

LELAND TOWNSHIP ZONING BOARD OF APPEALS
P.O. Box 238, Lake Leelanau, MI 49653

Kathy Dawkins, Chairperson
Susan Och – Township Board Rep. Nancy Smith - Secretary
Brooks Bunbury – Vice Chairperson

DRAFT ZBA MEETING AND PUBLIC HEARING MINUTES
Monday, February 12, 2024—1:00 p.m.
Old Art Building - 111 S. Main St. - Leland, MI 49654

DRAFT MEETING MINUTES

1. Call to Order/Pledge of Allegiance

No sitting Chairperson so ZA Cypher will start off. Meeting called to order by ZA Cypher at 1:01 p.m. Roll call: Och, Smith, Dawkins, Bunbury, ZA Cypher, and Recording Secretary Bufka in attendance. Pledge of Allegiance by all in attendance. 17 Guests.

2. Approval of Agenda – Dawkins moves to approve the agenda, Bunbury seconds . All in attendance vote yay to approve, motion carried.

3. Declaration of Conflict of Interest – No one speaks, no conflict

4. Public Comment (limited to three minutes per person unless extended by ZBA Chair)
No Public Comment

5. Election of Officers – Chairperson – Vice Chairperson – Secretary

Cypher: You must make a motion to appoint each officer, Susan Och cannot be Chair
Smith moves that Dawkins be elected Chairperson, Bunbury seconds motion, all in attendance vote yay, motion is approved and Dawkins is elected the chairperson.
Smith moves that Bunbury be elected Vice Chairperson, Och seconds motion, all in attendance vote yay, motion is approved and Bunbury is elected the Vice Chairperson.
Secretary – Bunbury moves that Smith be elected as Secretary, Och seconds the motion, all in attendance vote yay, Smith is elected Secretary. Meeting is handed to Dawkins to chair going forward.

6. PUBLIC HEARING

ZA Cypher reads below:

ZBA Application 2024-01 - William & Main, LLC

In accordance with the requirements of the Michigan Planning Enabling Act, Public Act 33 of 2008, and related amendments, this is notice that the Leland Township Zoning Board of Appeals would like to invite your participation, cooperation, and comment with regard to an appeal request from William and Main, LLC for a request for interpretation regarding the position taken by the Township that the development must be approved as a Planned Unit Development (PUD) under the Leland Township Zoning Ordinance, and an appeal of the Planning Commission’s denial of the PUD/special land use approvals, as set forth in by the Motion of the Planning Commission on January 3, 2024. The project was proposed in the C-1 Village Commercial zoning district. The proposed project was a mixed-use building at 211-243 N. Main Street, Leland, MI 49654; property tax number: 009- 750-210-00. The proposed use is retail/commercial on the first floor, and residential on the second and third floors.

A. Presentation by Applicant

No representative present. Twp. Attorney responded that briefs provided are adequate. Smith wants it noted on the record that there is no one here representing the applicant.

B. ZBA Questions/Discussion with Applicant – lack of attendance by any representative makes this impossible. Going to public comment

C. Public Comment (limited to three minutes per person unless extended by ZBA Chair)
Cal Little – Finds it interesting that there is no representative and feels that it speaks volumes about the applicant's interest in the community. Mr. Little thanks the ZBA members.

Doug Julien – lives on Lake Street in the Village. Given the likely next step, Mr. Julien discusses two things that may have escaped the PC as a reason for denying the Applicant. The building submitted is too tall was one reason. Garage floor is 2 feet lower, so the building is 1 foot too tall. There are not enough guest parking spaces. Judges prefer throwing things out on quantitative violations, not things like character. (Julien provided a 4 page document with building schematic and Article 21 with hand written notes about where proposed building is not compliant) Smith inquires if Julien was he hired or is a civil engineer? Julien states that he is a semi retired architect. Smith explains to those in attendance that the comments will be passed on to a court. There are no more public comments at this time.

D. Applicant's Response to Public Comment – NA no one representing Applicant in attendance

E. ZBA Discussion with Staff (Attorney & ZA)

Wierda explains that the PC records and ZBA comments will go to a circuit court. Smith asks Wierda or ZA Cypher to clarify what they should do today. ZA Cypher stated he would not comment and let Wierda clarify. Reminder that 270 letters were submitted against the proposed project.

