

VIA Email to mjohnson@devinemillimet.com
Meena, LLC
c/o Matthew R. Johnson, Esq. 111 Amherst
Manchester, NH 03101

Re: Notice of Decision concerning Site Plan Application for 41 NH Route 25,
Effingham, NH

You are hereby notified that, concluding on July 11, 2023 and as amended on August 7, 2023, the Effingham Planning Board considered a site plan review application submitted by Horizons Engineering, Inc., on behalf of Meena LLC (“**the Applicant**”), for property located at 41 NH Route 25 Effingham, New Hampshire (“**the Property**”). The Applicant has requested Site Plan Review for the following proposed use:

- A convenience store business with food service, use of existing apartments, and reinstatement of the gasoline and diesel sales operation.

The Planning Board held many public hearings and public meetings on this matter, all with the consent of the Applicant, including on: May 6, 2021; September 7, 2021; September 30, 2021; November 4, 2021; February 3, 2022; February 24, 2022; April 7, 2022; May 5, 2022; July 7, 2022; August 2, 2022; August 22, 2022; October 6, 2022; November 3, 2022; January 5, 2023; February 2, 2023; March 2, 2023; April 6, 2023; May 4, 2023; May 17, 2023; June 6, 2023; June 13, 2023; and June 20, 2023.

Based on the application, testimony given at the hearings, and additional documentation and plans as amended throughout this lengthy proceeding, the Board hereby makes the following findings of fact:

1. On March 30, 2021, the Applicant was granted a special exception from the Effingham Zoning Board of Adjustment (“**ZBA**”), case #095, under Effingham Zoning Ordinance Article 9 for Automobile Service Station defined by Section 1005, and “Change or Expansion of Non-Conforming Use” per Section 702. Pursuant to the granting of the special exception, any future change or expansion had to be compliant with the then current Zoning Ordinance or relief must be received from the ZBA.
2. To proceed with the project, the Applicant was to receive Site Plan Approval from the Effingham Planning Board (the “**Board**”).

3. On May 6, 2021, the Applicant submitted a plan for site plan review approval to the Board, entitled “Site Plan Review Plot for Meena LLC” prepared by Jacob & Mark McConkey.
4. The Property is located at 41 NH Route 25 Effingham, New Hampshire (Tax Map 401, Lot #5).
5. The Applicant is the owner of record of the Property.
6. Pankaj Garg is a member manager of the Applicant.
7. The Applicant authorized Mark and Jacob McConkey of McConkey Construction as the Designated Agents.
8. The Applicant was also represented by Horizons Engineering and Attorney Matthew Johnson at the various hearings.
9. The Property is located in the Rural/Agricultural (RA) District.
10. At the time of the Application, the current use of the Property was a convenience store with food service, laundromat, and apartments.
11. The gasoline/diesel sales operation at the Property had been suspended in 2015 when the State of New Hampshire Department of Environmental Services (“DES”) mandated that the then-existing underground storage tanks, piping, and dispensers were to be upgraded or removed.
12. After removal of the prior underground storage tanks, etc. and discussion with Town personnel, Meena LLC began reinstalling the underground storage tanks, etc. in the spring of 2021 with the Town’s Board of Selectmen’s knowledge.
13. The Selectmen later issued a cease and desist order against the Applicant completing that installation until the Applicant secured a Variance from the Town’s Zoning Board of Adjustment (“ZBA”) from Article 22 of the Town’s Zoning Ordinance (“the Zoning Ordinance”).
14. The Applicant’s Site Plan Review Application includes a proposed change of use, namely: the Applicant intends to continue the convenience business with food services, use of two of the existing apartments, and reinstatement of the gasoline and diesel sales operation while discontinuing the laundromat.
15. The convenience store and gasoline/diesel sales operations will have four employees and will be open seven (7) days a week from 6:00am until 11:00pm; and the gasoline/diesel pumps will only be operational during those hours.

