

**Town of Seven Devils**  
**Board of Adjustment Meeting**  
**Tuesday, January 23, 2024**  
**5:30pm**

**AGENDA**

- 1) Call to Order – Eddie Barnes, Zoning Administrator
- 2) Oath – New/Reappointed Members
- 3) Roll Call/Quorum – *4 minimum*
- 4) Election of Chairperson
- 5) Election of Vice Chairperson
- 6) Adopt Agenda *Motion*
- 7) Old Business
  - A. Approve Minutes – Board of Adjustment – July 25, 2023 *Motion*
- 8) New Business
  - A. Application for Appeal
    - (i) Open Evidentiary Hearing *Motion*
    - (ii) Opening Statement – Chairman
    - (iii) Determination of Witnesses
      - a. Parties with Standing
      - b. Expert Witnesses
      - c. General Witnesses
    - (iv) Witness Oath
    - (v) Disclosures
    - (vi) Presentations of Violation – Eddie Barnes, Zoning Administrator
    - (vii) Presentation of Appeal – Daniel Middleton, Applicant
    - (viii) Witness Statements for Application
    - (ix) Board of Adjustment Deliberations
    - (x) Decision *Motion*
    - (xi) Close Evidentiary Hearing *Motion*
- 9) Adjourn

Meeting Live Stream  
[www.SevenDevilsNC.com](http://www.SevenDevilsNC.com)  
Calendar -> YouTube



AGENDA ITEM 2)

## OATH OF OFFICE

I, (state your name), do solemnly swear that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina, not inconsistent therewith, and that I will faithfully discharge the duties of my office as a **Member of the Board of Adjustment of the Town of Seven Devils**, so help me God.

On this 23<sup>rd</sup> day of January 2024.

\_\_\_\_\_  
Barbara Hurlbrink

\_\_\_\_\_  
Quinn Morris

\_\_\_\_\_  
Mark Cuppernull

\_\_\_\_\_  
Dave Matney

\_\_\_\_\_  
James West

\_\_\_\_\_  
Administered by Hillary Gropp  
Town Clerk

Town of Seven Devils  
Board of Adjustment Meeting  
Tuesday July 25, 2023  
5:30pm

**AGENDA ITEM** 7) A.

The Seven Devils Board of Adjustment met on Tuesday, July 25, 2023, at Town Hall.

Attendance included Members - Bob Bridges, Faye Brock, Bobbye Hurlbrink, Stuart Ryan, and Richard Blonshine – Alternate & Quinn Morris – Alternate.

Member John Wells IV was absent.

Staff in attendance included Zoning Administrator Eddie Barnes, Town Attorney Rob Angle; Town Clerk Hillary Gropp recorded the minutes.

Town Manager Johnathan Harris represented the Town of Seven Devils, as the Applicant.

**CALL TO ORDER**

Chairperson Bridges called the meeting to order at 5:30pm.

**ROLL CALL**

Richard Blonshine, Faye Brock, Bob Bridges, Bobbye Hurlbrink and Stuart Ryan stated their name and announced their presence for Roll Call. A quorum was met.

Quinn Morris- Alternate viewed the proceedings from a front row seat in the audience, should it be needed to call him to participate.

**ADOPT AGENDA**

Member Brock made a motion to adopt the agenda; Member Ryan seconded the motion. All members agreed.

**OLD BUSINESS**

**A. Approve minutes – Board of Adjustment meeting – June 27, 2023**

Member Blonshine made a motion to approve the minutes; Member Brock seconded the motion. All members agreed.

## NEW BUSINESS

### A. Application for Special Use Permit – Town of Seven Devils

Johnathan Harris, Town Manager/Applicant

AGENDA ITEM 5)A.

#### Figure 14.1—Application for Special Use Permit

##### Application for a Special Use Permit for Property in the Town of Seven Devils

Town of Seven Devils  
157 Seven Devils Road  
Seven Devils, NC 28604  
Phone: (828) 963-5343

##### To the Board of Adjustment for the Town of Seven Devils:

I hereby petition the Board of Adjustment for a Special Use Permit as authorized by Article 14 of the Unified Development Ordinance for the Town of Seven Devils. I understand that the requirements set forth in the Town of Seven Devils Unified Development Ordinance will apply to all plans submitted.

