



Zoning Board of Adjustment

TOWN of SURRY, N.H.

Surry Town Hall ▪ 1 Village Road ▪ Surry, N H 03431

Board Members:

John Croteau, III, Chair

John Berglund

Eric Eichner

Ken Maynard

Linda Bergevin, Alternate Secretary

MINUTES of PUBLIC HEARING

THURSDAY, MARCH 6, 2025

Public Hearing of the Zoning Board of Adjustment was brought to order by **Chairperson Croteau** at 7:00 PM

Board Members PRESENT: John Croteau, III, John Berglund, Eric Eichner, Ken Maynard.

Alternates PRESENT: Linda Bergevin, as Secretary.

Chairperson Croteau welcomed and apprised the attendees, that this public meeting was relative to the ZBA's decision to deny Case #093024 - Application for a Variance by **The Tree Agents, LCC** on November 13, 2024; and a subsequent ZBA approval of a **Request & Motion for Reconsideration and Motion for Reconsideration & Rehearing (NH RSA 677:2)** document dated December 9, 2024; submission by **The Tree Agents, LCC** by and through its attorneys: **Gottesman & Hollis, P.A.** by **Elizabeth M. Hartigan, Attorney at Law.**

- **This night's hearing would re-start the process for a zoning variance request anew, with presentation of documents, facts and testimony from the petitioner and its agents, and the abutters and public, in support or against; all to be considered and deliberated by the Surry Zoning Board of Adjustment without bias.**
- **The proposed Plan presented at this meeting; if ZBA approves the Variance would need to be fully engineered and move on in process to the Surry Planning Board for approval.**
- **If the proposed variance is denied by the ZBA, the development plan does not go away; rather creates opportunity for the developer to redraft a proposed plan, adding or subtracting lots; conforming to variance or in a new design; which may or may not require a reapplication for variance. To be clear, we are addressing the current plan as proposed for the application of variance.**
- **Testimony given should be within the Variance Criteria: to be applied to both "Use" and "Area" -**
Five Decision Standards for Variance need to be satisfied in Support or Denial of the Action of Granting:
 1. Granting the variance will not be **contrary to the public interest**;
 2. If the variance were granted, the **spirit of the ordinance would be observed**;
 3. Granting the variance **substantial justice would be done**;
 4. If the variance were granted, the **values of surrounding properties would not be diminished**;
 5. Enforcement of the provisions of the ordinance would **result in an unnecessary hardship.** (*Attached*)

AGENDA: Business items for this meeting for the ZBA members to review and discuss:

1. Deliberative session of the ZBA regarding Request and Motion for Reconsideration & Rehearing Pursuant to NH RSA 677:2

RE: Application for Variance dated September 30, 2024 for Joslin Road, Lot #18, Map 4A, Case #93024 by said: The Tree Agents LLC ("Applicant") requesting relief from Article VI as listed with specific measures of 7 lots with less frontage and 8 lots with less lot width. (*Attached*)

2. ZBA Board business: to review/ approve ZBA Meeting Minutes from January 29, 2025.
3. **New Business:** Set Date for Next ZBA meeting to consider: **Request for Variance: ADU - Kathleen V. “Katie” Anderson**, 574 Old Walpole Road, Surry, NH
And, any other items of business that need to be addressed by this board.

Chairperson Croteau asked **Elizabeth M. Hartigan**, attorney for the Applicant (The Tree Agents, LLC) to present the request for variance.

- **12-lot residential subdivision that incorporates 7 lots which do not meet standard road frontage and 8 lots do not meet standard lot width of 200-feet.**
- Seeking relief for Zoning Article 6 of the Zoning Ordinance for the issues with these lots.
- The 87-acre parcel has wetlands and steep slopes; the plan shown on the map (*Map attached*) has been engineered to design 12 homes with a private access road, preserving the wetlands and leaving the slopes intact.
- The public way (road) would be built to Town standards maintained by the Development; in hopes that in the future the Town might consider or not, taking over the road maintenance. Frontage along the road is skinnier; if relief is not granted a longer roadway would need to be engineered; no longer preserving the wetland.
- Pursuant to the request for variance, these lots do not comply with the basic zoning objectives for lot size, roughly 50-feet on each lot. The threat of overcrowding between buildings. The length of the road will not alter that, as it is a safe access. Residential is a permitted use for this land.
- Public Health and Welfare - The septic and well are okay in design. Private road has a configured access turnaround for fire truck or emergency vehicles.
- Spirit of order- 12 lots on 87 acres – there is no overcrowding on this plan. A subsequent plan with a longer road allows a design for 16 potential lots.
- There is sufficient distance between homes, there is not an area for higher speeds on the roadway. The development will not alter the character of the area, in fact as nicely built residences will enhance the area in character and value.
- Justice done – if denied there would be no benefit to the public and harm to the applicant. The value of the surrounding properties would not be diminished; just the contrary. Well-designed homes will increase the values of the surrounding homes and properties. This is an equitable win for the public and applicant.
- Hardship – Could the developer do something else that is standard and reasonable? This plan is curated from 2 farm fields with steep slopes and a wetlands in the middle. This of itself makes the property unique to develop within the zoning guidelines without impact to the wetlands. Based on the topography this designed development plan is reasonable as to what the land can accommodate.
- Submitted to the ZBA copy of the Application which is the same plan as the original. (see *Attached*)

