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**MINUTES OF REGULAR MEETING  
BOARD OF ZONING APPEALS  
March 12, 6:30 P.M.  
Neighborhood Empowerment Center - 600 W. Maple Street**

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**I. ROLL CALL**

The meeting was called to order by Marcie Alling at 6:30 p.m. Roll call was taken.

**Present:** M. Alling, J. Leaming, M. Rice, K. Berryman, Chris Iannuzzi, R. Fryling & E. Jefferson

**Absent:** J. Hovey & M. Solak

**Staff:** S. Stachowiak

A quorum of five members was present, allowing voting action to be taken at the meeting.

**II APPROVAL OF AGENDA**

It was moved by Mr. Leaming, seconded by Ms. Jefferson to approve the agenda with the addition of “excused absences” under New Business. On a voice vote, the motion carried 7-0.

**III. PUBLIC COMMENT**

**IV. PUBLIC HEARING/ACTION**

**A. BZA-4056.20, 230 S. Holmes Street, Request to permit the restoration/reconstruction of a nonconforming fire damaged church building**

Ms. Stachowiak said that this is a request by Unity Spiritual Center of Lansing to permit the fire damaged church building at 230 S. Holmes Street to be restored/repared at a cost exceeding 50% of its value prior to the damage. She said that the site is considered nonconforming because it does not comply with the minimum 2 acre lot size and does not have access to a major or minor arterial as required for churches on a residentially zoned parcel of land. As a “Class A” nonconformity, the building cannot be restored/repared following damaged caused by a fire where the restoration/repair work exceeds 50% of the value of the building prior to the damage, unless approved by the Board of Zoning Appeals following approval by the Planning Board of a Class A nonconforming status request. Ms. Stachowiak stated that the Planning Board has granted the request for Class A nonconforming status.

Ms. Stachowiak stated that she received a petition with 109 signatures in support of the churches request, 13 letters/emails in support of the request and letters/emails from 5 individuals in opposition to the request.

Ms. Stachowiak stated that the estimate from the church’s insurance company to restore the building exceeds \$400,000 and while the exact value of the church building prior to the damage is unknown, it would not even come close to \$800,000 and thus, there is no question as to the need for approval by the Board of Zoning Appeals to

allow its restoration/reconstruction. Ms. Stachowiak said that the staff recommendation is to approve the restoration/reconstruction of the church on a finding that the request complies with the three criteria set forth in the zoning ordinance for evaluating these types of requests. She said that there is no evidence that the church has caused any negative impacts on the transportation system in the area or caused any type of nuisances such as noise, excessive traffic, light glare, etc. that would negatively impact the surrounding residential neighborhood. Ms. Stachowiak said that it is the determination of the Planning Division that the available parking is sufficient to meet the demand for parking during the peak hour of the churches highest intensity of use. The church holds one service on Sunday mornings where, for a period of 2-3 hours, it is operating at its highest intensity level. The remainder of the week, with the exception of the occasional funeral or special event, the level of activity is much lower and is generally able to be accommodated by the existing, roughly 12-16 on-site parking spaces. She said that the church is permitted to use the Sparrow Hospital 100+ space parking lot located one block to the north, which is not in use during peak hour parking demand for the church on Sunday mornings, and there are more than 50 on-street parking spaces within 1 block of the church along both Holmes and Prospect Streets. Ms. Stachowiak stated that the applicant has provided a plan showing that the site is capable of accommodating parking for 24 vehicles. She explained that expanding the existing parking lot would bring the parking much closer to the adjoining houses which could negatively impact those residents in terms of noise and light glare and from an appearance/aesthetic standpoint (views from windows). Ms. Stachowiak said that in order to protect the adjoining residents from the effects of adding additional parking and since the available parking in the area has historically proven to be adequate to support the church during its peak hour parking demand, any expansion of the on-site parking lot is not recommended.

Ms. Alling opened the public hearing.

