

**CITY OF CHARLEVOIX**  
**ZONING BOARD OF APPEALS MINUTES**  
**Wednesday, January 18, 2012 - 6:00 p.m.**  
210 State Street, City Hall, 2<sup>nd</sup> Floor Council Chambers, Charlevoix, MI

**(A) CALL TO ORDER**

The meeting was called to order by Vice-Chairperson Eveleigh at 6:01 p.m.

**(B) ROLL CALL**

Members Present: Richard Clem, Mary Eveleigh, Pat Miller, and Alternate Larry Sullivan  
Members Absent: Gary Anderson (excused) and Greg Withrow (excused)  
Staff Present: City Planner Michael Spencer

Alternate Larry Sullivan was designated as a voting member.

Motion made by Member Sullivan and seconded by Member Miller that Member Withrow be excused.  
Motion adopted by a unanimous voice vote.

**(C) APPROVAL OF AGENDA**

City Planner Spencer asked the Board to add the nomination of officers to the agenda. The Agenda was approved as amended.

**(D) APPROVAL OF MINUTES**

The Board reviewed the November 16, 2011 minutes.

Member Sullivan asked that in item (b) of page 2 the word "raising" be changed to "razing" and that the last sentence in the first paragraph be changed to read:

"Mr. Barron stated that it was determined in 2003 that 99 Auld Street was a separate lot of record."

Motion made by Member Clem and seconded by Member Sullivan that the November 16, 2011 be approved as corrected. Motion adopted by unanimous voice vote.

**(E) INQUIRY INTO POTENTIAL CONFLICTS OF INTEREST**

Member Sullivan asked if the Board had discussed if any Board members had any conflict of interest. Member Sullivan wishes to go on the record that he's a parishioner of St. Mary Church. Member Eveleigh stated that she too is a member of St. Mary Church. The Board agreed that Mr. Sullivan did not have a conflict of interest.

**(F) NEW BUSINESS**

1. Public Hearing for Project 2012-01 ZBA. Interpretation request from the Third Day Fellowship Church – Section 5.32(4)

- a. Staff Presentation

The City Planner gave the Board three letters that were received after the agenda was sent out. These letters are on file in the Planning Department.

- Email from Bob and Bonnie Lenhart of 803 State Street
- Email from D. Scott Kelly, BASES Executive Director
- Letter from Father Matthew Wigton, St. Mary Parish Administrator

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The Zoning Board of Appeals' members were sent letters from the following individuals prior to the meeting. These letters are on file in the Planning Department.

- Michael Walker, Executive Director, The Nehemiah Project
- John "Chip" Saur, Pastor, Community Reformed Church
- Rev. Gregory Culver, Charlevoix United Methodist Church
- Rev. Neil Wilson, First Congregational Church
- Pastor Michigan Arp, Family of Faith Ministries
- Pastor Neil Turner, Community Church of God
- Rev. James Athey, Bethany Lutheran Church
- Pastor Michael Ochs, Ironton Congregational Church
- Marge Krchak
- Nancy Staley

City Planner Mike Spencer reviewed the case with the Board. The applicant, Third Day Fellowship Church, is proposing to start a transitional home and day care facility at 801 State Street. The purpose of this faith-based transitional home is to shelter "women and children, who will be mentored and trained in the necessary life skills to give them the skills they need to break out of the cyclical patterns of marginalized living and become productive citizens in society." (Exhibit 1) The proposed name for the transitional home is Joppa House. The Catholic Church is willing to donate a home located at 104 W. Garfield that would be moved to 801 State Street.

The zoning ordinance does not have a definition for a shelter or transitional home; however, Section 5.32(4) does allow that "Churches and church-related structures, such as parish halls, parsonages, and cemeteries, shall be permitted" in the R-1 and R-2 Zone Districts. When a use is proposed that is not specifically listed or defined in the zoning, the ZBA has the authority to "classify a use into a comparable use category which is not specifically mentioned by this chapter" under Section 5.286 (2)(b) of the ordinance. This is essentially a public hearing for an interpretation request to see if the ZBA considers this transitional home and day care to be a "church-related structure." The ZBA's decision will not only apply to this property but also to any other parcels in the R-1 or R-2 Zoning Districts.

Member Clem asked if the Code had any requirements for day care centers. The City Planner advised the Board that the Code had a definition of day care.