16. Eleven (11) parking spaces are required for the proposed uses and thirteen (13) parking spaces are proposed.
17. All development is to occur within the existing structures, except for the construction of a proposed impervious dumpster pad and the completion of the installation of the underground storage tanks, etc. and related infrastructure.
18. All Abutters were notified of the Application pursuant to Town and State statutory requirements including abutting towns pursuant to RSA 36:54 et seq.
19. As part of the Application and as a result of various amendments to the associated plans and documents, the Applicant requested a waiver from the following Site Plan Review Regulations for the Town of Effingham (“Site Plan Regs”):
 - a. Section 6.2.B.11: Landscape Plan. Based on aerial photographs provided by the Applicant as part of its plan, the Board’s site walk of the Property and the Applicant’s proposal to eliminate/revegetate one of the existing driveway entrances onto Leavitt Road, the existing/proposed vegetation exceeds the Town requirements. Accordingly, the Board voted to approve the Applicant’s request that this requirement be waived.
 - b. Section 6.1.B.4: An estimate of peak period traffic generated by the development and an assessment of peak period traffic impacts at all adjacent intersections. The Property has been operating as a convenience store with gas, apartments, and a laundromat. The laundromat has been discontinued and therefore it will diminish the peak period traffic generated and the traffic exiting to the adjacent Route 25 and Leavitt Road. The Board discussed whether this Waiver was needed since the provision in question applied to Minor rather than Major Site Plan Applications. Accordingly, the Board determined that this Waiver was not needed and the Applicant withdrew its request that this requirement be waived.
20. The Application also included a letter dated April 12, 2021, where Mark E. McConkey, a New Hampshire licensed septic system evaluator and permitted septic designer/installer/water operator submitted his review of the Property, stated that he reviewed both septic systems associated with the Property, DES Subsurface operational approval #184290 for the main building and the new proposed system Construction approval eCA 2021032312; and Mr. McConkey stated the two systems were adequate to serve both the present and proposed use.
21. The Application included a letter from DES dated February 23, 2021, with a reference to “UST System Construction Plan prepared by, Christopher P.

Williams, P.E. PLLC dated November 5, 2020 and last revised February 22, 2021.”; and DES stated it completed its review of the subject plans forwarded to by the Applicant’s engineer for the proposed underground storage tanks #4A, #4B, #5A, #5B, and #5C system installations and conditionally approved the application dated December 13, 2020, plan sheet 1 of 3 last revised February 22, 2021, and plan sheets 2 and 3 of 3 last revised February 9, 2021, for construction in accordance with the requirements of Env-Or 407.04 of the New Hampshire Code of Administrative Rules, Env-Or 400, Underground Storage Tank Facilities (UST Rules).

22. This DES approval was subject to conditions, including, among other things, closure and site assessment requirements shall be performed in accordance with Env-Or 408.04 through Env-Or 408.10 for tanks sump replacements, piping replacements (including placed in existing ducts) and piping removals, approval is valid for one year (which has been subsequently extended), an owner shall not cause or allow any construction or other activity that is not in accordance with the approved plans and all terms and conditions of DES’s approval per Env-Or 407.04(e), and prior to DES authorizing an underground storage tank system to be placed into service, the owner shall submit to DES final certification by a New Hampshire licensed professional engineer or the certified tank installer that the installation has been completed and is in accordance with DES’ approved plans, as-built record drawings and all terms and conditions.
23. On March 23, 2021, DES approved the Applicant’s application for construction of Individual Sewage Disposal System (“ISDS”).
24. On May 14, 2021, the Applicant filed for a Variance under Article 22 with the ZBA to allow the gasoline/diesel sales operation on the Property.
25. On July 8, 2021, the Applicant received a driveway permit from the New Hampshire Department of Transportation (“DOT”) granting permission to construct (alter) a driveway, entrance, exit or approach adjoining NH 25 pursuant to specifications outlined in the permit.
26. The ZBA held public hearings and took comments from the Applicant, the Abutters, and the public at meetings held June 29, July 8, and July 20, 2021.
27. The ZBA resumed deliberations on August 4, 2021 and in an August 6, 2021 Notice of Decision, the Applicant was granted a Variance from Article 22, case #097, from the ZBA to operate a gas station, by a 4 to 1 vote of the ZBA, with the following conditions: (1) A Stormwater Management Plan, per DES guidelines, shall be submitted for Site Plan Review; and (2) A Spill Prevention Control and

