

Town of Seven Devils
Planning Board Meeting
Tuesday – January 17, 2023
5:30pm

- 1) Call to Order – Eddie Barnes, Zoning Administrator
- 2) Introduction and Oath of Office – New/Reappointed Members
- 3) Election of Chairperson
- 4) Election of Vice Chairperson
- 5) Approve minutes of Planning Board – September 20, 2022
- 6) Old Business
 - A. Update of Rezoning Applications/Cottom
- 7) New Business - Town Ordinances
 - A. Nuisance Ordinance – Discussion
 - B. Alternative Energy Ordinance - Discussion
 - C. Utility Ordinance (proposed) - Discussion
- 7) Citizen Comments
- 8) Planning Board Comments
- 9) Adjourn

This meeting will be live streamed and can be viewed via Go To Meeting #
<https://meet.goto.com/609339117>

OATH OF OFFICE

I, (state your name), do solemnly swear(affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of the State of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties as a Member of the Seven Devils Planning Board, so help me God.

On this 17th day of January, 2023.

Richard Blonshine

Walt Hogan

Jim Jones

Stuart Ryan

Administered by Hillary Gropp
Town Clerk

Town of Seven Devils
Planning Board Minutes
September 20, 2022
5:30pm

The Seven Devils Planning Board met on Tuesday, September 20, 2022 at 5:30pm. Attendance In-Person included Jim Jones, Joan Streightiff, Walt Hogan, and John Wells IV.

A quorum was met. Absent members: Jack Byrnes, Frank Sell, Mark Williams.

Staff attendance included: Zoning Administrator Eddie Barnes, Police Chief Johnathan Harris. Town Clerk Hillary Gropp recorded the minutes.

Applicant – Lenny Cottom was present.

Call to Order

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

Adopt Agenda

Member Walt made a motion to adopt the agenda; Vice Chair Streightiff seconded the motion. All members agreed.

Approve Minutes – July 19, 2022 & August 16, 2022

Member Walt made a motion to approve the minutes; Vice Chair Streightiff seconded the motion. All members agreed.

New Business

Zoning Administrator Barnes stated Lenny Cottom had withdrawn his previous Application for Change in Zoning Classification as reviewed and denied by the Planning Board in July & August 2022, resulting in no further review by Town Council or required Public Hearing.

The Applications being presented tonight are to be reviewed individually.

Zoning Administrator Barnes reviewed the Town's Zoning map with Planning Board to show the current zoning and proposed changes requested by the Applicant.

Zoning Administrator Barnes stated the Applicant already has approval for 128 homes on three (3) parcels currently zoned High Density Residential - HDR.

The applications being proposed tonight would total 244 single family dwellings, when subtracting out the 128 already approved, the net gain is 116 single family dwellings.

A. Application for Change in Zoning Classification of Property

1. High Density Residential – Low Density Residential – 17.32 acres

Owner/Applicant – Leonard & Denise Cottom

Zoning Administrator Barnes explained this density change would allow 1 dwelling per acre. With 2 acres designated for donation to the Town for additional Otter Falls parking, the remaining 15.32 acres would allow for a total of 15 single family dwellings.

Recap of density change is HDR = 104 to LDR = 15 single family dwellings.

2. Recreation Business – Medium Density Residential – 25.5 acres

Owner/Applicant – Hanging Rock Golf Club/Lenny Cottom

Zoning Administrator Barnes explained this zoning change would allow 3 dwellings per acre for a total of 75 single family dwellings. The Applicant reduced the amount of acreage from the previous Planning Boards review in July & August. The reduction went from 35.5 acres to now 25.5 acres.

3. Recreation Business – High Density Residential – 21.23 acres

Zoning Administrator Barnes explained this zoning change would allow 6 dwelling units per acre for a total of 126 single family dwellings. The Applicant has an adjoining HDR parcel to this proposed request; the existing HDR is 4.5 acres, allowing approximately 28 homes.

