

PLANNING AND ZONING COMMISSION

MINUTES OF MEETING HELD April 5, 2018 7:00 p.m. Council Chambers
DATE TIME PLACE

MEMBERS PRESENT: Stephan Ryder, Gerald Taylor, Julie Oliver and Kevin Heilmeier

MEMBERS ABSENT: Patrick Larson

CHAIRD BY: Gerald Taylor

SECRETARY: Regina Conti

REGULAR MEETING

SPECIAL MEETING

PRESENT: Mayor David Kline
Adam Paul, Planning & Zoning Department
Rita Weinberg, Planning Director / Economic Developer
Megan Raber, Law Director
Mary Ann Driscoll, Burgess & Niple

ITEMS TO BE DISCUSSED

Item # PZ18-04-01

Mark C. & Kimberly M. Hussing – Applicant
Gregory S. & Sheri A. Peters – Owner
Replat Application
Olde Orchard Estates Phase III
For review and determination

Item # PZ18-04-02

All Heart CrossFit – Applicant
John Anderson/Anderson Family LTD. – Owner
4481 Crystal Parkway, Suites 800 & 900
Special Non-Residential Development Application
Fitness Classes
For review and recommendation to Council

Item #PZ18-04-03

T & T Retail, LLC, Tyra Zwick – Applicant
BGR Warehouse LLC – Owner
132 Osceola Avenue
Conditional Zoning Certificate Application
Amusement Arcade
For review and recommendation to Council

The April 5, 2018 meeting of the Planning & Zoning Commission was called to order at 7:01 p.m. by Chairman, Gerald Taylor.

The meeting opened with the Pledge of Allegiance.

Roll called. All members were present with the exception of Patrick Larson.

Mr. Taylor: **Mr. Larson asked to be excused. I will make a motion to excuse Patrick Larson from this meeting.**

Mr. Heilmeier: Second.

Roll called. All members voted in favor (4-0).

Mr Taylor: Next item on the agenda is the approval of the March 2018 minutes as published.

Mr Ryder: **I would like to make a motion to approve the minutes from March 1, 2018 as recorded.**

Mrs Oliver: **second**

Roll called. All members voted in favor (4-0).

Mr. Taylor: Agenda additions? Adam, I don't see any additions.

Mr. Paul: No sir, no additions.

Mr. Taylor: Correspondence and communications, Adam – anything?

Mr Paul: Yes, we did have a number of correspondences that came into the Planning & Zoning Department over the course of April 4 and 5. All of those have been distributed to the members and to the applicant.

Mr Taylor: These are in reference to Item 3 on the agenda.

Mr Paul: that is correct. The proposed conditional zoning at 132 Osceola Ave.

Item # PZ18-04-01

Mark C. & Kimberly M. Hussing – Applicant

Gregory S. & Sheri A. Peters – Owner

Replat Application

Olde Orchard Estates Phase III

For review and determination

Mr Taylor: First item on the agenda is PZ18-04-01, Mark C and Kimberly M Hussing, applicant; Gregory S and Sheri A Peters, owners for Replat application of Olde Orchard Estates, Phase III. Is the applicant in the audience?

Mark Hussing, 847 Olde Orchard Drive, Tallmadge OH 44278

Mr Mark Hussing was sworn in.

Mr Taylor: Go ahead with your request.

Mr Hussing: My wife and I would like to acquire some of Greg and Sheri's property. They own approximately 1.6 acres behind my house. They are willing to let me acquire 10 ft x 165 ft across the back of my property. That is what we are requesting the City to okay.

Mr. Taylor: The request is to expand for what reason?

Mr. Hussing: We would like to put an in-ground pool. So with this additional 10 feet we can put a pool here – and then on Tuesday come in to try to get a variance. That is my next step after this hopefully gets approved.

Mr Taylor: The pool will be closer than 10 feet.

Mr Hussing: well 10 feet from what?

Mr Taylor: from the property line

Mr Hussing: it is currently. Yes it would be.

Mr Taylor: Adam has there been any correspondence or inquiries about this property from anyone – neighbors?

Mr Paul: No sir, not as related to this application. To clarify on why it is here is because, Olde Orchard Estates Phase III was platted as you see it now and per the code if there is any change, erasure, expansion, etc of any kind of recorded plat it has to come to you for that review and approval. Even for something like this minor lot split, because it is coming from outside the platted allotment – it needed to be here for that process. I have not received any inquiries about it.

Mr Taylor: Let's go through the questions. There is Mr Burgoon, your surveyor, to speak. Mr Burgoon, please come up.

Joseph Burgoon, Lewis Land Professionals, 8691 Wadsworth Rd, Wadsworth Ohio.

Mr Joe Burgoon was sworn in.

Mr Taylor: please give us a little background of what you did for Mr Hussing.

Mr Burgoon: Mr Hussing would like to purchase 10 feet. The Peters property is not within the Olde Orchard subdivision. It is unincorporated land so they have added the 10 feet straight off the back of their property. So we prepared a replat of subplot 61 of Olde Orchard Estates to include that property and take the acreage, total acreage .0379 acres to be added to their subplot.

Mr Taylor: Adam, does the existing subdivision have to be re-drawn because of this addition?

Mr Paul: not in its entirety. What you are seeing in effect is sufficient to serve that purpose.

Mr Taylor: since this is Olde Orchard Estates III – is there an association in that area?

Mr Paul: I don't believe so, No.

Mr Taylor: my question – do the property owners need to approve this change?

Mr Paul: no I don't think so. I think that is the reason we can have it come to this Commission as there has been a change to a recorded plat. If you think it is appropriate – you can review and consider it.

Mr Taylor: I did not understand it completely – if it had anything to do with the subdivision or not. Any questions by Commission members?

Mr Taylor: Any concerns by the City?

Mayor Kline: no the only concern is Ellen Drive – that is earmarked. You had that at your last commission meeting off of Treat where Ellen tied into the back. If in fact, Ellen ever went through – this lot right here – is still large enough to be able to form a lot right there. That was the concern at the beginning – they were thinking about taking more property but that may take it away from being a buildable lot. That does not happen at this point. If they choose to get closer than the 25 ft setback – they do have to go in front of BZA – already scheduled. The neighbors were notified of that. That is really not to do with this Board.

Mr Taylor: any further questions from Commission members?

Mr Taylor: Is there anyone else in the audience that would like to speak? Either for or against this proposal.

Mrs Oliver: **Based on the replat and supporting documents submitted on March 14, 2018, I move to approve the replat for item PZ18-04-01 Mark C and Kimberly M Hussing, applicant, Gregory and Sheri A Peters, owner for the replat of Olde Orchard Estates Phase III consisting of inclusion of .0379 acres from outside the platted allotment to the existing point 0.346 acre parcel of Sublot 61 based on the following standards:**

- (a) Compliance with the City of Tallmadge Thoroughfare Plan;**
- (b) Compliance with zoning**
- (c) Compliance with design standards of these regulations and**
- (d) Compliance with the procedural requirements of these regulations and that all requested variances requested per the preliminary plat are granted upon a finding that there are unusual or exceptional factors or conditions that require such modifications due to a finding that:**
 - (a) Unusual topographical or exceptional physical conditions exist**
 - (b) Strict compliance with the regulations would create an extraordinary hardship in the face of the exceptional conditions**
 - (c) The approved modifications depart from these regulations only to the extent necessary to remove the extraordinary hardship**
 - (d) The modifications granted will not be detrimental to the public interest nor in conflict with the intent and purposed of the regulations when modified**
 - (e) Require such other conditions to be met by the proposed plat as the Planning Commission may find necessary to accomplish the purposes of these regulations when modified.**

Mr Heilmeier: **Second.**

Mr Taylor: Discussion? Hearing no further discussion call the roll

All members present voted in favor (4-0).

Mr Taylor: Okay – you have your approval.

Mr Hussing: thank you so much.

Mr. Taylor: Okay, next item on the agenda is PZ18-04-02. This is a public hearing for All Heart CrossFit. John Anderson and Anderson Family Ltd Property Owners. This is a Conditional

Zoning Certificate for Special Non-residential Development Application at 4481 Crystal Parkway, Suites 800 and 900.

Item # PZ18-04-02

All-Heart CrossFit - Applicant

John Anderson/Anderson Family Ltd – Property Owner

Conditional Zoning Certificate

Special Non-Residential Development Application

Fitness Center / Classes

For review and recommendation to Council

Mr. Taylor: Is the applicant in the audience?

Lisa Shiu Luchansky, business address 4481 Crystal Parkway, unit 800 and 900, Kent, Ohio.

Lisa Shiu Luchansky was sworn in.

Mr. Taylor: At this time I will open the public Hearing. We will hear from you on your request.

Ms Shiu: I am here tonight to talk about All-Heart Fitness and how we help to enhance the community. The space on Crystal Parkway that we have been in since 2010 has the ideal building for what we do. We utilize the open space that our warehouse facility provides to us so we can employ different exercises - Power Lifting and Olympic Lifting which use bar bells and bumper plates and take up a lot of floor space. We use gymnastics pull up bars and rings and they also require additional space. And we even utilize the high ceilings by dropping climbing ropes from them. For us the warehouse makes the most amount of sense. We can't safely perform the exercises we do if we don't have enough open area for our members. We offer 6 one hour long classes per day – Monday through Friday under the instruction of certified coaches. So unlike a traditional gym setting where members come and go as they please our classes offer structure and limit the amount of patrons that utilize the facility at one time. We provide an invaluable service to the community helping them to lead healthier, more active lifestyles. We currently have 100 plus members, teachers, service men and women, students and retirees all come together at All Heart Fitness with the same goal – to live without limitation. We have been in business since 2010 and since then we have had zero complaints. I have submitted a petition signed by my neighboring business owners. Not only do they have no issues with our operation – but rather they find we are an asset to the business park. So in closing, I hope you can grant All Heart Fitness the necessary conditional use zoning permit so that we may continue to serve our community.

