

**CITY OF LAPEER
MINUTES OF A REGULAR
ZONING BOARD OF APPEALS MEETING
NOVEMBER 4, 2020**

A special meeting of the City of Lapeer Zoning Board of Appeals was held electronically via GoToMeeting and at Lapeer City Hall, 576 Liberty Park, Lapeer, Michigan on Monday, November 4, 2020 at 6:30 p.m.

Members Present: Chairman Bernard Jocuns, Vice Chairman Jeff Hogan, Ms. Bailey RaCosta, Mr. Paul Parsch and Mr. Eric Cattane.

Members Absent: Mr. Joe Black.

Also Present: Ms. Caitlyn Habben, Rowe Professional Services Company Planning Consultant, and Kim Hodge, Deputy City Clerk.

Chairman Jocuns called the meeting to order at 6:30 p.m.

PUBLIC COMMENTS

Several letters and emails which were all in support of the administrative decision appeal from The Refuge Homeless Shelter of Lapeer were read into the record.

Chairman Jocuns read letters and emails of support received from Nancy Williams, Diane Jones of New Hope Missionary Church, Reverend Colleen Dewey of St. Matthew's Anglican Church, Paul Jones, Timothy Campbell of Life Resource Center, Dorothy McHutchion and Lapeer County Commissioner Dyle Henning.

Ms. Habben read letters and emails of support received from Pastor Todd Petty of Hillside Discipleship Church, Zachary Smith, Linda McAlpine, Michelle Kollhoff and Lisa Schultz.

Ms. Hodge read letters and emails of support received from Jean Metzger of Hunters Creek Community Church, Mindy Schwab of Professional Alcohol and Substance Screening and Thomas Saelens of Lapeer County Community Collaborative.

PUBLIC HEARING SCHEDULED

The Refuge Homeless Shelter of Lapeer – Appeal of Administrative Decision – Accessory Use

Ms. Habben reviewed the request from The Refuge Homeless Shelter of Lapeer located at 1009 N. Saginaw Street of an appeal of an administrative determination that when the primary use of a building is a place of worship, it is allowed to have individuals stay overnight for no more than two consecutive weeks (14 days) in a 30 day period as an accessory use. Ms. Habben stated the request is not a variance, that use variances are not permitted and that the determination applies to all churches and places of worship in the City of Lapeer.

Ms. Habben reported a homeless shelter is currently classified as a hotel use which is permitted as a Special Land Use in the CBD-1, CDB-2, B-2, B-3 and Mixed Use districts, that the current shelter process is to rotate hosting the homeless for a week at a time with other churches in the area which is considered an accessory use to a church. Ms. Habben stated no permit is required for this activity and she is not aware of any complaints received on the current process.

Ms. Habben summarized the detailed response provided by Attorney for The Refuge Homeless Shelter of Lapeer Tim Denney which included the fact that due to the Covid-19 pandemic the number of churches hosting the shelter has been reduced due to social distancing requirements. Ms. Habben informed the board the Planning Commission has scheduled a public hearing at their November 12th meeting to consider new Zoning Ordinance language to regulate Transitional Housing which would permit a full time homeless shelter use and determine in which zoning districts to allow the use. Ms. Habben listed the following best practices for the board to consider for an appeal of an administrative decision:

1. Was the Zoning Administrator's action arbitrary or capricious?
2. Was the Zoning Administrator's action erroneous finding of a material fact?
3. Was the Zoning Administrator's action an abuse of discretion?
4. Was the Zoning Administrator's action based on an erroneous interpretation of the Zoning Ordinance?

Ms. Habben reviewed the following findings used when considering her determination:

- The determination is for all churches located in a residential district;
- It would appear that only 2 other churches would be needed to run under this model and The Refuge would be allowed to operate as they have in the past;
- There is no legal course to approve the request even as a temporary use within the residential zoning district where churches are located as the language currently exists;
- The intent of the Single-Family Residential zoning district; and
- The fact that Bed & Breakfast operations are not a permitted use in residential districts.

Ms. Habben stated The Refuge site at 1009 N. Saginaw is zoned R-2 Single-Family Residential and reviewed the definition of Accessory Use, that the determination cannot be made for only a certain period of time and that if the overnight accommodations were to exceed two weeks in a 30 day period it would constitute the predominant use as a homeless shelter. Ms. Habben further stated the determination applies to all churches located in residential districts in the City not just the current location of The Refuge at 1009 N. Saginaw and that all accessory uses and applicants need to be treated similarly.

Discussion was held regarding the fact that if the church was located in a different zoning district the determination would be the same, the location of the LCADA operation on S. Saginaw Street south of the Lapeer High School, the classification of The Refuge's current operation at 1009 N. Saginaw as a place of worship, the fact the determination applies to all churches not just the current site of The Refuge. It was also discussed that the use which is classified as a hotel use is permitted in other current zoning districts in the City and whether The Refuge has plans for opening a permanent shelter at another location.

Chairman Jocuns opened the public hearing at 7:21 p.m.

Mr. Wade Jenkins, 624 N. Madison St., Lapeer, stated there are no plans to use the 1009 N. Saginaw location as a permanent homeless shelter and a task force has been formed with the Lapeer County Community Collaborative to fund a shelter at an alternate location.

Attorney Tim Denney summarized his appeal of the administrative determination and stated the current request is only from now through April 30, 2021, that he is aware the Planning Commission is working on a text amendment to regulate transitional housing, that there has been no issues with the operation at 1009 N. Saginaw and that due to the statewide Covid-19 emergency the zoning ordinance needs to be flexible. Mr. Denney stated the homeless need a place to stay for an entire month, that these are not normal times, that he understands this is not a variance and he asks the ZBA members to reverse the interpretation through April 30, 2021.

There being no further comments, the public hearing was closed at 7:29 p.m.

Discussion was held on the Planning Commission's upcoming consideration of a text amendment regulating transitional housing, the fact the current language before the Planning Commission does not permit the use in residential zoning districts, issues with other churches accommodating the use while maintaining social distancing, the lack of a legal course to allow an exception for the use and the fact the use is permitted in other currently zoning districts in the City.

After discussion, it was moved by Mr. Jocuns and supported by Mr. Parsch to deny The Refuge Homeless Shelter of Lapeer's appeal of an administrative decision to allow a homeless shelter as an accessory use to a place of public assembly and place of worship not to exceed a two week (14 day) occupancy out of a 30 day period based on the following findings:

- The decision was not based on arbitrary or capricious actions;
- The decision was not based on an erroneous finding of a material fact;
- The decision was not based on an abuse of discretion; and
- The decision was not based on an erroneous interpretation of the Zoning Ordinance.

ON A ROLL CALL VOTE:

Yeas: Mr. Jocuns, Mr. Cattane, Ms. RaCosta, Mr. Hogan and Mr. Parsch.

Nays: None.

Absent: Mr. Black.

Abstain: None.

MOTION CARRIED.

ADJOURNMENT

There being no further business, it was moved by Mr. Jocuns to adjourn the meeting at 7:41 p.m. **MEETING ADJOURNED.**

Mr. Paul Parsch, Secretary