



AGENDA

**BOARD OF ZONING AND BUILDING APPEALS
THURSDAY, OCTOBER 8, 2015 6:30 PM**

**PLACE: COUNCIL CHAMBERS
7232 E. MAIN ST, REYNOLDBURG, OH 43068**

I. CALL TO ORDER

1. ROLL CALL
2. APPROVAL OF AGENDA

II. PUBLIC COMMENT

III. MOTIONS

A. Minutes of August 20, 2015

1. Board of Zoning and Building Appeals – Regular Meeting – August 20, 2015
2. **10.08.15 Special Meeting Memo to Members**

IV. ADJOURNMENT

MINUTES

BOARD OF ZONING AND BUILDING APPEALS THURSDAY, AUGUST 20, 2015 6:30 PM

**PLACE: COUNCIL CHAMBERS
7232 E. MAIN ST, REYNOLDBURG, OH 43068**

A. CALL TO ORDER

PRESENT: Linder, Donovan, Enfinger, Wallace
ABSENT: Rettke

2. APPROVAL OF MINUTES

Minutes of May 21, 2015 and July 16, 2015 Stand Approved

3. APPROVAL OF AGENDA

Agenda Stands Approved

4. SWEARING IN OF SPEAKERS

Chairman Enfinger: Please stand and raise your right hand if you will be speaking this evening. Do you swear and affirm that the information you give tonight before the Reynoldsburg Board of Zoning and Building Appeals is true and honest to the best of your knowledge? (All affirmed.) Please sign in and list your address, as well. And, when you come to the microphone, state your name and address so we have that on the record as well. Thank you.

B. PUBLIC COMMENT

Chairman Enfinger: Is there any public comment this evening? Since none is apparent, we will move on.

C. UNFINISHED BUSINESS

Chairman Enfinger: There is no unfinished business.

D. NEW BUSINESS

1. **ORDINANCE APPROVING SPECIAL EXCEPTION USE PERMIT - (6366 E. Main Street; Proposed Use – Auto Sales); Applicant, Jason P. Goss**

Mr. Enfinger: Staff, may we have the presentation please?

Mr. Snowden: Application #170493, for a Special Exception use Permit; 6360/6366 E. Main St.. The applicant is Auto Direct Inc. For the property located on the north side of East Main St. Between Brice Rd. And Rosehill Rd. Existing zoning is CC- Community Commerce District, and the property is in the CCL- Community Commercial Overlay. The request is for the Board to review and approve a Special Exception Use Permit for auto sales use in the CC district; current use is Auto Services, and the applicants representative is Mr. Jason P. Goss.

Minutes Acceptance: Minutes of Aug 20, 2015 6:30 PM (Minutes of August 20, 2015)

The location was an existing car wash and auto detailing shop. Adjacent uses include commercial businesses, also in the CC District. To the west the property is adjacent to an auto repair business. It is marked on the map as Dodd's Bodyworks. To the north, the property is abutting some single and multi family dwellings in the AR-2 district of the city of Reynoldsburg, and of the city of Columbus. To the immediate east is an auto parts retailer. There are several auto uses clustered in this area. Staff's Review: Background information - the applicant has changed the use of the parcel without a Zoning Certificate, or a Certificate of Occupancy from the Building Division. This issue was referred to the Planning and Zoning staff from the Code Compliance Division. Use Classification - the property as it exists is Auto Services. The change to an Auto Sales Use requires a new Special Exception Permit. The applicant stated in their narrative that minor repairs to vehicles will take place on the site. Staff's view on this is, as long as the service is not a service that is being provided to the general public, it could still be classified as an accessory use and the entire parcel could still be classified as Auto Sales, rather than Auto Repair. Staff is comfortable with the assessment of Auto Sales. Addressing - when Mr. Goss came in to turn in his application, Staff found that the property was addressed by the County Auditor's Geographic Information System as 6360 East Main St. Staff consulted the City Engineer and found that no address had formally been assigned to the rear building. Staff's suggestion is that, although this permit is going to be for the entire parcel to be used in this auto sales business, Staff would suggest that the applicant contact our Service Department and request a certified address for the rear building. There is no fee for that, and the Service Department can have our consulting Engineer assign one. Demolition of the front structure - the applicant has proposed to demolish the front car wash structure at some future date. This does require zoning approval and a demolition permit from the Building Division. The applicant has made some comments about the dumpsters, which are currently stored in a screened area, directly behind this front building. Any new dumpster which is installed here, or any relocation of dumpsters, is going to need to comply with the screening requirements of the Zoning Code. There are certain actions, in this case, that may require Design Review Board approval. Staff would like the applicant, in their presentation to clarify exactly what they are thinking and proposing, so Staff can assist with that process. The current condition of the awning on the front structure is not in compliance with the City's Property Maintenance Code. The Code states that any signage, or any detailing such as this, needs to be maintained. You can see from the photo, that the awning material is separating from the structure. Parking - you can see from the series of photographs that this is an extremely narrow site. The property is only about 60 feet wide. Staff measured it using our Geographic information System. The applicant, in their provided plan, provided for forty-four parking spots. Staff has some concerns about the narrowness of the lot. Generally, with car dealership uses or auto sales uses, property owners and operators like to have as much public street frontage as practical. In addition to that, you should be able to see that when this was a car wash, the lane pictured on the left was the entering/manuevering lane, and the exit lane on the right, which is now being used for car storage. That was not indicated on the plan, so the staff would like some more clarification. You can see cars displayed in front of the building which is different from what is indicated. Staff has some concerns regarding the entry/exit. The Board may want to suggest some enrty/exit signage so that people know how to enter and exit the property. Rear yard - the applicant did not mention the rear yard in their plan. The rear of the property has a fenced in/storage yard of some type. I stated generically

that some of the brush is several feet in height. Staff would like clarification about what is back there. I was unable to determine what material is on the ground... gravel, pavement, yard. Staff would like to know what the applicant proposes to do in that area. Signage - any reface signage in our Community Commercial Overlay, will require Design Review Board approval. Staff gave three recommendations in the event that the Board is comfortable with the application and is willing to approve it. Staff would suggest that the applicant be required to apply for a Certificate of Appropriateness for the ground side, remove the damaged awnings on both buildings, and remove the high grass in the rear yard and maintain that as it was originally installed. The authority items are the sections of the Special Exception Use Permit Chapter of the Code which have to do with the maintenance of the property. I am happy to answer any questions.

Mr. Enfinger: Very thorough. I appreciate that Mr. Snowden. Would the applicant please step to the mic?

Mr. Goss: 6366 E. Main St., Reynoldsburg, Ohio 43068. In regards to the back, I am planning on getting a bulldozer back there. I want to level and gravel that area. Most likely, when the front building comes down, and everything is approved, I will pave the entire lot. I own the building. I am going to be improving the building. I am going to be improving the property. It is a narrow lot. My plan was to have parking on one side of the property, at the rear, which would give room to turn around. We will be keeping about forty to fifty vehicles.

Mr. Donovan: The sign says ninety.

Mr. Goss: It says, "Seventy vehicles available." I always have twenty to thirty cars in the pipeline. We have cars at auto auctions. It does not necessarily mean they are sitting on the property. It means they are available to us.

Mr. Snowden: Mr. Chairman, may I ask Mr. Goss a question please? Mr. Goss, what is the material that is in the rear yard? Is it suppose to be a yard.

Mr. Goss: No, it's gravel and weeds.

Mr. Snowden: So it was originally gravel and has become overrun?

Mr. Goss: It had gravel but is not level, so I am not real sure what it was because it has been like that since I have had it. It has had gravel down but the grade is not at all level.

Mr. Enfinger: So, you have owned the facility for some time now?

Mr. Goss: I bought it in either April or May of last year.

Mr. Snowden: Mr. Chairman, gravel may be added if there is existing gravel there. Any paved surfaces in the City have to be permanent paved surfaces. But, if there is gravel there now, you can maintain gravel.

Mr. Goss: There is definitely gravel.

Mr. Enfinger: So my first question was going to be, "When did you take ownership without going through the proper channels?"

