

**MINUTES  
NEW DURHAM ZONING BOARD OF ADJUSTMENT  
13 NOVEMBER 2014**

Chair Prelli called the meeting to order at 7:05 pm.

**Roll Call:** Larry Prelli (Chair), Wendy Anderson (Vice Chair), Joan Swenson, Cecil Williams, Mike Hoffman, Dave Shagoury (Alternate), Stephanie (Richard) Kearns (Alternate), Recording Secretary Amy Smith.

**Others Present:** Videographer Peter Pijoan, Town Atty. Justin Richardson, Atty. Arthur Hoover, Atty. John Cronin, Brad Jones of Jones & Beach Engineers, Inc., Stephen Pernaw of Stephen G. Pernaw & Company, Inc., Mark McKeon of M. H. McKeon Appraisal Service, Mark Fougere of Fougere Planning & Development, Inc., Russell Weldon, Evan Goldner, Greg Anthes, Elizabeth Cantrall, Peter Bodwell, Jim Fenske, Dan & Jan Bell, Bob Snow, Alyce Ferguson, John Goyette, Jack Ferguson, Dennis & Carol Neyland, Adele Haskell, William Wood, Terry Chabot, Tom & Tammy Hutchinson, Patricia Weldon, Steve Eldridge, Mark Sullivan, Jim & Susanne Jagielski, Richard Duffy, Frank & Brenda Conery, Ted Booth.

Chair Prelli introduced Board members to the viewing public.

**Public Hearing - CASE: 2014-05 - Application submitted by Joseph & Cheryl Mullen. The applicant is seeking a Variance to Article VI Section C- 2 of the New Durham Zoning Ordinance in order to permit the construction of a three bay garage no closer than 58 feet from the intermittent stream, with associated driveway impacts, maintaining at least a 30 foot vegetated buffer along the stream. The property in question is located at 287 South Shore Road (Tax Map 113, Lot 77).**

**(Recessed from 14 October 2014)**

Chair Prelli opened the public hearing and read a letter from Peter Cooperdock, agent for Mr. & Mrs. Mullen, requesting the application be withdrawn from consideration. The Board accepted the withdrawal and the Mullen file (Case: 2014-05) was closed.

Chair Prelli informed the public that the next case could not be opened until 7:30 pm as that is how it was advertised.

**Review of Mail**

There was no mail other than letters pertaining to Cases 2014-06 and 2014-07.

**Review of Minutes**

Board members reviewed the minutes of 14 October 2014. Chair Prelli clarified the regular Board members would be the members voting on minutes as the two alternate members have not been appointed as there is a full Board.

**Ms. Swenson made a motion to approve the minutes of 14 October 2014 as printed. Mr. Hoffman seconded the motion. The motion was approved with three affirmative votes (Hoffman, Anderson, Swenson) and two abstentions (Prelli, Williams).**

**At 7:15 pm Ms. Swenson made a motion to recess the meeting until 7:30 pm. Ms. Anderson seconded the motion. The motion was unanimously approved.**

At 7:30 pm Chair Prelli reconvened the meeting. Mr. Hoffman and Mr. Williams recused themselves from the meeting and stepped into the audience. Chair Prelli designated Ms. Kearns and Mr. Shagoury to sit in as voting members.

Ms. Smith noted the people in the back of the room were blocking fire exits and the fire exits cannot be blocked by people or chairs as it is a fire hazard. Ms. Swenson suggested relocating the meeting to the Fire Department Community Room. Chair Prelli asked the audience if they had any objection to moving to the Fire Department Community Room. There were none.

**Chair Prelli made a motion to recess the meeting briefly in order to relocate to the Fire Department Community Room. Ms. Swenson seconded the motion. The motion was unanimously approved.**

At 7:57 pm Chair Prelli reconvened the meeting. Chair Prelli explained the conduct of the meeting per the Zoning Board's Rules of Procedure.