Wierda references the his letter of February 6th that goes point by point and reminds everyone that the ZBA job is to review the ordinance and PC decision. If the ZBA finds that the PC made a reasonable decision, they should uphold it. They have the right to uphold, change or something in between.

F. ZBA Deliberation/Findings of Fact

Smith thoroughly read the letters from the attorney, and states that she can do her duty today.

Och has read through all of the legal documentation. She feels that the planning commission did their job.

Wierda directs ZBA to determine whether or not the PC followed procedure. Smith asks for direction on how to proceed, motion? Public and legal input. Wierda clarifies how the PC followed procedure.

Dawkins felt that the PC followed the proper procedures. There have been multiple meetings, discussions and paperwork presented, A lot of deliberations took place. Options and zoning passages were discussed. Dawkins feels that they did all that they could to make a deliberate and logical review of the applicant's application.

Bunbury – They put a lot of time into this, and the PC did a thorough job in making their decision.

Wierda provided info that is a summary of arguments and recommends going through one by one.

Wierda: Everyone agrees that section 6.05.A, pg 7 from legal summary tells what the section provides. Description of what site should be. PC found 3 specific things: Building size compared to others next to it, roofline, and too close to setbacks.

Smith agrees with PC findings, just stated by attorney Wierda. She would like to note

that if there is an incorrect measurement on the height of the building, that should be corrected. Smith asks how it happened. Cypher said they provided a site plan. Our engineer did check those measurements. Smith would like it to be checked again to confirm if the building height is 34 or 36 feet high.

Pictures provided today were previously provided by Clint Mitchell from the PC three months ago. They are included in the findings.

Bunbury agrees that Applicant did not meet criteria of 6.05.A

Susan – in total agreement with the PC on their decision and vote. It's not just an aesthetic judgement, it's logical and based on requirements in the ordinance.

Smith clarifies if the applicant only meets some requirements but not all, he is denied.

Wierda confirms yes, for 6.05.A

Dawkins – she's reading his memo at the standards of review, pg 5. She agrees with the PC's findings, up to where it goes to Pg. 6. Wierda 6.03.B20 – this is where the PC felt the standard was not met by the Applicant. Wierda recommends that they go to the findings of fact and clarifies what the table is telling them.

He likes the level of detail provided between zoning ordinance and what is being proposed. Recommends that ZBA members go through and spell out in detail why they would or would not uphold the PC findings.

Dawkins reads from findings document. Wierda clarifies that Applicant was denied not because of B20. Article 17 is PUD findings. Article 6 is site plan review. Wierda says that they can amend the PC decision this in any way that they decide to. They can modify findings to state that a certain section was met.

They disagree with 6.03.B20 – waiver of site plan requirement – they find that the standard was met. No request for a waiver was made. Wierda suggests that they make this motion when they are ready.

Wierda 6.03.B.1-18 were found met by PC. Standards were met by Applicant in these sections.

Storm water section is questioned by Och. Cypher clarifies that soil and erosion department get drawings that are submitted and approved. (6.03.B.13)

6.03.B.19 was first section they found was not met by Applicant. PC discussion of 12/6/23 show that standard was not met. ZBA agrees with the PC findings.

Och – Applicant was asked why he felt it was harmonious with neighboring buildings, but did not respond or provide any additional info. ZBA agrees with PC's findings

Pg 7, Article 6.04 in findings doc – PC found that Applicant met that.

6.05.A – at least 3 agree that it is not harmonious with adjoining buildings.

Bunbury, differences are so dramatic, no issues with findings of PC. PC did a good job of laying out different neighboring properties, sizes and uses. Och has questions about setback commentaries.

Applicant says they meet objective requirements, not aesthetic. ZA Cypher: It's at the heart of zoning that you want like buildings and uses together.

Dawkins – likes how specific the PC was with their determinations in how the proposed building was not harmonious with others nearby. She is comfortable with the findings of fact. ZBA agrees with PC findings. Bunbury points out that there is plenty of quantitative information and it's not just subjective.

Wierda asks if there's discussion around page 8 and 9.

Wierda clarifies that if this did not meet site plan review, and not just a PUD.

Article 7, 16, 17 – you don't get to these unless it's a PUD, only a site plan review.

