

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS  
NORTHERN DISTRICT

SUPERIOR COURT

No. 212-2024-CV-00017

William Bartoswicz and Tammy McPherson

v.

Town Of Effingham and  
Town Of Effingham Planning Board

**VERIFIED MOTION FOR ORDER REQUIRING PLAINTIFFS TO POST A BOND**  
**(Pursuant to NH RSA 677:20)**

NOW COMES the Applicant and Intervenor, Meena LLC (“Meena”), by and through its attorneys, Devine, Millimet & Branch, Professional Association, and submits the following Verified Motion for Order Requiring Plaintiffs to Post a Bond in this case. In support of this Motion, Meena states the following:

**Introduction**

1. Meena seeks the imposition of a bond pursuant to RSA 677:20 because of the significant delay and economic harm to Meena due to plaintiffs’ filing serial appeals of administrative decisions culminating in this most recent appeal and a companion appeal. Meena could begin operating the gas station and continue operating the store and receiving revenue but for the actions of the plaintiffs in what is now their fourth and fifth appeal attempts to block Meena’s development project.

2. This present appeal arises from an Application for Site Plan Review (the “Application”) submitted by Meena to operate a gasoline station and convenience store at the real property known as 41 N.H. Route 25, Effingham, New Hampshire, Tax Map 401, Lot 5 (the

“Subject Property”). January 3, 2024, after multiple delays caused by the plaintiffs, the Effingham Planning Board (the “Planning Board”) issued a decision (the “Decision”) affirming that Meena had met all conditions precedent in its conditional approval dated July 11, 2023, as modified on August 8, 2023. This appeal challenges that Decision.

### **Factual and Procedural Background**

3. In connection with the Application, Meena first applied to the Effingham Zoning Board of Adjustment (the “ZBA”) for a variance to Article 22, Section 2207A(8) of the Town of Effingham Zoning Ordinance to operate a gasoline station and convenience store at the Subject Property.

4. On or about August 4, 2021, the ZBA issued a variance, with conditions, to Article 22, Section 2207A(8) of the Town of Effingham Zoning Ordinance for Meena to operate a proposed gasoline station.

5. The plaintiffs appealed this decision to the Superior Court, which precluded Meena from completing review by the Planning Board. Almost one year later, this Court affirmed the ZBA variance by Order dated June 2, 2022.

6. In light of the ZBA’s variance and this Court’s Order affirming the same, the Planning Board determined on August 22, 2022 that the proposed gasoline station did not require a Special Use Permit pursuant to the Effingham Zoning Ordinance.

7. On September 20, 2022, plaintiffs appealed the August 22, 2022 Planning Board determination (Case # 212-2022-CV-00102) with this Court (the “Special Use Permit Appeal”). The Special Use Permit Appeal prevented Meena from completing its site plan review process with the Planning Board until the Special Use Permit Appeal was finished.

8. On October 21, 2022, the Town of Effingham and Town of Effingham Planning Board filed a Motion to Dismiss with regard to the Special Use Permit Appeal, which was granted by this Court on January 27, 2023. Thereafter, Meena could complete its site plan review process with the Planning Board

9. On July 11, 2023, the Planning Board voted to approve Meena's Application, which was subsequently modified on August 8, 2023.

10. On August 10, 2023, plaintiffs filed a Petition of Certiorari and Appeal of Planning Board Decision Pursuant to RSA 677:15 with the Carroll County Superior Court, Docket No. 212-2023-CV-00127, which once again stayed Meena's ability to move forward on its project.

11. Plaintiffs ultimately agreed to dismiss that Petition as premature due to the conditional nature of the approval from the Planning Board.

12. The Planning Board on January 4, 2024 ruled that Meena had met all conditions precedent in the July 11, 2023 conditional approval.

13. Plaintiffs appealed that January 4, 2024 Decision to the ZBA and to this Court.

14. This case, the Planning Board Appeal, once again has blocked Meena from taking further action to complete its project by virtue of the certiorari order entered on or about February 5, 2024 by this Court (the "Planning Board Appeal").

15. The ZBA denied plaintiffs' appeal on January 3, 2024, granted a motion for rehearing, but then denied the appeal after the motion for rehearing on March 6, 2024. The plaintiffs have now appealed the ZBA decision to this Court as well. See Docket No. 212-2024-CV-00055 (the "ZBA Appeal").

