

1 **TOWN OF DERRY**

2
3 **Zoning Board of Adjustment**

4
5 **MEETING MINUTES – June 4, 2026**

6
7 **MEMBERS PRESENT**

8 Lynn Perkins, Chair
9 Craig Corbett, Vice Chair
10 Crystal Morin
11 James Dietzel
12

MEMBERS ABSENT

Richard Tripp

13 **ALTERNATES PRESENT**

14 Michael Donlon
15 Gaspar Obimba
16

ALTERNATES ABSENT

Anthony Herny
Jason Dragani

17 **CODE ENFORCEMENT**

18 Keri Owen, Code Enforcement
19

20 Minutes prepared by: Eileen Boudreau, ZBA Clerk
21

22 **I. CALL TO ORDER:**

23
24 Mr. Perkins called the meeting to order at 7:00 p.m. with the salute to the flag. Instructions were given on
25 safety. Also noted the meeting is audio and video recorded.
26

27 Mr. Perkins asked board members to introduce themselves.
28

29 **II. ADMINISTRATIVE BUSINESS**

30
31 **REQUEST TO TABLE TO JUNE 18, 2026 MEETING**

32 **26-115**

33 **Applicant: Germaine & Blaszk, PA**

34 **Owner: JAL, LLC**

35 **Parcel ID: 14015**

36 **Zoned: LMDR**
37

38 The applicant is requesting a variance to the terms of Article VI, Section 165-47.B.1 of the Town
39 of Derry Zoning Ordinance to subdivide approximately sixteen acres into lots with less than the
40 required two-acre minimum.
41

42 Ms. Morin made a motion to table case 26-115 to the next meeting June 18, 2026.
43

44 Seconded by Mr. Donlon All in favor, none opposed.
45
46

47 **III. PUBLIC HEARING**

48
49 **26-112 (Tabled from May 7, 2026 Meeting)**

50 **Applicant: Jeffrey Moulton**

51 **Owner: Benjamin Powell**

52 **Parcel ID: 19091**

53 22 Germantown Rd.
54 Zoned: LDR
55

56 The applicants are requesting a variance to the terms of Article VI, Section 165-48.B.4 of the
57 Town of Derry Zoning Ordinance to allow the construction of a second story expansion to an
58 existing single story garage which is located less than 35 feet to the front property line and less
59 than 15 feet to the side property line. (As permitted by a variance granted in 2016).
60

61 Mr. Perkins asked Mr. Obimba to sit in on case 26-112.
62

63 Jeffrey Moulton introduced himself and read the five criteria.
64

65 Mr. Moulton said in general, the houses in the neighborhood are close to the lot lines and to the road. He
66 said they will be raising the roof and putting a higher wall that will allow storage space. There is no heat
67 or water and there will be no living quarters.
68

69 Mr. Perkins asked if the roof was facing the lake and asked if he had any impervious issues or permitting
70 that is relevant.
71

72 Mr. Moulton said it is facing the lake and there is no increase in the impervious footprint.
73

74 Mr. Donlon asked Mr. Moulton about the proposed ridge height relative to the existing dwelling's ridge
75 height where are they relative to one another.
76

77 Mr. Moulton said a profile of the section shows raising of about 8 feet on the backside.
78

79 Mr. Obimba asked if the town enforces averages roof ridge heights.
80

81 Ms. Owen said as discussed, the applicant is seeking a variance to allow the construction of a second
82 story expansion to the existing single story detached garage located less than 35 feet from the front
83 property line and less than 15 feet from the side property line.
84

- 85 - The property was granted a variance on November 17, 2016, to construct a 22' x 22' detached
86 garage on the property with less than the required front and side setbacks.
87
- 88 - This is waterfront property located on Big Island Pond and also abuts a beach area for use by the
89 residents of Germantown Road.
90
- 91 - Germantown Road is a private road and is not maintained by the Town.
92
- 93 - The property is serviced by private water and sewer.
94
- 95 - A State Shoreland permit will not be required because the impervious surface is not being
96 increased.
97
- 98 - If approved, appropriate permits and inspections will be required.
99

100 Ms. Owen said the ridge height will remain the same, the back wall will be lifted to allow for head height
101 and storage in this space.
102

103 **CALL TO PUBLIC**

Mr. Perkins made a call to public.

FAVOR

No gestures in person.

OPPOSED

No gestures in person.

MOTION FOR DELIBERATION

Mr. Dietzel made a motion to enter deliberation. Seconded by Mr. Obimba All in favor, none opposed.

Mr. Dietzel said he thinks this is a straightforward application. He believes the five criteria were met. He looked at the property, and he does not think that what they are proposing is out of line, it does not change the essential character of the neighborhood. He believes strict enforcement of the rules or literal enforcement would deny reasonable use of this piece of property.

Mr. Obimba said he agrees with Mr. Dietzel that all the five points have been addressed. It is not an excessive ask. The footprint is not increasing to the impermeable surface.

Mr. Donlon also believes it is a reasonable request for all the reasons stated. There is no expansion of the actual footprint in impervious areas.

Ms. Morin agrees as well that all five criteria have been met.

Mr. Perkins said he agrees it is simple and all the permitting issues have been clarified.

Mr. Dietzel made a motion to come out of deliberation. Seconded by Mr. Donlon All in favor, none opposed.

MOTION

Ms. Morin made a motion on case #26-112 Jeffrey Moulton to grant a variance as provided in Article VI, Section 165-48.B.4 of the Town of Derry Zoning Ordinance to allow the construction of a second story expansion to an existing single story garage which is located less than 35 feet to the front property line and less than 15 feet to the side property line.

Parcel ID: 19091 Zoned: LDR

as presented with the following conditions:

1. Subject to obtaining all state and town permits and inspections.

Seconded by: Mr. Donlon

Mr. Perkins reviewed the findings of fact as follows:

The board found that:

- The applicant is in the low-density residential district.
- The parcel was granted a variance in 2016 to build a 22 x 22-foot garage.
- The application is to expand that on a second floor.
- This is on is on a private road along the lake and the property is serviced by private water and sewer.

Voting Members:

Mr. Dietzel Yes
Mr. Donlon Yes
Ms. Morin Yes
Mr. Obimba Yes
Mr. Perkins Yes

The application was GRANTED by a vote of 5-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that, the recourse would be to appeal to Superior Court.

26-113 (Tabled from May 21, 2026 Meeting)

Applicant: Edward N. Herbert Associates, Inc.
Owner: Craig J. Bonneau Construction Company LLC
Parcel ID: 14024
 34 Pingree Hill Rd
Zoned: LDR

The applicant is requesting a variance to the terms of Article VI, Section 165-48.B.1 of the Town of Derry zoning ordinance to allow the property to be subdivided into 3 lots where one of the lots will have less than the three-acre minimum.

Mr. Perkins asked Mr. Obimba to sit on case 26-113.

Shane Gendron introduced himself and Craig Bonneau. Mr. Gendron read the five criteria.

Shane explained this is an 8.44-acre parcel that his client purchased and there is an existing home on it. Craig is a builder and he would like to develop the property into three lots. The first step they take is to survey the lot and we have the wetlands flagged out. They hired Lou Curley of Hurley Environmental Land Planning to flag the wetland that runs from the back of the lot between Lot 1 and 2 all the way to the front of the lot. There is a culvert that runs under Pingree Hill and the wetland continues. Between the wetland and the 75-foot wetland buffer on either side of that wetland it creates a separation from the area around the house to a lot of the north. This lot has long frontage on Pingree Hill and frontage on Winchester Terrace. Lots 2 and 3 meet the zoning requirements. Lot 1 to the north, which is isolated, is where they are looking for the variance. Looking at the neighborhood most lots are well below the acreage. They are aware they will have to go before Planning Board for subdivision approval, and it would have to get state subdivision approval. There would also be septic designs that would have to be approved through the state of New Hampshire.

Mr. Perkins confirmed with Mr. Gendron that it is Lot 1, which is the conflicted lot that does not meet the acreage. He also said he can see the 75-foot wetland setback line and the proposed structure is 75 feet away. Mr. Perkins also discussed the location of the septic.

Mr. Gendron said it is Lot 1 and it is more than 75 feet away. He said there is over an acre of usable buildable land on the lot. There are almost two acres of high and dry upland land on the lot. Mr. Gendron said for the septic location they dug a couple of test pits to show the area proves out. They have already done all of the test pits, and they were greater than five feet with reasonable water tables because they are up a hill.

