

MEMORANDUM

To: City of The Village of Douglas Planning Commission
Date: April 14, 2023
From: Tricia Anderson, AICP
Andy Moore, AICP
RE: **200 Center Street / Ordinance Amendment Discussion**

As you know, the zoning of the parcel known as 200 Center Street has been a bit of a mystery while going through the process of site plan review for a mixed-use development on this parcel. The attached opinion, written by the City Attorney will now give clarity to the applicant and reviewers of future development on the 200 Center Street parcel. The conclusion is that the parcel's PUD zoning designation as depicted on the 2009 zoning map was a *mapping error*. The actual zoning is C-1 and will be updated on the zoning map sometime in the near future.

In reviewing the proposed mixed-use development on the parcel and the applicant's desire to have ground-floor residential, we've found some text in the zoning ordinance that may not fully align with the intent or its reason for being there. In the C-1, Village Center District, ground floor residential is permitted by special land use. Section 26.13 outlines the criteria for approving the ground floor residential as a special land use. These criteria are listed in Figure 1. Under Site Requirements, part b requires that abuts residentially zoned property on at least one side. The intent may have been for it to abut a residential *use*.

We are asking the Planning Commission to hold some discussion about the intent of part b and whether it needs to be there or not. We've learned from the development proposal at 200 Center St. that without a third floor and without ground floor residential, the development is unlikely to produce an effective return on investment. If the criteria for ground floor residential is modified to either remove the requirement for the site to abut residentially zoned property, or

Section 26.13 Ground Floor Residential

- 1) Locational Requirements: Residential uses shall be permitted on the ground floor of a structure located in the C-1 District only where such use does not front upon Center Street.
- 2) Site Requirements:
 - a) All residential dwelling units on the ground floor of a structure located within the C-1 District shall be set back a minimum of thirty (30) feet from the Center Street right-of-way to avoid breaking up the continuity of active commercial areas along Center Street.
 - b) All ground floor structures used for residential purposes shall be located on property which abuts property zoned R-1, R-2, R-3, R-4 or R-5 on at least one side.
 - c) The Planning Commission shall make a determination that the regular flow of pedestrian traffic to and from established commercial uses is not likely to be negatively reduced or impeded by the residential use within a ground floor structure.
 - d) Any application for Ground Floor Residential use within the boundaries of the Downtown Development Authority shall be submitted to the DDA Board for recommendation prior to Planning Commission approval.
 - e) All standards of Article 10 C-1 Village Center District shall apply to a ground floor residential use except that the minimum transparency requirements set forth within Section 10.02, D, may be reduced to no less than 30% to insure the safety and privacy of residents.

Fig. 1

(Amended October 19, 2009: Ord. #03-2009)

change it to *residentially used* property, it may continue to create barriers for developers to bring more housing options to the City.

If the Planning Commission comes to a consensus on the need for a text amendment, we will prepare the amendment at an upcoming meeting. Otherwise, we can simply leave the language as is.

Please reach out with any questions.



March 15, 2023

VIA EMAIL ONLY: Anderson@williamsworks.com

City of the Village of Douglas, Michigan
c/o Ms. Tricia Anderson
Williams & Works, Planning Consultants to the City

RE: 200 Center Street

Dear Ms. Anderson:

You have requested that Plunkett Cooney, acting in its capacity as City Attorneys for the City of the Village of Douglas (the "City"), advise the City and City Planning Commission whether real property commonly known as 200 Center Street, City of Douglas, should be considered as zoned "Planned Unit Development – Village Center-1" (herein, "PUD C-1"), as appears to be true from a review of the current City Zoning Map, or simply "Village Center -1" (herein, "C-1"), because the Zoning Map does not reflect a current planned unit development. For the reasons stated below, we are of the opinion that 200 Center Street should be considered as zoned "C-1".

