

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT

Merrimack Superior Court
163 North Main St./PO Box 2880
Concord NH 03302-2880

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

SUMMONS
ZONING BOARD APPEAL
RSA 677:4

Case Name: **Thomas Whitman, Teri Whitman, Stephen Robinson, and Daune Robinson v
Town of Hill Zoning Board of Adjustment**
Case Numbers: **217-2018-CV-00006**

Date Complaint Filed: January 05, 2018

A Complaint has been filed in this Court. A copy of the Complaint is attached.

The Court ORDERS that ON OR BEFORE:

March 08, 2018	Stephen Robinson; Daune Robinson; Thomas Whitman; Teri Whitman shall have this Summons and the attached Complaint served upon Town of Hill Zoning Board of Adjustment.
March 29, 2018	Stephen Robinson; Daune Robinson; Thomas Whitman; Teri Whitman shall file the returns of service with this Court. Failure to do so may result in this action being dismissed without further notice.
30 days after service	Town of Hill Zoning Board of Adjustment must file an Appearance and Answer or other responsive pleading and certified record of all previous proceedings with this Court. A copy of the Appearance and Answer or other responsive pleading must be sent to the party listed below and any other party who has filed an Appearance in this matter.

See attached Notice of Hearing for May 24, 2018.

Notice to Town of Hill Zoning Board of Adjustment: If you do not comply with these requirements, you will be considered in default and the Court may issue orders that affect you without your input.

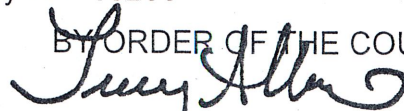
Send copies to:

Thomas Whitman	586 Poverty Pond Road Danbury NH 03230
Teri Whitman	586 Poverty Pond Road Danbury NH 03230
Stephen Robinson	620 Poverty Pond Road Danbury NH 03230
Daune Robinson	620 Poverty Pond Road Danbury NH 03230

January 22, 2018

(485)

BY ORDER OF THE COURT



Tracy A. Uhrin
Clerk of Court

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. _____

THOMAS and TERI WHITMAN and STEPHEN and DAUNE ROBINSON

v.

TOWN OF HILL ZONING BOARD OF ADJUSTMENT

APPEAL FROM TOWN OF HILL ZONING BOARD OF ADJUSTMENT
DECISION PURSUANT TO RSA 677:4

Thomas and Teri Whitman and Stephen and Daune Robinson (the “Petitioners”), pursuant to RSA 677:4 appeal the decision by the Town of Hill Zoning Board of Adjustment (ZBA) on December 8, 2017 to deny the Petitioners’ Motion for Rehearing regarding the Board’s decision to grant a building permit to Kathie Higgins (“Applicant”) on October 26, 2017, for construction of a single-family home on her property at Tax Map R8, Lot15. At the October 26, 2017 hearing, the ZBA reversed the decision of the Board of Selectmen denying the building permit application.

INTRODUCTION

The ZBA’s decision to grant the building permit was unlawful and unreasonable because the Applicant failed to present evidence to satisfy the requirements of RSA 674:41 and the Hill Zoning Ordinance. We respectfully appeal the ZBA decision because the ZBA lacked sufficient basis to reverse the Board of Selectmen’s decision denying the building permit for lack of required frontage.

I. PARTIES

1. Petitioners Thomas and Teri Whitman and Stephen and Daune Robinson are individuals who own properties at 586 & 620 Poverty Pond Road, Hill, N.H. 03241, respectively, and who are abutters to the Applicant, and have a right away across the Applicant's property to R8, Lot 07.

2. Petitioners Daune and Stephen Robinson maintain the driveway to their home on R8 Lot 7 which R8 Lot 15 is accessed by this driveway.

3. Applicant Kathie Higgins owns property at R8, LOT 15 .

4. The Town of Hill is a municipal corporation having its principal place of business at the Town Offices located at 2 Crescent Street Hill, New Hampshire.

5. The Hill Zoning Board of Adjustment is an official board of the Town of Hill, with its principal place of business at the Town Offices.

II. JURISDICTION AND VENUE

6. Pursuant to RSA 677:4, any person aggrieved by a decision of the ZBA may appeal the decision by filing a petition in the Superior Court within thirty days after the date upon which the ZBA denied a Motion for Rehearing regarding the decision, and such petition shall set forth the grounds upon which the decision is illegal or unreasonable.

7. The ZBA denied Petitioners' Motion for Rehearing on December 8, 2017. Accordingly, RSA 677:4 vests this Court with subject matter jurisdiction.

8. Venue is proper in this Court because the decision being appealed took place in, and the subject property is located in, the Town of Hill, County of Merrimack, New Hampshire.

III. APPLICABLE LAW

9. The Hill Zoning Ordinance is the law applicable to the Applicant's request for a building permit. The ZBA did not state which specific section(s) of the Zoning Ordinance it relied upon or considered.

