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**TOWN OF DERRY**

Zoning Board of Adjustment

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**MEETING MINUTES – May 7, 2026**

**MEMBERS PRESENT**

Lynn Perkins, Chair  
Craig Corbett, Vice Chair  
James Dietzel  
Richard Tripp

**MEMBERS ABSENT**

Crystal Morin

**ALTERNATES PRESENT**

Michael Donlon  
Jason Dragani  
Brent Lyskawa  
Gaspar Obimba  
Anthony Herny

**ALTERNATES ABSENT**

**CODE ENFORCEMENT**

Keri Owen, Code Enforcement

Minutes prepared by: Eileen Boudreau, ZBA Clerk

**I. CALL TO ORDER:**

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

Mr. Perkins asked board members to introduce themselves.

**II. ADMINISTRATIVE BUSINESS**

**26-105**

**MOTION FOR REHEARING (Tabled from April 2, 2026 Meeting)**

**Applicant:** Daniel & Jennifer Phelan

**Owner:** Nicholas Marion

**Parcel ID:** 03169-008

38 Gervaise Dr.

**Zoned:** LMDR

The applicant is requesting a rehearing of case #26-105.

Mr. Perkins asked Mr. Dragani and Mr. Donlon to sit in on case 26-105

Danile and Jennifer Phelan are requesting through their son a motion for rehearing.

Mr. Tripp reviewed the following three points:

1. Mr. Pheland said the board authorized a second home business at the property.

Mr. Tripp contacted Code Enforcement to find out how many special exceptions Mr. Marion has and there are none. This means that the special exception the board authorized is his one and only, so the bullet is rebutted.

2. The firearm visit does not fall within any of the categories the home business permitted.

Mr. Tripp said this is the odd part about this whole discussion is that he only wanted to be permitted to have a business, but he was not going to run a business. Mr. Tripp considers that rebutted too.

Mr. Perkins asked Mr. Tripp if that was pertaining to the FFL itself.

Mr. Tripp said yes.

3. The board exceeded its jurisdiction in attempting to regulate firearm discharge.

The board sets conditions that the applicant must follow in order to get his variance or special exception approved. Mr. Phelan does not practice law in New Hampshire. Mr. Tripp read the zoning board of adjustment has the ability to attach conditions to any relief that is within the jurisdiction which means that the board as a matter of practice set conditions that the applicant must comply with in order to have the variance and the basis for the board being able to set conditions is Town of Hudson. The only condition is that the Condition the conditions must be reasonable and relate to the spirit of the ordinance in question and the actual use of the land. In addition to several conditions, one of which was that he was not going to fire any weapons at this house. Mr. Phelan's contention was that we cannot require Mr. Marion to comply with that. Mr. Tripp said he must comply if he wants to get approval of his special exception.

Mr. Tripp said three contentions, and he believes the board has valid reasons for enforcing those.

Mr. Perkins asked Mr. Tripp if he found any information that would justify rehearing in the failing application.

Mr. Tripp said he did not.

Mr. Perkins asked Mr. Donlon if he found any new information in this beyond what Mr. Tripp has specified that we would rehear this case.

Mr. Donlon said beyond what Mr. Tripp stated, no.

Mr. Perkins asked Mr. Dragani if anything stood out to him on the case to be reheard.

Mr. Dragani said Mr. Tripp explained it.

Mr. Perkins asked Mr. Dietzel.

Mr. Dietzel said he is going to differ from Mr. Tripp on a couple of matters. He said number one there are two home businesses operating. The board in the past has granted a special exception in many cases and Mr. Dietzel explained an example of the special conditions of a home business and what Mr. Marion was looking to do. Mr. Dietzel asked the question whether this is a home business if he is not going to engage in sales and he is just doing it to get a license. He said if the answer is yes, he thinks whether or not the special exception is on the construction business or not he thinks the construction business is more of a home business than what he is proposing with the gun business. Mr. Dietzel said it would be two home businesses on the property or there are no home businesses on the property. If there are no home businesses on the property, why is the board giving a special exception other than to allow him to get the gun permit. The gun permit is not a zoning concern per say. Mr. Dietzel believes the board made an error and there would be two businesses operating on the property. Mr. Dietzel said the memo presenting the three objections, the explanation and his research is what changed his mind. His arguments are convincing that the board made an erroneous determination.

Mr. Perkins asked Ms. Owen how a home business is typically established.

Ms. Owen said it is a fine line definition. Registering a home business at a residence without having operations whether it is meeting with clients at the residence or conducting business deals that are a legitimate business. If you are working from home and you have a home office and you are set up to work remotely that is not necessarily a home business. If you are parking a work vehicle because you are using it as transportation to and from your residence to your place of business, then that is not classified as a home business.

Mr. Perkins said the board often finds that shipping and receiving can be a tip off. He said the last point the applicant indicates is that he is receiving his mail outside of the state and outside of that address.

Mr. Dietzel said the last point is whether or not it meets the definition of an allowed special exemption use and he does not see where under the enumerated allowable businesses where firearms sales fall. Mr. Dietzel does not feel the board denied the council his ability to represent his client. He was allowed to represent his clients remotely which allowed him to practice before the board. Mr. Dietzel will rebut that. He does not read the ruling in the way that he is asserting that the board is suggesting that the applicant could otherwise discharge firearms. Mr. Dietze will refute that assertion. The board is allowed to put reasonable restrictions on the operation of the property in order to minimize noise, safety, odors, pollution, etc.

#### **MOTION**

Mr. Tripp made a motion on case #26-105, for Jennifer and Daniel Phelan to grant a rehearing for the January 19, 2026, decision by the Town of Derry Zoning Board of Adjustment granting the request for a variance to permit a Type 01 Federal Firearm License at the residence of 38 Gervaise Drive.

