

**TOWN OF STILLWATER  
ZONING BOARD OF APPEALS  
March 9, 2015 @ 7:00 PM  
STILLWATER TOWN HALL**

**Present:** Chairman, William Ritter (WR)  
Vice Chairman, Donald D'Ambro (DD)  
Christine Kipling (CK)  
Richard Rourke (RR)

**Also Present:** Daryl Cutler, Attorney for the Town (DC)  
Paul Cummings, The Chazen Companies (PC)  
Lindsay Zepko, Town Planner (LZ)  
Sheila Silic, Secretary

**Absent:** Paul Male, Acting Director, Building and Planning (PM)

**Chairman Ritter called the meeting to order at 7:00 P.M.**

**Review and Approval of Minutes of Zoning Board of Appeals:**

Mr. Rourke made a motion to approve the minutes from the October 14, 2014 meeting. Ms. Kipling seconded. Mr. D'Ambro made a motion to approve the minutes with minor changes from December 8, 2014 meeting. Mr. Rourke seconded. The approval of the minutes passed unanimously.

**Public Hearings:**

**ZBA2015-2, 3 Cedar Bluff Court-Area Variance**

**ZBA2015-3, 5 Cedar Bluff Court-Area Variance**

**ZBA2015-1, 7 Cedar Bluff Court-Area Variance**

**\*\*\*\*The projects were reviewed simultaneously\*\*\*\***

Chairman Ritter recognized Mr. Matthew Hugg, Esq., Attorney representing Andrew Kajanian. Mr. Hugg stated that there are three applications before the Board and doesn't believe there is a

need for an Area Variance for these lots as we believe the lots are still in the Cedar Bluff PPD. Mr. Hugg stated that the three lots are identical in size and dimension as buildable lots as mentioned in the Cedar Bluff PPD dated 1989. Mr. Hugg stated that his review of the Town Code from the 1970 PDD Legislation Town Code states nothing in the law related to reversion of Zoning back to the underlying Zoning District. Mr. Hugg stated that if the Cedar Bluff PPD project was not finished within two years there would be no building permits issued and the remaining lots would require Site Plan Review. Mr. Hugg stated that Mr. Bryce acquired two of the lots in 1994 and in 2005 he acquired the third lot. Mr. Hugg stated that the maps were revised by Charles Wheeler, Land Surveyor. The maps show the building envelopes and potential house placement. The backs are the same as the maps from 1989.

Mr. Cutler stated that the 1974 Legislation under 15.2, Capital A, Section 7 specifies that if the completion of the project is not finished by a certain time limit the subject property reverts back to existing zoning. Mr. Cutler stated that the Cedar Bluff PDD does not amend the 1974 legislation of the Zoning Code. Mr. Cutler stated that on July 25, 2005 the Zoning Board of Appeals deemed the Cedar Bluff PDD as a failed PDD.

Mr. Hugg stated that in the Cedar Bluff PPD Section 15.4 it stated that building permits would not be issued and nothing about reverting back to the underlying zoning. Mr. Hugg stated that if the language from the 1974 Legislation of the Zoning Code is not included into the Cedar Bluff PDD then the Zoning Board of Appeals must grant in favor of the applicant as stated in the letter to the Zoning Board.

Mr. Kazanjian introduced himself to the Board and stated that he is the Developer for this project, and that the homes he would be building will fit in with the character of the neighborhood.

Chairman Ritter proceeded to open the public hearing and asked if anyone wished to provide public comment. Chairman Ritter stated the letters that were presented to the Zoning Board would be entered into the minutes.

Thomas & Pamela Giammattie, 1 Cedar Bluff Ct, Saratoga Springs

Mr. & Mrs. Giammattie presented the Board Members with a letter stating the reasons they are opposing the Area Variances for Mr. Kazanjian's project relating to lots #3, #5, and #7 Cedar Bluff Ct and asked the Board to take their comments into consideration when making the decision on the Area Variance. (see below)

Evan Tublitz, 6 Cedar Bluff Ct, Saratoga Springs

Mr. Tublitz presented the Board Members with a letter stating the reasons he is opposing the Area Variances for Mr. Kazanjian's project relating to lots #3, #5, and #7 Cedar Bluff Ct and asked the Board to take his comments into consideration when making the decision on the Area Variances requested. (see below)

Lance Orcutt, 39 Ruggles Rd, Saratoga Springs

Mr. Orcutt submitted a copy of the Well Completion Report for Cedar Bluff Ct. Mr. Orcutt stated that the report shows the water flow per gallon and that adding three more new homes would not

affect the wells or water supply of the residence who reside at #1 and #6 Cedar Bluff Ct. Mr. Orcutt stated that he does not oppose this project and it should be approved.