**Public Hearing - CASE: 2014-06 - Application submitted by Atty. John Cronin on behalf of Water Monkey Camp, LLC. The applicant is seeking a Variance to Article IV A of the New Durham Zoning Ordinance in order to allow recreational dwelling of the existing cottages at Cove Cottages, while it offers a series of one week water sport instructional programs to children between the ages of 11 and 17 on Merrymeeting Lake. The property in question is located at 298 Merrymeeting Road (Tax Map 119 Lot 11) and is owned by Russell Weldon.**

Chair Prelli opened the public hearing for case 2014-06 and asked the applicant if he felt there was any member of the Board who should not sit in on the case due to a conflict of interest. There was no issue with a conflict of interest. Atty. Cronin did question the 'conduct of the meeting' Chair Prelli read allowing abutters to have the last word. Atty. Cronin stated typically the applicant has the last word as it is their application. Atty. Cronin asked to see the Rules of Procedure document which Chair Prelli was reading from. Atty. Cronin read the document.

Atty. Cronin introduced the various professionals who worked on the project, as well as, the owner of the property, Mr. Weldon, and the owner of Water Monkey Camp, LLC, Evan Goldner. Atty. Cronin gave Board members and the audience a brief history of the project including an application before the Planning Board for a Site Plan Review (which was withdrawn without prejudice) and for a Special Exception which was heard and denied by the Board in August 2014 and the subsequent Motion for Rehearing which the Board also denied.

Atty. Cronin noted when former Code Enforcement Officer (CEO) Arthur Capello first gave his opinion that a Special Exception was in order based on the Land Use Suitability Map, his decision was never appealed, yet the Board determined in August that Mr. Capello's advice was incorrect. Atty. Cronin asked to introduce the records of the previous ZBA case (2014-02) and

the Planning Board application. Atty. Cronin stated it is his belief a variance is not required for the project at all.

Atty. Cronin introduced Atty. Arthur Hoover. Atty. Arthur Hoover stated he spoke with Code Enforcement Officer Jim Daley (Mr. Daley was Arthur Capello's immediate replacement) about the project. Atty. Hoover stated Mr. Daley's opinion was that neither a special exception nor a variance was necessary as there was not a significant enough change of use to warrant it. Atty. Hoover stated Mr. Daley's suggestion was that the applicant could proceed directly to the Planning Board for a site plan review. Atty. Hoover noted in his conversation with Mr. Daley he was presenting the project as he saw it and was going to come back to CEO Daley once Mr. Daley had a chance to review the file for himself. Atty. Hoover noted when he did come back to see Mr. Daley, Mr. Daley was no longer employed by the Town of New Durham. Atty. Hoover noted he has not yet had an opportunity to speak with the current CEO.

Atty. Cronin stated he had filed two applications one for each of the lots involved and requested the applications be heard together. Chair Prelli asked Board members if they had any objections to listening to both applications simultaneously. They did not.

**Public Hearing - CASE: 2014-07 - Application submitted by Atty. John Cronin on behalf of Water Monkey Camp, LLC. The applicant is seeking a Variance to Article IV A of the New Durham Zoning Ordinance in order to allow recreational dwelling of the existing cottages at Cove Cottages, while it offers a series of one week water sport instructional programs to children between the ages of 11 and 17 on Merrymeeting Lake. The property in question is located at 299 Merrymeeting Road (Tax Map 119 Lot 32) and is owned by Russell Weldon.**

Chair Prelli opened the public hearing for case 2014-07. Brad Jones of Jones & Beach Engineers stepped forward and presented the site plan of the property. Mr. Jones noted the Meetinghouse was moved onto the property and a new 2500 gallon/day septic system and leach field were installed on the property. Mr. Jones also noted the structures on the property are served by a community well. Atty. Cronin asked Mr. Jones to verify that there are no proposals to alter existing buildings or construct new buildings for the project. Mr. Jones agreed the Water Monkey Camp project is not proposing to alter or construct buildings.

Atty. Cronin submitted two binders to Chair Prelli for the record. Atty. Cronin also passed out several old photographs showing a snack bar on the water front property (lot 32). Mark Fougere of Fougere Planning & Development, Inc. stepped forward. Mr. Fougere noted he has been a Planner since 1987. Mr. Fougere noted the properties have been seasonal, recreational use since the 1940's and the Water Monkey Camp proposal is not a measurable difference or marked change over how the property is currently being used. Mr. Fougere noted the use of Merrymeeting Lake itself should not be part of the application as the Lake is under the jurisdiction of the State of New Hampshire. Atty. Cronin referred to RSA 674:19 which states "A zoning ordinance adopted under RSA 674:16 shall not apply to existing structures or to the existing use of any building. It shall apply to any alteration of a building for use for a purpose or in a manner which is substantially different from the use to which it was put before alteration."

