

Town of Seven Devils  
Board of Adjustment Meeting  
Tuesday, October 26, 2021  
5:30pm

The Seven Devils Board of Adjustment met on Tuesday, October 26<sup>th</sup>, 2021 at Town Hall. In-person attendance included: Bob Bridges, Faye Brock, Jack Byrnes, Bobbye Hurlbrink & Frank Sell; A quorum was met. Electronic format – Go To Meeting #163693237

Alternate members – Bert Valery & John Wells IV were absent. Staff included Debbie Powers-Zoning Administrator, Rob Angle–Town Attorney; the minutes were recorded by Hillary Gropp-Town Clerk.

Also in attendance:

Michael & Karen Zavislak – Applicants- 178 Woodwinds Circle  
Quinn Morris – President – Woodwinds POA

**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 and Jack Byrnes 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.

**OLD BUSINESS**

**A. Approve Minutes**

**(i) Board of Adjustment – Public Hearing – June 21,2021**

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

**(ii) Board of Adjustment – Meeting – June 22, 2021**

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

**NEW BUSINESS**

**A. Open Evidentiary Hearing**

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

**Hearing Notifications** – Town Clerk Gropp stated signage was posted on October 11<sup>th</sup> and letters were mailed to “Persons with Standing” on October 12<sup>th</sup>.

## **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. At this time, we will make a determination of the Witnesses and the Parties with Standing.*

## **Witness Oath**

Town Clerk Gropp administered the Witness Oath to all individuals who intend to provide witness testimony. This included: Michael & Karen Zavislak – Owners-Variance Applicants, Quinn Morris – Woodwinds POA President, and Debbie Powers – Town Zoning Administrator.

## **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?"*

Chair Bridges and Members Hurlbrink and Sell disclosed driving by the site. Chair Bridges disclosed he has met with staff for the purpose only of setting the agenda.

**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 any party with standing replied.**

**Presentation – Debbie Powers – Zoning Administrator**

Zoning Administrator Powers presented the following:

**Findings of Fact:**

- The Town of Seven Devils received a Variance Application from Michael Zavislak on August 23, 2021, delivered to Town Hall on this same date, and was received by Zoning Administrator on August 24, 2021.
- The application was complete and accompanied by the \$250 fee and all required documentation.
- The property address is 178 Woodwinds Circle – Lot 4 in the Woodwinds I subdivision; Parcel ID# 1878-23-4854-000, and is .28 acres. Property was deeded to Zavis Echota LLC, a South Carolina Limited Liability Corporation, on 12/30/2020. Michael Zavislak is the Registered agent for the LLC, with address listed as 5 Sherborne Court, Columbia, SC 29229 and status is “Good Standing”.
- Town of Seven Devils property taxes are currently paid, with a \$0 balance.
- Property is in the LDR (Low Density Residential) on the Official Zoning Map of the Town of Seven Devils. Setback regulations are in the UDO (Unified Development Ordinance) on page 38, Table 7.1 noting minimum front yard setbacks of 30’, and minimum side yard setbacks of 15’. The application, as submitted, encroaches onto the side yard setback for both the proposed paved driveway and the storage shed. Table 6.1 ‘Table of Permitted Accessory Uses’ permits Storage Sheds (not to exceed 200 square feet) in LDR Zoning areas.
- From page 15 in the UDO – “Under no circumstances is the Zoning Administrator permitted to make changes in this Ordinance or to grant exceptions to the actual meaning of any clause, standard, or regulation contained in this Ordinance.

Zoning Administrator Powers also presented a Timeline of Communications she has had with the Applicant.

**Presentation – Michael Zavislak – Applicant**

Michael Zavislak updated the BOA of an address change. The South Carolina address as previously indicated is no longer valid, and has been changed to the 178 Woodwinds Circle address.

Zavislak explained the house was purchased as a vacation home, but now he has moved into it as a full time resident, and has a need to accommodate 3 vehicles by extending the driveway. They are already parking in the area that is requested in the Variance, but wants to improve it. The current driveway is 16.5 ft wide and barely accommodates two cars. He stated the drainage lines for the adjacent property is 11 ft off the adjacent property, therefore the extended driveway would be approximately 8ft-11ft from the neighbor’s drain field. The subject property drain field is located on the other side of the house. The utility lines have been identified; Blue Ridge Energy lines are 4ft deep and no to need relocate; Charter Spectrum lines will be moved. Zavislak has submitted a drawing on graph paper of the property, house and proposed driveway extension. He has located and identified the property pins and measurements, but does not have a certified survey. The scope of work will include grading, gravel and paving, as well as repaving the original driveway.

