

Town of Seven Devils
Board of Adjustment Meeting
Tuesday, June 27, 2023
5:30pm

The Seven Devils Board of Adjustment met on Tuesday, June 27, 2023, at Town Hall.

Attendance included Members - Bob Bridges, Faye Brock, Bobbye Hurlbrink. Richard Blonshine joined at 5:40pm – Item 3) Amend Agenda.

Members absent: Stu Ryan, John Wells IV, and Quinn Morris – Alternate.

Staff in attendance included Zoning Administrator Eddie Barnes and Town Manager Johnathan Harris; the minutes were recorded by Town Clerk Hillary Gropp.

CALL TO ORDER

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

ROLL CALL

Board of Adjustment members Faye Brock, Bob Bridges and Bobbye Hurlbrink stated their name and announced their presence for Roll Call. A quorum was met for the Call to Order.

AMEND AGENDA

Chair Bridges requested to amend the agenda with New Business Item B – Delegation of Authority – Motion needed; Member Blonshine made a motion to amend the agenda; Member Brock seconded the motion. All members agreed.

CHAIRPERSON COMMENTS

Chair Bridges stated for the purpose of notice to the Board members and Citizens attending tonight, this is not an Evidentiary Hearing, but rather a meeting of the Board of Adjustment. Citizen Comments is included in the Agenda outline.

OLD BUSINESS

A. Approve minutes – Board of Adjustment meeting – April 25, 2023

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

Roll Call

Richard Blonshine–Yea Faye Brock–Yea Bob Bridges–Yea Bobbye Hurlbrink–Yea

NEW BUSINESS

A. Ratify Special Use Permit #2023-01 – Hawksnest Snowtubing, Inc.

Chair Bridges stated whenever a decision has been made by Board of Adjustment, whether it is for Variance, Special Use Permit or Appeal Decision, a “decision document” outlining the Findings of Fact and the decision is signed by the Board of Adjustment Chairperson and provided to the Applicant.

Historically, this procedure has been followed, duly certified, and filed by the Town Clerk.

Procedurally, this document should be voted on by the Board of Adjustment prior to mailing it to the Applicant. However, substantial delays could occur, as often several months may pass between meetings

of the Board of Adjustment. Potential delays caused by meeting timing could result in hardship for the Applicant and potential decision appeal action.

The step of ratifying the document at tonight's meeting is required, as the Special Use Permit #2023-01 – Hawksnest Snowtubing, Inc. was mailed on May 9 2023. All members of the Board of Adjustment who were present in the Evidentiary proceedings of April 25, 2023 have reviewed the document for accuracy of the final decision.

Quinn Morris – Alternate who could not be in attendance at tonight's meeting, has reviewed and responded via email. Town Clerk Gropp read the email aloud to record his approval.

Chair Bridges asked for a motion for a vote to ratify the Findings of Fact, Deliberation & Decision document for Special Use Permit #2023-01.

Member Brock made a motion to vote to ratify the Findings of Fact, Deliberation & Decision for Special Use Permit #2023-01 – Hawksnest Snowtubing, Inc.; Member Hurlbrink seconded the motion.

Roll Call

Richard Blonshine–Yea Faye Brock–Yea Bob Bridges–Yea Bobbye Hurlbrink–Yea

Quinn Morris – Alternate who could not be in attendance at tonight's meeting, has reviewed and responded via email. Town Clerk Gropp read the email aloud to record his approval.

<p>TOWN MANAGER <i>Jonathan Harris</i></p> <p>TOWN FINANCE OFFICER <i>Holga Sappington</i></p> <p>TOWN CLERK <i>Hillary Gropp, CMC, NCCMC</i></p>	 TOWN OF SEVEN DEVILS	<p>TOWN COUNCIL</p> <p>MAYOR – <i>Larry Fontaine</i> MAYOR PRO-TEM – <i>Brad Lambert</i> <i>Wayne Donato</i> <i>Leigh Sarno</i> <i>Jeffrey Williams</i></p>
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April 25, 2023