Zoning Administrator Barnes gave the recap as:

244 Maximum dwellings proposed

(128) Cottom owned parcels with existing HDR zoning

116 The net gain if the proposed applications are approved by Planning Board

Discussion occurred among Planning Board members about the new applications.

Members Streightiff and Wells stated the increase with density is still high.

Chair Jones stated that even though the topography of the land might not allow for the maximum build out, the Planning Board must consider the maximum as part of the equation. The new requests increase new homes by 25-30% of what already exists within the Town.

Member Wells is concerned about increased traffic, acknowledging this is a NCDOT maintained road with limited authority by the Town.

Member Hogan stated due to the location of these parcels at the end of Skyland Drive, it should be viewed equivalent to a cul-de-sac location, and thus the traffic pattern is similar.

Police Chief Harris provided traffic data, as previously provided at the August Planning Board meeting.

Highlights of the report indicate between the months of May 2022 and August 15, 2022, a total of 32,900 vehicles traveled on Skyland Drive at the proposed rezoning parcels. It was noted the “busiest hour of the busiest day” during this timeframe equates to approximately two (2) vehicles per minute.

Chair Jones asked for additional comments or questions.

Member Wells stated that although he appreciates an owner has rights, a rezoning isn’t always appropriate. Member Hogan agreed.

Member Wells inquired if the donation of 2 acres for Otter Falls parking by the Applicant is dependent on approval of all 3 applications.

Owner/Applicant – Hawksnest Zipline/Lenny Cottom

Applicant Cottom stated yes, all three applications would need approval.

Cottom further stated that his property lacked zoning regulations many years ago, but the Town imposed them with the current designations. As a property owner, Cottom stated he is invested in the area with improvements to his business during the past thirty years. In his opinion, the Town benefits by his business with desirability and land values overall for property owners. Cottom plans to continue to invest in his business, as well as the Town.

Cottom stated Town officials approached him to discuss options to acquire land for additional Otter Falls parking. Discussions lead to the recent and current applications for Rezoning based on those conversations.

Chair Jones asked for final discussion or motions for the three (3) applications.

A. 1. High Density Residential HDR to Low Density Residential LDR – 17.32 acres

Member Streightiff made a motion to **approve** the request for Change in Zoning; Member Hogan seconded the motion. **Motion passed 4 yeas – 0 nay**

John Wells – Yea Walt Hogan – Yea Jim Jones – Yea Joan Streightiff – Yea

A. 2. Recreation Business RB to Medium Density Residential MDR – 25.5 acres

Member Hogan made a motion to **deny** the request for Change in Zoning; Member Wells seconded the motion. **Motion passed 3 yeas – 1 nay**

John Wells – Yea Walt Hogan – Yea Jim Jones -Yea Joan Streightiff - Nay

A. 3. Recreation Business RB to High Density Residential HDR – 21.23 acres

Member Hogan made a motion to **deny** the request for Change in Zoning; Member Wells seconded the motion. **Motion passed 4 yeas – 0 nay**

John Wells – Yea Walt Hogan – Yea Jim Jones – Yea Joan Streightiff - Yea

Member Hogan suggested if a reduction of 21.23 acres to 15 acres for RB to HDR would be acceptable or agreeable to the Applicant.

Applicant Cottom asked the reasoning for the reduction and how did Hogan determine 15 acres to be acceptable.

Member Hogan stated the reduction would allow for 90 single family dwellings, not 126.

Applicant Cottom did not respond or commit to a modification of the application presented.

Zoning Administrator Barnes state the Applicant has the right to heard by the Town Council as presented, for a final decision. A favorable or unfavorable recommendation by the Planning Board would be forward to the Town Council's as consideration.

Member Hogan offered a modified motion as:

Recommendation to the Town Council approval of Application 3. Alpha – Recreation Business RB to High Density Residential HDR – 15 acres, contingent upon approval of the 1st motion by Town Council of conversion with Application 1. of HDR to LDR 17.32 acres.

Member Streightiff seconded the modified Application 3. Alpha.

