The Chairman, Glenn Clark, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M. on Tuesday, November 17, 2009 in Council Chambers of the Troy City Hall.

PRESENT: Michael Bartnik
Glenn Clark
Kenneth Courtney
Edward Kempen
Matthew Kovacs
Dave Lambert
Phillip Sanzica

ALSO PRESENT: Mark Stimac, Director of Building & Zoning
Allan Motzny, Assistant City Attorney
Pamela Pasternak, Recording Secretary

ITEM #1 – APPROVAL OF MINUTES - MEETING OF SEPTEMBER 15, 2009

Motion by Bartnik
Supported by Courtney

MOVED, to approve the minutes of the meeting of September 15, 2009 with the following changes:

Page 4, Item #4, paragraph 4 the following is to be added: "Mr. Rascol also brought in paperwork from the City Council meeting from 1998, which *he had interpreted as granting* approval of the storage of this vehicle outside."

Page 7, paragraph 1 – the word "under" to be changed to "understand" and in the last sentence of the same paragraph, the following change:
"Economics have changed *up and down* over the years and the truck has not been moved."

Yeas: All – 7

MOTION TO APPROVE MINUTES AS AMENDED CARRIED

ITEM #2 – APPROVAL REQUESTED. JOHN BRODERICK OF THE HONEY BAKED HAM COMPANY, 1081 EAST LONG LAKE, for approval to place two temporary storage containers outside at the rear of 1081 E. Long Lake for the time period from November 21st through December 31, 2009 and November 21st through December 31, 2010.

Mr. Stimac explained that the petitioner is requesting approval to place two temporary storage containers outside at the rear of 1081 E. Long Lake for the time period from November 21st through December 31, 2009 and November 21st through December 31,

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ITEM #2 – con't.

2010. The containers are used to store additional non-perishable supplies through the holiday months. Section 43.80.00 of the Zoning Ordinance allows the Board of Zoning Appeals to permit temporary buildings for permitted uses for periods not to exceed two (2) years.

Mr. Broderick was present and stated that this request is the same as the request done in previous years and was hoping that the Board would grant approval. Mr. Broderick went on to say that is a seasonal request and these trailers aid them in the storage of dry items such as boxes and wrapping goods.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are five (5) written approvals on file. There are no written objections on file.

Motion by Kovacs
Supported by Courtney

MOVED, to grant John Broderick, Honey Baked Ham Company, 1081 East Long Lake, approval to place two temporary storage containers outside for the time period from November 21st through December 31, 2009 and November 21st through December 31, 2010.

- Variance is not contrary to public interest.
- There are no objections on file.
- Variance will not have an adverse effect to surrounding property.

Yeas: All – 7

MOTION TO GRANT VARIANCE CARRIED

Mr. Bartnik said that one of the areas where this Board has authority is to make recommendations to City Council and he suggested that this Ordinance be modified to address retail customers that come before the Board for temporary approval that would be for a few weeks, rather than a full two years. Mr. Bartnik said that he does not see this type of request coming before the Board very often.

Mr. Clark said that he understands Mr. Bartnik's concerns and although there has never been a problem with this site, he would be concerned about granting blanket approval for all seasonal requests.

Mr. Kovacs said that this variance in the past has received opposition in the past but the people opposing the request did not totally understand the nature of the variance.

ITEM #3 – VARIANCE REQUESTED. WALLACE HALEY, OF HALEY LAW FIRM PLC, 1890 E. SQUARE LAKE (proposed address), for relief of the Zoning Ordinance to construct a 120' high cellular phone antenna tower within 49' of the west property line where the site abuts residentially zoned property. Paragraph C of Section 20.25.01 requires that the setback of the tower from abutting residentially zoned or used property be at least five times the height of the structure, which would mean that this tower would be required to be at least 600' setback from residentially zoned property.

Mr. Stimac explained that the petitioner is requesting a variance to construct a new 120' high cellular phone antenna tower. Paragraph C of Section 20.25.01 requires that the setback of the tower from abutting residentially zoned or used property be at least five times the height of the structure, which would mean that this tower would be required to be at least 600' setback from residentially zoned property. The petitioners are proposing to place this tower 49' from the west property line where the site abuts residentially zoned property. The adjacent property is currently developed and used as a religious facility.

A discussion began regarding the property along John R. Mr. Stimac explained that the Ordinance dictates that the tower has to be five (5) times its height from residentially zoned and/or used property. A shopping center is located on the corner of John R. and Square Lake, a medical office is located to the south of the shopping center, and there is a day care center south of that. There is a single family home farther to the south on John R, but that property does not abut the site in question.

Mr. Courtney said that the vacant property to the south is zoned residential and asked if there were any plans for development of that site.

Mr. Stimac said that the Building Department has not received any plans regarding development of this site. The owner of that property is a commercial real estate developer and this parcel is zoned single-family residential.