Chairperson Croteau invited Attendees for questions, pertinent testimony and public input.

Joe Vitale: submits his comments and abutter concerns in writing (see *Attached*)

Bill Russell: wanting to address first part of the standard Character impact – the proposed road frontage and diminished width will create lots bounded by lots of larger acreage, creating in change in character of the area.

Bill Fosher: pointing out that the hardship is one of the developer’s own creation. To ask for variance relief of their proposed plan is inconsistent with the law. They have other options to eliminate these issues (of frontage and width).

The land itself is the hardship. It is strictly for economic reasons and convenience (of the owner). For that reason, if there were fewer lots on a shorter road; the lots would conform to zoning. So, the developer is not interpreting the law correctly.

Applicant Jacob “Jake” Bramel – We have interpreted the law correctly and have a right to seek a variance. (to Bill Fosher) You should understand the law!

Judith Lundahl: So, if someone were to buy a house lot and build a house on one of these lots having say, the 15’ less frontage, would the variance approval make the property have a lower valuation?

Chairperson Croteau: cited the Cider Mill Project off Old Walpole Road, as recent development project that had some issues, but the developer compromised. Taxes are apportioned to the size of the lot no matter if they fit the standard dimensions. There are some grandfathered because they were built well before the current zoning requirements.

Carol Lothrop: Asks to submit her input and another abutter Sarah Topher into the minutes (*Attached*) She offered that as a resident of the Joslin Road for 40+ years, people used to walk, bike, run and hike the Joslin Road. Since there are many blind corners on the road with the current increased traffic, it is dangerous and submits that many have had close calls and near misses of getting hit on this roadway. Also, at a certain time of day, the sun is in direct line of a driver’s view. The grade of the road and excessive speeds at which people are driving is creating peril. Just adding 12 more cars of traffic (of the new development) on this roadway impacts the current residents, pets and farm animals’ welfare. There also remains an additional safety concern, part of the road coming off Old Walpole Road to Merriam/Josline Roads is dirt and quite narrow. Many people use the Joslin Road as a cut-through access from Old Walpole Road to Rte. 12A. There are many o, barely over a single lane. Older trees lining the road with increased falls each year from storms and wind. This causes concern for utilities, service and emergency vehicles that need to drive this road. She cites examples that there is no bus service, and many UPS/FEDEX or Mail Delivery vehicles will not use the road due to ice, mud ruts, and potholes. Many people have driven off or slid off the road over the years; due to conditions of the road or driver inexperience. She lists two years the road flooded with considerable disruption for the residents. This is not a safe road. Civil Engineers consulted about the road, have indicated that they do not build roads like this any longer. For this reason, the developer is putting prospective residents in a situation that is unsafe access to their homes.

Peter Wilbur –speaks in favor of granting the variance, states he grew-up on the Joslin Road, living there from 1951 to 2020. Many times, through those years, the town failed to take care maintaining the road. He remembered when there was grass growing in the middle of the roadway and seasonally it was impassable. People stayed in their homes through the winter months without coming down the hillside. The road itself is a hardship for all of the residents. People have to adapt to when it can be used or not. Cites there were not many houses on that road, but mostly cottages. The first big dwelling built was by Reggie Swan when he built ‘Cloud 9’. While the current condition of the road is much better; the layout of twists and turns, steep incline or decline still exists. Seasonal weather and storms still create accessibility issues. He comments his father was a collector of many trucks, tractors and such on their 13 acres on the Joslin Road. The land had what all the properties have on Joslin Road, slopes, wetlands and pasture with some woods. It would seem the development lots will have the same issues as adjacent properties. There is no special condition.