##### Description of Property

Physical Location of Property (including street address): 157 Seven Devils Rd,  
Seven Devils, NC 28604

Size of Property 7.34 acres County Watauga PIN # 1878-33-8610-000

Current Zoning District GB

General Use of Property: Government office,

##### Applicant Information

Name: Town of Seven Devils

Title:

Address: 157 Seven Devils Rd  
Seven Devils, NC 28604

Phone # (s): 828-963-5343

E-mail: townmanager@sevendevils.net

##### Property Owner

Name: Town of Seven Devils

Title:

Address: 157 Seven Devils Rd  
Seven Devils, NC 28604

Phone # (s): 828-963-5343

E-mail: townmanager@sevendevils.net

In order for this application to be complete, the applicant must submit the following:

- Two (2) copies of this completed form, typed, or filled out in black ink.
  - Eight (8) copies of current zoning map with location of property indicated.
  - A surveyed plat of the property in question.
  - Statements from the applicant describing how the proposed Special Use would meet the criteria for approval of such a permit as described in Article 14 of the Unified Development Ordinance.
  - Personal or Certified Check in the amount of \$500 for the application fee. Application fee shall be paid to the Town of Seven Devils, NC for each application for a Special Use Permit in order to cover the necessary administrative costs.
- I certify that all of the information presented by me in this application is accurate to the best of my knowledge.

Johnathan Harris  
Signature of Applicant

06-26-2023  
Date

Amount Paid: \_\_\_\_\_ Received by: Eddie Barnes Date 6-26-23

## **Open Evidentiary Hearing**

Member Blonshine made a motion to open the evidentiary hearing; Member Brock seconded the motion. All members agreed.

## **Opening Statement**

**Chair Bridges read the following opening statement:**

*"This hearing is a quasi-judicial evidentiary hearing. That means it is like a court hearing. State law sets specific procedures and rules concerning how this board must make its decision. These rules are different from other types of land use decisions like rezoning cases."*

*"The board's discretion is limited. The board must base its decision upon competent, relevant, and substantial evidence in the record. A quasi-judicial decision is not a popularity contest. It is a decision constrained by the standards in the ordinance and based on the facts presented. If you will be speaking as a witness, please focus on the facts and standards, not personal preference, or opinion."*

*"Participation is limited. This meeting is open to the public. Everyone is welcome to watch. Parties with standing have rights to participate fully. Parties may present evidence, call witnesses, and make legal arguments. Parties are limited to the applicant, the local government, and individuals who can show they will suffer special damages. Other individuals may serve as witnesses when called by the board. General witness testimony is limited to facts, not opinions. For certain topics, this board needs to hear opinion testimony from expert witnesses. These topics include projections about impacts on property values and projections about impacts of increased traffic. Individuals providing expert opinion must be qualified as experts and provide the factual evidence upon which they base their expert opinion."*

*"Witnesses must swear or affirm their testimony."*

### **Determination of Witnesses**

- **Parties with Standing**

Johnathan Harris, Town Manager

Eddie Barnes, Zoning Administrator

- **Expert Witnesses – None**

- **General Witnesses – None**

Chair Bridges asked Rob Angle, Town Attorney, to take the Witness Oath, as he would be asked questions during the proceedings.

## **Witness Oath**

Town Clerk Gropp administered the Witness Oath to Johnathan Harris, Eddie Barnes & Rob Angle.

## **Disclosures**

**Chair Bridges stated the following:**

*"The parties to this case are entitled to an impartial board. A board member may not participate in this hearing if she or he has a fixed opinion about the matter, a financial interest in the outcome of the matter, or a close relationship with an affected person. Does any board member have any partiality to disclose and recusal to offer?"*

**No board member replied.**

### **Ex Parte Communication**

**Chair Bridges stated the following:** *"The parties to this case have rights for any ex parte communication to be disclosed. Ex parte communication is any communication about the case outside of the hearing. That may include site visits as well as conversations with parties, staff, or the general public. Does any board member have any site visits to disclose?"*

**No board member replied.**

**Chair Bridges asked the following:** *"Does any board member have any conversations or other communications to disclose?"*

**No board member replied.**

**Chair Bridges asked the following specific question to the Board of Adjustment members:**

*"Does anyone on the Board of Adjustment also serve on the Town's Planning Board with participation concerning policy for a Special Use Permit?"*

