

TOWN OF SEVEN DEVILS
BOARD OF ADJUSTMENT MEETING
Tuesday, January 24, 2023
5:30pm

Agenda

- 1) Call to Order – Eddie Barnes, Zoning Administrator
 - 2) Roll Call/Quorum 3 BOA minimum
 - 3) Oath of Office – New/Reappointed Board Members – Town Clerk Gropp
 - 4) Nomination of Chairperson *Motion*
 - 5) Nomination of Vice Chairperson *Motion*
 - 6) Adopt Agenda *Motion*
 - 7) Old Business
 - A. Approve Minutes - *Motion*
 - (i) Board of Adjustment – Meeting – August 23, 2022
 - 8) New Business
 - A. Application for Variance – Yardy & Barbara Williams – 5.901 acres, Lots 8 & 9
Clark Barrow – Owner’s Representative
 - (i) Open Evidentiary Hearing *Motion*
 - (ii) Opening Statement – Chair
 - (iii) Determination of Witnesses
 - a. Parties with Standing
 - b. Expert Witness
 - c. General Witness
 - (iv) Witness Oath – Clerk
 - (v) Disclosures
 - (vi) Presentations of Findings of Fact – Eddie Barnes, Zoning Administrator
 - (vii) Presentation of Application – Clark Barrow – Owner’s Representative
 - (viii) Witness Opposed to Application
 - (ix) Board of Adjustment Discussion
 - (x) Decision – *Motion*
 - 9) Adjourn - *Motion*
-

This meeting will be live streamed and can be viewed via Go To Meeting

<https://meet.goto.com/829220965>

OATH OF OFFICE

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

On this 24th day of January, 2023.

Richard Blonshine

Quinn Morris

Stuart Ryan

John Wells IV

Administered by Hillary Gropp
Town Clerk

Town of Seven Devils
Board of Adjustment Meeting
Tuesday, August 23, 2022
5:30pm

The Seven Devils Board of Adjustment met on Tuesday, August 23, 2022, at Town Hall.
In attendance included: Bob Bridges, Faye Brock, Bobbye Hurlbrink, Jack Byrnes, and Stu Ryan, Alternate.
Member Frank Sell joined the meeting at the Determination of New Witnesses. Member John Wells IV, Alternate was absent.
Staff included: Debbie Powers, Town Manager and Eddie Barnes, Zoning Administrator viewed only remotely via Go To Meeting #939933693.

CALL TO ORDER

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

ROLL CALL

Board of Adjustment members Stu Ryan, Faye Brock, Bob Bridges, Bobbye Hurlbrink and Jack Byrnes stated their name for Roll Call. A quorum was met.

ADOPT AGENDA

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

OLD BUSINESS

Approve Minutes – Board of Adjustment – July 26, 2022

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

NEW BUSINESS

Application for Special Use Permit – Mark Williams – 268 E. Rocky Top Trail

Member Brock made a motion to open the Evidentiary Hearing from recess of July 26, 2022; Member Byrnes seconded the motion. All members agreed.

Summary Statement

Chair Bridges read the following summary statement:

The original hearing was recessed to give the Applicant sufficient time to complete the Special Use Permit application for the installation of solar panels, in accordance with the requirements set forth in Town of Seven Devils Unified Development Ordinance (UDO) and the Alternate Energy Resources Ordinance. Procedural instructions and statements previously provided in the original July 26, 2022, BOA meeting (e.g., any decision made is a quasi-judicial decision based on evidence in the record) remain in effect. Remind all witnesses previously sworn in that they remain under oath.

Disclosures

Chair Bridges asked if there were any disclosures since the meeting of July 26, 2022.

Chair Bridges stated he has had conversations with staff in regard to the agenda and procedural issues for tonight's meeting. No other BOA members had disclosures.

Chair Bridges asked if the witnesses or parties with standing any objections with participation based on the disclosures. There was no response.

Determination of New Witnesses

Parties with Standing:

Tiffany Williams, Applicant

Expert Witness:

Quint Davis – High Country Energy Solutions – Draftsman- Provided his working experience and educational background. BOA qualified him as an expert witness.

Chair Bridges administered the Witness Oath the new witnesses.

Presentation of Application – Continuation

Tiffany Williams, Applicant stated Quint Davis, High Country Energy Solutions would present.

Quint Davis stated he was the draftsman for the original plans but was unaware of a zoning ordinance to be followed by the Town. He has made revisions (highlighted in red) to comply with the requests of the Board of Adjustment for the site plan.

Chair Bridges asked Board members if they had any questions. No response.

Chair Bridges asked Quint Davis, “what is the source of the survey on site plan?”

Quint replied the survey was provided to him by the owners, and since he is not a licensed surveyor, he cannot stamp the site plan, and the site plan is labeled, *This is not a survey*.

“When asked if the newly submitted expanded set back measurements page was a blown up version of the originally submitted site survey (the original survey set back measurements were unreadable), Quint replied in the affirmative. Thus, the set back measurements are considered to have been provided by an independent surveyor.”

In reviewing the submitted documentation for the Special Use Permit, a survey is stamped and dated March 14, 2020.

Chair Bridges asked if there were any more comments or questions. There were none.

DELIBERATIONS/DISCUSSION

Chair Bridges read the following:

“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.

Chair Bridges outlined the standards as follows:

The BOA shall issue the Special Use Permit unless it concludes, based on the information submitted at the evidentiary hearing, that one (1) or more of the following is true (i.e., if any one is true, no Special Use Permit shall be approved):

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 the 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 in 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.