Bruce Smith: Wants to speak on a summary of Zoning history: Various years from 1951, 1964, 1973, 2003: As the Town of Surry implemented zoning changes on lot acreage requirements; including the minimum requirement for 2-acre lots in 2001 and the required lot dimensions and sizes. Clearly in the “Spirit of Intent” the development is not taking the Zoning requirements seriously. With this parcel of property of almost 90-acres there could definitely be 2-acre lots. As far as “special conditions” qualifying it for variance, it has the same quality and conditions as the abutters’ land.

Cites two examples from tax maps of “special conditions” : Lot 3I-43 has special condition – no frontage, adjoining property Lot 3I-38 has conservation easement. Variances are needed for building permits. (see *Attached*)

Cites example from tax map of variance granted for commercial storage building in the Commercial district: Lot 5A 105 has 2.5 acres: Required minimum 3-acres; front and width minimum: 300; depth minimum 300’. The lot at 2.5 acres and is only 102.77 road frontage. (see *Attached*)

He asks the Zoning Board of Adjustment to reaffirm the denial for the variance, since a re-designed plan would solve the width and frontage issues and is not a “special condition” like the examples he presented. Nor does it satisfy the “Hardship” criteria.

John Davis: regarding hardship for the developer – the amount of acreage of this development will support adequate lots that meet the zoning requirements for proper road frontage and width. The current zoning should be adhered to for protecting water quality and safety.

Neighboring parcels not anymore “unique” than this parcel. A wetland scientist would observe the similar conditions on most of the properties adjacent to this one; there will be sections of wet/muddy due to snow run-off or underground springs from the hillsides. Noted that the map of the development being shown at the meeting does not contain a Wetlands Scientist stamp.

Atty Hartigan comments that the wetlands of this property have been surveyed and studied, but confirms the map being shown, does not have the stamp.

Tim Bienvenu – Town Fire Engineer: cites Public Safety concern: Fire Department analysis shows the Private Way/ Road into the development is a dead-end roadway as shown on the project plan map. This is an issue for fire protection, and equipment. Also the number of homes on a dead-end road may also constitute a homeowners insurance issue. And as already stated, Post Office and School vehicles will not be using Joslin Road to gain access to the new development.

Aaron Russo: Just to clarify – the applicant/developer purchased this property to be a Tree Farm?

Atty Hartigan: Yes. It is currently a Tree Farm.

Aaron Russo: Then I don’t see why the “hardship” isn’t one of the developer’s own making? What is the hardship? Just because he doesn’t like the zoning requirements and wants to build more houses, that is a personal desire. Why can’t he comply with requirements and design less lots on the same area? If the plan needs to be redesigned to comply, it can be done. The effort of maximizing the parcel for more rather than less is just something he wants to do. Threatening to scrap this plan and create 16 lots that will impact wetlands doesn’t seem reasonable. Engineers know how to redesign, the developer can elect to have a plan that is within the zoning criteria. That should not be hard to do.

Bill Russell: Having lived on Joslin Road since 1972, the way it is, agrees with neighbor Peter Wilber. People in the 1700’s didn’t leave their farms often, as they were self-sufficient. They used sleighs, and wagons on that original dirt road to go to Walpole or Surry Village or Keene. Just because in our modern times the roadway had been improved with blacktop, a smooth surface doesn’t ensure safety!

Roger Wilbur: On the Farm Road I have 50 acres, 13 acres of farmlands, it too has a wet section in back and has about 150' road frontage. If I decide to put in 2 or 3 houses for financial reasons, I'd be asking for a variance too! You are setting a precedent for every project if you grant this.

Peter Wilber: The Town made different zoning requirements over the years to meet changing times or to meet state requirements, the reasons are pretty clear. If the 5 criteria are not met; then it should be denied. What's being asked is not unreasonable for the developer. It sets requirements for other developments too. That's why we have zoning. Relief is very special and a need for exception. This property is like the others nearby.

Atty Hartigan: Seeking Relief from Zoning Requirements is a reasonable and allowable option under the law.

Carol Lothrop: Just to summarize: the ZBA should deny the request for variance for traffic reasons due to concerns of safety and welfare.

Judith Lundahl: If the Fire Department cannot access these homes and one burns, is the Town held liable?
Another resident says: she works in insurance and Yes, the Town would be liable.

Tim Bienvenu: The residents in the new development could sign off on services, but still our Fire Department and assisting surrounding town FD's would make every effort to contain and quell any fire at any time in Surry.

Bruce Smith: I still believe this (request) is seeking variance for personal convenience.

Sharon Sweeney: So, the Zoning Board of Adjustment has two answers to this request?