Mr Taylor: Did you state your business hours?

Ms Shiu: Our first class is a 5:30 am and our last class is at 5:30 pm

Mr Taylor: Currently, your business is located quite a ways off Crystal Parkway behind two other buildings?

Ms Shiu: We sit behind one building. There is the road and then a big building that has many businesses. We are the middle two units of that red highlighted building.

Mr Taylor: Zoom in on that.

Mayor Kline: Let me put it in perspective first. I will zoom out. Here is Howe Road, Rubbermaid, Maplecrest golf course. I will zoom in. It is the red building. It is in your staff report. I put it up here so you can see where it is in relation to the Industrial Park.

Mr Taylor: Currently your parking is in front of the building?

Ms Shiu: Correct. Parking is in front and then also down the sides if needed.

Mr Taylor: You do have enough parking for all your people that attend?

Ms Shiu: Yes

Mr Taylor: You have people coming in and going out different hours, correct?

Ms Shiu: Correct.

Mr Taylor: are they just there for a one or two hour class?

Ms Shiu: yes

Mr Taylor: What about lighting? Is there lighting for safety?

Ms Shiu: there is. They should have been marked on a map that I submitted. There is a light.

Mr Taylor: There is exterior lighting on the building for safety?

Ms Shiu: Yes. And through the center of the parking lot.

Mr Taylor: This complex is zoned Industrial 1 and currently under Industrial 1 Fitness Facility is not listed as an approved use. Even under conditionally permitted use there is no Fitness listed. Is that correct Adam?

Mr Paul: Yes. What we are getting to is that is why it is under the special nonresidential track. Because it is not specifically listed there as a potential use in I-1.

Mr Taylor: So that would be the only category they could fall under to get the special nonresidential application.

Mr Paul: yes, sir.

Mr Taylor: I went out to the property and those buildings are all multi-use by contractors, electricians, general contractors and other small businesses. This seems to fall in line with the other uses that are there. It is self-contained and quiet and the other businesses don't seem to have any interference with this type of use. Your unit is in the center of the building with a couple of units on each side?

Ms Shiu: yes. We are the center of the building. My next door neighbor is Summit Lift and the other side is my landlord.

Mr Taylor: Okay. They have no problem with you and your fitness?

Ms Shiu: No.

Mr Taylor: explain to us what Cross Fitness is – what you actually do.

Ms Shiu: We do a lot of things. We do anything you can think of as exercise – we just combine it all together. Lots of power lifting, Olympic lifting, gymnastics, - rowers, kettle bells and add the element intensity. That is why everyone can get in and out in an hour because our workouts are short and quick.

Mrs Oliver: Is all of your activity contained within the building – or do you do things on the exterior?

Ms Shiu: We do take advantage of the outside. When the weather is nice – we actually have garage doors we open so people can run.

Mrs Oliver: Do they open into a parking area or where do you run?

Ms Shiu: Our building is the red one. The garage doors are on the back – so the space behind it. It is space between us and another storage facility.

Mrs Oliver: are there any vehicles generally driving through there?

Ms Shiu: not usually.

Mrs Oliver: it would be very limited.

Ms Shiu: Yes

Mrs Oliver: I am a little familiar with cross fit and the only thing – it can be noisy. I would say it is not that quiet. Would you agree with that to some degree – because of the amount of weight people are using?

Ms Shiu: Right. We are dropping weights and playing music. We are not quiet from inside. But from outside you cannot hear much.

Mrs Oliver: I would say because of the business on one side and the landlord not having an issue of the other side – that even if there is some noise that transfers from Summit Lift – I would image there is some transfer of noise between the two. So it kind of works itself out. Would that be a correct assessment?

Ms Shiu: yes.

Mrs Oliver: Thank you.

Mr Taylor: I have your sign-in sheet. No one has signed in to speak. Is there anyone in the audience that would like to speak either for or against this proposal?

Jennifer Yamokowski, 1293 Tonkawood Dr, Tallmadge Ohio

Jennifer Yamokowski was sworn in.

Ms Yamokowski: I would like to say that Lisa is an incredible trainer and what we do is not just fitness. It's life skills. The 5 years I have been coming to her gym have made me physically the strongest I have been in my entire life. I am a registered nurse here in the Akron area. I was a hospice nurse for 10 years in the field. From the fitness that I have gained from working with her I

had patients pass out and I have caught them and not hurt my back. As you all know a lot of nurses have a lot of chronic back pain because of our job. So she has protected me physically and I have been a better nurse for it. The gym is so much more than that. There is the emotional piece, this amazing comradery we have. You come there and let the day go and you work as hard as you possible can and leave a better person. It has made me a better mom, wife, friend and I'd be lost without her. I love our CrossFit family, I love the gym, I love what we do. I love that she takes people at every fitness level and makes them be a better version of themselves. We encourage you all to come and try it.

Brian Eisenberger, Summit Lift, 33 Fox Ridge, Tallmadge

Mr Brian Eisenberger was sworn in.

Mr Eisenberger: everything you have heard so far has been true. They are great people and I have no problem at all having them next to me. They don't make a whole lot more noise than I do working on the lift trucks. I don't have any problem with that. What I wonder in the conditional zoning how it is going to affect the other businesses in the area with anyone that is running outside the buildings. I just want to make sure how it will affect. I have a couple of young guys that work for me and I will have more that are coming to work. How will it affect me and my business or the other people that have cars and drive through the parking lot. Nothing to do with All Heart CrossFit – they do great. I want to make sure I am covered as a business owner. I drive through every once in a while and I see them running around – how will it affect me if someone gets hurt – as it a conditional zoning.

Mr Taylor: The conditional zoning I don't think plays into it. It is activity outside the building. Maybe Lisa can tell us - do you have a track you run on?

Ms Shiu: I don't have a track.

Mr Taylor: where is the running done?

Ms Shiu: We run out the back and straight out to the street.

Mr Taylor: You run around the building.

Mrs Oliver: That is one of the reasons I asked that specific question. Because I know that can be an issue. I don't know that is something we need to be concerned with. I would say that would be something a landlord would have to look at as it will fall back into his realm of what you are actually renting and what you are covered for and not. I don't think it has anything to do with us and whether we approve or not, in my opinion. I did ask that question because I know that can be an issue to other tenants in the area.

Mr Taylor: Has there been a problem in the past 8 or 5 years you have been there?

Ms Shiu: We have not had any issues.

Mr Eisenberger: I know. There have not been any issues. I was just wondering long term if it changes anything for the zoning. If it is zoned for a fitness and they are running around the building and someone gets hurt or there is an accident with someone outside does the liability rest on the business owner or the people that are running?

Mr Taylor: Probably both.

Mr Eisenberger: not that we are not watching where we are going. Maybe there needs to be some signs to let people know there are people running around here.

Mr Taylor: Is that something you could accomplish by putting signage up? Do you own all the buildings?

Mr Eisenberger: we both just tenants.

Mrs Oliver: I am going to say again, I think that needs to go back to the landlord. I don't think the City would have any obligation.

Law Director Raber: You do review this whole site plan - so what the activity and uses are outside of the building are somewhat in your purview. The parking lot and the uses outside do fall within the scope of your authority to a certain extent. Obviously people are free to walk or run around the parking lot. If it is in an organized fashion it could be signs that are required - I think you could ask that. However that would be contingent upon - she probably does not have the right to post them. The owner of the property would need to approve that- so.

Mr Eisenberger: That is why I was asking about the liability issue. Who would it fall on if no signage around and someone gets hurt? Is it All Heart CrossFit that gets hurt by it or is it my guy?

Law Director Raber: It could be either or. The fact that the conditional zoning exists - does it really change that analysis? That analysis would be based on who was more or most negligent?

Mr Eisenberger: It wouldn't have anything to do with the conditional zoning?

Mr Taylor: No. Any of those businesses - those people could go outside the businesses and run at their lunch.

Mr Eisenberger: there are people that walk through the parkway at their lunchtime.

Mr Taylor: They go for a walk along Crystal Parkway.

Mr Eisenberger: So they are taking the same risk anybody would be in the CrossFit?

Mr Taylor: Okay.

Mr Eisenberger: that is the only question I have. My guys drive through the parking lot - there are some blind corners - I want to make sure no one gets hurt. That we know that there will be people running through there and you need to - maybe a mirror could be put up?

Mr Taylor: That is something beyond us. It would be on the owner. Lisa - is this organized running or just one or two people?

Ms Shiu: Each day we have different workouts and sometimes they have running in them. It is organized as far as 6 times a day people will be running. If there happens to be running in the workout.

Mr Taylor: you might want to talk to your landlord about that. Has it been a problem in the past?

Ms Shiu: No it has not.

Mr Taylor: and he has not identified it has a problem to you saying you can't run out here or you can run?

Ms Shiu: No

Mr Taylor: I think that is something you need clarification on.

Mr Eisenberger: Since it didn't have anything to do with conditional zoning – I am all for it for them. They do great work in there. I just wanted to make sure how it affected my business. That is why I am here tonight. Thank you.

Mr Taylor: Thank you.

Mr Taylor: Is there anyone else in the audience that wants to speak in favor or against this? Any questions by the Commission members?

Mr Ryder: I do have a question. It seems on here we are granting a variance for the parking – for 50 lots – using this equation – one for every 100 foot. Is that a variance that we are granting? Or is that already cleared.

Mr Paul: I would say that it would be a variance – from the parking requirement based on the code standard we are applying to it. Also provided in your staff report is the section that shows the code also allows for joint or collective parking – so if they have multiple uses with various shared parking in different time slots that fit that uses – and it sounds like they have not experienced a problem.

Mr Ryder: So currently there are 50 parking spaces available for this.

Mr Paul: I am not sure about that. I am saying that is what I believe the requirement would be for a standalone use of that nature. Based on the size that they have provided. I think that is what the parking requirement would be. I don't believe that they have that there. And so I think you would have to grant a variance from it.

Mr Ryder: Okay. Now – I ask Lisa how many spaces would you need for your operation?

