

**DRAFT**  
**TOWN OF STILLWATER**  
**ZONING BOARD OF APPEALS**  
**May 12, 2014 @ 7:30 PM**  
**STILLWATER TOWN HALL**

**Present:** Chairman William Ritter  
Donald D'Ambro  
Richard Rourke

**Also Present:** Daryl Cutler, Attorney for the Town  
Paul Cummings, Engineer for the Town  
Eric Rutland, Code Enforcement Officer/Building Inspector  
Deborah Osborn, Secretary

**Absent:** Christine Kipling  
Paul Male, Acting Director of Building, Planning and  
Development  
Lindsay Zepko, Town Planner

Chairman Ritter called the meeting to order at 7:30 P.M. and led everyone in the Pledge to the Flag. Mr. Cutler noted for the record that there was a quorum.

**Public Hearings/New Business:**

**Janet Larsen, Area Variance, 4 Cedar Bluff Court, ZBA2014-27**

Chairman Ritter stated that the public portion of the Larsen public hearing was closed at the April meeting, therefore, there would be no further opportunity for public comment. Since the application was tabled at the April meeting to allow for further resolution of outstanding issues and concerns, Mr. Cutler advised that a

motion would need to be made to remove it from the table; Mr. D'Ambro made the motion and Mr. Rourke seconded. All were in favor with a roll call vote.

Chairman Ritter stated that there would need to be a separation of and subsequent discussion of two issues, the PDD sunset and the requested variances. Chairman Ritter recognized Janet Larsen and Tonya Yasenachak of Engineering America. They addressed any outstanding issues including the access road, building/ lot coverage, the pool encroachment, water supply/well yield, setbacks, storm water plan, etc. There was extensive discussion regarding the status of the PDD. It was determined, after a thorough analysis of the history of the PDD, that the PDD had expired and that this parcel should revert back to the Resort Residential Zone. Mr. Cutler addressed this with the applicant who modified and initialed her application to reflect this. Chairman Ritter, having been satisfied that all questions and concerns specific to both the status of the PDD and the application itself, had been addressed, or will be addressed specific to conditions set by the Board, asked to move the required resolutions.

**TOWN OF STILLWATER  
ZONING BOARD OF APPEALS  
2014 RESOLUTION NO. 6**

WHEREAS, Janet Larsen has submitted an application to the Zoning Board of Appeals for an Area Variance regarding property located on 4 Cedar Bluff Court, more fully identified as Tax Map Number 206.13-2-6.5; and

WHEREAS, Chairman William Ritter concluded that an interpretation was necessary to establish the status of the Cedar Bluff PDD in order to apply the proper zoning requirements for the parcel in question; and

WHEREAS, Chairman Ritter stated the following:

Before addressing the variance request made by the applicant, Janet Larsen, the ZBA needs to determine the status of the Cedar Bluff PDD. On May 4, 1989, the Stillwater Town Board passed legislation enacting the Cedar Bluff PDD. This PDD consisted of 9 lots. 7 of the lots (lots 1-7) are on Cedar Bluff Court and the remaining 2 smaller lots are on the other side Route 9P. Of the 7 lots on Cedar Bluff Court, 3 have been developed – 1, 2 and 6. The plot plan was filed with the County Clerk's Office identifying the specific lots, lot sizes, and depicting setback lines within the lot. Unfortunately, there is an inconsistency between the language in the PDD legislation, and the size of the 7 lots. Particularly, lots 3, 4, 6 and 7 appear to be smaller

than the minimum lot size within the PDD legislation.

This inconsistent language between the PDD legislation and the approved and filed map would lead to the logical conclusion that those undersized lots were, in fact, intended as buildable lots and therefore the minimum lot size language within the PDD was an error since it could it never have been intended by the Town or the builder to have 4 of the 7 lots be non-conforming and unbuildable. Accordingly, either by interpretation or variance, the ZBA must conclude that they are buildable lots. This can be achieved by the ZBA concluding that an interpretation of the minimum lot size intended for the PDD legislation was less than or equal to the smallest square footage of the 7 lots connected to the Cedar Bluff Court. Alternately, the ZBA must grant an area variance deeming the lot size large enough to allow for the lot to be buildable.

The above analysis regarding lot size is applicable so long as the PDD is still in effect. This case is more troubling due to the question of whether the PDD has a sunset provision which has caused the PDD to have failed and terminated. The PDD legislation under Section IX has a provision that must be considered when determining if the PDD is still in effect. That Section of the PDD 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 such site plan approval at which time, unless the proposed development has been completed, the development plan approval shall terminate and no additional building permit shall be issued. Upon the granting of site plan approval by the Town Board for the Development, building permits shall be issued.”

