

# **Bond Case Briefs**

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## **ZONING - NEW HAMPSHIRE**

### **Merriam Farm, Inc v. Town of Surry**

**Supreme Court of New Hampshire - September 22, 2015 - A.3d - 2015 WL 5559892**

Property owner that was previously denied a building permit for failure to satisfy the frontage requirement appealed from the denial by town's zoning board of adjustment (ZBA) of its application for a variance from the frontage requirement. The Superior Court dismissed the appeal on the basis of res judicata. Owner appealed.

The Supreme Court of New Hampshire held that owner's application for a variance was not the same cause of action as its application for a building permit.

Property owner's application to town's zoning board of adjustment (ZBA) for a variance from the frontage requirement was not the same cause of action as its earlier application for a building permit, which was denied for failure to satisfy the frontage requirement, and thus res judicata did not bar the variance application. Owner could not have added the variance claim to its appeal from the denial of the building permit application, since the building permit could have been granted without a variance if certain other conditions were met, and it was for the ZBA rather than the trial court to decide in the first instance whether to issue a variance.