**Dan Maynard, 2237 Luwanna Street**, spoke in favor of the request as a representative of Unity Spiritual Church. He said that the value of the church building was fairly low prior to the damage and thus, there would be no way to restore it or to construct a new church without exceeding 50% of its pre-damage value. He said that they have already received the necessary approvals to make the church handicap accessible.

**Belinda Fitzpatrick, 224 S. Holmes Street**, spoke in opposition to the request. She stated that she lives adjacent to the church and her house is 9 feet away from the church building. Ms. Fitzpatrick expressed concerns about the potential for the church to expand the parking lot, thus bringing it much closer to her property which would result in increased noise and light glare. She spoke about issues that have occurred with excessive use of the on-street parking by the church which has been even worse since The Fledge came into the area, one block from the church. Ms. Fitzpatrick said that the church property needs to be used for residential purposes so that it is compatible with the residential area in which it is located.

**Christine Clements, 1219 Prospect Street**, spoke in support of the request. She said that she is the owner of the other property that directly adjoins the church property and she does not object to expanding the on-site parking lot.

Seeing no one else wishing to speak, Ms. Alling closed the public hearing.

Mr. Leaming asked about the ability of the church to expand the parking lot to the north

where it would be very close to the adjoining property/house.

Ms. Stachowiak said that the church could do so to a certain extent but that would not be desirable given its impact on the adjoining neighbor. She said that the approval could be conditioned upon prohibiting any expansion of the parking lot. She also said that the Planning Board approval of the Class A status request included a condition that the church is to install shrubbery/bushes around the perimeter of the parking lot to soften its view from the adjoining properties and from the street.

Mr. Rice said that the issue seems to primarily involve concerns about expanding the parking lot. He expressed support for the church's request, with the same condition that the Planning Board included in its approval regarding planting shrubs/bushes around the perimeter of the site and with the condition that there is no expansion of the on-site parking area.

Ms. Stachowiak described the variances that have already been approved to allow for an addition to the existing church to make it handicap accessible.

Mr. Leaming expressed support for the request as well, subject to the same conditions described by Mr. Rice.

**Mr. Leaming made a motion, seconded by Mr. Rice to approve BZA 4056.19 a request to permit the restoration/repair of the fire damaged church building at 230 S. Holmes Street at a cost that exceeds 50% of its value prior to the damage, with the following conditions:**

- **The necessary permits are obtained and the work to restore/repair the fire damage to the building at this location commences within one (1) year from the date of this approval,**
- **The church plants shrubbery/bushes around the perimeter of the parking lot to soften its view from the street and from the adjoining properties; and**
- **No expansion of the existing on-street parking area is permitted.**

**On a roll call vote, the motion carried unanimously (7-0).**

**B. BZA-4055.19, 1215 River Street, Appeal of administrative decision to permit a new telecommunications tower that would have a reduced setback and a reduced separation distance between telecommunication towers**

Ms. Alling stated that Ms. Stachowiak would be given 10 minutes to present her position on this matter, after which the appellant will be given the same amount of time to make a presentation to the Board.

Ms. Stachowiak stated that SBA Communications is appealing her decision to authorize the setback and separation distance waivers necessary to permit a new Verizon wireless telecommunications tower at 1215 River Street, in accordance with the authority granted to her under Section 1298.05 (A) (4) of the Zoning Ordinance. Setbacks of 85 feet from the tower to the east and west side property lines (90 foot setbacks required) and separation distances of 1,396 feet (disputed) from an existing tower at 209 Baker Street and 1,481 feet (disputed) from an existing tower at 910 River Street (1,500 foot separation distance between towers is required) were approved by the Zoning Administrator as part of the site plan review and approval process.

Ms. Stachowiak said that the appellant asserts that she should not have granted waivers to Verizon for the construction of a new tower at 1215 River Street since there is an existing SBA tower at 209 Baker Street upon which Verizon could lease space to collocate an antenna. The appellant also contends that, in lieu of constructing a new tower, Verizon could simply upgrade its existing antenna on the tower at 910 River Street in order to improve its service in the area.