The City Planner stated that the property (801 State Street) is owned by the church [Third Day Fellowship]. The existing structure is presently owned by a church [St. Mary Church] and the facility will be run and directed by a licensed and credentialed pastor. The residents will be participating in Bible study and encouraged to attend church services. Based on these facts, the City Planner thinks the building can be classified as a church-related structure. The ZBA's decision must be supported with findings of fact. The City Planner has drafted proposed findings of fact for the Board's consideration.

The City Planner reviewed with the Board Section 5.32, which addresses side and rear yard setback requirements; however, the language in the ordinance is unclear and clarification is needed on whether the side and rear yard setbacks would relate to the proposed transitional home.

Finally, the City Planner stated that there is language under the development plan section that specifically exempts R-1 and R-2 [from development plan review]; however, the City Planner would like the ZBA's opinion on that, as well.

b. Presentation by Applicant (if requested)

Dan Barron, representing Third Day Fellowship & Outreach, spoke to the Board, reviewed his December 16, 2011 letter (Exhibit 1) with the Board, and spoke in detail of the mission and methods of Joppa House, which is a street-level ministry.

Mr. Barron asked the ZBA to review the parking arrangements and verify that they are satisfactory. Most of the residents of Joppa House will not have the financial means to own a vehicle. The former structure [destroyed in July 2011] had three residential units, which required eight parking spaces per the ordinance. The applicant is proposing to provide seven spaces, which should be ample for residents and staff. He asked the ZBA to adopt the proposed findings of fact that find that the proposed Joppa House is a church-related structure because this property is owned by a church, will be directed by an accredited Church pastor, and tenants will be required to participate in Bible study and attend church services. Additionally, transitional homes often offer child care as a use associated within a church or church-related structure.

Third Day Fellowship & Outreach Director and Pastor Ginger Stevens addressed the Board. She reviewed Third Day's mission with the Board. The ministry, which opened in February 2011, operates a food pantry, holds a public church service on Saturday evenings, provides assistance to those in the community with rent evictions, utility shut offs and other needs, and works with other agencies such as the Department of Human Services, the Salvation Army, and the Northern Michigan Community Action Agency. This ministry results in seeing a lot of homeless in the community. The women who come into the facility are lacking in life skills and unable to provide for themselves and their families. Third Day Fellowship will train them in necessary skills and, if needed, help those with substance abuse issues. The Joppa House's goal is to empower, mentors and train women during a six-month coaching course in basic life skills, child care, personal boundaries, cooking, basic housekeeping, job skills, scheduling, work ethics, budgeting, and finances. The Joppa House seeks to offer day care for the women as they learn these skills and seek employment. Pastor Stevens advised the Board that the day care would have two adults overseeing up to twelve children. The daycare will be used primarily by the residents of Joppa House, but other children would be able to attend the day care if there are any openings. Joppa House will offer shelter for up to fourteen people. An innkeeper, who may be couple, will also reside on a full-time basis at the Joppa House for a total of fifteen or sixteen people at the House.

Member Miller asked for and received confirmation that there was parking on site.

Member Clem asked for clarification on what the ZBA needs to determine. City Planner Spencer advised the Board that he is asking the Board to decide if a transitional home is a church-related structure. Member Clem asked if the ordinance defines a day care center. City Planner Spencer stated that day care centers were ~~not~~ defined in the ordinance. Day cares are permitted as a special use in the R-1 and R-2 zone district. Member Clem asked if a day care center would be allowed if the transitional home was not there. City Planner Spencer stated that the zoning ordinance would allow the placement of a day care center [at 801 State Street], if a special use permit was given.

c. Call for Public Comment

Greg Stevens, Financial Officer of Third Day Fellowship, addressed the Board. The Joppa House is financed by donations and they currently have over one hundred thousand dollars in donations and in-kind services for the project. Day care costs will be on a sliding scale and permit the women to return to the work place.

Member Clem noted that he has concerns about density if other families would be able to use the day care, with fourteen individuals in the house and up to twelve more in the day care.

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Jim Malewitz, project engineer, stated that other area churches do not meet density requirements, and that the majority of the children in the day care will be residents at Joppa House.

Dan Barron advised the Board that the day care aspect of the Joppa House is a critical use of the home. Residents will need someone to care for their children so they can enter the job market. It is not just a church owning the property: the day care is an integral part of the transitional home.

Jim McMahon, St. Mary's parishioner, addressed the Board on behalf of St. Mary's Father Wigton. The Church is supportive of the mission and is donating the home. Additionally, the Parish Council has approved the use of the playground and a limited use of two parking spaces for Joppa House.