Mr. Cutler made a recommendation that the March 6, 2015 letter from Paul Male and the Town Engineers letter from February need to be addressed and that the public hearing stay open until the next Zoning Board meeting on April 13, 2015.

Mr. D'Ambro asked if the applicant pursued buying property from one of the neighbors in the back of these lots. Mr. Kazanjian stated that he spoke to one neighbor about purchasing some land and at that time she was not interested in selling. Mr. D'Ambro stated that he may want to approach the neighbor again to check if she may be interested in selling now. Mr. Kazanjian stated that he would check into the possibility of purchasing land from the neighbor.

Chairman Ritter asked for motion to table the project and to leave the public hearing open until the Zoning Board meeting scheduled for April 13, 2015. A motion was made by Mr. D'Ambro and seconded by Ms. Kipling. A roll call vote was taken and passed unanimously.

March 9, 2015

Bill Ritter, Chairperson  
Town of Stillwater  
Zoning Board of Appeals

Reference is made to the area variance requests by Andrew Kazanjian, Lot #3, 5 & 7 Cedar Bluff Court, in the Town of Stillwater. This is our Formal Statement to the ZBA against the applicant.

We, Thomas and Pamela Giammattei, owners of Lot #1, Cedar Bluff Court offer the following opinion against the granting of a variance of each of these three variance requests:

**History of the Development**

The Lots on Cedar Bluff Court were officially created on May 4, 1989 pursuant to Section 265 of Town Law establishing a Planned Development District known as "Cedar Bluff Planned Development District, see attached subdivision plan dated June 16, 1989.

Section IX of the PDD Legislation states:

"The site plan approval process for the Development shall be completed as required by Section 15.4 of the Town of Stillwater Zoning Ordinance and the approved site plan shall be valid for a period of two (2) years from the granting of such site plan approval at which time, unless the proposed development has been completed, the development plan shall terminate and no additional building permits shall be issued"

Site Plan Map C-261A was filed in the Saratoga County Clerk's Office on January 11, 1990. Therefore, the Sunset Clause expired on January 11, 1992 and the lots along Cedar Bluff Road reverted back to the underlying zoning. Therefore, Lots #3, #5 and #7 are in the Low Density Residential District, and have been since January 11, 1992.

During the period 1991 through 1993 the developers, Cedar Bluff Associates, ran into financial difficulties. This resulted in the foreclosure of Lots #2, #3, #4 and #7 along with the beachfront and the road (Cedar Bluff Court) by Green Mountain Bank. Green Mountain Bank auction off the property on June 24, 1994 on an "as is" basis. The House on Lot #2 was purchased by Michael Dean. Lots #3, #4 and #7 were purchased by D. Wallace Bryce, a realtor, from Troy, New York. Green Mountain Bank subsequently conveyed a 1/7 share of the beachfront to each Lot owner and conveyed the road to the Town of Stillwater.

After having difficulty selling the Lots Mr. Bryce auctioned off the Lots on September 7, 1996 "subject to building permits". Mr. Bryce did not accept any bids at the auction since they did not meet his reserve requirements.

In December, 1997, D. Wallace Bryce, the owner of Lots #3, and #7 and former owner of Lot #4, requested an area variance for Lots #3 and #7 that was denied by the ZBA. Barry Hathaway, former owner of Lot #6, Cedar Bluff Court, provided a formal statement, to the ZBA that outlined numerous concerns that are still relevant today. The ZBA ultimately disapproved the request for variance and is a matter of record. The lots #3 and #7 were too small and could not be combined to meet Zoning because lot #5 was owned by two of the original developers. There were other concerns, such as well problems and density that also influenced the ZBA decision.

On February 9, 2014, on the hearing for Lot #4, the ZBA concurred that Cedar Bluff Court PDD was a failed PDD (Resolution #6 of 2014). This is where Lots #3, #5 and #7 stand today.

#### **Zoning District LDR Definition**

Lots #3, #5 and #7 totally lie within the LDR – Low Density Residential District. (Ref. Article III. Zoning Maps and Districts, Section 210.8 Establishment and purpose of districts; Zoning Map, attached "The purpose of this district is to protect low density single and two-family residential uses while allowing compatible agricultural uses".