Ms. Stachowiak stated that the decision to authorize the reduced setbacks was based on the following:

- \* There is no way to situate the tower on the site in compliance with the setback requirements from all 4 property lines.
- \* The reduced setbacks will have no negative impacts on the adjoining property owners, both of which are currently being used for open storage yards/parking lots.
- \* Since the property is zoned industrial and surrounded by industrial zoning and land uses, any construction on the property other than a tower would not be subject to any setback requirements (see setback requirements listed in Chapter 1276 of the Zoning Ordinance).
- \* The nearest property being used for residential purposes is located approximately 800 feet to the northwest of the proposed tower. The location is therefore, consistent with one of the primary goals of the wireless communication tower ordinance which is to locate towers on sites that do not adjoin or are located in close proximity to residential uses.
- \* The setback waivers are very minimal (5 feet) and denial would prohibit the tower, despite it being an appropriate location given the heavy industrial area in which it would be located.

Ms. Stachowiak said that her decision to authorize the reduced separation requirements was based on the following:

- \* The site plan for the proposed Verizon tower at 1215 River Street was submitted to the City for approval in September of 2019. At the time that the site plan and the setback/separation distance waivers were approved by the Zoning Administrator, there were no antennas on the tower at 209 Baker Street. The only antenna that is currently on that tower was installed by Sprint in October of 2019. To the best of our knowledge (not disputed by SBA), the tower at 209 Baker Street had not been in use for more than a year prior to October of 2019, thus making it an "abandoned" tower by the standards of Section 1298.09 of the Zoning Ordinance. As such, the City could have and should have required the appellant to remove its tower at 209 Baker Street but failed to do so. Instead, the City allowed the tower to remain and even be put back into use by authorizing a permit for installation of the Sprint antenna. Had the City required the removal of that tower, the separation distance from it to the proposed tower would not be an issue. Given these circumstances, it is unreasonable for the appellant to

challenge the decision of the Zoning Administrator to authorize a slight waiver to the separation distance requirement between the two towers when the appellant's tower at 209 Baker Street should not even exist at this time.

- \* The only tool available to the Zoning Administrator to measure distances is with the City's GIS system which shows that the existing tower at 910 River Street is located more than 1,500 feet from the proposed tower. This is not a 100% accurate means of measurement, however, and thus, the Zoning Administrator cannot state with absolute certainty that it exceeds the separation requirement. At most, the separation distance is 1,481 feet which is a waiver of 19 feet (1.2%). Denial of the tower for such a slight reduction in separation, particularly when there is a fair chance that it may actually comply with the requirement, is not reasonable.

Ms. Stachowiak said that she would like to share her remaining time with the representatives from Verizon.

**Robert LaBelle, Attorney representing Verizon Wireless**, stated that the SBA tower located at 209 Baker Street was not in use for at least 3 years and thus, the City should have required it to be removed in which case, it would not even be an issue. He said that denial of the reduced setbacks and separation distances would result in the need for the company to seek an alternate location that it needs in order to optimize and prevent gaps in its coverage to serve the needs of its customers. Mr. LaBelle said that Verizon already has an antenna on the tower at 910 River Street and is still experiencing issues with its coverage in the area. He stated that the separation distance and setback waivers are very minimal and denial would prohibit the tower, despite it being in a location that meets the intent and purpose of the City's Ordinance regulating the placement of towers. He asked that the Board uphold the decision of the Zoning Administrator stating that she acted in accordance with the authority provided to her under the ordinance.

**Ronald Redick, attorney representing the appellant, SBA Communications**, stated that the Zoning Administrator exceeded her authority in granting the waivers to allow the tower at 1215 River Street and thus, her decision should be overturned. He said that this is all about economics because Verizon does not want to keep paying SBA to lease space on its towers. Mr. Redick stated that there is no technical justifications for allowing towers within 1500 feet of each other and in fact, that is contrary to the goal of the ordinance which is to reduce the number of towers by encouraging co-locations on existing towers of which, there are 2 in the area that are owned by SBA and can serve the needs of Verizon with regard to coverage. Mr. Redick said that in order for the waivers to be granted, the Zoning Administrator has to find that the waivers are necessary to encourage shared use and to reduce the proliferation of towers. He said that the waivers granted by the Zoning Administrator have the opposite effect.