Parcel ID 03169-008, Zoned LMDR

Mr. Donlon seconded the motion. All in favor, none opposed.

Mr. Donlon confirmed with Mr. Perkins that a vote of no on this case would be to deny the request for rehearing and a yes vote would be to request a rehearing.

Mr. Perkins confirmed that it is correct.

#### Vote:

|             |     |
|-------------|-----|
| Mr. Donlon  | No  |
| Mr. Dietzel | Yes |
| Mr. Tripp   | No  |
| Mr. Dragani | No  |
| Mr. Perkins | No  |

Mr. Dietzel Not because of the two businesses on the property because he believes that was a matter of opinion of the board and he cannot say conclusively that would be an error. However, he votes yes because he believes the board made an error in its interpretation of allowed permissible uses as a special exception.

Mr. Tripp I believe that the three reasons that Attorney Phelan presented to justify having a rehearing were rebutted by the board and that there is subsequently no reason to have a rehearing.

155 Mr. Dragani For reasons specified. We disputed all his comments.  
156 Mr. Perkins I concur with the comment that Mr. Tripp laid out as I rebutted Mr. Dietzel's comments  
157 regarding whether or not there was already an established use as a business there. The  
158 debate becomes the authorized use that the board has granted and has granted likewise in  
159 the past.  
160

161 Case 26-105 is a four-to-one decision to deny that the rehearing request from the Phelan's son and Mr.  
162 Dietzel made a point that the board established he could speak as their son even though he didn't have  
163 certification to or authorization to do that, but the board gave him time to speak.  
164

165 Mr. Tripp does not believe that Attorney Phelan's discussion on whether he has permission to practice law  
166 in New Hampshire has any bearing on the decision tonight.  
167

168 Mr. Perkins and Mr. Donlon concur.  
169

170 The application was denied by a vote of 4-1. Anyone aggrieved by a decision of the Board has 30 days to  
171 file a request for a rehearing. After that, the recourse would be to appeal to Superior Court.  
172

173 NOTE: If voting against granting request you must state reason for denial.  
174

175 Mr. Perkins reviewed the findings of fact as follows:  
176

177 This application was for Mr. Marion, 38 Gervaise Drive and the board found as a majority that the  
178 applicant was not already doing an existing business and that he was just looking for a location to  
179 establish or contact and not for sales as the conditions that the board put on.  
180

181 Mr. Tripp pointed out that whether he is running another business really is not pertinent to the finding of  
182 facts.  
183

184 The board also includes all facts found in the meeting minutes for this application and incorporates all  
185 meeting minutes into its finding of facts and decisions. What is pertinent is that the zoning board has not  
186 granted him a previous special exception to have a home business. Since that is the case there can be no  
187 double home business permitted by the zoning board. The one the board granted at the previous hearing is  
188 the only home business that is permitted at 38 Gervaise Dr.  
189

190 Mr. Perkins asked Mr. Tripp if he wanted Mr. Perkins to retract the comment he made earlier on the  
191 second business. Mr. Perkins said we will strike and withdraw comments on the double business.  
192

193 Mr. Tripp said yes, he wanted the comment retracted.  
194  
195

#### 24-115

#### REQUEST FOR EXTENSION

198 **Applicant:** Town of Derry

199 **Owner:** Town of Derry

200 **Parcel ID:** 29128

201 19 Elm St.

202 **Zoned:** MHR2  
203

204 Request for extension of variance granted of case 24-115.  
205

Mr. Perkins asked Mr. Donlon and Mr. Lyskawa to sit in on case 24-115

**MOTION**

Mr. Diezel made a motion on case #24-115, to grant an extension of variance granted of case 24-115.

Mr. Lyskawa seconded the motion. All in favor, none opposed.

Parcel ID 29128, Zoned MHR2

Mr. Perkins said there are extenuating circumstances regarding the testing of soil. This is a town owned property, and the request was to put multifamily housing there. They are looking for an extension until all the testing, and all the other analysis can be done.

Mr. Donlon said it is not completely unheard of in a project of this scope to meet delays, especially with. Environmental testing. I believe there's mitigation on this property if memory serves me well, so it is not surprising it is delayed.

Mr. Tripp agrees if the environmental testing or mitigation has not been completed then there is no way that they could comply with building the 26-unit multifamily housing.

Mr. Lyskawa agrees he as well he would like to see everything accomplished so he believes this is justifiable.

Mr. Perkins said Yeah, this property is similar to the Abbott court property that the town has taken over. It is a complicated lot and so the extension is warranted just to the complexities of trying to find a use for this property. Similarly, just the hardship of it alone to try and find a property use for it is a challenge.

Mr. Dietzel said he concurs with the board members and would actually have been surprised if they had gotten it completed in two years. He is for the extension.

Mr. Dietzel made a motion on case #24-115 for the town of Derry to grant the request for extension.

Mr. Lyskawa second the motion.

Mr. Donlon said there are multiple variances to the case.

Mr. Dietzel made a motion on case #24-115 for the town of Derry to grant the request for extension Parcel ID: 29128 Zoned MHR2

The Variances grant relief as follows:

Article III, Sections 165-10, Article VI and Sections 165-45.B.2.d

Article VI, Sections 165-45.B.2.a

Article VI, Section 165-45.B.2.e

Article IX, Sections 165-73

The Variances are subject to the following conditions:

1. Obtaining all State and Town permits and inspections.
2. Subject to Technical Review Committee approval (TRC).
3. Subject to Planning Board approval.

Mr. Lyskawa second the motion. All in favor, none opposed.

Mr. Perkins read the finding of fact

The parcel is at 19 Elm St. in Derry. The parcel is owned by the town of Derry, was previously approved for construction of multifamily housing. The property has had environmental testing done to make sure that it is properly remedy for the residential purpose.