Ms. Owen discussed the following.

- The applicant is requesting a variance to allow the property to be subdivided into 3-lots where one of the lots will have less than the three-acre minimum.
- The property is located in the Low Density Residential District (LDR), which requires a minimum lot area of 3 acres. The proposed 3-lot subdivision will result in two lots meeting the 3-acre minimum, while the third lot will be approximately 2.3 acres, therefore, a variance is being requested for the undersized lot.
- The existing residence and proposed new lots are serviced by private septic and private well.
- If approved, Planning Board subdivision approval will be required.
- If approved, appropriate permits and inspections will be required.

CALL TO PUBLIC

Mr. Perkins made a call to public.

FAVOR

No gestures in person.

OPPOSED

One gesture in person.

Jonathan Bresnaham, 55 Pingree Hill Rd introduced himself.

Mr. Bresnaham said a week before the last town hearing is when he heard about this request. He was informed by the post office. He said he did not have time to prepare and was not given the plans. He came here to observe and learn. His understanding based on the plans is they want to put a home directly in front of his property and no one came to talk to him. The reason he bought his home was for his family and the privacy. Mr. Bresnaham said they were told it was conservation land and it would be a catastrophe to tear down the beautiful forest that they enjoy. He is worried about the timeline. Kids are out playing and he is worried about the trucks entering and exiting.

Mr. Perkins said he understands. Urban growth and time changes things and affects everybody. He told Mr. Bresnaham he would direct him to the five criteria that were read into the record which are the guidelines by statute.

Mr. Bresnahan said it does not meet his interests, and he hopes it does not get approved.

Mr. Perkins asked Mr. Gendron if the land was conservation land near Lot 1.

Mr. Gendron said it was not conservation land that he knew of. He said abutting parcels including Chester parcels were notified and they did speak to a couple of homeowners. He also said Craig is rehabbing the existing home for his daughter.

Mr. Perkins said the frontage is ample and they are almost there on the completed three lots.

MOTION FOR DELIBERATION

Mr. Donlon made a motion to enter deliberation Seconded by Mr. Dietzel. All in favor, none opposed.

Mr. Donlon said he feels the five criteria have been met specifically as it relates to the surrounding lot sizes and being similar to what is being proposed in the area is not egregiously off as far as the square footage. Especially relative to the surrounding lot sizes and the overage on the frontage as well as not needing any other variances as far as setbacks. There is no worry about well and septic's or shoehorning anything in. It is a reasonable use a lot at a time when people are looking for lots.

Ms. Morin said while the board and applicant were talking, she was writing down from the GIS for Derry the lot sizes and there is only one that does go above the two-acre lot. She feels that it meets the five criteria.

Mr. Dietzel said he is sympathetic to Mr. Bresnahan and his concerns. However, whenever new houses are built trees get cut down. He said he is going to stick to the five criteria, particularly the one nonconforming lot. If it was just dividing it into two three-acre-plus lots, then he would not need a variance. It is just that one nonconforming lot that is being discussed. He feels enforcing the ordinance in this particular nonconforming lot is not feasible, it would deny the property owner an opportunity to reasonably use the piece of property.

Mr. Obimba said he does not have much to add and he wanted to emphasize that if they go by averages of the abutting lots, he is still within that number. He feels they have met the five criteria.

Mr. Perkins said if you are too away the .06 and .07 on lots two and three and you add it to lot one you are only off by half an acre. The applicant expresses the general spirit of the ordinance in this regard which is still rural development at three acres a piece.

Mr. Obimba made a motion to come out of deliberation. Seconded by Mr. Donlon. All in favor, none opposed.

MOTION

Ms. Morin made a motion on case 26-113 to grant a variance to the terms of Article VI, Section 165-48.B.1 of the Town of Derry zoning ordinance to allow the property to be subdivided into three lots where one of the lots will have less than the three-acre minimum.

Parcel ID: 14024 Zoned: LDR

as presented with the following conditions:

1. Subject to obtaining all state and town permits and inspections.
2. Subject to Planning Board subdivision approval.

Seconded by: Mr. Obimba

Mr. Perkins reviewed the findings of fact as follows:

The board found that:

1. The board's findings that this is not contrary to the public interest:

Mr. Perkins said in contrary to the public interest the public interest is served more by the development of the property versus any takeaway from the public.

Mr. Dietzel said he agrees with Mr. Perkins analysis.

Mr. Obimba said he agrees with the analysis.

Mr. Donlon said he agrees with the analysis.

Mr. Morin said she also agrees with the analysis.

2. The board's findings that this is consistent with the spirit of the ordinance:

Mr. Perkins said Spirit of the Ordinance has been expressed as keeping open spaces and more spread-out development. Although lot one does not meet the entire acreage requirement it gives ample frontage to the property.

Mr. Donlon said he agrees and with respect to that the neighboring properties with the exception of the two three-acre parcels within this subdivision the undersized lot will still be the second largest lot in the forest area.

Ms. Morin said being familiar with that part of town and looking at the spirit of ordinance Pingree Hill and English Range both have numerous duplexes and maybe that was what they were trying to stop. She agrees that it doesn't go against the spirit of the ordinance as has plenty of frontage.

Mr. Dietzel said he agrees and does not think it conflicts with the basic zoning objectives to a market degree and it is reasonable.

Mr. Obimba agrees and believes the purpose of the ordinance to promote health, safety and not crowd the area is being met given the size of the lot. He said the evidence provided to the board that the septic and well have enough area to be placed and the frontages are being made. The spirit of the ordinance is being met.

3. The board's finding that Substantial Justice would be served by denying this variance request:

Mr. Perkins said for substantial justice Ms. Morin brought forward the other size of lots along the road and they are now nonconforming lots although we are not going to require them to tear their homes down to meet this requirement. He believes substantial justice works in this regard that the best development of

357 this parcel and the acres are fair and matches the overall development of the neighborhood that has been
358 in development for 50 years plus.

359
360 Mr. Dolon agrees it is reasonable.

361
362 Ms. Morin agrees.

363
364 Mr. Dietzel agrees for reasons stated.

365
366 Mr. Obimba agrees.

367
368 4. The board's findings that the applicant has adequately demonstrated that surrounding property values
369 will not be diminished?

370
371 Mr. Perkins said for the values of surrounding properties does meet the overall layout of the road. Homes
372 there and probably pricier homes are going to be a detriment to the values of the surrounding properties.

373
374 Mr. Donlon said he does not think so.

375
376 Ms. Morin said she did not think so as well. She feels it helps the other property values.

377
378 Mr. Dietel agrees with the reasons stated.

379
380 Mr. Obimba believes the new homes will increase the value of surrounding properties.

381
382 5. The board's findings that the unnecessary hardship is demonstrated because the hardship relates to the
383 unique characteristics of the property:

384
385 Mr. Perkins said the hardship here is that the parcel is not a perfect cube and the geography and the size of
386 the parcel and its shape create a hardship that would leave a significant amount of the land unusable for
387 the intent that this district has provided.

388
389 Mr. Donlon agrees. He said it is just shy of the nine and the parcels were being divided up some 50 years
390 ago if it was in keeping with everything else around that was one or a one-and-a-half-acre lot prior to any
391 changes in the zoning this conceivably could be five of six lots back then.

392
393 Ms. Morin agrees with what has been stated. And where the natural property line is to that you really can't
394 try to take from other properties without it looking or being an odd shape.

395
396 Mr. Dietzel said Mr. Donlon made a good point, and he agrees that the fifth criteria for the hardship
397 criteria has been met based on the reasons stated.

398
399 Mr. Obimba said he agrees with what has been stated. If you look at the shape of the property and the
400 problem the wetland creates it makes it difficult to subdivide to meet zoning ordinance requirements and
401 still be able to make good use of that third parcel.

402
403 The board also includes all facts found in the meeting minutes for this application and incorporates all
404 meeting minutes into its finding of facts and decisions.

