

LELAND TOWNSHIP PLANNING COMMISSION
Public Hearing
Wednesday, October 4, 2023
Leland Township Library, Munnecke Room
200 Grand Avenue, Leland, MI 49654

I. Call Meeting to Order/Pledge of Allegiance

Motion to Approve Agenda (additions/subtractions)

II. Declaration of Potential Conflicts of Interest - None

Approval of Minutes from September 6, 2023

III. Chairman Korson asked for a motion to approve the September 6, 2023 minutes as presented.

Commissioner Satterwaite requested a technical change in the September 6, 2023 meeting minutes. He requested that the quote from the meeting (page 12, 605 A) be extended to the whole standard rather than just the end of the quote.

TELGARD MOVED TO APPROVE THE SEPTEMBER 6, 2023 MINUTES AS PRESENTED; SIMPSON SECONDED. ALL PRESENT IN FAVOR; MOTION CARRIED.

IV. Correspondence

Cypher said they received a waiver request from Dusty Christianson from Mansfield representing the applicant Joel Peterson. He stated that they are hoping to address the waiver during the next public comment period. Cypher stated that this would be the time to bring up helpful comments, and they will make sure that the comments are on the record for the project.

Chairman Korson clarified that one public comment will be held now, then the commission will not do another public comment period until after the findings are established.

V. Public Comment (three minutes per person unless extended by Chairperson)

Ms. Lee Cory, resident at 615 N Lake Street, stated that after first reading the project waiver request, she had a few statements. She initially stated that the applicant stated that the waiver request was not required because the project is a not PUD, to which Ms. Cory stated to the commission that it is a PUD, as determined by the township administrator. Ms. Cory inquired about whether the PUD requirements apply to the project, and if it does, inquired about the requirements for open space on the project property. Ms. Cory also stated the requirements regarding open space

(17.1 B), “the PUD shall include dedicated open space, the dedicated open space shall forever remain open”. Ms. Cory moved on to 17.2, which states that the open space shall be determined by environmental features, lot size, and neighborhood character” which Ms. Cory believes is the most important thing. She believes the project is a violation of the ordinance, and the approval of the waiver will allow the developers to push the limits of the ordinance as much as possible. Ms. Cory asked the commission to deny the application.

Mr. Keith Ashley stated that, with regard to the waiver application from the PUD project developers, the waiver application submitted by the project developers is required by the planning commission and zoning administrator. He stated that the findings of the waiver application being taken so lightly is disheartening to the residents of Leland Township who have put time and effort into the project and the findings. He stated that developments must meet all requirements. He also stated that the development does not meet the ordinance requirement for Open Space (sec 2). Mr. Ashley believes this is a watershed moment for Leland Township, he believes that with natural progression, housing properties will come to fruition. He believes that approval of the project will be to the detriment of the Township. He asked the commission to prove that the project meets all ordinances. Mr. Ashley asked the commission to deny approval of the project.

Mr. Cal Little, resident of Leland, stated that the preservation of small residential village character in Leland should be central to all land issues. He stated that it is critical to measure new initiatives with the overriding community values expressed by the residents in the Master Plan. He shared that 79% of residents want the preservation of historic structures and 88% want limits on tall structures. Mr. Little stated that the framers of the Master Plan and zoning ordinances were structured around the preservation of the community feel. He also shared that in regard to the PUD project, the developer’s building style does not match that of the surrounding buildings on the main corridor, against the unanimous disapproval of the community. Furthermore, Mr. Little stated the development will unbalance the community in ways that will diminish Leland, however, the fact that the village is a year-round community is not lost on the residents and visitors. He shared that past efforts have shown that residents of the community will support design and building efforts to preserve the small residential feel of Leland. He shared that in the meantime, new developments must be vetted to ensure that the feel of the community continues, as well as urged the commission to reject the proposal and to treat others that follow with the same scrutiny.

Mr. Shep Burr, had observations regarding the efforts of Fishtown Preservation Society in preserving the character of Leland. He has been extensively involved in the effort. He stated that millions of dollars in funding have helped the efforts of the FPS excel. He shared that he would not like to see the efforts of the Fishtown Preservation Society be undermined by a for-profit development that would dramatically effect the character of the community. He stated that, with respect to the waiver issue, Section 17.2 sets forth standards that must be adhered to. He noted the general requirement that the commission would have to find and document that no good public purpose would be achieved by requiring conformance to the

ordinance requirements as well as the requirement that the commission must find and document that the spirit and intent of the open space development provisions will still be achieved. He also suggested to the commission to deny granting the waiver.