10. RSA 674:41 also governs the issuance of building permits.

IV. ARGUMENT

A. The Applicant Failed to Establish Required Frontage

11. Under RSA 674:41:

[N]o . . . building permit [shall] be issued for the erection of a building unless the street giving access to the lot upon which such building is proposed to be placed: . . . (b) [c]orresponds in its location and lines with . . . (2) [a] street on a subdivision plat approved by the planning board.

RSA 674:41, I(b)(2).

12. The decision of the ZBA, styled as "Meeting Minutes," states that it "wrestled with the ambiguous language of both the ordinance and state statutes," but does not specify the ordinance language or statutory sections that the ZBA found to be ambiguous.

13. The ZBA also noted "the 'common drive' shown on several maps presented to the Board accompanied by supporting deeds," but did not specifically identify which maps or which deeds to which it referred.

14. The ZBA also refers to "additional documentation," but not did identify what specific information formed the basis of their decision.

15. There are no meeting minutes detailing the conversation had by the ZBA apart from the decision as rendered.

16. The October 26, 2017 document signed by the Chairman is a decision of the ZBA that contains the conclusions of the ZBA reached “[a]fter careful consideration” but does not detail the consideration given by the ZBA.

17. The ZBA also does not identify which plan was considered to be an “acceptable plat that was approved by the Planning Board.”

18. It is also important to note that a street would have to be shown on a subdivision plat, not just an “acceptable” plat, to meet the requirements of RSA 674:41, I(b)(2).

19. None of the plans provided to the ZBA were accurately and precisely surveyed subdivision plats that show the location of the access road with any precision.

20. In fact, the various plans in the ZBA file show the outlet of the access crossing the Whitman’s property at different points or not at all. Many of the plans do not show the Whitman boundaries.

21. The “Boundary Survey and Boundary Line Adjustment Clarification” dated July 24, 1989, which was approved by the Town of Hill Planning Board and recorded in the Merrimack County Registry of Deed at Plat # 11177, does not provide any measurements, angles, directions, or other specific information about the depicted “common drive.”

22. Instead, the “common drive” is drawn on the edge of the plan with an unmeasured, indistinctly sketched curving path and no designated end.

23. In addition, it is unclear if the beginning of the “common drive” as mapped is located on the Whitman property at all, as the Whitman property lines are not indicated in any way.

24. The “common drive” on this plan is, at most, a reference feature that is noted but not described or located in any meaningful way.

25. The location of the “common drive” had nothing to do with the purpose of the plan.

26. This plan cannot serve as a “subdivision plat” that shows the “common drive” in satisfaction of RSA 674:41, I(b)(2).

27. The ZBA only states that the “common drive” meets the “requisite standard under the Town of Hill Zoning Ordinance and RSA 674:41, I(b)(2).”

28. Therefore, the ZBA’s decision only rests on being satisfied that the access road to the lot “[c]orresponds in its location and lines” with a street that appears on a subdivision plat approved by the planning board. RSA 674:41, I(b)(2).

29. No subdivision plat has been provided that shows the access road in a location consistent with the location claimed by the Applicant.

30. In her own application, the Applicant took a survey and redrew the end of the access-way as crossing the Whitman property, when the underlying survey showed it ending in a fork with Poverty Pond Road that possibly did not cross the Whitman’s property. See Higgins Application for Administrative Appeal, Sketch Plan.

31. If the Applicant has not shown the existence of a road on an approved subdivision plat, and not even an access-way that, on the ground, corresponds with the location and lines of the “common drive” depicted on the plans submitted, she has not satisfied the requirements of RSA 674:41, I(b)(2).

32. Under RSA 674:41, III, a “‘street giving access to the lot’ means a street or way abutting the lot and upon which the lot has frontage.

33. RSA 674:41, III does not include a street from which the sole access to the lot is via a private easement or right-of-way, unless such easement or right-of-way also meets the criteria set forth in subparagraphs I(a), (b), (c), (d), or (e)."

34. Here, the access to Applicant's lot is only by a private easement or right-of-way.

35. The access does not meet the requirements of RSA 674:41, I(b)(2), which is the only provision the Board says the applicant satisfies.


36. Therefore, access via private easement or right-of-way, as documented by the Applicant, is not equivalent to access that satisfies RSA 674:41.

37. For the above reasons, the ZBA's decision to approve a building permit based on the road frontage requirement being satisfied by the "common drive" shown in different, imprecise locations was unlawful and unreasonable.


38. **This filing was prepared with the assistance of a New Hampshire attorney.**

Respectfully Submitted,

Dated: January 3, 2018

By: 
Thomas Whitman

Dated: January 3, 2018

By: 
Teri Whitman

Dated: January 3, 2018

By: 
Stephen Robinson

Dated: January 3, 2018

By: 
Daune Robinson