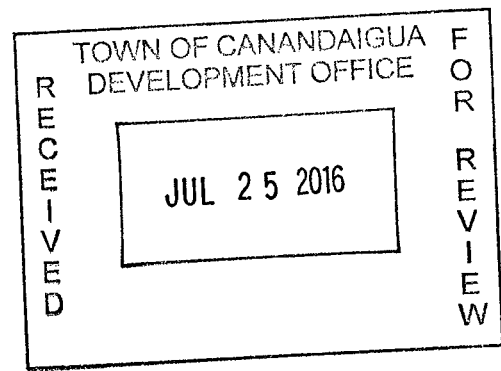


July 25, 2016

Town of Canandaigua  
5440 Routes 5 & 20 West  
Canandaigua, NY 14424



Dear Eric Cooper, ZO; Development Office; and ZBA Members:

Re: RSM Residences at West Lake, CPN-027-15, and  
Use variance required for a "Marina", or in the alternative a "Club".

If the proposed RSM subdivision and associated requested area variances are approved as applied for, the resulting waterfront entity will be something that is unprecedented in the Town of Canandaigua. This entity, whether you call it a "marina" or a "club" with recreational facilities should require a use variance.

As proposed, three (3) individual waterfront adjoining homeowners will each own one of the 3 proposed pieces of waterfront. These 3 homeowners will be responsible to pay the insurance (liability in particular) as well as the high waterfront property tax and will have the right to write off those property taxes on their annual income tax returns. The remaining 12 homeowners in the development will have to somehow reimburse or pay the 3 waterfront lot owners for this expense, as well as for maintenance for the docks, stairs, and joint storage shed. Does this payment constitute a business being run at the waterfront? Will this monetary arrangement be a lease, or a rental agreement, or varying dues for membership in the waterfront "club" managed by an HOA? The town has little way to know what to call this use and entity until the "legal arrangements" that the developer has stated will be put in place are disclosed to the town. All the town knows thus far is that it will involve easements plus other unknown legal arrangements.

One of the requirements of the Planning Board review listed in Ch. 174-15 is that the board must make "findings" regarding a list of items in the code. One required item, 174-15 D. states:

"D. Subsequent use and development of the lots will be unduly limited by easements, deed restrictions or other encumbrances."

How can the Planning Board come to a determination on this item when we don't have any details as to what the "legal arrangements" or other encumbrances are? So far, no one can even agree on what this waterfront entity and "use" is in respect to town code.

The ultimate question is: Regarding the waterfront and proposed associated shared facilities, is the proposed Use or Accessory Use by the 3 actual "adjoining parcel owners" a listed permitted Use or Accessory Use allowed by code in the RLD zoning district?

The Town of Canandaigua Zoning code states the following:

## 220-7 APPLICABILITY OF REGULATIONS

Except for buildings, land, or uses located on the lake side of the mean high water line of Canandaigua Lake, no building shall hereafter be erected and no existing building shall be moved, structurally altered, rebuilt, added to or enlarged, nor shall any land be used for any purpose other than those included among the uses listed as permitted or special permitted uses in each zone district of this chapter and meeting the requirements set forth herein. Open space contiguous to any building shall not be encroached upon or reduced in any manner, except in conformity to the area and bulk requirements, off-street parking requirements, and all other regulations required by this chapter for the zone district in which such building or space is located. In the event of any such unlawful encroachment or reduction, such building or use shall be deemed to be in violation of this chapter, and the certificate of occupancy shall become null and void.

A zoning determination should be made as to the proposed waterfront use in consideration of the proposed combined amenities such as multiple easements and private agreements for 15 homeowners (12 of which will own no lakefront property) to have docking facilities, an upland parking lot for waterfront access, an access staircase(s), a shared 100 sq. ft. storage shed, and proposed boardwalk on the waterfront; and whether or not this proposed combined use and structures constitute a permitted use or accessory use in the RLD. It is my opinion that a Use variance for a private "marina", or in the alternative a Use variance for a private "Club" with recreational facilities, should be required.

The Ontario County Planning Board said it better than I could in their July 2015 review of this proposed project:

"The current RLD District was enacted partially in response to the proposed creation of private docking facilities associated with upland residential development that allowed landowners who did not own lakefront property to create mechanism (often called keyhole development) to obtain a boat slips on a private docking facility. There is no such provision or defined term in the current RLD for a marina or private water oriented recreational facilities.

The current RSM proposal does not call the private docking facilities a marina but rather a legal arrangement of easements and private agreements among 16 upland landowners to have docking facilities and associated parking, private drive to the lake, pedestrian access. This use can alternately be characterized as a private recreational docking facility with upland support facilities. This proposal seems incongruous with the purpose statement and allowed uses of the RLD."

Additionally, it should be noted that the developer is proposing that the Homeowner's Association (HOA) would control and regulate all of the aforementioned water oriented

recreational amenities including the 15 proposed boat slips, and yet the HOA will not own any of the land that contains the amenities. The developer is proposing that the 3 individual property owners that would have an "as-of-right" ability to access the lake and place docks and boat slips would, via easements and other "legal agreements", somehow give their lake rights to the HOA to be shared among all 15 HOA members. (Are riparian rights transferable?) Even more amazingly the HOA would only have control over a small portion of each of the 3 lots, with some arbitrary line dividing the property over which the HOA would have control from that which it would not have control. The HOA would just control the portion that contains the amenities to be shared by all 15 homeowners, so there would have to be a complicated set of legal arrangements for dividing the costs for the property taxes and liability insurance costs borne by the 3 proposed homeowners who will actually own the lots and actually have a right to the "as-of-right" access to the lake.