The relevant facts provided, and to which our opinion is limited, are as follows:

The City has received an application for PUD site plan approval for a mixed-use building which the Applicant's representative has verbally advised will be limited to 2 stories in height, with commercial frontage on Center Street and ground-floor residential behind commercial on the rear building elevation. The Applicant's representative asserts that (i) the proposed development project will not be financially feasible without the inclusion of ground-floor residential and (ii) the desire to develop the parcel as a planned unit development is necessitated by, among others, (A) the Zoning Ordinance's C-1 district requirement that ground-floor residential comply with the requirements of Section 26.13 and (B) Section 19.03 Special Land Use off-site parking requirements.

The Applicant relies heavily upon the City Zoning Map, as adopted in May 2009 and most recently updated in 2014, which appears to depict 200 Center Street as a "PUD C-1" district.

Article 27 of the Zoning Act does not establish "planned unit development" as a mechanism to avoid the requirements of the underlying zoning district. Section 27.02 declares that PUD is both a separate zoning district and an overlay zone. As applied to this application, that means the requirements of the underlying C-1 zoning district continue to apply after a PUD C-1 rezoning except insofar as the City has identified specific waived or modified C-1 requirements upon a finding that the Applicant has demonstrated its satisfaction of the

ATTORNEYS & COUNSELORS AT LAW

Tricia Anderson
200 Center Street
March 15, 2023
Page 2 of 3

eligibility conditions of Articles 24 and 27 of the Zoning Ordinance. Zoning Map depiction of 200 Center Street as “PUD C-1”, without a PUD Ordinance or other identification of the waived or modified underlying C-1 zoning district criteria, and without evidence that Council made a determination of PUD eligibility, must fail.

In response to this application, we understand that City personnel conducted a comprehensive search for City records supportive of the City Zoning Map’s “PUD C-1” designation.

No record of a PUD Ordinance or PUD re-zoning of 200 Center Street to “PUD C-1” has been located for review. Accordingly, we cannot identify with any certainty the C-1 Zoning district deviations that Council may have approved in connection with any prior “PUD C-1” re-zoning -- assuming that the City Zoning Map depiction correctly reflects prior Council action to re-zone 200 Center Street. Indeed, there is no evidence that, in connection with its consideration of any past PUD re-zoning application, Council determined that the PUD prerequisite eligibility criteria of City Zoning Ordinance Section 27.03, the site plan requirements of Zoning Ordinance Article 24 or the project design standards of Ordinance Section 27.04 were satisfied. For all of these reasons, we are of the opinion there is insufficient evidence to support a conclusion that 200 Center Street is zoned “PUD C-1”, and, instead, conclude that 200 Center Street should be considered as zoned “C-1”.

A Site Plan, dated June 21, 2000, was submitted to the predecessor Village of Douglas seeking site plan approval for a proposed re-zoning of property located immediately adjacent to 200 Center Street as a planned unit development to be called “The Lodge at Douglas” (herein, the “Lodge PUD”). We understand that the City has located and reviewed minutes of Village proceedings at which the Lodge PUD application was considered, but these records also lack the requisite details discussed above. The Lodge PUD subsequently was abandoned; no physical improvements were subsequently installed or constructed on the proposed Lodge PUD site, which, in any event, did **not** include the adjacent 200 Center Street parcel.

Based upon all currently available evidence, we conclude that the most likely explanation for the City Zoning Map depiction of 200 Center Street as “PUD C-1” is that 200 Center Street was mistakenly, as a “simple mapping error”, included with the adjacent Lodge PUD lands as a parcel re-zoned to “PUD C-1”.

As a final note, a current re-zoning of 200 Center Street to “PUD C-1” does not appear to be permissible since this parcel does not satisfy the minimum land area two (2) acre eligibility requirement of Section 27.03 2) of the Zoning Ordinance.

Tricia Anderson
200 Center Street
March 15, 2023
Page 3 of 3

We cannot, of course, rule out the possibility that City officials may yet locate, or the Applicant may be able to provide, records concerning the 200 Center Street parcel that may warrant reconsideration of our opinion. Should either occur, we will be happy to supplement this opinion.

PLUNKETT COONEY

/s/ Philip A. Erickson

Philip Erickson
Plunkett Cooney, City Attorneys



David S. Keast
Of Counsel, Plunkett Cooney

cc: Rich Labombard, City of Douglas Manager

Open.20448.43876.30746369-1