Mr. Goss: We have been out there about sixty days. When I first got out there, we ran a repair facility for our own vehicles out there. I have owned Auto Direct for eight years, we have sold seven thousand cars. I had twenty employees. I am downsizing. I own this property, I was leasing the other building. When I opened my other car lot, I did not do any of that. I had no idea. I did not know that I had to get zoning or anything like that. When Reynoldsburg came, it was a complete surprise to me and I came directly down here and spoke with Josh.

Mr. Enfinger: As far as the number of vehicles on the property, how many do you currently have?

Mr. Goss: I'm going to guess fifty. The number of vehicles I control. I had a car lot that had two hundred cars on it. I can get two hundred cars now but we obviously don't have the space. Whatever number you are comfortable with, that works for me, will be the number. The old Target building on Scarborough, there is a Capitol City Auto Auction there, I could put fifty cars inside there tomorrow, and store them. That is not an issue. When we get everything set up, if it's approved, it will be a very nice looking building. We will take care of it. We are going to pave, paint, change the awnings or tear them down. Whatever we have to do.

Mr. Enfinger: So the condition you have kept the buildings in up to this point, will not be indicative of how you are going to treat them?

Mr. Goss: There have been a lot of improvements in the building already. They have just been interior improvements.

Mr. Enfinger: You have had the property for a while and the back has grown up with weeds. So you can understand our concern, we just want to make sure that it is perfectly clear that everything needs to be kept to code. What is the plan and time frame for the demolition of the front structure?

Mr. Goss: Obviously I have to get an approval from you before I tear the building down, since it is an existing car wash and it is going to be an auto sales place. Once that is done, I have quotes, I have to apply for demo permits, I will get it done. The front building is not only a hindrance to me, it is a hindrance to Reynoldsburg. It is an eyesore. It is also a hindrance to traffic. The traffic backs up on Main St., and the place has lost money as a car wash for the last eight years, I have their financial statements. It's not a business that can make it in today's world. I ran it as a car wash for a year. It lost money month in and month out. Whatever that property becomes, it can not be a profitable car wash. I bought the property from a friend of mine who owns a title company. He is very successful. He ran it himself for a year to try to get it to make money. It can't make money. The building is an

eyesore. I lived in Reynoldsburg twenty-five years ago. I am shocked at how nice Reynoldsburg is today. That building is not doing any good for Reynoldsburg. I opened up eight years ago, I've sold seven thousand cars. I have an "A+" rating with the Better Business Bureau. We have always gotten compliments on our buildings. In the event that you approve this, I can guarantee that whatever we do will benefit Reynoldsburg.

Mr. Enfinger: Once that is gone, what is the configuration of the parking? What do you envision going forward?

Mr. Goss: No matter what, the vehicles are going to have to line up on both sides of the property. They are going to have to be on the east and west sides of the property. I don't envision having cars across the front of the property. I heard somebody say something about car lots liking to have frontage. In today's market, frontage means nothing. People run car lots out of warehouses. It's the internet. So, is the drive by traffic customer good? Yeah, it's a plus, but that's not where the customers are coming from anymore. They are price shopping on the internet.

Mr. Enfinger: How many cars would you be able to stack on one side and not have to have them on both? When I went in there, it was next to impossible to turn around.

Mr. Goss: My thoughts were to have the cars on both sides, but towards the rear, and have the cars stop. That way there is an opening so someone could pull in and park and have plenty of room to back out. It's going to be tight no matter what. It is tight with no cars. It was tight as a car wash. The only thing I can think of is, one side has cars all the way, the other side has cars halfway, and that opens up a lot to be able to pull in and back up. And, on Dodd's Body Shop, what I would do is put signs that say "Customer Parking" on that brick wall. That way they know to pull in over there and they could back right out.

Mr. Enfinger: Will they park parallel to the wall there?

Mr. Goss: They could pull right into the wall. Or it could be on either side. If they are parking there, that gives them room to back up. It would have to be three or four spots towards Main St. We are not going to have fifty customers there at a time. If we have three customers there at one time, that is going to be the most.

Mr. Enfinger: Mr. Snowden, is there anything stated in the Code regarding number of vehicles per square foot of property. It is a very narrow piece of property so you are going to have to make it work, but in doing so, that may mean limiting the number of vehicles you have there.

Mr. Snowden: Mr. Chairman, and other members of the Board, I don't think the Code is going to provide us with any guidance on this particular detail. Staff's position would be that this is going to be a narrow property for anyone. There are not going to be a whole lot of other uses that are not going to have the same issues, except maybe in and out retail at a particular spot, and they would be upset with how far back the building is located. There are not a lot of other uses that are going to work.

Mr. Enfinger: It has the potential to work, with what you are wanting to do.

Mr. Snowden: Assuming that Mr. Goss's application was approved this evening, and he carried through the process, and went through to remove the structure at the front, Staff at that point would want to see a minor site plan, to show how the whole thing is going to look. It is a Zoning/Administrative approval, which means, I would approve it before the demolition approval could be issued through building. Mr. Goss could show Staff at that time. It is going to be something that someone with the experience of laying this out would have to do. That would be a good time for him to show Staff a more defined parking area. The impression that I am getting is that Mr. Goss had to move his business in, and that he is on the right path. We just need a system in place to make sure all of these details are taken care of. He stated in his application that he wants to repair the asphalt and repave. I would like more detail to see how it will all come together.

Mr. Enfinger: In that minor site plan, there would be a clear understanding of how many vehicles would be allowed on the property?

Mr. Snowden: Parking would have to be delineated based on the number of spaces per the Code. Right now this is open tar. This was travel lanes. The spaces are not detailed out. It's not as if I could look at a site plan of a shopping center and say they have a certain number of spaces. We can't really do that here. If he did that, Staff could review it based on the Code, how many parking spaces would need to be left for customers, and so forth. It is really murky now because the lot is not laid out in a normal manner for parking fields. And there is additional land there. It would seem to me that it would be unfortunate to deny the permit based on a lack of parking when Mr. Goss said he is willing to remove the building as soon as the Board approves the use.

Mr. Enfinger: My only concern is the amount of vehicles that will be on the property. It is a small property so it could really feel cramped, it's going to feel jammed up and we are going to be trading one eyesore for another. That is a concern I have. Again, with the minor site plan, I think it is reasonable to expect that we could know the number of vehicles. And, at that point it is laid out, you could make a decision as to what would be an appropriate number of vehicles to have on the property at any one time.

Mr. Snowden: Mr. Chairman, give me just one moment.

Mr. Enfinger: Any other questions from other Board members?

Mr. Donovan: I would like to know if you will be doing warranty or repair work on this property?

Mr. Goss: The only work we will be doing is minor repair work to our own vehicles. We will not be doing any work for the public. We have a four car shop behind there and we are going to use it. But, we will not be doing any major repairs. We will be doing brakes, oil changes, and things like that.

Mr. Donovan: This is for the vehicles you have on your lot?

Mr. Goss: For our own vehicles. We will not be trying to make a profit off of servicing cars. It will be strictly to service the vehicles that we are selling.

Mr. Snowden: Mr. Goss, do you know the approximate square footage of the back building?

Mr. Goss: 50 feet by 120, seems like that is about right.

Mr. Snowden: There is no specific requirement in the code for parking for this specific type of use. One for every two hundred square feet is the standard for retail and one for every one hundred square feet is the standard for in and out restaurant use. Even if we held them to a very high standard for parking, it is still going to be essentially ten spaces.

Mr. Enfinger: That would be for the customers and not for display of the merchandise.

Mr. Snowden: Correct. My point is, if that is a finite number, I will calculate the amount. And, if Mr. Goss does a minor site plan to remove the front building, he will only be allowed to have as many cars as what remains after that number. Even if I calculate off the retail, which is the lower number.

Mr. Enfinger: I follow.

Mr. Snowden: That is going to leave him with a finite number. Hypothetically, let's say he has fifty spaces, he will need ten for customers and will have forty spaces in which to display vehicles. However you want to space this out. And the spaces must be a certain size per the code, and I get that to whoever is going to do your site drawing.