Ms Shiu: Since I have classes every day – the most amount of people that are going to be there at one time happens to be when one class is leaving and the other is coming. We don't have usually have more than 20 people in a class. So – we have not had an issue with enough parking. We also have all the spaces up through the middle and down the other side of the building. They are all community spaces.

Mr Ryder: Okay – thank you.

Mr Taylor: So the building seems to be a mixed use – different small businesses in there and either single or double suites. The building is a metal structure with high bays. You utilize those high bays for your workouts. Each unit seems to be separated by common walls between them that separate you from everyone else. You have two units and then a unit on each end?

Ms Shiu: yes.

Mr Taylor: you do have restrooms? Men's and women's restroom.

Ms Shiu: yes.

Mr Taylor: And areas with climbing and bell bars -and you need both spaces to do CrossFit?

Ms Shiu: Yes. In order to be safe with all our bodies – we need the space that we have.

Mr Taylor: Any other questions from Commission or Administration? At this time I will close the public hearing. And open up for additional comments or discussion with members. I really see nothing wrong with the use. It seems to be fairly quiet. The other buildings around there – seems like trucks in and out. It is mixed use and does not seem to be offensive to what going on in the other units. I don't have a problem with the usage. It seemed to be quiet – can't hear anything from outside – but inside – a little bit of noise. Did the City Engineer have any comments regarding this? Economic Development? Rita do you have any comments?

Ms Weinberg: no comment

Mr Taylor: we had no comments from the Police Department, Fire Department, Adam?

Mr Paul: No sir, no comments.

Mr Taylor: **I will move to adopt the following findings based on the evidence presented Conditional Special Certificate for use for All Heart CrossFit, LLC at 4481 Crystal Pkwy. Suites 800 & 900.**

Mr Paul: I would like to point out before you get through the motion that there is an error.

Mr Taylor: I did not include that.

Mr Taylor: **(a) Is harmonious and in accordance with the general objectives of this Code;**
(b) Is designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and so that such use shall not change the essential character of the same use;
(c) Is not hazardous or disturbing to neighboring uses;
(d) Is served adequately by essential public facilities and services;
(e) Is not detrimental to the economic welfare of the community;
(f) Does not involve uses, activities, processes, material, equipment and/or conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.
(g) Does have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets or roads.

Mrs Oliver: **Second.**

Mr Taylor: Further discussion?

Roll call. All members present voted in favor (4-0).

Mr Taylor: Motion 2. **I move to recommend to Council to adopt the Conditional Zoning Certificate Application for Item #PZ18-04-02, All Heart CrossFit, Applicant, John Anderson/Anderson Family Trust, Owner, for the property located at 4481 Crystal Pkwy. Suites 800 & 900 for use as a fitness center / fitness classes as submitted based upon the application and plans with supporting documents submitted to the Planning & Zoning**

Department on February 15 and 23, 2018 and any supplements or any other specific documents subsequently provided. And subject to the following conditions, modifications or amendments based on the evidence presented

- 1. Any expansion of space or use(s) requires a new application for review and approval by the Planning & Zoning Commission**
- 2. That a variance from the parking requirements of TCO subsection 1187.04 (t) Recreational, Commercial, minimum of one space for each 100 feet of floor area is granted from 50 required parking spaces to allow for parking per the site plan submitted February 23, 2018.**
- 3. Compliance with Chapter 1183 Sign Regulations for any proposed signage.**

Mr Taylor: you are not proposing any signage at this time?

Ms Shiu: No

Mr Heilmeier: **Second.**

Mr Taylor: Any further discussion.

Roll call. All members present voted in favor (4-0).

Mr Taylor: Okay – You have been approved by us and we recommend to Council to approve your usage. You will have to go to City Council next Thursday at 7:00. It will be in this room. That is your next step.

Mayor Kline: They will accept the findings from this Board, amend the ordinance and then they will give it a second reading. It will be considered at the following Council meeting at the end of the month.

Ms Shiu: Thank you.

Item #PZ18-04-03
T & T Retail, LLC, Tyra Zwick – Applicant
BGR Warehouse LLC – Owner
132 Osceola Avenue
Conditional Zoning Certificate Application
Amusement Arcade
 For review and recommendation to Council

Mr Taylor: Next item on the agenda PZ18-04-03. This is a public hearing – continuation of March 1, 2018 meeting. T& T Retail LLC. This is a conditional zoning certificate application for amusement arcade for review and recommendation to Council. Is the applicant in the audience?

Attorney Don Malarcik, 54 E Mill St, Akron Ohio 44308.

Attorney Malarcik was sworn in.

Mr Taylor: Go ahead and proceed. This is a continuation of the Public Hearing.

Atty Malarcik: We were here in March and had an opportunity to review some of the concerns that were raised at that time. We requested and received a chance to come back and continue this

hearing. I will tell you that the property owner and myself had an opportunity to go out and meet with some of the folks who had written opposition with the Planning Commission. I can't tell you we changed anyone's mind but we listened intently to some of the concerns. We did file some amended plans that I think comply with the code, in terms of the parking. I think what this comes down to and I don't want to speak for anyone else here who may want to speak, in listening to the concerns, and reviewing the documents that have been provided – I think it comes down to a couple of things. Number 1, the residency requirement and the code says that an amusement arcade cannot be within 500 ft of a residence and there are a number of residences in the area. The concerns that I have seen, heard and listened to are allowing an amusement arcade in this particular location would increase crime, would be noisy and wouldn't fit within the community. I want to address those concerns. We are asking for a variance the 500 feet rule of a residence and I will indicate this. As we said in our first filing and with the amended filing, we are going to have security. We will have cameras inside and outside the facility. There will be sufficient lighting. Parking will be paved. We think with the lighting and the additional security that negates any concern about additional crime. These facilities attract essentially an older crowd, a lot of retirees. My experience in representing a number of these amusement arcades is folks will go from one facility to the next. We will offer free soft drinks, light snacks and beverages. We see a lot of people come in, spend \$20, eat, socialize and then move on. So I don't think there is going to be the impact that folks are concerned about. The ordinance also speaks to restrictions that would account for increased crime. There are limitations on the number of hours we can operate. There is security required. As I indicated in the April letter the front building will have glass that will allow anyone to see from the sidewalk into the building all the way into the rear of the amusement arcade facility. Again with the surveillance, the cameras and the lighting I don't think there will be any concern about additional crime. In terms of the community and whether this would be in harmony with other existing businesses – the existing businesses are light industrial. There are some storage facilities, car repair facilities and light industrial. So this isn't an historic district that the proposed use would be in conflict with. I don't think there would be much more noise or potential for crime than any of the proposed uses there. We are limited in where we can apply and operate based on the code. I would think that at the time amusement arcades were relegated to light industrial areas in zoning that there was a lot of thought and consideration. Where is this going to have the least of amount of impact on the neighbors and the surrounding community? There are only so many spaces within the City of Tallmadge that we can lawfully operate an amusement arcade and light industrial is one of those facilities. So I would like to answer any questions here on the panel might have.

Mr Taylor: I think, from what I can understand, this particular site with this existing building has a lot of site restrictions, I am not sure you will be able to overcome. One is that the business arcade has to be 500 feet from a residential use property. There are several residential properties within that 500 feet. The other one is the existing building is closer than 50 feet to the left property line. I think if it is not on the property line – it is very close to the property line. That is a problem. The building setback from the road, I don't think, correct me Adam, does not meet the requirement for our building setback in our current code.

Mr Paul: at the front setback?

Mr Taylor: yes

Mr Paul: It would be a minimum of 50 feet from the right of way. I think the parking area there presents a conflict with the code requirement for an amusement arcade.

Mr Taylor: They wouldn't be allowed to park in the front. Is that correct?

Mr Paul: Not without a modification to the code.

Mr Taylor: you would have to have a variance for that.

Atty Malarcik: I don't mean to interrupt but what we suggested in the April letter, that parking would be on west side of the building with a paved lot. I think that would address that concern.

Mr Taylor: There would be no parking in the front.

Atty Malarcik: correct

Mr Taylor: I think in your initial plan that you showed using that paper street that goes beside the building and into the back of the property. I don't think that is a dedicated street. I am not sure how the City feels about using the paper street that is not dedicated. You showed that as an access to your parking.

Atty Malarcik: with the revised plan and parking on the west side, Lakola would not be in use.

Mr Taylor: Did you submit a new, revised plan?

Atty Malarcik: No, just indicating the parking would be on the west side.

Mr Taylor: On the west side – and you would be coming off of – which street? Osceola?

Atty Malarcik: Yes, correct.

Mr Taylor: So you would be coming off Osceola into the lot?

Atty Malarcik: yes. Correct.

Mr Taylor: I guess we still have the two major problems with the 500 feet and the 50 foot from the property line.

Atty Malarcik: Those are the variances we are requesting.

Mr Taylor: Those were the two things that I saw.

Mayor Kline: just for a point of clarification. That lot that was in question on Lakota- this parcel is owned by this parcel. They are just not "Z-ed" together. This is owned by?

Mr Taylor: What are you saying? The street is owned by that?

Mayor Kline: It is a paper street so this parcel here is owned also by the parcel above it. So the two parcels are not "Z-ed" together but are owned by the same owners. For the record. So that Lakota, this parcel here is the same owners as that parcel.

Mr Taylor: Okay. So what do we see on that plan, Mayor.

Mayor Kline: There must be some kind of agreement from the parcel who owns that building for the trucking company to utilize that back parking lot. I don't know that. This ingress/egress to the back over here.

Mr Taylor: is a private drive? Is that what you are saying?

Mayor Kline: Yes.

Mr Taylor: it is not dedicated.

Mayor Kline: no it is not dedicated.

Mr Taylor: so you are saying that building is 50 ft from the property line.

Mayor Kline: It is not from this property line. Those are not "Z-ed" together. This is a separate parcel than that parcel.

Mr Taylor: Okay. So the building is closer than 50 ft to the property line. Its within a couple feet.