**Members Blonshine and Ryan disclosed they are Planning Board members.**

**Chair Bridges asked,** *"Can they be impartial for tonight's Board of Adjustment proceedings?"*

**Members Blonshine and Ryan replied, "yes."**

**Chair Bridges asked the following specific question to the Board of Adjustment members:**

*"Does anyone on the Board of Adjustment also serve on the Town's TDA (Tourism Development Authority)?"*

**Member Blonshine disclosed he is on the TDA and voted for funding of the Town's events.**

**Chair Bridges asked,** *"Can he be impartial for tonight's Board of Adjustment proceedings?"*

**Member Blonshine replied, "yes."**

**Chair Bridges asked the following specific question to the Board of Adjustment members:**

*"Does anyone on the Board of Adjustment also serve on the Town's Parks & Recreation Committee?"*

**Member Brock & Chair Bridges disclosed they are on the Parks & Recreation Committee.**

**Chair Bridges asked,** *"Can we be impartial for tonight's Board of Adjustment proceedings?"*

**Member Brock & Chair Bridges replied, "yes."**

**Chair Bridges asked the following:** *"Based on the disclosures we've heard from the board concerning partiality and ex parte communications, does any member of the board or any party to this matter have an objection to a board member's participation in this hearing?"*

**No board member, nor party with standing replied.**

### **Presentations of Findings of Fact – Eddie Barnes, Zoning Administrator**

The Special Use Permit application was filed on June 26, 2023, by the Town of Seven Devils, with Town Manager Johnathan Harris as the Applicant. The request is to allow for an Open Air Market in the Town's General Business district (GB), most specifically for a farmers' market to be held in August 2023 at 157 Seven Devils Road. The Town's UDO does not define Open Air Market, but as Zoning Administrator, a farmer's market is acceptable. It will be temporary, seasonal and for occasional use and in the spirit of the General Business zoning of the surrounding area, which is for commercial purposes and retail sales.

Notices in accordance with the UDO and NCGS 160D were mailed to all property owners as “parties with standing” as defined by the UDO as those within 100 feet of the project.

Nine (9) notices were mailed via 1<sup>st</sup> class mail on July 10, 2023, with sign posted on the property the same day. To date, there has been no reply from any of the “parties with standing.”

### **Presentation of Application – Johnathan Harris, Town Manager**

Town Manager Harris provided the following details:

1. The purpose of applying for a Special Use Permit is for a farmer’s market on Friday, August 18, 2023, from 3:00pm to 6:00pm.
2. There are temporary toilets for the citizens & vendors.
3. No alcohol is allowed.
4. This event is sponsored and funded by the TDA of the Town of Seven Devils.
5. It is understood that the Special Use Permit stays valid in perpetuity as long as the event is held annually, otherwise it will expire.
6. A Special Use Permit is required for Open Air Markets, according to the Town’s UDO. Other types of uses the Town have currently planned include food trucks, vendors, and outdoor concerts.
7. These events will occur in the General Business zoning district of the Town of Seven Devils.

Chairperson Bridges asked for questions or discussion from the Board of Adjustment members, as deliberations will conclude with one of three decisions: Approve, Approve with Conditions, or Deny.

Chair Bridges asked, “Why the hours of 3:00pm to 6:00pm?”

Town Manager Harris replied that the event and hours are planned by Jewel McKinney, Parks & Recreation Director of the Town of Seven Devils.

Chair Bridges inquired with Town Manager Harris how come Jewel McKinney, Parks & Recreation Director is not making the presentation tonight.

Town Manager Harris replied, McKinney does not like public speaking, so he is making the presentation.

Chair Bridges then asked each of the staff members who were administered the witness oath the following questions, for clarification of representation for this evidentiary hearing.

Who are you representing at tonight’s meeting?

- Eddie Barnes replied as both for the Town of Seven Devils and Board of Adjustment as the Zoning Administrator.
- Johnathan Harris replied as the Applicant for the Town of Seven Devils.
- Town Attorney Rob Angle replied as both for the Town of Seven Devils and Board of Adjustment. Chair Bridges inquired does this presents a conflict of interest, procedurally? Chair Bridges continued, that should Town Attorney Angle have to choose representation, what is his response? Town Attorney Angle stated that his duty is to the Town of Seven Devils over the Board of Adjustment.

