

**MINUTES
NEW DURHAM ZONING BOARD OF ADJUSTMENT
13 JANUARY 2015**

Chair Prelli called the meeting to order at 7:07 pm.

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

Excused: Dave Shagoury

Others Present: Videographer Corky Mork, Town Atty. Justin Richardson, Atty. Art Hoover, Elizabeth Cantrall, Greg Anthes, Evan Goldner, Bob Carleo Sr., Donna Vello, John Goyette, Dan & Jan Bell, Dennis & Carol Neyland, Chris & Kathy Cairns, Paul & Susan Raslavicus, D. Munroe, Terry Chabot.

Chair Prelli designated Ms. Richard to sit in as a voting member. Chair Prelli informed the audience Mr. Shagoury is ill and unable to attend the meeting. Chair Prelli noted regular Board member Cecil Williams is present and the meeting could continue with a full Board or they could continue without Mr. Williams and have a 4 member Board. Chair Prelli noted Mr. Williams had recused himself from previous meetings regarding Water Monkey Camp but not because he has a conflict of interest but because he had missed one meeting. Chair Prelli asked if anyone had any objections to Mr. Williams sitting in on the case. Audience member Donna Vello asked if Mr. Williams is familiar with the application. Mr. Williams stated he is and continued to state he missed only one meeting and has attended all others just not as a voting member. There was no objection to Mr. Williams sitting as a Board member.

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.

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 hearings regarding Case 2014-06 & 2014-07 and noted the cases would be handled together as was decided at the 13 November 2014 meeting. Chair Prelli also reminded Board members and the public that the public input portion of the hearing was closed and tonight's meeting was for deliberation among Board members.

Chair Prelli noted the first thing Board members need to decide is whether a variance is required or are the current and proposed uses the same from a land use perspective.

Chair Prelli made a motion that the use proposed by the applicant is the same as the current use on the site. Ms. Anderson seconded the motion.

Chair Prelli clarified an affirmative vote on the motion would mean a variance is not required for the proposal.

Ms. Anderson stated in her opinion the proposed use is not a significant change from the current use. Ms. Anderson noted the cottages are basically used in the same way but instead of a family using the cottages it is teens supervised by adults. Ms. Anderson continued to state instead of the property owner, Mr. Weldon, renting the cottages to various different entities he will be renting the cottages to one entity. Ms. Swenson stated the cottages themselves may be being used in the same way but the nature of the enterprise is different. Ms. Swenson noted when families or individuals rent the cottages there is no requirement for food inspections, trained personnel, or commercially licensed boats. Ms. Anderson stated she sees the point Ms. Swenson is making but the ZBA is a land use board. Ms. Anderson continued to state the way the land and buildings are being used is fundamentally the same, they are just being managed differently.

Ms. Richards stated she believes the proposal is different from the current use. Mr. Williams stated he agreed with Ms. Anderson that the proposed use is not a significant change from the current use. Mr. Williams noted most of the people in the room who are opposed to the proposal live on the Lake. Mr. Williams stated he lives on the Lake. Mr. Williams also stated there will be shoreland deterioration from boats no matter who is operating the boat. Mr. Williams stated there is a buffer zone to help minimize shoreland deterioration but there is no enforcement and very few boaters adhere to it. Mr. Williams also stated he doesn't think it is fair to deny Water Monkey Camp because of it.

Board members reviewed the 'agreed upon conditions' proposed by the applicant contained in the "Variance Attachment" section of the variance applications filed 22 October 2014. Ms. Anderson questioned if the ZBA could attach any conditions to the proposal if they decided a variance wasn't necessary. Atty. Richardson stated the Board can make a finding on what the use is and define it.

Ms. Richard stated currently Cove Cottages has a capacity of 44 and the proposal with Water Monkey Camp is to reduce it to 30. Ms. Richard asked if this restriction is placed on the property and Mr. Weldon changes his mind in the future, does he need to go back to the ZBA for approval. Chair Prelli stated he would.

Ms. Anderson asked for clarification on the application itself. Ms. Anderson questioned if the applicant is Water Monkey Camp but the owner is Russ Weldon is the application acceptable to act on. Atty. Richardson stated the owner of the property, Mr. Weldon, authorized Water Monkey Camp to file the application.

Mr. Williams stated the proposal allows control over the property that the Town does not currently have. Mr. Williams noted if the ZBA denies the application Mr. Weldon can continue

to rent his property without the controls agreed upon by the applicant. Mr. Williams noted if Water Monkey Camp changes direction they would need to come back before the Board.

Atty. Richardson clarified that the motion on the table is whether a variance is required for the proposal.

Ms. Swenson again stated she believes the proposed use is different than the current use and noted that currently the cottages are rented intermittently by families where Water Monkey Camp would be a continuous seasonal use and Water Monkey Camp has a series of planned activities and families come and go as they please.