Mark Sullivan, President of Merrymeeting Lake Association (MMLA), stepped forward and explained the function of the Lake Association. Mr. Sullivan stated the MMLA has an annual meeting at the end of June. Mr. Sullivan continued to state he was asked my members to put the

Water Monkey Camp proposal on the agenda. Mr. Sullivan stated the members present took a nonbinding vote as to whether members supported or did not support the project. Mr. Sullivan stated the vote was 100 in support of the project to 31 opposed to the project. Mr. Sullivan stated the vote in support was due largely to the fact that there would be restrictions placed on Water Monkey Camp that are not on the current Cove Cottages rentals. There was some concern from audience members that Mr. Sullivan was speaking as a resident in favor of the proposal and the hearing had not yet been open to public input. Mr. Sullivan stated he is not speaking as a resident in favor of or opposed to the project but simply informing the Board of the MMLA's vote.

Stephen Pernaw of Stephen G. Pernaw & Company, Inc. stepped forward and stated he conducted a traffic and safety study for the proposal. Mr. Pernaw explained how the study was done and noted an automatic traffic recorder was used. Mr. Pernaw stated the highest vehicle count was on the weekend, midday. Mr. Pernaw noted Water Monkey Camp would not be operating on the weekend. Mr. Pernaw showed the Board and audience members various pictures and charts. Mr. Pernaw noted there is a good site distance at the existing driveway and also a good site distance for pedestrian crossing at the existing crosswalk. Mr. Pernaw noted the current crosswalk location is the best location for pedestrian crossing. Mr. Pernaw stated it is his professional opinion that the use of Cove Cottages by Water Monkey Camp will not threaten public safety or welfare.

Atty. Richardson questioned how the site handles the drop offs. Mr. Pernaw stated he looked at quantified daily totals and not at what times drop offs would take place. Mr. Pernaw stated from a traffic operation standpoint the site could have 71 vehicles come and go in a 1 hour period. Mr. Jones noted the site could comfortably park 50 cars at a time. Mr. Weldon noted Saturdays are pickups and Sundays are drop offs. The time of drop offs/pickups is 10 am - 3 pm.

Mr. Weldon stated the properties were sold as commercial properties and he bought them as an investment. Mr. Weldon gave Board members and the audience a brief history of the properties noting that when George Taylor owned the properties a snack bar was built on the smaller lot. Mr. Weldon noted the snack bar building was also at varying points a sandwich store, a convenience store, and a club house. Mr. Weldon stated when he originally purchased the property the cottages were rented to as many as 60 different renters he reduced the renters to 10. Now he is looking to rent the properties to one renter for the entire summer. Mr. Weldon noted there are currently no restrictions on the rentals at Cove Cottages. Mr. Weldon stated with Water Monkey Camp there will be a curfew from 10 pm - 7 am, no alcohol, tobacco or fireworks, and a limit of two boats which will not be in use on Saturdays and Sundays. Mr. Weldon noted this past summer there was one weekend where there were 90 people and four boats at the Cove Cottages. Mr. Weldon also noted the Town cannot put restrictions on the number of boats in the water but he can. Mr. Weldon stated he will take the Camp Birch Hill boats off the water on the weekends as well. Ms. Swenson asked Mr. Weldon how he could restrict the Camp Birch Hill boats. Mr. Weldon stated it would be a condition of leasing space at his marina. Ms. Swenson noted Camp Birch Hill could use the public boat launch. Mr. Weldon stated they could but that wasn't very practical. Mr. Weldon also noted wake board boats are not something specific to Water Monkey Camp and he currently has 60 wakeboard boats stored at his marina.

Mr. Shagoury asked, in total, how many people would be at Water Monkey Camp. Mr. Weldon stated 30. Twenty paid students, 1 non paid student (a weekly scholarship will be offered to the New Durham Recreation Department), and 9 staffers.

Evan Goldner, owner of Water Monkey Camp stepped forward and explained Water Monkey Camp currently is in operation on Merrymeeting Lake and has been since 2012. Mr. Goldner stated currently Water Monkey Camp is operating out of Camp Birch Hill and the staff and students take a van back and forth to Merrymeeting Lake. Mr. Goldner stated his staff are either First Aid certified or First Responder certified. Mr. Goldner also noted he currently has a license for the camp from the State Department of Environmental Services for 'recreation and vacation purposes' and his boats are driven by commercially licensed boaters.