Member Ryan asked, “Who is requiring this Special Use Permit and why?” “Is it the county?”

Town Manager Harris replied, no, not the county, but the Town of Seven Devils requires it in the UDO, under the Table of Permitted uses.

Member Ryan stated that last year a farmer’s market was held in the Town of Seven Devils.

Town Manager Harris confirmed that to be true, however it was unknown at that time a Special Use Permit was required, so now the procedure is being followed correctly.

Member Hurlbrink asked, "Will there be restrictions on the type of vendors?"

Zoning Administrator Barnes stated the ordinance does not provide language on vendors.

Town Manager Harris reported that at this time vendors will provide food items, local grown produce, or plants, however, in the future might include arts & crafts.

Chair Bridges stated the Parks & Recreation Committee will provide guidance as to the type of vendors.

Member Brock asked, "Do the vendors have insurance?"

Town Manager Harris stated the property in the Town of Seven Devils is covered by liability insurance.

Member Ryan asked, "Is there a fee for a Special Use Permit?" "Did the Town pay the fee?"

Manager Harris replied, yes there is a fee for a Special Use Permit, but the Town is waived the fee.

Chair Bridges inquired about potential traffic issues.

Town Manager Harris stated last year about 40 citizens attended the farmer's market and it is unknown what the attendance will be in the future. The location has ingress & egress from Seven Devils Road, and recently the parking lot has allowed 400+ citizens to attend the music events. The Town of Seven Devils has police on duty to help with traffic issues.

Chair Bridges asked, "Will there be noise?" "Or any complaints of noise from previous events?"

Town Manager Harris reported that since Town Clerk Gropp answers most phone calls/complaints, that she provides this information.

Town Clerk Gropp stated that no complaints were received about last year's farmer's market, or any other events.

Zoning Administrator Barnes mentioned that since there is not a definition of Open Air Market in the Town's Permitted Use Table, that any restrictions tonight can set precedent, and/or future considerations can be decided on case by case basis.

Chair Bridges replied that the Town's Planning Board should decide any definition of Open Air Market, not the Board of Adjustment.

Member Ryan asked, "Is there a cost for the vendor?" and "Does this provide revenue to the Town?"

Town Manager Harris stated this event is funded by the Town of Seven Devils TDA with the Occupancy Tax collected from short term rentals.

Member Ryan stated he does not agree with more taxation of citizens.

Member Brock asked for clarification, "Do the vendors keep the money of items sold?"

Town Manager Harris stated "yes," and this farmer's market offers citizens of the Town or surrounding areas the ability to purchase fresh produce and items.



## **Board of Adjustment Deliberations**

### **Chair Bridges read the following statement:**

*"We will now begin the deliberation of this request. As a reminder this board is tasked with deciding if, based on the evidence presented, this proposal meets the applicable standards. This decision cannot be based on the personal preference of board members. Rather it is based on standards and evidence.*

*"Board members are encouraged to reference the applicable standards and specific evidence in their deliberation.*

*"For this particular case, the board is asked to decide: Does the record include competent, relevant, and substantial evidence that the required standards have been met. The board shall issue the Special Use Permit unless it concludes, based on the information submitted, that one (1) or more of the following is true.*

- 1. The application is incomplete.**
- 2. The proposed use will be located, designed, and/or operated in a way that will endanger the public health, safety, or general welfare.**
- 3. The proposed use will seriously interfere with existing uses on adjacent properties, with the character of the area, or with the purpose of the zone in which it is proposed.**
- 4. The proposed use will impose an undue burden on any public improvements, facilities, utilities, or services available to the area.**
- 5. The proposed use will substantially injure the value of adjoining or abutting property.**
- 6. The proposed use will not be in general conformity with the Vision Statement, Comprehensive Land Use Plan or other plan officially adopted by the Town Council.**

## **Decision – Findings of Fact**

Chairperson Bridges stated the following:

- 1) The application is incomplete. – FALSE**  
All material to be considered for a Special Use Permit has been submitted.
- 2) The proposed use will be located, designed, and/or operated in a way that will endanger the public health, safety, or general welfare. – FALSE**  
The proposed use will be managed and overseen by the staff of Seven Devils; the area is a municipal park and will be limited to pedestrian traffic; a separate parking lot is provided for vehicles.
- 3) The proposed use will seriously interfere with existing uses on adjacent properties, with the character of the area, or with the purpose of the zone in which it is proposed. – FALSE**  
The proposed use is consistent with uses in the General Business (GB) district; the open air market will be operated seasonally, with no permanent structure and be used for the sale of produce, plants and other goods found in a farmer's market.
- 4) The proposed use will impose undue burden on public improvements, facilities, utilities, or services. – FALSE**  
The proposed use will not use any utilities or permanent structures; the area is a municipal park and hours of operation will be set by staff of Seven Devils to not conflict with other activities.
- 5) The proposed use will substantially injure the value of adjoining or abutting property. – FALSE**  
The proposed use will be temporary, seasonal and no permanent structures.

- 6) The proposed use will not be in general conformity with the Town's Vision Statement, Comprehensive Land Use Plan, and other adopted plans. – **FALSE**  
The proposed use is consistent with uses in the General Business (GB) district of the Town's UDO and will provide citizens with the opportunity to purchase local grown food or local crafts.

Chair Bridges asked for a motion.

**Member Brock made a motion to approve the Special Use Permit application as submitted; Member Blonshine seconded the motion.**

**Roll Call:**

**Richard Blonshine, Alternate-Yea Faye Brock-Yea Bob Bridges-Yea**

**Bobbie Hurlbrink-Yea Stuart Ryan-Yea**

**Motion passed 5 yeas - 0 nays**

**Close Evidentiary Hearing**

Member Blonshine made a motion to close the evidentiary hearing; Member Hurlbrink seconded the motion. All members agreed.

**ADJOURN**

Member Blonshine made a motion to adjourn the meeting; Member Brock seconded the motion. All members agreed. The meeting was adjourned at 5:57pm.

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Robert D. Bridges, Chairperson

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Hillary Gropp, Town Clerk

*\*Clerk's note - Support documents/evidence to be attached with the minutes.*

## Town of Seven Devils Board of Adjustment

January 23, 2024

### Witness Oath

Do you solemnly swear (or affirm) that the evidence you shall give to the board in this action shall be the truth, the whole truth, and nothing but the truth, so help you God?

**Name:**

**Position:**

**Address:**

[illegible]

Article 17—Figure 1—Application for Appeal Page 1

Application for Appeal to the Town of Seven Devils Board of Adjustment

Town of Seven Devils  
157 Seven Devils Road  
Seven Devils, NC 28604  
Phone: (828) 963-5343

Description of Property

Location of Property: 603 THORN CLIFF DR  
Size of Property \_\_\_\_\_ County \_\_\_\_\_ PIN# 1868-95-5288-000  
Current Zoning District \_\_\_\_\_  
Current General Use of Property \_\_\_\_\_

Applicant Information

Name: Dan Middleton  
Title: 8344 Lake Providence Dr.  
Matthews NC 28104  
Address: \_\_\_\_\_

Phone # (s): 704-993-8335 CEL

E-mail: torquemaster944@yahoo.com

Property Owner Information

Name: Dan Middleton  
Title: 8344 Lake Providence Dr.  
Matthews NC 28104  
Address: \_\_\_\_\_

Phone # (s): 704-993-8335 CEL

E-mail: \_\_\_\_\_

In order for this application to be complete, the applicant must submit the following:

- Two (2) copies of this completed form (both pages), typed or filled out in black ink.
- Two (2) copies of the scaled site plan for the property in question.
- Two (2) copies of current zoning map with location of property indicated.
- Two (2) copies of any additional information the applicant intends to present at the Evidentiary Hearing.
- A list of names and addresses of the owners of property within 100 feet of the property in question.
- Personal or Certified Check in the amount determined by the current Fee Schedule for each application for an appeal to cover the necessary administrative costs.

To be placed on the agenda, completed applications, fees, and all accompanying materials must be presented no less than thirty (30) calendar days before the next scheduled meeting of the Board of Adjustment.

# Article 17—Figure 1—Application for Appeal Page 2

## To the Town of Seven Devils Board of Adjustment:

I, Pam Middleton hereby appeal to the Board of Adjustment from the following adverse decision by an agent of the Town of Seven Devils.