The language is clear that after two years, site plan approval terminates unless the proposed development has been “completed”. Two questions are presented: (1) what constitutes the Development being completed, and (2) once site plan approval terminates after two years, what happens? One possibility is that the proposed development is completed once the infrastructure is in place. The other possibility is that the Development would need to be completely built out within two years. In either case, the Development was not completed within two years. The Development was not completely built out within two years nor was the infrastructure completed within two years. Therefore, the development plan approval terminated. The question then becomes whether this simply means that the PDD remains in existence and site plan approval is needed for any additional building permits to be issued. The other possibility is that the PDD has a two year sunset provision at which point the PDD terminates if not completely built out.

The search of the records and history of this particular development provides some insight as to the interpretation of Section IX of the PDD. During the 4/14/14 Public Hearing, a number of the neighboring property owners stated that historically the Town and the ZBA had concluded and treated the PDD as a failed PDD and that the properties within the Development were subject to the underlying zoning requirements. While the Town Zoning Map still lists the property as being within a PDD, when lot 1 was developed by Thomas and Pamela Giammattei, the permit application shows that the property owner and the Town treated the property as being

within the R-1 district and applied R-1 zoning requirements, not the Cedar Bluff PDD requirements.

Over the years, a number of variance applications for the lots within the Development have treated the PDD as having terminated or failed. The applicants were held to the standards of the underlying zoning of the property, not the PDD standards.

Most particularly, on July 25, 2005, Janet Larsen had previously requested an area variance for the parcel 4 Cedar Bluff Court. Janet Larsen was granted an area variance for minimum lot size in a unanimous vote. Because Janet Larsen did not act on the variance within one year, the variance expired. At that time, the ZBA deemed the PDD as a failed PDD and applied the Resort Residential zoning requirements for 4 Cedar Bluff Court. Had the PDD still been in effect, the applicant would have needed an area variance of 1,691 feet. Because the ZBA concluded the PDD failed, the ZBA applied the Resort Residential area requirements, and the applicant is in need of a variance of 3,471 square feet.

Because of the prior Town and ZBA holdings that the Cedar Bluff PDD was a failed PDD and the property returned to the underlying zoning (Resort Residential) it is consistent, reasonable, and logical, for this Board to conclude that Section IX of the PDD legislation was intended as a sunset provision for the entire PDD. Therefore, the applicant before us is subject the zoning requirements of a Resort Residential district.

Based upon the above, now, therefore, be it

RESOLVED, that the property located at 4 Cedar Bluff Court, Stillwater, more fully identified as Tax Map No. 206.13-2-6.5 is within the Resort Residential zone as the Cedar Bluff PDD has expired and the property reverted back to the underlying zoning.

A motion by Chairman Ritter and seconded by Member D'Ambro adopt Resolution No. 6 of 2014.

A roll call vote was taken on Resolution No. 6 of 2014 as follows:

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

Resolution No. 6 of 2014 was adopted at a meeting of the Zoning Board of Appeals of the Town of Stillwater duly conducted on May 12, 2014.

**TOWN OF STILLWATER  
ZONING BOARD OF APPEALS  
2014 RESOLUTION NO. 7**

WHEREAS, Janet Larsen has submitted an application to the Zoning Board of Appeals for an Area/Use Variance regarding property located on 4 Cedar Bluff Court, more fully identified as Tax Map Number 206.13-2-6.5; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act (SEQRA), the proposed action is an unlisted action and requires completion of Part 2 of the SEQRA form;

Now, therefore, be it

RESOLVED, that upon review and completion of Part 2 of the Environmental Assessment Form, the Zoning Board of Appeals found the following:

The proposed action is the granting of an area variance for the development of a single family home in an approved subdivision. The project will include a domestic water well. Development of a private well may have “no or a small impact” on the water quality of neighboring wells during drilling. The subdivision’s plan and the use of on-sight water supply was reviewed and approved by the New York State Department of Health. No change to residential lot densities is proposed than that of the original development. The new well must comply with the New York State Department of Health well construction standards as identified in Appendix 5-B of 10 NYCRR Subpart 5-1.

The Zoning Board of Appeals also found that there would be a small impact or increase in the potential for erosion or drainage problems, especially during the construction phase of the proposed action. A written soil/erosion plan would be required to receive a variance and a building permit.

A motion by Member Ritter, seconded by Member D’Ambro to adopt Resolution No. 7 of 2014.

A roll call vote was taken on Resolution No. 7 of 2014 as follows:

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

Resolution No. 7 of 2014 was adopted at a meeting of the Zoning Board of Appeals of the Town of Stillwater duly conducted on May 12, 2014.

