

**TOWN OF DERRY**  
**ZONING BOARD OF ADJUSTMENT MINUTES**  
**December 15, 2022**

**Members Present**

Lynn Perkins, Chairman  
Craig Corbett, Vice Chair - Remote  
Crystal Morin, Secretary  
Allan Virr  
Donald Burgess

**Members Absent**

**Alternates Present**

Michael Donlon - Remote  
Gaspar Obimba  
Richard Tripp  
James Dietzel

**Alternates Absent**

**Code Enforcement**

Robert Mackey, Code Enforcement Director

Mr. Perkins called the meeting to order at 7:00 p.m. with the salute to the flag. Mr. Perkins stated that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 this public body is authorized to meet now physically and also electronically. As such this meeting is being held and will also be providing public access to the meeting by telephone with additional access possibilities by video utilizing the ZOOM app for the electronic meeting. To participate in this meeting, you can be present or by dialing 323-909-140 or by clicking on the website address: [derrycam.org/TuneIn](http://derrycam.org/TuneIn) the phone numbers are 646-558-8656 or 312-626-6799 meeting ID: 323-909-140 or if anybody has a problem, please call 603-845-5585 or email at: [ginnyrioux@derrynh.org](mailto:ginnyrioux@derrynh.org). In the event that the public is unable to access the meeting, the meeting will be adjourned and rescheduled otherwise the meeting will end at 10:00 PM. Mr. Perkins said that all votes taken are taken during this meeting shall be done by roll call vote.

The Board members introduced themselves.

**Leigh Ann Panorelli**

**Re-Hearing Request of case #22-150 Lewis Arch (Owners: Albert & Judy Prescott) of Variance granted 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 property which has frontage on a Class VI Road at 3 Poor Farm Road, Parcel ID 22012-003001, Zoned MDR**

Mr. Perkins said that the Board has received a request for a Re-Hearing from Leigh Ann Panorelli who submitted on behalf of other abutters with concerns regarding the variance granted to Lewis Arch, case #22-150 for 3 Poor Farm Road. He reviewed the information submitted for the record.

Mr. Virr said that he recalled the meeting and that the abutters concerns were of being able to still utilize the property for recreation and that the applicant said no. Mr. Virr said that he believes that the applicant has the right to restrict access to his property.

Mr. Obimba said that he feels that the Board reviewed the case and that the applicant addressed the concerns and met the required criteria. He said that he did not see any new evidence presented that had not been discussed to warrant a rehearing.

Mr. Corbett said that he reviewed what the applicant presented and that he also felt that the Board and the applicant had addressed the concerns noted and did not see any new evidence presented that would warrant a rehearing of the case.

Mrs. Morin said that she agrees with the Board that no new evidence was presented and everything had been discussed at the meeting.

Mr. Perkins said that he also reviewed the information submitted by Ms. Panorelli and that he found no new evidence presented and all aspects had been addressed at original hearing.

**Mrs. Morin motioned to Grant a Re-Hearing Request to Leigh Ann Panorelli of case #22-150 Lewis Arch (Owners: Albert & Judy Prescott) of Variance granted 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 property which has frontage on a Class VI Road at 3 Poor Farm Road, Parcel ID 22012-003001, Zoned MDR**

**Seconded by Mr. Virr.**

**Vote:**

**Mrs. Morin: No. No new evidence presented.**

**Mr. Obimba: No. No new evidence presented.**

**Mr. Corbett: No. No new information submitted.**

**Mr. Virr: No. No new evidence submitted that would justify rehearing of case.**

**Mr. Perkins: No. For the same reasons as stated.**

**The request for re-hearing was Denied by a vote of 0-5-0. Anyone aggrieved by the decision of this Board the recourse is to appeal to Superior Court.**

**Mr. Perkins noted that the findings of fact for case #22-150 were as follows:**

- **Request for rehearing was regarding variance granted to Lewis Arch.**
- **The parcel is 20 acres.**
- **No new information was presented to consider rehearing request.**
- **Property is located on a Class VI road.**

**The Board also includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into its finding of fact and decision.**

It was noted that Mr. Tripp would sit for the following case.