- Countermeasure Plan, per DES guidelines, shall be submitted for Site Plan Review.
28. Thereafter, two of the Abutters and Ossipee Lake Alliance (“OLA”) filed Motion for Rehearing with the ZBA concerning the granting of the Variance.
 29. On August 20, 2021, the Applicant received approval for operation of the ISDS.
 30. At the September 28, 2021 ZBA meeting, the ZBA voted to deny the Motion for Rehearing, stating it did not err in its initial decision and that the ZBA’s decision is neither unlawful nor unreasonable; and thereafter, two of the Abutters and OLA filed suit at Carroll County Superior Court.
 31. In a letter dated October 14, 2021 to the Planning Board, the Board of Selectmen recognized the driveway access off Leavitt Road existed prior to the adoption of the Effingham driveway regulation; and the Board of Selectmen further recognized that the driveway is valid and should be permitted to remain in place.
 32. On December 12, 2021, the Applicant submitted a subsequent plan for approval to the Board entitled “Site Plan Review Plat 1 for Meena” prepared by Jacob and Mark McConkey.
 33. On April 26, 2022, Northpoint Engineering (“Northpoint”) submitted to the Board its requested technical review of the plans and material for the Applicant’s project.
 34. Northpoint stated that because the subject site is located within the Town’s Groundwater Protection District and the Town ZBA granted a Variance for the proposed use subject to conditions that the project prepare a Stormwater Management Plan and a Spill Prevention, Control, and Countermeasure Plan (“SPCC”), and pursuant to the Board’s request, it focused its review on the stormwater management design and the SPCC plan; and Northpoint reviewed the application materials and plan documents to determine conformance with local regulations, state and Federal requirements, as well as generally accepted engineering practices.
 35. In its review, Northpoint recommended that the Applicant submit a formal Special Use Permit application to the Board, which is required for any use that will store, handle, or use regulated substances in quantities exceeding 100 gallons pursuant to Zoning Ordinance Article 22, Section 2208.
 36. On June 2, 2022, the Carroll County Superior Court denied the Abutters/OLA’s appeal from the ZBA’s denial of its motion for rehearing, and accordingly affirmed the ZBA’s grant of a variance from Article 22, Section 2207A(8).

37. On August 22, 2022, the Board held a special meeting regarding the Applicant's Application. At that meeting, the Board voted unanimously that the Special Use Permit under Article 22 of the Zoning Ordinance concerning the handling and use of regulated substances in quantities exceeding 100 gallons in areas of groundwater protection was not needed, in part, due to the prior Variance which had been upheld by the Court.
38. On September 20, 2022, the two Abutters and OLA filed a Petition for Writ of Certiorari in the Court, challenging the Board's August 22, 2022 decision that the Applicant did not need to apply for a Special Use Permit under Article 22 of the Zoning Ordinance.
39. On September 21, 2022, the Court ordered a Writ of Certiorari shall issue and proceedings upon the decision appealed from were stayed.
40. On October 19, 2022, the Applicant filed an Assented-to Motion to Intervene because the Court's decision on whether the Applicant needed to obtain a Special Use Permit, would directly affect its ability to move forward with the Project.
41. On October 21, 2022, the Abutters filed its "Appeal of Planning Board's August 22, 2022 Decision that Meena LLC Does Not Need a Special Use Permit Under Article 22 of the Town's Zoning Ordinance" at the ZBA.
42. Contemporaneously, on October 21, 2022, the Town and Board filed a Motion to Dismiss with prejudice for failure to state a claim upon which relief may be granted, arguing that the Petitioner's misinterpreted the Zoning Ordinance and misapplied the applicable law as it relates to the requirement of a Special Use Permit.
43. On October 31, 2022, the Abutters filed its Objection to Motion to Dismiss.
44. On January 4, 2023, the ZBA held a public hearing where the ZBA considered the appeal from the Planning Board decision's regarding the Applicant.
45. The Court held a hearing on the Motion to Dismiss on January 6, 2023.
46. On January 27, 2023, the Court issued its order granting the Respondent's Motion to Dismiss.
47. On February 5, 2023, the Abutters filed a Motion to Reconsider the Court's January 27, 2023 order.
48. On February 13, 2023, the Applicant filed an Objection to the Petitioner's Motion to Reconsider to which the Town and Board filed a Notice of Joinder.

