

**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 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 of Applicant was present. Twp. Attorney stated that Applicant's Attorney advised that he did not plan to attend and would rely on the briefs. 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. 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 and ZBA records would go to the circuit court if the ZBA decision is appealed.

Smith asks Wierda or ZA Cypher to clarify what they should do today. ZA Cypher stated he would not comment and let Wierda clarify. Cypher notes that 270 letters were submitted against the proposed project.

Wierda references his letter of February 6 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 followed required procedures and made a reasonable decision, they should uphold it. The ZBA has the right to reverse or affirm, wholly or partly, or modify the PC decision.

**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 PC did its job. Wierda directs the ZBA to determine whether or not the PC followed required procedure. Wierda indicates that the last paragraph on page 2 of his February 6 letter provides a summary of the procedure followed by the PC.

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.

The ZBA reviewed 6.05.A of the Zoning Ordinance and the PC's findings of facts and conclusion that the Applicant did not satisfy that standard. The PC found that there were three separate ways that the standard was not met. First, the size of the proposed building

was not harmonious with the size of the buildings on adjoining properties. The PC made detailed findings of the relevant buildings which showed that the proposed building would be much larger in total square feet and much taller in height than any building on adjoining properties. Second, the PC found that the flat roofline was completely different and not harmonious with the gabled rooflines on all of the buildings on adjacent properties. Third, the PC found that the lot coverage and proximity to setbacks were not harmonious with the lots/buildings.

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 PC 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 agrees with the PC's findings on these issues.

A discussion is had on 6.03.B20. Wierda suggests that the waiver referenced in this section refers to the requirements in 6.03.B only. The ZBA discusses the language in that section and agrees that it is referring to waivers as Wierda suggests. Wierda clarifies that the ZBA can amend the PC decision in any way that they feel is appropriate. The ZBA decides that they disagree with the PC decision that the Applicant did not meet the requirements of 6.03.B20. The waiver denied by the PC was requested under a different section of the Zoning Ordinance and is not applicable here. The ZBA concludes that the Applicant satisfied 6.03.B20.

Wierda recommends that the ZBA members go through and spell out in detail why they would or would not uphold the PC findings and conclusions. He likes the level of detail provided by the PC in its decision.

Wierda: 6.03.B.1-18 were found to be met by PC.

Storm water section is questioned by Och. 6.03.B13. Cypher clarifies that soil and erosion department get drawings that are submitted and approved. The ZBA agrees with the PC that 6.03.B.1-18 were met or were conditionally met with the conditions imposed by the PC.

6.03.B.19 was the first section the PC found was not met by Applicant. PC discussion on 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 that the proposed building is not harmonious based on the three reasons which were discussed in detail earlier.

6.04 – PC found that Applicant met that with conditions. ZBA agrees.

Returning to 6.05.A –the proposed building is not harmonious with adjoining buildings.

Bunbury, differences are so dramatic and obvious just looking at the drawing of the proposed building and the photographs of the existing building. He has 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 determination that the proposed building was not harmonious with others nearby. She is comfortable with the findings of fact and believes the PC decision was reasonable. ZBA agrees with PC findings and conclusion. Bunbury points out that there is plenty of quantitative information and it's not

just subjective.

Wierda clarifies that 6.05.A is part of Site Plan review. It is not a part of the additional requirements for a PUD or special land use.

Articles 7, 16, 17 – you don't get to these unless it's a PUD and/or special land use. Dawkins agrees with PC and thinks the project is not a use by right and can only be allowed with PUD approval. Zoning ordinance only allows for a single family dwelling in this district. This is a multi-family dwelling.

Latest memo from applicant's attorney says a similar building was allowed in Lake Leelanau and approved by PC.

Cypher states that applicant for Lake Leelanau project understood 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 apply for approval as a PUD instead. Lake Leelanau is multi-family also.

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

ZA Cypher: notes that 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 required a PUD or could be approved as a use by right.

Dawkins states - Precedent has nothing to do with the ZBA. Wierda tells them to get it right. He says they need to focus on getting their interpretation of 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.

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 and the ZBA did not review that decision because it was not appealed. 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 the zoning ordinance addressing PUDs and special land uses in detail. Make findings on whether it should be treated as a PUD. Dawkins reads out description about why it is a PUD.

Wierda points out that the PC says that definitions are why they determined this should be a PUD.

This building meets the definition of a multi-family dwelling and the only place multi-family dwellings are expressly allowed under the zoning ordinance is high density residential district, R-3.

There is overlap between what is required under Site Plan review and under PUD review. PC findings support denial because it failed site plan review (6.05.A). PC also found failed PUD review - Open space requirement and other standards.

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 any 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?

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

Wierda – Original application before the PC was a PUD Application. It addressed all of the requirements for a PUD. PC reviewed it the same way it was submitted addressing all of those requirements. Applicant included a letter that ZA had told them to apply as a PUD and that they disagreed with that and were reserving their rights to challenge that.

Och – agrees it should be a PUD

Discussion about the "Lot" definition in ordinance including 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 a requirement in 12.04.B.

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. PC decision that should be reviewed as PUD was reasonable.

Dawkins is comfortable with using multi-family.

Wierda: page 8 of the memo: (Feb 6<sup>th</sup>) – PC made motion to deny application.

Cypher clarifies passages in first column of Findings come right from Ordinance.

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

Smith – reference to the master plan – reads aloud language about master plan. Wants to reference Master Plan. She feels it should have been referenced more.

16.01.A2, A3 – These standards are similar to 6.05.A. They require the proposed building to be compatible with adjacent land uses and character of general vicinity. Och and Smith think it is obvious for the reasons discussed at length above related to 6.05.A that these standards are not met.

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 2<sup>nd</sup> or 3<sup>rd</sup> PUD project to come forth since that time.

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

Question is raised about a photo of a historical building that used to stand on this lot.

Wierda and Cypher – there is nothing about being compatible with historical buildings in the ordinance.

Applicant's Attorney argues that uses are what need to be compatible, not other things. 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 and find it reasonable.

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

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

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.

Discussion of what is compatible with the neighborhood with regard to open space?

Backyards? Proposed building will just have parking lot. Setbacks don't count toward open space requirement. Neighboring properties have significant open space.

Bunbury reads about open space. Och helps.

Wierda: was PC reasonable to decide as they did regarding open space? Yes, all agree.

Discussion of additional requirements of 17.01. Many of these are administrative items.

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.

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

17.02 – ZBA agrees with PC

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

Ordinance is only for existing C1.

Discussion of landscape plan, which was provided.

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.

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. The discussion and decision will be further memorialized with written findings.

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

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.