

**Town of Seven Devils  
Board of Adjustment Meeting  
Tuesday - May 25, 2021  
5:30pm**

The Seven Devils Board of Adjustment met on Tuesday, May 25, 2021, and the format of the meeting was dual format via Electronic – Go To Meeting #522999069 and In-Person at Town Hall.

In-Person attendance included Regular members: Bob Bridges, Faye Brock, Jack Byrnes, Bobbye Hurlbrink & Frank Sell. A quorum was met.

Alternate John Wells attended remotely with visible video display and observed. Alternate Bert Valery was absent.

Staff attendance included:

Debbie Powers, Town Manager/Zoning Administrator

David Poore, Town Engineer

Rob Angle, Town Attorney

The minutes were recorded by Town Clerk Hillary Gropp.

Also in attendance was Charles Clements – Applicant, Clevon Woods Associates, LLC and Mark Brooks, Engineer for Clevon Woods Associates, LLC.

**CALL TO ORDER**

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

**ROLL CALL**

Board of Adjustment members Frank Sell, Faye Brock, Bob Bridges, Bobbye Hurlbrink, Jack Byrnes, and Alternate John Wells stated their name and announced their presence for Roll Call.

**ADOPT AGENDA**

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

**4) OLD BUSINESS**

**A. APPROVAL OF MINUTES**

**Board of Adjustment – Public Hearing - April 26, 2021**

Member Brock made a motion to approve and adopt the minutes; Member Byrnes seconded the motion. All members agreed.

**Board of Adjustment – Meeting – April 27, 2021 – Town Clerk Gropp stated these minutes need to be amended to reflect the attendance of Frank Sell, who joined at Old Business.**

Member Brock made a motion to approve and adopt the amended minutes; Member Byrnes seconded the motion. All members agreed.

## **B. Shoppes of Tynecastle/Saltman Variance Request**

**(i) Call for Additional Disclosure** – Zoning Administrator Powers has communicated via email with Roxanne Saltman, Applicant to provide the Town’s regulation on signage.

**(ii) Email Public Comment** – NONE

**(iii) Board Deliberations** – Chair Bridges spoke of the intent of the Town’s Nuisance Ordinance – Article 13 – Recreational Vehicles Prohibited, and the intent was to restrict on the narrow Town roads within the Residential Zoning, but not Commercial Zoning (GB Zone).

Chair Bridges asked the BOA Members for discussion.

Member Hurlbrink asked what exactly does “overnight” mean? Are hours to be specified?

Discussion occurred among BOA members that a 24-hour period should be considered from 7am to 7am, allowing the Applicant the ability to set the hours of open/closing for the business.

Member Hurlbrink stated at the presentation on April 27, 2021, by Roxanne Saltman, Applicant, the intended to move the cigar lounge into the remodel Tower at the Shoppes of Tynecastle approximately in March 2022. “Will this Variance expire at that date?”

Chair Bridges stated the Variance can be with Conditions, such as an expiration.

Discussion occurred about the amount of parking spaces the RV would occupy, therefore limiting availability to others. Chair Bridges indicated that would fall under the authority of the landlord, and not the Variance.

## **Findings of Fact, Conclusion & Decision**

### **Findings of Fact:**

- The Town of Seven Devils received an Application for Variance from Ms. Roxanne Schwebke Saltman, delivered to Town Hall on March 16, 2021.
- Ms. Saltman was asked to deliver a letter from the owner of the Shoppes of Tynecastle, indicating their knowledge and acceptance of her proposed businesses (attached in packet).
- The application was complete and was accompanied by the \$250 fee and all required documentation.
- The property address is Shoppes of Tynecastle LLC at 4501 Tynecastle Highway, Seven Devils, NC 28604. Parcel ID # 1867-00-14-7120. Taxes are current.
- Property is in GB (General Business) on Official Zoning Map of Town of Seven Devils.
- Ms. Saltman verbalized her intent to lease the tower portion of the Shoppes of Tynecastle on the corner for a future cigar bar and distillery and place an Airstream RV in the adjacent parking area to accommodate a cigar bar until construction of the cigar bar/distillery in the tower section is complete.
- The Town of Seven Devils **Nuisance Ordinance, Article 13 – Recreational Vehicles Prohibited**, was referenced when the inquiry was delivered to the Zoning Administrator. RVs are not allowed in Town limits.
- Discussions with Ms. Saltman included:
  - a. Concerns regarding the RV systems – water intake, grey & black water collection, and disposal of these fluids.

- b. Process of obtaining ABC permits from the State to operate a distillery; requirements of Town personnel to inspect and sign off on the ABC application (Fire, Zoning, Police) and the building permitting process for the Town of Seven Devils and Watauga County Planning & inspections Department, even though the Shoppes of Tynecastle is physically in Avery County.