Chairperson Croteau: Actually three: the Board can:

- Approve with conditions
- Approve
- Deny

If the board denies, the next options for the applicant are: He can create another plan for the property and go through the process reviews; or remain with this plan- taking the Town to Superior Court to Appeal the Board's decision.

John Davis: I cannot see how 2 lots less will diminish the project, as it still makes suitable use of the land.

Atty Hartigan: Making these points: the 80 acres have unique topography; allowing for just a specific piece of the property to be utilized; there is no access to other roads other than the Joslin Road. Therefore, requesting relief on only those lots defined as less than minimum requirements is allowable and reasonable to do so.

Hardship: is the specific unique condition of the land. The use with requirements of less frontage is reasonable. You will never look at this road frontage and say: "That's less road frontage". The way the lots are designed the houses will have space and sight allowances to each other making these well-constructed homes attractive.

The Use is permitted. The owner has the right to utilize the land in this permitted way.

Chairperson Croteau: Asks if anyone has further input for the ZBA. None offered.

Motion to Close the Public Hearing: made by **Board Member Eichner** **Seconded** by **Board Member Maynard**. **Discussion:** None **Vote:** Unanimous **Time:** 8:20 PM

Chairperson Croteau: Advises attendees that the Board will go into Deliberative session. No further input will be entertained. All are welcome to stay or leave. A determination may or may not be reached to conclusion.

Copies of submitted statements from Public input are given to Attorney Hartigan.

Also, the U.S. Post Office Returned Certified Mailing of this Meeting Notice for the Applicant. Mailing was stamped by USPO that item failed to be picked-up/signed for by the addressee, and returned to the Town.

8:22 PM Chairperson Croteau opens the Surry Zoning Board of Adjustment Deliberative Session.

Secretary Bergevin Reads the Five Decision Standards for Variance.

Chairperson Croteau: Instructions to Board Members: Deliberations will focus strictly on these five criteria; anything not aligned or adhering to these; will not be applied in our deliberations. The Board will take each item and see if any of the evidence and facts presented by the Applicant/or agents or Public input has merit to qualify or disqualify each itemed criteria. All 5 items need to be satisfied for an approval of variance.

1. Variance will not be Contrary to Public Interest:

The development of the property is a permitted use.

Well-built homes will add value to the Town and adjacent properties.

While development is a “different” use of what is currently there and may “alter” the landscape, it is not detrimental to the abutters or properties.

New homes and residents have a positive aspect and viability to the Town.

Increased traffic of the new residents may or may not pose a safety issue for adjacent residents/families/farm animals/pets. An impact study would need to determine that.

Increased usage of the access roadway (Joslin Road) may create more expense through road maintenance.

There are 9 abutters. 1 landowner.

2. The Spirit of the Ordinance is Observed: The developer knows the zoning requirements; would say he has observed the spirit of the zoning intent.

But -has he considered redesigning with compliance? How do we know if he can or cannot? Obviously has a Plan B with a longer road and 16 lots that does not preserve wetlands – he will need to apply for that too. Why not redesign with 2 less lots than this plan with 12 lots?

3. Substantial Justice is done: If variance is granted, is there injustice to the abutters?

Increased traffic; adding to a difficult road? Creating more hazard? This was very concerning to abutters.

If variance is not granted what is the loss to the applicant? No relief from zoning that he considers unreasonable? Potential loss of selling potentially two additional lots? As comments were made this would be an “economic or convenience” concern for the applicant, not for the Town.

What is the loss to the Town? Tax revenues? Increased values? New population? Perhaps more children to educate?

Does one action outweigh the other for these parties?

4. **The Values of surrounding properties are not diminished:** As Board members we are not property value experts; but as residents in the town, values would seem not to be a problem. The Plan sounds like the homes will be an asset. But that is further down to the Planning Board as to the build-out on these lots. We do not know for sure the design of these houses. Atty Hartigan for the applicant stresses they will be “well-built”. Cider Mill Development impact on adjacent properties? What has happened with this?

5. **Literal enforcement of the provisions of the ordinance would result in Unnecessary Hardship:**

This is the one aspect that does not appear to be satisfied. We are coming back to this.

Public testimony given says that adjacent properties hold the **same** conditions of slopes/pastures/wetlands, etc. So, the applicant’s property does not distinguish itself from other properties. Given this, is this enough to deny a variance since it is not unique or special conditions of this property for the usage?

While the plan meets the criteria for accepted use and reasonable, the issue remains the desired use can be done on a lesser scale to meet zoning?

The property can be used reasonably, with the current zoning ordinance – it just means back to the drawing board for redesign to conform. Is that the real hardship?