Mr. Enfinger: That is the kind of clarity, kind or specificity, I think is necessary. At this point, when you drive through there, it is a hodgepodge. I understand you have the building to get down, so it is in the process. So to approve this, we want to make sure we know exactly what we are approving and not just a hypothetical situation where we leave it to you. That is the point of the concern.

Ms. Wallace: In this picture, even if you had cars down both sides and double deep on the one side, you could still have room if he only went back half way. Plus, when coming down Main Street, you are not going to be seeing this big line of cars because there is no frontage. It is all going front to back, so I don't have a problem with seeing the cars lined up, especially if the lot looks better than it looks now. I do not thin the front to back will be any kind of eyesore at all. You will see one or two cars and the rest will be hidden behind those.

Mr. Enfinger: My comment on trading an eyesore for an eyesore, was not meant to indicate that I feel running down both sides would be an eyesore. I think that is perfectly reasonable and would look very nice. My point is, if you take the cars all the way back, there is no way

to turn around and there is too much going on. But, if you have it stop at a point, you could turn around.

Ms. Wallace: It seems like, with the building gone, and with cars in rows, and with the paving and lines, it will be much more appealing when driving down the road.

Mr. Snowden: Mr. Chairman and Members of the Board, it seems the Board is comfortable with the use, but wants to make sure these details are addressed. One of two things may need to happen. Either Mr. Goss will need to get a minor site plan where he can address that specific portion of it, in addition to the other items I listed as suggestions for requirements. The other thing that could happen, depending on how much Mr. Goss wants to change the building, as far as color changes, material changes, etc...DRB could review and assist with these changes. In addition to the comments that I made in my report, as part of the review at three months, Mr. Goss will have either submitted a site plan, or submitted a package to Design Review, for Design Review Board's approval. Essentially it will amount to the same thing. I don't know if that is something the Board is open to, but that is the only other guidance I can give the Board.

Mr. Donovan: I thought there was a set-back requirement for selling vehicles from the street.

Mr. Snowden: I have had that told to me by several individuals since I have been here. I have searched the code for literally hours, attempting to find that. Including electronic searches. I can not find anything stating that. The only thing I could find related to that was regarding setbacks for the parking lots for new construction. I have not seen anything else. If anyone knows the code and wants to help me out, I would welcome that. But, I have looked at the code ad nauseam and I have not found any detail about that.

Ms. Wallace: I am comfortable with Mr. Snowden's suggestion of going with the recommendations and letting the Board decide if there needs to be a site plan and letting that go before the Design Review Board.

Mr. Enfinger: I think so as well. So, I make a recommendation that we move to approve Application #170493 with the following conditions: The applicant seeks the appropriate permits for the sign from DRB. The applicant brings the existing structures to code regarding the awnings. And, that the area in the back section be addressed. Seeing that those are agreed to, and pending approval of this Special Exception Use and a Minor Site Plan, that can be reviewed by staff.

Ms. Wallace: I will second.

Mr. Snowden: This application will be forwarded to City Council. The Clerk of Council will contact you if Council elects to hold any additional hearings, or take any additional action. You have already submitted for your zoning certificate. Once staff receives a notice of approval from the Clerk of Council, Staff will contact you when the certificate is ready for pick up. Once that certificate is secured and ready for pick up, you will need to contact the Building Division and submit plans for building occupancy. Those plans will be interior

drawings of the rear building that you want to occupy for your business. After that, have all required inspections. Board members, to clarify a procedure that has not been consistently followed, per Section 1145 of the Zoning Code, Staff will review this permit approval in six months. And to confirm compliance with the conditions and report those findings to the Board. If the applicant has not complied with all conditions of their approval, and completed all the required steps to open the business or use, the Special Exception Use can be revoked by the Board. With that, I will turn it back over to the Chairman.

RESULT:	REFERRED TO COUNCIL [UNANIMOUS]	Next: 9/14/2015 7:30 PM
MOVER:	Aaron Enfinger	
SECONDER:	Libby Wallace	
AYES:	Linder, Donovan, Enfinger, Wallace	

2. 7524 E. Main St.; Application #170630; Unnamed Eatery Serving Ice Cream, Sandwiches, and Festival Foods; John and Heather Fry

Mr. Enfinger: Application #170630 for 7524 E. Main St. May we please have the presentation?

Mr. Snowden: For Special Exception Use Permit, for an eating and drinking establishment, with a drive thru service, for the property located on the north side of E. Main St., between Jackson St. And Waggoner Rd. It is in the CC - Community Commerce District, as well as the HCO - Historic Commercial Overlay. The request is for the Board to review and approve a Special Exception Use Permit for drive thru service in a multi-tenant building, in the CC - Community Commerce District of the City. Current Use: the structure is vacant. It has previously been retail sales and an eating and drinking establishment. The applicants representatives are John and Heather Fry. Adjacent uses include commercial businesses in the CC - Community Commerce District. All adjacent properties are within the Historic Commercial Overlay. To the north, the property is abutting multifamily dwellings in the AR-2C District of the City. In front of you is a site plan of the lot as well as an indication of the specific tenant space. Use clarification: the property is in the CC District, as stated. In this district, eating and drinking establishments are normally a Special Exception Use and the Board reviews permits for those. However, Section 1194 of the Zoning Code provides a modified use table for commercially zoned properties that are within the Historic Commercial Overlay District, and assigns eating and drinking establishments as a permitted use. It did not modify the drive thru service use requirements, so Special Exception Use is still required. What the Board is considering is whether the drive thru use, and location of the window and its details, are acceptable. There is a separate use table for the Commercial Overlay that removes that from being a Special Exception. The applicant is proposing to repurpose an existing drive thru window for their service window, which was originally constructed for a bank and contains two bays. Under 1194 of the Code, regarding drive thru services, and mostly referencing new construction, it states that the architectural detailing and materials need to be carried throughout. Looking at the canopy, although it would be nice if there were brick elements on the pylons, to tie that in consistently, if it were a new building. The idea is that the drive thru should not look like an afterthought and should be integrated into the structure. Staff is comfortable that has been met. The only concern, that staff had specifically, is the entry into that drive thru. If you look on this site plan, you can see it

better indicated, this is an entry point and this is an exit, to access this window, you will be crossing the opposite window and then have to turn around. It is going to be a problem for the Fry's, it was probably a problem for the bank. Although, the bank may have had folks coming a different direction. Obviously the ice cream and sandwiches can not go through a pneumatic tube to get to the customers. That is really what the issue is there. The opposite argument is that there really is not any traffic back there right now, although there are some other tenant spaces. I would encourage the Board to listen to how the Fry's are presenting, and how much business they anticipate and so forth. There may need to be some additional signage or striping for the drive thru in order to get to that window.

Mr. Enfinger: Would the applicant step up to the podium please.

Mr. Fry: We do have a name now. I noticed that it was listed as "Unnamed." It is Carnival Ice Cream. We want to do a lot of hard dipped ice cream, subs, carnival foods, corn dogs, cotton candy, popcorn, etc... Items you can only get at a fair and not all year long. We have teamed up with Johnson's Ice Cream. We have met with them, and we have Matt and team and they are going to be our supplier. Technically, we are bringing Johnson's Ice Cream back to Reynoldsburg. As far as the drive thru, our thought was, there are a couple of ways to exit. You can do a reverse u-turn out, or you can take the other exit that takes you into the other shopping center, or back out to Waggoner Rd.

Mr. Donovan: Have you spoken to the property owners regarding being able to do that?

Mr. Fry: Yes. We have talked to them about being able to operate as a drive thru, and they know exactly what kind of business we are doing. We are in the process of putting the lease together. We are finalizing a couple of things. We have agreed to what each party is responsible for, especially from a cosmetic standpoint, because it has been vacant for twelve years. So, we have a lot of work to do. It is the largest retail space in that complex. We would like to get it going and bring more retail back into that area. There are a lot of vacant spots in there.

Mr. Donovan: Are you going to have sit down service at all?

Mr. Fry: Yes. One of the things we were concerned about was the stacking, so if you look behind there, there is parking. There is a back door, so the staff can run it out to them, and they can then leave. So, it keeps the process and the flow going.