Mayor Kline: correct.

Mr Taylor: Are you guys buying the property? Are you leasing the property?

Atty Malarcik: Leasing the property.

Mr Taylor: so you are going to do renovations.

Atty Malarcik: Yes sir.

Mr Taylor: you are just leasing the building. Not the land?

Atty Malarcik: we have access to the land to put in the parking space.

Mr Taylor: you are going to do the improvements to the building and the parking lot. But you are not purchasing the land in between.

Atty Malarcik: we have talked to the owner and he is in agreement with the plans we provided.

Mr Taylor: which plans?

Atty Malarcik: to put the parking lot on the west side and not use Lakola, use Osceola as the entrance way.

Mr Taylor: we did not receive those plans. Did you make those plans and send them to the zoning department? Other than you put it in the letter, right?

Atty Malarcik: That is correct.

Mrs Oliver: Would you mind taking the microphone and just showing where you are going to curb cut – or whatever you are going to do – off Osceola and where that parking will be located.

Atty Malarcik: To keep it away from the residents – we can put the parking here. And access from Osceola. Taking down some of the trees will allow for plenty of room for paved parking sufficient under the code and away the residences.

Mrs Oliver: So that front area there – will be not used.

Atty Malarcik: Landscaping – not parking.

Mrs Oliver: alright. Thank you.

Mr Taylor: So we did not receive any drawings as far as the new parking, the access way for the new parking or any modifications to the front of the building to include the required storefront on the building. Is that right?

Atty Malarcik: correct. Obviously you can make the conditional use conditioned upon compliance with what we discussed here today.

Mr Taylor: I looked at your plans. I don't see anything as far as the layout of the arcade. How many pieces of equipment you are going to have. I was trying to determine how many people you are going to have in there at one time. There was no layout. There was some electrical.

Atty Malarcik: We would anticipate about 30 machines.

Mr r: what kind of arcade games are you talking about here?

Atty Malarcik: the Ohio Revised Code authorized skill based amusement devices. The Casino Control Commission will start regulating and licensing those facilities in April. April 23 is the first day they will accept applications. So I can't tell you the exact software manufacturer that we will utilize, but we only utilize the software that has been approved by the state of Ohio and is lawful in the state.

Mr Taylor: As we look at that elevation – the overhead door will be removed? That will all be glass? We are looking from Osceola at the front of the building.

Atty Malarcik: Yes. What you will see from the side walk is an open area that will allow anyone from the sidewalk to see from the front of the building to the back of the building. That will be redesigned.

Mr Taylor: So that overhead door will come out and you will have storefront framing along there.

Atty Malarcik: correct.

Mr Taylor: any doors on the front?

Atty Malarcik: no

Mr Taylor: just doors on the side and the back.

Atty Malarcik: right.

Mr Taylor: for fire and emergency exiting.

Atty Malarcik: yes

Mr H: With roughly 30 machines – will there be a number of people that will be allowed in the building at one time – and what is that number?

Mayor Kline: That would be dictated by sq footage and the occupancy permit. I can't tell you what that is as I have not seen the floor plan – how much equipment is taking up, how much ingress/egress after the floor plan has been done.

Mr Taylor: There are people in the audience that wanted to speak.

Lynn Smith was sworn in.

Lynn Smith, 348 Geneva St, Tallmadge Ohio. Smith & Co, PO Box 7577, Akron, 44306

Mr Taylor: go ahead with your comments.

Mr Smith: This is an end result of conversation with colleagues and neighbors when we saw that this facility was being considered. There were actually a few thoughts.

Mr Taylor: you pose the questions to us and we will address the questions.

Mr Smith: The thing that is discussed to this point – parking is low on our list. The thing he mentioned first, the security, was really high on the list. We were asked to come back because time was needed to prepare additional information. I pestered Mr Paul – asking if anything has showed up during this month so we could get it a look at is. It showed up April 3rd and it represented that which is really a restatement of what everybody knows last month. What was noticeably absent, and implied by many of your questions, were details. There seemed to be a lot of presentation of Trust Me Trust Me. Security – we will take care of it. What form does your security take – what hours? Who is doing it? On the layout -how many people will be there? Like mom always said – anything is possible when you don't know what you are talking about. It seems to some of us that some of this would be included in the month's preparation – as you bring up questions – we don't have answers.... A number of people here don't think this is going to add anything to our landlocked community around Osceola and Geneva. Many of us are here because it is land locked. Everyone knows if there is a stranger around. My research show that this kind of activity brings strangers in... Who goes someplace and plays games all night? Any trouble we have had historically has been related to outsiders having into stumbled into our neighborhood, noticed things there that are interesting and see what is inside. I work in the area of some consult to law enforcement among others, and I ask my peers on committees – when these kind of facilities show up – do they make more calls or less calls. They say – more calls. If they go away the calls go down. We like what we have and don't like the idea of people coming in, hanging around, looking down the street, wondering what is in the buildings, those trailers. The best security we would ask is that it does not show up. We want you to consider our thoughts. I can answer questions.

Mr Taylor: Do you live in the area or do you have a business in the area?

Mr Smith: My partner and I share a large building that is a warehouse and storage area for equipment and vehicles that are kind of unique.

Mr Taylor: Are you on Osceola?

Mr Smith: we are on the dead end of Geneva off Osceola.

Mr Taylor: Okay. We have other people that have questions. And need to move on.

Mr Myron Vernis was sworn in.

Myron Vernis, business address 348 Geneva

Mr Taylor: Let's hear from you.

Mr Vernis: I think it is good nature that we are following the discussion about the CrossFit business. Because where CrossFit brings a lot of positive things to a community. The discussion of security – there were many questions for the people from CrossFit – but the idea of security and protection of the people around there – was never brought up – for good reason. The fact that Mr Malarcik and the people he represents are making plans for specific security, cameras and things like that – really implies that this is a business that needs security. He mentioned it is not their first choice to be in a light industrial setting – but have been relegated by the regulations in the City of Tallmadge. He implied that being relegated here it would be a good fit. I would postulate that it is relegated here because the City fathers felt that it would not be attractive to the people that want to operate that and they were doing what they could to keep it out. I don't see a great reason to bring a business like this into the area – it is legal but I don't think it is to our benefit as a community to make special accommodations through variances and conditional use to bring a business like that into the area.

Mr Taylor: Do you own or operate a business?

Mr Vernis: I do. I own the building at 348-322 Geneva.

Mr Taylor: What business is that?

Mr Vernis: It is a hobby business. I collect old cars, recently retired and now my hobby business has just been trading old cars.

Mr Taylor: So they are stored inside buildings?

Mr Vernis: Yes.

Mr Taylor: you are in and out of the buildings all the time? And you have employees there?

Mr Vernis: Yes – much more that I used to be. No employees. Mr Smith, in the building with me, we don't have employees – it is just us.

Mr: T: Do you feel the building is secure?

Mr Vernis: When I bought the building. I needed a larger facility. About 10 years ago when I hired a real estate broker – he wanted to show me 10 buildings. Number 10 - was this building on Geneva. He did not even show it to me – and I said why didn't you show me this building? You said you had 10. He said – you don't want this building – it's on a dead end street – there is no traffic. What he thought was detrimental was music to my ears.

Mr Taylor: very good. Thank you for your comments.

Ms Dominique Porter was sworn in.

Dominique Porter, home address 3206 Mogadore Rd, Tallmadge

Mr Taylor: Go ahead with your statement.

Ms Porter: I represent the owners of properties 158 and 170 Osceola. We are the homes right next to the proposed ordinance change for the business.

Mr Taylor: Those are single family residences?

Ms Porter: Yes. Those are single family residences.

Mr Taylor: you say you represent them.

Ms Porter: I represent the owners of the properties – brothers and sisters – we inherited from my father. To give you a little idea of these properties. The way I read conditional zoning that we are discussing is we are just not complying with it at all. My properties sit 75 to 100 feet close to this and they are residential properties. Our tenants are just not tenants that come as go – we have had tenants that have lived there 20 years and our current tenants – little over 10 years. These are not just rentals – they are residential homes in Tallmadge. We feel that granting this change would negatively affect the quality of life for our tenants that live there. My tenants enjoy the amenities of a residential area. Right at the corner is the Hike & Bike trail. You will see we use the trails, metro parks – and residents walking up and down the street. My residents have cookouts in the back yard. The back yard is just feet away from this proposed business change. We are strongly opposed to any kind of variances being made. As a matter of fact, my brother and I, my brother is a business owner behind this, we talked to the neighbors in the neighborhood including ones at the end of Osceola – over the bike track. They were surprised to hear that something like this was going in their neighborhood. We did get signatures from quite a few of those members – homeowners that are opposed to any kind of changes. There is a reason that this City has ordinances and they are put there for a reason and we should abide by those ordinances.

Mr Taylor: Is the petition you furnished to us with the 8 signatures of property owners in the area – mostly on Osceola, Shanafelt – in opposition of this request – with several letters attached.

Ms Porter: Right. Thank you.

Virginia Rang was sworn in.

Ms. Virginia Rang, 276 Osceola, Tallmadge OH

Mr Taylor: Go ahead.

Mrs Rang: I really wanted to come here tonight and talk to the Commission. I have lived in my house for 28 years. I don't feel granting this application is healthy for our neighborhood. There are children in the neighborhood. My main concern is security – I feel it is an attractive nuisance. As a mother, I hope that you oppose this.

Mr Taylor: Where is your property located?

Mrs Rang: We are just over the tracks – the tracks that run along the Hike & Bike trail - we are just over the other side of that.

Mr Taylor: are they within 500 feet?

Mayor Kline: No.

Mr Taylor: They are outside the 500 feet requirement.

Mayor Kline: That is correct.

Mrs Rang: It is rather dark and secluded after dark. I don't feel comfortable with the element that might show up in the neighborhood.

Mr Taylor: Thank you.

Ernest Rang was sworn in.

