

Town of Seven Devils
Board of Adjustment

Regular Scheduled Meeting
March 28, 2011

Call to Order

The meeting was called to order at 5:30 p.m. by Chairman Bill Wilkinson. Also present were Vice-Chair Richard DeMott, Members Bobbye Hurlbrink, Carol Isquith, George Ehlinger and Kathy Copley. Member Lois Dodson was absent. Also present were Town Manager Ed Evans and Town Attorney Rob Angle. The minutes were recorded by Beth Taylor, Town Clerk.

Approval of Minutes

– January 24, 2011 Regular Meeting (Organizational)

Vice Chair DeMott made a motion to approve the January 24, 2011 minutes as is. Member Isquith seconded the motion. The Members agreed unanimously.

Administration of Oath

The Town Clerk administered the Oath of Testimony to Ed Evans, Lenny Cottom and Warren Hutton, asking them to stand and raise their right hand.

Zoning Administer Comments

Town Manager Ed Evans summarized the following statement which was provided to each of the Board Members:

Zoning Administrator Comments

Condition Use Permit Application – Ski Hawksnest, Inc.

Mr. Lenny Cottom discussed the possibility of expanding his Zipline facility and adding bicycle racing to the properties known as Ski Hawksnest, Inc. and Hanging Rock Golf, Leonard Cottom, and Kasey Cottom. The discussions began in October 2010 and I encouraged him to wait until after the prospective Zoning Ordinance revisions occurred, not realizing how long a process that would be. It became obvious that the revision process was going to take longer than I thought, especially when we decided to unify our Ordinances making the revision process even further away in time. Consequently, I told Lenny he should go ahead and submit the application before we complete the revision process.

Lenny submitted a complete application, letter, fee, zoning maps, location maps, surveys, and all required materials in accordance with our Zoning Ordinance. He complied with the requests for materials within the timeframe outlined in our Ordinance for placing the Conditional Use Permit application request on the Agenda for the Board of Adjustment at the March 2011, regularly scheduled meeting date. The Town posted a notice of Public Hearing on the Town's website and on the front door of Town Hall. We also scheduled to have the notice appear in the Watauga Democrat in the March 20, 2011 publication in

accordance with our Zoning Ordinance and North Carolina General Statutes. Additionally, as the Zoning Administrator, I have analyzed all properties adjoining or within 100 feet of properties owned by Ski Hawksnest, Inc., Hanging Rock Golf, Leonard Cottom, and Kasey Cottom and sent letters to each affected property owner on March 14, 2011.

I have reviewed the proposed uses and plans in Mr. Cottom's permit application and have talked to him at length about the plans and find that the proposed uses of additional ziplines and bicycle racing are consistent with the Town of Seven Devils Vision Statement - Comprehensive Land Use Plan, which states "The Town of Seven Devils is a residential and recreational community." These uses obviously extend the emphasis on recreation. The land on which the proposed conditional uses are requested are zoned RB-Recreational Business. Within this zoning classification "parks, greenways, and playgrounds" are permitted uses. The Ordinance allows for conditional uses associated with 'amusement and recreational facilities.' Our Ordinance defines "'Amusement and Recreation Facility' as a private profit-making facility providing recreational and amusement activities. Examples include commercially operated golf courses; snow skiing and tubing facilities, ziplining facility, non-motorized biking, equestrian facility, and tennis club. Additionally, the Board of Adjustment may consider other recreation and amusement activities on a case-by-case basis."

Ziplining is one of the three current uses on the property and is currently authorized with an existing Conditional Use Permit. Also, snow tubing is a use authorized currently with an existing Conditional Use Permit. In trying to sort through exactly what needs to be done with the current application, we had two different potential approaches. First, we could accept the new Conditional Use Permit application request, or second, we could modify the existing permit. Since the new permit application also requests bicycle-racing events, I decided it best to proceed with the new application. The bicycle racing events have been occurring on the property for five years and were allowed by the former Zoning Administrator without requiring another Conditional Use Permit.