Mr. Perkins asked if there are any amendments to the finding of fact? There are no gestures. All in favor of moving the motion for a vote.

Vote:

Mr. Lyskawa     Yes

Mr. Donlon     Yes

Mr. Tripp       Yes

Mr. Dietzel     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.

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.

#### **24-109**

#### **REQUEST FOR EXTENSION**

**Applicant:**     **Promised Land Survey, LLC**

**Owner:**        **Comeau's Beach Redevelopment, LLC**

Parcel ID:       51084

                     74 Beaver Lake Ave

Zoned:           MDR

Request for extension of variance granted of case 24-109.

Mr. Perkins asked Mr. Dragani and Mr. Henry to sit in on case 24-109

Mr. Perkins said this request is 24-109 submitted by Promised Land survey on behalf of Como's Beach Redevelopment LLC, 74 Beaver Lake Ave. Mr. Perkins asked Ms. Owen to help the board with where the case is.

Ms. Owen said there was a third TRC meeting on April 10th, 2026. This project had kind of evolved over time with conservation, with the wetlands. So, they have a Wetlands Restoration Plan permit by notification as well with a wetland. It has gone through three rounds of TRC most recently April 10th and they are working towards Planning board submission after this evening and there are two sections that the

variance was granted on. This was granted May 16th, 2024, goes to Article 3 section 165-9 and Article 6, section 165-46.C.2. To allow the property to be subdivided into two lots, one with frontage on a private road, which is Jenny Dickey Way. It is subject to Technical Review Committee approval as well as planning board approval and state shoreland permits and municipal waiver of liability is also required to be recorded with the deed.

Mr. Perkins said there is an honest effort to continue working with this. And per statute, we can grant the extension up to two years.

### **MOTION**

Mr. Dietzel made a motion on case 24-109 for the town of Derry to grant the request for extension on Parcel ID 510. 84 Zoned NDR. As presented with the following conditions,

1. Subject to obtaining all state and town permits and inspections.
2. Technical Review Committee review.
3. The Planning Board Committee review and seven municipal waiver of liability.

That concludes the reading of this motion.

Ms. Owen said there is no further TRC required but planning board approval is required as well as the state shoreland permit and the municipal waiver.

Mr. Dietzel amended the motion to include the Articles

The Variances grant relief as follows:

Article III, Section 165-9

Article VI, Section 165-46.C.2

The Variances are subject to the following conditions:

1. Subject to all State and Town Permits and Inspections
2. Subject to Planning Board subdivision approval.
3. Subject to obtaining State Shoreland permits.
4. Subject to recording waiver of Municipal Liability and Responsibility for proposed Lot 54084-001

Mr. Dragani second the motion. All in favor, none opposed.

Mr. Perkins read the Finding of Fact

This parcel is asking for an extension for two years. It is in the MDR zone. It has currently been through Technical Review Committee dealing with conservation and issues and still has to go through planning, but progress has been made on the parcel moving, advancing it towards approval.

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.

### Vote:

|             |     |
|-------------|-----|
| Mr. Dragani | Yes |
| Mr. Henry   | Yes |
| Mr. Tripp   | Yes |
| Mr. Dietzel | 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.

### III. PUBLIC HEARING

#### 26-109

**Applicant:** Edward N. Herbert Associates, Inc.

**Owner:** Craig J. Bonneau

**Co-owner:** Snow Bonneau

**Parcel ID** 26169

23 Central Street

**Zoned:** CBD

The applicants are requesting a variance to the terms of Article VI, Section 165-33.B.5.b.iii and Section 165-33.C.4 of the Town of Derry Zoning Ordinance, to allow the construction of five (5) Residential Townhouses on the property which will not include a mixed commercial component and which will be located greater than eight (8) feet from the front property line. (This is a different request than the variance that was granted by the Zoning Board on February 20, 2025).

Mr. Perkins Mr. Lyskawa. Mr. Donlan, would you sit on case 26-109

Mr. Perkins said this case is presented by Edward and Herbert Associations on behalf of Craig and Snow Bonneau.

Mr. Perkins asked Shane Gendron employed with Edward N. Herbert Associates, Inc., and Craig Bonneau the property owner to introduce themselves and read the five criteria.

Mr. Gendron read the application and five criteria.

Mr. Perkins asked if they had been through planning.

Mr. Gendron said they have been through a TRC and we have been through several iterations of the plan with DPW, with planning. They have gone back and forth with different proposals as far as where the building is going to be placed, trying to meet the zone and make this lot work. What they are finding is that we are trying to put a square peg in a round hole. They basically met most recently on March 3rd with planning staff, DPW Mark L'Heureaux, the town engineer in the building department. Mr. L'Heureaux was the one that pushed them to come back and ask to push the buildings back. What happens with this lot is that there is only about sixty-eight feet of frontage on Central St. It is very narrow because the building set back requirements in this new zone. They are supposed to be eight feet from the street of frontage. They are allowed to be five feet off the side property line. He said Elizabeth Robidoux felt that they were crowding some of the existing preexisting nonconforming uses, which are basically tenant houses. There are some larger homes that have multiple units in them. It was suggested to go back to zoning board to see what kind of relief they could get. They felt if they were going to push the building back 130 feet and they were going to create residential town home style units it really did not make sense to have commercial. When presented to the staff they agreed it was the best use of the property.

403 They are looking at better circulation of traffic and not having any turning movements going on within the  
404 driveway access area by pushing that building back. They have more flexibility with the drainage and  
405 utilities and are able to provide adequate snow storage, adequate area for the dumpster and obviously  
406 clean up a site that is kind of an eyesore.

