

**TOWN OF STILLWATER
ZONING BOARD OF APPEALS
April 13, 2015 @ 7:00 PM
STILLWATER TOWN HALL**

Present: Chairman William Ritter
Vice Chairman Donald D'Ambro
Christine Kipling
Richard Rourke

Also Present: Daryl Cutler, Attorney for the Town
Paul Male, Acting Director, Building, Planning and
Development
Lindsay Zepko, Town Planner
Sheila Silic, Secretary

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

Review and Approval of Minutes of Zoning Board of Appeals:

Mr. D'Ambro made a motion to approve the minutes with minor changes from the March 9, 2015 meeting. Ms. Kipling seconded. The approval of minutes passed unanimously.

Public Hearings:

ZBA2015-1, 7 Cedar Bluff Court-Area Variance

ZBA2015-2, 3 Cedar Bluff Court-Area Variance

ZBA2015-3, 5 Cedar Bluff Court- Area Variance

******The Projects were reviewed simultaneously******

Chairman Ritter asked for a motion to reopen the public hearing. Mr. D'Ambro made a motion to reopen the public hearing, Mr. Rourke seconded. The Board approved the motion unanimously. Chairman Ritter proceeded to open the public hearing and asked if anyone wished to provide public comment. Chairman Ritter stated that the letters that were presented to the Zoning Board would be entered onto the minutes.

Mr. Kazanjian, representing Triple Crown Development, gave a brief recap of the project before the Board. Mr. Kazanjian stated that he is requesting three Area Variances for Lots #3, #5, and #7 Cedar Bluff Ct. Mr. Kazanjian stated that Mr. Bryce purchased two of the lots in 1994 and the third lot in 2005. Mr. Kazanjian stated that the infrastructure is already in and that Triple Crown Development would like to finish the build-out of the development with custom homes on each of the lots.

Jessie Schwartz, Attorney from Walsh & Walsh Law Firm, Representing Mr. & Mrs. Giammattie, 1 Cedar Bluff Ct Saratoga Springs

Mr. Schwartz presented the Board Members with a chart and also with a letter from Matthew Maloney, NYS Certified Appraiser. Mr. Schwartz stated that he reviewed the applications for the Area Variances for Lots #3, #5, and #7 Cedar Bluff Ct. Mr. Schwartz stated that he found various reasons that all three Variances should be denied. Mr. Schwartz asked the Board to take his comments into consideration when making the decision on the Area Variances requested. (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. Mr. Tublitz asked the Board to take both his previous and current comments into consideration when making the decision on the Area Variances requested. (See below)

Raymond Apy, representing Mr. Annese, 748 NYS Route 9P, Saratoga Springs

Mr. Apy presented the Board Members with a letter stating the reasons that Mr. Annese opposes the Area Variances for Mr. Kazanjian's project relating to Lots #3, #5, and #7 Cedar Bluff Ct. Mr. Apy asked the Board to please review the letter and to also make it part of the record. Mr. Apy asked the Board to take his comments into consideration when making the decision on the Area Variances requested. (See below)

Chairman Ritter asked if there was anyone else who wished to provide public comment. Hearing none, Chairman Ritter closed the public hearing.

Chairman Ritter recognized Mr. Matthew Hugg, Esq., Attorney representing Andrew Kazanjian. Mr. Hugg stated that he was going to respond to some of the concerns from the residents. Mr. Hugg stated that some of the issues are contradictory regarding Lots #3, #5, and #7 that these lots have wetlands but there is a low ground water table for wells. However the Board has no information that states these facts. Mr. Hugg stated that on March 9, 2015 the Board was presented with a perk test from Lot #4 showing a substantial amount of ground water. He stated that the residents had to of assumed these were buildable lots and would eventually be built upon as they were approved as part of the original PDD. Mr. Hugg stated that the Law that created the authority of the Town Board to create the PDD was from the Town Zoning Code from 1974, Section 15.7 "provided the Town Board that in passing the PDD the Town Board should specify the time period for completion of the Development and should indicate the appropriate action to be taken to revert the Zoning". Mr. Hugg stated the Cedar Bluff PDD has no mention of reversion to the underlying zoning, what it does state that if the Development is not completed

within two years there will be no further building permits issued. Mr. Hugg stated that the Area variances should be approved as there will not be an undesirable change to the neighborhood. When asked "can the applicant achieve this by some other means", Mr. Hugg stated that he spoke to Mrs. Byrnes about selling a portion of her property and she declined to sell. He stated that the variance is substantial in reference to the underlying zoning, but if you look at the project as part of the PDD, the variance is not substantial.