Mr. Neil Corey reminded the commission of the argument that occurred at the September 6 meeting regarding the PUD development project's violation of ordinances and guidelines set forth by the Master Plan. He noted that it violates the "character" guidelines, which the zoning ordinance clearly describes the community feel of Leland. Mr. Corey urged the commission to see that the development does not comply with the character guidelines. Mr. Corey also stated that the development should not be approved because it does not comply with Article 7.15 as well as 7.01 and which argues that land uses shall be compatible with adjacent land uses. He also argued that the large multi-family development is not compatible nor consistent with the village's general feel. Mr. Corey also cited the Open Space clause in the township's zoning ordinance, which he believes the development clearly violated. Mr. Corey urged that the commission deny the waiver request as well as stated that the developer, planner, and attorneys were disingenuous. Finally, Mr. Corey reminded the commission that the development waiver should not be granted because it clearly violates the guidelines set forth by the Master Plan, and zoning ordinance, and would work against the preservation of Leland's community character.

Ms. Heidi Cruise, director of the Leelanau Children's Center, expressed her concern for the current state of Leelanau families given the new project and how it will affect the draw for families to come to the area. She also urged the commission to envision a community without children. She stated that she feels troubled by the vision of the new PUD development, as she believes it will directly reduce the ability of families to move to the area. She urged the commission to decline the proposal.

VI. Reports

Commissioner Mitchell did not have any information to report. However, he did state to the room that the city will be looking for two new planning commissioners on the 1st of the year.

VII. ZBA Rep:

Commissioner Satterwaite did not have any information to report.

Mr. Cypher stated that he received a dimensional variance request for a lot width reduction. He shared that the property owner purchased 180 feet of frontage on Lake Michigan and put a guest house on the property. The owner now wants to divide the property 13 feet short of the minimum 200 foot lot width requirement. He let the commissioners know that this request will be on the docket at the ZBA meeting in the next coming months.

Commissioner Satterwhite also shared with the public about an opening on the ZBA, as well as described the duties of ZBA members.

VIII. Old Business – None

IX. Public Hearing – PUD 211 N. Main Street, Leland MI 49654 / Joel Peterson

The public hearing picked back up at the 6.05A mark in the Findings of Fact for the PUD development.

Mr. Cypher asked the commission to pause the discussion of the Open Space ordinance until section 17.

FINDINGS OF FACT

Mr. Cypher informed the commissioners of the attorney-client privilege guidance document from the township's legal counsel that details the lengths to which they want to identify fair and reasonable findings that are supported by factual evidence. Cypher wanted the board to know to be very specific in the language so the applicant and general public could clearly see the Findings of Facts details.

Section 6.05B -- Describes the landscape shall be preserved in its natural state by minimizing tree and other vegetation removal.

The existing vegetation has already been removed; the site has been demo-ed. Mr. Cypher shared that in circumstances like this, the PC would review the landscape plan and approve it if the project is approved. Cypher then asked the commission if they had any questions for the developer's landscape architect.

Commissioner Mitchell asked about the trees on the north and south side as a condition of approval.

6.05C -- stormwater management. Mr. Cypher informed the commission that the project has approval from the drain commissioner already. He shared that there are a few things that will be required as a part of their final permitting process. Additionally, Cypher shared that the development has a rain garden roof. He asked the commissioners if they had questions about the rain garden and referred them to Mr. Christiansen.

Commissioner Telgard asked if they ever verified that the rain during the September 6 meeting would have been adequately dealt with. Mr. Cypher stated that the township experienced torrential downpours during the night of the last meeting and shared that no stormwater management facility in the entire county could have dealt with that amount of rain. Mr. Cypher shared that the rain garden was designed to hold 4 inches of water.

