

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

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

In-person attendance included Members - Bob Bridges, Faye Brock, Bobbye Hurlbrink and Quinn Morris – Alternate.

Members absent: Stu Ryan, John Wells IV, and Richard Blonshine – Alternate.

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

Also in attendance, Lenny Cottom, Applicant.

CALL TO ORDER

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

ROLL CALL

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

ADOPT AGENDA

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

OLD BUSINESS

A. Approve minutes – Board of Adjustment meeting – January 24, 2023

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

NEW BUSINESS

A. Application for Special Use Permit – Hawksnest Snowtubing Lenny Cottom, Owner

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): 2058 Skyland Drive

Size of Property 36.09 acres County Avery PIN# 186819512673

Current Zoning District Recreational - Business

General Use of Property: old ski slopes

Applicant Information

Name: Lenny Cottom
Title: Owner
Address: 138 Trout Lilly Lane
Boone

Phone# (s): 828-773-5450

E-mail: lenny@hawksnesttubing.com

Property Owner

Name: Hawksnest Snowtubing, Inc.
Title: _____
Address: 2058 Skyland Dr
Seven Devils

Phone# (s): 828-963-6561

E-mail: lenny@hawksnesttubing.com

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.

Signature of Applicant



Date

3/25/2023

Amount Paid: _____

Received by: Eddie Barnes

Date

3-27-23

Open Evidentiary Hearing

Member Morris 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**

Lenny Cottom, Applicant

- **Expert Witnesses – None**

- **General Witnesses**

Eddie Barnes, Zoning Administrator

Johnathan Harris, Town Manager & Police Chief

Witness Oath

Town Clerk Gropp administered the Witness Oath to all individuals who will provide testimony.

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: *"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 Application was filed on March 27, 2023 by Hawksnest Snowtubing Inc., agent Lenny Cottom for consideration of an Alpine Coaster in the Recreation-Business (RB) zoning district. This request is consistent with the permitted uses for RB district as referenced in the Table of Permitted Uses of the Unified Development Ordinance (UDO). The Applicant paid the \$500 Special Use application fee at the time of submittal.

Staff reviewed the application and found all requirements for the application are met and set April 25, 2023 at 5:30pm at Town Hall as time and place. The Board of Adjustment members were forwarded the application and supporting documents via email on April 3, 2023 or at tonight's meeting.

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.

Eleven (11) notices were mailed via 1st class mail on April 11, 2023 with sign posted on the property the same day.

The Zoning Administrator has received an inquiry from one (1) noticed property, Mr. John Wiley. Fire Chief Matt Millsaps has submitted a letter regarding structures and passing the annual fire inspections. The letter also includes road conditions for access, egress, and a secondary route.

Presentation of Application – Lenny Cottom, Owner

Lenny Cottom, Applicant spoke to the Board of Adjustment and provided the following details:

1. The purpose of applying for a Special Use Permit is to install a mountain coaster on the former ski area. This special use will appeal to the same users of the snowtubing and zipline activities.
2. It will be designed and installed to federal guidelines for these types of coasters, so not to cause danger or harm to the guests. It will be inspected by the Department of Labor.
3. The use will have little to no impact on the surrounding property owners as the noise from the coaster is limited to laughter and thrills that already exist with the zipline and snowtubing. The coaster is designed to be built not far off the ground, approximately 1ft – 3ft and should not be seen from the surrounding areas. Lighting will be less than in the ski area and will be close to the track/ground for the coaster.
4. The use will have minimum impact on town utilities or properties. There might be an increase in water use for the bathroom, but typically the business does not use more than the minimum water use each month.
5. Since the impact is very low for the surrounding areas and will be within the current Recreational Business (RB) zoning, it does not affect the value of surrounding properties.
6. It will enhance the recreational fun of the existing zipline and snowtubing with estimates of 100 rides per hour.
7. The application is not for a zoning change, and this will comply with the UDO and Vision of the Town.

Cottom explained there will be approximately 20 carts with a need for decking/cover porch with a small work type building for maintenance and storage of the carts. This will serve as the start and end of the ride too. The total ride time is approximately 10 minutes, and the hours of operation will be the same as the existing snowtubing and zipline operations. Typically, 10am to 6pm, but until 8pm on weekends/holidays, but it will be a year round business operation.

Cottom stated he currently has adequate parking to accommodate, however the parking area might need to be expanded in the future as the activities grow in popularity. He explained tickets are sold for specific times and he expects participants will arrive at their expected time slot, therefore keeping the parking area from being overly full. He anticipates about 100 rides per hour at max capacity.

Cottom stated the parcel the coaster will be located on already has infrastructure from the ski slopes that will be used with the overall layout for design and function.