Who rendered the decision? EDDIE BARNE

Briefly describe what the decision prevents you from doing? I CUT DOWN A DISEASED TREE AND WAS UNAWARE OF THE NECESSARY PERMIT

Date of the decision: 11-19-23

Date you received the decision: 12-7-2023

How do you think the ordinance or guidelines should be interpreted?

I WAS UNAWARE OF THE RECENT CHANGE IN POLICY (I AM A 30 YEAR RESIDENT)

What section(s) of the ordinance or guidelines support your interpretation?

Why do you think your interpretation is correct? ONE TREE WAS CUT BY A UTILITY.

Why do you think that the agent of the Town's interpretation is wrong? THE FINE IS EXCESSIVE

Other comments/information that you would like to have considered: PLEASE SEE EDDIE BARNE FOR THE EMAIL THAT I SENT REGARDING THIS

I certify that the information presented in this application and attachments is accurate to the best of my knowledge, information, and belief.

Signature of Applicant

12-8-23

Date

Amount Paid \$300.00

Received by Eddie Barner

Date: 12-8-23

## CITATION

SEVEN DEVILS POLICE DEPT  
157 SEVEN DEVILS RD  
SEVEN DEVILS, NC 28604  
828-963-5343

Nº 0005

NAME	Daniel Middleton		DOB
VEHICLE MAKE	N/A	LICENSE NUMBER	N/A
STATE			
LOCATION	603 Thornecliff Drive		
DATE	11-18-23	TIME	□ A.M. □ P.M.

THE DRIVER OF THE ABOVE VEHICLE OR PERSONS ARE IN VIOLATION OF

THE FOLLOWING ORDINANCE:

- ☐ 1. Nuisance Vehicles: Vehicles abandoned on the public roads. For vehicles left on public roads when they are: obstructing traffic 7.3 (1)
- ☐ 2. Prohibited Parking: One that is parked so as to prevent safe passage of any vehicle on the public road 7.1 (8)
- ☐ 3. Other Nuisance Vehicles: 7.1 (1-12)
- ☐ 4. Chain Law: Traffic control device (flashing sign) at the entrance of

The Town of Seven Devils stating that this chain law is in effect, Requiring: (A) Chains (B) Snow tires (C) Four-Wheel Drive (AWD) (D) A combinations of the above.

- ☐ 5. Parking in front of private driveway, fire Hydrant, fire station, intersection of curb lines or fire lane. G.S.20-162
- ☐ 6. Fire Pits and Recreational Fires: 10.1 (1-5) 10.2 (1-12)
- ☐ 7. Animal Control: Public Nuisance Animal 4.2 (1-10)
- ☒ 8. Zoning Violations
- ☐ 9. Construction/Building Violations
- ☐ 10. Unreasonable and Disturbing noises: Prohibited Noises 5.1 (1-7), Noises permitted only during certain hours 5.2, 5.2.1 (1-2), 5.2.2 (1-2)

11. Other: Cutting trees without permit

THE AMOUNT OF THE FINE FOR THE VIOLATION INDICATED IS \$1,000.00 PAY THIS TICKET AT THE SEVEN DEVILS TOWN HALL WITHIN \_\_\_\_\_ HOURS, AND NO FURTHER ACTION WILL BE TAKEN.

NOTE: ANY PERSON HAS THE RIGHT TO OBJECT TO ANY VIOLATIONS THAT HE OR SHE MAY BE CHARGED WITH. IT IS THE VIOLATORS RESPONSIBILITY TO NOTIFY THE TOWN MANAGER IN WRITING WITHIN TEN DAYS OF THE VIOLATION AND STATE WHY THEY BELIEVE THEY ARE NOT GUILTY. THE TOWN THEN WILL SET A DATE/TIME FOR A HEARING IN THE MATTER.

OFFICER: Eddie Barner  
BADGE NO. Zoning Administrator

2. All fences must be kept in good repair.
3. No fence may be built or installed within the Town of Seven Devils except in compliance with the design standards contained herein.
4. No fence may be built or installed in the street yard or on public easements.
5. Fences installed by the Town of Seven Devils or a utility company to ensure public health and safety are exempt from the provisions of this ordinance.

(c) *Material, Color and Height Requirements*

1. Fences shall be built or faced with natural or manufactured wood, stone, brick, vinyl fence, or material with black wrought iron appearance.
2. No fence shall be built or installed higher than five (5) feet above the original ground profile.
3. Chain link fencing is prohibited.