Mr. Haley and Mr. Mark Voight the owner of the Bowling Alley were present. Mr. Haley explained that they had appeared before the Planning Commission and they feel that putting the tower in the back corner of the site makes the most sense. Mr. Haley said that he has been involved in trying to get a tower in this area for the last six years. The location of the tower would be back by the trees and visibility would be very low. Mr. Haley also said that they have studied the Master Plan and this area is referred to as a "neighborhood node" and Mr. Haley feels that this tower in its proposed location is a good fit for that plan. The plan proposed before the Planning Commission indicates that this will be a monopine tower and the Planning Commission felt that this type of structure would be aesthetically pleasing. The existing trees range from 30' to 75' in height and this monopine tower will be less obtrusive backing up to the trees.

Mr. Haley also said that this tower is a necessity as this area has a need for coverage. There are no surrounding towers and this tower will not have an adverse effect to surrounding property. If they were to move the tower farther east it would be closer to a

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heavily residential area. Because this is a natural wooded lot, it will provide screening. Mr. Haley does not believe there is any focus of view on the east side of the Church and therefore the tower will fit in with the surrounding area. Regardless of where this tower is located, a variance would still be required.

A discussion began about placing this tower on the Church property and Mr. Haley stated that he was not directly involved with that request but did learn that the Church did not want this tower on their property.

Mr. Kovacs asked if this tower could be moved farther east behind the bowling alley or if the petitioner had considered the possibility of putting the tower on top of the bowling alley.

Mr. Haley said that a variance would still be required and it would be a nightmare to construct the tower on the bowling alley. Mr. Haley said that they did consider moving it farther east, but felt that it would be more visible to the people living in the subdivision to the south. Mr. Haley went on to say that the sub is 90 degrees from where the proposed location of the tower is, and moving the tower to the east would create more visibility. A lot of thought went into this decision and Mr. Haley feels that this is the best location for this tower. The trees around this location are deciduous trees and therefore visibility would be at the highest at this time of year. AT & T is more than willing to construct this monopine tower at a higher cost in order to have it fit in with the area around it.

Mr. Kovacs asked if there had been any towers of this type that have totally failed and collapsed.

Mr. Haley said that even if there was a catastrophic storm, the tower would not fall from the base, but would "crimp" in the middle and fall over. These towers are built with a number of stress points and are very structurally safe.

Mr. Courtney said that he would not care to see a cellular tower with a tree on the top, such as the tower that was constructed at Manresa.

Mr. Haley said that in this particular location the Planning Commission felt that the monopine tower was a better aesthetic factor for this area.

Mr. Kovacs asked if the Planning Commission had taken a vote on this location and Mr. Sanzica said that the Planning Commission had not voted.

The Chairman opened the Public Hearing.

Mr. Dumitru Puiu, Council President of Holy Trinity Romanian Orthodox Church was present and stated that they object to this request as he is concerned about the health

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risks associated with cellular towers. Mr. Puiu also stated that he believes this tower will have a negative effect on the value of the Church property. Mr. Puiu stated that another cellular company had approached them about one year ago with the same proposal and the Church rejected that proposal. On the east side of the Church is the Sunday School and the children play in this area, and there are play practices on Saturday and during the week. Mr. Puiu also stated that there is no way to control how many cellular companies would go on this tower.

Father Calin Barbolovici, the Parish priest was also present and supported Mr. Puiu's concerns regarding the location of this tower. Father Barbolovici said that the proposed location is too close to the Church property and would like to see the tower placed much farther away. This issue was discussed in the general assembly of their community and everyone was concerned about the health issues. Father Barbolovici said that he had read a paper from Germany that said that the minimum distance of a cellular tower should be 400 meters.

No one else wished to be heard and the Public Hearing was closed.

There are two (2) written objections on file. There are no written approvals on file.

Mr. Courtney asked if there was a cellular tower located on the Sylvan Lake Golf course and Mr. Stimac said that there was; but that tower predates the current language in the Ordinance that prohibits cell towers on park sites.

Mr. Courtney then asked if the tower in Sylvan Glen offered enough coverage. Mr. Haley said that it did not and this is the reason another tower is needed. Mr. Haley went on to say that that there is very little coverage north and west of this park.

A discussion began regarding the coverage of the cell towers at John R. and Wattles as well as the cell tower at Sylvan Glen. The capacity of each tower was also addressed.

Mr. Courtney asked if this tower could be made larger and Mr. Haley said that increased height does not necessarily increase the coverage provided.

Mr. Sanzica said that he is familiar with the monopine towers and did not find it distracting at all and asked how many carriers could be added to this tower.

Mr. Haley said that it would be able to hold multiple carriers and this monopine tower is much sturdier than other towers. You also have to make sure there is plenty of ground space around it to install extra equipment.

Mr. Sanzica said that there are health concerns regarding towers that are this size. Mr. Haley stated that the Federal Government has preempted health issues from any discussion when a municipality is determining the location of a tower.

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Mr. Haley addressed the uses that he believes are in place on the east side of the Church. Mr. Sanzica said that he felt that was inappropriate and asked Mr. Haley to address the need for the tower on this site.