407  
408 Mr. Tripp said it appears you are asking to be allowed to have residential on the ground floor.  
409 Mr. Gendron said they are asking for all residential. There would be a commercial component to this  
410 project. They are asking there is no commercial component, it would be purely residential. The Front yard  
411 depth is going to be about 130 feet where it is required to be eight feet from the street line. A

412  
413 Mr. Donlon, as far as like lot coverage is concerned where do we stand now with the five units as opposed  
414 to the ten prior.

415  
416 Mr. Gendron does not have an exact calculation, but they have cut it down in half as far as building  
417 coverage The driveway is similar because they really haven't cut down on driveway they are still  
418 providing that same driveway width and going down the length of the building. But we can get  
419 stormwater to work. They did a full mockup full set of plans fully engineered on the eleven units and got  
420 that to work. They do not have a problem with five units.

421  
422 Mr. Lyskawa asked how many floors there are.

423  
424 Mr. Gendron said there will be garages on the ground level. Walk up to first floor, second floor, and third  
425 floor. Typical townhome style with single bay garages. Additional parking has been offered.

426  
427 Ms. Owen stated the applicants are requesting a variance to allow the construction of five (5) Residential  
428 Townhouses on the property which will not include a mixed commercial component and which will be  
429 located greater than eight (8) feet from the front property line.

- 430  
431 - This is a different request than the prior variance that was granted on February 20, 2025:  
432     o To Article VI, Section 165-33.B.5.b.iii and Article IX, Section 165-73 to allow the  
433        redevelopment of the property as mixed use consisting of ten residential townhouse style  
434        condominium units and three stories of commercial use facing Central St. The  
435        condominiums are proposed to have garages on the first floor, and the project will  
436        include the construction of some drainage and grading within the flood zone (Zone AE).  
437  
438 - The applicant is seeking approval to raze the existing non-habitable single-family residential  
439    structure that was destroyed by a fire, and construct five (5) Residential Townhouses on the  
440    property which will not include a mixed commercial component, and which will be located  
441    greater than eight (8) feet from the front property line.  
442  
443 - There are two variances being sought.  
444  
445 - The property is located in the Central Business District (CBD) which requires an 8-foot  
446    maximum front yard depth. The proposed new structure appears to be set back approximately 135  
447    feet from the front property line at its closest point; therefore, the first variance is being requested  
448    to Article VI, Section 165-33.c.4.  
449  
450 - A second variance is being requested to Article VI, Section 165-33.B.5.b.iii which permits multi-  
451    unit residential uses as mixed-use in conjunction with permitted non-residential uses while  
452    prohibiting residential use below the second floor. The 5-unit residential townhouse is proposed  
453    with residential living on the first floor; therefore, a variance is being requested to this provision.

- The property is serviced by municipal water and sewer.
- If approved, the proposal will require Technical Review (TRC) by Town staff and Planning Board for Site Plan approval. This review will include items such as site lighting, parking, landscaping/buffering, drainage, architectural design review, etc.
- If approved, appropriate permits and inspections will be required.
- There are pictures in the file for review by the Board.

#### **CALL TO PUBLIC**

Mr. Perkins made a call to public.

Mr. Provencher brought to Mr. Perkins' attention to the fact that there are attendees raising their hands remotely and we may want to remind folks of the policy regarding remote participation.

Mr. Perkins reminded the audience that the board no longer provides remote input. He said the board no longer offers remote input and the board would be obligated to take a motion to hear anybody that is remote.

Mr. Dietzel made a motion for remote testimony or questions.

Mr. Lyskawa second the motion. All in favor, Mr. Tripp opposed.

Mr. Provencher said at this time we are reduced to one person and the person has identified as James.

Their hand is raised with it likely that they might be having some technical difficulty. We will have them try to dial in at 845-5585. The speaker is having trouble getting through.

Stever, 21 central St. said this will benefit the neighborhood tremendously. He has lived at his property for over 15 years and never seen anyone interested.

#### **MOTION FOR DELIBERATION**

Mr. Dietzel said this is a straightforward proposal. He reviewed the five criteria. Mr. Dietzel believes that it fits in the current neighborhood. As far as the hardship the property has met special conditions which did not lend well to a commercial property, and it does lend well to a reasonable use of the property which is the town homes. He does not see a problem with the application.

Mr. Donlon agrees. He touched on the variance for the set back. He thinks the lot itself specifically calls for these units to be set back. He does not think it is in any way an egregious footprint on the lot and the setback gives them some flexibility in extra parking which gives relief to the neighboring properties.

Mr. Tripp said this is not what he would consider a perfect lot. There are a lot of challenges. There are a lot of wetlands, and they may have standing water issues. The. Housing being what it is five extra town houses would help.

Mr. Lyskawa thinks it is a great idea, and it will boost the area and thinks the way that they have it now designed is well fit for the lot.

Mr. Perkins said he likes the reduced impact, even though it is conflicting with the non-commercial use requirement established in this district. He thinks it is difficult, which is why this board is a relief valve to be able to see in a more finite way aspects of the geography or the historic aspects that do not quite keep up with the zoning requirements. Mr. Perkins likes the plan and the reduced impact. It is a good fit. Staff have worked with the owner, and they understand the hardship that is there and try to make this parcel not just become a blighted piece in the center of town. Mr. Perkins said the board has subject to obtaining all state and town permits and inspections and subject to Technical Review Committee and Planning Board site plan approval. Mr. Perkins asked Ms. Owen how far they were into the planning board phase.

Ms. Owen said this is a new concept and we would still require Technical Review Committee approval first and then planning board approval from there.

Mr. Perkins said in that case no extension of the variance is going to be necessary either.

Mr. Donlon made a motion to come out of deliberative session.

Mr. Tripp seconded the motion. All in favor, none opposed.

