

Town of Seven Devils
Board of Adjustment Meeting
Tuesday, February 22, 2022
5:30pm

The Seven Devils Board of Adjustment met on Tuesday, February 22, 2022, at Town Hall. In-person attendance included: Members - Bob Bridges, Faye Brock, Bobbye Hurlbrink, Frank Sell & Stu Ryan-Alternate; Remote attendance by Member Jack Byrnes. John Wells IV–Alternate. Electronic format – Go To Meeting #4166349381

Staff included Debbie Powers-Zoning Administrator; the minutes recorded by Hillary Gropp-Town Clerk. Also in attendance:

Michael & Karen Zavislak – Applicants- 178 Woodwinds Circle – In person
Ann McConnell – President – Woodwinds POA - Remote

CALL TO ORDER

Zoning Administrator Powers called the meeting to order at 5:30pm.

ROLL CALL

Board of Adjustment members Bobbye Hurlbrink, Stu Ryan, Bob Bridges, Frank Sell, Faye Brock, Jack Byrnes & John Wells stated their name and announced their presence for Roll Call. A quorum was met.

OATH OF OFFICE

The oath of office was administered In-person at Town Hall by Town Clerk Gropp prior to tonight's meeting to Reappointed Member Faye Brock (2/10/22) & New Appointed Member Stu Ryan-Alternate (2/16/22).

John Wells IV – Alternate has not been administered the oath for his current term. He viewed tonight's meeting without participation.

NOMINATION OF CHAIR

Zoning Administrator Powers opened the floor for nominations of Chairperson. Member Hurlbrink nominated Bob Bridges; Member Brock seconded the motion. With no other nominations, all members agreed. The gavel and meeting were turned over to Chair Bob Bridges.

NOMINATION OF VICE CHAIR

Chair Bridges asked for nominations for Vice Chairperson. Member Hurlbrink nominated Jack Byrnes; Member Brock seconded the motion. Member Byrnes accepted, with no other nominations, all members agreed.

ADOPT AGENDA

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

OLD BUSINESS

A. Approve Minutes

(i) Board of Adjustment – Meeting – October 26,2021

Chairperson Bridges requested to amend and add on page 3, **No board member, nor any party with standing replied.** Member Sell made a motion to approve the amended minutes; Member Brock seconded the motion. All members agreed.

B. Open Recessed Evidentiary Hearing – Zavislak -Variance Request

Member Brock made a motion to open the Recessed Evidentiary Hearing; Member Hurlbrink 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.”

Any witnesses that were previously sworn in (10/26/21) are still under oath.

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.

Chair Bridges stated the requested items from the applicant have been submitted to Town Clerk Gropp and included in the agenda packet for tonight's meeting. Discussion of items to occur as needed.

Items submitted:

Engineered Plans – Lot 4 – Dated 12/1/2021

As-Built Survey – Lot 4 – Dated 12/1/2021

Septic Letter – Dated 01/17/2022

Septic Plans – Lot 4 – Date Illegible

Septic Plans – Lot 5 – Dated 02/08/1990

Woodwinds POA Statement – Dated 12/14/2021

Chair Bridges asked the Applicant Zavislak if he had anything else to say.

Zavislak replied, No.

Chair Bridges asked the BOA members if they had any questions.

No board member replied.

Chair Bridges stated that he had two questions.

Chair Bridges asked the Applicant Zavislak if it was a conflict of interest for him to be both the applicant and the engineer? Zavislak replied, no, as he is a professional engineer, and he is the owner of the property. Bridges continued further questioning about the survey lines and the accuracy of it. Zavislak stated it is accurate and he took measurements from the survey pins, and the survey pins have not been moved.

Chair Bridges asked the Applicant Zavislak about the Woodwinds POA statement and the criteria the proposed structure is not a separate structure, but rather is integrated into the existing house structure. Zavislak replied that is already his intention, therefore it is a non-issue.

Discussion/Board Deliberations on Variance Request

Chair Bridges stated:

The board must decide on the following findings, and all must be **TRUE** to approve the Variance request.

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. All of the following must be true under this finding:

a. The hardship results from the application of the ordinance.

Chair Bridges stated this is **TRUE**.

b. The hardship is suffered by the applicant's property rather than personal circumstances.

Chair Bridges offered that while to some extent, personal circumstances do enter into the variance request (too many vehicles, not enough storage space, etc.), the footprint of the existing house does create an inability for the project to comply with the side set back ordinance. This is **TRUE**.

c. The hardship is not the result of the applicant's own actions.

Chair Bridges stated that the Applicant has followed required Variance procedure and did not start the project which would be a self-inflicted violation of the variance. This is **TRUE**.

d. The hardship is peculiar to the applicant's property.

Chair Bridges stated even though this is a common problem for the Woodwinds POA, while suspected, no evidence has been submitted to indicate that other property in the development suffer from the same set back challenges due to property line angles and house foundation footprint. This is **TRUE**.

2. The variance is in harmony with the general purpose and intent of the UDO, Vision Statement, and Comprehensive Use Plan, and preserves their spirit.

All agreed this is **TRUE**.

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

Chair Bridges stated no evidence was presented that would indicate a negative impact on nearby septic drain fields (public safety), and there is no set back requirement from septic systems for driveway expansion (per evidence submitted by Licensed Soil Scientist). Additionally, set back from a septic drain field is not at issue, set back from the legal property line is. And, public safety is improved by getting vehicles off the street to the benefit of emergency vehicles necessary for the safety of citizens.

This is **TRUE**.

Chair Bridges added his personal thoughts, as he is troubled by the apparent conflict of interest, the Applicant & Engineer being one in the same, regarding set back measurements from the property line. Chair Bridges expected the surveyor to have shown these measurements on the submitted 12/1/2021 survey – Agenda Item E. (iii).

However, Chair Bridges acknowledged the Applicant – Zavislak stated, under oath, that the setback distances are accurate as being measured from the independent survey of the property line in question, and therefore, Chair Bridges reluctantly accept the measurements as accurate in this case.

Decision

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

Vote on Variance Request

Motion: The Board of Adjustment voted to Approve the Variance Request.

(5) Yeas (0) Nays

A roll call vote of the Board of Adjustment members is as follows:

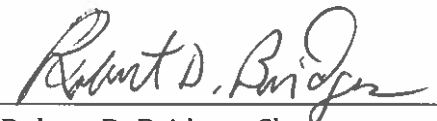
Frank Sell-Yea Faye Brock-Yea Bob Bridges-Yea Bobbye Hurlbrink-Yea Jack Byrnes-Yea

Close Evidentiary Hearing

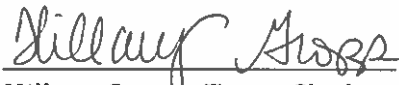
Member Sell made a motion close the Evidentiary Hearing; Member Brock seconded the motion. All members agreed.

ADJOURN

The meeting adjourned at 5:55pm.



Robert D. Bridges, Chairperson



Hillary Gropp, Town Clerk

