Agenda 6a

Date 5-09-23

NORTON SHORES
IT'S IN OUR NATURE.

4814 Henry Street
Norton Shores, MI 49441

www.nortonshores.org
www.nortonshoresliving.com

May 4, 2023

Planning Commission Meeting of May 9, 2023
SUBJECT: Zoning Ordinance Amendment, Section 48-66

Chairman and Members
of the
Planning Commission

Ladies and Gentlemen:

The City Attorney and myself have been reviewing the Special Land Use standards since last summer. City staff is proposing revising the ordinance to eliminate verbiage that is both antiquated and unnecessary. Currently there are 11 standards as required by City Ordinance. We are proposing parring that down to four (4). The overall objectives of the current standards will remain in the proposed language, including: harmonious with the surrounding uses and general objectives of the Master Plan, that public facilities can handle the proposed use, there will not be an overcrowding of the land, and the standards are consistent with the public health and welfare of the City.

The Planning Commission may use the attached resolution in making a recommendation to the City Council regarding this request.

Sincerely,

Ted Woodcock
Planning and Zoning Administrator

Attachment

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission hereby recommends to the City Council that the zoning ordinance amendment for Section 48-66, Division 2, "Special land use permits" is granted per the submitted ordinance amendment.

At a regular meeting of the Planning Commission of the City of Norton Shores, held at the Norton Shores Branch Library, 705 Seminole Road, on the 9th day of May 2023, the foregoing resolution was moved for adoption by Commissioner. The motion was supported by Commissioner.

Ayes:

Nays:

Resolution declared adopted/denied.

_____

Sarah Romine, Recording Secretary

Gravis Law

Gravis Law, PLLC | www.GravisLaw.com

Douglas M. Hughes
Managing Attorney
120 W. Apple Ave.
Muskegon, MI 49440
231.251.2379 | DHughes@GravisLaw.com

May 2, 2023

Nick Morano
Planning Commission Chair
4814 Henry Street
Norton Shores, MI 49441

Re: Special Use Permit Process

Dear Chairman Morano and Planning Commission:

We recently reviewed section 48-66 of our zoning ordinance. We noticed that the current language states:

> The planning commission and the city council shall, upon separate occasions, review the particular facts and circumstances of each proposal in terms of all of the following standards and each shall find adequate evidence showing (11 standards) (Emphasis added).

The ordinance goes on to require that:

> Upon making a decision, the city council shall incorporate, in a statement of conclusion, the factual basis and reasons for the grant or denial of the application for a special permit in written findings of fact. Such findings should be adopted contemporaneously with the action of the grant or denial, and placed on file with the clerk. Section 48-70.

The City Administrator recently asked me to look at the enabling legislation to see if it was possible to clarify our process.

The enabling statutory provisions, in particular section 502, provide:

> (1) The legislative body may provide in a zoning ordinance for special land uses in a zoning district. A special land use shall be subject to the review and approval of the zoning commission, the planning commission, an official charged with administering the zoning ordinance, or the legislative body as required by the zoning ordinance. The zoning ordinance shall specify all of the following:
> (a) The special land uses and activities eligible for approval and the body or official responsible for reviewing and granting approval.

(b) The requirements and standards for approving a request.
(c) The procedures and supporting materials required for the application, review and approval.

***

(4) The body or official designated to review and approve special land uses may deny, approve, or approve with conditions a request for special land use approval. The decision on a special land use shall be incorporated in a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed.

The state statute, at section 504, goes on to say:

(2) The standards shall . . . insure that the land use or activity . . . shall be compatible with adjacent uses of land [and] that the land use or activity is consistent with the public health. . . .

***

(4) Reasonable conditions may be required . . . to insure that public services and facilities affected . . . will be capable . . . to protect the natural environment . . . to insure compatibility with adjacent uses of land . . . to promote the use of land in a socially and economically desirable manner.