Mr. Clark said that in his opinion this request is for a very large variance and people in the area are concerned about health issues as well as the fact that this tower could devalue the value of their property.

Mr. Kovacs concurred with Mr. Haley and said that the Federal Government dictated that health issues could not be considered.

Mr. Clark said that the Board did not have to grant a variance if it was determined that this tower would devalue surrounding property.

Mr. Kempen said that he is in favor of this location as it would aid thousands of people in the surrounding subdivision and the tower would have a favorable impact to the surrounding area.

Mr. Courtney asked if the tower could be moved more to the center of the property and farther south.

Mr. Haley said that it could be done, but they felt the proposed location was the best as it would be backed by the trees.

Mr. Kovacs said that he thinks the proposed location is too close to the existing house and he would like to see it moved farther east.

Motion by Courtney
Supported by Bartnik

MOVED, to grant Wallace Haley, Haley Law Firm, 1890 E. Square Lake, relief of the Zoning Ordinance to construct a 120' high cellular phone antenna tower.

- Tower will be a regular tower and not a "monopine" tower.
- Tower will be located 149' from the west property line.
- Tower will be located along the south property line.

Board members began discussing the proposed location of the tower with the motion made by Mr. Courtney. Mr. Bartnik asked if 149' was near the driveway on the property.

Mr. Stimac explained that the driveway is on the eastern edge of the property closest to the medical office. The bowling alley building is approximately 100' from the west property line, and the building is about 225' in width. 149' from the west property line would be about one-quarter of the width of the building heading east.

ITEM #3 – con't.

Mr. Bartnik then asked where 200' would be located and Mr. Stimac pointed that location out on the plan.

Mr. Lambert said that he did not like to create legislation on the "fly" and thought it may be better to postpone this request until the next meeting to allow the petitioner to determine if other locations could be utilized. Mr. Lambert also asked Mr. Stimac if he thought there would be any impediments in the way of a new location.

Mr. Stimac said that in looking at the documentation submitted by the petitioner, there did not seem to be any other issues that would preclude moving the tower farther east.

Mr. Bartnik asked about the location of the medical building if the tower was moved farther east.

Mr. Stimac said the proposed location under discussion was approximately 188' from the medical office and about 195' from the Day Care center.

Mr. Sanzica stated that he was concerned about the conditions that were added to the motion.

Mr. Motzny explained that this Board had the authority to modify the original request and add conditions.

Mr. Courtney said that he would rather look at a regular cellular tower than a tower with a tree on top of it.

Motion by Lambert
Supported by Courtney

MOVED, to postpone the request of Wallace Haley, Haley Law Firm, 1890 E. Square Lake, for relief of the Ordinance to install a 120' high cellular tower within 49' of the west property line where Paragraph C of Section 20.25.01 requires that the setback of the tower to be at least 600' setback from residentially zoned property.

- To allow the petitioner the opportunity to review the plans submitted and come back to the Board with an alternative location.

Mr. Bartnik asked if Father Barbolovici's residence was on the property and Mr. Stimac confirmed that it was.

Mr. Sanzica said that the Planning Commission did not vote on this request but were very impressed with the design of the tower. Mr. Sanzica said that he feels that this request is going backwards.

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Mr. Courtney asked if Mr. Sanzica had seen the tower located at Manresa. Mr. Sanzica said that he had only seen it in pictures.

Mr. Kempen asked if the petitioner was comfortable with postponing this request until next month and Mr. Haley said that it would not be a problem.

Mr. Bartnik asked what a "monopine" was and Mr. Stimac said that it is a type of tower pole with artificial foliage at the top to make it appear to be a tree. The picture submitted indicates a tower that has one carrier and asked if the petitioner could provide Board members with a picture of a tower that has more than one cell phone company on it.

Mr. Haley said that he would.

Mr. Kovacs stated that the impact to homes constructed in the future would be greater if the tower was moved closer to the south property line.

Vote on motion to postpone until the meeting of December 15, 2009.

Yeas: 6 – Lambert, Sanzica, Bartnik, Clark, Courtney, Kempen
Nays: 1 – Kovacs

MOTION TO POSTPONE THIS REQUEST UNTIL THE MEETING OF DECEMBER 15, 2009 CARRIED

Mr. Stimac explained that the Zoning Ordinance has changed in that people go to the Planning Commission first and then come to the Board of Zoning appeals if a variance is required on an item that requires site plan approval. The Planning Commission is not taking any final action on these items, nor is it making any kind of recommendations to the Board of Zoning Appeals.

Mr. Stimac also stated that now the Planning Commission will see the plans before they are presented to the Board of Zoning Appeals. The intent was to prevent a petitioner coming to the Board of Zoning Appeals and then going to the Planning Commission and having to come back to the Board of Zoning Appeals regarding a different site plan location. Whether the Planning Commission approves or doesn't like the plans, they will not make a recommendation to the Board of Zoning Appeals.

The Board of Zoning Appeals meeting adjourned at 9:10 P.M.

Glenn Clark, Chairman

Pam Pasternak, Recording Secretary