Both the Ziplining and the bicycle racing have been taking place for some time now and have been positive endeavors for the owners and for the Town of Seven Devils. These recreational activities have brought in manageable crowds and positive exposure for the Town. Both events have been positively touted by our Public Safety Department Officers as "good for the Town" and "no trouble." After the most recent bicycle-racing event, our Police Chief, Chuck Davis, stated to me, "This is good for the Town and brings in a lot of family activity."

The proposed Ziplining lines are located well within the property boundaries and none fall close to or in setback areas. Mr. Cottom needs some flexibility in location of the lines to take advantage of topography, anchor trees, and existing ground cover. I recommend that flexibility be considered in locating new/additional zip lines except within setback areas. All of the proposed new lines are to be located on what was formerly the golf course.

The bicycle racing events use only temporary markers for setting up courses and the markers are typically erected a few days before the race and taken down soon after the race completion. The type of cycle racing planned for the property is known as cyclocross racing, although the type of bicycle racing is not material to the Town of Seven Devils, in my opinion.

In the case of both potential uses, both have been occurring without negative impact on Town services or infrastructure. Both uses could be considered "green uses" in that they capitalize on nature and the natural surroundings of Seven Devils that make it special. The uses seem to fit the Town of Seven Devils Mission Statement well which states, "The Town

of Seven Devils' mission is to preserve, protect, and enhance those gifts of Nature that make up the unique quality of our Town and its environs...".

I believe that both uses are consistent with the RB-Recreational Business Zone for which the application is sought and consistent with the Town's and regional emphasis on recreation, bringing in many visitors to Seven Devils and tourism dollars to the High Country region.

After listening to Manager Evans statement, Chairman Wilkinson stated "This permit says 'bike races' it doesn't say what kind of bike races. Won't that include any kind of bike not motorized?" Manager Evans replied, "It could. So that might be something you want to address as a Board." Member Copley interjected, "Maybe permission a certain type or something." Vice Chair DeMott asked Manager Evans, "In terms of the trees, do they still have to come to you in terms of removal or trim?" Evans replied, "Yes they do." Chairman Wilkinson stated, "And you would treat that just like a footprint to a house? You have to move it to make it work?" Evans replied, "Exactly." Chairman Wilkinson asked if there were any further questions for Ed. There were none.

Public Hearing to Consider an Application for a Conditional Use Permit Submitted by Hawksnest for an additional Ziplining Facility & Bicycle Racing Events

Chairman Wilkinson wanted to remind everyone prior to opening the Public Hearing that, "This is a Public Hearing. We are here to hear what you all have to say, not to answer your questions. We're here just to hear the information and input that the public would like to have. At this time I make a motion to open the Public Hearing." Vice Chair DeMott seconded the motion. The Members agreed unanimously. Chairman Wilkinson stated, "The Public Hearing is now opened. If you want to raise your hand, stand up and introduce yourself; speak away."

The Public Comments were as follows:

Lee Rawlinson of 791 Skiview Rd- "In listening to Ed's thorough comments on the presentation, I just had a couple of concerns. Since I can't ask questions, Mr. Chairman, I guess you all may have to pursue some questions to maybe get it clarified. It seems as though our track itself and the area you will be racing on seems to be several miles long. Obviously you don't build a facility like that without some elevation changes. I don't know what the range issue regarding erosion or water or settlement that could occur in Valley Creek as a result along the course track itself or how close it even comes to the Creek. That would be a concern of mine. I don't know if it has even been addressed or looked at or has been a part of the application at all. The other is I understand the course itself, the parking associated with this particular use is probably going to be sitting on more than one legally described parcel, and perhaps under more than one ownership. My whole career has been zoning related issues and planning. I will tell you it is difficult when someone who owns a separate parcel decides they want to do something different or discontinue use and the overall use, for instance, parking, if parking were on my property and it was necessary to support the larger use on the other property there's generally a requirement that there be a unity of title to tie these parcels together. So whatever requirement of parking to support one, make sure it is going to be there and will be there for a long term to support the particular user, it gets very difficult if the owner wants to do something different and the use continues and

then you end up in a short situation regarding parking or sewer or whatever else will be necessary to support this use. That would be a concern of mine that I would draw your attention to and hope you would address before you precede any sort of approval for this application.”