The granting of these variances is not in harmony with the above purpose and intent of the Low Density Residential District. The "living environment" and "related facilities" in the zone include such things as picnicking, cookouts, and other outdoor activities. In addition, living in the zone implies a certain sense of privacy. Lot #7 is directly behind the developed Lot #6, owned by EvanTublitz. The long driveway would run immediately adjacent to his property along for the entire length of the southern boundary. The same privacy issue would be experienced with Lot #3 overlooking our property on Lot #1.

According to appendix A, Schedule of Regulations, Summary of Dimensional Area Requirements:

#### **Zoning LDR – Low Density Residential:**

<b>minimum lot size</b>	<b>1.5 Acres (reduced from 2 Acre minimum required due to public sewer and no public water)</b>
<b>minimum lot width</b>	<b>250 feet</b>
<b>front setback</b>	<b>40 feet</b>
<b>side setback</b>	<b>20 feet</b>
<b>rear setback</b>	<b>30 feet</b>

Each lot is severely deficient in bulk area on all 3 lots from the required 1.5 acres.

1.5 acres=65, 340 sq ft

Lot 3= 18, 279 sq ft. Short by 47, 062 sq ft  
Lot 5= 19, 845 sq ft. Short by 45, 495 sq ft  
Lot 7= 19, 492 sq ft. Shory by 45, 848 sq ft

The 3 failed lots, combined into 1 building lot, would not meet Zoning requirements and would require a variance(s). The failed lots could be combined into one lot as they are owned by the same person.

In addition to the bulk area deficiency there is a deficiency in the required 250 foot lot width requirement for each lot.

#### **Area Variance Considerations**

According to Section 7E of Local Law #4 of 1995 amending the Zoning Ordinance, the Zoning Board of Appeals in granting area variances shall:

".....take into consideration the benefit to the applicant if the variance is granted, as weighted against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting the area variance; (2) whether the benefit sought by the applicant can be achieved by some other method, feasible for the applicant to pursue, other than an area variance; (3) whether the area variance is substantial; (4) whether the proposed variance will have an adverse affect or impact on the physical or environment conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals....."

#### **Undesirable Change**

The granting of these variances will produce an undesirable change in the neighborhood. The construction of single family residences on Lots #3, #5 and #7 will result in increased density in the area. This increased density will be concentrated along the borders of Lot # 6 and our property on Lot #1.

It is common sense to assume that a dense community will lower our property value. A house immediately behind Evan Tublitz Lot #6 and our house, Lot #1 will reduce the values of Lots #1 and #6.

The circular portion of the cul-de-sac would have between 6 and 8 driveways on it, depending on the ZBA's decision. There would be no room for on-street parking, placement of mailboxes. This condition would greatly increase the chances of having backing accidents and leave no room for snow removal for both the Town and individuals.

The existing street already shows signs of distress that will need attention and expense that would be imposed on the Town residents. Depending on what is approved by the ZBA there could be up to 3 new deep excavations to install the sewer laterals to the existing sewer.

There could be 3 new wells needed with the 4<sup>th</sup> being the new well drilled on #4 Cedar Bluff Court (presently under construction). It will not be known the impact of the new well until the new family starts using it. The jury is still out on this and could be a major problem for the Town, neighbors and us.

In addition, there exist large lots on either side of Cedar Bluff Court. Immediately to the north of Cedar Bluff Court there are lots of sizes 3.50 acres and 4.06 acres (tax map numbers 208.13-2.3 (Robert Ether) and 208.13-2.2 (Thomas and Dale Heggenberger). Immediately to the south of Cedar Bluff Court there is a lot of size 56.92 acres (tax map 206.-1-25.1 (James Byrne). In fact, all lots (with the exception of Evan Tublitz Lot #6, allowed under the PDD) contained in the Low Density Residential zone meet its requirements. In most cases, lots lying in the Residential Resort District at least meet the requirements of the Residential Resort District zone. Lots #3, #5 and #7 do not even meet the RRD zone lot size requirements.

As such, these lots are not in the character of the District and allowing it would produce an undesirable change.

#### **Other Alternatives**

The three parcels are owned by the same person. They could be combined into 1 lot to more closely conform with the LDR – Low Density Residential requirements. Any other scenario would be less conforming. The owner could purchase additional property to add area to the 3 Lots to conform to the LDR Zoning District.

**Area Variance is Substantial**

Each lot is **severely deficient** in bulk area on all 3 lots from the required 1.5 acres.