To: Hawksnest Snowtubing Inc, / Lenny Cottom – Applicant
Board of Adjustment Members
Town Council of Town of Seven Devils

Re: Special Use Permit for Alpine Coaster in Recreation-Business Zone

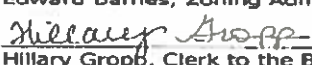

At its meeting on April 25, 2023, after conducting a duly noticed Evidentiary Hearing, and after considering the application materials, testimony, and evidence presented at the Evidentiary Hearing, or otherwise appearing in the record, and the criteria set forth in the Town of Seven Devils Unified Development Ordinance (UDO) – Article 14 – Special Use Permit, the Town of Seven Devils Board of Adjustment voted 4-0 to Approve the Special Use Permit as submitted.

I, Edward Barnes, Zoning Administrator for the Town of Seven Devils, do hereby certify the attached to be a true copy of the Order approved at the meeting of the Board of Adjustment held on April 25, 2023.

Date filed with the Clerk to the Board: May 9, 2023

Date mailed to Parties: May 9, 2023

IN WITNESS WHEREOF, I have hereunto set my hand and have caused the seal of the Town of Seven Devils to be affixed this the 9th day of May, 2023.

<p> Edward Barnes, Zoning Administrator</p> <p> Hillary Gropp, Clerk to the Board of Adjustment</p>	
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* 137 Seven Devils Rd., Seven Devils, NC 28604 * PH: (828) 863-5343 * www.sevendevils.net *

The Town of Seven Devils does not discriminate on the basis of age, sex, religion, marital origin, disability, political affiliation, or marital status



**Board of Adjustment
Special Use Permit Decision #2023-01**

**Hawksnest Snow Tubing, Inc.
Mr. Lenny Cottom**

Findings of Fact, Deliberation & Decision

Findings of Fact:

- The Town of Seven Devils received an Application for a Special Use Permit for an Alpine Coaster from Hawksnest Snowtubing Inc. principal owner Lenny Cottom on March 27, 2023.
- The application was complete and was accompanied by the \$500 fee and all required documentation.
- The property address is 2058 Skyland Drive, Seven Devils, NC 28604. Parcel ID # 1868 19-51-2673 Avery County, NC. Taxes are current.
- Property is in RB (Recreation-Business) on Official Zoning Map of Town of Seven Devils. Pursuant to the Town of Seven Devils Unified Development Ordinance, Section 5.1, Table of Permitted uses, Amusement and Recreation Facilities are permitted use if approved through a Special Use application and permit.
- Mr. Cottom gave his Testimony in regards to the Alpine Coaster, Testimony was also received from Eddie Barnes, Zoning Administrator as to the completeness of the application and Jonathan Harris, Town Manager to the impact on town services. Eleven Property owners with Standing were notified by First Class mail. No property owners with Standing testified.
- Discussions with Mr. Cottom included:
 - a. The location of the proposed Alpine Coaster in relation to property lines of adjoining properties and the setback from the property line.
 - b. The construction timeframe
 - c. The hours and time of operation
 - d. The potential impact of an Alpine Coaster on surrounding properties including noise, light, and visual impact.

Decision - Findings of Fact

Chairperson Bridges stated the following:

- 1) The application is incomplete - **FALSE**.
It is complete based on evidence and testimony.
- 2) This endangers the public health, safety, or general welfare - **FALSE**.
The coaster is designed and installed under Federal guidelines; periodic inspections by the State; located in an area already designed for activities similar to the proposed activity; and expected incremental increase in traffic can be handled by existing infrastructure.
- 3) This will seriously interfere with existing uses on adjacent properties - **FALSE**.

The parcel is currently zoned for Amusement and Recreation; no direct impact on access/egress to adjoining properties; incremental noise abated by tree lines and absorbed by noise from existing recreational activities; visual impact mitigated by low height structure and low height lighting, with tree line absorbing some of the site line impact to adjoining properties; and hours of operation coincide with existing recreational activities, so only incremental noise/visual/traffic impact.

