

**Town of Seven Devils  
Board of Adjustment Meeting  
Tuesday - April 27, 2021  
5:30pm**

The Seven Devils Board of Adjustment met on Tuesday, April 27, 2021 and the format of the meeting was dual format via Electronic – Go To Meeting #331996005 and In-Person at Town Hall.

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

Alternate John Wells attended remotely with visible video display and observed. Member Frank Sell joined In-person at 4)OLD BUSINESS. Alternate Bert Valery was absent.

The minutes were recorded by Town Clerk Hillary Gropp.

Town Manager/Zoning Administrator Debbie Powers recused herself from the procedural duties of the “Old Business” for BOA meeting.

Also in attendance:

Norman & Kay May – Appeal Applicants – Lot 25, Alpine Meadows

Roxanne Schwebke Saltman -Variance Applicant – Shoppes of Tynecastle

**CALL TO ORDER**

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

**ROLL CALL**

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

**AMEND AGENDA**

Chair Bridges amended the agenda with two items as follows:

Item 4) Old Business, B. Deliberations of May Appeal, *strike and replace* (ii) ~~Parties with Standing Comments/Email Comments~~, amend to Submission of Email Comment as part of Case Documentation.

Item 5) New Business, A. Variance Application/Presentation, *remove Roxanne Schwebke Saltman, Petitioner and add to* (v) Presentation of Facts/Evidence – Debbie Powers, Town Manager/Zoning and Roxanne Schwebke Saltman.

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

**4) OLD BUSINESS**

**A. APPROVAL OF MINUTES – Board of Adjustment – March 23, 2021**

Chair Bridges asked to amend the Board of Adjustment minutes, at page 7, included language in italics at the following sentence, A future public hearing will occur and citizens with standing *and other citizens*

will be able to comment, prior to the Board of Adjustment's final decision. Member Byrnes made a motion to approve the amended minutes; Member Brock seconded the motion. All members agreed.

## **B. DELIBERATIONS OF MAY APPEAL**

**(i) Call for Additional Disclosure** – Zoning Administrator Powers spoke with Watauga County Planning & Inspection about the last inspection, which occurred in December 2020. The next inspection would be for the final CO (Certificate of Occupancy), however it has not been called in at this time. Powers also visited the location, and the driveway is still gravel, but will need to be concrete or asphalt to comply with the UDO requirements.

**(ii) Submission of Email Comment as part of Case Documentation – NONE**

**(iii) Discussion**

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

#### **Findings of Fact, Decision, and Order – Norman May, Lot 25, E. Rocky Top**

##### **Findings of Fact**

1. Mr. and Mrs. May and Town staff met on October 17, 2017 for a Pre-Construction meeting to issue all the necessary Building permits for the Town (Zoning, Grading, Driveway, Water Tap, and Performance Bond).
2. The Town Unified Development Ordinance – Article 10 – addresses all the details of Construction regulations, including the two-year overall time limit for all new residential construction projects.
3. Five email correspondences occurred over the period of April 26, 2018 to December 10, 2020 from the Zoning Administrator to Mr. May, regarding the slow progress of his construction project. These emails were presented at the Evidentiary Hearing on April 27, 2021 as Attachment C.
4. On December 30, 2020, a written, signed complaint was received from Mr. Jeff Williams at 177 East Rocky Top Trail, the next-door neighbor to the May property. The UDO states the Zoning Administrator “shall investigate the complaint, take whatever action is warranted, and inform the complainant what actions have been or will be taken.”
5. On December 30, 2020, a Violation and Letter was issued in the amount of \$250, due within 30 days (January 31, 2021) and a warning that beyond that date, that an additional \$250 per day Violation would accrue until the project is completed.
6. Mr. May paid the \$250 Violation and has appealed the decision of the Zoning Administrator of the \$250/day Violation that started on February 1, 2021 and accrued until April 27, 2021 (the date of the Board of Adjustment meeting). Total amount accrued is \$21,500.
7. At the March 23, 2021 Board of Adjustment meeting, Mr. May presented his case, stating that the delay was due to inclement weather conditions and unreliable contractors.
8. At the March 23, 2021 Board of Adjustment meeting, the Zoning Administrator stated that 2 other new construction projects had been started after Mr. May's project began and were completed and received their CO within the 2-year limit.

##### **Conclusion:**

1. Based on the Application for Appeal, the evidence submitted on March 23, 2021 Board of Adjustment meeting, the Public Hearing on April 26, 2021 receiving no written or verbal comments from persons of

standing, or other citizens, and the above findings of fact, on April 27, 2021 the Board of Adjustment final Conclusion and Decision is as follows:

The Town of Seven Devils Zoning Administrator has exhibited leniency and extended the deadline by 1 year, 3 months with the May permit. Although extreme weather, labor or supply shortages, due to Covid19 can be considered as a factor, when considering an already extended deadline, these too have already been factored in by the Zoning Administrator prior to the issuance of two violations.

Violation #0492 - \$250.00 – Failure to complete construction in 2 years

Violation #0494 - \$250.00 – UDO Construction – Failure to complete in 2 years; \$250 a day fine, Effective February 1, 2021.

On the Application of Appeal, most specifically, How do you think the ordinance or guidelines should be interpreted? Norman May's written reply is, "The Hardship is not the result of the Applicant's own Actions".

Board of Adjustment Chair Bridges disagreed, and stated the Owner's own action brought the hardship by acting as his own general contractor, as well as being an absentee general contractor, not being familiar with the sub-contractors, suppliers, schedules, availability of supplies contributed more to the "failure to complete in 2 years".

To date, the May construction is still not complete.

#### **(iv) Vote**

**Motion:** The Board of Adjustment voted to Affirm the Zoning Administrator decision, with a \$250.00 a day fine to begin on April 28, 2021 at 12:01am.

