

Town of Seven Devils  
Board of Adjustment

Regular Scheduled Meeting

March 23, 2009 – 5:30 p.m.

**Call to Order**

The meeting was called to order at 5:32 pm by Chairman Richard DeMott. Other Board Members present were Kathy Copley, George Ehlinger, Bill Wilkinson, Bobbye Hurlbrink, Lois Dodson and Carol Isquith. Also present was the Zoning Administrator Don Fulkerson and Town Attorney Rob Angle. Town Clerk Karen Daniels recorded the minutes.

Chairman DeMott stated the Board of Adjustment is quasi-judicial in nature and that all people speaking, other than Board members, would need to sign in and be sworn in to give testimony. He explained that all testimony should be specific to the subject at hand and requested that all cell phones be turned off.

**Adopt Agenda**

Member Copley made the motion to move the *Approval of Minutes* to Item II on the Agenda. Member Wilkinson seconded the motion. The members agreed unanimously.

Member Dodson made a motion to adopt the agenda as amended. Member Wilkinson seconded the motion. The members agreed unanimously.

**Approval of Minutes – July 28, 2008 regular meeting**

Member Copley requested the second sentence from the bottom of the first paragraph on page three (3) be changed to read as follows: *Member Copley stated she would like to hear some discussion regarding this proposal.*

Member Wilkinson made a motion to approve the July 28, 2008 minutes as amended. Member Dodson seconded the motion. The members agreed unanimously.

**Oath of Office**

The Town Clerk administered the Oath of Office to Member Carol Isquith and Alternate Member David Ehmig.

**Election of Officers**

Bobby Hurlbrink nominated Richard DeMott as Chairman for the Seven Devils Board of

Adjustment. Member Ehlinger seconded the motion. The members agreed unanimously.

Member Dodson nominated Bill Wilkinson as Vice Chairman for the Seven Devils Board of Adjustment. Member Hurlbrink seconded the motion. The members agreed unanimously.

### **Citizen Comments**

None

### **Old Business**

None

### **Public Hearing**

Chairman DeMott asked for all present and wishing to give testimony to sign in at the podium and stand to be sworn in.

The Town Clerk asked all standing to raise their right hand. She then administered the Oath of Testimony to all standing.

At 5:55 p.m. Member Copley made a motion to open the Public Hearing. Member Ehlinger seconded the motion. The members agreed unanimously.

Chairman DeMott asked the Zoning Administrator if he had anything to add to his findings. The Zoning Administrator said he did not have any additional information to add to his findings. Chairman DeMott requested the Zoning Administrator's findings be recorded in the minutes.

### **Zoning Administrator's Findings**

Re: Hawksnest application for Conditional Use Permit for a zipline.  
Date: March 23, 2009

Pursuant to Section 12.3.5, this finding is submitted. This application has been filed for a recreational facility. It is proposed to be located in the Recreational Business zoning district and is therefore in compliance with Article 5 of the Zoning Ordinance.

#### **A. Public Hearing to Consider an Application for a Conditional Use Permit Submitted by Hawksnest**

The Zoning Administrator presented two (2) maps, one an aerial photograph and one a topographical map showing the location for the proposed ziplines at Hawksnest.

Robert Nickell of Universal Zipline Technology (UZT) was introduced to the Board of Adjustment by Lenny Cottom from Hawksnest. Mr. Nickell told the Board he and his staff would appreciate the opportunity to play a part in bringing an exciting ecological adventure to Seven Devils. He distributed a booklet entitled *Zipline Canopy Tour at Hawksnest* to accompany a DVD he played showing the same information. He described the proposed installation of the zipline as follows:

- This zipline will be built with the environment and the beauty of Seven Devils as a top priority, second only to safety
- Installation will not involve any grading or earth moving; it will require only a few holes for footings, which will cause no erosion or runoff
- Very few trees (if any) will need to be cut for the installation of the cables
- Any trails constructed will be built in accordance with the National Trail Builders Association
- Upon completion, the beauty of Seven Devils will remain intact as the cables can barely be seen
- Mr. Nickell indicated that he would like to build the project but that he may or may not be the contractor selected for the job.

A lengthy discussion followed regarding the proposed zipline installation, hours and season of operation. At the Board's request, Mr. Nickell hand-drew three additional lines (labeled 1, 2 and 3) on the aerial photograph to show locations for "super" ziplines. The Board agreed super zipline one (1) should be removed but agreed location two (2) or three (3) is acceptable (but not both 2 and 3).

After the discussion, Chairman DeMott requested a motion to close the public hearing. At 7:25 p.m. Member Copley made a motion to close the Public Hearing. Member Ehlinger seconded the motion. The members agreed unanimously.

A lengthy discussion followed among the Board regarding the conditions to be placed on the Conditional Use Permit.