405
406 Voting Members:

407

408 Ms. Morin Yes
409 Mr. Dietzel Yes
410 Mr. Donlon Yes
411 Mr. Obimba Yes
412 Mr. Perkins Yes
413

414 The application was GRANTED by a vote of 5-0. Anyone aggrieved by a decision of the Board has 30
415 days to file a request for a rehearing. After that, the recourse would be to appeal to Superior Court.
416
417

418 **26-107 (Continued from April 2, 2026 Meeting)**

419 **Applicant:** Bird Enterprises LLC, Jay Yenaco, duly authorized
420 **Owner:** Bird Enterprises LLC, Jay Yenaco, duly authorized
421 **Parcel ID:** 10012
422 187 Hampstead Rd
423 **Zoned:** LMDR
424

425 The applicant is requesting a variance to the terms of Article III, Section 165-101.1 of the Town
426 of Derry Zoning Ordinance to allow the installation of a 50 sq ft pylon sign.
427

428 Mr. Perkins asked Ms. Morin to sit on case 26-107 in Mr. Tripp's absence.
429

430 Attorney Drescher read and reviewed the newly submitted plans for the sign and the documents for the
431 lighting. The sign is smaller, shorter, and darker. The plans were altered considering comments by the
432 ZBA as well as the abutters.
433

434 Mr. Perkins asked Attorney Drescher if they were still proposing a time when the light would go off and
435 if the topper on the post had been removed. He confirmed with Attorney Drescher that passersby are
436 going to be able to identify with this location safely and it sounds like they have been able to decrease the
437 element that will affect the abutters.
438

439 Attorney Drescher said they are. They will stand by what they had before there would be a timer set that
440 will effectively go on when it starts to get dark and it will be off by 9:00pm. He said the topper had been
441 removed. They have heard everyone and they have done a lot to try to make changes.
442

443 Mr. Perkins said the questions in this regard are to make sure that it is clarified for the record what the
444 changes are. He asked if they wanted a motion for lighting separate from the motion of the sign or if they
445 wanted to keep them combined.
446

447 Attorney Drescher said they have no objection to having two separate motions.
448

449 Mr. Perkins asked Ms. Owen if she sent the documents to the abutters and asked if she heard back from
450 any of them.
451

452 Ms. Owen confirmed she sent the documents and did not hear back from any of the abutters.
453

454 Mr. Perkins asked for a motion to enter deliberation.
455

456 Mr. Foley stood up and walked towards the board members and asked if they were in a public session.
457

Mr. Perkins explained to Mr. Foley his time was done and he asked him to sit down as the board was entering deliberation.

Mr. Foley again asked if they were in a public session.

Mr. Perkins explained to Mr. Foley they moved out of a public session at the end of the last hearing. The board followed the policies, and all abutters were given an opportunity to rebut.

Mr. Foley asked Mr. Perkins if they had moved into deliberative session.

Mr. Perkins said the board is moving into deliberative session right now.

Mr. Foley asked if this was a public hearing or not.

Mr. Perkins said this is not a public hearing, this was the applicants opportunity to make their formal request that they altered their original motion and are compromising to the abutters. He asked Mr. Foley to return to his seat.

Mr. Foley told Mr. Perkins he is breaking the law. They submitted a new proposal after the board went into deliberation.

Mr. Perkins told Mr. Foley he is not breaking the law the board is going into deliberative session now.

Mr. Perkins asked Attorney Drescher if he had anything to add.

Attorney Drescher said the last meeting was supposed to be their last final word although there was a request made to them to provide some last bit information that was just matter of fact that he just read and was submitted. They are not opining and are not making any more arguments. The public has been heard multiple times, and the changes are more of a revision or an amendment. He believes everybody has said enough at this point and it is supposed to be that the applicant is supposed to have the last word.

Mr. Foley said it is a complete redesign of the sign. It is a change in the height of the sign, and he would like to make sure that the minutes of the meeting make it clear that a new design has been submitted after they left public session and that requires notification in the hearing.

Mr. Perkins told Mr. Foley that it has never occurred before his time on the board, and the board has been able to make amendments, especially when the public input has given them direction to do so. Mr. Perkins told Mr. Foley he can sit down or he will have him removed from the building.

Ms. Morin said the meeting ended because of time.

Mr. Perkins said the board is all set to go and they are in deliberative session.

Mr. Perkins said Ms. Morin will be sitting in for Mr. Tripp, who is absent.

MOTION FOR DELIBRATION

Ms. Morin made a motion to enter deliberation Seconded by Mr. Donlon All in favor, none opposed.

Mr. Perkins said public input and the compromise of the property owner have brought forward the proposed reductions in the sign that was asked for. The board had given direction as they had tabled this

without deliberation at the prior meeting. He asked the board to make a separate proposal as the applicant asked for two motions. One motion for the sign and one motion for the lighting. Mr. Perkins said they are designating relief for the lighting and asked Ms. Owen if they have a separate lighting aspect to signage in the three pages of ordinances.

Ms. Own said she is trying to find something in relation to lumens. She did not find anything separate in the ordinance.

Mr. Perkins said the motion for the sign would not be 50 s/f but is 42 1/2 feet and the board will revise a second motion as the applicant requested. He asked Ms. Owen if they were separating the motion if it was encompassing of all signs.

Ms. Owen said in this district yes, she would agree.

Mr. Perkins said the board will leave section 165 101.1 of the town of Derry Zoning Ordinance to allow the installation of an internally lit sign with decreased luminance no higher than 2,600, timed lighting as specified, and the lit topper removed.

1. The board's findings that this is not contrary to the public interest.

Mr. Perkins said the first of the five legs the question becomes contrary to the public interest. He said does the sign alter the essential character of the neighborhood. Mr. Perkins said this was discussed prior that the road is a main commuter thoroughfare and double yellow line. It is not an intimate neighborhood setting like something in or around a school zone. There are similar or larger signs along the same roadway. Prior the focus was solely on the electronic messaging sign with a similar sign at the far end of Hampstead Rd. Mr. Rojee brought the various signs in the community to other like businesses to the attention of the board. Measuring the signs at similar locations that he had shown the board, those signs vary in size and are larger than what the ordinance specifies for such a venture like this in any other district that would be 24 square feet. The Calvary Christian Church has a 40 square foot sign, and it is backlit and it is closer to the road than this facility.

Mr. Donlon said he agrees and he would add that some of the clients may be first-time clients that are visiting the property. The sign would cut down on any erratic traffic patterns or erratic driving behavior on what the board concludes to be a busy road. Safety is a concern and turning into other properties in an effort to turn around and then back out into the road.

Ms. Morin said she wanted to add to what Mr. Donlon said. The reasonable identification as well for emergency responders.

Mr. Perkins asked how does a property get identified and he closed out the last meeting saying that there is no district within the town that does not allow some kind of business sign. He said if you look through all of the ordinances either through the effect of a special exception or as designated for a business. It is not a matter of whether or not this business should have a sign, it is what type of sign, how large, and what is fitting in a district where there is an approved use for that facility. The signage needs to identify a business or needs to identify a location. And as pointed out by Mrs. Morin it is for safety issues as well.

Mr. Dietzel said he agrees for reasons stated and he does not believe it is contrary to the public's interest.

Mr. Corbett said there have been a lot of changes and if you look at the latest changes he does not think they are material and from what was seen at the last meeting he thinks the new background and the type of material for the sign wasn't necessarily within the board's purview. Just shrinking it from the 50 to the

42 ½ ft is within changes that they have seen. He said driving down the road the last two months while hearing the case he believes it is tough to see the church in the back especially when you are coming around the corner with another church right back there.

He thinks that the current sign while it is larger than a couple of the other ones in the general vicinity is appropriately scaled. He does not think it is going to adversely affect traffic and he thinks it will help traffic, especially knowing the age groups and people that are going to be coming in and looking for the property at night. He does not think it is contrary to the public interest on a larger scale when thinking about the town.

2. The board's findings that this is consistent with the spirit of the ordinance.

Mr. Perkins said on the spirit of the ordinance as he indicated there is not a district in the town that does not allow a sign of some sort for a business. The spirit of the ordinance allows for different signage in different districts.

Mr. Perkins said he believes the spirit of the ordinance is met. It is met when a business albeit is a unique business and needs to be able to promote itself. It is not about more revenue but to be able to just be existent and be identified. It would be a hardship to take that away from them.

Mr. Donlon said he agrees and would reiterate by saying he believes it is similar to other signage in the general geographical area of the building.

Ms. Morin said given the property's unusual setback and reduced visibility from the roadway the requested relief is reasonable, and it allows the property to function in a manner consistent with other properties in the area while maintaining the overall intent of the ordinance.