Dawkins agrees with PC and thinks it should be a PUD. Zoning ordinance only allows for one (1) level above retail. The project becomes a PUD with 3 levels. Dawkins agrees with Smith. If it had been only a single family dwelling, they wouldn't have needed the PUD. Because it was a PUD, PC said because of definitions in ordinance (lot), and because of size of each condo. This is a multi-family dwelling. Latest memo from applicant's attorney says it was allowed in Lake Leelanau and approved by PC.

Cypher describes that applicant themselves understood that it became a PUD once it became condominiums per the zoning ordinance passage,

Other attorney wonders how other passed and this is going through a PUD. Applicant for Lake Leelanau project understood that that Article 7, 16 and 17 would come into play with condos. Legal counsel at the time said it was a reasonable approach. Now this project – there were 6 weeks of time and discussion with Applicant and could have gone to ZBA to clarify first but chose to go to PUD instead. Lake Leelanau is multi-family also.. There was a different viewpoint of the attorney at the time and the applicant.

Multi-family dwelling isn't normally allowed in the current C-1 zoning. It's a challenging question and a good discussion.

ZA Cypher: duplication of standards are present in article 6 and subsequently in articles 7, 16 and 17. Very similar concepts in each.

Wierda clarifies that they should decide if project is considered a PUD.

Smith wants to get this done today as it is hard to get a quorum.

Dawkins states - Precedence has nothing to do with the ZBA. Wierda tells them to get it right. They could face a lawsuit or other things. He says they need to focus on getting the ordinance right.

Article 12 – Cypher – should we have disregarded that language in special land use criteria when applicant from Lake Leelanau was under the understanding that they were coming back to PC. Och asks for clarification on what is being discussed.

Bunbury reads ordinance – Och interprets that in C1, separate units can be converted to condos going through special use process. Och doesn't see it as an argument against a multi-family dwellings.

Lake Leelanau – existing building torn down and new building built. Dawkins – what happened in Lake Leelanau was determined in Oct 2021, PC had same membership, at the time ZBA did not review because it was approved. Dawkins – just because that building was approved, doesn't mean they have to approve this building. They are focused on the ordinance language in today's discussion. Dawkins understands that the court knows their positions as community members and not lawyers.

Smith – what about argument that there's not enough parking.

Cypher: article 12, states no additional parking required, except for residential purposes. PC didn't think it was an issue. 12.01.B.8

Dawkins – lead us back to what we need to do.

Wierda – PC decided this should be treated as a PUD. ZBA should decide if they want to go through these articles in detail.

Determine findings that it should be treated as a PUD. Dawkins reads out description about why it is a PUD.

Wierda points out that the definition of the PUD is why they PC determined this should be a PUD.

This building meets the definition of a multi-family dwelling and the only place it fits in the zoning ordinance is high density area R-3. Uses permitted by right, is a use that's allowed. A lot of additional requirements have overlap. PC findings of why this was denied are part of site plan. Open space requirement another reason – for a PUD.

ZA Cypher: There was interaction between PC members and applicant's legal counsel during the first meeting. There was some tap dancing with legal counsel that PC could approve without anything with open space. But PC didn't want to do that.

Smith wants to support PUD's, even if it causes difficulties.

Cypher clarifies that ZBA can't hold it against them if Applicant doesn't show up.

Och – residences under PUD, should this require a PUD review?

Cypher: Wierda found a different avenue than previous legal counsel. Based on these facts, here's his view where they are lacking. Applicant attorney opposed these findings.

Wierda represents the township, the other attorney represents his client.

Dawkins – Applicant has as much responsibility to review ordinance as much as we do.

Wierda – original application was a PUD. But they've asked for a review based on it being a PUD, and that's how the PC reviewed it. They submitted as such, with a caveat that they could appeal.

Och – agrees it should be a PUD

Lot definition in ordinance includes condominiums. Minimum lot area is 6,000 square feet. Each unit needed to be 6,000 square feet minimum to meet that standard. That was an argument discussed in 12.04.B. Reference is to single family dwelling, not multi-family dwelling.

Does this have to be a PUD? They are saying yes because it's multi-family. (Dawkins and Och)

Everyone agrees it should be a PUD. Bunbury, square footage is one thing. Multi-family dwelling is the first thing. Second argument is the definition of a lot in ordinance – pg 28 of ordinance is read aloud.