Barbara Williams of 149 Four Diamond Dr- “My background is insurance and that is my concern, for really all three of these, but I don’t know that I can say anything about tubing because that is not before the Board. I do not know whether the Town could be held legally liable or not. And I doubt that anyone here knows, including the attorney, because anybody can sue for anything and nobody ever knows what the outcome is going to be. Governmental bodies do have some exclusions at some points in time, but if our Town does not require proof of liability insurance for the owner of this property, if we were never found legally liable, we would certainly be morally liable. No one who comes to use these facilities would expect to use them and not have the owner of the property have provided liability insurance in case they get hurt or die. I urge the Board, if you approve this, to require proof that there is liability on this business. You can do that two ways. You can ask to be named as the official insured, and in that case you get a certificate of insurance and if it expires, you get a notice from the insurance carrier that it has expired. The other way is you can just require the owner of the property to provide the Town with proof of insurance every year and make sure it stays in force. And I say again, if we were never found legally liable in this Town, we will certainly be morally liable if we allow a business to function without required liability limits and high ones.”

Larry Fontaine of 127 West Rocky Top Trail- “My comments pertain to the zipline. Go back to the original meeting when we granted a conditional use permit. To my memory, the conditional use permit was granted with stipulations. The presentation that was made was a construction, someone well versed in constructing these ziplines and that was a big influence on the Board because he had time to work with the State to try to determine what types of inspections are needed on these, how they are constructed. What I am wondering is, who built the original ziplines? The lines that are in existence. The other question I had was, these additional lines, were these the lines that we approved before or have all those been built?” Manager Evans replied, “There are still three of those that could still be built that have not been built.” Mr. Fontaine continued “The other comment I had is, if we are reviewing Hawksnest application for cycling, why is this a year late when cycling happened all last year?” Chairman Wilkinson stated “Last five years. I would comment to that that Ed explained the fact that our previous Zoning Administrator gave them permission for it and didn’t think there was a need for a permit. It is now in our Zoning Ordinance. It is a permitted item and he has requested a special permit. It does not call for a special use permit, or conditional use permit.”

David Hooper of 167 Snowcloud Dr- “My comments are as kind of a property owner adjacent to the property. Our house is right above the parking lot that is there. From my point of view, we do not have any problems. We have no problems with, when we hear a ‘Weee’ from the zipline going down, which doesn’t bother me that much. My wife’s hearing is a little more sensitive than mine. We will hear someone hollering once and awhile ‘Yeah’ but from some of the sounds we heard from the golf course when it was

there, the amount of traffic we see there either when they are bicycling or when there's ziplining has been almost negligible compared when it used to be a big ski weekend and they were parked where down the road. So from a homeowner/neighbor point of view it doesn't really bother me a bit. I think it is a good idea.

Bill Logan of 129 Greenview – “Point of clarification, maybe I didn't hear right. Did you say that if we allow this to take place, it opens up Zoning for other things to take place within the same area?” Manager Evans replied, “No. I can see where what I said might have been interpreted that way, but that is not what I was saying. I was saying that presently it is zoned RB, we could just as easily be dealing with instead of a conditional use permit we could be dealing with someone who is instead is asking us for a zoning change.” Mr. Logan replied, “That's what I was worried about. Because the gentleman I think was asking for a zoning change previously so they could build condos or something which was for the Town. If we open this door then does it allow...” Manager Evans inserted “It is a case by case. Every new owner is entitled to ask for whatever they'd like to do. And if the zoning is not consistent with the way they would like to use the property, they have every right to fill out a zoning request change and it would go before a hearing very similar to this.” Mr. Logan stated “But there are strict limits as to what can be done?” Evans replied “That is correct”.

Barbara Tarlton of 236 Edgecliff Ln- “Two items. One, I have heard much concern from people who live on Skiview concerning transporting bikers by van and there are ski lifts available and I know those are used when they have bike races at Sugar and why are not the ski lifts used in thinking it is safer for our citizens who are trying to go up and down with those vans flying around. Secondly, I do understand you're into bike races. There are loud speakers, bullhorns, whatever, that might be considered a noise nuisance to those people who live at the top of the hill.”