Mr. Dietzel said regarding the spirit of the ordinance the abutters previously stated that they are conflating the business with the sign. He does not see how the two can be completely separated. As said, this business needs a sign of some sort. Mr. Dietzel believes the spirit of the ordinance and the essential character of the neighborhood was blown when they put the church in many years ago. He does not see how a sign of this nature is significant compared to what has already been done. There is case law that says that it must unduly and in a marked degree conflict with the zoning objectives of the ordinance. He does not think this sign does to a marked degree and in an unduly fashion. He believes the spirit of the ordinance is observed.

Mr. Corbett said he agrees with what Mr. Dietzel stated and he thinks that what is allowed there is now lawfully authorized and that happened through a prior decision outside of the board. Mr. Corbett does not think the sign goes against the spirit of the ordinance understanding what we are utilizing the property for.

3. The board's finding that Substantial Justice would be served by denying this variance request.

Mr. Perkins said substantial justice is when the loss to the individual is outweighed by gain to the public. He said the abutters had an opportunity to address this matter. He said the board tried to correct one abutter in the fact that he was solely talking about the prior case that focused on electronic messaging signs but not presenting the objection to any of the five criteria that is relevant to this case here. As much as the board tried to engage with him, he was resistant. Mr. Perkins said the Davison's concerns are understood and the applicant has done a lot to diminish the impact and honor what their feelings are. Mr. Perkins believes this is a compromise that they asked for and the applicant notably gave justice in itself.

Mr. Donlon agrees with Mr. Perkins and would go back to the point Mr. Corbett was making in his closing statement to the spirit of the ordinance in that they are not the board to decide the use of the land. He said it would be reasonable to contend that a business needs a sign, and he agrees that it is substantial justice for a business.

Ms. Morin said she agrees with what has been stated. She feels the requested sign is not intended to expand or intensify the already approved use but rather to provide reasonable identification of the property. The relief requested is limited in scope and directly related to the unique characteristics of the property.

Mr. Dietzel said he agrees and thinks the substantial justice has been met for reasons stated.

Mr. Corbett said a good point was made. When you look at the substantial justice, if the board were to deny this variance, he thinks it causes more of a burden to the applicant. The sign is a reasonable identifier. If the sign is approved, he does not think that it results in harm to the public, especially having a chance to really look at this and to see the lights turned down. The sign is a reasonable use.

Mr. Perkins said the board honored the testimony Mr. Rojee and other abutters provided. He thinks that the board also has honored what it is that they were advocating for with some compromise even though they have not been able to identify how they would be aggrieved. Mr. Perkins said it goes back to the emphasis that substantial justice is what does the public gain if you do not allow this business to promote itself. He thinks it becomes a detriment.

4. The board's findings that the applicant has adequately demonstrated that surrounding property values will not be diminished.

Mr. Perkins said the board has seen the broker opinion supporting both sides of the argument. He thinks that the compromise by the applicant has allowed something less offensive to the abutters particularly at night. The higher courts have allowed zoning boards to determine the relevance of the information to diminution of property values, and he finds that between the two arguments it is neutral. Mr. Perkins believes as you go by this property it improves the property values and does not diminish it.

Mr. Donlon said he agrees and will reiterate the concessions that have been made along the way to minimize any effects while still maintaining effectiveness in regard to the sign serving its purpose as needed.

Ms. Morin agrees with what has been stated and looked at the town's vision plans. The number one thing was youth activities. Having that property in town will not just help their property values but everyone else's because of the recreation part of it.

Mr. Dietzel said he agrees with what Mr. Perkins and Ms. Morin said about the business itself enhancing property values. He is going to focus on the sign. From his standpoint if he were looking for a house and wanted to live in a particular neighborhood he would not want to live right near the business because it is too busy or too lit. But if he wanted to live there, would he turn around and say I want to reduce the price of my offer by \$50,000 because of the sign. He does not see it. For reasons stated by Mr. Perkins the sign itself is neutral. Mr. Dietzel does not see any adverse effect on property tax or property values.

Mr. Corbett said he agrees with the way Mr. Dietzel looks at it. They have heard testimony on both sides and have a letter from the abutters that stated it would reduce the value. They also have letters from the application saying it would enhance the value. He thinks Mr. Dietzel's and Ms. Morin made a good point because what is there now and the improvement to the property is an increase to the property value. He

believes the property values are already increasing. What he looks at now is a sign located in an area that was on the site plan review that allowed the business to go in is now going to be what reduces the neighborhood value, he does not see it. He does not think the sign is negative. It is neutral. It would be negative for the applicant.

5. The board's findings that the unnecessary hardship is demonstrated because the hardship relates to the unique characteristics of the property.

Mr. Perkins said looking at this property what is the hardship and the unique setting and whether or not the property is unfairly burdened by its location. He said the hardship was established some time ago not to the applicant's doing. The church was established some time ago and created this building that was designed for a lot of parishioners who did not seem to go there. Now you have this structure and what do you do with it. This individual made use of this property which is a reasonable use. He said as a capitalistic society the idea that a business can be there but cannot ever promote itself, show itself, or display itself creates the hardship.

The structure and the pictures that were given to the board as well as his own drive-bys of this property almost create a safety risk. Mr. Perkins said if you are heading east on this on Hampstead Road you have to rubberneck back in order to see the facility and be able to identify what it is. People that may want to be patrons and want to go to this baseball school may end up driving by multiple times because they overshoot the driveway because they do not see it. He said there are other parcels on this same stretch of road that are allowed to have signs, larger signs than what the ordinance would allow. Mr. Perkins said the signage is necessary as proposed and improved in the compromise for the applicant.

Mr. Donlon agrees and would like to reiterate that he believes this is reasonably similar to other properties in the area. It is setback from the street more than the other properties around further facilitating the need for the signage.

Mr. Perkins asked Mr. Donlon if it would be the signage as they are proposing which is smaller than the other sign ordinance specified throughout other parts of the community.

Mr. Donlon said it is.

Ms. Morin agrees because it is an approved use and it is set far back. She said it is unreasonable to expect them to lift the building and move that forward.

Mr. Dietzel said hardship is a difficult one for him. He said due to the conditions of the property no fair and substantial relationship exists between the general public purposes of the ordinance. He thinks that means they should not just be enforcing it for the purpose of enforcing it. It should be tied to the goals of the ordinance. That goes back to the other four criteria, specifically the spirit of the ordinance and substantial justice. Mr. Dietzel believes that there is a special condition for this property that they have already discussed. He believes that the hardship criterion is met with this application due to the unique setting and a unique overall condition given the history of the use and is unfairly burdened.

Mr. Corbett said he thinks Mr. Dietzel's done a particularly good job over the years, reminding the board how the hardship relates to the characteristics of the property, not to the business and not to the applicant. When he reviews the site what he looks at that makes this unique is it is in a residential zone. Mr. Corbett said churches are allowed to build anywhere which then led the board to a situation where the church goes vacant for years and the property becomes an eyesore. The applicant does not need to show the sign is necessary and show that it is reasonable. Mr. Corbett thinks that a sign for commercial use in a residential area is reasonable.

Mr. Perkins said they have two motions. One is for the installation of a 42 ½ -foot pylon sign and one for the lighting for the sign. They are going to take the motions one at a time and identify finding of fact for each. The motions will be simultaneously. The request was to make sure that everything was clearly documented as to what they were or were not approving.

Mr. Perkins asked Ms. Owen if she had a lumens tester.

Ms. Owen said she does have a tester.

Mr. Corbett made a motion to leave deliberation Seconded by Mr. Donlon. All in favor, none opposed.

MOTION

Ms. Morin made a motion on case #26-107 for Bird Enterprises LLC, Jay Yenaco, duly authorized, to grant a variance to the terms of Article III, Section 165-101.1 of the Town of Derry Zoning Ordinance to allow the installation of a 42.5 sq ft pylon sign.

Parcel ID 10012 Zoned LMDR

as presented with the following conditions:

1. Subject to obtaining all state and town permits and inspections.
2. Lit topper to be removed.

Seconded by: Mr. Corbett

Mr. Corbett reviewed the Finding of Fact:

The Board found that

Finding of fact for case 26-107. Originally heard April 2, 2026, continued May 7th, May 21st, and concluded on June 4, 2026. The ZBA heard the application of Bird Enterprises, LLC, represented by counsel concerning the property located at 187 Hampstead Road, Parcel ID 100212. Notice was provided to the immediate abutters per statute and the board received testimony from the applicant and legal counsel, town staff, and both abutters and members of the public. Documentary evidence included but was not limited to site plans, photos, records, and expert testimony. The property is located in the low-medium-density residential zoning district.