- 4) This will impose undue burden on public improvements, facilities, utilities, or services – **FALSE**. Incremental increase in traffic can be absorbed by existing infrastructure; activity time segments will be scheduled to spread out incremental traffic impact; incremental increase in water (existing bathroom facilities) can be absorbed by existing water supply based on applicant's current usage.
- 5) This will substantially injure the value of adjoining properties – **FALSE**. No evidence provided by Parties with Standing objecting to the project based on substantial injury to property values; and applicant has attempted to minimize impact on adjoining properties by the size, scope, and location of the project.
- 6) This is not in general conformity with the Town's Vision Statement, Comprehensive Land Use Plan, and other adopted plans – **FALSE**. Coincides with current zoning restrictions; coincides with commercial development compatible with our residential and recreational community; provides for minimal tree impact vs. the size/scope of the project, so that tree preservation is a priority.

Chair Bridges asked for a motion.

Motion:

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


Member Hurlbrink seconded the motion. Motion passed 4 yeas - 0 nay

Roll Call

Quinn Morris, Alternate-Yea Faye Brock-Yea Bob Bridges-Yea Bobbye Hurlbrink-Yea

Close Evidentiary Hearing

Member Hurlbrink made a motion to close the evidentiary hearing; Member Brock seconded the


Robert D. Bridges
Board of Adjustment Chair

Date of Signature: May 9, 2023

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B. Delegation of Authority

A discussion occurred about passing a Delegation of Authority as a procedural step for future "decision documents" that need to be sent to the Applicant in a timely manner.

Member Hurlbrink made the following motion:

I move to delegate the Board of Adjustment approval authority of all quasi-judicial decision documentation required under NC GS 160D-406 to the Chair or Vice Chair of the Board of Adjustment; Member Blonshine seconded the motion.

Roll Call

Richard Blonshine-Yea Faye Brock-Yea Bob Bridges-Yea Bobbye Hurlbrink-Yea

C. BOA Updates

Chair Bridges reported to the Board of Adjustment members that a property owner has filed a lawsuit in the Avery County Superior Court challenging Special Use Permit #2023-01. The Town will engage legal counsel.

D. BOA Edu

Chair Bridges stated the Board of Adjustment meeting tonight is not an Evidentiary Hearing, therefore no witness testimony will occur, thus it lacks the required procedures they have happened at prior meetings. Zoning Administrator Barnes thanked the Board of Adjustment members for their duty and service to the Town with this important role.

Review of Quasi-Judicial procedures occurred, facilitated by Zoning Administrator Barnes and topic highlights included:

Deliberations in public, Submittal of evidence timeline, Ex parte communication, Disclosure & Recusals, Competent/Material evidence, Impartiality vs Public opinion, Expert opinion, Parties with Standing, Procedural tests for Special Use Permits & Variances, Permitted Zoning Table, Sufficient evidence, Importance of Alternate members, Deliberations, and Final Decision documents.

Reference materials included for this discussion included:

Quasi-Judicial Handbook by David W. Owens & Adam S. Lovelady, Published by UNC School of Government.

UNC School of Government Blogs published:

05/27/2014 04/03/2015 08/24/2021 03/15/2022 04/04/2023

CITIZEN COMMENTS

Leigh Sasse – Chestnut Ridge Trail – Asked for clarification about legislature for Special Use Permits and Variances; the Town's UDO Table of Permitted Uses and Variance Setbacks. Sasse also inquired about the procedure of ratification of the Special Use Permit #2023-01 and email approval by Alternate member.

BOARD OF ADJUSTMENT COMMENTS

Chair Bridges stated that the educational portion of the tonight's meeting was a result of a discussion he and Zoning Administrator Barnes had in January, initiated by the appointment of 4 new Board of Adjustment members, with terms effective, January 1, 2023.

ADJOURN

Member Brock made a motion to adjourn the meeting; Member Hurlbrink seconded the motion. All members agreed. The meeting was adjourned at 6:15pm.


Robert D. Bridges, Chairperson




Hilary Gropp, Town Clerk