(d) *Procedures*

1. All fences built or installed within the Town limits of Seven Devils require a fence permit. The Zoning Administrator shall issue fence permits.
2. If a fence permit is denied, the decision may be appealed to the Seven Devils Board of Adjustment in accordance with the provisions of Article 17.

**Section 10. Tree Protection/Preservation**

(a) *Intent*

It is the intent of this Section to preserve the natural beauty of the Town, to encourage better care of trees and vegetation within the Town, on both private and public properties, to promote cooperation between the public and private sectors to effectively manage urban forests, and to support and participate in the Tree City USA program.

(b) *Administration*

To carry out the provisions of this Section, the Zoning Administrator shall have the responsibility and control over all trees and shrubbery planted or growing in or upon Town property. The Town Council may establish a Tree Board, made up of citizen volunteers; the volunteers shall have the following duties:

1. Assist the Town Manager with the creation, updating, monitoring, and management of the Town's tree regulations.
2. Work with the Town Manager to prepare a tree maintenance program.

3. Work with the Town Manager on all issues relating to the management and care of the Town's forests.

The Tree Board shall consist of a minimum of five members, appointed by the Town Council annually, at the first meeting of each fiscal year. The Tree Board shall annually select a Chair and a Vice Chair; the Zoning Administrator shall serve as the secretary to the Tree Board. The Tree Board shall meet on a regular schedule, to be determined at the beginning of each fiscal year.

(c) *Definitions of particular significance to Tree Protection:*

**Diameter at Breast-Height (DBH):** A tree trunk diameter measured in inches at a height of four and one half (4 1/2) feet above the ground. If a tree splits into multiple trunks below four and one half (4 1/2) feet, then each trunk is measured as a separate tree. A tree that splits into multiple trunks above four and one half (4 1/2) feet is measured as a single tree at four and one half (4 1/2) feet. Diameter can be determined by dividing the circumference of the tree trunk at four and one half feet above the ground by pi or 3.1416.

**Historic Tree:** A tree with a Diameter at Breast Height (DBH) of twenty-four (24) inches or greater. Every effort should be made to retain healthy historic trees.

**Protected tree:** A live tree measuring in excess of six (6) inches in diameter at four and one-half feet (4 1/2) feet above ground.

**Removal of Trees:** Any intentional or negligent act that shall cause a tree to decline and die, including but not limited to:

- (1) Pruning
- (2) Cutting
- (3) Damage inflicted upon the root system of a tree by application of a toxic substance, operation of machinery, change of natural grade by excavation or filling about the root system or around the trunk of a tree, or injury by fire that result in or permit pest infestation.

**Significant Tree:** A tree with a DBH of six (6) inches or greater.

**Tree Removal/Pruning Permit:** A permit for tree removal and/or pruning issued under the provisions of this Ordinance.

(d) *Tree Protection Requirements*

1. Jurisdiction

The regulations set forth herein shall apply to all real property within the Town's planning jurisdiction, subject to the following exceptions: utility companies, electric suppliers, and governmental agencies in the course of constructing or

maintaining easements for water, sewer, electricity, gas, drainage, telephone or television transmissions, or rights-of-way.

2. **Tree Removal Prohibited**

No person, firm, organization, society, association, corporation, or any agent or representative thereof shall directly or indirectly destroy or remove any trees in excess of six (6) inches DBH within any zoning district without permission under the provisions of this Ordinance.

3. **Application and Scope**

The process for applying the Tree Protection Section of this Ordinance shall be as follows:

All persons desiring to prune, crop, scale, or shape a protected tree(s) shall apply for a Tree Removal/Pruning Permit through the Zoning Administrator. Tree limbs of 3" or less in diameter may be pruned without a permit.

The Zoning Administrator or his/her designee may issue and approve a Tree Removal/Pruning Permit.

Lots that contain a majority of trees less than six (6) inches DBH shall not be clear-cut. No more than fifty percent (50%) of the natural vegetation, equally balanced on the lot, can be cut regardless of the size of the vegetation. The Zoning Administrator shall base approval on the criteria listed in this Article.

