



Zoning Board of Adjustment

TOWN of SURRY, N.H.

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

Board Members:

John Croteau, III, Chairman

John Berglund

Eric Eichner

Ken Maynard

Linda Bergevin, minutes

MINUTES of PUBLIC HEARING

WEDNESDAY, NOVEMBER 13, 2024

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

Board Members PRESENT: John Croteau, III, John Berglund, Eric Eichner, Ken Maynard. **Also PRESENT:** Linda Bergevin, as Secretary.

Stated Advisory: Notice of this Public Hearing was posted at the Town Hall and posted town locations, also published in the Keene Sentinel. Mailing to affected property owners and abutters.

Abutters and Interested parties attending: 35 Surry residents

Additionally: Surry Fire Captain: Josh Brooks, Conservation Committee Chair John Davis and Planning Board Members.

APPLICATION FOR A VARIANCE: Filed 9/30/24 Case No: 93024

Applicant: The Tree Agents, LLC, 10 Overlook Drive, Epping, NH 03042

Re: ARTICLE IV, Land and Space Requirements Table in the Surry Zoning ordinance: Insufficient road frontage and Lot Width

Proposed property 12 lot subdivision off Joslin Road of an 87.4 acre parcel, of these lots: 7 do not have required road frontage, 8 do not have required lot width for the Land & Space Ordinance of the Town of Surry.

REASON FOR VARIANCE: Five Fact Questions need to be satisfied in Support of the Action of Granting:

1. Granting the variance would 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 would do substantial **justice**:
4. If the variance were granted, the **values** of surrounding properties would not be diminished:
5. Any unnecessary **hardships**:

Chairman Croteau explained original denial by the Surry Planning Board, and that the application or variance to the ZBA is for relief of the ordinance, to be met by five (5) criteria. Cautions all residents and interested parties wishing to speak, to relate statements to the petition only based on the five criteria, not the project plan or other non-criteria issues.

Chairman Croteau invited the Petitioner's representative **Attorney Elizabeth M. Hartigan**, Associate at Gottesman & Hollis, P.A., to address the Board and present any information and/or facts to support the five (5) questions for the application.

Atty Hartigan stated the project plan in relation to the five criteria that are met and submitted on the application. Outlines the following:

Presents overview of the topography of the land from the Concept Map of the Development project by **The Tree Agents, LLC/ Jacob "Jake" Bramel**.

Fields and wetlands with steep slopes are preset in the back of the property . To maximize the lots, the development project is designed to stay away from the wetlands and steep slopes. A short private road will be built to access the 12 lots from Joslin Road. This road would be maintained and controlled by the Development. As the road is short, this creates a lack of compliance with road frontage and lot width. The petitioner is not seeking relief for 4 of the lots.

Based on the five Criteria for Variance: these will be nice residential homes not altering the characteristic of the neighboring properties, without threat or disturbance to the natural terrain. This is an appropriate, reasonable and permitted use of the land. The Plan protects from overcrowding of site lines, as 16 lots could be placed on this property. There is no adverse nature of the project that would affect any neighbors or abutters. The engineered plan meets all the criteria.

Finally, the uniqueness of the land prevents layout of the lots to meet compliance with the Surry Ordinance for Road frontage and lot width.

Chairman Croteau opens the Floor to residents and interested parties to provide testimony in favor or against the submitted request for variance.

Questions and Comments:

John Davis – Conservation Committee Chair

Speaks to Public Interest -the origins of the Surry Zoning laws with emphasis that these ordinances were voted on by Town residents and is the WILL of the People to protect property, preserve nature, create order, and maintain quality of life for residents. While Surry may be tough on development it does not mean that the WILL of the Town should be ignored.

Regarding the Private Road: Does this mean the developers will maintain and create a Homeowners Assn. for the upkeep? (**Atty Hartigan: Yes**) Is the road meeting Town Specs/ drainage, etc.? (**Atty Hartigan: Yes design is with the Planning Board**)

Davis notes there will be no school buses or mail delivery on Joslin Road – this might affect marketing to prospective buyers.

He shows on Project Map that when there is heavy rains, the water there is a source for brooks and streams, hoping this project provides proper drainage to function correctly for the water supply. From the slopes of this property to Merriam Brook to the Ashuelot River which is protected, this is an important confluence.