Motion passed 4 – yeas – 0 nay.

John Wells – Yea Walt Hogan – Yea Jim Jones – Yea Joan Streightiff – Yea

B. Planning Board – Expiring Terms

1. UDO Mechanism

2. Application

Town Clerk Gropp updated the Planning Board about expiring terms as of December 2022.

The Administrative Mechanism for the Planning Board from the Town's UDO was provided, as well as an application for those who would like to serve.

Citizens Comments

Stu Ryan asked the Planning Board to review two (2) ordinances for improvement.

The Recreational Ordinance should be tweaked to be more family friendly.

Rework/rewrite the Alternate Energy Ordinance.

Wayne Bonomo stated the Hawksnest's zipline/snow tubing business is most beneficial to visitors and short-term rental owners, as most year-round citizens would benefit more from a golf course or ski.

Tom Bookstaver spoke to the truthfulness of the Cotton property, that years ago the zoning designations were vastly different on either side of Skyland Drive.

Planning Board Comments

Member Hogan stated tonight was a tough consideration of the applications, and Town Council can override the decision of the Planning Board.

Adjourn

Member Hogan made a motion to adjourn the meeting; Vice Chair Streightiff seconded the motion. All members agreed.

Jim Jones, Chairperson

Hillary Gropp, Town Clerk

ALTERNATIVE ENERGY RESOURCES ORDINANCE

Intent

The Town of Seven Devils recognizes the progressive and changing needs for alternative energy sources and wishes to illustrate a desire to be proactive in addressing these new sources. The goal is to preserve the health, safety, and welfare of Seven Devils citizens by promoting the safe, effective and efficient use of active solar energy and wind energy systems. Inherent in this goal is the desire to reduce the on-site consumption of fossil fuels or utility-supplied electric energy. The Town's goal of protecting its natural beauty is an important consideration in the substance of this section.

Applicability

This Ordinance shall apply to the use of all alternate energy resources except "temporary energy systems" as herein defined.

Application Requirements: Submittal of a conditional use permit Special Use Permit application as well as a site specific development plan for all systems shall include the following requirements that will be considered by the Board of Adjustment:

- (a). A plan denoting the dimensions of the subject property, proposed location of solar panel(s), the arrangement of solar panels, distance from the roof, pitch of the finished roof, and distance from the proposed site improvements to all property lines. Not Required for Roof mount solar or wind system on existing structure / house
- (b). The site plan should also show the required buffering as outlined in UDO, Article VIII, Section 8.04 (e) and (f); while consideration should be made for reasonable solar access. Not required for Roof mount solar or wind system on existing structure / house
- (c). Submit horizontal and vertical elevation drawings to scale with dimensions.

- (d). Approved solar components: Solar energy system components must have a UL listing and must be designed with anti-reflective glare coating(s) to minimize solar glare.
- (e). Written authorization, when applicable, from the public utility company acknowledging that it has been informed of the applicant's intent to install an interconnected customer-owned generator and that it also approves of such connection(s).
- (f). Compliance with North Carolina Building Code: All active solar energy systems shall meet all requirements of the North Carolina State Building Code and shall be inspected by a building inspector with whom the Town of Seven Devils contracts.
- (g). Compliance with National Electrical Code: All systems shall comply with the National Electrical Code, current edition and any other applicable codes.
- (h). All solar collection devices shall be registered with the Fire Department and registration shall include a map of the solar collection devices and panel disconnect.
- (i). Posting of a performance bond is required on the completed project and must be done within 10 days of approval. The amount, which shall be enough to meet the requirements of (j) immediately below this paragraph shall be determined by an Engineer licensed in the State of North Carolina. Not Required for small scale roof mount solar or wind systems
- (j). If the applicant ceases operation of the energy project or begins, but does not complete, construction of the project, the applicant shall restore the site to its previous appearance. It shall be the responsibility of the property owner to maintain any installed solar system. If failure to restore or maintain, the Town of Seven Devils shall have the authority to cash in the performance bond and perform the necessary work to restore the site.