The property is approximately 8.76 acres and is currently a mixed-use nursery/youth athletic school and facility. The proposal concerns variance relief from Article XII, Section 165-101.1 for a 42-and-a-half square foot pylon sign. The board weighed testimony both for and against the proposal over the course of the prior three meetings.

Mr. Corbett and the board discussed the five criteria.

1. The board's findings that the unnecessary hardship is demonstrated because the hardship relates to the unique characteristics of the property:

Mr. Dietzel said he believes the criterion was met due to the nature of the property being a commercial property in a residential zone and the setback from the street a sign is necessary. He said denying the application would not allow him to use his property in a reasonable manner.

Mr. Perkins said he believes that the property is in a unique setting and that the property is burdened to be useful and the use currently cannot be accompanied reasonably without a sign. The property is not the only parcel of similar nature along the same roadway which has signage that is slightly larger in places related to their locale.

Ms. Morin agrees that it has been met with the property's unique setback and the sign is needed because of the distance between the building and the road.

Mr. Donlon said he also believes the hardship criteria have been met for reasons stated.

Mr. Corbett said he also believes that the hardship was displayed as he noted before due to it being a non-residential mixed-use allowed within the residential zone. As he went back through again referencing RSA 674:33 and the Harborside case that the board heard earlier the applicant is not required to show that it is necessary just that it is a reasonable use given the property's special conditions. Mr. Corbett believes the planning board determining their approval does not mean that it should be rubber-stamped but he does think that their determination that the use is allowed is relevant when you are evaluating it. They have a fair right to show that the businesses exist.

2. The board's findings that this is not contrary to the public interest:

Mr. Donlon said his findings are that this is not contrary to the public interest for all the reasons that were stated during the deliberative station. He agreed with comments and added traffic patterns and adverse effects of people out of town without knowing what they're coming upon.

Ms. Morin agrees that the variance will not be contrary to the public interest. She feels the sign being there will eliminate potential hard breaking and dangerous U-turns.

Mr. Perkins believes that the public interest is served. He believes the sign does not alter the essential character of the neighborhood. He said there are sporadic signs of this nature along the same stretch. He said this is not an intimate neighborhood and it is a thoroughfare or throughway for a lot of commuter traffic and signage will enhance and help with safety and identification for emergencies.

Mr. Dietzel agrees it is not contrary to the public interest for the reasons stated by the other proceeding members.

Mr. Corbett said he believes the sign has been appropriately scaled and thinks it has been appropriately designed. He believes it has been revised in a manner that works with the property also while considering the surrounding residential character. He does not think it is going to adversely affect traffic, safety, or the visual conditions. Mr. Corbett believes that the revised changes to light brightness and the hours are going to ensure that the internal lighting does not create a material different aesthetic from what previously existed with the spotlights and with everything that was bringing attention with the externally illuminated signs. He does not think it results in a substantial detriment to the public good or a derogation from the intent of the zoning bylaw.

3. The board's findings that this is consistent with the spirit of the ordinance:

Mr. Dietzel said the spirit of the ordinance is to keep the area residential and he does not see how the sign in its diminished capacity from the previous proposals would have any effect on the essential character of the neighborhood. He does not think it is a material difference.

Mr. Perkins believes that this meets the spirit of the ordinance. As he indicated there is not a district in the town that does not allow some sort of signage for a business either through special exception or otherwise. Therefore, not allowing that same privilege here for this applicant would be a detriment to them.

Ms. Morin agrees it meets the spirit of the ordinance because it is permitted commercial use on the property and reasonable identification is necessary.

Mr. Donlon feels that this is consistent within the spirit of the ordinance for reasons discussed during the deliberative session and he believes that this is reasonably similar to other signage in the general area.

Mr. Corbett believes the spirit of the ordinance has been met. He believes the sign serves a clear identification function for uses that have already been lawfully authorized on the property through the planning board's mixed-use approval.

4. The board's finding that Substantial Justice would be served by denying this variance request:

Mr. Donlon does not believe substantial justice would be served by denying this variance request. He feels like substantial justice is done by granting the variance for reasons discussed during the deliberative session.

Ms. Morin believes substantial justice is done as it is a reasonable request.

Mr. Perkins said there is no gain to the public by denying this. The applicant has revised the plans to accommodate the direct abutters of which there are only two households that have protested this. Mr. Perkins thinks that their accommodations have met the testimony given by those individuals.

Mr. Corbett agrees with the Chair. He believes that denying the variance would impose a real and practical burden on the applicant and that it would limit the reasonable identification of multiple approved on-site uses. He thinks granting it results in little to no corresponding harm to the public.

Mr. Dietzel agrees for reasons stated by Chair and Vice Chair.

5. The board's findings that the applicant has adequately demonstrated that surrounding property values will not be diminished?

Mr. Dietzel said the applicant has adequately demonstrated that the surrounding property values will not be diminished by greatly reducing the size and the brightness of the sign. He thinks the applicant has demonstrated that this would be neutral with respect to surrounding property values.

Mr. Perkins believes that there is no diminution in property value. He thinks the prior building that was there or that existed before the applicant took it over is an increase in property value and their ability to communicate with the public in a modified sense is not going to diminish property value.

Ms. Morin feels that the values of surrounding properties are not diminished due to evidence that the abutters had given the board and it is neutral.

Mr. Donlon believes the values of the surrounding properties are not diminished for reasons discussed in the deliberative session as well as reiterated by the Chair.

Mr. Corbett said as noted during deliberation the board heard testimony from both sides and looking at this through the New Hampshire State Supreme Court precedent they can rely on their own knowledge. Driving through the area he believes that the sign at the entrance of the property at a location that was approved during a site plan review will not negatively impact the values of the surrounding properties.

The board also includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into its finding of facts and decisions.

Voting Members:

Mr. Corbett	Yes
Ms. Morin	Yes
Mr. Dietzel	Yes
Mr. Obimba	Yes
Mr. Perkins	Yes

The application was GRANTED by a vote of 5-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that, the recourse would be to appeal to Superior Court.

Ms. Morin made a motion on case #26-107 for Bird Enterprises LLC, Jay Yenaco, duly authorized, to grant a variance to the terms of Article III, Section 165-101.1 of the Town of Derry Zoning Ordinance to allow internal lit sign with less than 3000 lumens with timed lighting.

Parcel ID 10012 Zoned LMDR

as presented with the following conditions:

1. Subject to obtaining all state and town permits and inspections.
2. With timed lighting as specified; on at dusk and off at 9pm.

Seconded by: Mr. Corbett

Mr. Corbett reviewed the Finding of Fact:

The Board found that

Finding of fact for case 26-107. Originally heard April 2, 2026, continued May 7th, May 21st, and concluded on June 4, 2026. The ZBA heard the application of Bird Enterprises, LLC, represented by counsel concerning the property located at 187 Hampstead Road, Parcel ID 100212. Notice was provided to the immediate abutters per statute and the board received testimony from the applicant and legal counsel, town staff, and both abutters and members of the public. Documentary evidence included but was not limited to site plans, photos, records, and expert testimony. The property is located in the low-medium-density residential zoning district.

The property is approximately 8.76 acres and is currently a mixed-use nursery/youth athletic school and facility. The proposal concerns variance relief from Article XII, Section 165-101.1 for a 42-and-a-half square foot pylon sign. The board weighed testimony both for and against the proposal over the course of the prior three meetings.

