THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS. **SUPERIOR COURT**
NORTHERN DISTRICT

William Bartoswicz, et al.

v.

Town of Effingham, et al.

Docket No. 214-2024-CV-00055

ORDER

The plaintiffs, William Bartoswicz and Tammy McPherson, bring this action against the defendants, Town of Effingham (the "Town") and the Town of Effingham Zoning Board of Adjustment (the "ZBA"), appealing the ZBA's decision to deny their appeal of the Effingham Planning Board's July 11, 2023 decision to conditionally approve a site plan application. The Applicant, Meena, LLC ("Meena"), has joined the instant action as an intervenor. For the following reasons, the decision of the ZBA is AFFIRMED.

Factual Background

The instant action centers around Meena's site plan application for a gas station, convenience store, and apartments at 41 NH Route 25 (the "Property") in Effingham. (Certified Record ("C.R.")[1] at 17, 32.) On February 25, 2021, Meena purchased the

[1] As discussed later, the Certified Record in this case has been expanded to include additional documents submitted by the petitioners. These documents were received by the Court on July 22, 2024, and are sequentially numbered as additions to the Certified Record.

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Hillsborough Superior Court Northern District
10/1/2024 9:30 AM

Property, known as Boyles Market, which primarily consisted of a convenience store, two apartments, and a laundromat. (Id. at 72.) Previously, the Property was the site of a gas station. (Id.) While the gas station canopy and pumps remained at the time of Meena's purchase, the property's use as a gas station had been discontinued in 2015 when the New Hampshire Department of Environmental Services ("DES") mandated that the existing underground fuel storage tanks needed to be upgraded or removed. (Id. at 46.) Notably, in 2011, the Town established a groundwater protection district in the Effingham Zoning Ordinance ("EZO") which specifically prohibited certain uses, including gas stations, within the district (Id. at 48; see EZO § 2207.) Recognizing the Property was located in the groundwater protection district since 2011, it is undisputed that the Property's use as a gas station was a preexisting nonconforming use at the time gas sales ceased in 2015.

Nonetheless, Meena sought to restore the Property's use as a gas station. On March 10, 2021, Meena submitted an application to the ZBA for a special exception for an "Automobile Service Station + Expansion of [an] Existing Use[.]" (C.R. at 45, 173.) The application also reflected that Meena intended to discontinue the operation of the laundromat on the Property and repurpose the space into an apartment. (Id. at 181.) Meena provided a site plan reflecting the existing convenience store and the location of the proposed gas pumps. (Id. at 179.) The application indicated that the "previous and existing use for this property has been a convenience store with gas operations" and that the "gas canopy is in place, the state permitting is in place, [and] a state licensed contractor is ready to install the tanks, piping, and dispensers according to the current state standards[.]" (Id.) Meena also listed several conditions, including that the "[gas

p]umps will be located no closer than 35' feet to any building and greater than 35' feet from either right-of-way of any street." (Id. at 182.) On March 20, 2021, the ZBA issued a notice of decision:

> You are hereby notified that a Special Exception is Granted to add gas pumps to the convenience store and convert the laundromat to a third apartment, in accordance with Effingham Zoning Ordinance Article 9 Special Exception, Section 904 Conditions for approval, with regard to Section 1005 Automobile Service Station, and per Section 702 Change or Expansion of Non-Conforming Use, by the Zoning Board of Adjustment at its meeting on 3/29/21.

(Id. at 194.) The notice of decision also provided that site plan approval from the planning board would be required and that "[a]ny future change or expansion must be compliant with the then current Zoning Ordinance or relief must be received from the Zoning Board of Adjustment." (Id.)

On May 6, 2021, Meena went before the Planning Board regarding its site plan application. (Id. at 74.). At this first hearing, the Planning Board referred Meena to the ZBA for a variance regarding the Property's location within the Ground Water Protection District. (Id. at 75.) However, for reasons which are unclear, Meena subsequently began reinstalling the underground storage tanks and conducting work on the Property with the Town's Board of Selectmen's knowledge. (Id. at 46, 74.) The Selectmen later issued a cease-and-desist order against Meena on or about May 13, 2021, prohibiting Meena from completing the installation until it secured a variance from the ZBA. (Id. at 46, 108.) While it appears that the cease-and-desist order did not prohibit the continued operation of the convenience store, the convenience store has not consistently operated since the issuance of the cease-and-desist order. (Id. at 108.)