1.5 acres=65, 340 sq. ft. Required

Lot 3= 18, 279 sq. ft. Short by 47, 062 sq ft

Lot 5= 19, 845 sq. ft. Short by 45, 495 sq ft

Lot 7= 19, 492 sq. ft. Shory by 45, 848 sq ft

The 3 failed lots, combined into 1 building lot, would not meet Zoning requirements and would require a variance(s). The failed lots could be combined into one lot as they are owned by the same person.

In addition to the bulk area deficiency there is a deficiency in the required 250 foot lot width requirement for each lot.

**Adverse Impact on Physical and Environmental Conditions**

The current topography of Lots #3, #5 and #7 have gullys up to 6 feet deep running through them that drains the rear of the properties as well as Mr. Byrne's property. The construction of the houses and driveways on the Lots would change the drainage patterns. Due to the small lot sizes (bulk area) proper grading will be difficult to control and will need to be tied into the Town's closed drainage system which will drain directly into Saratoga Lake. An environmental assessment is needed to determine the impact on the Lake.

The three lots must be considered as a Subdivision because they are in a failed PDD. Since the Lots are in a failed PDD they no longer are valid lots and should be considered as a single parcel of land which the owner and / or developer need to comply with subdivision requirements and be required to go through the subdivision process, including environmental document. Wetland vegetation, hydric soils and intermittent streams, water pollution control, storm water drainage plan, impact on water supply need to be addressed.

**Summary**

In summary, the granting of these variances goes against the purpose and intent of the Low Density Residential District (LDR). The granting would produce and undesirable change in the character of the neighborhood, due to other larger lots in the area, increased density and reduction in property values. The area variances are substantial both in terms of acreage and frontage. Development of the Lots would have an adverse

impact on local water supply and would create difficulties in handling stormwater drainage. Mr. Bryce knew full well what he was getting into when he purchased Lot #3 and #7 at the bank auction and is now a self-created hardship. Perhaps he knew that he would need Lot #5 when he purchased it to combine the three lots to form one building lot.

Thomas Giammattei 3/9/15  
Pamela Giammattei 3/9/15

E V A N T U B L I T Z

9 March, 2015

Town of Stillwater Zoning Board of Appeals  
and Building, Planning and Development Dept.  
P.O. Box 700,  
Stillwater, NY 12170

Re: Proposed Area Variance requested by Andrew Kazanjian for Lots# 3,5, & 7 Cedar Bluff Court

Dear Chairman Ritter & the Stillwater ZBA, Lindsay Zepko, and Paul Male:

As owner and resident of #6 Cedar Bluff Court in the town of Stillwater, I have some grave concerns regarding the fostering of development of the lots #3,5 & 7 on Cedar Bluff Court.

- 1) In the ZBA resolution #6 approved on May 12, 2014, it was concluded by the ZBA as noted by Chairman Ritter, that the Cedar Bluff PDD had sunset and therefore was expired and the lots at #3,5, & 7 would therefore revert Low Density R-1 requiring a minimum of 1.5 acres (reduced from the 2 acre minimum due to the public sewer and no public water.)
- 2) The owner of the three lots, Mr. D. Wallace Bryce, having been denied an area variance on those lots in the past, was more than aware of the actions of the ZBA ruling on the expiration of the Cedar Bluff PDD and did not petition the ZBA to stop or argue against the sunset and expiration of the PDD thus reverting to the underlying Low Density R-1 Zoning requirements.

By not taking any action from last May 2014 to the present, it clearly can be argued that he, his assigns or partners, and any subsequent owner have created a "self-created hardship" having let the PDD expire and must now live with the underlying acreage minimums of Low Density R-1. (Barby Land Corp. vs. Ziegner 65 A.D.2d 793 (1978) NOTE: It was well-known that development of lots #3,5,& 7 were delayed—waiting on the Saratoga Glen Water Pipeline to reach Cedar Bluff Ct. and provide sufficient water to allow for development. This has not occurred.

The Cedar Bluff PDD failed due to poor planning to successfully develop lots 3,4,5 & 7 for many years due to: a) inability to maintain the look and feel of the established neighborhood by creating structures too close to one another, b) stressing the established aquifer and water requirements from drilled wells with so many homes so close together, and c) significantly increasing the traffic on a dead end street not designed for it. Building on the individual lots would significantly and create an undesirable change in the look and feel of the neighborhood and devalue existing property.