Mr. Redick stated that Verizon has not submitted any technical information to demonstrate that their needs cannot be served by the existing towers within 1500 feet of the property tower. He said that Verizon has not even provided a rebuttal to the technical information that SBA provided which shows that its towers are sufficient. Mr. Redick stated that with regard to the tower at 209 Baker, SBA was in negotiations with Sprint, which now has an antenna on that tower, but they delayed making the decision until 2018 which is why it was vacant for some time.

Robert LaBelle spoke in response to the comments made by Mr. Redick. He stated that it is telling that the tower at 209 Baker Street was vacant for 3 years. He also said that the new tower will be half way between the two existing towers which fills a gap in coverage. Mr. LaBelle said that under Mr. Redick's interpretation of the ordinance, no waivers could ever be granted and thus, there would be no reason to provide for doing so in the ordinance. He said that the only cause for overturning the Zoning Administrator's decision would be if there had been an abuse of power and that is not case where this matter is concerned.

Ms. Alling opened the public hearing.

Seeing no one wishing to speak, Ms. Alling closed the public hearing.

Mr. Leaming asked if there is any dispute as to whether the tower at 209 Baker Street should have been removed, given the amount of time that it was not in use.

Ms. Stachowiak stated that the City should have required the tower to be removed but did not do so.

Mr. Iannuzzi asked what happens if the appeal is upheld.

Mr. LaBelle said that Verizon will have to find another location which will be difficult because the search ring to fill the coverage gap is so small. He said that Verizon has no desire to build new towers where it is not necessary as it is very expensive to do so. He said that co-locating is the preferred course of action.

Mr. Leaming asked if all of the towers shown on the map that SBA provided are owned by SBA.

Mr. Redick said that they are all owned by SBA.

Mr. Fryling asked Mr. LaBelle why there is a need for a new tower when there are other towers in the area.

Mr. LaBelle said that it is not just a matter of coverage but a matter of capacity and their needs simply cannot be met by collocating on an existing tower in the area.

Mr. Rice stated that the BZA is charged with determining if the Zoning Administrator position was appropriate and in keeping with the ordinance standard and with the intent and purpose of the ordinance. Mr. Rice stated that the waivers that were granted by the Zoning Administrator were minimal and the result was to allow a tower in a location consistent with the intent and purpose of the ordinance regulating towers. He said that he is not inclined to overturn the decision that is being appealed.

Mr. Leaming stated that both parties have monetary interest in this matter. He said that the tower that is the subject of the appeal is intended to achieve more capacity in the service area and only needed very minimal waivers in order to allow the tower in the proposed location so that it can fulfill that objective. Mr. Leaming stated that he does not find anything egregious with regard to the Zoning Administrator's decision.

**Mr. Rice made a motion, seconded by Mr. Leaming to deny the appeal and uphold the decision of the Zoning Administrator to waive the setback**

requirement and the required separation distance between towers in order to locate a new tower on the property at 1215 River Street. On a roll call vote, the motion carried unanimously (6-1). Mr. Berryman cast the dissenting vote.

V. OLD BUSINESS - None

VI. NEW BUSINESS

A. Excused Absences

Mr. Leaming made a motion, seconded by Mr. Rice to grant excused absences for Mr. Hovey and Mr. Solak. On a voice vote, the motion carried unanimously (7-0).

VII. APPROVAL OF MINUTES

A. Regular Meeting, October 10, 2019

Mr. Leaming made a motion, seconded by Ms. Jefferson to approve the minutes from the regular meeting held on October 10, 2019, as printed. On a voice vote, the motion carried unanimously (7-0).

VIII. PUBLIC COMMENT

IX. ADJOURNMENT AT 7:43 p.m.

Respectfully Submitted,

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Susan Stachowiak, Zoning Administrator