Accessory Solar Energy Collection Systems, Small Scale

Shall be permitted as accessory uses in the Limited Density – LDR, Medium Density – MDR, and Snowcloud – SC Residential Zoning Districts, and Recreational Business - RB District as roof mounted systems to existing structures or facilities provided they comply with minimum design standards outlined below. Ground mounted systems are prohibited. Compliance with applicable standards shall be documented and shown on a site plan and submitted to the Zoning Administrator along with a **Conditional Use Permit** Application for the appropriate review and approval. [Change to Special Use Permit](#)

(1). Residential Solar Collection. An application for a proposed Small Scale Solar Collector/Energy System located at a residence must meet the following standards as an accessory use:

(a). Roof-mounted solar collector systems shall meet the following location standards:

- (i). Roof-mounted accessory solar collectors shall not extend above the ridge-cap or exceed the 35 feet height restrictions for houses in the LDR and MDR zoning districts of the UDO.
- (ii). The collector surface and mounting devices for roof-mounted systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built.
- (iii). Exterior piping for solar hot water systems shall be allowed to extend beyond the perimeter of the building on a side yard exposure.
- (iv). Roof mounted systems shall be located so as not to impede the ability of emergency personnel to access the roof for fire-fighting purposes.
- (v). Roof mounted systems on pitched roofs shall be mounted parallel to the roof at the same pitch or no greater than 5% steeper than the roof.
- (vi). Solar panels shall be placed such that concentrated solar radiation or glare shall not be directed onto other properties or public access areas.

- (vii). Mounting hardware and framing shall be non-reflective or matte black in color.
- (viii). Approved solar components: Solar energy system components must have a UL listing and must be designed with anti-reflective glare coating(s) to minimize solar glare.

Accessory Solar Energy Collection Systems, Small Scale

Shall be permitted as an accessory use in the GB – General Business zoning district as roof mounted systems to existing structures or facilities provided they comply with minimum design standards outlined below. Ground mounted systems are prohibited.

(1). Commercial Energy Solar Collection. An application for a proposed Small Scale Solar Collector/Energy Systems in zoning districts other than residential and Recreational Business must meet the following standards as an accessory use:

(a). Roof-mounted solar collector systems shall meet the following location standards:

- (i). Roof-mounted accessory solar collectors shall not extend above the ridge-cap or exceed the 50-foot height restriction of the UDO.
- (ii.) The collector surface and mounting devices for roof-mounted systems shall not extend beyond the exterior perimeter of the building on which the system is mounted or built.
- (iii). Exterior piping for solar hot water systems shall be allowed to extend beyond the perimeter of the building on a side yard exposure.
- (iv). Roof mounted systems shall be located so as not to impede the ability of emergency personnel to access the roof for fire-fighting purposes.
- (v). Roof mounted systems on pitched roofs shall be mounted parallel to the roof at the same pitch or no greater than 5% steeper than the roof.

- (vi). Solar panels shall be placed such that concentrated solar radiation or glare shall not be directed onto other properties or public access areas.
- (vii). Sites where a flat roof is used to support the solar system must be shielded from view by a parapet or curtain wall tall enough to shield the panels and have a uniform look around the entire perimeter.
- (viii). Exterior electrical wires and conduit shall be kept as a location to a side yard and any related conjunction boxes shall be shielded from public view while maintaining access to mechanical equipment.

***Accessory Solar Energy Collection System, Utility Scale
(Production for Resale):***

On a utility scale, accessory use solar collectors in the zoning district of GB – General Business may be used for on-site consumption as well as generating electrical energy for the purposes of resale back to the energy grid. This type of use must meet the following standards as an accessory use:

- (a). Systems designed for on-site consumption and the possibility of resale use shall be permitted on a flat roof only, no ground mounted systems are allowed.
- (b). Systems shall be screened from public view by a parapet or curtain wall around the entire perimeter of a flat roof, with consideration given to maintenance and solar access.
- (c). System panels shall be tilted in the optimal direction and shall not exceed a 37° angle from horizontal.
- (d). Systems must be mounted on non-reflective or black matte frames to help reduce glare to neighboring properties.
- (e). System's associated wiring and electrical boxes should be located inside the building. If this is not possible, then they must be screened from public access and public view, while allowing maintenance access for the operator(s).

