

MINUTES OF THE ZONING BOARD OF APPEALS THE TOWN OF KINGSBURY

Minutes of August 24, 2017

MEMBERS PRESENT:

Hank LaFountain, Chairman  
Brian Heasley  
Katherine Henley  
Rich Hogan  
Bill Whipple  
Michelle Wood

MEMBERS ABSENT:

Sondra Michaud (Excused)  
Scott Winchell (Excused)

CODE ENFORCEMENT OFFICER/ZONING ADMINISTRATOR:

Francis Cortese

TOWN ATTORNEY:

Jeff Meyer, ESQ.

The meeting was called to order by Chairman LaFountain at 7:00pm.

Roll call of all members.

Chairman LaFountain entertained a Motion to Approve the Minutes of April 27, 2017.

**ON A MOTION BY MR. WHIPPLE**, seconded by Mr. Heasley, the minutes of the April 27, 2017 meeting were approved.

AYES: 6

NAYES: 0

ABSTAIN: 0

MOTION CARRIED

**1. R2M Holdings LLC**, Tax Map # 146.13-2-15, commonly known as 36 Dean Road, Hudson Falls, Town of Kingsbury, located in Zoning District, Low Density Residential / LDR-25 is seeking Site Plan approval to increase the number of dwelling units on the property from 5 to 17. An LDR-25 District allows one dwelling unit for every 25,000 square feet. Plans for proposal are available at Kingsbury Town Hall, 6 Michigan Street, Hudson Falls, New York during regular business hours.

Chairman LaFountain introduced Ethan Hall, Principal with Rucinski-Hall Architecture and Attorney Jon Lapper, Bartlett, Pontiff, Stewart & Rhodes, P. C. who will be representing Robert Springer, R2M Holdings, LLC to address the Board.

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Chairman LaFountain opened the Public Hearing.

Attorney Lapper stated he is the Project Attorney for this project and Ethan Hall, Project Architect. Attorney Lapper stated in general they are seeking a density variance. The reason is on both sides of this project are the Schermerhorn Apartments and The Quarry Circle Townhouses that are higher density than the Low Density Residential Zone allows. They stated the LDR is there because there are other constraints in other LDR area's such as high ground water which don't exist on this site. The main reason is the applicant now has sewer. The five units that have been approved will be connected to the pump station across Dean Road. By having the sewer there will not be a need for leach fields, that was originally planned. By having the sewer it creates more land and they feel it is more compatible with the neighborhood because of the other multi-family projects. They also understand and recognize with the single family neighbors this project needs to be buffered and that will be done with the landscaping.

Mr. Hall stated when Mr. Springer started Phase I there wasn't any access to sewer. He had proposed 5 units with onsite septic originally. Once this project was started Mr. Springer had discussions with Bill Nikas who owns The Quarry Project LLC. The pumping station is located on his property and is designed to carry all of the development. They have had several meetings with Washington County Sewer District and Mr. Nikas discussing the volume and how it is underutilized due to The Quarry LLC has not been fully developed.

Mr. Nikas has been in the back of his development doing some work and has realized that all of the capacity he set aside for the sewer isn't necessary because he will not be able to develop as much as he thought he could. Mr. Springer and Mr. Nikas have worked out an agreement where Mr. Springer will be able to utilize some of, The Quarry LLC capacity.

They are proposing to build 6 duplexes that are smaller in size than the first two dwellings they built. They will still be 2 stories in height with garages under living space. The townhouses will all be 3 bedroom apartments. Mr. Hall stated they will be maintaining 50 feet between the last building that is there and the first new one and then 50 feet in between each of the new buildings. Mr. Hall stated all setbacks will meet code requirements.

The project will have a private road and not be turned over to the Town to be maintained. Mr. Springer will be taking care of the maintenance for the road.

Mr. Hall stated when the water line does get extended to the end of this project they will be installing another fire hydrant. At this time there is a hydrant on Dean Road and with adding another fire hydrant to have more coverage. All of the units will have sprinkler systems.