Cottom provided a video of a mountain coaster to provide an example of the experience, visual and sound impact that is similar to what can be expected on his parcel.

Cottom also provided other support documents including visuals of a sample coaster, maps, and layouts of the expected location on his parcel, as well as details of projected plans indicating GPS coordinates of the start/finish, total length, elevation drop and track elements.

Member Hurlbrink asked, “when will the coaster be open?” Cottom replied, normal business hours, depending on the season of summer or winter.

Member Brock asked, "how long is the construction process?" Cottom stated preliminary groundwork will occur this summer and he estimated the coaster to open in Spring 2024.

Member Morris asked about grading on the property. Cottom stated grading should be minimal, as the coaster is designed to contour with the land.

Chairperson Bridges asked if the coaster rail footprint will go through trees on the upper part of the run and the lift will go up on the same line as the existing ski lift. Cottom confirmed that description.

Chairperson Bridges asked, "what about the impact of traffic and noise?"

Cottom stated the expectation is 4-5 riders at a time and the ride is approximately 45 seconds per rider. The start of each ride is controlled by a digital timer to allow ample spacing between riders. Chairperson Bridges surmised the trees will provide buffering for some noise.

Town Manager/Police Chief Johnathan Harris provided details on statistics gathered from traffic radar on Skyland Drive. On July 4, 2022, the busiest hour had a total of 80 vehicles traveled; December 28, 2022 the busiest hour had a total of 102 vehicles. These figures are for all vehicles, whether citizens, tourists, commercial etc. He stated Skyland Drive is a NCDOT road.

Several Board of Adjustment members reviewed submitted plats, adjoining properties, distances, and setbacks with Zoning Administrator Barnes and he identified the "parties with standing" parcels, noting 3 lots are owned by the Town of Seven Devils.

Discussion occurred about setbacks distances and Member Brock asked for details.

Zoning Administrator Barnes stated Residential lots have a 10ft setback and Recreation Business has a 15 ft setback, therefore totaling 25ft.

Member Morris asked Zoning Administrator Barnes for clarification with front/road access setback. Zoning Administrator Barnes replied front/road set back equals 30ft, but side is 15ft.

Chairperson Bridges asked, "if the sled rail is 1ft – 2ft off the ground, how high is the lighting from the ground?" Cottom replied, "approximately 10ft -12ft.", all pointed down at the rail system.

Member Morris inquired if there is a comparison with increase for vehicle traffic for the winter vs summer months. Cottom replied, "he estimates there to be maybe 150+ more in the summer."

Cottom expects riders who enjoy one of the existing activities to now enjoy this extra activity.

Cottom plans to increase his business and wants it to be successful.

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

Member Brock suggested the surrounding properties would be affected negatively, suggesting more restrictive setbacks should be considered.

Member Morris stated he is considering Approval or Approval with Conditions with more restrictive setbacks.

Cottom questioned, "Why, what is the purpose of being more restrictive?" He stated he pays taxes on his entire parcel, the setbacks are already established, and he has ski equipment currently on his property that is within existing setback regulations, and although the equipment is not being used, it could be operational again. The features on his RB parcels have been established publicly without harm to others. Cottom estimates there to be approximately 50ft-60ft setback distance but does not want a restrictive setback. Cottom also made a point the "parties with standing" have been notified, and nobody has opposed this, and one "party with standing" had contacted Zoning Administrator Barnes without any objection. Chairperson Bridges duly noted for consideration.

In response to Member Brock's concern about the impact on future adjoining property owners, Chairperson Bridges acknowledged that ownership could change on adjoining parcels, but the zoning is established.

Several Board members once again reviewed submitted plats and adjoining properties, distances, and setbacks with Zoning Administrator Barnes and Applicant Cottom.

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 and 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.**
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.

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

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

Roll Call

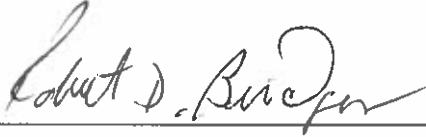
Quinn Morris, Alternate–Yea Faye Brock–Yea Bob Bridges–Yea Bobbye Hurlbrink–Yea

Close Evidentiary Hearing

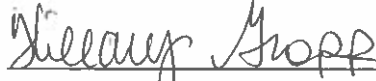
Member Hurlbrink made a motion to close the evidentiary hearing; Member Brock seconded the motion. All members agreed.

ADJOURN

Member Brock made a motion to adjourn the meeting; Member Hurlbrink seconded the motion. All members agreed. The meeting was adjourned at 6:35pm.



Robert D. Bridges, Chairperson



Hillary Gropp, Town Clerk

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