16. Once again, by filing this appeal, the plaintiffs have precluded Meena from completing its development project.

### Analysis

17. NH RSA 677:20, I states that:

Whenever an appeal to the superior court is initiated under this chapter, the court may in its discretion require the person or persons appealing to file a bond with sufficient surety for such a sum as shall be fixed by the court to indemnify and save harmless the person or persons in whose favor the decision was rendered from damages and costs which he or she may sustain in case the decision being appealed is affirmed.

18. In the current action, Meena requests that this Court require plaintiffs to post a bond pursuant to NH RSA 677:20, I.

19. NH RSA 677:20, I, gives the Court great deference in determining when the circumstances of a particular case warrant the imposition of a bond. In enacting this provision, which became effective on August 23, 2022, the legislature did not articulate a standard for when NH RSA 677:20, I, should be triggered. In addition, the legislative history does not provide any insight and undersigned counsel is not aware of any prior court decisions interpreting this statute. Given this set of circumstances, Meena submits that the Court must consider the serial filings of the plaintiffs as a basis to now impose a bond.

20. The procedural history as discussed herein demonstrates that plaintiffs have brought suit, on three prior occasions, to challenge the decisions of the Town of Effingham with respect to Meena's approvals to operate a gasoline station at the Subject Property, without success. Plaintiffs now have this appeal and the ZBA Appeal also before this Court.

21. In Case #212-2021-CV-0015, this Court affirmed the variance issued and in Case #212-2022-CV-00102, plaintiffs failed to state a claim and the suit was dismissed. In the most

recent appeal prior to this appeal, Case No. 212-2023-CV-00127, plaintiffs agreed to dismiss the appeal as premature.

22. Because of the serial filings by the plaintiffs, Meena respectfully requests that this Court require plaintiffs to now post a bond. NH RSA 677:20, I is designed to “indemnify and save harmless the person or persons in whose favor the decision was rendered from damages and costs which he or she may sustain in case the decision being appealed is affirmed.” In this case, Meena is being delayed in opening the gasoline station and convenience store business that the Town of Effingham Planning Board and ZBA have approved. But for this Appeal, Meena would be in a position to open the gas station and convenience store after satisfying all of the conditions precedent and subsequent in the Notice of Decision by no later than June 1, 2024. A bond in the amount of \$603,450.85 represents the amount of net profit that would be lost from the filing of this Petition on February 4, 2024 through February 4, 2025, the expected duration of this case. Meena can accurately estimate the lost net profit because Meena operates other gas stations and convenience stores and has done so for many years. Thus, Meena knows what the profit margin is on its gas stations and convenience stores. Pankaj Garg, the manager of Meena, LLC, has verified this calculation and if necessary could testify as to how he arrived at that number.

23. Given the nature of this Motion for Plaintiffs to Post a Bond, counsel for Meena has not consulted with counsel for the plaintiffs. Counsel for the Town assents/does not assent to the imposition of a bond.

WHEREFORE, Meena respectfully requests that this Honorable Court:

- A. Grant this Motion to Post Bond in the above-captioned Planning Board appeal;
- B. If necessary, schedule a hearing on the bond request; and
- C. Grant Meena such other and further relief as may be just and proper.

Respectfully submitted,  
MEENA, LLC

By its Attorneys,  
DEVINE, MILLIMET & BRANCH, P.A.

Dated: April 22, 2024

By: /s/ Matthew R. Johnson  
Matthew R. Johnson, Esq. (#13076)  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the forgoing was forwarded to all counsel of record on this date in accordance with the Superior Court Civil Rules.

Dated: April 22, 2024

/s/ Matthew R. Johnson  
Matthew R. Johnson, Esquire

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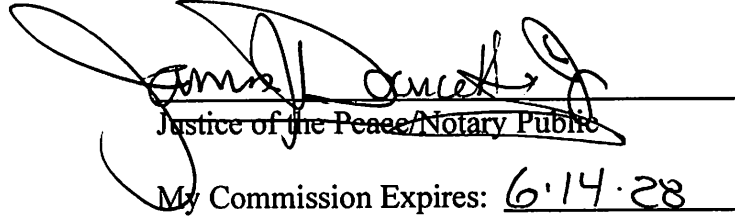
  
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Pankaj Garg, Manager, Meena, LLC

Dated: April 19, 2024

STATE OF NEW HAMPSHIRE  
HILLSBOROUGH, SS.

Personally appeared the above-named Pankaj Garg, known to me or satisfactorily proven to be the person who subscribed to the foregoing Motion, and who made oath that all factual allegations therein contained are true and correct to the best of his knowledge and belief.

Dated: April 14, 2024

  
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Justice of the Peace/Notary Public  
My Commission Expires: 6.14.28