49. On March 14, 2023, the Court filed a margin order denying the Petitioner's Motion to Reconsider, stating that the Court did not overlook or misapprehend any points of law or fact. The Court also found that the Motion to Reconsider was not brought in bad faith or with malice, and therefore the Applicant's request for attorney's fees was denied.
50. On June 20, 2023, the Board reviewed the Site Plan Regs and the Zoning Ordinance (both referenced herein according to section) in conjunction with the Application to see if the Applicant had met the applicable requirements of Site Plan Review.
51. At the outset, Chairman Bull stated that the Board had already voted on the fact that the application was complete and that the purpose of this review was to confirm the requirements due to various changes that have occurred over the life of this lengthy project.
52. The Board determined that the Applicant had met the requirements of Major Review Submission Requirements, Sections 6.2.A and 6.2.B.1–10.
53. The Board noted that, during the June 6, 2023 meeting, the Board voted to waive the landscape plan requirement pursuant to 6.2.B.11.
54. The Board found the requirements of 6.2.B.12–20 were also met.
55. The Board found that the Applicant had provided the necessary documentation from the Department of Transportation ("DOT") DES, and the ZBA's conditions had been provided pursuant to Section 6.2.C.
56. The Board found that an Erosion Control Plan was not applicable to this site.
57. The Board confirmed a Stormwater Plan developed by an engineer was provided.
58. The Board noted that there was no new proposed easements or covenants, but that a utility easement had been noted on the plat as required.
59. The Board agreed an impact analysis pursuant to Section 6.2.D. was not applicable for this site and no additional information was deemed necessary by the Board per Section 6.2.E.
60. The Board reviewed the abutter list and confirmed it was complete pursuant to 6.2.F.
61. The Board determined that no "as built" plans were required to be provided at this stage of the development, but that such plans were required as a condition of approval.

62. The Board found that under Section 6.4 General Standards Major, the proposed plan shows buffer vegetation is to be left intact and describes revegetation over the gravel area of the eliminated second driveway onto Leavitt Road, all of which will meet the requirement of 6.4.A.1.
63. As noted earlier, the landscape plan was waived, but the Stormwater Plan was developed by an engineer to meet the conditions of the ZBA Notice of Decision.
64. The Board found that under Section 6.4 B Illumination, the proposed plan shows minimal existing lighting on the buildings and the five (5) signs on three (3) posts internally lit and one (1) portable marquee are preexisting signage and are therefore grandfathered.
65. Further, the Board found that the one downward facing light illuminating access on the Leavitt Road side of the property was appropriate.
66. The Board found the Applicant met all of the requirements for 6.4.C. Pedestrian Safety, as the site has a front door for customers, a back door for loading, handicap parking identified, doors at the front of each apartment and resident parking, and access for employees to the storage area.
67. The Board found that under Section 6.4.D Off Street Parking and Loading, the plan has adequate parking and meets the requirements of 6.4.D.1 and the requirement that access, parking, and loading areas be designed to minimize dust, erosion, and runoff conditions was met with the paved access designated directional access on pavement and vegetation to be planted on the old gravel drive.
68. The Board found the requirements of Section 6.4.E Screening had been met with natural vegetation and a steep hillside at the rear/side of the Property providing a buffer and adequate screening, an enclosed storage area in the adjacent structure, and a dumpster with three-sided fencing with a gated opening on a concrete pad.
69. The Board found that under Section 6.4.F Street Access/Traffic Pattern, the proposed plan addresses street access and traffic as required, as there is no new road construction, two-way access with proposed center line from Leavitt Road and emergency access is adequate.
70. The Board found that adequate water supply and sewage disposal systems were provided to meet the requirements of Section 6.4.G, where each building has its own sewage disposal system that meets DES requirements, ISDS numbers marked on the plat, and where the water supply previously supported a laundromat.