Additional Board comments: While the agent for the applicant presented statements of support for a favorable finding on each requirement, was it sufficient for all five criteria?

Rehearing and reconsideration of this application did not seem to give us any new or additional information.

... she (Atty Hartigan) kept saying the property was the hardship: yet it remains that the question that a varied plan might suit zoning and usage. What can the owner/developer do without the variance?

That is the question that remains unanswered. The application for rehearing cites the Board’s previous decision of denial based on “hardship does not exist” / citing this was unlawful and in error because “case law states that (the Board) needs to provide a variance for relief from the letter of the zoning ordinance”(see **5c of the Request**) This may be a semantical argument.

Reading of segments of a NH Rehearing case from the

Supreme Court of NH ROBERT L. GARRISON v. TOWN of HENNIKER

Opinion Issued: August 2, 2006 (see *Attached*) as a pertinent case where the stated (V.) “ affirming the court’s finding that enforcement of the ordinance will not create unnecessary hardship.” And, (VI) the claim of error is that the court failed to distinguish between evidence submitted by the applicant to prove uniqueness... and safety regulations insured that granting the variance would not be contrary to the public interest.”

Atty Hartigan stated Public benefit was strictly about a nice residential development with adequate distance between the homes. Question remains -why not configure a couple of lots larger (less by 2 lots) to meet the road frontage and width? The use would not be prohibited, or denied, and the land would support a development adhering to the ordinance. It would seem the owner/developer just doesn’t feel the need or want to embrace the ordinance?

Contrary to Public Interest – the abutters are quite concerned with safety on their roadway. Although we are considering just the parcel – the only way to and from the development is the Joslin Road. The application states this as well. Can that be a fact of concern for public welfare & safety for denial?

On Substantial Justice – although the board considers every request (for variance) based on the individual property and case; each time a variance is granted does it alter the “Spirit of the Ordinance” to have less

weight for our Town's zoning? Waters it down little by little until why have zoning? Residents were concerned about "setting a precedent" for convenience.

Question – If the ZBA approves variance – then the process moves to the Planning Board, correct? Yes. They could or could not approve the lot plan, but with weight from the ZBA that a variance granted; would have their own criteria to satisfy for the project? Yes.

Chairperson Croteau notes the lateness of the hour.

Board Member Eichner makes a motion to table this reconsideration for the Request for Variance by The Tree Agents, LLC and schedule a reasonable date for continuance for further deliberation of the matter.

Board Member Berglund: Seconded.

Chairperson Croteau: Discussion? None.

Vote: Unanimous.

Chairperson Croteau declares the Deliberative Session ended at 9:38 p.m.

Chairman Croteau asks the Board to determine a Meeting date and time for Continuance.

And to address an additional Request for Variance (Anderson)

Discussion: that new date could not be next week due to voting and Town Meeting (March 11 & March 13)
The next available and agreeable date: **Wednesday, March 19 at 7 PM at The Surry Town Hall**

Vote: Unanimous

Chairperson Croteau at 9:40 p.m. asks the Secretary to Read the Previous Meeting Minutes (1/29/25) for the Board. Asks for any errors or omissions.

Secretary notes a **correction on Page 2:** Chart of Pro's and Con's: "Supreme Court" should be amended to read: "Superior Court".

Motion to approve the Amended Minutes with noted correction made by **Board Member Eichner.**

Seconded by Board Member Maynard.

Vote: Unanimous.

Motion to Adjourn the Meeting made by **Board Member Berglund.**

Seconded by Board Member Maynard.

Discussion: None.

Vote: Unanimous.

Chairperson Croteau closes the Meeting for the Surry Zoning Board of Adjustment at 9:56 PM

Respectfully Submitted:



Linda M. Bergevin, Alternate/Secretary

ATTACHMENTS:

1. Request and Motion for Reconsideration and Rehearing Pursuant to NH RSA 677:2 by The Tree Agents, LLC & Their Attorneys Gottesman & Hollis – dated December 9, 2024 / Plan Subdivision Concept Map/Fieldstone Land Consultants, PLLC
2. Analysis of the Variance Standards Under RSA 674:33
3. **Public Input items:**
Vitale (244 Joslin Rd.) Letter 3/10/25;
Lothrop (Merriam Rd.) Concerns and Road Safety Issues;
Topher (Joslin Rd) Safety Concerns;
Smith (Crane Rd.) Maps/ Info on Special Conditions for Variances allowed in Surry
4. Deliberation reference item: **NH Supreme Court Case no: 2005-471** ROBERT L. GARRISON v. TOWN of HENNIKER
Argued: March 9, 2006, Opinion Issued: August 2, 2006