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Chairman LaFountain asked for comments from the Board.

Mr. Hogan questioned if the density was already met with the two buildings that are there at this time.

Mr. Hall stated yes, that is correct. One building is a duplex structure and the other building is a triplex. They are proposing six duplex buildings with two units in each building.

Mr. Hogan questioned the approval for the first 2 buildings having septic systems.

Mr. Hall stated at that point there wasn't capacity and Mr. Nikas wasn't interested in giving any additional capacity because he had it all reserved for his development. In the meantime he had started doing some work out in this area and decided for the amount of blasting he would have to do it would be a lot more expensive to run his capacity for sewer out to this area. This area is all rock.

Mr. Hogan questioned if there were any runoffs on this property.

Mr. Hall stated all of the stormwater runs in the grass swales lower area in between each unit. All the rain from this spring went to the back where there is a depression that is put into the ground handles this run off. They would put in smaller swales in between each unit.

Mr. Whipple questioned if they were basements or slabs.

Mr. Hall stated the five existing units are on slabs. The units they are proposing would have a crawl space underneath them so the furnace could be installed there and give the units more floor space. The crawl space would be only 4 feet on depth. When they dug the sewer lines they hit water at about 8 feet. Mr. Hall stated the test pits they did originally were about 7 ½ feet.

Chairman LaFountain stated as he recalled there was a lot of water being pumped from this area in the spring.

Mr. Whipple questioned if Mr. Springer was the same applicant that was before this board with a proposal for a three lot subdivision at this location that was denied. Mr. Whipple questioned if this was the same project.

Mr. Hall stated it is the same property. This is a different proposal at the same location.

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Mr. Whipple stated he used to live in this area and he knows the neighborhood and the back side of property has a water issue. This is his main concern, the neighbors pump to each other. He has lived on the other side of Schermerhorn and the same side as this project. He hasn't lived there in three years so things can change. Mr. Whipple stated he felt this proposal was a large request.

Chairman LaFountain stated the density is 25,000 square feet per unit and you are asking for twelve more units times 25,000. You would have approximately 7500 square feet per unit instead of 25,000 square feet per unit. That is less than a third and you are already non-conforming.

Mr. Hall stated five units are conforming in the LDR-25.

Chairman LaFountain stated you are now asking the Board to go more nonconforming with what you have been already granted.

Mr. Hall stated there was nothing granted, they were allowed five units on the lot. The total lot gives you a total of five units.

Chairman LaFountain stated that is right, the five units give you the maximum allowable for the space there. Now you are asking for instead of 25,000 square foot, you are asking for 7,500 per unit. That is less than a third of the requirement.

Attorney Lapper stated that is correct, now there is sewer available instead of a septic system.

Chairman LaFountain stated the sewer doesn't have anything to do with the density. The density is 25,000 square feet per unit and you are asking for 7,500 square feet per unit.

Attorney Lapper stated that is because when you have sewer available you can afford more density.

Chairman LaFountain stated the availability has nothing to do with the density.

Chairman LaFountain stated with the five units that are there you cannot put any more units in.

Attorney Lapper stated this is why they are here asking for a variance.

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Joan Leahy, 32 Dix Avenue, stated her property borders this parcel. There is water at this parcel. She is still pumping water from her house. She states she is getting the overflow of water from the property. She doesn't believe she can handle any more water.

Mr. Hogan questioned how close Ms. Leahy is to the property.

Ms. Leahy stated when facing her property she is on the right side of the proposed project.

Chairman LaFountain questioned if the neighbors were using sump pumps and how often do they run.

Dan Atkinson, representing his mother Edna Alexander, 28 Dean Road, stated they have been running.

When they are pumping the water goes into the back field towards Schermerhorn Apartments.