Jim Zeitler of 206 W. Garfield addressed the Board and voiced concerns about increased traffic flow. The two hundred block of W. Garfield is a very busy street. The Sheriff's Department, Pine River Place, Health Department, Andy's Store, and the recycling center are in the area and have contributed to the amount of traffic traveling on W. Garfield. He believes that the day care, if used by the general public, would also cause additional traffic.

Vice-Chairman Eveleigh closed the public hearing at 6:54 p.m.

d. Zoning Board of Appeals determination of findings of fact.

Member Miller asked if there would be church services held in the building. Pastor Stevens stated that the church services would be held at the Third Day Fellowship's Bridge Street location.

Vice-Chairman Eveleigh asked the Board to focus on the interpretation of Section 5.32, and asked if the fifty foot setback would be required. City Planner Spencer asked the Board to review the staff report. Paragraph (2) refers to public schools and colleges, which are large structures, being required to have the fifty foot setback. The ordinance language is confusing and does not list a church or church-related structure as being required to have the fifty-foot setback. The Joppa House is essentially a home being used as a church-related structure.

Member Miller asked if the fifty foot setback could be met. City Planner Spencer advised the Board that Joppa House cannot meet the fifty foot setback requirements at 801 State Street.

Member Clem feels a church-related structure should have a fifty foot setback. Member Sullivan also voiced support that the fifty foot setback should be required.

City Planner Spencer stated that there is no question about the meaning of this Section [5.32]; however, the Board can interpret whether or not the fifty foot side and rear yard setback mentioned in paragraph (2) is intended for this type of use.

Member Clem agrees that the facility should have a child care center, but voiced concerns with non-Joppa House residents using the child care facility. Member Clem asked for and received clarification that a State license is required, and that the license would allow up to 12 children.

Vice-Chairperson Eveleigh recessed the Board at 7:05 p.m.  
Meeting reconvened at 7:10 p.m.

Member Sullivan asked if the ZBA would be required to make the interpretation, if the Women's Resource Center were making this application. City Planner Spencer stated that the Women's Resource Center is not affiliated with any church, so it could not be considered as a

church-related structure and would require an amendment to the zoning ordinance to run a day care at this location.

Member Sullivan voiced support for the transitional house and a day care for the residents of the Joppa House; however, he feels that an ordinance amendment should be made to allow the use in the R-1 and R-2 zone districts and that the use comply with whatever setbacks are established in the R-1 or R-2 district.

Jim Malewitz of Performance Engineers spoke to the Board about the day care. He advised the Board that Pastor Stevens sees a number of women that are not able to look for a job or able to work unless they have affordable day care. The women may not need the transitional house but they need affordable day care. The day care costs will be on a sliding scale. The children may be living in the house or they may be living elsewhere. The day care is required to have two employees to oversee the day care, which is an added expense.

e. Motion

City Planner Spencer reviewed the items the Board needs to consider:

- Is a transitional home a church-related structure? If yes, then:
  - Does the fifty foot setback for side and rear yard apply?
  - Does the transitional home have to apply for development plan review?

The Board discussed transitional homes. A transitional home is not listed as an allowable use in the single family district; it is not defined or listed anywhere in the ordinance.

The Board agreed that the proposed transitional home should be interpreted to be a church-related structure because there is a licensed and credentialed minister overseeing the house. The Board reviewed and discussed the proposed findings of fact.

Motion made by Member Miller ~~the~~ <sup>^that^</sup> we [the Board] accept the findings of fact as written, and the bottom [of the last paragraph of the proposed findings of fact] which reads "the ZBA finds that section 5.32(2) does not apply", that that paragraph be attached and that we [the Board] move that the ZBA finds that the proposed transitional home is interpreted to be a church-related structure based on the findings of fact contained herein.

Member Sullivan objected to the inclusion of that part of the motion which refers to Section 5.32(2). Motion died due to lack of a second.

Motion amended by Member Miller to read: that we [the Board] accept the findings of fact as written in paragraph one, [in its entirety]. Motion seconded by Member Sullivan.

*The ZBA finds that the proposed transitional home is a church-related structure and therefore an allowable use in the R-1 and R-2 Zone. The City has documentation that this property is owned by the Third Day Fellowship Church, which is a registered Michigan ecclesiastical corporation and a member of the Charlevoix Ministerial Association. The ZBA finds that the Third Day Fellowship Church will require tenants to participate in Bible study and attend church services as evidenced in the Joppa House overview (Exhibit 1). Further, the director of the Joppa House is a credentialed Assemblies of God Pastor and director of the Third Day Fellowship Church. The ZBA finds that shelters and/or transitional homes are often owned and operated by a church, a group of churches, or other faith based organizations. Child care is also a common use associated within a church or church-related structure. In summary, the ZBA finds that the proposed Joppa House is a church-related structure because the property is owned by a church, will be directed by an accredited church pastor, will require residents to attend Bible study and church services, and transitional homes with child care facilities are uses commonly associated with churches and church-related structures.*

Motion adopted by the following yea and nay votes:

Yeas: Members Miller, Eveleigh, and Sullivan  
Nays: Member Clem

Motion adopted.