Mr Ernest Rang, 276 Osceola, Tallmadge OH.

Mr Taylor: Go ahead.

Mr Rang: I oppose the ordinance change. It is just a bad element. They say it is an amusement arcade – it is a gambling facility – slot machines. That’s what you want to put in our back yard – and I oppose it. On the Hike & Bike trail – I use it almost every day and I would not feel safe toward the evening with that facility going in. It is just a bad idea and I oppose it.

Mr Taylor: Is there anyone else in the audience that would like to speak – either for or against? We will take a break and have everyone sign in.

Michael Kozlowski, The Kozlowski Co, 157 Osceola Ave, Tallmadge OH

Mr Kozlowski was sworn in.

Mr Taylor: Go ahead and make your statement.

Mr Kozlowski: We are directly located across the street - diagonal – of the proposed property. We also have the property at 165 Osceola Ave as well up on the corner of Tacoma. We have been 40 plus years owners in that area. We operate a construction company and we see this variance as detrimental to our community and to our business and our property. The businesses in there now, the way it is zoned, are operated 8-5pm primarily, which allows adjacent residential properties to function normally. We have no issues, in this time frame, with any residential homeowner. We have great concern that the applicant has knowingly purchased the property with these limitations. As you heard earlier said that there are very few places available that someone could do this. So this property was bought with this in mind. The behavior shows that and now they want to come into the community and add something that is clearly detrimental to the homes. Based on the law they are allowed to operate from 6 am to 1 am. We talk about security – what type of security will help us if a child in the neighborhood, - houses right beside it – I see kids play out in the front, side yards – if we have it on film that a child is harmed? That is the reason we have these ordinances and variances in place – and if we allow such a variance here, what is the difference between the houses that are adjacent to this property or any place in Tallmadge. Is every residential neighborhood available to allow such a variance? These families are important to our community as anywhere else. Those are some of the concerns that we see. Also – harmonious as some of the other property owners has mentioned – following light industrial uses. We welcome the new owner to use the property as the other local residences. We have an issue of how you would use the property in our community. Use the property as it is already zoned for – that is harmonious – warehouse, storage, automotive. This use has a detrimental effect on the property owners in the surrounding area. We want to be good neighbors and we want good neighbors coming. We ask the committee to think about what this means for the rest of the community – not just this part – and deny this request.

Mr Taylor: Do you know what the building is presently being used for?

Mr Kozlowski: I don’t want to speak in hearsay – He may know but I was told it was used as storage right now – as a warehouse. Maybe repairs of equipment. I have great concern hearing all verbal commitments, tonight, things we are going to do, and there are no plans. Even if the things

I heard tonight from the applicant were true, they still to me do not meet the criteria to be acceptable to neighbors. I feel it would be detrimental.

Mr Joe Kolleth was sworn in.

Joe Kolleth, 437 Tacoma Ave, Tallmadge, OH

Mr Taylor: go ahead.

Mr Kolleth: We live 3 houses down from that. We also own Lakola Ave – 90% of it that comes up right in the back of that property.

Mr Taylor: Is it that L-shaped property, Joe that includes?

Mr Kolleth: Yes. We have been there for 42 years and paying taxes on Lakola Ave all these years. It abuts the end of that property – are they going to come over on any part of my property for this for any part of the driveway?

Mr Taylor: No. They were going to come with a driveway off of Osceola on the west side of the property and provide their parking on the west side of the building.

Mr Kolleth: I understand. Are they going over any part of that?

Mr Taylor: No. It is not a dedicated street and they were going to go around to the parking lot which would be on the west side of the building and come off Osceola with a driveway. That is the verbal commitment. We don't have a plan.

Mr Kolleth: Since my property almost abuts this will there be trash thrown on my property and who is going to clean it up?

Mr Taylor: I can't answer that. It looks heavily wooded behind the existing building. I don't imagine there will be any trash back there – but you never know.

Mr Kolleth: My wife and I are both very opposed to this. If they can be open until 1 in the morning – we are three houses down – we will hear this noise.

Mr Taylor: Okay. Thank you.

Stephanie Smith was sworn in.

Stephanie Smith, 270 Osceola Ave, Tallmadge OH

Mr Taylor: Do you live in a residence there or do you have a business?

Ms Smith: I live in a residence. I just want to speak against this proposed establishment coming into the neighborhood. I live there – on the other side of the bike trail. I have kids- I have two adolescent children who frequently ride the bike trail after school. They ride it all through the summer, in the evening. As well as other children in the area. I am concerned about security – it is great they have security on the property but what about when they leave the property? What about when people walk outside of the parking lot? Where is the security there??Where is the security in front of my house to make sure that people are not there? I am concerned because this is the bike trail – this is clearly within 500 ft – it is clearly stated this should not be anywhere near the bike trail and it is. Section 1189.04 says the store will provide many benefits to our

community. What will it provide – what exactly is it providing to our community? Other than bringing in people in other areas – bringing in strangers to the neighbor. My concern is security – protecting children – my children – in the neighborhood – making sure they are safe. As well as anyone who might be walking that trail.

Mr Taylor: Okay. Is there anyone else in the audience that wants to speak – for or in opposition to this request? I would like the applicant to come back up. We have some questions: security, what will you bring to the community – number of people in the building. Please address.

Law Director Raber: The other question I wrote down was what it is currently used as.

Atty Malarcik: The previous use was storage. There were different vending machines and the type of machines that are going into this facility were stored there. I would not anticipate more than 30-50 people in the store at any given time. What this brings to the community in terms of an economic benefit is – jobs, at least two people there, managing – be there at all times. There are a number of other employees that will be there. They will be purchasing food and beverages that are offered for free to the customers in the store. There are licensing fees also set forth by the City. That is an economic benefit to the City. I will indicate these are not going to be gambling devices – these are not going to be slot machines – those types of devices are prohibited by Ohio Revised Code. There are a number of these amusement arcades throughout our state. And they operate without a huge influx of crime, no children have been hurt, the communities continue to flourish. The individuals who are operating this are veterans in this industry – they want to operate a clean, safe and welcoming store. That is how you succeed in this industry. There will be security inside, inside & outside cameras. There is no objection to security guards there – we would be happy to – typically on the weekends- Friday, Saturday 8 pm – close. Our store would comply and do that. In addition there are a number of things we are responsible for – that the code provides – that we are going to abide by. Those are: no one under the age of 18 is permitted on the premises; we have to adopt and enforce a no loitering on the premises policy – that is why the guard and the manager is there – to ensure there is no loitering – no one lurking around the facility. There is enough lighting to illuminate every means of ingress/egress in the adjacent parking areas. We will comply with that. The glass storefront – allowing full visibility from the sidewalk or the right of way – through the playing area – through the rear facility. That will be complied. Windows will be free of tint. We will comply with all of those. I understand the concerns – but they seem to be very speculative – and I am not sure what element everyone thinks is going to be attracted to these facilities. If you visit one of them – typically it is a lot of older, retired folks who enjoy the company of each other, the free food, and the entertainment that is provided in these facilities. There has not been an increase in crime at other facilities – if there were- they would be shut down. The last study I read demonstrated that there are over 300 licensed facilities in the state of Ohio. If they were attracting the kind of elements with the concern that was expressed here – they would not be there.

Mr Taylor: You indicated you will have security guards – inside and outside?

Atty Malarcik: Yes. In the past the security guards are inside and they take a round every ½ hour or 40 minutes. Walk around the facility and make sure everything is secure. We want to have a secure facility as much as anyone there.

Mr Taylor: Are they armed guards?

Atty Malarcik: No.

Mr Taylor: so what are they there for if you have older people playing these arcade games?

Atty Malarcik: They are to provide everyone a sense of security. That's why they are at the bank, at schools, why we see security guards everywhere. They drive around the facility. We will have them inside the facility to provide a safe and stable environment.

Mr Taylor: I am not sure what the arcade does. Do people come in and buy tokens or do they use cash to play these arcade games? What type of arcade games are they - pinball? I have never been in one.

Atty Malarcik: People come in and can put cash into a machine and play an entertaining and skill based entertainment device.

Mr Taylor: Okay. These are made to put dollars in – and gives you points – and if you win do you get dollars back?

Atty Malarcik: yes. The prizes are enumerated under the code. You can win merchandise prizes including gas cards up to 10 dollars. That is what folks are playing for.

Mr Taylor: So they playing for gas cards or Visa cards?

Atty Malarcik: Gas Cards.

Mr Taylor: Just gas cards. Any other game of chance that they could win at? Just gas cards?

Atty Malarcik: Correct.

Mr Taylor: So they put in 10 dollars and gamble to see if they can win some gas cards.

Atty Malarcik: It is entertaining. My son plays video games for hours and hours a day. I have to pull him off of them and take him outside. Folks enjoy that – and he can't win a dime. That is the experience people are coming for – comradery – some food – safe well-lit place – they enjoy hanging out with each other. And if they are going to spend \$20 with a chance to win \$20 dollars in gas cards – that is the draw. And that why the folks show up.

Mr Taylor: Any TVs on the wall or things like that?

Atty Malarcik: Sure – we have had TVs on the wall and a little area with refreshments for free.

Mr Taylor: Chips, pretzels, soft drinks.

Atty Malarcik: Yes

Mr Taylor: No food – you will not have a kitchen there?

Atty Malarcik: No

Mr Taylor: I have not been to one of these facilities and am not familiar. Okay – you said no more than 30 people because you only have 30 machines.

Atty Malarcik: 30-50 people.

Mr Taylor: You only have 30 machines – why are you going to have 50 people?

Atty Malarcik: some folks come in in pairs – there are individuals there that are not going to play the machines – that is my experience. They will come in with a spouse, partner, friend and socialize.

Mr Taylor: Oh - Okay. Have free drinks and snacks while waiting to win gas cards. Security – you say you are going to provide two jobs. What are the hours again?

Atty Malarcik: The code says you cannot operate between 1 am and 7 am. Our hours will be 8 am to midnight.