71. The Board found that the Applicant had met the requirements of Section 6.4.H Underground or Belowground Fuel Storage Tanks, where Jeff Lewis of Northpoint Engineering, the Board's independent engineer, confirmed that the tanks have met DES approval.
72. The Board found no additional stormwater runoff will be generated under Section 6.4.I Stormwater Drainage.
73. The Board engaged in considerable discussion regarding the topic of pollution control pursuant to Section 6.4.J of the Site Plan Regs, including but not limited to: Board Member Cahalane asked if the Board was considering the two Stormwater plan options, impermeable barrier on the bottom or not; Chairman Bull stated they were only able to discuss the plan as presented and until the testing at the retention basin is done, there is not another plan on the table; Chairman Bull also stated there can be a condition precedent for testing under the proposed retention basin; the question before the Board was whether the Applicant was doing the best that they can to provide pollution control.
74. The Board found that the Applicant presented a pollution control plan which had been peer reviewed to confirm that it meets DES requirements and those of the Site Plan Regs so that the Applicant has met this requirement.
75. The Applicant stated that they conduct DES tests of the Property bimonthly and everyone gets notified of the results, including the Effingham Fire Department.
76. Board Member Jewell questioned the Bioretention Design and whether the filter material under the basin ever gets changed; and Horizons Engineer Mark Lucy responded that the filter medium can be replaced regularly or as needed, but that the Applicant intends to replace the filter medium annually.
77. The Board questioned the distance between the Public Water Supply Well and the UST tanks; and Board Member Cahalane stated that the deactivation of the well requires reactivation testing from DES, annual testing that must meet State and Federal Standards.
78. The Board found that the Applicant supplied the proper DES documentation regarding a waiver for the distance from the well and its approved water supply; the Applicant noted that the testing results are available to the public on the DES website; and Board Member Cahalane stated that DES reactivation approval does not happen until the Applicant is ready to reactivate the well.
79. The Board discussed a possible condition of approval regarding well testing and concluded that there must be Quarterly testing for VOCs in the Public Water

Supply and that the threshold is not to exceed the DES Standards with results submitted to the Town's Board of Selectmen.

80. In response to concerns raised regarding the timing of when the well was approved as a Public Water Supply and the UST tank approval, Attorney Johnson, representing the Applicant, verified the Well distance was depicted on the Application plan for the UST tanks that was provided to DES and approved by DES and that all aspects of DES were aware of the application, including the Water Division; and the Board required a copy of the UST Application that was approved by DES that would satisfy this concern; and with the addition of this condition of approval, the Board found the Applicant has met the requirements of Section 6.4.J.
81. The Board found that handicap access has been identified on the plat, and this meet the requirements of Section 6.4.K.
82. The Board found that the Application meets the requirements of Section. 6.4.L.; and per Section 6.4.L Unsuitable Land, the Board found that unsuitable land is typically steep slopes of greater than fifteen (15) degrees or wetlands, whereas level well drained sandy soil would be considered suitable within the context of the Site Plan Regs and Zoning Ordinance.
83. The Board found that Section 6.4.M, where the site plan shall provide for the safe and attractive development or change or expansion of use of the site, had been met, where Board Member Williams stated that the removal of the second driveway onto Leavitt Road had improved safety by limiting access to the site to one access point on Leavitt Road.
84. The Board found that the Application meets the requirements of Section 6.4.N, where the Master Plan was reviewed and confirmed a gas station is consistent with the character of the Town.
85. The Board found that the Application meets the requirements of Section 6.4.O, where Board Members stated that there is more open space and green space at this location than there is at a typical gas station, and that the proposed plan includes adding additional vegetation that will only increase the green space.
86. In addition to the Site Plan Regs, the Board found that the Applicant must meet certain requirements of the Zoning Ordinance.
87. The Board first considered Article 10: Conditions for Permitted Uses.
88. The Board found that the Application falls under Section 1005: Automobile Service Station based on the classification assigned by the ZBA Variance.