- (d). System's solar panels shall be placed such that the concentrated solar radiation or glare shall not be directed onto other properties or public access areas.
- (e). Systems shall not cover more than 65% of a flat roof. This allows for the addition of other roof top mechanical or electrical equipment and solar access.

Accessory Wind Energy Conversion Systems, Small Scale shall be conditional as an accessory use in the Limited Density Residential – LDR, Medium Density Residential – MDR, Snowcloud – SC, and Rereational Business - RB as a single system whose main purpose is to supply electricity for on-site consumption. It is essential that a site plan must first be submitted in order to determine if a property is eligible for a wind energy conversion system. Roof mounted systems to existing structures or facilities are easier to regulate provided they comply with minimum design standards outlined below. Compliance with applicable standards shall be documented and shown on a site plan and submitted to the Zoning Administrator along with a **Conditional Use Permit** Application for review and approval by the Planning Board and the Board of Adjustment.

- (1). Residential Wind Energy Conversion Systems: A **Special Use Permit conditional use permit** application, as well as a site plan, denoting the dimensions of the subject property for a proposed Small Scale Wind Energy Conversion System located at a residence must meet the following standards as an accessory use:
 - (a). Roof-mounted wind energy conversion systems shall meet the following location standards:
 - (i). Roof-mounted accessory wind energy conversion systems shall not extend above the ridge-cap of the roof or exceed the 35 feet height restrictions of this ordinance.

- (ii). The wind energy conversion system and mounting devices for roof-mounted systems shall not extend beyond the exterior perimeter of the roof of the building on which the system is mounted or built.
- (iii). Roof mounted systems shall be located so as not to impede the ability of emergency personnel to access the roof for fire-fighting purposes.

Accessory Wind Energy Conversion Systems, Utility Scale shall be conditional as an accessory use in the General Business – GB, for the purpose of on-site consumption in addition to the resale of energy back to the grid. These systems require an environmental assessment by a professional Engineer, licensed in the State of North Carolina. The environmental assessment shall be submitted along with a **Conditional Use Permit Application** to the Zoning Administrator.

- (a). All wind energy conversion systems shall be located within a protected “fall zone.” Towers cannot exceed 100 feet in height. The tower shall be designed in such a manner as to be fully contained within a “fall zone” (distance within fifty (50) feet in any direction from the center point) that will not exceed fifty (50) feet, should it collapse. There shall be no other structures located within the site plan defined area. Distances from the proposed site improvements to all property lines shall be clearly indicated. The setbacks in the zoning ordinance are in addition to the fall zone calculation.
- (b). Acceptable decibels (at the property line) should be no greater than (40dB.)
- (c). Clear cutting of property in order to install an accessory wind energy conversion system shall not be allowed without special permission from the Board of Adjustment.
- (d). If approved, a performance bond, with value determined by a NC licensed engineer, shall be posted on the project and must be done within 10 days of approval. The amount, shall be enough to meet the

requirements of (e) immediately below this paragraph as determined by an Engineer.

(e). If the applicant ceases operation of the energy project or begins, but does not complete, construction of the project, the applicant shall restore the site to its previous appearance. It shall be the responsibility of the property owner to maintain any installed wind system. If failure to restore or maintain, the Town of Seven Devils shall have the authority to cash in the performance bond and perform the necessary work to restore the site.

Completion and Decommissioning:

Each accessory wind energy conversion system project must be completed within 18 months. Should delays occur, the Zoning Administrator must approve an extension at six (6) month intervals. Should a project cease operation as an ongoing business entity, the site must be restored to the original, natural state. A plan must be filed with the Zoning Administrator within 180 days after cessation, outlining how the structure will be removed, the time frame in which the work will be done, and the plan to return the property to its pre-existing state. A date for final removal must be given and approved by the Zoning Administrator in the plan.