Chair Prelli made a motion to amend the motion by adding: ‘based upon the “agreed upon conditions” specified in the application’s ‘Variance Attachment’ (filed 22 October 2014).’ Ms. Richard seconded the motion. The motion was unanimously approved.

Ms. Smith read the amended motion.

Chair Prelli made a motion the use proposed by the applicant is the same as the current use on the site based upon the “agreed upon conditions” specified in the application’s ‘Variance Attachment’ (filed 22 October 2014). Ms. Richard seconded the motion. The motion failed with two affirmative votes (Anderson, Williams) and three negative votes (Richard, Prelli, Swenson).

Chair Prelli read Article IV Section A of the Zoning Ordinance, ‘Residential- Recreational- Agricultural Permitted Uses’.

Chair Prelli made a motion that a variance is required for the proposed use of the property as the use is not listed as permitted under Article IV Section A of the Zoning Ordinance. Ms. Swenson seconded the motion. The motion was unanimously approved.

Chair Prelli made a motion the Board approve the applications submitted by Atty. John Cronin on behalf of Water Monkey Camp, LLC for 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 & 299 Merrymeeting Road (Tax Map 119 Lots 11 & 32). Ms. Richard seconded the motion.

Board members reviewed the 5 criteria necessary in granting a variance and the application material submitted by the applicant stating how they believe they have met the 5 criteria. ‘The grant of the variance would not be contrary to the public interest’ and ‘The spirit of the ordinance is observed’ were discussed together’. Ms. Anderson stated she believes the applicant satisfactorily addressed health and safety concerns. Atty. Richardson noted the applicant does not need to just address health and safety for this prong of the variance criteria but also show the proposal will not ‘frustrate’ the ordinance. Ms. Swenson stated she did believe the proposal is contrary to the public interest. Chair Prelli noted the current use of the property is not a residential use. Chair Prelli continued to state he doesn’t believe what the applicant is proposing

would change or contradict the Ordinance any more than how the property is currently being used. Mr. Williams agreed.

The Board next discussed ‘The values of surrounding properties are not diminished’. Chair Prelli noted at the Public Hearing held on 13 November 2014 the applicant had the opinion of a professional appraiser who stated surrounding property values would not be diminished and also from a member of the audience who stated he was a realtor. The audience member stated in his opinion when commercial activity is introduced property values tend to decrease. Ms. Richard noted the property is already being used as a rental property and she does not believe the proposal would cause diminishment to surrounding properties. Ms. Anderson noted there were several direct abutters who attended the public hearing held on 13 November 2014 and they all spoke in favor of the proposal. It was noted none of the direct abutters spoke in opposition to the proposal. Ms. Anderson stated the direct abutters would be the people who would be most affected by the proposal and they would not be speaking in favor of the project if they believed their property values would be diminished. Chair Prelli and Mr. Williams agreed.

The Board next discussed ‘literal enforcement of the provisions of the ordinance would result in an unnecessary hardship’. Per RSA 674:33 ‘unnecessary hardship’ means “owing to special conditions of the property that distinguish it from other properties in the area: (i) No fair and substantial relationship exists between the general public purposes of the ordinance provision to the property; and (ii) the proposed use is a reasonable one”. Ms. Swenson stated she does not believe there is a hardship as the Board is not stating Mr. Weldon cannot continue to rent Cove Cottages as he has done in the past. Ms. Swenson noted it may be more convenient for Mr. Weldon to rent to only one renter instead of many different renters but she does not believe it is a hardship.

Chair Prelli stated he does not believe what Mr. Weldon is proposing is unreasonable and does not believe the Town gains anything by denying the variance. Mr. Williams & Ms. Anderson agreed. Mr. Williams stated he believes the activities will improve the property and noted the buildings were becoming dilapidated and now they are being repaired. Ms. Swenson stated she wouldn’t say the buildings were dilapidated but rustic. Ms. Swenson also stated she believes the proposal will change the landscape of the area. Ms. Swenson noted there is a significant increase in population in New Durham in the Summer due to people wanting to enjoy the tranquility of the Lake and a quiet getaway. Ms. Swenson noted she believes this would be adversely impacted by a commercial enterprise and could cause home owners to sell. Chair Prelli stated he doubted a change in one property would impact people that much that it would cause them to move away. Chair Prelli also noted there already is a commercial enterprise on the property. Ms. Anderson noted the proximity of the public boat ramp can cause the area to be very busy at any time.

The Board next reviewed ‘substantial justice is done’. Chair Prelli stated the proposal is a carefully thought out plan and doesn’t see that anything is gained by a denial. Chair Prelli stated he views the proposal as an improvement as it allows the Town controls over the enterprise that do not already exist. Mr. Williams agreed and stated the properties are already being used by Mr. Weldon’s renters without any controls and under Water Monkey Camp there will be controls that better the area.