Mr Taylor: wow. 8 o'clock in the morning people will be there to play?

Atty Malarcik: yes.

Mr Taylor: That is a lot of traffic. Any other questions from the commission members?

Mr Ryder: I am a little concerned – we don't have a site drawing. We talked a lot about things that you are proposing as far as parking lot, concerned about lighting but without a plan to review I don't know that we can approve a site plan without that information.

Atty Malarcik: as indicated here – we are happy to provide whatever information that is necessary. And if the conditional use is approved there will be some additional information that would be provided. I understand, here are the sketches of what the proposed property is going to look like, where the property is going to go. But the lighting, the landscaping that would be provided before we would open subject to the approval of the zoning committee.

Mr Ryder: We are here tonight to approve the site plan. Is that right, Adam?

Mr Paul: The site plan is one set of core required documents for what you review both with this application and most that you receive. It is a requirement for this. There was a site plan provided at the onset of the application procedure but I don't think it is reflective of what is being proposed since - per the letter of April 3 and discussed tonight.

Mr Ryder: okay.

Mrs Oliver: Mr Mayor, I noticed that you were measuring to the bike trail. Can you confirm that is within 500?

Mayor Kline: 830.

Mrs Oliver: So it outside of that – but there are residents still within the 500 feet.

Mayor Kline: There are seven residences within 500 ft.

Mrs Oliver: I understand to some degree why you don't have all this information in front of us because this is at the beginning stage of this. I get that. It would have helped to have it – as I was confused by the parking situation. It would have been useful and I appreciate the information you have provided. I have a question regarding the relationship between the owner and the operator. There are 2 separate entities, is the operator a division of the owner of the property?

Atty Malarcik: It is a landlord tenant relationship.

Mrs Oliver: So the current owner has owned that property how long?

Atty Malarcik: it has been recent – within the last 12 months – that they purchased the property.

Mrs Oliver: So they began storing these vending machines?

Atty Malarcik: No. That was what the previous owner stored there.

Mrs Oliver: Those are still there?

Atty Malarcik: no.

Mrs Oliver: So they moved all of that - it is coincidental.

Atty Malarcik: Right right.

Mrs Oliver: That is what I was trying to get at. I believe that is all the question I have.

Mr Paul: I would like to specifically answer the question both for the Commission consideration and the applicant's verification that the site plan, Mrs Oliver referenced the parking side area and Mr Ryder you inquired about that specifically – if you look at the application for the Conditional Zoning Certificate requirement 1189.02. You are always in receipt of these things and we discuss them at length that is because of the code. It is derived from the code. It is a requirement for the application. Nothing new to that effect after you got the plans you started with.

Mr Taylor: Don, did you get a copy of the staff report?

Atty Malarcik: yes sir.

Mr Taylor: I noticed there are some things in there by the police department referencing crime rates associated with gambling establishments, potential for complaints, increased production of traffic, noise – that was some of their comments. The fire department also had 9 comments on there that could be addressed. They indicated the occupancy load for that building was 230. I can't believe that. What is the square footage of that building? Is it 1700?

Atty Malarcik: It was on the application, I believe that sounds right.

Mr Taylor: I couldn't imagine you had 230 people occupancy level.

Mrs Oliver: 3720

Mr Taylor: The problem I had when I looked – there was no layout of the arcade equipment and spaces so I could figure how many people in there. You are indicating it would be 30-50 which is less than what the fire department says. Any other comments from commission members? Administration? Comments from the city engineer?

City Engineer Driscoll: I had a few comments on my memo that I issued last month but most of them just indicated that the plans were inadequate for me to make specific determinations. And now it is even harder since they submitted a letter recommending specific changes they wanted to make to the plans and they are not in plan form for me to really evaluate.

Mr Taylor: So there was nothing for you to evaluate other than last month's – indicating whatever was provided was not sufficient.

City Engineer Driscoll: correct

Mr Taylor: Someone else in the audience wanted to speak again. Mr Rang wants to speak again. Go ahead and continue.

Mr Rang: I have a couple questions. T&T Retail LLC are based in Philadelphia? Also BGR Warehouse – are they based in New Hampshire? That is what I got off the website for their company. That was one question. Also, that property is already out of realm to have this variance because it sits right on the property line and there is no parking in the front – and yes, he said he would loop around the back

Mr Taylor: on the west side.

Mr Rang: yes but it is still out of the realm of the area. I gamble at Rocksino and like to play the slots. Besides that I don't see any place for that in this area. Are these companies out of state?

Atty Malarcik: T&T Retail stands for the two first names of the individuals that are listed on the April 3rd letter, Tyra and Tristan. They live North Canton. They are local folks – New Philadelphia. They are Ohio residents. The owner lives in Fairlawn. That is his company.

Mr Taylor: The BGR?

Atty Malarcik: yes, sir. He is my neighbor.

Mr Taylor: Okay. Any other questions either for or against?

Mrs Rang: Virginia Rang, Osceola. I have the concern with the width of the road right there. I know the City trucks go up and down that road – as the Maintenance building is right there. It seems to me not to be wide enough for extra traffic of that sort. And is that up to Zoning as well?

Mr Taylor: The traffic going into this facility would just be cars. I don't think there will be any trucks – maybe some small vans.

Mrs Rang: Even on that road if there is a car coming the other way you have to slow down.

Mr Taylor: it is a little tricky.

Mrs Rang: I have reservations about it and I don't feel it is a healthy choice for us. And I would much rather it be a church.

Mr Taylor: I think there is someone else that wants to speak. We have two more and that will be it.

Mr Taylor: Joe you were sworn in.

Mr Kolleth: Is this going to be open 7 days a week?

Mr Taylor: We will ask the applicant.

Mr Kolleth: if it is going to open Saturday and Sunday, we have lived in this neighborhood for 42 years and usually by 10 at night and on the weekends it is real quiet. Is this going to be a noise pollution that we have to put up with?

Mr Kozlowski: Mike Kozlowski, again. One of the things in listening to the applicant's attorney – we started out with 30 people and 30 machines and quickly got to 50 -so we almost doubled it. We also heard about the time and hours. He would not operate between 1 am and 7 am. Then it was 8 am to 12 pm. There is a lot of inconsistency that concerns me. Looking at the fire department thing – I am concerned we are hearing one part of version of what will take place and the concern of the future is the occupant load is 230 – so what is to stop them from having 230 people in there. And as many machines as you can get in. There is so little information it certainly concerns me - and others share the same sentiment. We talked about veteran people in this gaming industry – amusement arcade – DiPietro is BGR – I would like to know if they ever had any problems in their facilities where there was an issue with running such an establishment. Is that the kind of thing that we may have?

Mr Taylor: Okay.

Mrs Oliver: Can I address these last comments for the record. Please don't misconstrue what I am saying. First of all I think the applicant has always stated 30-50. We made a comment of 30 and then changed it to 50. So the applicant did not change his statement. I also think his statement of being open from 8 am to midnight was consistent with the fact that he can be open from 6 am till 1 am. I am saying this for the record to state he was not being inconsistent in his statements.

Mr Taylor: His initial letter indicated that his hours will be 8 am to 12 pm. Don please come back up. In your initial letter you indicated your hours would be 10 am to 1 pm, right.

Atty Malarcik: No – we can't stay open past 1 am. So you could close at 1 am. We'd said midnight – that's when we would close. The code says you can open until 1 – I don't think there is much business past midnight.

Mr Taylor: In your letter of January 19th you indicated that you will be open from 10 am to 1 am. Is that correct?

Atty Malarcik: Yes.

Mr Taylor: Not 8 am till 12. Is that correct?

Atty Malarcik: yes.

Mr Taylor: So you are saying what you had in your initial letter.

Atty Malarcik: Let me say it this way. They are not going to stay open beyond what is permitted in the code. If no one is there at 9pm -they will close the doors at 9:01. That is how businesses operate. This is a small operation – and it is going to be a new operation. I can promise you we won't stay open longer than what is allowed in the code. I can't imagine them opening at 8 am. The other stores I represent open around 10 am – and that is what I put in the letter. We are allowed to open at 7 am – I am saying 10 am seems like a reasonable time to open a new business on a dead end street.

Mr Taylor: I just want to make sure we are clear on the hours.

Mr Ryder: Which days a week?

Atty Malarcik: The code provides 7 days a week. That is what is authorized – by the City of Tallmadge.

Mr Ryder: And that is what you will operate?

Atty Malarcik: We will abide by the code – yes.

Mr Taylor: Christmas and holidays too?

Atty Malarcik: No.

Mrs Oliver: Considering the location that was selected – how do people know these are out there? I am confused as to how – it is not something that people drive by?

Atty Malarcik: There are a community of people that frequent these facilities – usually older, retired individuals who will flock to a new facility because they want to see it, taste the food and see the environment. And if you are operating a safe, friendly and welcoming environment – they will stay. If you are not – it if is run down or dirty and it is not welcoming they won't stay. So there is an incentive to be a very good corporate neighbor. And that is how people find the place – word of mouth.

Mr Heilmeier: Where is the closest facility like this right now?

Atty Malarcik: In Summit County they are licensed and operating in Coventry, Springfield, Barberton, Norton, Stark County, Jackson, Plain Township, Canton – those are the closest.

Mr Heilmeier: and those are all the ones owned by these people.

Atty Malarcik: No. Those are places that are operating.

Mr Taylor: And those places – where are they within the city?

Atty Malarcik: That is a hard question to answer. Some of the facilities were open before the regulations and were grandfathered in.

Mr Taylor: So they could be in a commercial area but not in a residential area.

Atty Malarcik: Right. Not in a residential area. Again – one of the concerns were – is this going to show up in my residential area. The answer is no. The City of Tallmadge has said you must be in a light industrial area and that is why we are complying with that provision.