Mr. Snowden: Mr. Chairman, and Members of the Board, I was wondering if it would be possible for the Board to require specific signage, or if the Board feels it is necessary. In staff's view, that could be helpful. A lot of fast food restaurants are utilizing the waiting areas and because of the unique configuration, maybe it is something the Board should require instead of just recommending.

Ms. Wallace: I know most drive thrus have the pull over and wait for your food thing. And I'm sure it wouldn't be an issue to paint an arrow and have a corner sign that directs you to pull around the building to the left and into a numbered space. This is common in drive thrus

that have a longer cook time. I have lived here fifty years and that complex does not have a ton of constant traffic thru it. In a shopping center, my personal thought is that you don't have continuous constant traffic flow like you would have on Main St. So I don't think it would be an issue to come in up against the building.

Mr. Fry: Right now, there are no businesses behind there. It is all vacant.

Mr. Snowden: Mr. Fry, let me interject, there is one catering business at the very back of the property. But the tenant spaces that face that are actually currently empty.

Mr. Enfinger: So, around the corner where we are talking staging the stacking of the drive thru, there are actual parking spaces?

Mr. Fry: And that is on an as needed basis.

Mr. Snowden: You should be able to see that on your site plan.

Mr. Enfinger: Is there a way that you could have an agreement with the landlord and be able to designate that these two to three spaces are yours? I don't know how far away it would be before another tenant would desire to have that area.

Mr. Snowden: Mr. Enfinger, if you look on this site plan, there are two tenant spaces here, this is an access pathway between the two buildings approximately six feet wide, so there is a little bit of room there. I don't think we are going to be overwhelming the rear tenants and taking away their parking. In addition, the catering use utilizes this area for vehicle storage and parking.

Mr. Enfinger: Are you going to have a board you drive up to before moving forward? Or will you place the order face to face?

Mr. Fry: There will be a prior menu.

Pastor Linder: Where will that be. Will that be toward the entry?

Mr. Fry: If you can see the very far part of the building, there is going to be a menu there. At the very beginning.

Pastor Linder: The only thing I'm curious about is, if they are going to drive into this holding space, and then back out, will there be any anticipation that if someone just got their order and is backing out...

Mr. Fry: No need to back out. When they pull in, they are in a lane.

Pastor Linder: Almost off and into a space?

Mr. Fry: So if someone wanted to go past them, you have that other lane that we are not going to use. I have no use for that second lane.

Mr. Enfinger: That does bring up the concern of where the menu board is, so if you have two or three people staged in line, where are they going to be? Maybe the best thing is to have the board next to the window. These are things you are going to have to work through with striping...

Mr. Snowden: Mr. Chairman, and Members of the Board, unfortunately the Code offers us absolutely no guidance on stacking space requirements. Some cities require up to eight, and that is usually the communities that have the lane wrapping around the building. In my experience, I have only seen a handful of locations that utilize that.

Mr. Enfinger: So the concern is, it is going to be a wildly successful business, and on any kind of warm evening you can drive by the Dairy Queen and see that the traffic is very problematic. So you can see our concern in wanting to make sure that these kinds of things are thought thru.

Mr. Fry: We put a lot of thought into the drive thru. It is one of the first things we talked about and addressed. The first question I had was, where is the stacking?

Mr. Snowden: What about stacking in front of the building and then turning left into the lane?

Mr. Enfinger: That goes against the flow of traffic.

Mr. Snowden: You are right.

Mr. Enfinger: Theoretically, how many vehicles could you put if you had one at the window? Are you talking three at most once you get past the corner of the building?

Mr. Fry: Actually, we can get four before we get into the intersection where people are going to come in and turn left to go in front of...

Mr. Enfinger: If we have six vehicles?

Mr. Fry: You pull two around to the holding spots.

Mr. Enfinger: maybe you have two in the holding spots, and there are six vehicles with four stacked up, and two more trying to get in. There obviously will be a lot of issues with people trying to leave and everyone trying to stack in. That is where clear definition on striping would be, like a little stop sign or some pavement markings like "Stop Here to Wait for Clearance." Otherwise, they will just back up and stack up, into that exit lane. Who has the purview for deciding and requiring that? Is that us?

Mr. Snowden: The Board has that power. If the Board thinks that it can work, the Board can approve. If the Board thinks it will not work, the Board can deny it. If the Board would like to see more information, the Board could table it and give Staff parameters to view such a plan. It is really up to you. You have pretty much unlimited discretion.

Mr. Enfinger: So what time are you looking at to try to open?

Mr. Fry: What we have worked out with the landlord, because of the cosmetic work which needs to be done inside, we have a four month build out, which means going inside with new flooring, painting, dry wall, bringing in of equipment. So we have a four month window before we actually open, once everything is done through the City.

Mr. Enfinger: So, the restaurant can open irrespectively. Our concern here is strictly the drive thru.

Mr. Snowden: Given the persnickety Use Table of the Code, Staff was not totally clear with Mr. Fry that that was the case. So, now that he knows that, he can move forward with securing a zoning certificate for the main part of the business and start going through that process while the details are worked out with this drive thru.

Mr. Enfinger: I certainly think it is doable, I just think we need some specifics and exactly what it is that we want to do. And maybe the officer might be able to help out there.

Mr. Fry: I know there was a coffee shop prior. Is there any documentation for this business as to what they had and what they did?

Mr. Snowden: That is a great question. Do we know what year they were approved?

Mr. Fry: It was empty in 2003.

Mr. Snowden: Staff probably does not have those records accessible. They are beyond the retention schedule. Did they utilize the window?

Mr. Donovan: In the frontage of that building there was a pastry place.

Mr. Enfinger: It use to be Five Cups or Three Cups, something along those lines.

Ms. Wallace: I don't have an issue with the drive thru if we would give Staff the authority to have guidelines for arrows on the pavement, if allowed by code to have hash marks so drivers don't block the side that goes down to Tyler's. Just something for a visual to tell people to wait here. I don't think it is going to be an issue.

Mr. Enfinger: If you have ever sat at Moo Moo's waiting, there is a place where you cross a couple of times. I think people could get use to it. And even if they are stacking up in the traffic lane, not right in front of the building, but farther away, if everyone learns that this is where they stack before they come in, we are all smart.

Mr. Fry: Like above the drive thru have "Drive Thru Entry"?

Ms. Wallace: Or arrows on the pavement that show the traffic pattern. Most people are courteous drivers. You do have people that are not. Most people would allow someone to turn that was waiting for the drive thru.

Mr. Donovan: I will give you an example, go out on the street corner out here and watch all the people run through the red light. People do not care. My thing is, he has already covered the property thing about being able to use the other property's driveways to get in and out. That will alleviate a lot of their problems.

Ms. Wallace: I don't think it is going to be an issue going in and out.

Mr. Snowden: As I stated before, all of our Special Exceptions are suppose to be reviewed at six months. The Board could put on some sort of condition that would address this. Staff could also attempt to pull accident data to see if there have been any issues. I do not know what else the Board could require. It's one of those things where it looks like it could work. Staff is not overly panicked about it. But, obviously the Board wants to make sure that it is done properly.

Mr. Enfinger: I think specificity on the issue again, like before. I think it is completely doable. Let's just have a plan. I make a motion that we move to adopt and approve Application #170630 with the following condition, that the applicant works with Staff in coming up with a traffic flow plan that is suitable to safety concerns for the community as well as other tenants in the building.

Mr. Donovan: I will second it.

Mr. Snowden: Mr. Fry, that stands approved. I always provide a written notice, mailed out, stating the information I am about to read to you, but I want to read it into the record. The application will be forwarded to City Council, and the Clerk of Council, if Council wants to have any additional hearings or take any other action. I will check my files. I think I have a Zoning Certificate application for you already. Once I receive notice from the Clerk of Council, I will contact you that it is ready to pick up. At that point I would really like to see a more detailed plan for the drive thru configuration. Once the Zoning Certificate is obtained, you need to contact the Building Division to submit your plans for building occupancy, as we have discussed. Per Section 1145 of the Code, Staff will review this in six months and report the status back to the Board. Have a great night.