**TOWN OF STILLWATER  
ZONING BOARD OF APPEALS  
2014 RESOLUTION NO. 8**

WHEREAS, Janet Larsen submitted an application to the Zoning Board of Appeals seeking an Area Variance in order to build a residence on property located at 4 Cedar Bluff Court, Stillwater, more fully identified as Tax Map Number 206.13-2-6.5; and

WHEREAS, the Applicant is seeking an area variance and a setback variance from the requirements 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 for April 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 the public hearing was conducted on April 14, 2014, at which time the Zoning Board of Appeals received verbal and written comments. Thereafter, additional written comments were received by the Zoning Board of Appeals; and

WHEREAS, Chairman William Ritter stated the following:

When considering whether to grant a variance, the ZBA must consider the public input. During the public hearing, neighboring property owners provided verbal and written input regarding the variance request. That input included the following:

Nancy and Paula Quenelle of 2 Cedar Bluff Court expressed concerns regarding the impact on their well, the ability of the sewer system to handle an additional property, storm water runoff, potential damage to their pool, their privacy and their property value.

Evan Tublitz of 6 Cedar Bluff Court expressed concerns regarding the impact on surrounding properties' wells, storm water issues, property values and concern that it would lessen property views of the lake. Evan Tublitz submitted a geotechnical engineering report dated March 31, 2014 prepared by Daniel G. Loucks, PE. This report expressed concern regarding storm water drainage and potential impact on the neighboring pool. Evan Tublitz submitted a hydrological investigation dated April 2, 2014 and prepared by Hanson Van Vleet, LLC. This report addressed concerns regarding the impact on the neighboring properties quantity and quality of water. Evan Tublitz submitted a statement prepared by Barry Hathaway which was submitted by Mr. Hathaway in an area variance request for lot 3 Cedar Bluff Court sometime in the past. This document argued that the Cedar Bluff PDD expired on or about January 11, 1992. The document then addressed the five area variance considerations and how they applied to the variance request for 3 Cedar Bluff Court which Barry Hathaway concluded was in the residential district (R-1). He then verbally asserted that the proposed house was too

big for the lot in question as well. Evan Tulbitz submitted a letter to the Town of Stillwater dated April 18, 2014 containing the history of ownership of the lot in question, his comments regarding his position that denying the variance would not be a legislative taking, his comments regarding whether the applicant had adequately addressed the concerns expressed in the geotechnical report, his concerns regarding the potential height of the parcel, and the existence of a pre-existing driveway on the lot which must be considered when determining the percentage of lot coverage. In addition, a report prepared by Clough, Harbor and Associates, LLP dated December 22, 1997 was submitted which expressed concerns regarding a proposed project on Cedar Bluff. The concerns related to drainage issues and water supply.

Chris Eatz of 2 Stone Creek Drive expressed the position that water quantity and quality has always been a problem for many of the residents on the east side of the lake and that property owners can dig a second well on their property which could have the same impact as this applicant having a well. He felt that the property values in the area could go up because of the Development just as likely as they could go down and that he was generally in favor of the project.

Carol Dooley of 744 NYS Route 9P expressed concern regarding the impact on the neighboring wells.

Thomas and Pamela Giammattei of 1 Cedar Bluff Court expressed concerns regarding grading, drainage, the impact on surrounding wells, and expressed their position that the PDD had expired and failed. They also submitted written documentation which expressed concerns about increased density, reduction in property values, storm water drainage, and a strain on the water system in the area.

During the public hearing and the submissions thereafter, neighbors expressed concerns regarding density. It should be noted that, under the PDD, this was an approved building lot. Allowing this lot to be developed does not create any greater density than what was anticipated by the Town Board originally.

The neighbors' concerns regarding the view of the lake are not factors to be considered as there are no view shed provisions within the Town zoning code and with or without approval any neighbor could place large trees blocking another neighbors' view. There are building height limitations but the applicant is not asking for a variance regarding those conditions.

Engineering reports and the comments by the neighbors expressed concerns about storm water drainage issues, soil conditions and erosion. An appropriate condition for mitigating those concerns would be the requirement that the applicant prepare a storm water management plan, a soil and erosion plan, and that the applicant submit a site plan for review and approval by the Town Engineer.

Since the time of the Public Hearing, the applicant has amended the proposed location for the house so that it is further away from the neighbor's pool. With proper construction practices, this should address the concern of damage to the pool and even provide some additional privacy for the neighbor.

The concerns expressed regarding property values are purely speculative. Property values could potentially increase instead of decrease due to the development of the property. No factual, empirical, scientific, or analytical evidence to support the belief that property values would decrease were submitted.