Mark McKeon of M. H. McKeon Appraisal Service stepped forward and stated he has been an appraiser since 1988. Mr. McKeon stated a typical purchaser would find Water Monkey Camp an enhancement over the current way Cove Cottages are rented out. Atty. Richardson asked if the testimony was an appraisal. Mr. McKeon stated it is not an appraisal but his professional opinion as an appraiser.

Chair Prelli asked Atty. Cronin to explain how the application meets the five criteria necessary in granting a variance. Atty. Cronin noted he didn't believe a variance was necessary in the first place and asked the Board to make a determination. Chair Prelli asked Atty. Cronin to proceed with the variance criteria.

Atty. Cronin stated granting of the variance would not be contrary to the spirit of the ordinance or the public interest as the properties have been used for seasonal recreation since the 1940's. Atty. Cronin stated the cottages have been rented to various users, without restrictions, since the 1940's. Water Monkey Camp, like all the other renters, will have access to the Lake via Lot 32. Atty. Cronin noted there are no structural changes to the buildings nor is there an alteration of the essential character of the neighborhood. Atty. Cronin noted due to the restrictions placed upon the property for Water Monkey Camp safety and welfare are actually enhanced.

Atty. Cronin noted the Board and audience just heard from professional appraiser Mark McKeon that the variance will not diminish surrounding property values. Atty. Cronin stated the hardship criterion has also been satisfied as the use of the property is a reasonable one and there is not a substantial difference between the way the property is currently being used and Water Monkey Camp. Atty. Cronin noted the prospect of one renter with restrictions is an improvement over the current scenario of multiple renters with no restrictions.

Chair Prelli asked if there were any Town Officials present who would like to speak on the application. There were none.

Chair Prelli asked if there were any abutters present who would like to speak on the application. Tom Hutchinson stated he is a direct abutter to the property and while he was very concerned at first after listening to the proposal and the restrictions he is in full support of the proposal.

Frank & Brenda Conery (direct abutters) stated they are in favor of the proposal. Mr. Conery stated he agrees with Mr. Hutchinson and believes 100% Water Monkey Camp is the right decision for the area. Mrs. Conery agreed and stated she believes it will be an improvement.

Abutter Jim Jagielski stated he did have a lot of concern about the proposal at first but he is now in full support of the project. Mr. Jagielski stated he believes the restrictions on the property will be a big improvement over the current situation where there are no restrictions.

Chair Prelli asked if there were any more abutters to the project who wished to speak. There were none.

Chair Prelli asked if there were any members of the public who wished to speak. Peter Bodwell stated he is not questioning that Mr. Goldner is doing a good job but is concerned for what's next, and that the Lake will become commercialized.

Jim Fenske stated he does not believe the Town's jurisdiction ends at the waterline but ends at the Town's borders. Mr. Fenske also questioned the safety of pedestrian crossing as there are no sidewalks. Mr. Fenske also stated drop offs and pickups will be occurring on the weekend which is the busiest time at the boat ramp.

John Goyette stated he is opposed to the project and stated the wake caused by the boats used by Water Monkey Camp are damaging to the shoreline and can be dangerous to young children on the beach and to baby loons. Mr. Goyette also stated that just because now the proposal is for 21 children and 9 staff what is preventing that number from increasing. Mr. Goyette also stated he did not want to see Merrymeeting Lake exploited for personal profit.

Chair Prelli noted the Board received about 8 letters about the project that are in the file.

Jan Bell stated she wrote one of those letters. Ms. Bell stated she reviewed the zoning ordinance and four words kept coming up: 'prevent', 'protect', 'preserve', and 'promote'. Ms. Bell stated she does not believe Water Monkey Camp does any of these things and is opposed to its approval.

Bob Snow stated he was very disappointed in the Merrymeeting Lake Association vote. Mr. Snow also stated he thought the Board should know Mr. Weldon is a former President of the Association and current Vice President. Mr. Snow also stated some households were allowed two votes on the issue.

Steve Eldridge stated Water Monkey Camp currently exists on the Lake. Mr. Eldridge also stated Lot 32 has been commercial since the snack bar was built.