#### **MOTION**

Mr. Tripp made a motion on case #26-109 for Edward and Herbert Associates Inc to grant a variance as provided in Article 6. Section 165-33.B.5.b.iii and section 165-33.C.4. for the town of Derry zoning Ordinance to allow the construction of five residential townhouses on the property which will not include a mixed commercial component, and which will be located greater than eight feet from the front property line.

as presented with the following conditions:

1. Subject to obtaining all state and town permits and inspections.
2. Subject to Technical Review Committee and Planning Board site plan approval.

Parcel ID 26169, Zoned CBD

Mr. Donlon seconded the motion. All in favor, none opposed.

Mr. Corbett reviewed the findings of fact as follows:

- May 7, 2026, the ZBA heard the application of Edward N. Herbert Associates, Inc. concerning the property located at 23 Central Street. Parcel ID 26169.
- Notice was provided to the immediate abutters per statute.
- The board received testimony from:
  - The applicant and legal counsel
  - Town Staff
  - 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 Central Business District.

- This is a different request than the prior variance that was granted on February 20, 2025:
  - To Article VI, Section 165-33.B.5.b.iii and Article IX, Section 165-73 to allow the redevelopment of the property as mixed use consisting of ten residential townhouse style condominium units and three stories of commercial use facing Central St
- The applicant is now seeking approval to raze the existing non-habitable single-family residential structure that was destroyed by a fire, and construct five (5) Residential Townhouses on the property which will not include a mixed commercial component, and which will be located greater than eight (8) feet from the front property line.
- The proposed new structure appears to be set back approximately 135 feet from the front property line at its closest point; therefore, the first variance is being requested to Article VI, Section 165-33.c.4.
- Because the 5-unit residential townhouse is proposed with residential living on the first floor, a second variance is being requested to Article VI, Section 165-33.B.5.b.iii which permits multi-unit residential uses as mixed-use in conjunction with permitted non-residential uses while prohibiting residential use below the second floor.
- The board weighed testimony both for and against the proposal.

Mr. Corbett went through the five criteria and went to each board member to ask whether the criteria had been met or had not.

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 yes, he mentioned special conditions that did not lend well to the commercial property.
- Mr. Tripp, yes there is a substantial wetland on the lot which reduces what can be done with the lot. Mr. Tripp appreciates the applicant making use of the property to build housing because of the housing crisis the state is in right now. He thinks it is a good solution to a lot that is somewhat marginal.
- Mr. Donlon said yes due to reasons stated.
- Mr. Lyskawa said yes.
- Mr. Perkins said yes, he feels the hardship exists because of the nonconformity of the lots in those districts to begin with and needed restoration without abandonment is necessary for this approval.

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

- Mr. Donlon said he finds that it is not contrary to the public interest. For what was discussed during deliberation and otherwise this is a very unique property and thinks it is a good use of the property in the neighboring areas as well as the need for housing in the community?
- Mr. Tripp said yes, he thinks any more housing we can have is in the public interest.
- Mr. Perkins said he finds the public interest is served and there is no lack of public interest by granting this application.
- Mr. Lyskawa said this will be great. The fact that the townhouses get more square footage for the people buying or renting.

- Mr. Dietzel said he agrees with everything that has been said. Not only will it not be contrary to the public interest he believes it is in the public's interest.

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

- Mr. Dietzel said yes for reasons stated.
- Mr. Lyskawa said yes.
- Mr. Perkins said he finds it satisfactory to the spirit of the ordinance.
- Mr. Tripp said he finds it in the spirit of the ordinance. Having this dual use would be a detriment to the property.
- Mr. Donlon said yes, it meets the spirit of the ordinance for reasons stated earlier.

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

- Mr. Donlon said substantial justice is served by granting the request.
- Mr. Tripp said he believes that substantial justice would be done by granting the ordinance. It takes a piece of property that has been a burned-out hawk for a year and replacing it with five town houses.
- Mr. Perkins said yes, substantial justice is being served here and allows the reasonable use of the of the parcel in the same community that there are already similar properties existing.
- Mr. Lyskawa said he agrees.
- Mr. Dietzel said he agrees. He believes there is very little or no loss from the public but there would be a significant gain for allowing the applicant reasonable use of the property.

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

- Mr. Dietzel said yes, he sees no evidence that surrounding property values will not be diminished. In fact, they will be enhanced.
- Mr. Lyskawa said it will bring them up.
- Mr. Perkins said he never thought he would be the one to say rising tides lift all boats and I think that is certainly the case here.
- Mr. Tripp believes anything that replaces the burned-out hawk is probably better than nothing.
- Mr. Donlon said surrounding properties will not be diminished the values will go up for reasons stated. Specifically, the fire damaged building removal and new townhouse being built.

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.

Vote:

|             |     |
|-------------|-----|
| Mr. Dietzel | Yes |
| Mr. Tripp   | Yes |
| Mr. Donlon  | Yes |

647 Mr. Lyskawa Yes

648 Mr. Perkins Yes

649

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

652

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

654

655 Mr. Perkins asked who was present for case 26-112 - Jeffrey Moulton. He said the board would not get to  
656 them tonight, but they are welcome to stick it out if they like or the board can motion to table the case to  
657 the next meeting on May 21, 2026

658

659 Mr. Corbett motioned to table case 26-1112 to the next meeting, May 21, 2026.

660

661 Mr. Tripp seconded the motion. All in favor, none opposed.

662

663 Mr. Perkins told Mr. Lannan that he would give the same courtesy for case 26-111 to be tabled for the  
664 next meeting on May 21, 2026.