Tim Peloquin – School Board

Speaks to character and Property Values – Asked about square footage of the homes to be built. (**Atty Hartigan: No buildings with sq. footage have been determined yet.**)

Peloquin notes a developer is looking for maximum profit so typically the houses, nice as described would be 2500 – 3000 square feet. The idea is to squeeze in as many as possible. It is quite possible the developer would want to add in 5 or so years another 10 or 30 more homes.

Doing the math these homes would add 2/3 children per home, impacting the School tax rate. These homes will not generate enough tax revenue to offset the rate of education per student. Resulting in a tax burden on all of Surry. He is not in support of granting the variance.

Steve Goldsmith – Selectman & Building Inspector

He has cut the hay in the pastures on this property over the last 15 years, Says the map does not account for all the wetlands present on that property. During the wet season, early Spring there is standing water. Points out on map the gully on Joslin Road, bankings come down steeply. This would impact septic system designs for the lots. There is a requirement to be 100feet away from any water source. (**Atty Hartigan: Engineer went through all this on the property when creating the lot designs and did perking.**)

Joe Vitale

Confirms heavy rains can flood portions of the property with water build-up.

Chairman Croteau clarifies Burden to Neighbors and describes Character of the Town.

Pelloquin - U.S. Census site indicates tax rate requires average of \$56,000 per Special Education student \$17,000 cost to educate per student

Which adds \$350,000 Special Education funding/ \$600,000 education costs for 30 new children added in Surry.

Surry has a set number of taxpayers – adding 12 new families is not going to make a dent in the taxpayers offsetting education costs. This has a strong financial impact and burden to the Townspeople.

Sandra Peters

Questions with no services (School buses/Mail) is this going to be a 55+ housing development? (**Atty Hartigan: Surry does not have an ordinance permitting that/ and may or may not be the case. Does not have bearing on the variance petition.**)

Judy Lundoff

If the project can't comply with Surry Zoning laws, why can't the developer put in fewer homes and less road?

(**Atty Hartigan: Note the topography of the property, steep slopes, Christmas trees growing on the hill, necessitates configuration of the lots as shown on the map.**)

Carol Lothrop – Conservation Committee

Speaks to Character impact of the Project – noting four other homes are in the neighborhood, adding 12 new homes is going to impact the character of those properties, views, road traffic, etc.

(**Atty Hartigan: the proposed use of the land is permitted by the town**)

Sharon Sweeney

Asks if the 48 feet shy of the compliance is on each lot or for all the lots.

(Atty Hartigan: all, case in point one lot is 152.446 smaller than the rest while the others are larger but on the required road frontage of 200 feet, 48 feet less, 48 x7 lots)

Scott Hillard

Concerned with 12 lots requiring a variance – so there is a problem with each one?

(Atty Hartigan: The law allows for applying for relief from the Ordinance – there is not a problem with all 12 lots. Only the ones identified by the Petition)

Nancy Wilbur

Wife of Roger, who was not able to be present, asks to read a sworn statement from her husband:

In part objecting to a developer who is not a town resident, the variance for not just lot but several lots.

There is a 12-acre parcel adjacent to the subdivision located in part in Walpole and Surry. That development was designed meeting the Zoning for both towns.

The reason for zoning is to prevent chaos and will-nilly building.

The submission of the request creates chaos for the community and changes the lifestyle for existing residents. The Wilburs are not in favor of approving the variance.

Fred McLauren -

New to Town, formerly from the seaside community of St. Augustine, FL. Shares background of that community granting variances that changed the entire community forever, with no consideration to impact on infrastructure, traffic. One variance gave way to multiple variances creating legal battles. This greatly impacts lifestyle in so many ways.

(Atty Hartigan: Variances by nature of the process legally ensure each request is determined case by case to the letter of the law. And Relief from an Ordinance due to special circumstances is allowed.)

Bruce Smith -

Cites an RSA regarding Projects that do not conform to the Public interest. States this particular project is Contrary to the Public Interest.

Tim Peloquin -

The developer has already mentioned an alternate plan of 16 lots; implying by doing the 12 they are “saving us” from heavier development.