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916 1. The board's findings that the unnecessary hardship is demonstrated because the hardship relates to the
917 unique characteristics of the property:
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920 property in a residential zone and the setback from the street a sign is necessary. He said denying the
921 application would not allow him to use his property in a reasonable manner.
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924 useful and the use currently cannot be accompanied reasonably without a sign. The property is not the
925 only parcel of similar nature along the same roadway which has signage that is slightly larger in places
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929 of the distance between the building and the road.
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934 residential mixed-use allowed within the residential zone. As he went back through again referencing
935 RSA 674-33 and the Harborside case that the board heard earlier the applicant is not required to show that
936 it is necessary just that it is a reasonable use given the property's special conditions. Mr. Corbett believes
937 that the planning board determining their approval means that it should be rubber-stamped but he does
938 think that their determination that the use is allowed is relevant when you are evaluating it. They have a
939 fair right to show that the sign exists.
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941 2. The board's findings that this is not contrary to the public interest:
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943 Mr. Donlon said his findings are that this is not contrary to the public interest for all the reasons that were
944 stated during the deliberative station. He agreed with comments and added traffic patterns and adverse
945 effects of people out of town without knowing what they're coming upon.
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948 there will eliminate potential hard breaking and dangerous U-turns.
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951 character of the neighborhood. He said there are sporadic signs of this nature along the same stretch. He
952 said this is not an intimate neighborhood and it is a thoroughfare or throughway for a lot of commuter
953 traffic and signage will enhance and help with safety and identification for emergencies.
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959 designed. He believes it has been revised in a manner that works with the property also while considering
960 the surrounding residential character. He does not think it is going to adversely affect traffic, safety, or the
961 visual conditions. Mr. Corbett believes that the revised changes to light brightness and the hours are going
962 to ensure that the internal lighting does not create a material different aesthetic from what previously
963 existed with the spotlights and with everything that was bringing attention with the externally illuminated

signs. He does not think it results in a substantial detriment to the public good or a derogation from the intent of the zoning bylaw.

3. The board's findings that this is consistent with the spirit of the ordinance:

Mr. Dietzel said the spirit of the ordinance is to keep the area residential and he does not see how the sign in its diminished capacity from the previous proposals would have any effect on the essential character of the neighborhood. He does not think it is a material difference.

Mr. Perkins believes that this meets the spirit of the ordinance. As he indicated there is not a district in the town that does not allow some sort of signage for a business either through special exception or otherwise. Therefore, not allowing that same privilege here for this applicant would be a detriment to them.

Ms. Morin agrees it meets the spirit of the ordinance because it is permitted commercial use on the property and reasonable identification is necessary.

Mr. Donlon feels that this is consistent within the spirit of the ordinance for reasons discussed during the deliberative session and he believes that this is reasonably similar to other signage in the general area.

Mr. Corbett believes the spirit of the ordinance has been met. He believes the sign serves a clear identification function for uses that have already been lawfully authorized on the property through the planning board's mixed-use approval.

4. The board's finding that Substantial Justice would be served by denying this variance request:

Mr. Donlon does not believe substantial justice would be served by denying this variance request. He feels like substantial justice is done by granting the variance for reasons discussed during the deliberative session.

Ms. Morin believes substantial justice is done as it is a reasonable request.

Mr. Perkins said there is no gain to the public by denying this. The applicant has revised the plans to accommodate the direct abutters of which there are only two households that have protested this. Mr. Perkins thinks that their accommodations have met the testimony given by those individuals.

Mr. Corbett agrees with the Chair. He believes that denying the variance would impose a real and practical burden on the applicant and that it would limit the reasonable identification of multiple approved on-site uses. He thinks granting it results in little to no corresponding harm to the public.

Mr. Dietzel agrees for reasons stated by Chair and Vice Chair.

5. The board's findings that the applicant has adequately demonstrated that surrounding property values will not be diminished?

Mr. Dietzel said the applicant has adequately demonstrated that the surrounding property values will not be diminished by greatly reducing the size and the brightness of the sign. He thinks the applicant has demonstrated that this would be neutral with respect to surrounding property values.

Mr. Perkins believes that there is no diminution in property value. He thinks the prior building that was there or that existed before the applicant took it over is an increase in property value and their ability to communicate with the public in a modified sense is not going to diminish property value.

Ms. Morin feels that the values of surrounding properties are not diminished due to evidence that the abutters had given the board and it is neutral.

Mr. Donlon believes the values of the surrounding properties are not diminished for reasons discussed in the deliberative session as well as reiterated by the Chair.

Mr. Corbett said as noted during deliberation the board heard testimony from both sides and looking at this through the New Hampshire State Supreme Court precedent they can rely on their own knowledge. Driving through the area he believes that the sign at the entrance of the property at a location that was approved during a site plan review will not negatively impact the values of the surrounding properties.

The board also includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into its finding of facts and decisions.

Voting Members:

Mr. Corbett	Yes
Ms. Morin	Yes
Mr. Dietzel	Yes
Mr. Obimba	Yes
Mr. Perkins	Yes

The application was GRANTED by a vote of 5-0. Anyone aggrieved by a decision of the Board has 30 days to file a request for a rehearing. After that, the recourse would be to appeal to Superior Court.

NOTE: If voting against granting request you must state reason for denial.

Mr. Perkins said the finding of fact applies to both the sign and the lighting.

Mr. Dietzel made the motion. Seconded by Ms. Morin. All in favor none opposed.

26-114 (Requested Table From May 21, 2026 Meeting)

Applicant:	Promised Land Survey, LLC
Owner:	Peabody Family Revocable Trust of 2025
Co-Owner:	Peabody Craig B. & Jennifer A. Trustees
Parcel ID:	06103A
	26.5 Ballard Rd
Zoned:	LMDR

The applicant is requesting a variance to Article VI, Section 165-47.B.2 and Section 165-47.B.3 of the Town of Derry zoning ordinance to allow the construction of a single-family home with less than the required frontage and minimum lot width.

Ari Pollack attorney at the Gallagher, Callahan, and Gartrell Law Firm introduced himself. He said has a letter of authorization signed by the trustees of the Peabody Trust that he would like to submit to staff for the file. He also has a broker's opinion of value that he would like to make part of the testimony.

Ms. Owen received the letter and broker's opinion of value and provided a copy to each board member.

Attorney Pollack said the trustees Jen and Craig Peabody are here with him tonight. Craig is seated to his right of him. Also with him in the gallery is Neil McCarthy of Promise Land Survey. Neil prepared the application for the Peabody's, and his firm has surveyed the lot in question.

Attorney Pollack read the five criteria.

Attorney Pollack said the unique configuration of the lot and its narrow frontage is the main obstacle for development. The parcel contains 2.7 acres, and it has ample building envelope for a residence. He said they submitted a zoning exhibit with the application. Residential use is allowed in the low medium-density residential district Attorney Pollack said the applicants closed last October and they understood that variances had been approved and that the lot was developable for their intended use as a residence. The lot is intended to be their retirement residence. He said after they closed on the lot and as their house plans were progressing towards a spring construction start this year, they became aware that the lot variances had been valid but had expired actually prior to their purchase and prior to the lot being listed for sale. They are asking that the property be put back into the position where it was left by the courts in 2023 with variances to allow residential use by driveway constructed from Ballard Road. The lot is sufficiently sized with a building envelope to support a house. There is room for water and for septic. There is also room for driveway.

Attorney Pollack said his clients have provided an opinion letter from a local broker, Julie McMaster of Caldwell Banker. She is here tonight. She is available to answer your questions.

Attorney Pollack shared Julie's letter that recites not only her experience in the local market but also her professional opinion that the use of this lot for a residence will not diminish surrounding values.

Attorney Pollack said another factor in valuation is whether the function or use of the neighbors' properties would be impaired by the variances that are sought. In this case some survey work done prior to the application determined that the neighbors to the north were using a driveway that they actually or their predecessors had constructed over a corner of the subject lot. They were using an existing hammerhead turnaround near their home that also came over the property line onto the subject lot. Attorney Pollack shared that an easement was granted by the sellers in 2025 in connection with the closing to his client to rectify this situation. The easements are on record, and it essentially allows their improvements to remain as is. Neither of those easements affect ability to lay down a driveway.

He said literal enforcement of the ordinance would result in undue hardship due to the unique configuration of this property. The lot has plenty of building envelope and it was intended to be a community of well development of homes. There is a minimal access route because it was originally intended as a utility parcel and issues of frontage and width will otherwise deprive the landowners of what is a reasonable and allowed use that is pursued by all of the properties that surround it. The lot can be reasonably developed with a typical driveway, and we are proposing screening and landscaping to help shield the abutter on the other side of the driveway from some concern relating to headlight glare. Attorney Pollack said the Peabody's face considerable financial harm if the lot cannot be used for a residence that is consistent with its surroundings.

Mr. Perkins asked Attorney Pollack if the access easement that he is speaking of is noted in the middle of the driveway stretch and what the proposal is.