665

666 Mr. Corbett motioned to table case 26-1112 to the next meeting, May 21, 2026.

667

668 Mr. Tripp seconded the motion. All in favor, none opposed.

669

670

671 **26-107**

672 **Applicant:** Bird Enterprises LLC, Jay Yenaco, duly authorized (Tabled from April 2,  
673 2026)

674 **Owner:** Bird Enterprises LLC, Jay Yenaco, duly authorized

675 **Parcel ID:** 10012

676 187 Hampstead Rd

677 **Zoned:** LMDR

678

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

681

682 Mr. Perkins asked Mr. Donlon to sit in on the case.

683

684 Mr. Perkins said the board has some housekeeping stuff to take care of before we go any further with this  
685 case. All board members have the prior application from almost a year ago. The board needs to review to  
686 make sure how the board feels relative to the material information of this case versus the prior. The prior  
687 application was stated for a wall cabinet, channel letters, a Pylon sign 156 inches by 60 inches, and an  
688 inclusive 3 by 5 full color LED electronic messaging center.

689

690 Mr. Perkins said this does not spell out as cynically as the prior application. This application that we are  
691 currently hearing is asking for the similar post to remain in place, and it is asking for two wall cabinets.

692

693 Mr. Perkins asked Christopher Drescher, Attorney for Cronin Bisson & Zalinsky P.C., and Jay Yennaco to  
694 come up to the dais.

695

Mr. Perkins said he is reading from the original application, however it would be inaccurate because in the prior case there were amendments made to the application during the hearing that goes back to last July.

Mr. Yennaco said that is correct.

Mr. Perkins asked Mr. Yennaco to refresh his memory of the revisions that the board decided on.

Mr. Yennaco said he believes the revisions made at that point where the electronic reader boards. The town ordinance had it changing no more frequently than 7 seconds. Mr. Yennaco made a concession he would not change it for no less than 5 minutes. That was a major change at that point.

He believes he made a change to the Electronic Reader Board that it would shut off at 9:00. At that point there was a stipulation that it was going to put on a time clock to be shutting off at a particular time. There has been a lot that has changed since then. He believes from the initial application to what was approved by the board there was a reduction in size for some extent because there was a third tenant sign that we put in there originally that was removed. He cannot say how many square feet or inches, but it was removed but it was conceded. He believes those were the generic concessions or changes at that time. Since that time, they also came with some additional concessions and some additional tonight.

Mr. Perkins said he thinks Mr. Yennaco is correct. There was a third tenant sign that he had originally entered with, and he had the electronic messaging sign which is indicated on the former application. The pylon which he believes would be the pole that all this is mounted on was 156 by 60 inches. Those two primary changes from the original application, now that we are discussing it, stand out.

Mr. Corbett said he reviewed it in depth after the last meeting as he requested more time to be able to go through the Minutes and those are all the concessions that he noticed as well. What was murky was whether or not the board separated the sign from electronic messaging. It was kept as one. The majority of the discussion was surrounding the hours and the strength of the lights, and safety and timing was towards the electronic messaging and not the entirety of the sign. He does think there was oversight on the board's behalf. The board should have realized they were focused on one of three portions of it. Because of that Mr. Corbett feels this is a material change.

Mr. Corbett measured the sign it appears the sign itself now is also 42 1/2 square feet, it looks like there is a slight reduction overall from the 50 that was proposed.

Mr. Perkins asked Mr. Yennaco if that was a modification that he made at that time.

Mr. Yennaco said he is not 100% sure about that change. The third tenant portion of the sign that he originally had there his explanation for that was that his family had this happen overtime and made the mistake of not having extra space. He had no tenant. The Electronic Reader Board is now gone.

Mr. Perkins asked Mr. Tripp how he feels about what has been discussed for the current application and the testimony given so far and if there is a substantial material difference in his view regarding this application versus the application last year.

Mr. Tripp said, as Mr. Corbett said in the original meeting, the board definitely got sidetracked on the electric messaging board. There was hardly any discussion on the remainder of the application. He believes that the electric messaging sign is no longer part of the application.

Mr. Perkins said to Mr. Donlon, as he sat on this the first evening for the current application and he was there for the prior or has seen the original face page of the application, he asked what his viewpoints were on this matter.

Mr. Donlon said he agreed that the lack of the electronic reader board makes this application substantially different.

Mr. Dietzel said Mr. Perkins asked the members whether they objected to just the electronic portion of the sign or the sign altogether. He was wishy washy because he wanted to discuss it more and he said the whole sign. But like Mr. Corbett said the board focused on the electronic sign portion. The sign was not focused on in its entirety. Mr. Dietzel agrees this is different. It does not include the electronic messaging board it is just the sign itself. He feels this warrants a new hearing.

Mr. Perkins said he believes he recalls asking specifically to one of the abutters, you know, their objection to this and tabled the meeting specifically to have information relative to the impact of the electronic messaging sign and that became the primary focus. Outside of that the questions that went on in that hearing in 2025 the initial application that is being asked for now honors and respects to the higher courts ruling on the matter and this is substantially different. Similar but substantially different to warranting the process and the testimony that we have allowed to be presented at this point.

Mr. Tripp motioned that the board approves the application for a sign as different from the prior application.

Mr. Dietzel inquired about how the school how operates and is structured.

Mr. Corbett seconded the motion. All in favor, none opposed.

For the record I am Chris Drescher council for the applicant. John Conan is in the audience. Mr. Drescher said he will defer to the testimony. It is already on record, but he thinks the biggest discussion was lighting. The abutters are concerned about certain lights, specifically the one that is shining up. His client removed them. He has also turned off the lights at night. He is working with code enforcement to try to strip the sign down until we can hopefully legitimize what we are trying to do here tonight. His client showed up tonight with something very helpful for the board. There are two pieces of paper and some copies for everyone. This first paper there are some instructions about turn on and turn off of the lights. Mr. Yennaco reached out to an electrician who has provided some technology and evidence of that technology that can demonstrate that these lights can be on a timer. The second page offers a grid of times of the day when sunrise, sunset is and it gives it during the winter, the spring, summer, and autumn when he is proposing that this sign would not be turned on.