**Conclusion:**

1. Proposed Parking area for the Airstream RV is acceptable
2. Intent of the Nuisance Ordinance restricting RVs in Town limits is directed at residential zoned areas, and less towards Commercial or General Business zoned areas.
3. Public Welfare and Safety will not be harmed by allowing the Airstream RV to be parked in the designated area.
4. Applicant stated that this would be a temporary marketing tool until the tower construction was completed, in approximately one year.
5. In compliance with the NC General Statutes regarding granting Variances, the following four points must concur:
  - a. The unnecessary hardship results from the strict application of the Ordinance - TRUE
  - b. The unnecessary hardship results from the conditions that are peculiar to the applicant's property - TRUE
  - c. The unnecessary hardship is not a self-created hardship - TRUE
  - d. The requested Variance is consistent with the spirit, purpose, and intent of the Ordinance such that the public safety is secured and substantial justice is achieved – TRUE

**Decision:**

**Approve the Variance Request, with Conditions:**

1. Airstream RV is allowed to be parked at the designated area for a period of 4 calendar days of each calendar week. For the remaining three days of the week, the RV is to be moved off the property and out of public view.
2. The end date of this Variance will conclude when the construction project of the tower is completed, or on June 30, 2022, whichever occurs first.

Member Byrnes made a motion as shown above; Member Brock seconded the motion. Roll call vote is below:

**(iv) Vote on Variance Request**

**Motion:** The Board of Adjustment voted to Approve the Variance Request, with the above Conditions.

(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

**5) NEW BUSINESS**

**A. Application for Special Use Permit – WWTP – Clevon Woods Associates, LLC**

**(i) Open Evidentiary Hearing**

Member Sell made a motion to Open the Evidentiary Hearing; Member Byrnes seconded the motion. All members agreed.

## **(ii) Opening Statement**

**Chair Bridges gave 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.*

## **(iii) 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 stated prior to being on the Board of Adjustment that he drove on Aldridge Road.**

**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 replied.**

**(iv) Determination of Witnesses**

**Parties with Standing** - Charles Clement, Applicant; Sworn Affidavits from abutting Owners

**Expert Witness** – Mark Brooks, Engineer for Applicant; Chad Vincent – RE Broker Affidavit – was presented as an Expert Witness for the Applicant to attest to the lack of detrimental impact of the WWTP on the adjoining/abutting properties. Chair Bridges disqualified the Expert Witness designation due to the fact that the opinion was not supported by any data nor method of analysis; only an opinion expressed by the signor of the Affidavit was given. Applicant disagreed with this decision.

**General Witness** -Debbie Powers, Town Manager/Zoning Administrator; David Poore, Town Engineer

**(v) Witness Oath**

Town Clerk Gropp administered the Witness Oath to Charles Clement, Mark Brooks, Deborah Powers & David Poore.

**Chair Bridges stated the following:** *“Testimony from witnesses must be sworn, factual, and material. The Board must base its decision upon evidence in the record. Not personal preference or opinion. Expert opinion is allowed, but must be substantiated with sufficient data, reliable methods of analysis.*

**(vi) Presentation of Facts/Evidence – Debbie Powers Town Manager/Zoning Administrator**

Zoning Administrator Powers presented the following:

**Findings of Fact/Clevon Woods Associates, LLC – Special Use Permit Application**

- The Town of Seven Devils received an Application for a Special Use Permit from Charles Clement, Managing Member of Clevon Woods, LLC, on April 26, 2021.
- The Application was complete, was on time to be included in the next regularly scheduled Board of Adjustment meeting and was accompanied by the \$500 fee and all the required documentation.
- The property address is unassigned at this time; the Parcel ID is 1878-53-7991, is a .576-acre parcel, and was annexed into the Town of Seven Devils Town limits on December 8, 2020, with a GB (General Business) Zoning designation. The parcel is located directly across the street from the old Carlton Gallery at 140 Aldridge Road.
- According to the Town’s UDO (Unified Development Ordinance) on Table 5.1 – Table of Permitted Uses, a Private Utility/Waste Treatment Plant is permitted in the GB (General Business) zoning district with a Special Use Permit issued by the Board of Adjustment.
- According to the Town’s UDO (Unified Development Ordinance), Article 14 – Special Use Permits, Section 3 (C), Final Development Plan, “at least 14 days prior to the hearing, the Applicant shall submit (3) three copies of the Final Development Plan to the Zoning Administrator”, which occurred on Tuesday, May 11, 2021, at 10:00am. The meeting was attended by Mr. Clement, Mr. Sayles, Town Engineer David Poore, Town Public Works Director Kevin Aldridge, and Town Manager/Zoning Administrator Debbie Powers. The details of the 15 points outlined in this Article section were discussed and provided by the Applicant. Plats and Plans were provided and displayed at Town Hall and Board of Adjustment members were notified via email that these documents were available for viewing at their convenience.
- **Important Item #1** – Neither the Town nor the Board of Adjustment has a legal right to determine **IF** a WWTP can be built – that decision lies directly with the State – the NC Dept. of Environment and Natural Resources, Division of Water Quality (DENR). The Board of Adjustment’s decision is one that relates only to the permissibility of the USE, according to the UDO.
- **Important Item #2** – If the Special Use Permit is approved by this Board of Adjustment, the Applicant will then be responsible to follow the construction regulations of the UDO. This includes

obtaining the Zoning Permit, the Grading Permit, the Driveway Permit, Tree Removal Permit, and any other Permits as required by Watauga County Planning & Inspections.