Commissioner Mitchell then asked Mr. Christiansen if the road commission had informed him that water was going to be flushed out from the site. Cypher asked if there would be any special conditions that the PC members would like to add to 6.05C, to which Commissioner Simpson stated that if it is okay with the drain commissioner, then it will be okay with the commission. Cypher informed the commission that dwelling units will be located on the 2nd and 3rd floors. Chairman Korson asked if someone could purchase one of the commercial spaces downstairs and turn it into living quarters, and Cypher replied that no, it would not be possible. The zoning ordinance only allows commercial businesses on the first floor. Chairman Korson asked if there was a house next door to a commercial district, would the owners get to live on the first floor. Mr. Cypher replied that the single-family residential home is an allowed use in the commercial district. Korson then asked if it would be possible

to live in the first-floor commercial space of the new PUD development if it were designated as a single family residential. Cypher stated that the ordinance is very clear that the first floor of the development is utilized for commercial businesses.

Section 6.05.D – Cypher stated that they have received communication from the fire chief regarding the conditions and recommendations required for approval. He opened the floor to the commission for questions.

Section 6.05.F – Mr. Cypher shared that the structure has access to public streets on two sides. He also stated for the commission that the conditions that the road commission set forth will be met by the developer. Again, Cypher opened the floor to the commissioners for questions.

Section 6.05.G – Mr. Cypher stated that because the development is in a historical commercial zoning location, the development has sidewalks on two sides. He shared that they have received communication from the road commission and have agreed to the requirements set forth by the road commission.

Section 6.05.H – Mr. Cypher shared that proposed lighting will still need to be reviewed to ensure that it complies with the ordinance.

Section 6.05.I – Mr. Cypher stated that the development has access to public streets and sidewalks, and the developer will be working with the road commission to ensure that the development complies with the plan going forward.

Section 6.05.K – Mr. Cypher shared that the commercial zoning district does not mandate off street parking with one exception, if there is a dwelling unit on the second floor. This ordinance will require 8 parking spots for the four dwellings including a handicap parking requirement. These requirements will be met once the project has been granted approval.

Section 6.05.L – Mr. Cypher shared that the road commission has signed off on curb cuts and will be moving forward.

Section 6.05.M – Mr. Cypher stated that the property owner noted that everything (utilities) will be underground.

Section 6.05.N – Mr. Cypher shared that the applicant will provide all approvals from all applicable agencies prior to the final project approval.

Section 6.05.O – Mr. Cypher stated that the developer has an environmental screening that is designed to trap any type of hazardous waste. The applicant ensures reasonable precautions have been made to prevent hazardous waste leakage.

Section 6.05.O.1 – discussed earlier.

Section 6.05.O.2 – Mr. Cypher stated that he spoke with Mr. Patmore and was informed that the public sewer system does not allow anything other than wastewater and waste into the system. Cypher also shared that the developer excluded a restaurant use to ensure the project complies with wastewater ordinances.

Section 6.05.O.3 – Mr. Cypher shared that there was no mention of any agency requirement based on the uses set forth by the applicant. Mr. Cypher stated that he spoke with the building safety department and the finding will be confirmed will all other regulatory agencies before approval from the township.

Section 7:

Mr. Cypher shared the intent of article 7 (special use section) of the zoning ordinance and that the project use is listed under uses by right as the property owner wants to emphasize that fact. Commissioner Telgard stated that he believes that the standard for section 7 is to promote the intent and purpose of the zoning ordinance, which has a component to maintain the character of the community. He shared that he believes that on this ground the project is not in compliance with the ordinance. He continued to read the intent of section 7 and questioned the project’s compatibility of the development with adjacent land uses. Commissioner Satterwaite requested a finding for this section. Cypher asked the commission to explain the thinking behind the findings. Commissioner Telgard addressed the “intent and purpose of the zoning ordinance” intent of Section 7 and referred to Article 1 of the zoning ordinance. Commissioner Telgard asked if the PC was okay with adding wordage from Section 1 into the findings.

Section 7.A – The commission decided the finding was Not Met due to mass and open space. Mr. Cypher asked for consensus, to which Chairman Korson reminded the commission to define the “character” of the village. Chairman Korson asked about the audiences’ concern for compatibility with adjacent uses of land. Chairman Korson argued that the development is compatible with adjacent land uses. Korson pointed out that the development’s building style is not compatible with surrounding land uses, but the use is. Commissioner Simpson inquired if the compatibility of the development is for the current surrounding land uses not the possibility of future land uses. Chairman Korson disagreed. Commissioner Simpson said that the reasoning behind stating that the finding was not met was due to mass. Chairman Korson urged that the commission take into account the Master Plan when deciding the compatibility of the development. Commissioner Satterwhite will add to the finding that the incompatibility is due to the mass of the project. Commissioner Telgard agreed. Commissioner Mitchell stated that he believed the same incompatibility extends to 7E.