Chairman DeMott then told the Board the concurring vote of four-fifths (4/5) of the membership of the Board of Adjustment shall be necessary to decide in favor of the applicant or any matter upon which it is required to pass under this ordinance or to effect any variation of this Ordinance.

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:

Each statement was voted upon and findings recorded as follows:

1. The application is incomplete.

Chairman DeMott asked the Board to vote on #1. The vote was recorded as follows:

FALSE: Unanimous

FINDING OF FACT: The Board agreed the application is complete.

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

The Board agreed conditions to be placed on #2 were as follow:

- The layout shall be accepted as presented on the official maps with no more than a five (5) foot variance for post placement
- The layout shall be accepted as modified, eliminating super zipline one (1) and allowing super zipline two (2) or three (3) but not both. Which super zipline to construct (#2 or #3) shall be determined by the property owner
- The project shall be constructed and operated to the Professional Rope Course Association of America standards
- Staff shall be trained and certified to the standards and practices of the zipline industry
- The equipment and cable shall be to the standards and practices of the zipline industry (especially to improve safety and minimize noise)
- The project must use the Petzl Tandem Speed pulley/trolley
- Trees to which cables are attached shall be certified by a licensed arborist
- The project shall be operated to North Carolina Department of Labor safety standards.
- It shall be certified by Mr. Robert Nickell
- It shall be built, operated and maintained in conformity to the highest available standards on the date of certification
- The owner shall provide an insurance binder
- Tree removal shall be approved by the Zoning Administrator in general conformity to Zoning Ordinance General Standards 8.9.4
- The property owner shall provide engineer drawings for the suspended platforms. They shall be stamped by an engineer licensed in the State of North Carolina
- The owner shall provide a plan developed in conjunction with applicable emergency medical services

After reviewing and agreeing to the above conditions, Chairman DeMott requested the Board vote on #2. The vote was recorded as follows:

FALSE: (approval with conditions) Unanimous

FINDING OF FACT: Upon meeting the above conditions, there is no evidence that the location, design or operation of the ziplines will endanger the public health, safety, or general welfare.

3. The proposed use will seriously interfere with existing uses of adjacent properties,

with the character of the area, or with the purpose of the zone in which it is proposed.

The Board agreed conditions to be placed on #3 were as follow:

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

After reviewing and agreeing to the above condition, Chairman DeMott requested the Board vote on #3. The vote was recorded as follows:

FALSE: (approval with conditions) Unanimous

FINDING OF FACT: Upon meeting the above condition, there is no evidence that the proposed use would 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 an undue burden on any public improvements, facilities, utilities, or services available to the area.

Chairman DeMott asked the Board to vote on #4. The vote was recorded as follows:

FALSE: Unanimous

FINDING OF FACT: There is no evidence that the proposed ziplines will impose an 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.

Chairman DeMott asked the Board to vote on #5. The vote was recorded as follows:

FALSE: Unanimous

FINDING OF FACT: There is no evidence the proposed ziplines will 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.

Chairman DeMott asked the Board to vote on #6. The vote was recorded as follows:

FALSE: Unanimous

FINDING OF FACT: The proposed use is in compliance with the Vision Statement, Comprehensive Land Use Plan and Zoning Ordinance adopted by the Town Council.

Having passed on (6) six of (6) six criteria, Chairman DeMott made a motion the Board of Adjustment approve the Conditional Use permit for the Hawksnest ziplines. Member Wilkinson seconded the motion. The members agreed unanimously.

- B. Public Hearing to Consider an Application for a Variance Submitted by Don McLean** – The applicant requested this be placed on the agenda for next month.

### **Board Member Comments**

Member Copley stated in order for the application to be complete the applicant must submit certain items listed in the Zoning Ordinance, which includes eight (8) copies of the current zoning map with location of property indicated. She stated she would like to see the minutes reflect the necessary information to be submitted.

## **ZONING ORDINANCE**

### **Application for Conditional Use Permit**

#### *Page 12-6*

In order for this application to be complete, the applicant must submit the following:

- Two (2) copies of this completed form, typed or filled out in black ink.
- Eight (8) copies of current zoning map with location of property indicated.
- A surveyed plat of the property in question.
- Statements from the applicant describing how the proposed Conditional Use would meet the criteria for approval of such permit as described in Article 12 of the Zoning Ordinance.
- Personal or Certified Check in the amount of \$500 for the application fee. Application fee shall be paid to the Town of Seven Devils, NC for each application for a Conditional Use permit in order to cover the necessary administrative costs.

### **Adjourn**

There being no other matters to bring before the Board, at 8:40 p.m. Chairman DeMott asked for a motion to adjourn. Member Ehlinger made the motion to adjourn. Member Isquith seconded the motion. The members agreed unanimously.

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Richard DeMott, Chairman

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Karen E. Daniels, Town Clerk