Chair Bridges asked questions for clarity with the scope of work. Chair Bridges asked the Applicant if he knew what the adjacent property owner thought of this request? The Applicant stated the neighboring house is a rental, the owners have been contacted, but has received no response, so he doesn't know. Chair Bridges asked for a clarification on if he's made contact or not? And how?

The Applicant stated the Woodwinds POA just had a meeting on Sunday, October 24<sup>th</sup> and were told of this Variance request. He invited them to come look or ask questions, and while some looked, nobody responded to him. The Applicant stated they have been parking in the proposed driveway extension since January 2021.

Member Hurlbrink asked if the Applicant spoke to all the homeowners? The Applicant stated they received an email.

Quinn Morris – Woodwinds POA President addressed the BOA.

He stated the owners of Woodwinds POA were notified by email, as the POA has a common area across the street from the subject property. His email to the owners was to let them know he could be the representation on behalf of the POA.

He did receive a response from Anthony Jones & Karmen Baretich of 109 Woodwinds Lane and adjacent property owner.

Chair Bridges stated he would allow his testimony, but asked the Applicant to return to the podium for additional questions from the BOA members.

Member Brock asked the Applicant that when the house was purchased, the driveway was established and did he consider the limitations of space at the time of purchase? The Applicant replied, the house was purchased as a vacation home, but now is being lived in full time. Personal circumstances have increased the household size and the need for additional parking. Member Brock stated even as a secondary home, multiple vehicles would cause parking issues. The Applicant stated that was not a consideration at the time of purchase. The Applicant stated several homeowners park on the street or in a common area of Woodwinds. The goal of the Woodwinds POA is for owners to park vehicles on their private property.

#### **Other Parties with Standing – Quinn Morris – Woodwinds POA**

Quinn Morris, Woodwinds POA President, stated he would try to summarize the feedback from the citizens that responded in Woodwinds.

Below is background on the Woodwinds Community, followed by the 3 requirements that the Board of Adjustment will be reviewing for the Variance request.

- A unique bit of history is when the Woodwinds Community was originally developed, it was not as individual plots, but as one parcel of land, and much later, timeframe unknown, the property lines were established. Unfortunately, this has caused some particular challenges, as several homes already encroach in the setbacks.
- The community was developed primarily for vacation homes, and most have limited parking, narrow driveways, and single car garages. Now that most residents in Woodwinds live there full time, there is a constraint with parking.
- The POA owns all septic fields; not individual owners. The responsibility for maintenance of the septic fields lies with the POA and is in the covenants, and includes easements. It should be noted

that a septic field might not even be located on the same property as the house that it services, but on another lot. The POA has reviewed the map of septic fields and the neighboring septic field is fully on the adjacent lot and not the subject parcel for the Variance request.

- Because of the Woodwinds POA covenants and restrictions, this project would require review by the Woodwinds Architectural Committee, whether or not a Variance was requested or approved.

1) The peculiar nature of the limitations of the subject parcel is not singular, but an issue for many, if not all of the properties.

Quinn Morris stated that 7 of the 17 homeowners agreed with this opinion, and expressed concern that allowing a variance would lead the way for many variance requests within the Woodwinds POA.

Quinn Morris also stated that several other homeowners countered with this opinion, replying, this is a problem for the Woodwinds POA, and allowances should be granted to homeowners to make better use of their private property.

Quinn Morris stated the Woodwinds POA is a "Party with Standing" as they own the common area, but they have no official position, and do not want to prejudice the decision of the Board of Adjustment.

Whatever the outcome with a Board of Adjustment decision, the Woodwinds POA Architectural Committee would also review.

Michael Zavislak made the Board of Adjustment aware the Woodwinds POA Architectural Committee has already approved a driveway extension using gravel. When the request to pave, instead of gravel only was made, the Woodwinds POA directed the Applicant to contact the Town for any permits needed.