On August 6, 2021, Meena received a variance from the ZBA to develop and operate a gas station on the Property. (Id. at 113.) Following that decision, the site plan application process continued for nearly two years as the Planning Board held multiple public hearings. (See Id. at 45.) At the Planning Board's request, Northpoint Engineering, LLC ("Northpoint") performed a technical review of the plans. (Id. at 49.) The Planning Board also voted to declare the project one of regional impact. (Id. at 75.) The petitioners also hired Geoscience Solutions, LLC to conduct a review of the site plan application. (Id.) Over the course of the planning board's review, Meena made further revisions to its site plan application.

Eventually, on July 11, 2023, the Planning Board voted to approve Meena's site plan application. (Id. at 62.) The Planning Board then issued a written notice of decision dated July 13, 2023, with 100 paragraphs including both conditions subsequent and conditions precedent. (Id. at 32.) After another public meeting on August 7, 2023, the Planning Board issued an amended notice of decision dated August 8, 2023. (Id. at 45.) Around that same time, Meena provided the Planning Board with a revised set of plans dated August 7, 2023. (Id. at 77.) This revised plan, like the prior submissions, had a diesel canopy, diesel pump, gasoline pumps, fuel tanks, oil water separators, and other storm management devices within the Town's 50-foot setback requirement. (Id. at 67.) The petitioners subsequently appealed the Planning Board's decision to the ZBA.

After receiving the appeal application, the ZBA issued a public notice and held a public hearing on October 25, 2023. (Id. at 91.) However, the meeting was rescheduled after the ZBA became aware that the issue of the gas station approval was declared a regional impact, and the ZBA had not notified the affected towns within the appropriate

14-day window (Id. at 93.) Eventually, on January 3, 2024, the ZBA held a hearing on the petitioners' appeal. (Id. at 141.) The ZBA appeal included two main issues: (1) the application of the Town's 50-foot setback requirements, and (2) the size of the convenience store on the Property. (Id. at 71-80.) During the hearing, the ZBA heard from members of the public, in addition to counsel for the petitioners, counsel for the Planning Board, and counsel for Meena. (Id. at 141–42.) The ZBA members deliberated and ultimately voted against granting the petitioners' appeal. (Id.) In the notice of decision, dated January 4, 2024, the majority of the ZBA found that the 2021 Special Exception allows for relief from the dimensional constraints of the EZO, and that this special exception was not abandoned by Meena. (Id. at 143–45.)

On or about February 1, 2024, the petitioners filed a motion for rehearing with the ZBA. (Id. at 156–62.) In the motion, the petitioners argued that the ZBA erroneously denied their appeal and that the January 3rd hearing had numerous deficiencies, including the failure to notify the Lakes Region Planning Commission ("LRPC"), a party entitled to notification due to the regional impact of Meena's application. (Id.) The ZBA addressed the motion for rehearing on February 21, 2024, and voted to grant it for the limited purpose of giving the LRPC an opportunity to be heard and scheduled the rehearing for March 6, 2024. (See id. at 170–71.)

On March 5, 2024, the petitioners' counsel sent the ZBA a letter in anticipation of the rehearing, arguing that the decision to limit the rehearing to LRPC was erroneous and that the notices sent were unclear. (Id. at 164–62.) At the March 6, 2024, rehearing, no LRPC representative appeared, and the ZBA did not allow any other members of the public to participate. (Id. at 151–54.) The ZBA determined that no new evidence or

testimony had been offered and voted 3-2 to deny the petitioners' appeal. (Id.) In its notice of decision, dated March 8, 2024, the ZBA reaffirmed its previous decision and incorporated by reference its previous findings of fact. (Id.) The instant appeal followed.

Standard of Review

"The superior court's review in zoning cases is limited." Kalil v. Town of Dummer Zoning Bd. of Adjustment, 155 N.H. 307, 309 (2007). "When reviewing a decision of a zoning board of adjustment, the superior court acts as an appellate body, not as a fact finder." Chester Rod and Gun Club, Inc. v. Town of Chester, 152 N.H. 577, 583 (2005). When evaluating an appeal to the Court, "the burden of proof shall be upon the party seeking to set aside any order or decision of the zoning board of adjustment . . . to show that the order or decision is unlawful or unreasonable." RSA 677:6. Upon review, "the trial court must treat all factual findings . . . as prima facie lawful and reasonable, and may not set them aside, absent errors of law, unless it is persuaded by a balance of probabilities on the evidence before it that the ZBA decision is unreasonable." 1808 Corp. v. Town of New Ipswich, 161 N.H. 772, 775 (2011).