Section 7.B – Mr. Cypher reminded the commission that the lot had been demolished. He asked the commission if there was something that should be included in the finding. Commissioner Mitchell inquired if this was the place to include information about open space for PUD developments. Cypher urged the commission to push the open space argument to Section 17. He opened the floor for any general questions from the commission.

Section 7.C – Commissioner Simpson inquired if PUDS can only be used for residential purposes, to which Mr. Cypher responded with No.

Section 7.D – Mr. Cypher informed the Planning Commission that the road commission is looking at future projects on the adjoining county road. The commission had no comments.

Section 7.E – the commission would like to include the reasoning for incompatibility due to the mass of the development. Commissioner Satterwaite asked to separate design and use, whereas the development is compatible in use but incompatible in design. Chairman Korson wondered if a structure was set back farther, whether it would be approved. Mr. Cypher argued that MDOT would not comment on that as it is a township matter, not MDOT. The commission stated that the development was at 48% lot coverage, so the design of the development is incompatible with placements on surrounding properties. Commissioner Mitchell restated that the development was too big. The commission finalized that the development was incompatible in size and use of setbacks. The commission settled that the current use of the development is compatible.

Section 7.02.D.2 – The commission decided to wait to speak on the matter until Section 16 and Section 17 are addressed.

Section 12: Mr. Cypher stated the intent of section 12 regarding the C1 village commercial district.

Article 21: Mr. Cypher asked if a finding is needed for the off-street parking ordinance. The commission decided a finding was not needed.

Article 16:

Section 16.1 -- Mr. Cypher outlined the intent of Article 16 regarding the general principles and objectives of the Master Plan. Cypher asked the commission if they would like to add anything to the guidance tool. There were no comments.

Section 16.2 – Commissioner Telgard referred to the language in Article 1 as a statement to support the non-compliance of the development according to this ordinance. Commissioner Mitchell inquired that the commission should explain why the development is not consistent with Article 1, to which Commissioner Satterwaite responded that the development violates the ordinance through mass, character, adaptability, and suitability. Commissioner Telgard framed that this finding is not met.

Section 16.3 – Not met. Mr. Cypher offered to put together evidence regarding the development and its compliance with this ordinance. Commissioner Simpson requested specific language for the finding. He shared that he believes it will change the character of the area. The rest of the commissioners concurred.

Section 16.3.A – No additional comments.

Section 16.4 – Mr. Cypher stated that he believes that the commissioners already discussed this finding earlier in the meeting. The commissioners concurred.

Section 16.4.A – Mr. Cypher clarified that this ordinance is referring to the commercial district, whereas the development use is included by right. The commissioners decided it has been met.

Section 16.4.B – Mr. Cypher shared that there will not be parking in front of the garages at the development. He also stated that the developer will make sure that the language in the master deed is appropriate and that it complies with the ordinance.

Section 16.4.C – The commission believed the finding was met. No additional comments.

Section 16.4.D – Mr. Cypher stated that there should be a condition included for approval to ensure the developer will have trash receptacles. Commissioner Mitchell shared that the request was included as a condition (section 6.03.B.9) during the September 6 meeting.

Section 16.5 – Mr. Cypher referred to Mr. Christiansen for information on the hours of operation, Cypher asked the commission whether it was desirable to include a condition for approval for normal business hours. The commission concurred.

Section 16.6 – Mr. Cypher believed that the finding was answered previously. The commission concurred. Commissioner Simpson pointed out the word density, and explained that the development's mass was an issue. No additional comments.

Section 17.6.A – Mr. Cypher noted that the project was too close to the front setback limit for the size as stated by the general public and the PC members. No additional comments from the Commission.

Section 16.6.B – Mr. Cypher informed the commission that the fire chief has signed off on emergency services. The commission stated the finding was met.

Section 16.6.C – Mr. Cypher reminded the commission that the residential component of the project will include parking spaces. He also shared that the road commission and MDOT will mark the parking areas that are suitable for compliance on their roadways.

