

Town of Seven Devils
Board of Adjustment Meeting
Tuesday, July 26, 2022
5:30pm

The Seven Devils Board of Adjustment met on Tuesday, July 26, 2022, at Town Hall. In-person attendance included: Members - Bob Bridges, Faye Brock, Jack Byrnes, Bobbye Hurlbrink, Frank Sell and Stu Ryan-Alternate; Remote attendance by Member John Wells IV-Alternate.
Electronic format – Go To Meeting #142996461.

Staff included Eddie Barnes-Zoning Administrator; the minutes recorded by Hillary Gropp-Town Clerk.

Mark Williams – Applicant – Remote attendance.

CALL TO ORDER

Chairperson Bridges called the meeting to order at 5:32pm.

ROLL CALL

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

AMEND AGENDA

Chairperson Bridges asked to amend the agenda with moving 5) New Business (iii) Disclosures to follow (v) Witness Oath. Member Byrnes made a motion to amend & adopt the agenda; Member Brock seconded the motion. All members agreed.

OLD BUSINESS

A. Approve Minutes

(i) Board of Adjustment – Meeting – February 22, 2022

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

NEW BUSINESS

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

Open Evidentiary Hearing

Member Hurlbrink made a motion to Open the Evidentiary Hearing; Member Byrnes 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:

Mark Williams, Applicant

Expert Witness:

Luc Parmentier - High Country Energy Solutions – Working experience for 2 years and holds a degree in Sustainable Technology from ASU; has certifications for solar edge product.

General Witness:

Eddie Barnes, Zoning Administrator

Witness Oath

Town Clerk Gropp administered the Witness Oath to all individuals who will provide witness 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?"

**Members Brock & Hurlbrink disclosed they have walked by or driven by the site.
No other board member replied.**

Chair Bridges asked the following: *"Does any board member have any conversations or other communications to disclose?"*

**Chairperson disclosed he had a conversation with the Clerk about the agenda and two brief conversations with the Zoning Administrator about the application.
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.

Presentation – Eddie Barnes – Zoning Administrator

Zoning Administrator Barnes presented the following:

- The Town of Seven Devils received an Application from Mark Williams on June 27, 2022.
- The application is for installation of solar panels, with documentation, and submitted with the \$500 fee. Solar panels are considered an accessory use requiring a Special Use Permit.
- The property address is 268 E. Rocky Top Trail. – PIN# 1878-49-2606-000
- Property is in the LDR (Low Density Residential).
- The Town has an Alternate Energy Ordinance as guidance.
- Photos and diagrams are included in application package.
- Sign was posted on site and letters were mailed to "Parties with Standing" on July 12, 2022.

Luc Parmentier – High Country Energy Solutions stated the following:

- High Country Energy Solutions will comply with the Town's ordinances.
- The submitted plan will be followed.
- There will no overhang or pitch; panels will be 3 inches off the roof surface; wind rating 180mph.
- Dimension of panels about 40" x 80"

Member Brock asked if the roof has solar panels, as visually it appears to be so.

Applicant Williams stated yes, the roof has solar panels for the hot water heater, these new panels would be support for the entire house.

Chairperson Bridges asked the applicant when the existing solar panels were installed. Applicant Williams stated they had been installed prior to his purchase of the house.

Chairperson asked the Board members if they had any prior knowledge of procedures and installation timeline for the existing solar panels. The Town's Alternate Energy Ordinance was adopted in 2014.
No board member replied.

Chairperson Bridges asked when the house was built; Applicant Williams replied in 2012.

Member Byrnes stated those should be considered “grandfathered in,” without further consideration.

Chairperson Bridges asked if approval by the local power company has been documented.
Zoning Administrator Barnes stated yes, Blue Ridge Energy email has been provided tonight.

Chairperson Bridges asked the approximate timeline for installation.
Luc Parmentier stated about 1 month, as it includes inspections, etc., however, High Country Energy Solutions will only be on site about 1 week of this timeline.

Member Brock asked if there will be noise during the installation process.
Luc Parmentier stated power tools will be used, and there will be noise, equivalent to building a deck.

Chairperson Bridges asked if there are any witnesses opposed to this application.
Applicant Williams stated the neighbor, Eddie Williams is without objection and would submit a letter.
Chairperson Bridges stated that will not impact the decision tonight, as the letter has not been received.

Discussion/Board Deliberations on Request

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 (relating to the required standards) is true; 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.**

Board Deliberations on Special Use Permit Request

Chair Bridges asked for discussion among the Board of Adjustment members.

Member Hurlbrink stated that the solar panels are not too large, and this is acceptable. It does not affect anyone else. She also thinks eventually other people will install solar panels to save money.

Chairperson Bridges stated in agreement that likely other applications will be submitted for this purpose.

Member Jack Byrnes stated he thinks the application meets all of the criteria.

Chairperson Bridges stated that he has no issue with the project/installation of solar panels, however, he views the application as incomplete. Further, he states by approving the Special Use Permit with an incomplete application, it sets a precedent for subsequent requests by other citizens.

Chairperson Bridges outline the following deficiencies on the Application, when reviewing the Town's Alternate Energy Resources Ordinance that was adopted on March 11, 2014.

Site specific development plan **shall** include:

- (A)
1. Dimensions of the property – **Not Satisfied** – Boundary survey is submitted, but unreadable.
 2. Proposed location of solar panels – **Satisfied** – Shown on site plan addition.
 3. Arrangement of solar panels – **Satisfied** – Shown on site plan addition.
 4. Distance from roof – **Satisfied** – Flush mounted per sworn testimony; same pitch as existing roof.
 5. Pitch of finished roof – **Not Satisfied** – Not included.
 6. Distance from proposed site improvements to **ALL** property lines – **Not Satisfied** – Site plan addition shows distance from road (NOT a survey), but no other setback measurements.
- (B)
1. Site plan to show required buffering (setbacks), per UDO Intensity Regs – **Not Satisfied** – No setbacks shown.
- (C)
1. Horizontal/Vertical elevation drawings to scale with dimensions – **Not Satisfied** – None provided.

Chairperson Bridges stated the requirements of the Alternate Energy Resources Ordinance must have been important to Town Council when adopted in 2014. If not important now, the Planning Board should make the recommended changes to Town Council. The Board of Adjustment has no authority to make changes to existing Ordinances.

Chairperson Bridges reviewed the options with Board members including:

- (1) Approve the Application with existing deficiencies – Chairperson Bridges stated he will vote NO on this motion, and it needs 3 of 5 votes to pass.
- (2) Deny the Application due to incomplete status.
- (3) Recess the hearing to give the Applicant sufficient time to complete the application on accordance with the Ordinance.

Chairperson Bridges inquired with Mark Williams, Applicant about his thoughts. The Applicant agreed the application should be complete, however, it will take time & further expenses on his part to do so. Chairperson Bridges stated a reasonable timeframe should be allowed to the Applicant, suggesting no longer than the January 2023 Board of Adjustment meeting.

Member Sell made a motion to RECESS this item to no later than January 24, 2023; Member Byrnes seconded the motion. All members agreed. ~OPEN~

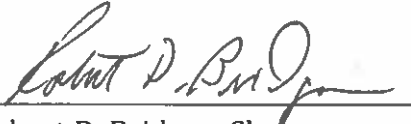
(5)Yeas (0)Nays

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

ADJOURN

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


Robert D. Bridges, Chairperson


Hillary Gropp, Town Clerk