Ultimately, the superior court's review "is not to determine whether it agrees with the zoning board of adjustment's findings, but to determine whether there is evidence upon which they could have been reasonably based." Rochester City Council v. Rochester Zoning Bd. of Adjustment, 171 N.H. 271, 275 (2018) (quotation omitted). In essence, the Court "does not sit as a 'super zoning board.'" Id. (quotation omitted).

Analysis

As a preliminary matter, the Court addresses the petitioners' motion to expand the Certified Record. (See Doc. 13.) The Court heard argument pertaining to this motion at its July 17, 2024, hearing. The petitioners maintain that the certified record filed by the Town is missing nine documents from the underlying ZBA proceedings which should be considered by the Court.[4] The Town assents to the inclusion of all but two documents. (See Doc. 15.) Meena assents to the inclusion of all but three documents. (See Doc. 16.)

Specifically, the Town objects to the inclusion of Exhibit 6, an August 2, 2021, email from Attorney Matthew Serge reflecting his legal opinion on aspects of the project, and Exhibit 7, Meena's application for its 2021 special exception. (See Doc. 15 ¶¶ 5–6; Hr'g 1:09–1:12.) The Town argues that the email was not before the ZBA in this matter and, as such, is not relevant. (Id.) Additionally, the Town contends that the underlying special exception application is not relevant for the Court's review because there is not a legal challenge to the special exception. (See Hr'g 1:09–1:12.) In addition to joining the Town's limited objection to Exhibits 6 and 7, Meena also objects to Exhibit 8, the notice of decision for the special exception, for the same reasons as that provided for Exhibit 7. (See Doc. 16 ¶ 2.)

Despite arguments against the inclusion of the aforementioned documents, the parties have extensively referenced Meena's 2021 special exception and the associated

[4] Specifically, the petitioners request the inclusion of the following documents: (1) the petitioners' motion for rehearing; (2) the petitioners' letter dated March 5, 2024; (3) a letter from Rich Fahy to the ZBA; (4) the agenda for the February 2021, 2024 ZBA meeting; (5) the minutes for the February 21, 2024 ZBA meeting; (6) an email from Attorney Matthew Serge to Theresa Swanick dated August 2, 2021; (7) Meena's application for a special exception; (8) the notice of decision for the special exception; and (9) an email from Nate Fogg to counsel for the petitioners dated February 1, 2021 providing the ZBA's January 3, 2024 notice of decision. (See Doc. 13, Exs. 1–9.)

documents. Because the terms and scope of the special exception are relevant to the Court's instant review, the Court GRANTS this motion in part and accordingly incorporates Exhibits 1–5 and 7–9. See Mountain Valley Mall Assocs. V. Municipality of Conway, 144 N.H. 642, 655 (2000) (The Court has broad discretion "to consider additional evidence when it shall appear necessary."). However, the Court DENIES this motion as it pertains to Exhibit 6, in light of this exhibit not being before the ZBA in this matter and upon this Court finding that it will not aid in its review.

Turning to the substantive issues on appeal, the petitioners argue that the ZBA erred in its decision to affirm the Planning Board and the Court should grant reversal because (1) there were several technical and procedural hearing deficiencies relating to the ZBA's consideration of the planning board appeal, and (2) Meena's site plan application was not in compliance with the EZO. (See Doc 14.) The Court addresses each in turn.

I. Alleged Hearing Deficiencies

The Court begins by considering the technical and procedural deficiencies related to the ZBA's hearing on the petitioners' appeal. Specifically, the petitioners draw the Court's attention to: (1) the apparent inaudibility of the ZBA's deliberation; (2) the ZBA's decision to not address each issue within the appeal separately; (3) the allegedly inaccurate or incomplete meeting minutes; (4) the ZBA's delay in providing the written notice of decision; and (5) the ZBA's initial failure to notify the LRPC and their decision to grant a limited rehearing upon notification to the LRPC. (See Doc. 14 at 10–13.) In response, the Town contends that the hearing was legally sufficient and that any errors

were neither dispositive nor grounds for reversal. (Doc. 11 at 6–8.) Upon review, the Court agrees with the Town.