**22-151            Kenneth Foley**

**The applicant is requesting a special exception as provided in Article VI, Section 165-47.A.1 of the Town of Derry Zoning Ordinance to allow the operation of an electrical contracting business from the residence at 6.5 Floyd Road, Parcel ID 09036, Zoned LMDR**

Mr. Perkins said that the applicant has presented the Board with a few considerations with regard to parking and at the previous meeting the Board heard abutter's concerns with regard to safety.

Mr. Foley said that he has changed up the parking situation. He said that he has spoken to the Police with previous parking and was informed that it was a legal spot but have relocated the vehicle.

**Board Questions**

Mr. Perkins said that part of the criteria is to address not to be injurious, noxious or offensive to the neighborhood etc. which also limits the aspect of appearance. He said that he was not opposed to an electrician business but concern with extra vehicles. Mr. Perkins said that at the previous meeting it was stated that the bucket truck would be potentially sold. Mr. Foley said yes as he did not use it often.

Mr. Tripp said that he reviewed the information submitted and saw that there is a garage on the property and all the vehicles are outside and asked what was the garage used for. Mr. Foley said it was for personal use.

There was some discussion with regard to parking.

Mr. Perkins said that the main point is the operation of the business from the home but the concern is with the number of vehicles commercial and others located on the property. The Board can grant to allow with conditions of number of vehicles.

Mr. Corbett said that he struggled at the previous meeting with what prevents to operate from the home. He said that the Board is focusing on the parking of the vehicles not basis for request as letter of explanation states have 2 vehicles utilized for the business.

There was some discussion with the number of vehicles parked on the property.

Mr. Mackey said that to help alleviate some of the commercial vehicle concerns that maybe it would be possible that the employee take home one of the vehicles to help with number of commercial vehicles at the property.

Mr. Foley said that he needed the van for service calls so unable to have employee take it home.

Mr. Tripp asked what the van was utilized for. Mr. Foley said it was for storage.

Mr. Tripp said if the van was for storage what was the garage used for. Mr. Foley said that he has cars and his bike in it.

Mr. Virr asked what was in the trailer. Mr. Foley said it has his lawn mower, chop saw and other various items in the trailer.

Mr. Perkins said that the request is to operate an electrical business not Board's purview to say what is kept in garage or trailer but the abundance of commercial vehicles is a concern.

Mr. Burgess said that the Board could not address the personal vehicles but business vehicles should be moved back off the road.

Mr. Perkins said that the Board does have the purview to set conditions as to the number of commercial vehicles.

Mr. Corbett said that the applicant has stated in his letter of explanation that there are two work trucks and that he was struggling with the lettering on the additional vehicles on the property.

There was some discussion with regard to the lettering and the number of vehicles located on the property.

Mr. Virr motioned to go into deliberative session.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Tripp, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

### **Deliberative Session**

Mr. Corbett said that the Board has done a lot of discussion with regard to the property but needs to focus on the number of commercial vehicles as letter of explanation state only 2 vehicles utilized for the business but there are other vehicles on the property with lettering and applicant is also requesting a sign.

Mr. Virr said the Board needs to consider the number of commercial vehicles with logo on them and possibly make a condition to limit to 2 commercial vehicles with lettering. The Board could suggest a timeline to remove some of the commercial vehicles but then possibly enforcement could be difficult.

Mr. Perkins said that the Board needs to outline some stipulations to commercial use of property and limit vehicles. And also to address the commercialization of a residential property.

Mr. Tripp said that Mrs. Morin's question of who vehicles were registered to was answered that they were not registered commercially.

Mr. Perkins said that they were commercial type vehicles and that the trailer was lettered and a sign is being requested as well so would like input of how to define commercial aspect.