David Brooks

Confirming more acreage is wetlands than the plan indicates. From firsthand experience also working and haying the property over the years. Developer is “trying to pull the wool over our eyes.” They should meet the zoning standard for lot size.

Aaron Russo

The plan does not address the tax burden on the Town. The affected tax rate will be broad and affect the affordability of living in Surry. The type of houses to be built will generate between \$7,500 - \$10,000 in taxes against the \$400,000 - \$600,000 in tuition costs.

Ron Proviso -

Joslin Road has a dirt section. Additional traffic on that road will cause additional road maintenance and costs. Not supportive of granting variance.

Judy Lundoff -

There is only 25% of each lot out of compliance. Some with 160 or 150 feet versus the required 200 feet That is significant.

(Atty Hartigan: Relief from the requirement will allow the building lots to have road frontage, not believing someone will drive up to measure the frontage once homes are built. And being on the short private maintained road people will not notice any significant difference in the lots.)

Steve Goldsmith -

Attention must be paid to fire protection. Fire trucks may have difficulty accessing water. Reference to former fire on Joslin Road, complete loss. This is a severe safety issue for any future residents.

Frank McLauren -

Various accidents on the Joslin Road, steep and winding road, icing in the low-lying areas. Again, increased number of vehicles traveling Joslin Road during the winter months will be critical – public safety and additional resources will be needed for road maintenance, emergency and fire. This is another tax burden on the Town.

Chris LaRocca -

The Public Interest of our Town – could be very different depending on who you talk to.[in other adjacent towns]

Chairman Croteau stated Public Interest is what the Town decided and votes on. It is not what any other town like Walpole or Swanzey defines Public Interest as.

(Atty Hartigan: Granting the variance of road frontage & lot width is for the general area. By granting variance this applies to a subdivision off the main road and on its own private road.)

Peter Wilbur - abutter

This issue is regulated by law. The necessary information was brought forward by the developer. The developer has not violated any laws setting up the land for proposed use. They have dotted their “I’s” and crossed their “T’s”. The real issue is the matter of Public Opinion.

Scott Hillard –

So, does the approval of this variance allows the project to move forward? Is the variance directly related to that?

Chairman Croteau – Yes, approval allows this project to move forward to the next step. – Specifically, the plan for the private road.

Josh Brooks – Surry Fire Chief

[The private] road length might need another variance, if it does not comply to Town specs. It might be setting a precedence on this part or the other part.

Also, Water supply [for fire protection] is problematic. Fire trucks would need to truck hundreds of gallons for proper firefighting. If there is a Plan B, either all the lots or just 1 house, there are hazards, accessibility, specialty tools and safety issues the Fire Department would have to address.

Bill Foshier -

There are too many hurdles to surmount. The plan is contrary to the Public Interest as evidenced by the residents who have spoken tonight. Cites the Institute of Traffic Engineers Report – a Family of four people generates 10 trips per day. That translates to 120 trips up and down Joslin Road. And, the Town can't make the Joslin Road any safer!

Chairman Croteau –

The Stipulation of Hardship – lack of variance is reasonable; the property is unique so are the zoning requirements reasonable? This proposal seems to be driving the decision.

Chris LaRocca-

Asking for Relief – what about property values? Perhaps consider smaller number of lots or a different use like a Pig Farm?

12 newer homes at the estimated value of these new homes, will affect the older homes in town.

(Atty Hartigan: This would not diminish the value as evaluations of each home has to meet the State Standards There are 400 tax paying homes in Surry these homes would add to the taxpayer base.)

Steve Goldsmith –

Think there should be a review of the wetlands aspect of this property.

(Atty Hartigan: The surveyor walked the entire property, and perking was done to tests the soils).

Frank McLauren-

What's to stop this project from just being just Spec Houses or buying preconstruction and/or the project doesn't sell so we end up with transient renters?

Bill Russell –

Questions why the 2 lots were subdivided? State rules require more stringent rules if there is subdivision registration.

Scott Hillard –

Has the [private] road been approved?

(Atty Hartigan: No, not yet.)