Chair Prelli stated he believes the applicant has made their case and in fact believes the proposal gives the Town the opportunity to ensure conditions are in place to reduce potential problems. Chair Prelli stated he does not believe granting the variance would 'open the doors' to commercialization of the Lake as each application before the Board is taken on a case by case basis. Chair Prelli noted in this particular case there already is commercial activity on the property. Ms. Anderson stated she believes the project, with the conditions imposed, will be a betterment of the area. Ms. Anderson continued to state she believes all five criteria necessary in granting a variance have been met. Mr. Williams, Chair Prelli, and Ms. Richard agreed. Ms. Swenson stated she does not believe the 'hardship' criterion has been met as Mr. Weldon could continue to rent his cottages and Water Monkey Camp could continue to operate out of Birch Hill Camp.

Chair Prelli made a motion to amend the motion to add "Based on the following conditions: 1) Water Monkey Camp, LLC shall have a maximum capacity of 30 people. 2) Water Monkey Camp, LLC shall have a curfew from 10 pm to 7 am. 3) Water Monkey Camp, LLC shall strictly prohibit use of alcohol, tobacco or other controlled substances. 4) Drop-offs on Sundays and pick-ups on Saturdays shall be staggered over a 5 hour period (10 am - 3 pm) to reduce congestion. 5) Water Monkey Camp, LLC shall have a limit of two powerboats. Camp boats shall be commercially certified and inspected by the State of New Hampshire each year. Power boats shall carry all required safety equipment and shall be operated by a commercially licensed driver. 6) Water Monkey Camp, LLC shall limit camp ski/wakeboard instruction to weekdays only from 8 am to 12 pm and 1:30 pm to 5:30 pm. No weekend classes. 7) Water Monkey Camp, LLC shall supervise campers on a 24 hours/7 day per week basis by trained staff members. 8) Water Monkey Camp, LLC staff members shall be first aid certified or higher as well as lifeguard certified. 9) During rainy days campers shall be engaged in structured programs or taken off-site for alternative activities. 10) Student's vehicles are not allowed. 11) Jet skis are not allowed. 12) Town Beach use is subject to approval by the New Durham Board of Selectmen." Mr. Williams seconded the motion. The motion was unanimously approved.

Ms. Smith read the motion as amended.

Chair Prelli made a motion the Board approve the applications submitted by Atty. John Cronin on behalf of Water Monkey Camp, LLC for 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 & 299 Merrymeeting Road (Tax Map 119 Lots 11 & 32). Based on the following conditions: 1) Water Monkey Camp, LLC shall have a maximum capacity of 30 people. 2) Water Monkey Camp, LLC shall have a curfew from 10 pm to 7 am. 3) Water Monkey Camp, LLC shall strictly prohibit use of alcohol, tobacco or other controlled substances. 4) Drop-offs on Sundays and pick-ups on Saturdays shall be staggered over a 5 hour period (10 am - 3 pm) to reduce congestion. 5) Water Monkey Camp, LLC shall have a limit of two powerboats. Camp boats shall be commercially certified and inspected by the State of New Hampshire each year. Power boats shall carry all required safety equipment and shall be operated by a commercially licensed driver. 6) Water Monkey Camp, LLC

shall limit camp ski/wakeboard instruction to weekdays only from 8 am to 12 pm and 1:30 pm to 5:30 pm. No weekend classes. 7) Water Monkey Camp, LLC shall supervise campers on a 24 hours/7 day per week basis by trained staff members. 8) Water Monkey Camp, LLC staff members shall be first aid certified or higher as well as lifeguard certified. 9) During rainy days campers shall be engaged in structured programs or taken off-site for alternative activities. 10) Student's vehicles are not allowed. 11) Jet skis are not allowed. 12) Town Beach use is subject to approval by the New Durham Board of Selectmen. Mr. Williams seconded the motion. The motion was approved with four affirmative votes (Anderson, Prelli, Richard, Williams) and one negative vote (Swenson).

Audience member John Goyette questioned who ensures the conditions are adhered to. Chair Prelli stated the Town's Code Enforcement Officer.

Review of Minutes

Board members reviewed the minutes of 13 November 2014.

Ms. Swenson made a motion to approve the minutes of 13 November 2014 as printed. Mr. Williams seconded the motion. The motion was unanimously approved.

Review of Mail

Board members reviewed a letter regarding a course on Planning and Zoning Laws held at the Concord Technical Institute. Chair Prelli asked if the Town would cover the cost of the course. Ms. Smith stated the Board has money in the budget for Training/Workshops but she is not sure how much. Ms. Smith stated she believes the money in the budget should cover the cost of 2 or 3 members but would double check. Ms. Anderson stated she may be interested in attending but needs to check her schedule first.

At 9:55 pm Ms. Swenson made a motion to adjourn. Mr. Williams seconded the motion. The motion was unanimously approved.

Respectfully submitted,

Amy Smith
Recording Secretary