The drafters of the zoning ordinance, adopted in the early 80s, appear to have combined requirements of 3502 and 3504 into one standard, which we refer to as 48-66 in the code of ordinances.

As noted above, our language says "upon separate occasions" each shall find:

(1) That the proposed use will be harmonious with and in accordance with the general objectives of the master plan and zoning ordinance of current adoption;
(2) That the proposed use will be harmonious with existing or the intended character of the general vicinity and that such a use will not change the essential character of the same area;
(3) That the proposed use will not be hazardous or disturbing to existing or future neighboring uses;
(4) That the proposed use will be served adequately by existing essential public facilities and service such as highways, streets, police and fire protection, drainage structures, refuse disposal or schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such service;
(5) That the proposed use will not create additional requirements at public cost for public facilities and services;
(6) That the proposed use will not involve uses that will be detrimental or hazardous to any persons or property;
(7) That the proposed use will be consistent with the intent and purposes of this chapter;

(8) Whether a hazard to life or property caused by fire, flood, erosion or panic;
(9) Whether the use of the structures cause an overcrowding of land;
(10) Whether the plot area is sufficient; and
(11) Whether the use to be operated is near residential neighborhoods and, if so, that the development shall not cause any disturbance of the character, peace or values, or it shall not create any hazards to the residents by virtue of increased traffic, overcrowding or lack of nearby recreational facilities.

The drafters of the zoning ordinance back in the 80s set the bar higher than what is required by the enabling legislation. My recommendation is that we change the ordinance. I would also recommend changing the language so as to provide a more streamlined version of the findings for the Planning Commission to consider. I would further suggest that the City Council retain the right to review and approve or reject your recommendation for specific reasons. In making these suggestions, I am mindful that the City Council has the final authority for approval, but there are other options for consideration, such as, affirm or return. The proposed language is as follows:

- **Sec. 48-66. - General standards for making determinations.**

  The Planning Commission will and the City Council shall review the particular facts and circumstances of each proposal in terms of the following standards:

  (1) Whether the proposed use will be harmonious with the existing or intended character of the general vicinity and in accordance with the general objectives of the master plan and zoning ordinance of current adoption;

  (2) Whether the proposed use will be served adequately by existing essential public services and facilities, or the applicant will provide for those services and facilities;

  (3) Whether the proposed use of the land and structures will not cause an overcrowding of land; and

  (4) Whether the proposed use is consistent with the public health, safety, and welfare of the City of Norton Shores.

The remaining provisions provide:

Sec. 48-68. - Recommendation to city council.

Upon conclusion of the public hearing or at the next meeting thereafter, the planning commission shall recommend approval or denial of an application for a special use permit to the city council. Recommendations shall include an accurate description of the proposed special use, a description of the property upon which

the special use is sought to be located and recommendations and proposed conditions of the planning commission, along with a summary of the comments at the meeting of the planning commission considering the application.

Sec. 48-69. - City council; issuance/denial of special use permit.

The city council may affirm, modify or deny the application for special use permit with all conditions and, if approved, instruct the building and zoning administrator to issue the special use permit with the conditions. If conditions are required prior to or with the permit, they shall be typed on paper and signed by the city clerk, as authorized by the council and the applicant, and recorded with the county register of deeds, and shall be binding on the owners of the property or their successors.

Sec. 48-70. - Decision.

Upon making a decision, the city council shall incorporate, in a statement of conclusion, the factual basis and reasons for the grant or denial of the application. ~~for a special permit in written findings of fact. Such findings shall be adopted contemporaneously with the action of the grant or denial, and placed on file with the clerk as a public record.~~ (to be deleted).

I would be happy to discuss how these provisions could be changed. In making this recommendation, I am mindful of the fact that these changes, if adopted, may well be in effect for a long time.

Sincerely,

Douglas M. Hughes
City Attorney
Gravis Law, PLLC
Direct Dial: (231) 727-2119
Email: dhughes@gravislaw.com

DMH:kar
cc: Planning Commission Members