89. The Board found that each site requirement under Section 1005 had been met: (a) the operating hours are between 6 AM and 11 PM 7 days per week; (b) lot size is greater than 2 acres; (c) the pumps are no closer than 15 feet to any building or 25 feet of any right of way; (d) there is a vegetative buffer; (e) all utilized areas for vehicular traffic are paved; (f) the preexisting signage is grandfathered; (g) preexisting portable sign is noted on the plan; (h) adequate room for snow storage as depicted on the plan; and (i) gasoline dispensing only, so not applicable; and that the Special Exception and Variance have been granted by the ZBA.
90. The Board found the requirements under Section 1015 for Two Family Dwelling Unit, including two parking spaces, had been met with respect to the two existing apartments included in the project.
91. Additionally, the Board found the two-family dwelling unit is preexisting and there are no proposed changes and is grandfathered as is.
92. The Board found that the requirements for a Retail Business under Section 1031 have been met, specifically the parking requirements.
93. The Board concluded that the Site Plan Regs and Zoning Ordinance requirements have been reviewed and confirmed the requirements have been met.
94. The Board found that an environmental impact study and a traffic study are not required.
95. The Board continued the hearing to July 11, 2023 in order to draft a Notice of Decision for consideration.
96. The Board agreed with Mr. Lewis of Northpoint Engineering that (i) the I&M Manual needed to be recorded at the Carroll County Registry of Deeds as a condition subsequent to the signing of the final Site Plan, (ii) the soil testing underneath the Bioretention Basin area for VOC's with the threshold of DES standards was needed as a condition precedent to the signing of the final Site Plan with the express condition that if VOC's are found in excess of such threshold, then the Applicant will need to return to the Board with a redesigned Bioretention Basin for the Board's review and possible approval, and (iii) that the following changes to the final Site Plan were needed as conditions precedent to the signing of the same: (1) revised location of diesel pump at least 15 feet from building and 25 feet from the right of way with blockage to prevent usage of the pump between the building and the pump (or the Applicant shall return to the Board with a revised Site Plan if the Applicant decides upon a different traffic pattern for the diesel pump); (2) impermeable liner on the sides of the Bioretention Basin; (3) the drainage area between buildings needs additional spot elevations; (4) clarification

of pavement removal on the plan; (5) gravel areas to be seeded need to be shown; (6) Basin Spillway shall be moved further to the east away from the steep slopes; and (7) spot elevations and drainage flow arrows in the areas of the pumps shall be added.

97. The Board determined that as an additional condition precedent, the Applicant is required to pay all of the Board's expenses associated with Northpoint Engineering's review of the various plans and documents and participation in the various hearings of this matter.

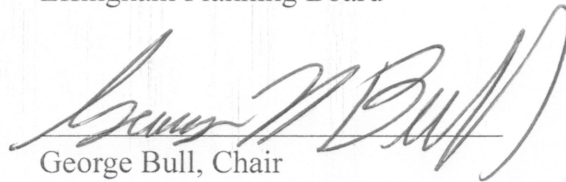
98. The Board determined that Mr. Lewis and the Board Chair are authorized to determine together if the conditions precedent have been met.

99. The Board determined that the following additional conditions subsequent are imposed on the Applicant, its successors and assigns: (i) the Applicant must provide to the Town a complete set of "as built" plans covering the USTs, canopies, the Stormwater Management infrastructure, impervious dumpster pad and landscaping as well as a copy of the UST Application that was approved by DES; (ii) the Applicant must comply with all required testing of the public water supply well on the Property, including but not limited to the quarterly testing of the water for VOC's with the results of the same to be provided to the Town's Board of Selectmen on a timely basis; (iii) the Applicant shall comply with all aspects of the Spill Prevention Control and Countermeasure Plan and Stormwater Management Plan tendered as part of this Application process; (iv) the Applicant shall obtain all necessary State permits for operation of the business as proposed and shall provide copies of all such permits to the Town for its file on the Property; and (v) the Applicant shall operate the business on the Property only between the hours of 6 a.m. and 11 p.m. seven (7) days a week and that the gas/diesel pumps shall be operational only during such hours.

100. Having considered all of the evidence presented to the Board during the above-referenced public hearings and given such evidence the weight it deserves, the Board hereby grants the Applicant's Site Plan Review Application with the conditions precedent and conditions subsequent as set forth above.

Effingham Planning Board

Dated: August 8 2023

A handwritten signature in black ink, appearing to read "George Bull", written over a horizontal line.

George Bull, Chair

Duly Authorized