Attorney Pollack said some planting is shown on the concept plan. The idea is something evergreen that will prevent glare in all seasons of the year.

Mr. Perkins said one of the conflicts the board saw before when the lot was before the board was travel disturbing the abutters. Noting that the board recognized its failure the disruption to their property. He can appreciate in their presence of mind the proposal of the line of trees. He asked if the easement area noted goes into the back of these parcels that are along Ballard Road on the frontage. He asked what the intention was for the radius in the easement area.

Attorney Pollack said the belief was they were going to leave it alone and use it as it is laid out today.

Mr. Corbett said he remembers this case from last time. He said he disagreed with the overturn when it took place. He felt the board did dot its I's, cross its T's. He does not say that out of a place of bias as he was one of the two who voted in favor of the prior applicant. As he looks at it again today, he does not see any changes to the request.

Ms. Morin said she would like to hear from others.

Ms. Owen discussed the following:

- The applicants are requesting a variance to allow the construction of a single-family home on an existing lot with less than the required frontage and minimum lot width.
- This property is located in the Low-Medium Density Residential Zoning District (LMDR) which requires a minimum 150 ft lot frontage, and a minimum lot width of 150 feet at the thirty-five-foot front setback line, or 150 feet at the front lot line, therefore a variance is being requested.
- The Board may recall that this parcel was denied a variance in 2021 to allow the construction of a single-family home on the property. The decision was appealed by the Applicant to the Housing Appeals Board (HAB) in 2022 which resulted in the reversal of the Zoning Board's decision. The Town of Derry subsequently appealed the HAB decision to the N.H. Supreme Court, where the HAB's decision was affirmed. It has been over 2 years since that final order was issued by the N.H. Supreme Court; therefore, the variance has expired (Decision issued on August 17, 2023).
- The property is serviced by private well and on-site septic system.
- If approved, the driveway for the new home must be constructed to Town of Derry standards as required by the Land Development Control Regulations.
- If approved, appropriate permits and inspections will be required.

Mr. Perkins said this is back before us because as specified by Mr. Pollack the variance had expired and per statute, the board is required to hear it again unless an extension had been granted.

Attorney Pollack said there were changes in circumstances since the last time which was the granting of an easement to benefit the property to the north so that their improvements could remain as constructed and the proposed screening on the south side. He said they are doing their best to make a unique and oddly shaped property function well for everybody. Even with the concessions the driveway that they are proposing would be of compliant width and have sufficient travel along with some shoulders.

CALL TO PUBLIC

1165
1166 Mr. Perkins made a call to public.

1167
1168 **FAVOR**

1169
1170 No gestures in person.

1171
1172 **OPPOSED**

1173
1174 Six gestures in person.

1175
1176 Mrs. Janet Virr, 20 Ballard Road introduced herself. She said this is about the third or fourth time that she
1177 has sat in the seat in this matter before the zoning board. She said it came before the zoning board in
1178 2003, and it was turned down due to lack of frontage on Ballard Road. The lot land sat undisturbed since
1179 the end of construction of the Ballard Road subdivision which was in 1985. Mrs. Virr said the land is the
1180 highest point on Ballard Road and a well was driven on the site, but no sufficient water could be obtained.
1181 Ms. Virr said it came before the zoning board in 2021 with a denied decision in 2022, same road variance
1182 issue. She said this is not a reasonable request because the lot is a circle and it does not fit. Mrs. Virr said
1183 she is going to leave the frontage issue that is before the board and go to the real reason for the abutter's
1184 objection to this being a buildable lot. Water runs downhill. What she is alluding to is the water from rain,
1185 etc. has only one place to go, downhill. She said there will be damage to the abutters from the water. The
1186 damage includes damaging foundations, filling cellars, furnace damage, soil erosion, pool filled with mud
1187 and debris, and the rendering of a septic and leach field system located in a back lawn being completely
1188 damaged and in need of replacement.

1189
1190 Ms. Virr's caution to the board and the owners of lot 26.5 is that any work done on this property, if
1191 zoning allows be managed by a qualified engineer to ensure that there is absolutely no runoff at any time
1192 from whatever is being done, has been done, or will be done in the future. Once the destruction of the
1193 forest takes place and the construction starts, our peace, our quiet, our privacy will all be gone.

1194
1195 Mrs. Virr has two questions for Attorney Pollock. When the driveway is constructed, especially at the top
1196 by the house will there be sufficient room for Derry's ladder firetruck to go up turn around and come back
1197 down. The New Hampshire House of Appeals in their decision on this stated that screening vegetation
1198 shall be planted on the east side of the driveway as needed to provide a site buffer and there also needs to
1199 be a safety buffer.

1200
1201 Mr. Perkins said originally the board came up with the Fisher doctrine laid into this.

1202
1203 Mr. Corbett said the board ended up reviewing this and tabled it the first night. The board went back to
1204 review it he believes in 2003. It was reviewed against the Fisher doctrine and determined that the board
1205 had to go through it. Mr. Corbett believes the board said it was not duplicative. Overall, the board ruled
1206 that they did have to vote on it again because in 2003 the vote was structured in a specific way. Then it
1207 changed that you no longer had to do it that way. Whereas in '03, every board member had to vote yes or
1208 no unanimously. When we came back, we realized that with the change in the zoning law with simplex no
1209 longer being applied, which is seemingly the basis of the '03 ruling that we were able to hear it again.

1210
1211 Mr. Corbett made a motion to extend the meeting by 15 minutes. Seconded by Ms. Morin. All in favor
1212 none opposed.

1213
1214 David Harvey, 28 Ballard Road introduced himself. He said one of the issues he would like to bring to the
1215 attention of the board is the easement that was supposedly filed. He said if you look at the easement you

will not find his or his wife's signature on it. It was not presented to them. They found out after the fact, after the property was sold. He said the easement says something about maintenance, but it was not negotiated with them. Mr. Harvey said the driveway that was put in is the one that gets you from the half oval out to the build site, that is his driveway. The driveway on the north running to the road that is their driveway and the easements marked that are covered by that easement document they do not signatures from him or his wife.

Mr. Perkins asked Mr. Harvey if they were the owners at the time. He asked if they were contesting the easement.

Mr. Harvey said they were the owners at the point of sale and have been there since 2020, 2024 and they are contesting the easement.

Mr. Corbett asked Mr. Harvey if he was here when the board previously heard this case.

Mr. Harvey said he was not.

Mr. Perkins asked Mr. Harvey if the thing that says trail on it if it exists now.

Mr. Harvey said it was there when they moved in and it is still there.

Mr. Corbett asked if the easement in question is between E2 and E4.

Mr. Harvey said E2 and E4 and where the front of their driveway crosses over. And it is important to note that the power pole that services their house also sits near there.

Mr. Corbett asked Ms. Owen if she knew what the typical process is for how an easement would get recorded.

Ms. Owen said it is partially executed at this time, but she would have to review it she is not clear on the process.

Mr. Harvey said his main point is that it is a contested easement.

Mr. Perkins asked Mr. Harvey if the easements were erased or were found not legitimate, what would it do to his parcel relative to this application.

Mr. Harvey said he is not sure he has not had any discussions with them, so he does not know what their plans are.

Mr. Corbett said he believes the easement was put in by the seller which he believes is Cooper. There is a history from the previous property owners of making a move without necessarily consulting.

Mr. Harvey said that the consultations were not happening often or were contentious at best.

Lori Fazio, 26 Ballard Road introduced herself. She said she does not know what she can say that has not already been said. She said the land has been untouched for over 40 years at this point and what was deemed a utility road or a paper road has never been used as such. The frontage might be a little bit wider, but the driveway is narrower, maybe 30 to 35 feet. She also believes emergency vehicles would not be able to make it up unless you start encroaching on property at 26 and 28.

1267 Ms. Fazio said if you see some of the markers that were placed for surveying, there are trees that cut
1268 through those markers. I would not want those cut down. Having a driveway cut through my backyard
1269 causes safety concerns. There is also the issue of drainage because that property is higher.

1270

1271 Ms. Owen said they are required to have a turnaround or a hammerhead at the end of the driveway and
1272 two feet on each side of the stabilized ground grade, more than that preferably for drainage.

1273

1274 Mr. Perkins said that criteria are not within this board's purview, but it is to address that concern and
1275 narrow the argument down to significant points. He is not diminishing any of them. He said if Ms. Fazio's
1276 house is approximately 40 feet wide from the road edge to the back of the home is 100 feet. That gives
1277 her 250 feet of grade behind her to the development line that the applicant's providing.