Essentially dusk or sundown, and then at 9:00 PM they would be shut off. An interesting fact it says on average for the entire year, there are approximately one hour and 55 minutes of darkness between sunset and 9:00 PM in Derry. So, on average the sign if permission that we can have it will only be on for an average of approximately 2 hours a day. It is called the Lutron device.

Mr. Perkins said one of the things he would like to look at is in some of the considerations and the discussions that have gone back and forth is in your own testimony your importance or your understanding of the legitimacy of a business that's in a location that needs advertising. How much is required or significant or necessary in that area or in any area. I think is a legitimate requirement here. It is just how far does that legitimacy goes.

796 Attorney Drescher said his client has taken down the sign and it has already had an impact on his business  
797 to his detriment. Driving around that area once it gets dark there needs to be some kind of light to see the  
798 sign. The business is going to be open at least for a period of time when it is dark out. The sign will not be  
799 lit until it is dark.

800  
801 Mr. Yennaco said there has been a significant impact at this point on his business. People think he is out  
802 of business.

803  
804 Mr. Corbett has a question regarding the overall size of the sign. He said he drove by a few times when  
805 the sign was up and admittedly the sign was done very tastefully. He thought the size of the overall sign  
806 he did not find to be egregious. Coming down the road it actually jumped out. In his opinion it is  
807 necessary to find the business. What really jumped out was the almost 16-foot pylon that was designed  
808 with the electronic messaging attached to it. Now that the electronic messaging sign is gone does the  
809 opportunity exist to cut down the pylon portion.

810  
811 Mr. Yennaco said he does not know the answer to that, but he believes it is possible. He has no problem  
812 asking the question.

813  
814 Mr. Perkins said Mr. Yennaco was given approval to operate a business there and make use of the parcel.  
815 At some point is established the criteria for the Planning board to review your site plan and what was  
816 going on and it is pointed out and it was noted that you had an existing location for a sign that was part of  
817 your site plan. Mr. Perkins asked Mr. Yennaco what his understanding of being able to have a sign to  
818 operate at this business at that time? It is noted on the site plan that there would be a sign for this location.

819  
820 Mr. Yennaco said he did not recall. He believes the town officials have actually changed since that point  
821 and he would have to refer back to that those conversations, if possible, but he thinks the conversation at  
822 that point was that if he was to move forward doing additional signage he would be before the zoning  
823 board.

824  
825 Mr. Perkins asked Mr. Yennaco at no time if he had any indication that he would not be allowed to have a  
826 sign.

827  
828 Mr. Yennaco said he was not given the indication he would not be allowed to have signed.

829  
830 Mr. Corbett asked Mr. Yennaco if the rendering was depicted within the site plan with the pylon sign and  
831 the electronic messaging.

832  
833 Mr. Yennaco said he does not believe so.

834  
835  
836 Mr. Donlon said he has seen some lights that projected up at a sign. He asked if anyone on the board had  
837 any thoughts about material difference between a floodlight shining up at sign as opposed to what we  
838 keep referring to as like a backlit sign.

839  
840 Mr. Corbett said he believes it is material. Churches and residential neighborhoods shall not be internally  
841 lit, but may be externally lit. There was only a definition between the differences.

842  
843 Discussion occurred about lumens and brigtness.

844  
845 **CALL TO PUBLIC**

846  
847 Mr. Perkins made a call to public.

848  
849 **FAVOR**

850  
851 No gestures in person.

852  
853 **OPPOSED**

854  
855 There were gestures in person.

856  
857 Jim Foley, 178 Hampstead Rd. he said he feels like the Tom Hanks character from Forrest Gump. He said  
858 here we are again. First, he wants to make it clear that we seem to be getting on the path again of  
859 conflating the business with this sign. We know what the business does and we understand the business  
860 and what it brings to the town. Nonetheless, this variance is for the sign. The second thing he wants to  
861 reiterate is the fact that the planning board said that this is approved use on that lot it does not turn the lot  
862 into commercial zone. He said the continual effort to bootstrap that it is appropriate to have a sign for this  
863 type of business does not apply here. His main argument is it was not addressed in any of the hearings  
864 previous to this or again tonight. He then talked about what the court ruled. Nothing has changed since the  
865 court ruling.

866  
867 Mr. Perkins said this is not an area of variance, it is a use variance. He asked Mr. Foley how he  
868 disseminates the difference between what he is citing, which is the area variance, frontage, square foot,  
869 and the use variance.

870  
871 Mr. Foley said the court ruled on that.

872  
873 Mr. Perkins said that this is not that case. He needs to make an argument for this case. The Board has  
874 found this to be a new application and therefore you have to present it to this. Mr. Perkins reminded Mr.  
875 Foley this is a use variance, not an area variance and asked him how does he disseminate and how does he  
876 correct that.

877  
878 Mr. Foley said he would ask the board to look at the same fact. He said you can bring up as many  
879 different variations of this sign, but it does not meet the residential sign agreements, and it is not valid. He  
880 said the sign did not fit requirements of a residential area. Mr. Foley said they want to put up an oversized  
881 commercial sign in a residential area.

882  
883 Mr. Perkins asked Mr. Foley if it was a hardship when they can establish a business as a use variance in  
884 what should go on with what should be part of a business use. He asked Mr. Foley what makes it an  
885 oversized sign and that he keeps citing that this is an area variance and it is not, it is a use variance.

886  
887 Mr. Foley Carbonell says specifically the fact that you cannot do it as well without the sign is not a reason  
888 to overcome hardship.

889  
890 Mr. Rojee, 164 Hampstead Road introduced himself. Mr. Rojee read his prepared statement.