What does Wierda recommend? He says that is up to the ZBA. Och, multi-family dwelling is easier to understand. ZBA – PUD review is necessary as it is a multi-family dwelling.

Dawkins is comfortable with using multi-family, not because it needs to be done today.

Wierda: page 8 of the memo: (Feb 6th) – PC made motion to deny application and uphold that.

Cypher clarifies findings passages in first column come right from Ordinance.

Wierda: article 16, applies to special land uses. Pg 9 of memo, pg 12 of findings – several findings not met by PC.

Smith – reference to the master plan – reads aloud language about master plan. Wants to reference Master Plan, Wierda says PC didn't focus too much on Master Plan. She feels it should have been referenced more.

16.01A1, A3 – Wierda – consistent – not compatible with intended use. Och and Smith think it is obvious.

Cypher – at first meeting opposing attorney said character is related to site development standards. Height, density, set back and if there is intent to have more beyond that the township had an opportunity to change and revise it. This is only the 2nd or 3rd PUD project to come forth since that time.

Dawkins – recent buildings do not look like the proposed building.

Wierda – there is nothing about being compatible with historical buildings in the ordinance. Uses are what's compatible – not other things, according to other attorney.

Wierda: Compatible with size of adjacent buildings – judges would see that nearby buildings are not close to what is surrounding the site.

Cypher: aesthetics weren't discussed in the past. It's been in the books for 35 years. Would like to hear how applicant thinks it is harmonious with other buildings, but they haven't responded or attended meetings.

Och – do we need to go through the rest of the PC findings? Wierda advises yes.

We are in 16.01 now. Wierda asks: do they agree with the PC? Yes, all agree with PC decision

Article 17 – addresses PUD's. Page 10 on memo, page 16 in Findings

Under 17.01B, D – PC found that these were conditionally met.

17.01.E – they did not meet this, so found the PC.

The open space is site specific for C1. (Cypher) page 18 on findings doc refer here – 2A Bunbury agrees that PC findings were correct. Since there was no open space at all, they asked for a waiver. What's compatible with the neighborhood with regard to open space? Backyards? Proposed building will just have parking lot. Setbacks don't count.

Bunbury reads about open space. Och helps. Under 2B – all land within a development, etc. shall be set aside as common land, but not dedicated open space. Neighboring properties have significant open space.

Wierda: was PC reasonable to rule as they did regarding open space? Yes, all agree. 17.01.J as example – ZA does review prior to this – but lets PC decide, he doesn't make the decision. They have multiple meetings because of this.

ZA Cypher defers to legal counsel to answer their questions. He has been through the process.

Dawkins is comfortable with the findings of fact 17.01 F-J

17.02 – ZBA agrees with PC

17.03 parking – no discussion required – Applicant met ordinance requirements – PC decision was reasonable. Bunbury – nothing in zoning about commercial parking.

Ordinance is only for existing C1.

PC had not been provided a full landscape plan, but was not reviewed.

Smith is focused on statement from master plan, and likes that it is included.

ZBA all agree that PC findings are reasonable.

G. ZBA Motions/Action

Wierda recommends that they make a motion. Affirm, deny, etc.

Dawkins – motion today is to affirm PC findings.

Smith: I move to affirm the Planning Commission decision of 1/3/24 denying the William & Main LLC application for the reasons stated on the record. The findings of the Zoning Board of Appeals change the Planning Commission findings with respect to section 6.03 (B)(20).

Bunbury seconds the motion. Roll call vote: all vote yes, the motion is approved and the ZBA upholds the PC decision to deny the application of William & Main LLC.

Och: I move that we interpret the zoning ordinance to require a PUD for the Williams and Main LLC project. Smith seconds: Roll call vote: all yes, motion is approved

7. Other Business (if any) none

8. Public Comment – none

9. ZBA member's Comment

Och thanks everyone

There's been discussion about putting a findings document together, how much time do we have to finalize appeal process? Early March we have to approve.

10. Next Meeting/Adjournment

Och moved to adjourn, Bunbury seconded. Motion approved. Meeting adjourned at 3:31 p.m. Next meeting on February 27 @ 1pm in the township office meeting room.

Date Approved: _____

Note: A quorum of the Leland Township Board may be present. However, no Leland Township Board business will be conducted at this meeting.