Yardy Williams of 149 Four Diamond Dr- “Mr. Chairman, ladies and gentlemen of the Board of Adjustment. I would like to make several comments and I will make them very brief. In considering this application that is before you, I urge you to require that only state maintained roads be used to access the recreational activities or for that matter any activity that puts an excessive burden on our Town maintained roads or the residence who use them. Precedence has been said by a previous Town of Seven Devils Board of Adjustments, ten years ago an application was made to come in for a conditional use permit on a land that is adjacent to this land that is now before you for consideration of a conditional use permit. At that time, the Board of Adjustments decided that they would put conditions on the use of the permit for this particular application. And one in particular that I would like to point out to you that was a condition for this application was to use Town maintain roads to allow participation to occur in the activities taking place, particularly bicycles. One person has already spoken to you about concerns there for citizens who are on Town maintained roads that have been, I think, adversely impacted. In this particular application, the Board of Adjustments, after receiving a detailed study of the plans submitted by the applicant by a very competent, professional engineer and also by the recommendations that were made to the staff at that time were reviewed very extensively by very competent, legal counsel and one of the conditions of many that were made at that time were that no

Town maintained roads should be used to access this property. And the reasons given were very very detailed I am sure they are still available for the Town's reference here. One of them was safety issues. The other was the cost to the Town of maintaining the roads when they are opened up to commercial traffic. Those two alone are enough to hopefully persuade you to consider requiring a conditional use permit for this applicant, that all the activities, the access to the activities should be restricted to the state maintained roads. I know that the bicycling at Sugar has them use the ski lifts that's what should be used here, frankly I think any capital expense involved in making this activity possible that the applicant is requesting, should be borne by the applicant. We certainly don't discourage private enterprise we hope they do make a profit, but we want them to remember that the residents of our Town cannot be inconvenienced, endangered, nor have to pay for what is private business."

Dr. Rodney Waschka of 391 Snowcloud- "I have two comments. We don't know where the new ziplines are. That was not part of the letter so we don't know where they are located. One thing I would like to draw your attention to in that regard is that there is land that is near residential land where ziplines might be placed that could cause dangers in terms of landslides. I don't know what is involved in building these platforms but I think that is something that should be taken into account. I know that Mr. Evans stated that they were beyond 100 feet of someone's property but that doesn't mean it won't affect us if that land starts to give away. 100 feet is not enough barrier, especially where our house sits. That is a real concern. I can't say more specifically about that since I am not privy to the knowledge of where the ziplines would be placed. The other point is what Mr. Wilkinson has already touched on and I urge the Board to be very careful and narrow in their definition of what is allowed. If the current application says 'bike racing' I urge you to limit that to cyclocross bike racing and make it clear that that does not include downhill racing which would as I understand it meet the applicants request while avoiding some of the problems that our neighbors had talked about."

Chairman Wilkinson asked if anyone else wanted to comment. After no further comments he made a motion to close the Public Hearing. Member Isquith seconded the motion. It was agreed unanimously.

Old Business:

- None

New Business:

Consideration of Conditional Use Permit Submitted by Hawksnest

Chairman Wilkinson asked for a motion to open the process for the Conditional Use Permit. Vice Chair DeMott made the motion. Member Isquith seconded the motion. It was agreed unanimously. Chairman Wilkinson turned the floor over to Mr. Cottom.

Mr. Cottom addressed the Board, "Since you have the packet in front of you where it lays out the zipline for you and where it is going to go, I will speak to some of what the concern the citizens raised. The first one is erosion control. You are not going to have

