

David L. Smith

# A matter of fairness

The confusion about special use permits in the Effingham gas station case is unfortunate because the importance of the issue can be summarized in a single sentence: The planning board's decision that Meena LLC does not need to apply for a special use permit to operate a gas station on its high-risk property deprives the community of required environmental information by lowering the bar for the applicant.

The zoning ordinance prohibits new gas stations in the Groundwater Protection District because they are a risk to the Ossipee Aquifer. It regulates other uses based on activity risk factors, including the storage, use or handling of 100 gallons or more of a regulated substance like gasoline.

These other uses, regardless of what they are, require the applicant to apply for a special use permit by providing specific environmental information to the planning board, which then decides if the proposed use can meet the ordinance's performance standards. If a permit is granted, the submitted information establishes baseline data to track compliance.

The zoning ordinance does not specify environmental standards for operating gas stations where they are prohibited, like the Meena property. So, when the ZBA granted Meena a variance to pump gas, it said the company needed to submit stormwater management and spill prevention plans as part of its site plan application to the planning board.

The stormwater and spill protection plans are essential, but they fall short of the full range of safeguards the ordinance requires for the use of regulated substances in the Groundwater Protection District. In short, the ZBA inequitably favored Meena by setting a lower environmental bar to operate a gas station on property where a gas station is by definition an unreasonable risk.

Meena's position is that it is exempt from the special use permit process as it pertains to regulated substances because gas stations are prohibited on its property — even though it received a variance to build and operate one there. It first presented this argument last year after North Point Engineering, the planning board's independent advisor in the Meena matter, twice told the board the developer needed to apply for a special use permit.

But when the planning board ruled on the matter in August, it didn't cite North Point's opinion or Meena's legal argument or the abutters' legal counter-argument that the variance had turned a prohibited use into a lawful use that requires a permit.

Instead, the planning board held a general discussion and concluded the stormwater and spill protection plans were good enough, and the special use permit requirements were redundant. It then failed to issue a written decision explaining its reasoning, which the ordinance requires.

Abutters and two conservation organizations, including ours, appealed to the ZBA, saying the planning board's decision violated the zoning ordinance. On Jan. 4 the ZBA heard arguments on the appeal, but deferred a decision to Feb. 1.

What is it about the performance standards in the special use permit process that Meena is trying so hard to avoid?

For one thing, it is trying to avoid submitting a plan on how to maintain more than four feet of vertical separation between stormwater runoff and the groundwater. For another, it is trying to avoid submitting a plan to remediate potentially carcinogenic naphthalene contaminants left in the ground from a previous gas station that was abandoned eight years ago.

You are not alone in thinking these are important pieces of information, given the well-documented environmental risks on Meena's property. Any other applicant for a use in the Groundwater Protection District that involved storing or handling 100 gallons or more of a regulated substance would have to address these special use permit requirements, but the planning board has given Meena a pass.

Don't blame the planning board alone. From the start, Meena has aggressively pursued environmental shortcuts. Several months after it bought the property, it installed underground gas storage tanks and started building a gas station without an approved site plan or building permits.

Ironically, the appeal of the planning board's special use permit decision is now before the same body that granted the variance almost two years ago. But the current

**The planning board held a general discussion and concluded the stormwater and spill protection plans were good enough, and the special use permit requirements were redundant.**

see SMITH page 11

**SMITH** from page 10

ZBA has a different chair and several new members, and there is a lot more information available compared to then.

The only way to address the inequity of the planning board's decision is for the ZBA to rule that the planning board erred by not requiring Meena to do what any other applicant for a

gas station would have to do — apply for a special use permit and show it can meet the performance standards in the zoning ordinance. The ZBA has an opportunity to do that when it reconvenes on the Meena matter on Wednesday, Feb. 1.

*David L. Smith, co-founder of Ossipee Lake Alliance, lives in Freedom.*