(5) Yeas (0) Nays

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

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

#### **C. Decision**

A. To determine "when the fine begins?", the Board of Adjustment discussed the Town of Seven Devils Unified Development Ordinance (UDO), Article 17, Section 2 (b), Stay of Further Action.

*An appeal by aggrieved parties to the Board of Adjustment stays all actions seeking enforcement of, or compliance with, the decision being appealed.*

The Board of Adjustment's interpretation of "stays all action, enforcement of, or compliance with" meant that, once the May's filed an Application for Appeal on February 1, 2021, all fines between the dates of February 1, 2021 and April 27, 2021 (the "appeal period") are not enforceable. It was concluded that there is no fine during the stated "appeal period".

### **5) NEW BUSINESS**

#### **A. VARIANCE APPLICATION/PRESENTATION**

##### **(i) Open Evidentiary Hearing**

Member Byrnes made a motion to Open the Evidentiary Hearing; Member Brock 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. At this time, we will administer the oath for all individuals who intend to provide witness testimony."*

## **(iii) Witness Oath**

Town Clerk Gropp administered the Witness Oath to Roxanne Schwebke Saltman – Variance Applicant – Shoppes of Tynecastle.

## **(iv) 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 replied.**

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

Zoning Administrator Powers presented the following:

**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.
- I required Ms. Saltman 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 distillery, and to place an Airstream RV in the adjacent parking area to accommodate a cigar bar.
- 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.

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

Member Brock asked:

*Is there a timeline for this to end?”* Powers replied there is not an ending or expiration.

**Presentation by Roxanne Schwebke Saltman**

Saltman explained the plans to open a distillery in the Tower at Shoppes of Tynecastle. Plans also include a cigar lounge to be operated out of an Airstream RV. Saltman provided photos of an Airstream RV as an example. The request for Variance is for a RV to be parked a few days a week, to be used for the cigar

lounge. When it isn't actively being used for the business use, then it will be stored behind the Shoppes of Tynecastle on private property. Details for exact business days, or hours of operation have yet to be determined, as well as sanitary disposal methods of fluids; ex: water, gray & black water.

The timeline to begin operation of the RV Cigar Lounge is set for late May 2021, until TDB in year 2022, when the Cigar Lounge will be relocated to the Tower.

The business plan/lease to open the RV Cigar Lounge at the Shoppes of Tynecastle is in a holding pattern and contingent on the Board of Adjustment decision or approval.

Saltman stated she thinks her Variance Application should be considered and approved, as the RV Cigar Lounge will be located in the Town's GB Zoning, and not Residential Zoning.

Saltman stated she will follow up with Zoning Administrator Powers about proper permits for signage.

Chair Bridges asked the Board of Adjustment members the following: *"Are there any questions for Roxanne Schwebke Saltman?"*

Member Hurlbrink asked *"When will a lease be signed?"* Saltman replied once the Board of Adjustment makes a decision.

Member Hurlbrink asked, *"Are there laws about smoking inside the RV Cigar Lounge?"* and *"Is there proper ventilation?"* Saltman replied that is all approved by a Government Agency.

Member Brock asked, *"Will the RV Cigar Lounge be ADA compliant?"* Saltman replied there will be two ramps to the main floor.

Member Brock asked, *"Will this be a year round operation?"* Saltman replied yes, but not initially.

Chair Bridges asked, *"Is this a legitimate DBA lease/business name?"* Saltman replied yes.

Chair Bridges asked, *"Will the bathroom in the RV Cigar Lounge be functional and used by how many customers?"* Saltman replied, yes, she didn't know how many would actually use the inside bathroom, and disposal of the tank would be needed. But she did not know the frequency of disposal until the RV Cigar Lounge opens. The RV Cigar Lounge will accommodate approximately 18 customers.

#### **(vi) Board of Adjustment Discussion**

Chair Bridges spoke about the intent of the Town of Seven Devils Nuisance Ordinance – Article 13 – Recreational Vehicles Prohibited.

13.1 Purpose – Due to the limited size and width and grade of the Town roads, all Recreational Vehicles are prohibited in the Town of Seven Devils town limits.

When considering the language directly relating to width and grade, this suggest the roads within the Residential Zoning, and not Commercial Zoning (GB Zone).

Chair Bridges read 13.4 Exceptions – Commercial work trailers operated by contractors, (i.e., landscapers, tree arborists, handyman, etc.) during normal work hours. Buses or RV's visiting Commercially Zoned (GB Zone) and Recreational Business (RB Zone) businesses during normal business hours.

Chair Bridges asked Zoning Administrator Powers, *"Why doesn't this RV qualify as an exception?"* Powers replied because the RV will remain overnight, and not visiting.

Member Byrnes stated this RV will be moved at times, and not remain permanently in the location.

**(vii) Close Evidentiary Hearing**

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

*\*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.*

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

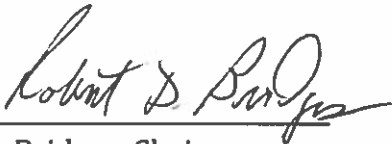
**(i) Public Hearing**

Member Brock made a motion to set the Public Hearing date on Monday, May 24, 2021 at 1:00pm; Member Sell seconded the motion. All members agreed.

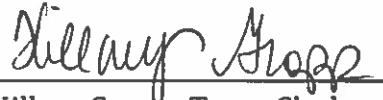
**(ii) Board of Adjustment Meeting - Tuesday, May 25, 2021 at 5:30pm**

**ADJOURN**

Member Brock made a motion to adjourn; Member Hurlbrink seconded the motion. All members agreed. The meeting adjourned at 6:30pm.



Robert D. Bridges, Chairperson



Hillary Gropp, Town Clerk