Mr. Booth stated it is incorrect to state there have been no changes to the property in the past 60 years as there have been changes, most recently the move of the Meetinghouse onto the property and a new septic system. Mr. Booth also stated 299 Merrymeeting Road (lot 32) may have been commercial but it is currently shown as residential on the tax card and has never been contested by Mr. Weldon. Mr. Booth also questioned how many of the kids at the camp will be bringing their own cars. Mr. Booth stated he is opposed to the proposal and also noted whenever a commercial activity is introduced the residential property value goes down.

Jack Ferguson questioned how the Town could stop expansion and suggested if the variance is approved the restrictions need to be built into the approval. Mrs. Ferguson stated she is concerned with the age difference of the campers. Mrs. Ferguson stated she doesn't think 11 year olds have any business camping with 17 year olds.

Mark Sullivan noted Cove Cottages are already commercial and already being rented for commercial purposes.

Richard Duffy stated the Water Monkey Camp boats are already on the Lake. Mr. Duffy stated the only thing that is changing is where the campers eat and sleep. Mr. Duffy also stated the big wakes are not being generated by the Water Monkey boats but by deck boats and cuddy cruisers.

Mr. Fenske asked about food service at the camp and if the State is involved. Mr. Goldner stated the State inspects his camp twice each summer.

Atty. Cronin stated in response to questions or concerns brought up during the meeting he wanted to note the location of the well and septic system are depicted on the plan submitted by Mr. Jones, students are not allowed to bring their own vehicles to camp and that will be written into the restrictions, and there are no jet skis being proposed for the camp.

Mr. Weldon stated in response to comments made by Mr. Snow, he is proud to have served as the Merrymeeting Lake Association President and to continue to serve as Vice-President. Mr. Weldon also noted it was Mr. Snow who demanded the vote in the first place but is now finding flaws with it when the outcome was not as he expected. Mr. Weldon also stated he looks at the property (lot 11 and 32) as one property. He bought it as one property and it has always been owned together. Mr. Weldon also stated the property is commercial and was bought as commercial. Mr. Weldon noted the only alteration made to the Meetinghouse was the addition of a service kitchen and a handicap bathroom.

Mr. Booth stated although he is not a member of the Merrymeeting Lake Association he does live on the Lake and he was not noticed about the meeting.

Mr. Duffy stated notices about the meeting were on the Merrymeeting Lake Association webpage, their Facebook page, and every known address was sent a notification. Mr. Duffy stated the fact that Mr. Booth doesn't belong to the MMLA is probably why they didn't have his address but he does not see how that is the fault of the MMLA.

Mr. Neyland asked if a variance is granted does it terminate with the transfer of property. Chair Prelli stated it does not, variances go with the land.

Chair Prelli asked if there was any other public comment. There was none. Chair Prelli closed the public input portion of the meeting.

Chair Prelli stated the Board needs to decide whether a variance is required and if the Board deems it is they need to review the variance criteria to see if the application has met them.

Due to the lateness of the hour, Chair Prelli suggested the Board recess the hearing and deliberate at the recessed hearing. Board members agreed.

**Chair Prelli made a motion to recess the public hearings of CASE: 2014-06 - Application submitted by Atty. John Cronin on behalf of Water Monkey Camp, LLC. The applicant is seeking a Variance to Article IV A of the New Durham Zoning Ordinance in order to allow recreational dwelling of the existing cottages at Cove Cottages, while it offers a series of one week water sport instructional programs to children between the ages of 11 and 17 on Merrymeeting Lake. The property in question is located at 298 Merrymeeting Road (Tax Map 119 Lot 11) and is owned by Russell Weldon and CASE: 2014-07 - Application submitted by Atty. John Cronin on behalf of Water Monkey Camp, LLC. The applicant is**

**seeking a Variance to Article IV A of the New Durham Zoning Ordinance in order to allow recreational dwelling of the existing cottages at Cove Cottages, while it offers a series of one week water sport instructional programs to children between the ages of 11 and 17 on Merrymeeting Lake. The property in question is located at 299 Merrymeeting Road (Tax Map 119 Lot 32) and is owned by Russell Weldon until 9 December 2014 at 7 pm at the Fire Department Community Room. Ms. Anderson seconded the motion. The motion was unanimously approved.**

**At 10:20 pm Chair Prelli made a motion to adjourn. Ms. Anderson seconded the motion. The motion was unanimously approved.**

Respectfully submitted,

Amy Smith  
Recording Secretary