Section 16.7 – The commissioners found that the development met the finding.

Section 16.8 – No additional comments for this finding.

Section 16.9 – Chairman Korson shared that he does not want the decision that the project was compatible with the natural environment to undermine the other findings for the project. Mr. Cypher shared that he was not under the impression that it was compatible. Commissioner Mitchell stated that the project takes up the entire site, but Cypher shared that the rain garden is helpful for the natural environment. Commissioner Mitchell inquired if there should be a finding. Mr. Cypher that the property was previously cleared. Commissioner Simpson shared that the commission should look at the future plans. The commission concurred that no additional comments would be made.

Section 16.10 -- Mr. Cypher shared the master plan ordinance from page 14 with the commission and urged them to read it. He reminded the commission that the land is expensive. Commissioner Mitchell stated that the ordinance was not applicable to the development. Commissioner Simpson asked if the developer must meet findings from the master plan, while Cypher stated that the master plan was a guidance tool. The commission concurred that no additional comments would be made.

Section 16.11 -- Mr. Cypher shared that the developer is trying to promote growth in the village. No additional comments were made.

Article 17:

Section 17.01 – Mr. Cypher shared that condominium projects are a permitted use, he also shared that the development is a condominium project with 4 residential units.

Section 17.01.C – no additional comments from the Commission. Commissioner Satterwaite inquired about an explanation regarding this ordinance. Mr. Cypher shared that historically, PUD projects experienced a lack of benefit – so standards were implemented for R-2 zoning. He also shared that the planning commission put size requirements but left the commercial district open for site specific size requirements. The commission concurred that there was no need for commentary on this section.

Section 17.01.D – Mr. Cypher shared that there will be unified control at the beginning but the project is a condominium project. He shared that to be consistent with how the PC has operated in the past, the developer would want to the commission to require a performance guarantee. The Commission concurred. The discussion of specifics of the performance guarantee was tabled until the next meeting. The PC agreed to require a performance guarantee.

Section 17.01,D-E – Commissioner Mitchell summarized that there was no open space and the ordinance requires open space, so he stated that the condition was unmet. Mr. Cypher shared that this is why the developer sent in the waiver. Cypher reminded the commission of the public commentary about the discussion to grant the waiver. Mr. Cypher asked if there would be a nuisance created and stated that it is clear that if there is excessive noise, smell, etc., it may preclude a waiver from being granted. He also suggested that the commission determine if there are any standards that can be met by the applicant. Commissioner Simpson shared that he did not believe a nuisance could be created because there is no open space, he also stated that the spirit and intent of the open space could not be achieved. Commissioner Mitchell reminded the commission that the lot size is double the PUD minimum square footage, but the conditions are site-specific. Commissioner Mitchell shared section 17.01.C regarding the size of the project lot, and clarified there is no specific size for PUD in the C-1 or C-2 districts. Commissioner Telgard argued to deny the waiver due to the lack of open space. The commissioners concurred. Cypher reminded the commission that the findings must be documented. The Commission found that the 1st requirement (the project does not bring good to public space) did not apply, the 2nd requirement (spirit and intent of the open space provision will still be achieved) was not met, and the 3rd (no nuisance would be created) was met. The commission concurred.

Section 17.0.F – no additional comments.

Section 17.01.F.1 – Cypher stated that the project may require a variance from this standard if approved. He urged the commission to include the condition for a dimensional variance from the Board of Appeals.

Section 17.01.F.2 -- no additional comments.

Section 17.01.G – The commission discussed that no natural features would be comprised. No additional commentary was made by the commission.

Section 17.01.H -- Mr. Cypher shared that the minimum lot area must be 5,000 feet. Commissioner Mitchell shared that there was enough space to comply to the condition of open space. Chairman Korson inquired about a previous building in Lake Leelanau, but Commissioner ___ reminded him that the building was subject to different standards.

Section 17.01.H.1 – No additional comments.

Section 17.01.H.2 – No additional comments.

Section 17.01.H.5– No additional comments.

Section 17.01.I – Mr. Cypher stated that the development is in compliance with fire requirements and utilities. No additional comments from the commission. Mr. Cypher shared that the project is scheduled to be completed in 12 months.