Bonnie Hanna, 40 & 42 Dean Road, stated she lives on the other side of the project. When she was here last the last time Mr. Springer was proposing to build two houses on this lot to sell. The ZBA denied this proposal. Without asking anyone the Board allowed him to put in the two buildings that now are rentable buildings. The Town or whoever said they are trying to cut down on the amount of buildings being so close to each other in the area instead of having buildings on top of each other. She doesn't know what ever happened to that. She feels Mr. Springer's proposal is ridiculous and does not want them there.

Dan Atkinson stated the buildings are so large when compared to the one story homes in this area. He feels this is getting overwhelming.

Ms. Hanna questioned the 25,000 square foot rule.

Chairman LaFountain stated 25,000 square feet is the available space you have to have per unit.

Mr. Atkinson questioned if the residents would be able to hook into the sewer.

Mr. Whipple explained Mr. Nikas bought the sewer for his project and is not being used as of yet. He may someday want to develop the other side. He would have to come back before the board and ask for a variance. Anything can happen at that point.

Mr. Atkinson stated they are paying for water that they are not hooked up to because of Mr. Nikas's project across the street.

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Ms. Leahy stated she does not feel the shrubs will be enough of a buffer.

Attorney Lapper stated after hearing what they have heard, they would like to table this project and study the stormwater and do more soil testing. This way they can have more answers and they will be able to talk to Mr. Springer regarding the density.

Chairman LaFountain closed the Public Hearing.

Attorney Meyer advised to keep the Public Hearing open.

Chairman LaFountain questioned if the Board should act on this proposal tonight.

Ms. Hanna had questions again concerning Mr. Springer's first proposal of building two houses at this location.

Zoning Administrator Mr. Cortese stated on the first proposal Mr. Springer wanted to subdivide the property into three lots. A lot of people came to the meeting and were not in favor of the subdivision. He changed his plan to do a multi dwellings complex. The multi dwellings are an allowed use in this zoning district. Mr. Springer did go to the Planning Board for site plan review and they gave him approval for the units. There would not have been enough road frontage for all lots.

Chairman LaFountain asked for a member to make a motion to table this proposal.

Chairman LaFountain question Attorney Meyer if the Board would approve or deny this proposal at this point.

Attorney Meyer stated essentially you can deny it, approve it or table it. The applicant has asked the Board to table it. Historically the Board has always attempted to work with the applicant.

Chairman LaFountain stated at this point he would like to deny this project.

Mr. Whipple stated if they were to deny it Mr. Springer could come back to the Board with something entirely different.

Chairman LaFountain responded this will still be density and he is already maxed.

Chairman LaFountain entertained a motion to deny, approve or table.

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Attorney Lapper stated he would like a motion for this project to be tabled so that he could talk to Mr. Springer.

Chairman LaFountain stated he is not getting a motion for that.

Attorney Meyer stated typically if the applicant asks for the project to be tabled it was granted.

Chairman LaFountain stated we have tabled them in the past but not for someone asking for this kind of density change.

Mr. Whipple made a motion to deny this proposal. He feels it is too big of a project for what the Town's Zoning is set up for at this time.

Ms. Henely seconded the motion.

Chairman LaFountain started reviewing the Resolution to deny this project.

Attorney Lapper stated to the Chairman LaFountain rather than take a denial they will withdraw this application and come back with a better proposal.

Ms. Hanna questioned if they come back with four more buildings instead of six, will that be more acceptable.

Chairman LaFountain stated the problem with this is they have reached the maximum density. It seems to be the motion of this Board is a denial.

Attorney Meyer stated the applicant is free to make proposal and the Board will consider it. We are essentially dealing with property rights and it's this Board's job to review each application on its merits.

Attorney Lapper withdrew this application. They will be back at a later date with a different proposal.

**ON A MOTION BY MS. HENLEY**, seconded by Mr. Heasley all in favor, the meeting was adjourned at 7:30 P.M.

Michelle Radliff  
Secretary