- 3) If the three lots were combined, they still would not meet the 1.5 acre requirement. One house built, set back considerably as the original homes (#1,2,&6), in the middle of the three lots poses the only viable option although the drilling of another well will further undermine the production of the existing wells (as the negative impact on the area of the new well at #4 Cedar Bluff has yet to be determined as it is under construction.) If a home were built there, it should retain the 'gracious' character of the original homes with respect to style,

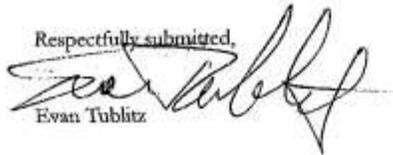
6 CEDAR BLUFF COURT • SARATOGA SPRINGS, NY 12866-9630  
PHONE: 518-583-6464 • CELL: 518-421-9800

quality and space between existing homes.

- 4) I refer the ZBA to my previous submissions at the Public Hearing on April 14, 2014 the issues raised in report by Hansen Van Vleet dated April 2, 2014 and report prepared by Barry Hathaway submitted to the ZBA regarding the five area variance considerations as they applied to the variance request of 3 Cedar Bluff Court in "Tublitz Exhibit 5". The issues therein are germane to this request for area variance.
- 5) It has been brought to my attention that there are wetlands on some or all of those lots and they may need to be investigated by the NYS DEC and any other agency to remediate before building could commence. Please provide a copy of such report when it is conducted.
- 6) As new information undoubtedly is brought up to the affected neighbors at the Zoning Board Public hearing, I would request that the Public Hearing on this matter be held open until such time as I and my neighbors have been able to conduct our research on this matter and that all my affected neighbors may be back in town to be able to attend such a hearing- which would be the April 13, 2015 meeting.

Thank you for your attention to this matter.

Respectfully submitted,



Evan Tublitz

**ZB2014-42 Brickyard Road Apartments (Bove) Area Variance, Brickyard Rd**

Chairman Ritter proceeded to open the public hearing and asked if anyone wished to provide comment. No one responded and Chairman Ritter closed the public hearing. Chairman Ritter stated that the applicant was before the Board to ratify Resolution #22, 2014. Chairman Ritter stated that the project had to go to Saratoga County Planning Board for review and approval.

**TOWN OF STILLWATER  
ZONING BOARD OF APPEALS  
2015 RESOLUTION NO. 1**

WHEREAS, John Bove has submitted an application to the Zoning Board of Appeals seeking an Area Variance in order to build an apartment complex on property located on Brickyard Road, Stillwater, more fully identified as Tax Map Number 262.-1-1.1; and

WHEREAS, the Applicant is seeking an area variance regarding the set-back requirement contained Stillwater Zoning Code §3.5(D); and

WHEREAS, pursuant to §14.2(D) of the Stillwater Zoning Law, the Town properly and timely published a notice for public hearing conducted on October 14, 2014; and

WHEREAS, the Zoning Board of Appeals has duly considered the application and the elements necessary to consider the granting of an Area Variance by taking into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such grant; and

WHEREAS, on October 14, 2014, the Zoning Board of Appeals granted a set-back Variance on the project which was 2014 Resolution No. 22; and

WHEREAS, the Zoning Board of Appeals subsequently discovered that the resolution was made prior to receiving the Saratoga County Planning Board approval of the project; and

WHEREAS, the Zoning Board of Appeals reviewed the prior findings of Resolution No. 22;

Now, therefore, be it

RESOLVED, that the Stillwater Zoning Board of Appeals hereby RATIFIES the prior finding of 2014 Resolution No. 22.

RESOLVED, that the application of John Bove for a set-back Variance to allow for the building of an apartment complex on property located on Brickyard Road, Stillwater, more fully identified as Tax Map Number 262.-1-1.1, is GRANTED with the condition that sidewalks are required in front of the buildings along Brickyard Road.

A motion by Member D’Ambro, seconded by Member Kipling, to adopt Resolution No. 1 of 2015.

A roll call vote was taken on Resolution No. 1 of 2015 as follows:

Member Christine Kipling	Yes
Member Richard Rourke	Yes
Vice Chair Donald D'Ambro	Yes
Chairman William Ritter	Yes

Resolution No. 1 of 2015 was adopted at a meeting of the Zoning Board of Appeals of the Town of Stillwater duly conducted on March 9, 2015.

**Adjournment:** A motion to adjourn was made by Mr. Rourke, seconded by Chairman Ritter, at approximately 8:45 P.M.

**The next Zoning Board of Appeals Meeting will be held  
April 13, 2015**