Section 17.01.J – Commissioner Telgard shared that the landscaping provision should apply to this finding. The commission denied the waiver. Commissioner Mitchell stated that he believed that the spirit and intent is there for the minimum lot size, then he believed it should be there for 10,000 square feet.

Section 23 -- Mr. Cypher asked the commission if the development was consistent with this finding. The commission concurred.

Section 23.04 – Commissioner Satterwaite asked if the landscaping piece could be included, and Mr. Cypher concurred. Cypher asked the commission what amount of trees they would like to see. Commissioner Mitchell informed Cypher about a row of trees on the South and 6 on the East side of the development.

Mr. Cypher stated that the 9/11 timeframe, in discussion with the legal counsel, this is a project that the commission may want to hold on voting until the completion of the findings of fact to ensure the development is given due diligence to reduce the chance of the judicial system getting involved. Commissioner Satterwaite asked if it would be appropriate to prepare that report based on the findings of fact, and Mr. Cypher agreed. Cypher shared that the applicant requested the decision is made during the current meeting, but Cypher informed the planning commission that they are under no obligation to do that. Commissioner Mitchell asked if the commission typed up the findings of fact and prepared report, if the findings are enough to win litigation or does the commission needs to be more specific. Cypher said that detail is needed. The attorney will prepare the findings of fact report. Commissioner Satterwaite stated he is confident that the commission is working through the findings fairly and that the findings will withstand litigation if a vote was to be held during the meeting. He ended by saying he would appreciate if all documents were prepared before the vote takes place.

Chairman Korson confirmed that the next meeting would begin with further discussions with the applicant, with a document to approve and the commission will put the project to a vote.

COMMISSIONER MITCHELL MOVED TO CONTINUE THE NOVEMBER 1, 2023 MEETING ON #2 WITH THE FINDINGS AND CONDITIONS IN WRITING DURING THE PROCESS OF PROCESSING THIS APPLICATION; COMMISSIONER SATTERWAITE SECONDED. ALL PRESENT IN FAVOR; MOTION CARRIED.

Commissioner Telgard shared that there will be a notice put out for the change of venue before the next meeting if this venue is available.

X. Other Business

Mr. Cypher shared that the planning department received a request for the Siddall project in Lake Leelanau for return of their performance guarantee. The development originally agreed to put a hardy board wood grain siding on the exterior building, but put up a vinyl with wood grain finish instead.

Cypher stated he had a pre-app meeting with a potential buyer for the harbor courtyard on South Lake Street overlooking Fishtown. The buyer is proposing a project similar to Peterson, which he shared could be forthcoming.

XI. Public Comment

Mr. Keith Ashley shared that there were several findings that were not met. He also shared that he sent a letter a few days ago which pointed out the applicant's drawings. Mr. Ashley reminded the commission that they are approving the site plan as provided by the applicant. Mr. asked the commission to be aware of that. He also said that, with regard to the waiver of standards, that it is clear that the waiver requirement #3 about nuisances should be put up to the surrounding residents.

Mrs. Lee Corey asked to revisit the issue of character. She reminded the commission that it is really important to understand that character is not subjective in this case. She outlined that in the master plan, the issue of character is defined specifically for Leland. She added that the text is unambiguous and clear. She stated that the neighboring properties are small, residential properties. She also clarified that multi-family residences are different from single-family residences. She asked the commission to respect the language of the ordinance and to respect the guidelines when making a decision. Lastly, Mrs. Corey added that the language is not subjective and should lead the commission to denying the project.

Mr. Julian addressed the commission's discussion on trees. He stated that it would be important to include the size description of trees in the conditions.

Mr. unknown asked the commission to consider that retail spots have no trash, but it means that the trash is out front by the sidewalk if there is not space in the back and it becomes a nuisance. He shared that there are other forms of nuisances that relate to the normal functions of the city and should be accounted for.

Mrs. Robin Moran addressed the word nuisance. She informed the commission about her awareness of setbacks and stated that she appreciated the commission's time and that she looks forward to November.

UNAPPROVED

XII. Adjournment

There is no objection, Chairman Korson adjourned the meeting at 9:28 P.M.

The next scheduled meeting will be held on Wednesday, November 1, 2023, at 7 P.M. at the Leland Township Library in the Munnecke Room unless otherwise noted.