The owners of the neighboring properties submitted their statements regarding their wells, water quantity and quality along with engineering reports addressing concerns regarding the same. The applicant's engineer, Tonya Yasenchak, of Engineering America Co., submitted a response letter dated April 30, 2014, along with comments made at tonight's meeting. In that response letter, the engineer, among other things, opined that constructing a house on a pre-existing, non-conforming lot, itself does not affect the wells as a house was already proposed for this location. In fact, when the PDD was approved, 7 wells were proposed for the properties along Cedar Bluff Court. It is reasonable to impose a condition on the variance that the developer/owner drills a well that provides water of adequate supply and quality prior to any other work on lot and that any well must meet New York State Department of Health standards.

Applying the factors to be considered, the Stillwater Zoning Board of Appeals hereby makes the following findings:

1. An undesirable change will not be produced in the character of the neighborhood or a detriment to nearby properties will not be created by granting the area variance because this parcel of property is part of a seven lot subdivision that anticipated the development of this land as a buildable lot. The parcel of property is 18,320 square feet, and is larger than lot 6 which has already been developed. The conditions requiring a storm water management plan, a soil and erosion plan, and an approved site plan will help to mitigate any potential detriment to the neighboring properties caused by soil conditions, erosion and drainage issues.

2. The benefits sought by the applicant cannot be achieved by some other method feasible for the applicant to pursue other than the area variance because, although the applicant could obtain additional property to enlarge her lot, such additional property would include a portion the neighboring properties' paved driveway, thereby making it not a feasible alternative to enlarge the lot. None of the other neighboring properties will sell to the applicant, and absent an area variance, the land will be a non-buildable lot.

While the applicant could adjust the location of the proposed residence so that no set back variance would be required, to do so, the applicant would need to move the house 10 feet closer to the neighbor's pool. Since the neighbor has expressed concerns regarding potential damage to the pool during construction and the desire for more privacy, granting the set-back variance is a better outcome for the neighboring properties.

3. The requested area variance is substantial in that it requests a variance for 3,471 square feet but the lot is still larger than other lots within the subdivision, and absent this variance, the land would not be a buildable lot.

4. The proposed variance will not have an adverse effect or impact on the physical or environmental conditions of the neighborhood or district because the conditions requiring a storm water management plan, a soil and erosion plan, and an approved site plan will help to mitigate any potential adverse impact on erosion and drainage.

5. The alleged difficult was self-created in that the property owner purchased the property after the Town had already deemed the land to have reverted back to the underlying Resort Residential Zoning and the applicant was granted a variance but due to the applicant's inaction, the variance expired. Nevertheless, the true status of the zoning at the time the applicant purchased the property was far from clear. It would not be unreasonable for the applicant to have concluded that the PDD was still in existence, and that the lots created by the PDD were buildable lots. It is appropriate to grant the variance to allow the lot to be a buildable lot and to grant a set-back variance.

Based upon the above, now, therefore, be it

RESOLVED, that the application of Janet Larsen for an area variance and a set-back variance to build a residence on the property located at 4 Cedar Bluff Court, Stillwater, more fully identified as Tax Map No. 206.13-2-6.5 is GRANTED under the conditions set forth below; and it is further

1. That the applicant have a licensed engineer prepare a storm water management plan and a soil & erosion plan; and
2. That the applicant provides a site plan to the Town Engineer for the Town Engineer's review and approval.
3. That the developer/owner drill a well that provides water of adequate supply and quality prior to any other work on lot and that any well must meet New York State Department of Health well performance standards.
4. That the applicant must file a permanent easement for the existing driveway to the neighboring land or remove the driveway.

A motion by Member Ritter, seconded by Member D'Ambro, to adopt Resolution No. 8 of 2014.

A roll call vote was taken on Resolution No. 8 of 2014 as follows:

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

Resolution No. 8 of 2014 was adopted at a meeting of the Zoning Board of Appeals of the Town of Stillwater duly conducted on May 12, 2014.

**Chris Van Pelt Area Variance, 576 Route 9P, ZBA2013-24**

There was no representative present for discussion of the application.

**Other Discussion:**

Chairman Ritter asked if the other Board members had any outstanding issues. Mr. D'Ambro made inquiry as to the status of the mobile home park on County Route 76 and stated that he expected the one mobile home in dis-repair to be removed. Mr. Rutland advised that he was aware of this problem and was working on it. He added that the Building Department personnel would be meeting with all mobile home park representatives to address any concerns/issues.

**Adjournment:**

A motion to adjourn was made by Mr. Rourke, seconded by Mr. D'Ambro, at approximately 8:55 P.M.

**The next Zoning Board of Appeals Meeting will be June 9, 2014.**