- **Important Item #3** – Applicant understands that according to Article 14, Section 7 (1) – “If a Special Use is abandoned or discontinued for (one) 1 year, the Special Use Permit becomes void without further action by the Town, and the Use may not be re-established without approval of a new permit.”
- Multiple phone conversations between myself, Mr. Charlie Clement, and Mr. Ron Sayles occurred after the annexation of this property, regarding the UDO regulations, procedures, and deadlines, proceeding forward with this Special Use Permitting process.

Chair Bridges asked the Board of Adjustment members the following: *“Are there any preliminary questions for the Zoning Administrator Powers?”*

**No board member replied.**

**(vii) Presentation of Application – Charles Clements, Clevon Woods Associates, LLC.**

Clevon Woods Associates, LLC, Applicant is a privately owned NC LLC, based in Boone, NC. The company owns an 18-acre vacant parcel (Zoned GB) within the Town limits, fronting on the north side of NC Hwy 105, near the 0.576-acre tract, which is the subject parcel for the SUP application. The 0.576-acre tract is proposed to be used for a wastewater treatment plant (WWTP) installation with outfall line to the Watauga River.

In 1987, Clevon Woods applied for and received from the State of NC, a discharge permit (#NC0070408) for a WWTP with capacity of 35,000 gpd to support development of its property. The WWTP permit has been reissued every 5 years since 1987, and on November 9, 2018, was renewed by the State of NC through November 30, 2023. Exhibit C.

Authority to construct the WWTP has been previously issued by the Town of Seven Devils and Watauga County. However, due to circumstances, construction of the plant was delayed, and necessitating the present Application to the Board of Adjustment.

Applicant has submitted a Bill of Sale, dated February 13, 2018, between BBR Enterprises, LLC to Clevon Woods Associates, LLC for a previously used WWTP, owned and operated by “Aqua” in Mint Hill, NC. The WWTP is an extended aeration activated sludge package plant with tertiary filters and is temporarily stored on the 0.576-acre parcel.

The proposed project is classified as a public utility, and to be regulated by the NC Division of Water Resources and the NC Utilities Commission.

In 1986, Clevon Woods constructed and operated (through a lessee), a gas service and convenience store on a 1.245-acre tract adjoining the 18-acre tract, located at the corner of NC Hwy 105 and NCSR 1151/Seven Devils Road. This is now known as the Speedway Station. The septic system providing waste disposal for the Speedway has failed and there is not sufficient usable land for septic field repair or construction of an alternate drain field. Currently, the Speedway Station has been using a temporary pump and haul permit for waste disposal.

Speedway Station is supportive of the WWTP project and has contributed funds towards construction. The WWTP and gravity sewer line system will be designed and constructed to tie into the Speedway property when completed and operational.

Vestpocket Investments, LLC owns a parcel of land on Aldridge Road, diagonally across from the 0.576-acre parcel owned by Clevon Woods. The Vestpocket Investments, LLC parcel has a failed septic system, and not sufficient usable land for septic repair area. A proposed restaurant to be on the Vestpocket Investments, LLC parcel will tie into the WWTP once it is operational.

Clevon Woods purchased the subject 0.576-acre parcel from the Propst Family Heirs, as its location provides higher ground, less affected by wetlands, on which to locate the WWTP. This acquisition included the allocation of 1,000 gpd of wastewater disposal for the Propst's use.

The abutting property to the 0.576-acre parcel, owned by the Propst Family Heirs was recently sold in April 2021, to Stephen & Sally Tatum. Clevon Woods provided a recorded Warranty Deed to the BOA.

With adequate wastewater disposal for Speedway, Vestpocket Investments, and Propst, as well as the 18-acre tract owned by Clevon Woods, these properties can be developed for mixed used residential/commercial. The benefit to the Town will be increased tax base, economic growth, and jobs in the community.