Chair Bridges asked for discussion from BOA members.

Member Sell stated the Applicant has met the criteria.

Member Byrnes agreed and stated the requested documents have been supplied.

Chair Bridges concurred the Applicant has met the criteria requested.

Chair Bridges asked for a motion.

Member Brock made a motion to approve the Special Use Permit application as submitted.

Member Byrnes seconded the motion. Motion passed 6 yeas - 0 nay

Roll Call

Stu Ryan, Alternate – Yea Frank Sell – Yea Faye Brock – Yea Bob Bridges – Yea

Bobbye Hurlbrink – Yea Jack Byrnes - Yea

Board members thanked the Applicant for their patience, as well as the steps of completion of the requested items that apply to the Town's standard for issuance of a Special Use Permit. The BOA suggested that although this is the first request for a SUP to install solar panels, it likely won't be the last. Complying with the procedures while setting a precedent is vital to the application process.

ADJOURN

Member Brock made a motion to adjourn; Member Hurlbrink seconded the motion. All members agreed. The meeting adjourned at 5:47pm.

Robert D. Bridges, Chair

Hillary Gropp, Town Clerk – *Minutes submitted as viewed via Go To Meeting recording.*

Article 17—Figure 2—Application for Variance Page 1

Application for a Variance 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 Town of Seven Devils Board of Adjustment:

I, Clark Barrow on behalf of Barbara & Hardy Williams, hereby petition the Board of Adjustment for a Variance from the literal provisions of the Seven Devils Unified Development Ordinance because, under the interpretation given to me by the Zoning Administrator, I am prohibited from using the parcel of land in a manner shown by the Scaled Site Plan attached to this application. I request a variance from the following provisions of the Unified Development Ordinance: Article 8 Section 9 Fences

I request the variance so that the aforementioned property can be used in a manner indicated by the Scale Site Plan attached to this application or, if the Scaled Site Plan does not adequately reveal the nature of the variance, as more fully described herein (if variance is requested for a limited time only, specify duration of request): 5.401 acre lot, lot 8 and lot 10

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

A Variance from the regulations of this Ordinance may be granted by the Board of Adjustment if it finds that strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the Variance, and that, by granting the Variance, the intent of this Ordinance, the Vision Statement, and the Comprehensive Land Use Plan will be observed, public safety and welfare secured, and substantial justice done as prescribed by the North Carolina General Statute Article 19-Planning and Regulation of Development. The burden of proving that these conditions exist is on the applicant.

In the spaces provided below, indicate the facts that you intend to show and the arguments that you intend to make to assist the Board of Adjustment in determining their findings:

Article 17—Figure 2—Application for Variance Page 2

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance.

Specifically, in reaching their conclusion under this finding, the Board of Adjustment must determine that all of the following are true:

- a. Strict compliance with the regulations allows no reasonable return from, or no reasonable use of, the applicant's property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)
The unique features of the 5.901 acre lot, lot 8 and lot 10 are such that they attract unwanted trespassers despite posted "no trespassing" signs and repeated calls to the police.
- b. The hardship results from the application of the ordinance. (The Board of Adjustment must limit itself to evidence of hardship resulting from the application of the ordinance to the property involved.) The current ordinance restricts the owners from installing the type of fence that would prevent unwanted trespassing activity.
- c. The hardship is suffered by the applicant's property rather than personal circumstances. (The hardship must be one that affects the applicant's property directly. The public's hardship is irrelevant. Also, unique personal or family hardships are irrelevant because a variance, if granted runs with the land not with the current landowner's present circumstances.) The current ordinance only allows the type of fence that would have a negative environmental impact. A barbed wire fence will have the smallest environmental impact, ensure aesthetics and deter trespassing.
- d. The hardship is not the result of the applicant's own actions. (The applicant may not show hardship that he inflicted on himself or that the applicant could have avoided.) Despite "no trespassing" signs being posted and repeated calls to the police, the three lots continue to be subject to unwanted trespassing, trash/littering and dumping.
- e. The hardship is peculiar to the applicant's property. (If the hardship results from the conditions that are neighborhood-wide, relief becomes a matter for the Town Council to amend the ordinance.) The 5.901 acre lot, along with lot 8 + 10, are part of a large vacant and unused area that contains a prominent and unique rock outcropping with a near 360-degree view at the top. These features are not found on other lots in the community.

Article 17—Figure 2—Application for Variance Page 3

2. **The variance is in harmony with the general purposes and intent of the Unified Development Ordinance, Vision Statement, and the Comprehensive Land Use Plan, and preserves their spirit.**

State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood. A barbed wire fence will have the least visible and environmental impact.

3. **In the granting of the variance, the public safety and welfare has been assured and substantial justice has been done.**

State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.

The approval of this variance would protect the safety and welfare of the general public and reduce owner's liability, as well as the community's.

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.
- Two (2) copies of the scaled site plan for the property in question.
- Two (2) copies of any additional information the applicant intends to present at the Evidentiary Hearing.
- List of names and addresses of affected property owners
- Personal or Certified Check for the application fee as specified in the latest Fee Schedule. Application fee shall be paid to the Town of Seven Devils, NC for each application for a Variance in order to cover the necessary administrative costs.
- Names and addresses of owners of property within 100 feet of the property in question (see Figure 17.3).

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.

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

Clark Barrow on behalf of Barbara & Yandy Williams 11-3-22

Signature of Applicant

Date

Amount Paid \$300.⁰⁰ Received by: Eddie Barnes Date: 11-3-22

January 24, 2023

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]