Quinn Morris confirmed this previous approval of the footprint of the driveway, by the Woodwinds POA.

It was reviewed and approved as a change to landscape, as required by the Woodwinds POA.

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

Zavislak stated this improvement would increase the property value; Chair Bridges dismissed this as a non-consideration for the Board of Adjustment.

Member Hurlbrink asked specifically what is the opinion of the adjacent property owners?

Quinn Morris read an email from Anthony Jones – Owner – 109 Woodwinds Lane

A septic map survey for 109 Woodwinds Lane was submitted for review; the copy is nearly illegible.

Quinn Morris confirmed the septic field for 109 Woodwinds Lane is located entirely on 109 Woodwinds Lane, and is situated between the two houses. Quinn Morris stated he is not an expert about septic fields or how a variance approval would affect it.

Quinn Morris read an email from Rosalyn Thorpe – Owner – 194 Woodwinds Circle

Chair Bridges confirmed with Quinn Morris that no matter what the decision of the Board of Adjustment, additional review by the Woodwinds POA will be needed. Quinn Morris confirmed with, yes.

Michael Zavislak stated the total distance from the neighboring septic field will be 11 ft.; the closest the driveway extension will be to the adjacent parcel/property line is 8 ft.

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

**Discussion/Board Deliberations on Variance 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 is true; The board must make the following three (3) findings; all must be true.*

- 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.*
  - b. The hardship is suffered by the applicant's property rather than personal circumstances.*
  - c. The hardship is not the result of the applicant's own actions.*
  - d. The hardship is peculiar to the applicant's property.**
- 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.*
- 3. In granting the variance, the public safety and welfare have been assured and substantial justice has been done.*

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

Member Hurlbrink stated the opinions of the adjacent property owners should be given more consideration, than the other "Parties with Standing". Their concern is for their septic field, and if the driveway will cause harm.

Member Byrnes stated the septic fields are already settled and not fragile; this is a non-issue and the distance is adequate. He said the "blanket" septic easement occurred when Woodwinds was developed. The hardship occurred when Woodwinds was developed and then the property lines were drawn. The drainage lines will always be a reoccurring issue for anyone requesting. The hardship is not peculiar to the applicant's property.

Member Brock would like more evidence showing a survey of the property and showing the septic field. She is also concerned approval of the variance request will set precedent to be followed by others. Chair Bridges stated each BOA variance request in the future is to be considered individually.

Chair Bridges questioned is the hardship due to the property or personal circumstance.

Member Byrnes inquired how the Woodwinds POA has handled previous requests by other owners. Quinn Morris stated that other owners have not always followed the process; The Applicant – Zavislak is taking the correct steps.

Member Hurlbrink said the Woodwinds POA has already approved a gravel driveway extension for the Applicant.

**Discussion occurred among the BOA members that more evidence is need to make a decision. Specifically, a request is made for:**

- 1) Professional survey**
- 2) Map of septic lines; and requested expert opinion**
- 3) Official position of the Woodwinds POA.**

**Recess Evidentiary Hearing**

Member Sell made a motion to Recess the Evidentiary Hearing to a future TBD Board of Adjustment meeting; Member Brock seconded the motion. All members agreed.

Roll Call – Frank Sell-Yes, Faye Brock-Yes, Bob Bridges-Yes, Bobbye Hurlbrink-Yes, Jack Byrnes-Yes

**B. BOA Applications/Recommendations to Town Council**

The following applications have been received for the Board of Adjustment.

Faye Brock – Reappointment – Term begins 01/2022 & expires 12/2025

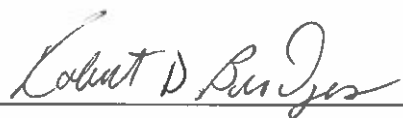
John Wells IV – Reappointment-Alternate – Term begins 01/2022 & expires 12/2025

Stu Ryan – Appointment-Alternate to vacant seat – Term ends 12/2022

Member Byrnes made a motion to approve applicants with recommendation to the Town Council; Member Hurlbrink seconded the motion. All members agreed.

**ADJOURN**

Member Brock made a motion to adjourn; Member Hurlbrink seconded the motion. All members agreed. The meeting adjourned at 6:37pm.



Robert D. Bridges, Chairperson



Hillary Gropp, Town Clerk