RESULT:	REFERRED TO COUNCIL [UNANIMOUS]
MOVER:	Aaron Enfinger
SECONDER:	Richard Donovan
AYES:	Linder, Donovan, Enfinger, Wallace

3. **1914 Brice Rd.; Application #170778; Childcare Center; LaTarsha Pritchard**

Mr. Enfinger: Application #170778 at 1914 Brice Rd., a childcare center. Mr. Snowden, may we have the presentation please?

Mr. Snowden: Thank you Mr. Chairman. It's Application #170778, Special Exception Use Permit for a Childcare Center for the property located on the east side of Brice Rd., just south of Livingston Ave. It is located in the CC - Community Commerce District of the City, as well as the CCO - Community Commercial Overlay. The request is for the Board to review and approve a Special Exception Use Permit for a child care center in the CC District of the City. Current use: vacant space. The most recent user was a charitable Bingo game. Applicant is LaTarsha Pritchard and the applicant's representative that is here with us this evening is Mr. David Hodge. Adjacent uses include commercial businesses in the CC district. The property abuts out lots which front Brice Rd. These contain a gasoline station and fast food type business in the CC and CS Districts. To the south, the property is adjacent to another commercial building in the CC District, one of which contains a childcare center. Along the east side, the property abuts the Truro Township Fire Station #162 and the City's Community Garden. And I believe, to the southeast, on a related parcel is the COTA park and ride. The applicant was previously denied for the same use at the same location at the March 2014 meeting of this Board. Staff reviewed the materials and minutes from that application extensively, and encouraged the applicant and their representative to address the concerns that were raised by the Board at that meeting. Since that time, the Big Lots retailer that was in this location on the map in front of you, has left the center and that space is now vacant. The entire center is now vacant except for a carry-out grocery store in the southern most tenant space, which I am indicating. Parking: we do not have a specific parking requirement. You can see some parking ratios taken from other zoning codes. In this case, Staff has calculated that there are over 330 parking spaces on site and the most this applicant could be required would be 20 spaces, and there are 210 spaces required if all of the property was filled with retail. Staff has met several times with the applicant and their representative to discuss the issues that were raised by the Board. Staff would like the Board to determine if there is a parking/loading/drop-off configuration that they would find more acceptable. Obviously, there is the potential to have additional tenants here. There is basically a conflict here between families and loading into the center, and other traffic. Even if you have a stand alone child care center, there is still some conflict between children, family, and other folks, because those centers have a parking facility as well. The applicant stated as part of their proposal that they are planning to load from the front, but staff questions if there is any merit to those details and whether the Board would like to see one or the other. The applicant is proposing to utilize the existing fenced in play area at the rear of the building. Obviously there is a potential conflict between loading and unloading and vehicles idling near the play area. If the Board were comfortable with the use in general, Staff's recommendation would be that the Board prohibit loading and unloading, and require the property owner to establish a specific no loading or unloading, or idling time for vehicles near this particular spot. Staff also suggests that the fence, which the applicant has proposed to detail, would have some sort of high visibility, so it is not just a service structure, but that it is blocking a specific thing. Character: the biggest thing that Staff took from review of the previous material is that the Board felt that moving a child care center into this type of location fundamentally changed the character of the center away from retail to institutional or educational type of use. Staff's main concern with these types of childcare centers is that when the play area is specifically

placed in the front, which you do see in commercial buildings from time to time, that is a very dramatic change from a retail in and out type of use, to an institutional type of use. In this location, they are proposing a place in the back. Staff is a bit more open to that location of the play area, and does not feel as strongly that this is a character change. Again, this is Staff's opinion. All that say, in a complicated way, is that Staff is open to it, and with that I will turn it back to the Board and Mr. Hodge.

Mr. Enfinger: If you could just state your name and address for the record please.

Mr. Hodge: My name is David Hodge and I am a Zoning and Land Use Attorney with the Law Firm, Smith and Hale, 37 W. Broad St., Suite 460, Columbus 43215. I am here this evening on behalf of the owner of the property. It is an LLC, called WK Brice, that consists essentially of two individuals, Jim Wiggins and Dima Kuzmanovski. I think preliminarily, because this is relevant, all of us are able to speak on issues about which we have personal experience. I have an eight year old, a six year old, both of whom are now in elementary school. And, a three year old who is in preschool. I took the eight year old everyday to the same preschool, as well as the six year old, and as of yesterday, the three year old. So, I have some considerable experience with pick up and drop off at preschools or day cares. The preschool that my kids have gone to, and currently go to, is at the Bexley United Methodist Church, on Broad Street in Bexley, and the parking lot for that church is next to it. It has very narrow aisle widths. It has angled parking. None of which are the required width, which is about nine feet. And, it has no snow removal in the winter. It is tricky and not always easy. I can say without reservation, I have been to tonight's subject site many times. And, with reference to my experience and what is being proposed here, the parking situation, the pick up and drop off situation, is vastly better than my own personal experience. And truly, in my humble opinion, not an issue. There are sixteen spaces along the front. Within the "U" shape of the building, we would like to designate those spaces to exclusive use for the daycare. The way this daycare operates, is there is no hard and fast drop off time. A preschool starts at nine. This is a daycare so there are drop offs throughout the day. They are open from 5:30 a.m. and close at 7:30 p.m. And the potential operator says there are no more than five dropping off or picking up at the same time. Now there certainly could be multiple children in the same car. There have been in mine. But, in reference to the sixteen spaces across the front, we don't think there is going to be any conflict. Employees would park in the parking field to the west, so that employees are not in that front location. For the off chance, that folks/parents/grandparents may be dropping off in that parking field, we would propose painting a cross hatched cross walk, from that parking field, over to the front of the facility. As you are surely aware, and as Eric indicated, this shopping center is vacant. There is a Mexican grocery store at the far south space. Those same operators are in the process of finishing a restaurant, I'm not sure they have picked up their occupancy permit.

Mr. Snowden: They have not and their plan reviews may have expired.

Mr. Hodge: It really is a beautiful Mexican restaurant. They have done a fantastic job with the improvement of the interior. The remainder of the center is vacant. There was a Big Lots/Odd Lots at the northern most big box space, but they have since moved across Livingston Ave. From my clients perspective, they have no income. They have a lot of

obligation, they have a lot of maintenance, they have a lot of tax, and they have no income. And so, I am aware that historically, maybe today, there are folks in the city that take exception to having day cares in retail centers. I understand that perspective, but this center is drying on the vine and it needs some vibrancy, it needs some activity. And the hope is that when and if the restaurant opens, and when and if the day care opens, that there is some activity. And, any retailer will tell you that one of the first things they look at is the MORPC map that shows the number of cars up and down the street everyday to tell you whether or not it is a good retail location. Our clients, Mr. Wiggins and Mr. Kuzmanovski, they need some income, they need some life breathed into the center. With reference to the measures that are in that statement, that is part of the packet, I have mentioned the parking, which I think is adequate, and the commitment to painting the crosswalk on the pavement. We also would put some signage along the sidewalk in front, just to let folks know that the sixteen spaces, or some number of them, are reserved and designated for parent pick up and drop off, so there is no conflict. People pull in, see the sign, and they go back out into the parking field. With reference to the playground at the back, you know it's tired. The fence is in bad condition. It's not flush to the ground. So, we would propose moving the fence and installing a new board on board fence that's on the ground. There's also a mechanical in that area. That mechanical would be enclosed with the same fence, mulch would go down, play equipment would go out. There is already a door leaving the building and I think the idea to put some neon yellow bollards around the perimeter of the fence, to make certain that there are not issues with delivery trucks or other cars back there, is a fantastic idea and is something that we are willing to do. I think it is interesting that, as Mr. Snowden mentioned in one or both of the previous cases, that there is a check and balance in place in the code, which if an applicant or property owner doesn't comply with conditions, that the Special Exception can be revoked. That is a great checks and balance, and it holds folks' feet to the fire and really obligates them if they want to continue to keep their work. Even though I have a license to practice law, and even though I am here tonight on behalf of people, I'm not really a lawyer. This is what we do. We go to BZA's, and we go to Planning Commissions, and City Council, and I'm personally on the Bexley Planning Commission. So, I sit on that side of the table, sometimes. It has been good for what I do on this side, but I'm over there sometimes. I don't really like to talk about the law when I do this because it turns people off. It doesn't do what one thinks that it does. But briefly, a Special Exception, or a Conditional Use, or a Special Use, they're all legally synonymous terms, and what those are, are uses that are permitted in the zoning classification that may have a greater impact than just the family of permitted uses. And so, it obligates an applicant, or a property owner to appear before a Board, and there are criteria in the Code that we review to make sure, to make absolutely certain that the use is not going to have a negative impact on surrounding owners, traffic impacts, things like that. We have addressed those standards in our statement. We stand by what we wrote in the statement. And, to the extent that anybody would want me to speak about any of those five or six criteria in particular, I'm happy to do that. But, I am comfortable that we meet them, and exceed them, and certainly child care is a listed Exceptional Use in our zoning classification.