Mr. Corbett said a condition to limit the number of vehicles with lettering on them would possibly make less confusing as to what is being utilized for work or personal use.

There was some discussion with the number of commercial vehicles.

Mr. Burgess spoke to the explicitly of identifying vehicle descriptions.

Mr. Perkins concurred with past case history.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Tripp, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

**Mrs. Morin motioned on case #22-151 Kenneth Foley to Grant a special exception as provided in Article VI, Section 165-47.A.1 of the Town of Derry Zoning**

**Ordinance to allow the operation of an electrical contracting business from the residence at 6.5 Floyd Road, Parcel ID 09036, Zoned LMDR as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Advertisement of business limited to 2 vehicles only and one sign not to exceed 3 square feet.**
- 3. No more than two commercial type (or non passenger) vehicles on the property.**

**Seconded by Mr. Virr.**

**Vote:**

<b>Mr. Virr:</b>	<b>Yes.</b>
<b>Mr. Corbett:</b>	<b>Yes.</b>
<b>Mr. Tripp:</b>	<b>Yes.</b>
<b>Mr. Burgess:</b>	<b>Yes.</b>
<b>Mr. Perkins:</b>	<b>Yes.</b>

**The application was Granted by a vote of 5-0-0. 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.**

**Mr. Perkins noted the findings of fact as follows for case #22-151:**

- The parcel is a two-family residential dwelling.**
- Applicant wishes to have an electrical contracting business from the residence.**
- Office space would be located where they reside.**
- The business is currently operating.**
- Multiple vehicles associated with the business are stored at the property.**

**The Board also includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into its finding of fact and decision.**

The Board took a brief recess.

It was noted for the record that Mr. Corbett would step down and that Mr. Dietzel would sit for the following case.

**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 operate a photography office and studio at the residence at 134 Island Pond Road, Parcel ID 06025, Zoned LDR**

Leanne Willett Peluso, owner, reviewed her application criteria for the record.

### **Board Questions**

Mr. Virr asked if the business consisted mostly of portrait sessions. Mrs. Peluso said yes that she does a lot of high school senior portraits.

Mr. Dietzel asked if the property was recently purchased on October 30, 2022. Mrs. Peluso said yes that they just moved here from Massachusetts.

Mrs. Morin said she was familiar with the property and feels property would be perfect for a photographer. Mrs. Peluso said that was one of the reasons she purchased the property.

Mr. Virr asked what were the hours of operation. Mrs. Peluso said generally 10:00 am to 5:00 pm for office work and 2:00 pm to 7:00 pm for pictures but basically daylight hours but varies.

Mr. Tripp asked if develop photos. Mrs. Peluso said no that they were all digital.

Mr. Perkins asked if hours of operation were specific. Mrs. Peluso said no, as listed if needed to be specific but work during daytime hours or doing office work of which no one would be present at that time.

Mr. Perkins asked if weekends were part of hours. Mrs. Peluso said yes.

### **Code Enforcement**

Mr. Mackey provided the following information with regard to the property for the record.

- The applicant is requesting a special exception to allow the operation of a photography business at the residence.
- The applicant proposes to use a bedroom and office located on the first floor for the business along with some photography sessions outdoors on the property.
- A small sign is being requested and will require a permit from the Code Enforcement Office.
- There are pictures in the file for review by the Board.

Mr. Virr asked what was the use of the area on the right of the barn. Mrs. Peluso said that that portion was dismantled before they purchased it by the former owner.

Mr. Donlon said that due to the nature of the business that he did not feel the Board should restrict hours of operation due to the nature of the business.

Mr. Perkins informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

### **Favor**

No one spoke in favor of the request.

Mr. Perkins informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

### **Opposed**

No one spoke in opposition of the request.

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Dietzel.

Vote: Unanimous.