Indeed, it is well-established that "not all procedural irregularities require a reviewing court to set aside an administrative decision; material prejudice to the complaining party must be shown." See Patenaude v. Town of Meredith, 118 N.H. 616, 621 (1978). Moreover, "[w]hether prejudice has resulted is a question of fact[.]" Mountain Valley Mall Assocs., 144 N.H. at 653. Here, however, the petitioners do not articulate how any of the alleged technical and procedural deficiencies resulted in any material prejudice.

Notably, the petitioners maintain that the public "could not adequately hear" and that the "ZBA members appeared confused as to what was happening" in apparent violation of RSA 91-A, the Right-to-Know Law. (See Doc. 14 at 10.) However, the petitioners do not allege that they themselves could not hear the proceedings. Additionally, they provide no actual evidence that members of the public, or any ZBA members, could not hear and were materially prejudiced. Accordingly, the Court does not find that abstract and indirect complaints of potential RSA 91-A violations are sufficient to warrant invalidation of the ZBA's denial of the petitioners' appeal. See RSA 91-A:8, III.

The Court finds similarly upon consideration of the petitioners' remaining complaints concerning the alleged hearing deficiencies. While the petitioners contend that the ZBA should have individually addressed the issues on appeal, they do not cite, nor is the Court aware of, any authority in New Hampshire requiring the ZBA to separately vote on each issue in an appeal. Although it is undisputed that there were

some errors in the ZBA meeting minutes and that the notice of decision was delayed, the petitioners do not argue that these errors resulted in any prejudice. To the contrary, the petitioners were still able to bring a timely appeal to this Court and the meeting minutes appear to reflect the substance of the ZBA meeting. Contrary to the petitioners' argument, review of the parties' filings reveals consensus regarding the meaning of any notable errors in the meeting minutes, which further cuts against any material prejudice.

Finally, as the Town notes, the purpose of a rehearing is to afford a ZBA the first opportunity to correct any errors, and therefore, the movant does not control the scope of the rehearing. See Fisher v. Boscawen, 121 N.H. 438, 440 (1981) ("The rehearing process 'is geared to the proposition that the board of adjustment shall have a first opportunity to correct any action it has taken, if correction is necessary, before an appeal to the court is filed.'"); see also Nestor v. Town of Meredith, 138 N.H. 632, 635 (1994) ("[T]he scope of the rehearing was not confined to the issues contained in the motion for rehearing."); N.H. Alpha of SAE Trust v. Town of Hanover, 172 N.H. 69, 77 (2019) (describing a ZBA's authority to grant a re-hearing request as "broad"). While a rehearing requires an entirely new hearing be advertised and noticed, a ZBA may "accept as part of the record testimony and exhibits introduced at the first hearing." Loughlin, 15 N.H. Practice: Land Use Planning and Zoning § 21.18 (2024). Consistent with the broad authority given to a ZBA to grant a rehearing, the Court does not find that the ZBA's decision to grant a limited rehearing for the purposes of giving the LRPC an opportunity to be heard and submit evidence was unlawful or unreasonable.

In light of the absence of any demonstrated material prejudice, the Court finds that the alleged hearing deficiencies cited by the petitioners do not warrant reversal of the ZBA's decision.

II. Compliance with the Town's Zoning Ordinance

Next, the petitioners contend that the ZBA erred in denying their appeal of the planning board's conditional approval of Meena's site plan due to outstanding violations of the EZO. (Doc. 14 at 13–14.) Specifically, the petitioners highlight that the approved site plan reflects that the "diesel canopy, diesel pump, gasoline pumps, fuel tanks, oil water separators, and other storm management devices" are placed in locations that violate the EZO's 50-foot setback requirement. (Id.) The petitioners also argue that the convenience store exceeds the maximum floor space established in the EZO. (Id. at 18.) In response, the Town asserts that any dimensional "issues" concerning the zoning ordinance are irrelevant because Meena obtained both a special exception and a variance for the gas station's operation. (Doc. 11 at 8.) Upon careful review, the Court agrees with the Town's arguments.

"The interpretation of an ordinance is a question of law" which requires the Court to "determine the intent of the enacting body[.]" Working Stiff Partners, LLC v. City of Portsmouth, 172 N.H. 611, 615 (2019) (internal citations omitted). The Court also utilizes "the traditional rules of statutory construction when interpreting zoning ordinances" and "construe[s] the words and phrases of an ordinance according to the common and approved usage of the language[.]" Id. at 615–16. However, "where the ordinance defines the terms in issue, those definitions will govern[.]" Id. at 616. "Furthermore, [the Court] determine[s] the meaning of a zoning ordinance from its

construction as a whole, not by construing isolated words or phrases." Id. "When the language of an ordinance is plain and unambiguous, [the Court] need not look beyond the ordinance itself for further indications of legislative intent." Id.