Mr. Donovan: Did you just say you are going to feed them there?

Mr. Hodge: Did I say that? I did not say that.

Mr. Donovan: I was looking for a kitchen and I do not see one. My question is, hopefully you are going to have a hundred and ten kids in there, so how much staff are you planning to have?

Mr. Hodge: Thank you for the question. It is a good one and it is something that I left out of my remarks. Any operator of a daycare/childcare is required to have a license issued by the State of Ohio, the Ohio Department of Jobs and Family Services Childcare Division, which this user has. She currently has another daycare center, one underway at the south end of Columbus, and potentially this one. She has that licensure. And there is a certain ratio, depending on the age of the children, that you have to meet. It's up to twenty employees. They would not all be there at the same time, but it is up to twenty employees/teachers.

Mr. Donovan: My next question is, how are you going to handle that with just two restrooms? And, with little kids who are being potty trained?

Mr. Hodge: Sure, that's a great question, and not one I anticipated. She believes it is an adequate number of restrooms. If additional restrooms are required by the licensing entity, the State of Ohio, or by any requirement in the City of Reynoldsburg, then additional restrooms would go in.

Ms. Wallace: I think with my history with daycare and preschool, that is a pretty average number. In regards to the restroom thing, that seems adequate to me.

Mr. Donovan: They are hoping for 130 people?

Ms. Wallace: Thirty or fifty are in diapers. Where my kids went, there was one bathroom for that same number of kids.

Mr. Hodge: My daughter has a bathroom in her classroom, she is not going to use it, but it is there.

Ms. Wallace: I really know she has a good successful business. I would like for her to bring her business to Reynoldsburg, being a successful business woman. The parking thing out front, and the traffic thing, most people would not send a two year old by themselves. I come down to, and not with just this application, but with every application for childcare, especially ones within strip malls, it is the back where the play area is, and the fact that is a drive through. Hopefully, eventually we will have all the strip malls in Reynoldsburg full again. But, knowing there are going to be semis and delivery trucks out back where the kids are playing, has always been pretty much my only concern. Knowing that is a drive through and cut through, and there is a traffic light there, it's just a traffic area out back with a play area out back is my concern every time someone wants to put a day care in a strip area. With parking out front, you are not going to get dropped off at the door anywhere. You are going to have to get out and walk. So I don't have an issue with the parking and walking across the street to take your kid in, but it's the back thing and I don't know how that can be remedied in this situation.

Mr. Snowden: May I bring you up to speed on the practical details here. I think Mr. Hodge has done an excellent job addressing the individual issues with the use, but there are some issues with the site that we are having, which is one reason I have asked Officer Kessler to be here this evening. He is our Community Liaison to the Brice/Livingston area. And although they are not specific to this application, there are some issues that are effecting the entire property that may need to be worked through. Let me just touch on them briefly. On the screen is the proposed area for the play area. We have found there are transients that may be trying to live on this property. It is something officer Kessler has been investigating. You can see behind the mechanical, one of the items I suggested in my longer Staff Report. Under Staff Recommendation, was suggested that the Board perhaps require some of these additional mechanical devices to be screened for this very reason here. If this was going to be built today, that mechanical structure would had to have been screened or integrated into the structure. It wasn't when the structure was originally built but it would have to be today. Obviously there is a safety issue with having folks attempting to live in the immediate area of where the children will be. That being said, I think Mr. Hodge's point is well taken in that having more activity at the site in general, may discourage that type of negative behavior. If you look to the north, this is another area where folks have been staying, and this is all at the rear of the property. One additional item, I understand that Mr. Kuzmanovski and the property owner have been attempting to prohibit semi tractor trailers from idling and being at the back of the property. The last thing I will state which is slightly separate, there is some issue with the signage. The Code says that anytime a business is closed for more than ninety days, the sign face needs to be replaced with a blank. The Livingston Ave. Entry sign has an open electrical hazard. Staff did an extensive review and was unable to find the permit required to erect the temporary development sign there that appears to have been erected in 2013, based on street view. Although these are things that don't necessarily apply to the specific use, these are some additional issues that are happening at the property, that Staff would like to see resolved as well. If the Board will allow me for one second, I want to see if Tim has anything else he would like to add as far as operations at the facility.

Officer Kessler: I would like to reiterate what Mr. Snowden is saying. We have had a lot of activity to the back of that, and Mr. Kuzmanovski has made contact with us about the semi traffic. He has tried to enlist our help in getting those out of there. But, on any given day, there are three or four semis parked at the back of that property. They use it for transient parking. Semis come and go constantly. As a matter of fact, the one that Mr. Snowden showed has moved on, but I had another one towed out today. They are back there constantly. The other problem we have is the transient population is starting to move into the Brice Road area. We are working with Truro Township to try to alleviate some of the problem. But there is evidence of people living to the rear of the property and the tree line behind the property. These all lead to safety concerns for the children. Obviously, it is a daycare. Back to the semis, I have found that some of the drivers live in adjacent apartment complexes, so they bring their trucks and they will let them set there for two to three hours at a time while they go home and eat dinner, or go do whatever. And the semis are idling and producing harmful side effects for the children. What can they do to alleviate this? Obviously, I have no idea, but it could be a major problem for the safety of the children that are going to be placed in this facility if it is approved.

Mr. Snowden: Mr. Hodge and Mr. Kuzmanovski did the right thing by getting in contact with Officer Kessler and starting to make him aware of the problems so he could assist in his role as Community Liaison. I don't generally like to drag every possible thing into a zoning review with the Board, but when we deal with child care, we deal with the rear of the property as well. So, these are things that our Board should consider addressing with our applicant.

Pastor Linder: I have not been out behind the property, and this may be a very naive suggestion, but is there any possibility of some sort of gated access on either side of those two openings. It would be a little bit of an expense for the owner, but would that create security for him moving forward? When I see the lane behind, it looks like it is fairly narrow?

Mr. Hodge: It is essentially wide open.

Pastor Linder: So, it is very wide. If the owner makes provisions, you are still concerned about a major security dynamic because it is so open. Would that be accurate?

Officer Kessler: That is an accurate statement. Mr. Kuzmanovski has taken steps to try to reduce the amount of traffic flow back there, but, unless you have a marked cruiser sitting out there twenty-four hours a day... One of the semi drivers was kind enough to leave his number on a post-it note on his window so he could be contacted if there were any issues. So, I contacted him over the phone that parking is not allowed. There are signs clearly posted across the back of the building, all the way down through there. And, he assured me that he would have the vehicle moved. I went back the very next day and it was still sitting there so it had to be sited. After he was issued a citation, he finally moved. The problem is, even with my presence there issuing warnings and citations, and ultimately towing vehicles out of there, it has been used for this purpose for so long that a lot of the semi drivers are not aware of it, or just don't care. Like I said, the signs are clearly posted all the way across the back of the building and they still park there. To alleviate that problem immediately, the only way I could see, would be to completely gate off that whole thing and I know that is a massive expense that I am sure they don't even want to consider. The only other option is to continue doing what we are doing, and that is going to take some time. So you are still going to have issues with semi trucks for the foreseeable future.

Pastor Linder: Just one more question. In your experience, does private security end up becoming more of a challenge all the way around, or can they be successful in providing their own type of security, if it is qualified?

