

Approved: \_\_\_\_\_  
Approved with changes: \_\_\_\_\_

**Effingham Zoning Board of Adjustment**  
Town Offices Meeting Room, 68 School St. Effingham & via Zoom  
**Meeting Minutes**  
**June 29, 2021**

**Members Present:** Theresa Swanick (chair), Tim White (vice chair), Jim Pittman, Knute Ogren, Nate Williams. Mike Cahalane & Lenny Fitzgerald (appointed alternates at this meeting)

**Members Absent:** none

**Others Present:** Nate Fogg, Rebecca Boyden (zoom).

Meeting called to order at 6:05pm.

The ZBA recessed into a non-meeting status for a consultation with town counsel.

The ZBA reconvened at 7:06pm.

**Others present:** Chuck Fuller (selectman), Tom Hart (selectman), Erik Jones, Mark McConkey, Lenny Espie (selectman), and Mary Giglio (zoom).

**Meena, LLC Variance Application**

Nate Fogg reviewed the Meena Application and found the application to be complete. Case number #97 was assigned.

**Jim Pittman made a motion to accept the Meena Variance Application as complete. Tim White seconded the motion. The motion passed by a vote of 5-0.**

Mark McConkey reviewed the previous ZBA application for expansion of a non-conforming use, and then reviewed the PB application which was not accepted because of the need for a variance.

Mr McConkey told the ZBA that he owns a gas station/ convenience store in Ossipee, he has sat on the ZBA for 12 years. The Meena property sold gas until 2015. The rules changed in 2015 requiring double walled tanks and pipes and the previous owners of the property made the choice to remove the tanks rather than upgrade their system. He does not believe it is possible to make money in a convenience store without selling gasoline. At this point, Meena, LLC needs a variance to proceed and will then have to also receive planning board site plan approval.

Mr McConkey noted that he has presented reasonable arguments for the 5 Variance criteria and that the ZBA can grant the variance. He is willing to read his responses to the criteria, however the ZBA felt they had ample time to review them on their own.

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Mark McConkey reviewed the three levels of operators required to be in place for each gas station. Generally, there are class B & C operators at the store and the Class A operator is an owner of the property.

A question arose that now that we know that the property lies within the Groundwater Protection Zone, does that affect the state UST permit in any way.

Knute Ogren asked whether the tanks 'will' be installed or 'have been' installed.

Rebecca Boyden advised that she issued a cease-and-desist order on May 13<sup>th</sup>, 2021 after the Planning Board noticed the applicant property was within the Groundwater Overlay district.

Knute Ogren noted that it doesn't sit well with him to grant a variance just because they didn't know the Effingham Rules.

Theresa Swanick believes that the new owners may have been mis-informed before they purchased the property.

Mark McConkey noted that the owners had a window of opportunity to get the tanks installed or they would have to wait months (fall or winter) before they would have another opportunity. Only certain contractors are qualified to perform such installations.

Jim Pittman asked about oversight of the installation. Mr McConkey noted that an engineer oversees the day-to-day installation and that the state checks the installation with pressure tests and other tests to insure a proper installation. Mr McConkey is unsure if the installation is complete and has been tested.

Mike Cahalane asked about the size of the tanks. Mr McConkey was unsure of the exact tank sizes. They are likely coated steel tanks that have sensors to detect gas leaking out of or water leaking into the tanks. There are sensors between the walls of the tanks to check for leaks and a control panel to check fuel levels and sensor operation. Any sensor reading or leaking water or gas has to be reported within 12 hours. The gas operation is looking for the same number of pumps as were previously in place before the 2015 removal.

The owners or the site is different than the name on the UST permit. Mr McConkey will provide the chain of ownership for the operation. Ramco, LLC and Meena, LLC have the same owners.

Mike Cahalane questioned the hardship. He's not sure that needing to sell gas to make money is a reasonable hardship.

Mr Fogg found the UST permit in the Meena Special Exception application and Mr McConkey said it was fine to distribute to the ZBA members.

Mr Ogren noted the earlier ZBA Special Exception was conditioned upon a site plan approval.

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Rebecca Boyden asked if the ZBA had considered regional impact because of the aquifer. The Aquifer Overlay District was a collaboration of 6 towns and was pulled together by the Green Mountain Conservation Group.

Theresa Swanick noted that Effingham is the lower end of the watershed.

Jim Pittman believes there is no regulatory obligation to notify other towns because of watershed. Many other risks to groundwater exist.

Tim White and Theresa Swanick both agreed that they would like more time to review and ask more questions.

Theresa Swanick noted that any interested party is able to attend and speak at the hearing.

Mark McConkey said that he would get the full UST permit for the ZBA for all members to review.

**MOTION by Knute Ogren to continue the Meena Variance Application public hearing to July 8<sup>th</sup> at 7:00pm at the town office location. Jim Pittman seconded the motion. The motion passed by a vote of 5-0.**

**Adjournment:**

**Knute Ogren made a motion to adjourn the meeting. Tim White seconded the motion. The motion passed by a vote of 5-0.**

The meeting adjourned at 8:55pm.