Trees shall not be topped. However, limbs may be removed for improving views as long as the health of the tree is not damaged. Detrimental trimming is prohibited. Property owners are encouraged to use an ISA Certified Arborist to prune and remove trees and utilize the crown reduction pruning technique.

**Public Property Trees:** In determining whether a permit shall be issued for the cutting of trees on public property, the Zoning Administrator shall consider the following:

- a. The condition of the tree with respect to disease, danger of falling, proximity to existing or proposed structures, and interference with utility services.
- b. The necessity to remove trees in order to construct proposed improvements to allow economic development of property adjacent to public property.
- c. The topography of land and the effect of tree removal on erosion, soil retention, and the diversion or increased flow of surface waters, and coordination with the Town's drainage patterns.
- d. The effects of tree removal regarding property values in the area.



(e) *General Standards for Removal and Retention*

It is the desire of the Town of Seven Devils to preserve all existing trees to the greatest extent possible. Permits for removal of protected trees may be approved and issued where one (1) or more of the following conditions are found to exist:

1. Said trees are within ten (10) feet of an area designated for the construction of an approved primary or accessory structure on a lot, including designated walkways, driveways, and parking areas; or
2. Said trees are within five (5) feet of an approved septic tank or septic drain field; or
3. Said trees pose a hazard to the property owner, adjacent property, utility lines or public health and safety; or
4. Selective cutting of said trees, observing proper trunk spacing in accordance with best management practices, promotes the growth and development of other trees on the lot; or
5. Said trees are diseased or damaged, or
6. Removal of said tree(s) is the only reasonable means by which building, zoning, subdivisions, health, public safety, or other Town requirements can be met.

(f) *General Considerations*

1. **Emergency Conditions**

In the event that any tree shall be determined to be an imminent hazard or danger to the public health, safety, or general welfare by the Zoning Administrator or his/her designee, that tree can be removed regardless of the size of the tree.

2. **Violations Defined**

- a. **Lacking a valid Tree Removal/Pruning Permit, any intentional or negligent act resulting in the death of a protected tree, including but not limited to those defined in Section 10(b) of this Article.**
- b. **Lacking a valid Tree Removal/Pruning Permit, the pruning of any protected tree, except as allowed under the provisions of Section 10(f) of this Article.**
- c. **All waste from tree removal and/or tree pruning activities that accumulates on public property shall be removed at the end of each day of tree removal or pruning. All waste from tree removal and/or tree pruning activities that accumulates on private property shall be removed within three (3) working days after the day of completion if the work has been**

contracted out. If the homeowner does the removal/pruning, they must remove the debris or put the debris in a place accessible by the Town and the Town will remove no more than one (1) truckload according to the current debris pickup schedule published by the Town. The homeowner must notify the town within 3 days. Failure to comply with these stipulations shall constitute a violation.

If violations are noted during the course of a project or at final inspection, the Zoning Administrator may take appropriate actions including, but not limited to:

- a. Requiring replacement of illegally removed trees with trees no smaller than six (6') feet high and of the same type (evergreen or deciduous) as the trees removed.
- b. Replacement of protected trees that are damaged, dying, or dead with trees no smaller than six (6') feet high and of the same type (evergreen or deciduous) as the trees damaged.
- c. Remedial actions to protect trees during construction.

**(g) Penalties Defined**

Pursuant to North Carolina General Statutes 160A-175(b), a violation of any provision of Section 10, Tree Protection, shall subject the offender to a civil penalty in the amount established by the Town of Seven Devils most current Annual Operating Budget Ordinance, per tree to be recovered by the Town. Violators shall be issued a written citation, which must be paid within ten (10) days after receipt of the written citation. If the violator does not pay the penalty within ten (10) days after receipt of the written citation, the Town may recover such penalty in a civil action in the nature of a debt. In addition, trees removed without approval are subject to a requirement that they shall be replaced with two (2) six foot (6') tall, two inch (2") in caliper trees for each tree illegally cut. Such replacement trees shall include but not be limited to the following list:

BOTANICAL NAME	COMMON NAME
Acer Rubrum	Red Maple
Acer Saccharum	Sugar Maple
Betula nigra	River Birch
Betula papyrifera	White Paper Birch
Sorbus aucuparia	Mountain Ash
Cornus Kousa - varieties	Kousa Dogwoods
Picea abies	Norway Spruce