Officer Kessler: Private security may help as far as the transient population, and as far as somebody climbing the fence and utilizing the playground for a sleeping area or something like that. Private security, as far as the semis and traffic, would have the same issues that I have; unless they are standing out there 24/7 directing cars and semis as they pull onto the lot, it is not really feasible.

Pastor Linder: Mr. Hodge, I come into this situation, new to the Board. I reviewed the minutes from the last time the applicant came, and I have a predisposition to be a little bit suspect of having a day care in this environment. But, I am very sympathetic to this owner because, what they made in terms of a case, seems to be a constant issue if we do not find a correction. So, just so you know, there is an empathy here, for an owner that says I can not find a way to get ahead here if we don't find some flexibility. I wish I could find a solution for you right now, as far as how to create safety there.

Mr. Hodge: Pastor Linder, I appreciate the comment and I truly think you hit the nail on the head. When we met with Mr. Snowden and Mr. Havener on the property and walked it and went onto the proposed play area, there were some discussion as to this being a chicken and egg scenario. The center has problems. Problems I was made aware of for the first time tonight.

Mr. Snowden: This is a new thing in this immediate area. Officer Kessler, that is correct?

Officer Kessler: That is correct.

Mr. Snowden: Even within the last couple of weeks. If the information came...

Mr. Hodge: No. No. It's not a criticism in the least.

Mr. Snowden: I had never seen that before. Having driven behind it many times when I visited the site earlier this week to take those photographs for the presentation, that was the first time I noticed it, and that was the reason I invited Officer Kessler. And again, the idea is not to abuse our applicants, but to have everyone involved so that we can come to a solution that hopefully addresses these ongoing issues.

Mr. Hodge: I've got very thick skin. I don't feel attacked in the least. I truly don't. I think it's incumbent upon me to do the best that I can to help my client to solve a problem. It's a problem for my client. It's a problem for the City. Hopefully there will come a day when there is somebody other than a day care that is willing to rent space from him, and pay him more rent, but there's not, there's just not. And, I am not here making the claim. The proof is in the pudding. Big Lots is gone. This space is vacant. It has been vacant. It's going to be vacant. And vagrants and the other issues that come along with it, that's not going to go anywhere with inactivity at the site. We have heard of the broken windows theory. I was a Sociology major in college, so I had no choice but to go to Law School. And the broken windows theory is, if you are in a place where there are a lot of broken windows, there are going to be a bunch of broken windows. So, I know it's a hard case. I talked to Miss Pritchard many times on the telephone. I spoke with her at length today. She seems like an earnest lady. She seems like a lady who knows what she is doing. She is an entrepreneur. She has got the appropriate licensure from Jobs and Family Services. I think the parking issue with reference to the pick up and drop off is a non issue. I understand that the play space in back is not a park, but we are trying to soften the space and put in new fencing. If we can put in fencing that can exceed six feet in height, we are certainly willing to do that. There is going to be play equipment back there. There is going to be mulch on the ground. It

is going to be screened from the parking field. So, with reference to the standards of the code, again it is a permitted use subject to the review of certain standards, A-H, I think we meet them all, I think arguably we meet them all, starting from the bottom, "H". It is a special exception use in the code. The use complies with the provisions/development standards of the code. We have had a lot of discussion here about the use being in accord with general and specific objectives. And the purpose and intent of the Zoning Code and Land Use Plan, which incidentally I understand is from 1992, the year I graduated from High School and the year Mr. Snowden was in Kindergarten, and other plans and ordinances of the City. Now, I am a zoning attorney so I have this stuff pounded into me. There is a case law that says zoning is a derogation of the common law and restricts otherwise permitted uses of property. So we have to tread lightly on restricting people's private property rights. And the purpose of any zoning code is to allow people to make a fair and reasonable use of their property. In this instance, we have a viable tenant. They have been sticking in there for the long term. And we really are doing our very best to mitigate the issues that have arisen in the past, and to mitigate issues that are here tonight. So, I think we certainly meet the objectives of Land Use Regulation, purpose and intent of Zoning Code, and the outdated Land Use Plan. Traffic impact, there is no traffic impact here. The proposed use is served adequately by public facilities, police, fire, storm water, water, sanitary sewer, schools. I think that anybody would say there is a significant impact there. The proposed use shall not adversely effect the health, safety, morals, or welfare of persons residing or working in the neighborhood. I don't think it will effect the neighborhood one iota. I think it is going to be just fine. The proposed use shall not adversely effect the use of adjacent property. If anything, this is going to improve the adjacent property because we are sitting here with a vacant center, and vagrants sleeping in the back, and trucks idling on private property where they should not. I am going to suggest to my client that he engage with a private tower, because those private towers are probably paying if they tow cars off there. That's one way to generate some income. He is not interested in having people idle there. When I was there today, I think I did see a truck in the back. I also saw some Rumpke trucks in the front of the lot. Maybe they were at the grocery store, I don't know.

Ms. Wallace: I appreciate your argument, and I agree with a lot of it. And, I want more than anything for that strip mall to have tenants in it, and for your client to be able to open another business and be able to expand her business. But, for me, the whole setting is just not going to change. If you did everything you said, it still does not change the fact that the back of the building is still on a thoroughfare to get from one main street to another main street. I appreciate and agree with your points about trying to make everything work out. Physically, it just cant be changed. The giant parking lot, if you could fence in the whole area and prevent any traffic at all, that would be a different idea, but that is not feasible. That would me millions of dollars to make it so you are not having traffic go through there. The ability of semis to go two doors down to make a delivery. That part for me is not changeable or fixable, even though everything else seems to be.

Mr. Hodge: Ms. Wallace, I don't know precisely what the ODJFS requirements are as to whether a operator has an obligation to have an outdoor play area. If the play area could be incorporated into the building...

Ms. Wallace: I am pretty sure there has to be an outside play area.

Pastor Linder: When the church had a day care years ago, we did have interior because of foul weather, so I do not remember now if you have to have both. We did have an outside and inside. I don't know if that is something worth looking into.

Mr. Hodge: Ours does too.

Pastor Linder: That had been a suggestion that I would have made, that if we could find more space for them to have an interior play area, that may have given the owner more room.

Mr. Snowden: Our zoning code is not going to require them. As far as what ODJFS requires, I don't know. I can't answer that question.

Mr. Hodge: I would on that issue, if it is important enough to one or more Board members, I would propose that this application be tabled until a later meeting so that we can get that answered. If you feel it is that important and makes a difference to your position.

Pastor Linder: Was the owner open to restricted hours in terms of delivery? Is that even practical for him and other tenants that would come in?

Mr. Hodge: At this point it is practical because there is nobody else there.

Pastor Linder: But could he work that with future lease agreements? Would he be comfortable trying it?

Mr. Hodge: At this point the answer is yes. One of the things he is looking at and has eluded to in my statement and I think it is a fantastic idea, again I drove it today, this building has a pretty significant face on Livingston Ave., and it's the site of old Big Lots, that could be broken into smaller spaces and have more of a presence on Livingston Ave. I think that is a direction he should go to breathe more life into the center and to draw traffic in off of Livingston. Currently it just looks like a long vacant front.

Mr. Snowden: So, to clarify what he means is taking the former Big Lots space and subdividing it into small tenant spaces that would face Livingston, that could be rented easier. For example, instead of renting the several thousand foot space, you could divide it and rent one to a barber shop, and one to a nail salon and so forth. So, it would be smaller and easier to rent.

Mr. Hodge: So, it is box truck delivery at that point?

Mr. Snowden: Correct, instead of the semi truck level delivery that Big Lots had.

Mr. Hodge: So, Pastor Linder, the answer to the question is yes.