Member Sullivan reviewed Section 5.32(2) with the Board. He feels that the language of this section is clear and the side yard and rear yard setback requirements are applicable. Planner Spencer reminded the Board that if the language in the ordinance is unclear, the Board has the authority to interpret the ordinance for clarification or revise the ordinance to make it clear. Planner Spencer agreed that the language is clear; what is unclear is whether or not the language applied to all churches and church-related structures per subparagraph (4), or just those structures that are similar to those listed in subparagraph (2).

Member Sullivan and Member Clem feel the language is clear and the ZBA does not have the ability to interpret this section.

City Planner Spencer asked the Board if the use, a transitional home, is similar to a public school and college, public buildings and public utility buildings.

Dan Barron stated that the Board of Appeals has the authority to interpret if there is any ambiguity in the ordinance. The two paragraphs do not tie in clearly with one another. It easily can be interpreted that when looking at church-related structures which have a public aspect such as gathering places, the larger setbacks are required. However, a parsonage or a home for the minister in a single-family district, which happens to be church-related, should not require the larger side and rear yard setbacks. The ordinance clearly requires that a building for larger gatherings requires the bigger setbacks. The proposed findings of fact are specific enough to derail any precedence setting.

Motion made by Member Miller and seconded by Member Sullivan that we [the Board] accept the last paragraph under findings of fact as written.

The motion failed by the following yea and nay votes:

Yeas: Members Miller and Eveleigh  
Nays: Member Sullivan  
Abstained: Member Clem

The Board discussed alternative language to the proposed findings of fact.

Motion made by Member Miller and seconded by Member Sullivan that the ZBA finds that Section 5.32(2) does not apply to transitional homes in R-1 and R-2 Zoning Districts. Further, churches and church-related structures are not listed in 5.32(2).

Motion adopted by the following yea and nay votes:

Yeas: Members Clem, Miller and Eveleigh  
Nays: Member Sullivan

The Board of Appeals reviewed Section 5.188 (1) as it relates to this project. The Planner is uncertain if this project should be subject to Development Plan review. The building that was on the site prior to the July 2011 fire had three apartments in the building.

The Board considered the number of adults that would live at Joppa House.

Member Sullivan advised the Board that the previous planner had required churches to have development plans.

Motion made by Member Sullivan and seconded by Member Miller that based upon the language of Section 5.188 Development Plan reads clearly that no building shall be erected or structurally altered, nor shall any grading take place in any zone district, except R-1 and R-2, nor shall any change in use as defined by use regulation which requires an increase in parking spaces within the various zone districts be permitted.

Motion adopted by the following yea and nay votes:

Yeas: Members Clem, Eveleigh, Miller, and Sullivan  
Nays: None.

### **(G) OLD BUSINESS**

1. Discussion on 101 Auld Street Variance Application/Legal Opinion

City Planner Spencer advised the Board that the variance application has been withdrawn based on the legal opinion. The Board reviewed the Bryan Graham's November 28, 2011 legal opinion. It is the opinion of the Attorney that the parcel existed prior to the enactment of the zoning ordinance and 99 Auld Street is a separate lot of record.

Member Sullivan briefly left the room at 8:04 p.m.  
Member Sullivan returned to the dais at 8:07 p.m.

Vice-Chairperson Eveleigh asked that her disagreement with the City Attorney's legal opinion be made part of the official minutes.

2. Review and discussion of Draft ZBA Bylaws

Motion by Member Sullivan and seconded by Member Clem, to postpone discussion of the proposed bylaws to the next regular meeting. Member Sullivan asked Board members to review the draft bylaws. There was no objection.

3. Election of Officers

Item was postponed until the next meeting.

### **(H) ADJOURNMENT**

Motion made by Member Miller and seconded by Member Clem that the meeting be adjourned.

Motion adopted by unanimous voice vote.

The meeting was adjourned at 8:24 p.m.

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Mary Eveleigh, Vice-Chairperson

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Greg Withrow, Chairperson

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Carol A. Ochs, City Clerk

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Linda Jo Weller, Recording Secretary