Mr. Dietzel, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Perkins

### **Deliberative Session**

Mr. Perkins reviewed the conditions for the record.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Dietzel, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Perkins

**Mrs. Morin motioned on case # 22-152 Leanne Willett Peluso to Grant a special exception as provided in Article VI, Section 165-48.A.1 of the Town of Derry Zoning**



**Ordinance to operate a photography office and studio at the residence at 134 Island Pond Road, Parcel ID 06025, Zoned LDR as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. Sign not to exceed 3 square feet and not to be internally illuminated.**

**Seconded by Mr. Virr.**

**Vote:**

<b>Mr. Virr:</b>	<b>Yes.</b>
<b>Mr. Burgess:</b>	<b>Yes.</b>
<b>Mr. Dietzel:</b>	<b>Yes.</b>
<b>Mrs. Morin:</b>	<b>Yes.</b>
<b>Mr. Perkins:</b>	<b>Yes.</b>

**The application was Granted by a vote of 5-0-0. 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.**

**Mr. Perkins noted the findings of fact as follows for case #22-152:**

- The applicant will be utilizing less than 25% of the home square footage.**
- The office will be a converted bedroom and there will be outside photo sessions.**
- A sign of no more than 3 square feet, as ordinance allows, is being requested.**
- The Board sees no infringement on abutters.**
- The zoning is LDR.**

**The Board also includes all facts found in the meeting minutes for this application and incorporates all meeting minutes into its finding of fact and decision.**

**22-153            Joseph McCarron**

**The applicant is requesting a variance to the terms of Article III, Section 165-20a and Article VI, Section 165-46.C.2 of the Town of Derry Zoning Ordinance to allow the construction of a single-family dwelling on the property which does not have frontage on a Town approved street and which will be located less than 75 feet from a wetland at 13 Field Road, Parcel ID 56001, Zoned MDR (This is a renewal of a request for 2 variances granted in 2020 – case #20-111 and case #20-112)**

Attorney Christopher Drescher, Cronin, Bisson & Zalinsky, P.C, said he was representing Mr. McCarron tonight. Attorney Drescher reviewed the letter of explanation and required criteria for the record.

### **Board Questions**

Mr. Virr said he remembered the previous cases and that they were well vetted and can understand the delay.

Mr. Perkins said that he recalled the previous case was a bit bumpy. Attorney Drescher said that there was a snow plowing concern but it will be addressed.

### **Code Enforcement**

Mr. Mackey provided the following information with regard to the property for the record.

- The applicants are requesting a renewal of 2 variances granted in 2020 to allow the construction of a single family dwelling on the property. The variances granted have not been exercised and, therefore, per State RSA 674:33 have expired.
- There are two variance requests, one regarding the lack of frontage on an approved street and the other involves the wetland setback to the brook.
- The original variance concerning the wetland setback (case #20-112) was granted on March 5, 2020 and the variance concerning the frontage (case #20-117) was granted at a rehearing that took place on May 7, 2020. There are copies of the notices of decisions and meeting minutes in your packets.
- As the original variances were granted separately, these cases should be taken up by the Board as two separate motions.
- There are pictures in the file for review by the Board.

Mr. Corbett said he recalled previous case and did not have any questions.

Mr. Tripp asked if there would be any issues with well or septic for the property.

Mr. Perkins said that the case is for frontage and wetland setbacks and that well or septic was not purview of the Board.

Mr. Mackey said that the property would be serviced by Town sewer and have a private well.

Attorney Drescher said that they have already received State Shoreland approval.

Mr. Perkins informed the public that now would be the time to call in favor of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

### **Favor**

No one spoke in favor of the request.

Mr. Perkins informed the public that now would be the time to call in opposition of the proposed request. He said if wish to speak press star 9 and someone will answer your call.

### **Opposed**

No one spoke in opposition of the request

Mr. Burgess motioned to go into deliberative session.  
Seconded b Mrs. Morin.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins

### **Deliberative Session**

Mr. Perkins said that this would consist of a two-motion vote. The first motion would be for frontage and reviewed the conditions for that motion for the record. Mr. Perkins said that the second motion would be for setbacks and reviewed the conditions for that motion for the record.