Violations

Each day that the site is not restored beyond the approved deadline for final removal shall be assessed a civil penalty of \$50 per day fine. Each day will be treated as a separate offense. If the violation continues for a consecutive sixty (60) days: the Town of Seven Devils will then have the authority to cash in the performance bond and have the work performed.

Definitions

Accessory Solar Energy Collection Systems, Small Scale: Any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for generating energy for residential use. The term shall include active solar systems. Windows and skylights are not included and shall be considered components of passive systems.

Accessory Solar Energy Collection Systems, Utility Scale: Any device or combination of devices or elements which rely upon sunlight as an energy source, including but not limited to any substances or devices which collect sunlight for generating energy primarily for selling and/or returning electric energy to an electric distributor. Energy generated by this system may be used to serve on site power needs as well. Location of such high impact use is restricted to flat roofs and areas above ground that cannot be seen from major thoroughfares. This use is prohibited from slopes greater than 20 percent grade and shall not cover more than 50% of a property.

Accessory Wind Energy Conversion System: A wind energy conversion system consisting of a wind turbine, tower, and associated control or conversion electronics, which has a rated capacity of less than or equal to hundred (100) kilowatts and is intended to reduce on-site consumption of utility power. A system is considered a small wind energy system only if it supplies electrical power for on-site use with no intention of selling power back to the grid.

Accessory Wind Energy Conversion System, Utility Scale: A wind energy conversion system consisting of a wind turbine, tower, and associated control or conversion electronics with the intention of selling power back to the grid.

Environmental Assessment: a detailed examination of the applicant's proposal as it relates to the project's local environment with an emphasis on avoiding, minimizing, and mitigating adverse impacts. An Engineer licensed in the State of North Carolina must provide an environmental assessment.

Fall Zone: a distance two times the height of the tower or two times the engineered break point on the tower as a setback from the nearest structure in order to alleviate the concerns of safety and negative impact. It may be possible to have a professional engineer calculate the specific "fall zone" for where the turbine could conceivably land if it were to topple. Additionally, the Town's setback from both property lines and buildings that may lie on the same property should be outside the fall zone.

Mechanical Equipment: Any device associated with a solar or wind powered system, such as an outdoor electrical unit/control box that transfers the energy to the intended on-site structure.

Operator: the entity responsible for the day-to-day operation and maintenance of the Wind Energy Facility.

Parapet Wall or Curtain Wall: Is a wall-like barrier at the edge of a roof where extending above a roof, it may simply be a portion of the exterior wall that continues above the line of the roof surface, or may be a continuation of a vertical feature beneath the roof such as a fire wall. This outer covering is non-structural and is used merely to keep the weather out or to be used as a screening device. Because it is non-structural, it must be of like durability as the other external building materials.

Photovoltaic (PV): The technology that uses semiconductors to convert light directly to electricity.

Solar Glare: The effect produced by light reflecting from a solar panel with an intensity sufficient to cause annoyance, discomfort, or loss in visual performance and visibility.

Solar Access: A property owner's right to have sunlight shine on the owner's land.

Temporary Energy Systems: any system designed to provide temporary power for periods that do not exceed thirty (30) days and generally associated with emergency use. Temporary systems can include solar, wind, or small battery backup systems.

Wind Energy Facility. is an electric generating facility, whose main purpose is to supply electricity, consisting of one or more Wind Turbines and other accessories.

Wind Power. is the conversion of wind energy into another form of energy.

Wind Turbine: or windmill, is a wind energy conversion system that converts wind energy into electricity through the use of a wind turbine generator, and may include a nacelle, rotor, tower, guy wires, and pad transformer.

Wind Turbine Height: the distance measured from grade at the center of the tower to the highest point of the turbine rotor or tip of the turbine blade when it reaches its highest elevation.