1278

1279 Ms. Fazio said the property was never intended to be built on. It was never intended for residential use. It
1280 was supposed to be a water source. When they all purchased property, they were told that nothing would
1281 ever be built back there because it was supposed to be a well source.

1282

1283 Mr. Perkins said the board will be in a hard place too even though the technicalities of why this has come
1284 back to them for statute reasons that occurred five years ago. And knowing the path that this has gone in
1285 already, all the way to Supreme Court, there is still some vetting to do. He said where this path has gone
1286 with this parcel prior makes it tougher for the board to render an opposing decision.

1287

1288 Raymond Veilleux, 17 Ballard introduced himself. He said his problem with this whole thing is if you
1289 look at the street at 18 Ballard the road bends and comes down into this cleverity so when it rains hard the
1290 water comes down. The road is crowned and Ballard Circle, that is the cleverity feeds onto that road that
1291 comes over. He also at 28 their driveway is on a big declivity where the water comes down, hits Ballard
1292 Circle, hits Ballard Road, comes over to his property. He said his property is going to get flooded and he
1293 does not want to buy flood insurance, it is expensive.

1294

1295 Mr. Corbett made a motion to extend the meeting by 15 minutes. Seconded by Mr. Dietzel. All in favor
1296 none opposed.

1297

1298 Annette Hyde, 24 Ballard Road introduced herself. She too is opposed to the building of the developed
1299 home mentioned. She said her neighbor has a little girl and she is in her backyard playing. And I have
1300 three grandchildren who will play there quite often. She is concerned about vehicles, trucks, etc. Ms.
1301 Hyde said she is here to support her neighbors.

1302

1303 Lauren Guertin and Kevin Guertin, 3 Brier Ln introduced themselves. They are Southwest on the bottom
1304 on the backside. They said they are not personally impacted by this, but they have questions. They had
1305 not seen this before they saw the other map without the house. If this goes forward and this is their
1306 proposed layout, are they able to then change it and move the house.

1307

1308 Mr. Corbett said as long as they are within the setback requirements. They would not have complete free
1309 rein. There still would be restrictions for each property line that they would have to meet.

1310

1311 Mrs. Guertin said they can move it back as far as they want.

1312

1313 Mr. Guertin said there is also the town farce.

1314

1315 Mr. Corbett said it would be a property line.

1316

1317 Mrs. Guertin asked what the rule was. I guess.

Mr. Perkins said the expense of putting the driveway in is not one that is going to suggest they want to push their house deeper into the forest.

Mr. Guertin said the three or four properties that are in front of them are now impacted by that because now theirs are different than the rest of the properties along that road. So, it changes the structure of the neighborhood, and it is different from the rest of the properties.

Mrs. Guertin said talking about property value, our property value, I do not see how this would increase our property value in any way, shape, or form. Our property is unique where we are set back in the woods. And privacy is one of our number one benefits. The property value of the abutters that all have legitimate concerns would be diminished. Mrs. Gerton asked about water and a well and if this house was going to be on a well. There was talk about drilling the well and it running dry. They are on a well and we cannot get on town water because of how far back they are. She asked what the potential impact would be if they are both tapping into the same well.

Mr. Corbett said what came through in the application is that the property will be serviced by a private well and an on-site septic system.

Mr. Perkins asked Attorney Pollack if they wanted to come back for their rebuttal or if they wanted to try and dig into it now. He said they only have about four minutes.

Attorney Pollack said he will take four minutes offered because these items are now fresh in everybody's mind. He said there were a lot of comments about the easement to benefit the property to the north, which he believes is 26 Ballard. He has never spoken to the seller about this. He found the easement in the record, and it is fully executed. It grants rights, not obligations, to that abutting owner to maintain the driveway improvements that are currently on 26.5. It allows them to maintain what otherwise would be an encumbrance. If they do not want to do it, if they want to remove those, if they want to release the easement, all of that can be done. He thinks this was done in an effort to simply preserve an existing condition and not cause anyone hardship of, one fighting over those encroachments, and two, having to remove them. They have the right to do so if it benefits them to clip the corner at the front and to come into that E2, 3, 4 rectangles further down the line. He said there was about drainage and cutting of trees. He would like to be clear that they have no right to do any work on anyone else's property. If there are trees on other people's properties that they wish to preserve, they will not be touching them. They cannot touch them. He said as far as drainage they are talking about a single-family residence with residential accessory improvements. There is no reason to suspect that the impervious coverage associated with a single residence would create a significant change in the drainage pattern. They would have responsibility for that if it were flow leaving the property in an unreasonable amount that changed the natural drainage pattern. They do not have any easements for drainage, and they do not have any rights to drain on other people's property.

Attorney Pollack said regarding the comment about whether or not the house could potentially move back. He said it could potentially move back but he can assure that nobody wants that for the reasons the chairman mentioned in terms of the expense of a longer driveway and more area of disturbance.

Mr. Corbett said Attorney Pollack is saying they have a right to maintain the existing layout of the driveway. They have no obligation to keep it there. And they have no obligation to maintain it.

Attorney Pollack said they believe they can have a fully compliant driveway on this property, whether it is 12 feet, 14 feet, with the required grade and the required shoulders so that utility and emergency vehicles would have reasonable and typical access.

Mr. Perkins said they are curious about the grading. He asked if Mr. McCarthy here could provide that prior to the next board meeting to look at how the drainage is. He asked if the test pit had been done and if it was going to be the test pit location.

Attorney Pollack said they did a test pit and it has been approved.

Mr. Corbett made a motion to table this until the next meeting June 18, 2026. Seconded by Mr. Donlon. All in favor none opposed.

26-116

Applicant: Kilduff Realty Trust, Carol Kilduff Trustee

Owner: Carol Kilduff Family Trust

Parcel ID 51008

16 Coles Grove Rd

Zoned: MDR

The applicant is requesting a variance to the terms of Article VI, Section 165-46.C.4 of the Town of Derry Zoning Ordinance to allow the construction of a single-family home located less than 35 feet to the front property line and less than 15 feet to the side property line.

Mr. Perkins said the board can extend the case to the next scheduled meeting.

Brandon Wilson, Terrain Planning and Design, LLC asked Mr. Perkins on behalf of the building Trust if he could at least present it would take under 10 minutes. He thinks there are several members of the public here.

Mr. Perkins said the board is not going to take any testimony. We cannot get into the five criteria and then into testimony.

Mr. Corbett made a motion to table case 26-115 to the next meeting June 18, 2026.

Seconded by Mr. Dietzel All in favor, none opposed.

OTHER BUSINESS:

- Discussion – Tapir Properties

The board must bring the case back. HAB took a long time to decide the case and remand it back to the board. He said evaluating deeper discussion on the decision is tough to do as Mr. Burgess is no longer on the board and he was one of the deciders. He said the board can bring this back for a full hearing or bring it back for open discussion and reevaluating the decision. He said the second of the two is more abbreviated.

Mr. Corbett said he missed the last meeting that led to the set of appeals and would be content making them come back a third time. He would be content stepping in for Mr. Burgess. He would suggest they do the revised talking points and then dive back into deliberative and take it as a remand back to the board.

1419 Mr. Perkins asked Ms. Owen to notify Tapir Properties, Attorney Swiniarski, that the board is going to
1420 bring this back for brief discussion and reevaluate the board's vote.
1421

- 1422 • Review summer schedule
1423

1424 Mr. Perkins asked if staff had preferred days in the months of July and August. He believes they follow
1425 the town council schedule. His recommendation would be the third Thursday in July and the third
1426 Thursday in August.
1427

1428 The board agreed that the meetings will be July 16, 2026, and August 20, 2026.
1429

1430 **CORRESPONDENCE**
1431

1432 **REVIEW MEETING MINUTES**
1433

1434 Mr. Obimba motioned to table the May 7, 2026 and May 21, 2026, meeting minutes.
1435

1436 Seconded by Mr. Dietzel All in favor, none opposed.
1437

1438 **ADJOURNMENT**
1439

1440 Mr. Corbett made a motion to adjourn. Second by Mr. Dietzel. All in favor of adjourning, none opposed.
1441

1442 The meeting adjourned at 10:30pm
1443
1444
1445

X 

Chair

1446