891

Mr. Perkins told Mr. Rojee that one of the things he had done at the prior meeting was be brought some point forward relative to competitors of other businesses in the community. That testimony was pretty enlightening. Although public shaming is not necessarily the case. Mr. Perkins said the other part of this that Mr. Rojee said the hardship is self-imposed. Mr. Perkins asked him if he would he not agree that if this applicant takes a business proposal to the Planning Board and the Planning Board sees there is a location for a sign on there, that this owner is expecting to open up a business in that area. It is a conforming business from the agricultural aspect, and it is given that green light with the understanding that he would be able to have a sign there. He asked Mr. Rojee if he would believe that withdrawing (permission) after that fact creates a hardship.

Mr. Rojee said he did not see the drawing. His understanding is that it did not show the size of the sign. He would not look at it and think there needs to be a sign here and assume that it is a non-conforming sign that is being requested. There are such things as conforming signs in the LMDR. Mr. Rojee pointed out signs that he presented that are in the community and discussed the size of the signs.

Mr. Perkins told Mr. Rojee that there are a couple of presumptions that are going on. One being that the board has already made a decision. Mr. Perkins asked Mr. Rojee what a nonconforming sign was.

Mr. Rojee said that was something touched upon earlier. There was an assertion that a conforming sign was twenty-four square feet or under and unlit. Mr. Rojee said he would personally be okay with a sign that is twenty-four square feet and unlit. He talked about an externally lit sign and an internally lit sign. Mr. Rojee asked to clarify the size of the sign.

Mr. Corbett said the sign is 42.5 sq ft.

Mr. Perkins said one box is certainly less than the twenty-four square feet that is allowed and he believes it is permitted in this district as well under certain circumstances. When citing the total size which was fifty square feet you are talking about two signs. These are assigned for each business that is operating at that facility.

Mr. Rojee said he disagrees with it. He said if he has an LLC registered to his property because he has a home office there he could easily register three more LLC's and put up a sign for each business and he would not need a variance and then he could have as many square feet of signage as he wants.

Mr. Perkins said, going back to the hardship question which is that he has been given approval for use here by the Planning Board and for both uses. Getting down to the bottom is should each of the two businesses be permitted to have its own individual sign.

Mr. Rojee said he does not think so because the are They are both owned by the same person and entity.

Mr. Provencher brought the time to Mr. Perkins' attention.

Mr. Corbett motioned to table Case 26-110 to the next meeting May 21, 2016.

Mr. Donlon seconded the motion. All in favor, none opposed.

Mr. Donlon motioned extending the meeting to 10:15pm.

All in favor, none opposed.

Mr. Perkins told Mr. Rojee we have pondered about the size of the signs whether or not these signs exceed those that are permitted within the ordinance trying to get to the spirit of the ordinance and the question of hardship. The other question is whether the hardship establishes when the owner of the property is permitted the use by the Planning Board with an established location for the sign. We touched on the lighting.

Mr. Perkins asked if there was anyone else that would like to speak to this case when it is reconvened at the next meeting.

Mr. Tom Cardin, 2 Cunningham Dr would like to speak at the next meeting May 21, 2026.

Will and Brenda Davison, 1 Wishing Well Lane would like to speak at the next meeting May 21, 2026.

**26-110**

**Applicant:** Michelle Lamattina (Tabled to May 21, 2026)

**Owner:** John M Lamattina

**Parcel ID:** 09049-001

4 Cross Rd

**Zoned:** LDR

The applicant is requesting a Special Exception as provided in Article VI, Section 165-48.A.1 of the Town of Derry Zoning Ordinance to allow the operation of a wig salon at the residence.

**26-111**

**Applicant:** Promised Land Survey, LLC (Tabled to May 21, 2026)

**Owner:** S & T Nominee Trust (Tracey A. & Stephen J. Lannan, Tts)

**Parcel ID:** 15-016-003

17 Whitney Grove Rd.

**Zoned:** LDR

The applicants are requesting a variance to the terms of Article III, Section 165-9 of the Town of Derry Zoning Ordinance and NH RSA 674:41 to allow the construction of a single-family dwelling on the lot which does not have frontage on a Town approved street.

**26-112**

**Applicant:** Jeffrey Moulton (Tabled to May 21, 2026)

**Owner:** Benjamin Powell

**Parcel ID:** 19091

22 Germantown Rd.

**Zoned:** LDR

The applicants are requesting a variance to the terms of 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. (As permitted by a variance granted in 2016).

Mr. Corbett made a motion to table Appointment of Officers to the next meeting May 21, 2026.

Mr. Tripp seconded the motion. All in favor, none opposed.

994  
995 **OTHER BUSINESS:**  
996

997 Mr., Tripp mentioned when he was up at the Southern New Hampshire Planning Commission meeting  
998 there was a presentation on accessory dwelling units and he got a handout from New Hampshire Housing,  
999 He gave the copy to Ms. Owen so if anyone would like to review it they can.  
1000

1001 **CORRESPONDENCE**  
1002  
1003

1004 **REVIEW MEETING MINUTES**  
1005

1006 Approval of February 19, 2026, meeting minutes  
1007

1008 Mr. Tripp motioned to accept the February 19, 2026, meeting minutes as amended.  
1009

1010 Seconded by Mr. Donlon All in favor, none opposed.  
1011

1012 Approval of April 2, 2026, meeting minutes  
1013

1014 Mr. Tripp motioned to accept the April 2, 2026, meeting minutes as presented.  
1015

1016 Seconded by Mr. Dietzel. All in favor, none opposed.  
1017

1018 Mr. Henry abstained from both motions.  
1019

1020 Mr. Tripp mentioned the seminar is on Saturday. All board members have signed up to attend.  
1021

1022 **ADJOURNMENT**  
1023

1024 Mr. Dietzel made a motion to adjourn. Second by Mr. Donlon. All in favor of adjourned, none opposed.  
1025

1026 The meeting was adjourned at 10:07pm  
1027  
1028  
1029

X 

Chair

1030