any grading with this. For the most part a lot of these cables will be attached to trees. If they are not attached to trees, then we put a treated telephone type of pole in the ground for that. So we just dig a hole and put stick that in there. The platforms that are built are built above ground. You'd build a footer just like you would for anything else. You build a footer for the platform. The platforms for the most part will come to the ground so they are not going to be 3' by 6' or 8' in size something in that area. For the most part they are all to ground and we won't really know that until we get into it a bit more. There is not any grading involved in this. As far as parking goes, it is all owned by one owner so there not going to pick that up and take that out of there. I don't see how one owner owns both the businesses that are being used, so obviously the parking is all theirs anyway. I'm not sure where that was a concern, but it is all one owner. As far as the insurance and that kind of thing goes, I have insurance, always had and always will have insurance. I carry liability insurance just like everybody else. I kind of feel like on that if you are going to make some big conditions on me to do that then you might want to do that to all the people out here renting condos and that sort of thing. It should fall under the same kind of category of what I am trying to do. If you want to see my insurance policy I am happy to bring that to Ed once a year when it gets renewed. I do not have a problem with that. As far as Town road use, I don't have any plans to use any of the Town maintained roads. People coming up and down are going to use the state road. If we need to use a road then it will be the state road as well." Chairman Wilkinson wanted to clarify, "So no one drives up Skiview to the top?" Mr. Cottom replied, "No. I don't have any plans to continue the downhill." Mr. Cottom's lawyer, Warren Hutton stated to Mr. Cottom "Why don't you explain that a bit." Mr. Cottom replied, "Really my plans right now are just to do the cyclecross race. The downhill race, I am not going to do that. I am going to discontinue doing that. Cylcecross race, like Ed explained before, is all self-contained in the golf course itself. So it is all the flat area, like Ed said. It sounds like a lot when you say 4 miles, but it's really only over probably over a 5-7 acre track. So it's really under a small area that they are going to be using and it's done by a lot of taping. They have a lot of little twist and turns and that sort of thing that makes it seem a lot longer than it really is. But it's really a small area that they are using. They just park in one area and then they get transported in one." Member Hurlbrink asked, "Where is this?" Mr. Cottom replied, "Are you familiar with where Carol Isquith lives? Carol kind of is down probably 500' from where they do the cyclecross. Roughly. They're down there and all the parking is down there unless they are parking at the top at the big parking area. They don't get transported anywhere, they start right there, they end right there. When they leave they just leave and go home. I don't know what other questions you might have about the zipline. We've had it going on for two years now and I haven't had any problems with that, as far as I know, from any town people. The bike racing has been going on for five years, like Ed said, we came and asked to do it and the old Zoning Administrator said go ahead so we did. I think originally the TDA gave money for that first race. To kind of get it off the ground and it has been going great ever since." Member Isquith asked, "Just a quick question—How many races a year do you plan on doing?" Mr. Cottom replied, "The cyclecross right now is one." Member Isquith clarified, "Just once a year?" Mr. Cottom confirmed, "I don't have any plans for any other ones." Manager Evans interjected, "There could be more" to which Mr. Cottom agreed, "There could be more. Maybe two? I don't know how big the interest is in this." Member Isquith wanted to rephrase, "How big do you think this could get within the next 2-5

years? In other words, will there be more than two, more than three, more than five?" Mr. Cottom replied, "No. It is not a big thing for me. I am just doing it as a way to bring people up here. It gives a little bit more exposure to the zipline and snow tubing. We've been doing it and it is getting a lot of local feedback. The locals really like it." Manager Evans stated, "If I may, this is done on a race schedule that set up in advance and the races are going on in many different towns/cities. Most of them are in North Carolina. They mostly take place in 12 different locations over a four month period. In my experience with the race schedule they have never come back and done the same place during that cyclocross season." Member Isquith, "So it's one venue out of many." Manager Evans confirmed, "Yes, it's one. The most I think I have ever seen any place have is four times in one year." Member Copley stated, "Ed reminded us that there were three lines that were approved in the previous application that have not been put in. I don't remember where the lines are that were put in. I would like to have a better understanding of what exist now, what still permitted to be done on the old permit and then superimpose, mentally, this." After several people interjected, Member Copley clarified, "I guess there is only one left." Mr. Cottom agreed to show the Members on the diagram, stating, "Where the new ones are planned, the one super line will no longer fit. So it is not in my plan to do that one anymore." Member Copley asked, "So the one remaining from the original application is now off the table." Mr. Cottom confirmed that is correct.