Mr. Cutler stated if the Cedar Bluff PDD has sunsetted this Board has to apply the standards of the current underlying zoning and has to consider whether the variances are substantial. Mr. Hugg stated that if the Board finds that Cedar Bluff PDD as lapsed would the underlying zoning district still apply even though the Zoning Map still shows this as Cedar Bluff PDD and if all the PDD lapsed then all the lots except for Lot # 4 are not in compliance with Zoning. Mr. Hugg stated that the Board has to examine all the circumstances of the application and substantial variances are granted all the time as a matter of course. Mr. Hugg stated that on paper the variances is substantial but in reality it is not substantial. Mr. Cutler asked Mr. Hugg to address the issue of whether the benefit can be sought by another method, when the applicant is purposing to buy three lots and can combine them to minimize the area variances by combining the three lots into one that would need a much lesser area variance regarding bulk area. Mr. Hugg stated that this would be financially unfeasible to do and it is unfair to ask the applicant to combine the lots. Mr. Hugg stated that not one of the objectors have offered to buy the lots and preserve the property the way it is now. Mr. Cutler stated that the applicant could create two lots that are more conforming than what is proposed. Mr. Hugg stated that the applicant could create one or two lots but they would still be nonconforming to the underlying zoning. Mr. Cutler stated that previously variance requests had been made for lots #3 and #7 that were denied. Mr. Hugg stated that he was not aware of this as it was not included in the FOIL request. Ms. Zepko stated that this information was found after an intensive search in archives. Ms. Zepko stated that a copy of this information will be sent to Mr. Hugg's office. Mr. Cutler referred back to Section 15.4 of the PDD Language that states that the request for a building permit would mean that an applicant must go before the Town Board for approval. Mr. Hugg stated he disagreed with this statement and referred to Section 15.4 of the PDD Language "Development Plan" which requires that the applicant would have to go back before the Planning Board and Section 15.2A Subsection 7 relates to the reversion of Zoning. Mr. Cutler referred to Section 15.2-10 which states the Town Board approves or disapproves the Development Plan. Mr. Hugg stated yes, but in conjunction with the Planning Board who would not relinquish their right for Site Plan approval. Mr. Cutler stated in 1974 the Town Board approved the PDD and Development Plans. Mr. Hugg stated that he would make the same argument before either Board that the Cedar Bluff PDD is still in effect. Mr. Cutler asked how the property is not considered self-created when the applicant doesn't own the property and has knowledge of the property issues and would the applicant consider combining the lots to make two lots instead. Mr. Hugg stated it is not self-created as the current owner, Mr. Bryce, bought these lots as part of a PDD and it is still shown on the on the Zoning map as a PDD. Mr. Hugg stated that he would have to discuss the combining of the lots with his client.

Mr. Rourke asked about the Army Corp of Engineers and the issue with the wetlands. Mr. Hugg stated that there are no wetland issues on the property.

Mr. Cutler stated that he would contact the Supervisor Kinowski about the PDD issue, the statements from Army Corp of Engineers and DEC should be presented to the Board in writing. The wetland issue could require the placement of a house in a different position on the lots.

Chairman Ritter asked for a motion to table the project until the Zoning Board meeting scheduled for May 11, 2015. A motion was made by Mr. D'Ambro and seconded by Ms. Kipling. A roll call vote was taken and passed unanimously.

A motion to move into executive session made by Mr. D'Ambro and seconded by Mr. Rourke. A motion to come out of executive session made by Mr. D'Ambro and seconded by Ms. Kipling.

A motion to adjourn was made by Ms. Kipling, seconded by Mr. Rourke, at approximately 8:14 P.M.

**The next Zoning Board of Appeals Meeting will be held on
May 11, 2015**