The Court begins its inquiry by reviewing the EZO's setback requirement. Here, EZO Section 402 sets a broad 50-foot minimum "structure" setback from the front property line in the rural agricultural district, where the Property is located. Moreover, EZO Section 302 defines a "structure" as "[a]nything constructed or erected with a fixed location on the ground or attached to something having a fixed location on the ground." In light of this express definition, the Court finds that this 50-foot structure setback applies expressly to "structures" which are "on" or above ground and not those which may be underground. As such, the setback at issue would only apply to above ground "structures" such as the diesel canopy, diesel pump, and gasoline pumps, but not the underground improvements such as the fuel tanks, oil water separators, and other storm management devices. Such an interpretation is consistent with the purposes of setbacks, which include "the satisfaction of those health and safety concerns underlying open space and density regulations, and the improvement of roadside appearances, an object within the police power." Storms v. Town of Eaton, 131 N.H. 50, 53 (1988) (internal citations omitted).

Because it is undisputed that the diesel canopy, diesel pump, and gasoline pumps would be located within a 50-foot setback, the Court must next evaluate the scope of Meena's special exception. The petitioners argue that Meena's special exception did not address the EZO Section 402 setback requirement, and only addressed EZO Section 1005, which pertains to automobile service stations, and EZO

Section 702, which pertains to the change or expansion of a non-conforming use. (See Doc. 14 at 17.) However, in so arguing, the petitioners overlook the scope of Meena's original special exception application. Specifically, Meena's request to "add gas pumps" and "expand the nonconforming use" included consideration of a proposed site plan and inherently encompassed consideration of the existing dimensional constraints and the nonconforming status of existing uses and structures. (See Doc. 13, Ex. 7–8.)

Despite the fact the nonconforming service station use had ceased and expired by the time of Meena's application, nonconforming "structures", such as the diesel pump, gasoline pumps, and a gasoline canopy, remained on the property. These structures existed in conjunction with a nonconforming convenience store and laundromat. By granting the special exception, the ZBA implicitly recognized these preexisting nonconformities, the discontinuation of some nonconformities,[5] and granted their change and partial expansion despite them arguably contravening present setback requirements. See Dietz v. Town of Tuftonboro, 171 N.H. 614, 619 (2019) ("At the outset, we observe that we generally assume that a fact-finder makes all of the necessary factual findings to support its conclusion."); Pappas v. City of Manchester Zoning Bd., 117 N.H. 622, 625 (1977) (stating that "[t]he board's decision amounted to an implicit finding that the several requisites for a variance had been met," and holding that "[a]lthough disclosure of specific findings of fact by a board of adjustment may often facilitate judicial review, the absence of findings, at least where there is no request therefor, is not in and of itself error"). Thus, the Court concludes that relief from the

[5] Although the laundromat was not discussed in great detail by the parties, the operation of a laundromat at the instant property appears to be a pre-existing nonconforming use at the time of Meena's purchase. Within the Rural/Agricultural district, service businesses, including laundries, are only allowed by Special Exception. (See EZO §§ 302, 1033; EZO Table 1.)

existing dimensional constraints of the EZO was an implicit aspect of the ZBA decision to grant the special exception in 2021.

Notwithstanding the petitioners' argument that the "diesel canopy, oil water separators, and other storm water management devices were never raised in the special exception application" and, thus, could not have been covered in said special exception, also implicit to this granted expansion of an existing nonconformity are necessary and incidental improvements needed for the replacement of the fuel pumps to modern standards. (Doc. 18 at 18.) See Geiss v. Bourassa, 140 N.H. 629, 631 (1996) (affirming the trial court where it found that a party did not exceed the scope of a special exception because violations of the special exception conditions "have not changed the character or nature of the use"). Here, following the logic of Geiss, the scope of the special exception necessarily encompasses the "diesel canopy, oil water separators, and other storm water management devises" because they are necessary to support the operation of a modern automobile service station and do not change the character of this use.