Both Manager Evans and Mr. Cottom clarified on the map provided the lines of both the existing ziplines, as well as where the proposed ones were going. Member Hurlbrink read from the minutes of the previous public hearing regarding ziplines, stating that only one super zipline was approved to be built originally. Member Copley asked Mr. Cottom if he was ok with putting in a condition requiring that the remaining super zipline not be built if he was approved for the new proposed lines. Mr. Cottom agreed that was fine. He clarified there will be two zipline courses total when this is complete. Member Hurlbrink wanted to know how close the line goes to Fifth Fairway, to which Mr. Cottom replied, "About 100ft. There are a lot of trees between there as well." Vice Chair DeMott wanted to know about how many people you think this will draw a year. Mr. Cottom estimated about 5,000. Chairman Wilkinson wanted to know how many he had last year. Mr. Cottom estimated about 6,000 over a 12 month period. Member Hurlbrink wanted know when they were opened. Mr. Cottom replied that tubing was Nov-March and the zipline was year round with the busiest time around the 1st of June to the middle or end of August. Vice Chair DeMott wanted to know what Mr. Cottom planned as far as food and restrooms. Mr. Cottom replied that they have all that available to them at the Lodge. Member Hurlbrink wanted to know about kinds of lines he would use. Mr. Cottom replied he is currently using CMI, but that is subject to change, as he is always looking for the best out there. Chairman Wilkinson wanted to know if there were any new regulations regarding ziplines. Mr. Cottom replied that he is a member of ACCT (the association of challenge coarse technology) so he stays up to date on regulation changes. The ACCT are the biggest association that does zipline regulations and they basically write the standard for that kind of thing. One of their approved vendors conducts the inspections. The Members further discussed possible conditions to include in the permit. Town Attorney Angle reminded the Members that they do not have the authority to impose any conditions they want. The Members cannot force Mr. Cottom

to keep within 100ft off the set back from Fifth Fairway, when the standard is a 15ft set back.

Chairman Wilkinson asked Member Copley to review the conditions the Board agreed to add prior to approval of the conditional use permit. After further discussion regarding possible conditions, Chairman Wilkinson stated that if there were no further questions, he motioned that we read our application questions and take a vote. Vice Chair DeMott seconded the motion. The Members agreed unanimously.

The following is taken from the Zoning Ordinance:

12.3.6 Action on the application

After completion of the public hearing, the Board of Adjustment shall take action on the application within thirty-five (35) calendar days. The findings by the Board of Adjustment shall be based on reliable evidence presented at the public hearing. Action taken on the application shall be one of the following:

1. Approval
2. Approval with conditions
3. Denial

The Board of Adjustment shall issue the Conditional Use Permit unless it concludes, based upon information submitted at the public hearing, that one (1) or more of the following is true:

1. The application is incomplete.

Board Finding: False

Vote: Unanimous

2. The proposed use will be located, designed, and/or operated in a way that will endanger the public health, safety, or general welfare. Conditions to be placed on that would be:

1. The races shall be non-motorized cyclecross and shall be contained from start to finish on the golf course property only

2. Operations will start no earlier than one hour after sunrise and the last tour shall end no later than one hour before sunset

3. The bicycle races shall not use Town roads

4. The lines and/or platforms shall be no closer than 30ft of the Fifth Fairway property lines

Board Finding: False

Vote: Unanimous

3. The proposed use will seriously interfere with existing uses or adjacent properties, with the character of the area, or with the purpose of the zone in which it is proposed.

Board Finding: False

Vote: Unanimous

4. The proposed use will impose an undue burden on any public improvements, facilities, utilities, or services available to the area.

Board Finding: False

Vote: Unanimous

5. The proposed use will substantially injure the value of adjoining or abutting property.

Board Finding: False

Vote: Unanimous

6. The purposed 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 Finding: False

Vote: Unanimous

Chairman Wilkinson asked for a motion to approve the application. Member Isquith made a motion to approve the application. Vice-Chair DeMott seconded the motion. It was agreed unanimously. The application was approved.

Board Member Comments:

-None

Adjournment

There being no further business to bring before the Board, Chairman Wilkinson asked for a motion to adjourn. Vice-Chair DeMott made a motion to close the meeting. Member Hurlbrink seconded the motion. The members agreed unanimously. At 7:12 p.m. the meeting was adjourned.

Bill Wilkinson, Chairman

Beth Taylor, Town Clerk