The reason the HOA cannot own, as a separate lot, the land on which the proposed amenities will be located, is because clearly any lot that did not have a single family dwelling on it as the primary use of such lot, but instead had the primary use by 15 families, as say a private marina or club facility, would be easily discernible as violating code, because the only 3 permitted primary uses of a lot in the RLD are (1) single-family dwelling (2). Public Parks (3) Public Safety Facilities.

In the proposed situation the use is an "Accessory Use" by the 3 lake adjoining property owners. However, there are only 5 permitted accessory uses, each with their own set of regulations in the RLD: (1) One detached garage (2) One accessory building not to exceed 100 sq. ft. (3) Seasonal storage of docks and hoists (4) Hot tubs (5) One In-ground swimming pool.

The developer's attorney makes the absurd argument that the town's code could not possibly list all of the customary or typical associated "Accessory Uses" of a lakefront property such as playing catch with your children or lounging in the sun, and tries to confuse ZBA board members with the common term "use" (as in, use the yard to play catch) instead of the legal term "use" (as in, permitted accessory use). Rental or transfer of riparian rights of a homeowner's waterfront land, docks, and boat slips to others who do not own waterfront is neither a customary, typical, nor a prevailing "Use" in the Town of Canandaigua. **The applicant has not submitted any proof to support the applicant's claim that it is a typical or prevailing use.**

Nowhere in the Town Code does it say that a private community docking facility, regulated and managed by an HOA and shared via easements and legal maneuvering by multiple non-adjoining, non-waterfront upland lots, additionally with an associated parking lot, access staircases, boardwalk across three of the individually owned lots, and a common accessory storage building is an allowed use or accessory use (no matter what it is or isn't called). As a matter of fact, the Town specifically eliminated marinas from the allowed uses, as well as a use called Private Water-oriented Recreational Facility (PWORF) several years ago, specifically to prevent "keyhole" or "funnel" developments which create a much more intense use of the waterfront than is

desired in the RLD zone. The purpose statement section of the RLD code (ch. 220-21 A) states:

“A. Purpose. The purpose of the RLD Residential Lake District is to allow limited residential uses that protect the quality of Canandaigua Lake and the surrounding natural topography, including the shoreline, ridgelines, and scenic vistas of this unique and environmentally sensitive area.”

Note the word “limited” in the RLD purpose statement. The proposed use is 5 times more intensive than what is contemplated by UDML regulations, or 500% greater than what is delineated in code (15 families versus 3 actual waterfront adjoining owners).

So what is the “Use” that RSM is proposing? Most of the previously allowed “Special Uses”, such as “PWORF” (Private Water-Oriented Recreational Facility) and “Semi-Public buildings and grounds” were eliminated from the code in 2011. There is one definition remaining in the code, although it is NOT an allowed use, that describes the proposed use quite well:

“Club - An organization catering exclusively to members and their guests, including premises and buildings for recreational or athletic purposes, which are not conducted primarily for gain, provided there are not conducted any vending stands, merchandising or commercial activities except as required generally for the membership and purposes of such club or as permitted by separate ordinance or local law.”

And

“Ch 1-15 F. The word “premises” includes a lot and all buildings or structures thereon.”

“Club” or “Club facilities” is not a listed permitted use in the RLD. Whatever this proposed use is, it certainly isn't single family residential, nor is it “limited residential use” as desired in the purpose statement of the RLD Zoning District, nor is this use restricted to only the “adjoining parcel owner(s)” as defined in the UDML. Under UDML the only individuals or parcel (lot) owners with an “as-of-right” ability to place and maintain docks to access Canandaigua Lake are “adjoining parcel owner(s)”. An “Adjoining Parcel” and “Adjoining Parcel Owner” are defined in the UDML as:

“ADJOINING PARCEL - A parcel of land encompassing the mean high water mark of Canandaigua Lake.”

“ADJOINING PARCEL OWNER - The owner of record of the adjoining parcel.”

The “use” that RSM is proposing circumvents all of the above mentioned codes and purpose statements by using easements and other as yet unknown legal contracts to allow lot owners, the majority of which who are NOT “adjoining parcel owners”, to place

and maintain docks and boat slips to access Canandaigua Lake. A Use variance should be required. Such legal manipulation of the town's code was never anticipated, and it should not be allowed.

The RSM proposed use of the waterfront and all the shared waterfront amenities is neither a customary, typical, nor a prevailing "Use" or "Accessory Use" in the Town of Canandaigua. Therefore, I am requesting that the zoning officer make a determination as to what "accessory use" or "Use" is being proposed for the waterfront portion of this development. Is it a private "marina", 3 private mini-marinas, a "club" with recreational facilities, or a "private recreational docking facility" as stated by the Ontario County Planning Board?

All of the design problems, safety concerns of the planning board and neighbors, and difficult zoning determinations exist regarding this project solely because the developer is trying to push the envelope, circumvent the zoning regulations, circumvent the UDML, and ram through this unacceptable "keyhole" or "funnel" development in order to make a greater profit selling pseudo "lakefront homes" in what has been an ill conceived development project from the start.

Thank you for your efforts to preserve our environment.

Sincerely,

Marion Cassie  
4735 Co. Rd. 16  
Canandaigua, NY. 14424