Next, the petitioners argue that the ZBA and Planning Board overlooked the issue of the convenience store "failing to comply with [S]ection 1031 of the [EZO], which requires retail stores to have a maximum floor space of 2,000 square feet per floor." (Doc. 14 at 18.) According to the assessing records supplied with Meena's special exception application, the convenience store encompasses more than 2,000 square feet. (See C.R. at 188.) The petitioners maintain that "neither the cease-and-desist order nor the court-imposed says on the Planning Board proceedings prevented the store from operating." (Doc. 14 at 18.) Because two years have passed since the cease-

and-desist was issued and the store has operated, the petitioners maintain that Meena has abandoned the non-conforming use and their intent to reopen is immaterial under the EZO. (See id. at 18–19.) The Court disagrees.

As the petitioners note, the New Hampshire Supreme Court has recognized that "consideration of intent to abandon is not necessary when an ordinance defines abandonment without a consideration of intent." McKenzie v. Town of Eaton, 154 N.H. 773, 777 (2007). However, the Court does not find that the term "abandonment" is precisely defined under the EZO. Cf. Pike Industries, Inc. v. Woodward, 160 N.H. 259, 262 (2010) (holding that an ordinance which defines abandonment or discontinuation with a specific span of time and notes that it applies "for any reason" negates the requirement that the ZBA must consider subjective intent). Instead, EZO Section 703 discusses a general procedure of ascertaining whether a nonconforming use has been abandoned:

> If a non-conforming use is changed to a conforming use and continued for a period of four months or more, such change shall constitute the abandonment of the prior non-conforming use. A non-conforming use shall be presumed abandoned if the use has been discontinued for a period of two years or more. The Enforcement Officer shall first make a determination; any person aggrieved may appeal that decision to the Zoning Board of Adjustment. Rights vested by applicable law shall not be affected.

(emphasis added). Notable in the aforementioned provision is the inclusion of "presumed" before the term "abandoned". In New Hampshire "a presumption is not evidence—its sole function is to take the place of evidence. When the latter appears, if only to the extent that an inference may be drawn from it, the presumption vanishes." Jodoin v. Baroody, 95 N.H. 154, 156–57 (1948). Consistent with this principle, the subsequent portion of the ordinance provides for the Town's Enforcement Officer to

make an initial determination subject to appeal, where the presumption of abandonment may be rebutted with evidence. Accordingly, Section 703 provides a process by which the Town can presume and subsequently evaluate the abandonment of a nonconforming use.

In the absence of a fixed term of nonuse or a more precise definition of the term "abandonment", the ZBA must apply the test articulated in Lawlor v. Town of Salem, 116 N.H. 61, 62–63 (1976). In Lawlor, the supreme court determined that "[a]bandonment depends upon the concurrence of two factors: (1) an intention to abandon or relinquish the use, and (2) some overt act or failure to act which carries the implication that the owner neither claims nor retains any interest in the use. Id. Thus, "[t]he decisive test is whether the circumstances surrounding such cessation of use are indicative of an intention to abandon the use and the vested rights therein." Id. at 63.

Here, the ZBA's consideration of the petitioners' abandonment argument mirrored the Lawlor test. Specifically, the ZBA considered the fact that Meena was served with a cease-and-desist order while attempting to reinstall tanks, making it "unsafe to continue operation of the convenience store despite the fact that the convenience store was not, *per se*, subject to the [cease-and-desist order]." (C.R. at 144.) The ZBA also noted that despite numerous appeals and the outstanding cease-and-desist order, Meena continued working with town and state officials to secure permitting which did not evidence an intent that Meena had "relinquished or abandoned the 2021 Special Exception and the preexisting nonconforming use[.]" (Id. at 145.)

In light of the ZBA finding no evidence of an intent to abandon and no "overt act or failure to act" by Meena, the Court finds that the ZBA was able to reasonably

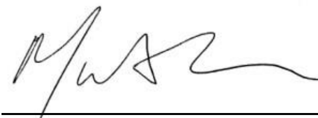
conclude that the convenience store use was not abandoned. See Rochester City Council, 171 N.H. at 275.

Conclusion

In light of the foregoing, the Court concludes that the petitioners have failed to establish that the ZBA's decision was unlawful or unreasonable. See RSA 677:6. As such, the decision of the ZBA is AFFIRMED. Petitioners' appeal is hereby DISMISSED.

SO ORDERED.

Date: October 1, 2024



Michael A. Klass
Presiding Justice

Clerk's Notice of Decision
Document Sent to Parties
on 10/01/2024