Mr. Mackey said that the elevation certificate is the lowest level of the home when established.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins

**Mrs. Morin motioned on case #22-153 Edward N. Herbert Associates, Inc., Owner: Joseph McCarron/Deborah Van Etten to Grant a variance to the terms of Article VI, Section 165-46.C.2 of the Town of Derry Zoning Ordinance to allow the**

**construction of a single family dwelling on a property which does not have frontage on a Town approved street at 13 Field Road, PID 56001, Zoned MDR as presented with the following conditions:**

- 1. Subject to obtaining all State & Town permits and inspections.**
- 2. A waiver of Municipal Liability and Responsibility must be recorded with the deed prior to obtaining a building permit.**

**Seconded by Mr. Virr.**

**Vote:**

**Mr. Virr: Yes.**  
**Mr. Corbett: Yes.**  
**Mrs. Morin: Yes.**  
**Mr. Burgess: Yes.**  
**Mr. Perkins: Yes.**

**The application was Granted by a vote of 5-0-0. 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.**

Mr. Burgess motioned to go into deliberative session.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins

Mr. Perkins said that the second motion would be for setbacks and reviewed the conditions for that motion for the record.

Mr. Burgess motioned to come out of deliberative session.

Seconded by Mr. Corbett.

Vote: Unanimous.

Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins

**Mrs. Morin motioned on case #22-153 Edward N. Herbert Associates, Inc., Owner: Joseph McCarron/Deborah Van Etten to Grant a variance to the terms of Article III, Section 165-20.a of the Town of Derry Zoning Ordinance to allow the construction of a single family dwelling on the property less than 75 feet from a**

wetland at 13 Field Road PID 56001, Zoned MDR as presented with the following conditions:

1. Subject to obtaining all State & Town permits and inspections.
2. Certificate of Elevation to be filed with Code Enforcement.

Seconded by Mr. Burgess.

**Vote:**

Mr. Burgess: Yes.  
Mr. Virr: Yes.  
Mr. Corbett: Yes.  
Mrs. Morin: Yes.  
Mr. Perkins: Yes.

The application was Granted by a vote of 5-0-0. 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.

Mr. Perkins noted the findings of fact as follows for case #22-153:

- The applicant is requesting the extension of a pre-approval.
- There are two variances requested one for frontage and the other a wetland setback.
- No noted changes to the conditions of the property to prevent approval.
- The zoning is MDR

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

**Approval of Minutes**

Mrs. Morin motioned to table the minutes of November 17, 2022 as amended.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Dietzel, Mr. Obimba, Mr. Tripp, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins

Mr. Burgess motioned to approve the minutes of December 1, 2022 as written.

Seconded by Mr. Virr.

Vote: Unanimous.

Mr. Dietzel, Mr. Obimba, Mr. Tripp, Mr. Burgess, Mr. Virr, Mr. Corbett, Mr. Perkins

### **Other Business**

Mr. Tripp said that the minutes state that still allow the public to attend remote and if it still holds true.

Mr. Perkins said that the Board did not have to but Town Council said that they will continue to allow remote input to meetings.

There was some discussion with regard to remote status.

### **Adjourn**

Mr. Burgess motioned to adjourn.

Seconded by Mr. Obimba.

Vote: Unanimous.

Mr. Dietzel, Mr. Obimba, Mr. Tripp, Mr. Donlon, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins

Adjourn at 8:59 PM

Minutes transcribed from notes & tape:

Ginny Rioux

Recording Clerk

### **Approval of Minutes January 19, 2023**

Mr. Corbett motioned to approve the minutes of December 15, 2022 as amended.

Seconded by Mr. Burgess.

Vote: Unanimous.

Mr. Dietzel, Mr. Tripp, Mr. Donlon, Mr. Burgess, Mr. Virr, Mrs. Morin, Mr. Corbett, Mr. Perkins