In addition to exhibits provided with the Application for Special Use Permit, included with the agenda packet, other exhibits provided to the Board of Adjustment at tonight's meeting include:

- 1) Non-Warranty Deed, dated February 13, 2018 – BBR Enterprises, LLC & Clevon Woods Associates, LLC
- 2) WWTP Permit, dated November 9, 2018 – Issued by NCDEQ
- 3) Bill of Sale – Aqua North Carolina, Inc. paid by BBR Enterprises, LLC, dated July 9, 2015
- 4) Annexation Plat for Clevon Woods Associates, LLC; prepared by Ralph Daughtry, Surveyor
- 5) Plat – Centerline of a 10' Sewer Easement & Treatment Plant Site Plan; prepared by Ralph Daughtry, Surveyor
- 6) Warranty Deed, recorded April 16, 2021 – Propst Estate & Stephen and Sally Tatum
- 7) Signed Affidavits of Ron Sayles, Debra Cairns, and Chad Vincent – *Originals with BOA Clerk*
- 8) Notarized Bill of Sale – Ron Sayles, BBR Enterprises LLC – Aqua North Carolina – *Original with BOA Clerk*

Applicant individually addressed each of the six (6) requirements (according to the Town of Seven Devils UDO – see page 150) that must be considered in order for a Special Use Permit to be issued.

Chair Bridges asked the Board of Adjustment members the following: *“Are there any questions for Charles Clements?”*

Chair Bridges asked the applicant, *“What is the difference between a private and public utility?”*

Clements replied, a private utility is not regulated, but a public utility is, and must meet higher standards.

Chair Bridges asked about the previous permitting of the WWTP with the Town of Seven Devils and Watauga County. The applicant did not consider the question relevant, but answered, as the BOA Chair does. A recap permitting process was provided again, along with property purchases and future goals.

The previous permits were deemed void, due to lack of construction within the allotted time, causing the process to begin again. Clevon Woods has a valid issued Permit#NC0070408 by NCDEQ.

Chair Bridges expressed his three (3) major concerns are:

- 1) Odors
- 2) Visual Impacts/Size of Building & Fence
- 3) Effluents into the Watauga River

Clements replied, he has provided a rendering of the proposed building and fence for the WWTP.

Mark Brooks, Clevon Woods Engineer stated he has been involved with approximately one hundred (100) WWTP's in his career. This WWTP is considered average. As a public utility, the State of NC has oversight, and through the permit process sets the discharge limits. Testing & reporting are performed regularly. Any odors could be considered organic in nature, in his opinion. The building provides noise and odor abatement.

Clements stated this is a public utility that will be operated by a licensed private operator.

Member Brock asked, "Will there be noise from the building?" Clevon Woods Engineer replied, yes there will be some noise from the mechanical operations. The building will include insulation.

Chair Bridges asked David Poore, Town Engineer for his opinion or feedback about this presentation.

Poore replied, "This is permitted by the State of NC with what can be released; the parameters are very strict levels. Poore's opinion is the Applicant is doing his best to control the odor and noise. The Applicant is not required to provide a building but is doing so in effort to be a good neighbor. Any complaints about the discharge levels should be addressed to the State of NC.

Member Hurlbrink asked, "The rendering shows landscaping. Will landscaping be included and maintained?" Clements replied, yes.

Member Hurlbrink asked, "Will the fencing be around the entire building, or just at the front roadside?"

Mark Brooks replied just at the roadside.

Clements stated any restrictions that the BOA wants to place on the permit, will be abided by.

Town Engineer Poore clarified restrictions on the WWTP are set out by the State of NC only.

Clements agreed, but also clarified he meant the Special Use Permit being considered by the BOA.

Chair Bridges asked, "What is the approximate measurement of the 0.576-acre parcel to the Watauga River?" Mark Brooks replied, approximately 171 feet.

Member Hurlbrink asked, "What is the size of the building in relation to the land?"

A map was shown, and all setbacks will be determined and met by the Town's UDO.

Charles Clement, Applicant thanked the Board of Adjustment for their questions and concerns, while considering this Special Use Permit request.

Chair Bridges reviewed the next steps of the Public Hearing and Board of Adjustment meeting.

**(viii) Witness Opposed to Application - None**

**(ix) Board of Adjustment Discussion - To be held on June 22, 2021 - BOA Meeting**



**(vii) Recess Evidentiary Hearing until June 22, 2021**

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

*\*Clerk's Note - All labeled attachments submitted with the agenda or exhibits referenced in this Board of Adjustment proceeding are included at the conclusion of these minutes.*

**E. Board of Adjustment - Future Dates**

**(i) Public Hearing**

Member Brock made a motion to set the Public Hearing date on Monday, June 21, 2021 at 1:00pm; Member Sell seconded the motion. All members agreed.

**(ii) Board of Adjustment Meeting - Tuesday, June 22, 2021, at 5:30pm**

**ADJOURN (Subject to Evidentiary Hearing Recess)**

Member Byrnes made a motion to adjourn; Member Hurlbrink seconded the motion. All members agreed. The meeting adjourned at 7:15pm.



Robert D. Bridges, Chairperson



Hillary Gropp, Town Clerk