Aaron Russo –

If developer enacts on "Plan B" with the alternative of 16 lots, requiring a longer access road, this would be a completely different configuration perhaps meeting the zoning requirements?

Eva Morrell – Planning Board

The acreage has only so many buildable acres, and configuration would need to be mindful of wetlands and other natural contours.

Sharon Sweeney –

Questions how developer can apply for variance on road frontage when the private road has not been approved and therefore does not exist?

(Atty Hartigan: Yes the road doesn't exist per se, it is a "paper road" applying to the planned project detail.)

Laura Ylitalo –

Believes approving the variance will open a can of worms and will set a precedent that future projects can come back to cite- creating an avenue for all kinds of approvals. Just opens the door for more.

Chris LaRocca –

Thanks, the ZBA Board Members for their hard work, taking in all that has been spoken about at this meeting. Not an easy task to work with the legal criteria and interpretation.

Chairman Croteau –

Asks **Atty Hartigan** if she has any closing remarks or additions to her presentation.

She reminds that there is a hardship in developing the project if the variance is not granted for the plan as presented, without the road frontage and lot width relief.

And that there are unique features of the property that the developer has observed and protected [wetlands and slopes]

And that adding twelve new homes to the desired community of Surry will be potentially good by adding new taxpayers to a stagnant base.

And that this use of the plan for the property is a permitted use.

Chairman Croteau thanks the public for its input, thoughts and valuable discussion.

States the Board is prepared to sift through all the testimony given tonight, and will make determinations to the variance request based on the Criteria outlined:

- Contrary to Public Interest
- Spirit of the Ordinance would be Observed
- Would do substantial justice
- Values of Surrounding Properties would not be diminished
- Not creating any unnecessary hardships

Board consents that testimony and discussion is sufficient to the intent of the hearing.

Board Member J. Berglund: Moves to close deliberations and proceed with a Motion.

Board Member E. Eichner 2nd - All agree. [Alternative Secretary abstaining from the vote.]

Chairman: Declares the Public Hearing Closed for Board deliberations to begin.

=====

BOARD DILIBERATIONS:

Chairman Croteau Opens Zoning Board Deliberative Session:

Motion Made by Jay Croteau to accept the Petition for Variance as presented by The Tree Agents, LLC.

Seconded: John Berglund

Discussion.

The Board deliberates on all criteria. Discussion.

In summary:

- 1- **Public interest:**
- 2- **Spirit** of the ordinance:
- 3- Substantial Justice/**impact** to town:
- 4- **Property values:**
- 5- **Hardship** – always difficult to determine –

Chairman Croteau: Recaps the Five questions and were they satisfied and sufficiently answered by facts as presented for the variance requested.

Affirmed that testimony heard from abutters, concerned citizens, fire, safety, education, and conservation raised topics that relate in some way to Contrary to Public Interest criteria. There is minimal community support the improvement of the property as presented in this plan. Still there are undetermined factors of the private road, and home square footage.

By creating the Plan as the developer has, it is a self-imposed hardship of the road frontage and lot width. The plan for development could be altered in a variety of ways to decrease the number of lots or expand the number of lots that should meet zoning requirements.

Motion Vote on the Approve Motion Called by Eric Eichner

Motion Made by Eric Eichner to decline the Petition for Variance as presented by The Tree Agents, LLC.

Seconded: Ken Maynard

Discussion: None

Move to Approve the Variance as presented by The Tree Agents, LLC: Does not Carry

Unanimous to disapprove.

Petition not granted.

Board Deliberative Session closed.

Chairman Croteau informs the Public and Petitioner and Legal Representation of the Board reaching decision.

Announces the Petition for Variance has been declined.

Chairman Croteau: Thanks the Board for their deliberative work and conclusion.

Advises that Letter of Notification of the ZBA decision will be completed and mailed within 5-business days of the Hearing date. The Tree Agents, LLC can proceed with re-hearing request or what they feel would be the next best step for them.

Close of this Variance Public Hearing by Chairman Croteau.

Motion to Adjourn: Unanimous MEETING ADJOURNED: 9:35 PM November 13, 2024

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Linda M. Bergevin". The signature is fluid and cursive, with the first name "Linda" being more prominent.

Linda M. Bergevin, Alternate Secretary