Mr. Enfinger: Do we have any other questions, commentary, from members of the Board? My concerns still remain from the initial time. The proposed use is not going to be in character with the area, and I feel in my opinion that in the long term the proposed use will have an adverse effect on the use of adjacent properties, even though those might be empty right now. One of the questions that I think is obvious is, does it create the environment for other positive permitted businesses to move into the area. Once you start changing the actual character of that specific facility, all of the issues and things we discussed to this point seem to echo the fact that this place is not the proper place for a day care. It is my opinion, and we have voted consistently since I have been on the board, that day cares are long term, and as a zoning board, that's our perspective. Our perspective has to look beyond what Mr. Wiggins and Mr. Kuzmanovskis' short term objectives are, and we have to look at the long term thing. I have a couple of questions. Has WK Brice as an organization confronted the City administration and asked what is being done to turn this area around? What is the plan? Where is the vision? Have they put adequate pressure on the City to say, "This is not our fault. We are doing everything we can, but the neglect of the city, the neglect of a plan, of a vision, for that whole entire area..." And this center is not the only one that is struggling, and in my opinion, I think this is a larger issue. The one thing we have to be careful of here, in zoning, is to make sure we are preserving and protecting the long term financial interests of the district, of the city, and of the citizens. Maybe I am taking too broad of a view of it but I think that this is where the rubber meets the road. These are the types of decisions that have impact on those things subsequent years from now. Because, in all reality, if she is able to move in there, and she is successful through the years, it may be 10,15, or even 20 years she is there. Is that the right long term answer for us. It may be in their best interest to fill it, but long term I'm just not sure that it is. It all circles back around to the fact that it is beginning to change the essence and the character of this district, and this facility. When you begin to allow that type of a business, it fundamentally changes it. It has implications that reverberate through time. We have to be careful of that. And that is the position that the Board has taken since I have been on the Board for a little over a year now. And we have consistently upheld that as the position in the Community Commerce District. The day care centers do not fit the character, and it will have, as in Item "B", a negative impact on the neighboring and other businesses in that area. As a result, that is where I stand.

Mr. Hodge: I appreciate the comments Chairman Enfinger, and I think it is fair to say that reasonable people can reach alternative conclusions and I differ with your opinion. I am not just here as a mouthpiece for folks that have a goal, but I am here, and I believe what I say. I understand the position. I disagree with it. And, I think that in answer to your question, has this applicant reached out to the City? Yes, repeatedly, over and over. Mr. Havener is very active with this owner and his representatives, and very active with the City. And, the City to it's credit, has sent out many people to the site. They don't rent it. It's a challenged site. It is set back away from Brice Rd. The Brice Road frontage is all carved up into out lots. You cannot see it. The Livingston Ave. redo of the frontage is a great idea, but it hasn't happened yet. People will not rent it. And so, it is a chicken or egg and the client is here spending money on me and other things, and willing to engage with the City to improve the site and to make all effort to do what is necessary to improve the site. But, until they get some income, until they get some activity on the site, my opinion is it is going to continue to languish.

Mr. Snowden: I would have to characterize them as very engaged at the moment, not just with this application, but looking at any potential changes to the site.

Mr. Hodge: I guess I would reiterate if there are folks to whom it would make a difference, regarding the play area, I would ask your thoughts and propose tabling to allow me to check with ODJFS.

Pastor Linder: I started reading the minutes thinking along the lines of Mr. Chairman, but I would be open to hearing if that answer would make a difference. I don't know if we should make a motion to table it, but I do yield to the veteran members here because I do not know if that just gets us back to spinning our wheels. That would be a motion I would make to table it at this time because that would give the applicant the opportunity to answer another way for this day care to fit that we might find to be safer, with respect to the Chairman's objection to the idea.

Ms. Wallace: I think a big point that has been made by some of the Board members is that it being a day care in not just this strip mall, but any, is just something they are not comfortable with because it does not fit the character of the building. And, if somebody would want to put a sales business in there, it would not fit the character of what the strip mall was originally deemed for.

Mr. Enfinger: I concur, the issue of the play area, while it is germane, is not my only concern. So, was there a motion?

Pastor Linder: There was.

Mr. Enfinger: Do we have a second for that motion. No second, so the motion is declined. I make a motion that we move to approve Application #170778.

Ms. Wallace: I second.

Mr. Enfinger: As a result, the applicant has failed, in my opinion, to reach the standards and requirements for all Special Exceptions, delineated in Item 1145.09 of the Code, specifically Line A and Line B.

Mr. Snowden: Very well Mr. Chairman and members of the Board, it stands as denied. At this time, if I could interject, Mr. Hodge, you can appeal that to City Council within thirty days and I will discuss with you as soon as the meeting is adjourned what you need to do in order to do that.

Mr. Hodge: Well thank you all for the opportunity, and for listening to me ramble on. And, Mr. Enfinger, I made a pretty strident point, but it is all in the nature of doing my best to make my clients case.

Mr. Enfinger: I absolutely understand. Thank you for coming out this evening.

RESULT:	FAILED [0 TO 4]
MOVER:	Aaron Enfinger
SECONDER:	Libby Wallace
NAYS:	Linder, Donovan, Enfinger, Wallace

E. OTHER BUSINESS

Mr. Enfinger: Mr. Snowden, is there any other business on the Agenda.

Mr. Snowden: No other business or announcements at this time.

Pastor Linder: I would like to talk to you about the lights on the Dollar General store. They still have the lights on the top of the store.

Mr. Snowden: With regards to that, staff has been to the site several times since we last talked. The property went to pull electrical permits but were unable to because they did not heed my advice, which was that they needed to submit electrical plans to the building division, for review, before they could pull their permits. So, the property owner had to go back and have those plans drawn, and I believe they have yet to be submitted again.

Mr. Enfinger: Is there a specific time horizon in which there can be punitive action taken by the City, to encourage them to comply in a more timely manner?

Mr. Snowden: There is. When we made the initial statement, when the Board said thirty days to present a plan to Staff, they did present a plan to staff, although they are not in compliance at this time. So, they did meet that initial statement, but they have not met any subsequent timelines. The Board does not need to take any formal action. If it is the will of the Board that Staff and the Code Compliance Division move forward, there is nothing to prevent Staff from enforcing the Code.

Mr. Enfinger: I think we were, to say the very least, very generous in allowing them to move in there. Now they are dragging their feet and hoping that the whole thing goes away. I am just not comfortable with that. I don't think other members of the Board are as well. They have thumbed their nose at our requests. I think we need to move forward in those proceedings.

Mr. Snowden: Let Staff confer with Dan. One of the issues is that our Code Compliance Division is actually under Building so I am going to need to discuss with our Building Official exactly how he would want to operationally handle that. Let me try to get the Board a follow up from that either tomorrow or Monday. I will let you know whether they have submitted the plans, or whether citations are forthcoming.

Mr. Enfinger: Sounds good. Any other business? I would like for the record to reflect a point of clarity. Whenever I was speaking to Mr. Hodge about his client interacting with the City, and putting adequate pressure on the City, I wasn't speaking specifically of Mr. Havener. I know he is doing everything he can. I am speaking more broadly in terms of City Council, the Mayor's Office, and other entities in the City that seem to not be putting enough effort into making things happen, and not backing it with resources, and not doing what needs to be done, and just

standing by with hands folded. As a point of clarity for that, I did not want it to come across as though I was throwing Staff, or the Development Director under the bus, specifically. I'm talking about the City leadership in general. That is where my comments are directed. Any other comments.

F. ADJOURNMENT

Chairman



Planning Administrator

Minutes Acceptance: Minutes of Aug 20, 2015 6:30 PM (Minutes of August 20, 2015)



TO: Members of the Board of Zoning and Building Appeals

FROM: Eric Snowden, Planning Administrator

RE: October 8, 2015 Special Meeting

DATE: October 1, 2015

Board Members:

Staff is requesting this special meeting in order to correct an issue with the previously approved minutes from the August 20, 2015. An error in the legislation tracking system led the voting information for Application #170778 to be incorrectly recorded. This information appears on page 26 of minutes. On the advice of the City Attorney's Office, Staff has corrected the minutes and is requesting the Board approve the corrected version of the minutes at this special meeting.

Once approved, the updated version will be published to the August 20 meeting entry and will be retained as a permanent record. However, both versions will remain in the informational materials attached to this special meeting and will be available for public inspection. Please do not hesitate to contact me if you have any questions.

Respectfully,

Eric Snowden

CC: Dan Havener,
Clerk of Council

Attachment: 20151008 BZBA Special Meeting - Memo to Members (1196 : 10.08.15 Special Meeting Memo to Members)