Mr Taylor: Any other questions? I think we have covered all our questions. Any questions from administration? At this point we will close the public hearing and we will open it up to Commission discussion. This is an item that we are reviewing and we will make recommendations to Council for their approval or rejection. As I said in the beginning, I understand what the code says that it has to be within Industrial zoned property – but this particular site does not lend itself to meet all the criteria – like you can't be within 500 feet of residential use property. And the existing building can't be any closer than 50 feet from the property line. It is almost on the property line. Those are the two big issues that I have. The other issues that came from the Police Department were not very good. They indicated that these type of facilities can have some problems with crime in their staff report; increased crime; production of traffic, increase in traffic, noise and potential for complaints or disturbances. That was their comments that were not too glowing. Any other comments from Commission members?

Mrs Oliver: Again – I am doing this for the record. I read the police report to state the crime rates negatively influenced by gambling establishments are mixed. So I am not sure that they are stating that is actually a fact or situation. However, they do then talk about the other issues that can come up with that. To me the major issue in my mind is the fact that we have an unusual light industrial area in that we have residential homes there and they are within 500 ft of this establishment. No matter how many other things they comply with when I look through what we have to find in our research and testimony this evening – I cannot get past that one particular item. It is an unusual situation – in most light industrial areas, I don't believe we have too many residential homes. In this particular case we do, therefore that is the one that I cannot get past. I have looked through every one of these items. The only other one that I feel they have not complied with is first of all the site plan, but then again it states the owner will independently provide a narrative of the business operation. We sort of have that but we don't know enough about it. My major issue is the residential properties that are within 500 feet.

Mr Heilmeier: I concur with Mrs Oliver. They are very close to residential – no matter whatever else is presented tonight. We can't get around that. Those houses are not going to move. The other stuff you sometimes you can close your eyes. There is not way to close your eyes to that stuff.

Mr Ryder: I think there are some major compliance obstacles here in front of this project. As far as dealing with the setbacks and the 500 foot distance, the residential properties as close as they are and trying to provide some kind of variance to that is difficult because part of the fundamental criteria we use on this panel for determining whether a property should be given variances – is it harmonious with the rest of the area. We are talking about an industrial area; it doesn't seem to fit – as far as the use that is being proposed. Obviously there is a lot of residential opposition to the type of use that is being proposed there. We have to take that into consideration too. This one is tough to try to be able to approve under our criteria.

Mrs Oliver: One other point, with the residences that are in that particular area, being in a light industrial area – I don't know if the chicken or the egg came first, those property owners have been in that location and have had the light industrial around them for whatever time period. I don't know whether homes came first or those light industrial properties came first. Over the course of time – through a panel like this – those were either approved or not. They must have been if they are there. In this particular situation we have the opportunity to protect those particular homeowners who have elected to be in a light industrial area but they purchased or live in those properties knowing that is the situation as it stands today. This is something that would be new and why I have an issue with it.

Mayor Kline: Just for the record – there are seven residential structures that are existing. The first one at 300 feet, 325, 284, 363, 467 and the close ones are 155 and 256 from the center of the building. It really goes from the property to the corner of the building. For the record there are seven residential homes that are there. The Hike and Bike trail from that location is closer to the 800 feet, 898 to the center of that building to the center of the Hike and Bike Trail.

Mr Taylor: Is that considered a park?

Mayor Kline: It is owned by Metro Park. It is beyond the 500.

Mr Ryder: The hike and bike is considered part of the 500 foot requirement – a bike path is included in that?

Mayor Kline: The point is the code says it is a permitted use inside of an industrial park but no residential use within 500 feet. Clearly there are 7 residences that are within 500 feet.

Mr Taylor: this is a lengthy motion. Stephan would you like to attempt?

Mrs Oliver: Before you begin – I direct this to the law director. I am looking at motion 1 – the first part A says “does or does not” specific to use and so on. I am not sure if we need to go through each one of those items if we say does not – do we need to state only the one or others that follow along the lines that it does not comply?

Law Director Raber: You can do it that way.

Mr Taylor: Just pick and choose

Mr Ryder: or I can state the ones that do not.

Mr Paul: I draw your attention to a correction to be made in motion 3 – before we get there – the item is incorrectly stated and should be noted as PZ18-04-03. And that plans of supporting documents submitted of January 18 and 19 – are correct – but should also include and April 2, 2018.

Mr Taylor: Stephan, we will try to help you. I had a question on some of these – if we include them.

Law Director Raber: You may have the discussion in advance of the motions to say which ones you believe do not apply – so the person making the motion can state that clearly.

Mr Ryder: Do you want to start with the first one? 102 is the reference – I would say does not comply. 107 – because we have no lighting plan – Do we want to include?

Mr Taylor: Does not apply.

Mr Taylor: 115

Mrs Oliver: does not apply

Mr Ryder: 123

Mrs Oliver: I don't think we need that one. I think strike it.

Mr Ryder: 124 – does not comply. 125 – I believe that one does comply.

Mr Taylor: Yes.

Mr Ryder: We don't know about outdoor advertising.

Mr Taylor: There has been no signage that has been applied for.

Mr Ryder: Strike it out. Shared access drive – It is a private drive – does comply.

Mr Taylor: 132

Mr Ryder: yes it does apply.

Mrs Oliver: hours?

Mr Ryder: hours – yes. Does comply. C – is not stated. D – does not comply? Or just strike it – strike it.

Mr Taylor: Exterior lighting – we did not receive anything on lighting.

Mrs Oliver: Strike it.

Mr Taylor: as far as the new parking.

Mr Ryder: handicap accessible – strike that.

Mrs Oliver: we did not see that. I don't think he addressed smoking. I would eliminate it. If we are okay doing that?

Mr Ryder: can we just remove it?

Mr Taylor: Yes. He did indicate on his letter that the glass storefront would be installed. We don't have any elevations – but.

Mrs Oliver: it does.

Mr Ryder: free and clear of tints.

Mr Taylor: He said you would be able to see into the building.

Mr Ryder: So food consumption will comply. And I think the manager's names were provided. The public park, school – that does. L – the last one does comply. Okay let's go through this one.

Mr Ryder: **I move for adoption of the following findings, based upon the evidence presented, that the conditional zoning certificate for use as an Amusement Arcade for T&T Retail, LLC – Tyra Zwick, Applicant, BGR Warehouse LLC, Owner, at 132 Osceola Avenue:**

(a) Does not meet the requirements specific to use as an Amusement Arcade as directed by TCO (n) Amusement arcades:

Does not comply with 102 that All structures, activity areas, and parking areas should be located at least fifty (50) feet from all property lines.

Does not comply with 107 (that) No lighting shall constitute a nuisance and shall in no way, impair safe movement of traffic on any street or highway; no lighting shall shine directly on adjacent properties.

Mrs Oliver: I thought we were striking those.

Mr Ryder: Okay. I am sorry.

Mr Taylor: we were striking those. We are just doing 25, 29 and 32.

Law Director Raber: I thought the discussion was there was no plans so you didn't think it complied.

Mrs Oliver: I did not know if we were going strike it because we did not see anything or if we should say it does not comply of that.

Law Director Raber: If you do not believe it complies – you should state that it does not comply.

Mr Ryder: Is that okay just to say that?

Mrs Oliver: I take back my comments.

Mr Ryder:

Does not comply with 115 (that) All permitted installations shall be maintained in a neat, orderly condition so as to prevent injury to any single property, any individual or to the community in general.

Does not comply with 124 (that) No such business shall be located on any lot within 500 feet of any residentially- zoned district or any residentially-used lot.

Does comply with 125 (that) No such business shall be located within 500 feet of any public library, private or public elementary school, public park or bike path or place of worship.

Does comply with 129 (that) No shared access driveways will be permitted.

This is TCO 1189.05 132:

Does comply with A no such business shall be located on any lot within 1,000 feet of any other adult amusement arcade.

Law Director Raber: Before you continue that subsection b should be noted one way or the other right above that.

Mr Ryder:

Does comply with B Arcades shall open not earlier than 6:00 a.m. and shall close not later than 1:00 a.m.

Does not meet the requirements specific to use as an Amusement Arcade as defined by TCO 1189.05 132.

Does comply with H. A glass storefront is required allowing full visibility at the sidewalk or right-of-way from the front through the arcade area to the rear of the facility, exclusive of restrooms. No amusement devices shall be placed in restrooms, offices, or private areas.

Does comply with I. Windows shall be free and clear of tint. No obstructions shall prevent observing at least fifty percent (50%) of the amusement devices from outside the storefront.

Does comply with J. On premises food consumption provision and services shall comply with state, county, and local health regulations.

Does with K. The names, residence addresses, and telephone numbers of the owner(s), operator(s), and all managers shall be maintained current on file with the Tallmadge Police Department.

Does comply with L. No amusement arcade shall locate closer than 500 feet to a church, public park, or school in regular use.

Does with M. For purposes of this section, an “amusement arcade” shall have the same meaning as set forth in Section 726.02.

Mrs Oliver: I would like to go back and state some of the ones that do not comply under this because we have stated it does not comply and everything we have stated does. So I think we need to go back to these 5 and state that they do not comply as they are the reason we are stating that they are not complying with that.

Mr Ryder: so you are referring to C through G. Does not comply.

Mrs Oliver: Yes – we don’t know. We didn’t get anything to tell us so right now the application, I am assuming does not comply. Am I correct in that?

Law Director Raber: I think you can make that judgement because you don’t have the facts in front of you.

Mr Ryder: Okay.

Does not comply with C. All doors to the business used for ingress by patrons shall remain unlocked for purposes of egress during business hours of operation.

Does not comply with D. The owner, lessee, and sublessee of the property shall independently provide a written narrative of the business operation.

Does not comply with E. Exterior lighting shall be maintained of sufficient intensity to illuminate every means of ingress and egress and adjacent parking areas.

Does comply with F. The premises shall be maintained so that it is handicap accessible throughout.

Does not comply with G. No smoking is permitted in the arcade and adequate signage shall be posted conspicuously.

Mrs Oliver: **Did you say Does or Does Not on F?**

Mr Ryder: **I meant does not.**

Mrs Oliver: **Second.**

Mr Taylor: Discussion?

