effingham worked on writing this ordinance, helped tweak it to fit into our town's vision and then put it before the voters where it passed as law. It is up to the municipal officials in this town to uphold the laws that are in place. You have sworn and oath to do so. The law is clear. Effingham has long had a Groundwater Protection ordinance in its zoning laws that clearly states:

Section 2201 Authority The Town of Effingham hereby adopts this Article pursuant to the authority granted under RSA 674:16, in particular RSA 674:16, II relative to innovative land use controls.

Section 2202 Purpose The purpose of this Article is, in the interest of public health, safety, and general welfare, to preserve, maintain, and protect from contamination existing and potential groundwater supply areas and to protect surface waters that are fed by groundwater. The purpose is to be accomplished by regulating land uses that may contribute pollutants to designated wells and to aquifers that provide current or future water supplies for this town and surrounding municipalities which share such wells and aquifers.

You must uphold the law that the towns' people voted in.

To address the five criteria that must be met for a variance to be legally granted:

1) The variance will not be contrary to the public interest;

Everything about granting this variance is contrary to public interest---it puts drinking water at risk; it puts lake water in Ossipee Lake at risk; it puts the tributary Phillips Brook at risk and it puts well water on abutting properties in Freedom, Effingham and Ossipee directly at risk.

2) The spirit of the ordinance is observed;

The spirit of the ordinance is to protect ground water from contamination. A gas station is not allowed because it puts ground water at risk (see above paragraph Section 2202 Purpose)

3) Substantial justice is done;

Justice?---The applicant did not contact the town of Effingham or review the town laws and went ahead and installed their tanks without even questioning if there were laws around that activity. Justice? The property owners could do many things on this property. It already has been a small grocery store with takeout food, and pizza; home to a laundry; and hosted two apartments above the laundry so there is already a thriving business going on without the need for a gas station. Historically it has been noted that gas stations make very little money on selling gas.... Ten cents on a gallon at the most and usually much less. There is no need for a gas station at this location for public benefit either as there is one across the street and just a few miles east of this location. The applicant could consider putting in a charging station instead of gas especially with the country aiming to do away with gas cars in the future. There are many things that can be done on that property that will not put the ground or surface water at risk. Justice for the citizens of the Town of Effingham is to deny this permit, fine the property owners and uphold the laws that protect our clean drinking water.

4) The values of surrounding properties are not diminished;

Granting a variance to allow the underground gas tanks puts the surrounding property values at risk. One may not know if, when or how big a leak is once it occurs until it shows up in either a drinking water test---if the home owner actually samples for VOCs or smells it when taking a shower as what happened at Ski Works on Route 16 when M and V video had a leak in their new tanks at that gas station a few years ago. Should there be a leak and a plume developed this could put lake property values at risk too. Please

note that the plume near the junction of route 41 and route 16 has never been fully cleaned up and is continuing to move towards.....

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

There is absolutely no hardship here. As noted above there are many things that the land owner can do with this property other than create a gas station. The land is not dictating that only a gas station can be located here.

In order for a variance to be granted, all five of these criteria must be met. Please note that **none** of these criteria can be met. The ZBA must deny this variance and the town needs to fine the property owners for going ahead and installing tanks without permits in place.

Thank you.

Blair A. Folts