Mayor Kline: Just for the record – on H: the storefront glass – the applicant did state he would do that. But we don’t have any plans indicating that.

Mr Taylor: We did not have any drawings or elevations to indicate it – we just had the original plans. But he indicated in the letter.

Mrs Oliver: So do we feel we should change our findings on that item?

Mayor Kline: The applicant said they would do that – but we don't have that plan.

Mr Ryder: So that should be a does not.

Mrs Oliver: So do you want to amend? I will take back my second.

Mr Taylor: He said he is going to comply with that in his letter. But we don't have the drawings.

Mayor Kline: I just wanted that on the record that we are going off the word. And I am okay.

Mr Taylor: Do you want to amend?

Mrs Oliver: It is up to you.

Mr Ryder: I think the next one too – we said does comply

Mr Taylor: (i)

Mr Ryder: So all those we are saying does comply because he verbally said that he would.

Mr Taylor: We don't have any drawings but he verbally saying.

Mr Ryder: I will just leave it as is.

Mr Taylor: Yes.

Mrs Oliver: I will put my second back.

Mr Taylor: We will have discussion. Keep in mind the motion was to move for adoption. Do we have any further discussion?

Mrs Oliver: Of the following findings. So we would not be looking at voting.

Mr Ryder: we are voting on the findings as stated. There is no approval in that.

Mr Taylor: right.

Mrs Oliver: Mr Heilmeier, do you know what you are voting on?

Mr Heilmeier: I understand – I know how I want to vote – but I don't know what.

Law Director Raber: You are just voting on the initial motion which is the findings that have to be made and the findings were made in accordance with what Stephan said. This is not ultimately – you will have another motion coming up that eventually – the third motion – that will then be definitely about the actual application, itself. This is the findings.

Mr Taylor: You are in agreement with the findings or not in agreement with the findings. Is that correct?

Law Director Raber: That is correct.

Mr Heilmeier: Okay.

Roll called. All members voted in favor (4-0).

Mr Taylor: Motion 2?

Mr Ryder:

I move for adoption of the following findings, based upon the evidence presented, that the conditional zoning certificate for use as an Amusement Arcade for T&T Retail, LLC – Tyra Zwick, Applicant, BGR Warehouse LLC, Owner, at 132 Osceola Avenue:

- (a) Is not harmonious and in accordance with the general objectives of this Code;**
- (b) Is not designed, constructed, operated and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity and so that such use shall not change the essential character of the same area;**
- (c) Is hazardous or disturbing to neighboring uses;**
- (d) Is served adequately by essential public facilities and services;**
- (e) Is detrimental to the economic welfare of the community;**

I would refer to the statement in here from the Economic Department.

Mr Taylor: We can ask the law director – I would say F does involve uses, activities, operation that would be detrimental to any person, property or general welfare by reason of excessive of traffic noise – not smoke in fumes and glare. Can we modify that?

Mrs Oliver: I want to go back to E first. We should have talked about this before we started. It is detrimental to that particular community. I don't believe it is detrimental to Tallmadge as a whole because there are taxes, etc to be paid. I don't think we are shooting ourselves in the foot by saying that it is not detrimental to the economic welfare of the community because it is the community of Tallmadge. We have determined that for this particular location it is not economically to their benefit. I don't know how anyone else feels about that. I will defer if anyone feels differently.

Mr Heilmeier: I think there is economic welfare to the community – there is some benefit because you have taxes and stuff.

Mr Taylor: do you want to say is?

Mr Heilmeier: Yes.

Mrs Oliver: And this may sound to everyone else that we are nit picking – but I think in the end we need to be able to justify what our decisions are and what our findings are. We can't just overlook one because. That is my opinion – and I am willing to defer if you want to tell me that it is not the case.

Mr Ryder: **so E is to say IS NOT detrimental to the welfare of the community.** Do we want to talk about f?

Law Director Raber: Going back to Mr Taylor's question. You can state it in the affirmative – you can list all of them and then in your justification you can say which ones you think apply. You can do that in the discussion section.

Mr Taylor: There are some here that don't apply.

Law Director Raber: Right – but all of that is included in that so then you can say while I don't think blah, blah apply – I do think that whatever does.

Mr Taylor: Why don't we just say does. And keep it the same.

Mr Ryder: yes – and keep it the same.

Mr Taylor: I had a problem with that too.

Mr Ryder:

So F does involve uses, activities, processes, material, equipment and/or conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors.

G Does have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets or roads.

H Does comply with the City of Tallmadge Thoroughfare Plan. If additional street right-of-way width is required for compliance, the property owner shall dedicate the required land at a time requested by the City at no cost to the property owner.

Mr Heilmeyer: **Second**

Mr Taylor: Discussion? This is also to move for adoption. This is for findings again?

Law Director Raber: yes.

Roll called. All members voted in favor (4-0).

Mrs Oliver: Before we go on to motion 3 – I am going to say that if we do adoption we will be looking at all the possible conditions and modifications – If we we do a rejection – we will not.

Law Director Raber: That is not correct. So I would highly encourage you to go through the conditions even if you make the motion to reject. The reason being that Council then gets this as a recommendation and they have those conditions to work with and that is the preferred method even though it sounds counter intuitive.

Mrs Oliver: Thank you. Alright.

Mr Ryder: so we should go through these.

Law Director Raber: You may want to discuss those in advance.

Mr Ryder: number 1.

Law Director Raber: You can make determinations on variances in the affirmative or the negative. So part of the conditions can be that a variance is not granted as the same as you can make the condition the variance is granted. You need to contemplate the requirements for granting the variance and whether that meets those requirements.

Mr Taylor: Do we have to do each one individually?

Law Director Raber: you don't have to vote on them individually – you can make them in one motion. If you have the discussion in advance then you might know which way you should make the motion.

Mrs Oliver: The first one is related to the property line and being located closer and whether or not a variance should be granted to be closer than 50 feet – in this case granting it to 46 feet. So our recommendation will be the variance is not granted. Correct? So the variance is not granted to allow closer than 50 feet, the variance to 46 feet is not. The zero side building setback on the left side is not.

Mr Ryder: the next one is to allow parking within the 50 foot setback; that was the proposal.

Mrs Oliver: We are not allowing it.

Mr Taylor: So that is not.

Mr Ryder: Okay. And the next one is parking requirements – minimum of one space per 100 feet is granted or not from 37 to 27. Is not.

Mrs Oliver: Do we want detailed construction plans?

Mr Ryder: yes.

Mrs Oliver: 5 is a definite is not.

Mr Ryder: right. The lighting plan ...

Mrs Oliver: And we are not granting - the variance for number seven would not be granted for Lakola.

Mr Ryder: right. And the rest of them – we agree with those. Alright.

I move to recommend to Council to reject the conditional zoning application for Item PZ-180403 T&T Retail, LLC – Tyra Zwick, Applicant, BGR Warehouse LLC, Owner, for property located at 132 Osceola Avenue for use as an Amusement Arcade based upon the applications and plans with supporting documents submitted to the Planning and Zoning Department on January 18 & 19 and April 3, 2018 and subject to the following conditions, modifications and or amendments based on the evidence presented:

- 1. That a variance from the requirements of TCO subsection 1189.05, 102 is *not* granted to allow an amusement arcade building to be located closer than 50 feet to its (left) side property line, and to its front property line. Variance to a 46-foot front building setback is *not* granted, and a Variance to a zero side building setback on the left (south) property line is not granted.**
- 2. That a variance from the requirements of TCO subsection 1189.05, 102 is not granted to allow parking areas for an amusement arcade within the required 50-foot setback distance, per the proposed plan received January 18, 2018 as shown.**
- 3. That a variance from the parking requirements of TCO subsection 1187.04 (t) Recreational, Commercial, minimum of one space for each 100 feet of floor area is not granted from 37 required parking spaces to 27 spaces per the site plan submitted January 18, 2018.**

4. **That detailed construction plans for the proposed parking lot improvements be supplied for review and approval based on City construction standards and compliance with Chapter 1187 Off-Street Parking and Loading Regulations, subject to City Engineer approval.**
5. **That a variance from the requirements of TCO subsection 1189.05, 124 is not granted to permit an amusement arcade within 500 feet of multiple surrounding residentially-used lots at 158 Osceola Ave., 170 Osceola Ave., 184 Osceola Ave., 396 Tacoma Ave., 408 Tacoma Ave., 421 Tacoma Ave., 431 Tacoma Ave., and 437 Tacoma Ave.**
6. **That a detailed lighting and landscape plan, including pertinent details for signage size and location, be submitted for review and approval of the Planning & Zoning Commission.**
7. **That a variance from the requirements of TCO subsection 1189.05, 129 is not granted to permit shared access drive at Lakola Ave. per the site plan details submitted January 18, 2018.**
8. **That the applicant provides requisite details as defined in TCO subsection 1189.05, 132 for review and approval of the Planning & Zoning Commission.**
9. **That no open air or outside areas are permitted for the proposed use of amusement arcade.**
10. **That requisite details as stated in letter of additional information received 04/03/2018 be provided to verify compliance**
11. **Full compliance with Chapter 726 Amusement Arcades.**
12. **Full compliance with Chapter 1189 Conditional Uses.**

Mr Heilmeyer: **Second**

Mr Taylor: Discussion? We recommend to Council to reject. Call the roll.

Roll called. All members voted in favor (4-0).

Mr Taylor: So our recommendations will go the City Council. They will review it and when do they meet next?

Mayor Kline: Next Thursday.

Mr Taylor: Next Thursday. So you have an opportunity to present your case before City Council next Thursday.

Atty Malarcik: Thank you.

Mr Taylor: Thank you.

Mrs Oliver: **I move to adjourn.**

Mr Taylor: **Second.**

Roll called. All members voted in favor (4-0).

Meeting adjourned at 8:46 pm.

Respectfully submitted,

Regina Conti, Secretary

Patrick Larson, Vice Chairman